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Faithful Parents: Choice of Childcare Parentage Laws

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Faithful Parents: Choice of Childcare Parentage Laws

by Jeffrey A. Parness*

I. INTRODUCTION

In July 2017, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved and recommended for enactment in all U.S. states a new Uniform Parentage Act (UPA). This Act follows the 1973 and 2000 UPAs, which have been widely adopted. While all three UPAs recognize forms of childcare parentage beyond biological ties (in and outside of marital births) and formal adoptions, the 2017 UPA is quite expansive in recognizing such forms, including in its provisions on

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The title of this Article derives from Rebecca Aviel’s wonderful piece, Faithful Unions, 69 HASTINGS L.J. 721 (2018) wherein she reviews why the Full Faith and Credit Clause, U.S. CONST. art. IV, § 1, has not been employed in choice of marriage law cases and how such cases are resolved. Herein, I review choice of parentage law cases wherein again the Full Faith and Credit Clause has not been significantly employed. It should be, at least in certain settings. Such limited settings in marriage cases may involve plural marriage. Aviel, supra at 767–68. Herein, I suggest possible employment of both constitutional and non-constitutional directives on choice of law in imprecise parentage cases, that is, cases where childcare parenthood is determined judicially by examining earlier conduct occurring at no precise time (like holding out a child as one’s own), with an analysis dependent upon no definitive conduct (like marriage to a birth mother at the time of birth arising from consensual sex).


2. UNIF. PARENTAGE ACT (UNIF. LAW COMM’N 1973).

3. UNIF. PARENTAGE ACT (UNIF. LAW COMM’N 2000).

de facto parentage,\textsuperscript{5} voluntary acknowledgment parentage,\textsuperscript{6} and intended parentage of children born of assisted reproduction.\textsuperscript{7} These expanded forms of childcare parentage, relevant to child custody, visitation, and support issues, are chiefly dependent on childcare agreements and parental-like acts rather than on blood ties or formal adoptions.

This Article focuses on the choice of law problems arising with these expanded forms of childcare parentage.\textsuperscript{8} First, it reviews the UPAs on choice of law and on the expansive forms of childcare parentage. Second, it demonstrates the challenging choice of law issues when childcare parentage issues arise after interstate moves but depend upon premove behavior which is not precise (not like giving birth) or which occurs at no particular time (not like marriage to a birth mother at the time of birth). Third, the Article posits that in declaring forum laws usually apply when adjudicating expansive childcare parentage issues, perhaps relying upon the UPAs, courts should expressly recognize that forum laws sometimes include their own choice of law rules. Such recognition should be explicitly noted in an amended 2017 UPA. This approach follows precedents on choosing between conflicting state laws in and outside of family law settings. It also honors reasonable expectations, lessens forum shopping, and avoids Full Faith and Credit difficulties where there are parentage-related "public acts," like voluntary parentage acknowledgments, whose validity often turn on imprecise conduct occurring at no particular time, like fraud or duress.

Finally, the Article posits that state courts, and the NCCUSL in its 2017 UPA, should establish some special rules on choice of parentage laws. Special rules should operate when courts hear challenges to voluntary parentage acknowledgments (VAPs), with application of the

\footnotesize{\textsuperscript{5} UNIF. PARENTAGE ACT § 609 (UNIF. LAW COMM'N 2017).}

\footnotesize{\textsuperscript{6} Id. § 301.}

\footnotesize{\textsuperscript{7} Id. § 701.}

\footnotesize{\textsuperscript{8} Choice of Law problems are particularly challenging as there is no state that is a "place of celebration," that is, a state which "exercised regulatory authority over a domiciled couple" like a state exercises in recognizing a marriage. Aviel, supra note *, at 769–70. Professor Aviel does not discuss the challenging choice of law issues that would arise where there was an attempt to have one U.S. state recognize a common law marriage arising from purely private agreements or marital-like acts in a second state. In marriage settings, choice of law problems might also arise where there is no definite site that is the place of dissolution or where the time of dissolution is key to distinguishing between marital and nonmarital property in marital asset distribution. See, e.g., OHIO REV. CODE ANN. § 3105.171(A)(2) (2018) ([use of] date of the final hearing in an action for divorce" for asset distribution purposes can be overcome if "inequitable"); Iske v. Iske, 100 N.E.3d 957, 964–66 (Ohio Ct. App. 2017) (applying OHIO REV. CODE ANN. § 3105.171(A)(2)).}
VAP challenge laws of the state where the VAP was filed. Special rules should also operate in some spousal parentage and assisted reproduction cases.

II. CHOICE OF LAW UNDER THE UPA

The UPAs have different approaches to choice of childcare parentage laws issues. The 1973 Uniform Parentage Act (1973 UPA) says a parentage action "may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced." It does not speak generally to choice of law.

The 2000 Uniform Parentage Act (2000 UPA) generally addresses choice of law in childcare parentage disputes. It says that a court shall apply its own law "to adjudicate the parent-child relationship." This norm does not depend on either "the place of birth of the child" or "the past or present residence of the child." As "for a proceeding to adjudicate parentage," possible venues include a county in which "(1) the child resides or is found; (2) the [respondent] resides or is found if the child does not reside in this State; or (3) a proceeding for probate of the presumed or alleged father's estate has been commenced." Further, the 2000 UPA specifically addresses choice of law where childcare parentage allegedly flows from a VAP undertaken elsewhere.

The 2017 Uniform Parentage Act (2017 UPA) says the applicable law does not depend on "the place of birth of the child" or "the past or present residence of the child," with the court to apply its own law "to adjudicate

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9. It may never be that VAPs are wholly or partially signed in one state and filed in another. If that happens, the law of the filing state should apply to VAP challenges as state VAP forms inform the signors of the applicable challenge norms, upon which they should reasonably be able to rely. As well, factual issues related to VAP challenges would most always involve conduct occurring before signing, as with fraud, duress, or marital mistake of fact.

10. UNIF. PARENTAGE ACT § 8(c) (UNIF. LAW COMM'N 1973).

11. UNIF. PARENTAGE ACT § 103(b) (UNIF. LAW COMM'N 2000).

12. Id. § 103(b)(1), (2). These provisions on forum law application apply regardless of place of birth or residence and operate in several American jurisdictions. See, e.g., DEL. CODE ANN. tit. 13, § 8-103(b) (2018); 750 ILL. COMP. STAT. ANN. 46/104 (LexisNexis 2018); ME. STAT. tit. 19-A, § 1835(2) (2018); N.D. CENT. CODE § 14-20-03(2) (2018); N.M. STAT. ANN. § 40-11A-103(B) (LexisNexis 2018); OKLA. STAT. tit. 10, § 7700-103(B) (2018); WASH. REV. CODE ANN. § 26.26.021(2) (LexisNexis 2018).

13. UNIF. PARENTAGE ACT § 605.

14. Id. § 311 ("full faith and credit" to a VAP "effective in another state" if "signed" and "otherwise in compliance" with the other state's law).

15. UNIF. PARENTAGE ACT § 105 (UNIF. LAW COMM'N 2017).
parentage.” 16 Venue in “a proceeding to adjudicate parentage” is appropriate in a county in which “the child resides or is [found];” in a county where “the [respondent] resides or is [found]” if the child resides out of state; or in a county where there is commenced a proceeding “for administration of the estate of a [person] who is or may be a parent.” 17 Thus, the 2017 UPA choice of law and venue norms substantially follow the 2000 UPA. Like the 2000 UPA, the 2017 UPA has a special choice of law provision for VAPs. 18

The UPAs were said to follow the Uniform Interstate Family Support Act (UIFSA) 19 in declaring forum state law applicable to adjudicate the parent–child relationship in 2000 and to adjudicate parentage in 2017. 20 In each instance, the UPA Comment asserts that this directive “simplifies choice of law principles,” though recognizing that should the chosen state provide “an inappropriate forum, dismissal for forum non-conveniens may be appropriate.” 21

The 1996 and 2008 versions of the UIFSA generally speak to how a “responding tribunal” should proceed when asked by an “initiating tribunal” to determine the duty of, and amount payable for, child support. 22 Here, the respondent in a child support proceeding is not subject to personal jurisdiction in the initiating tribunal. 23 So the initiating asks a responding tribunal where there is personal jurisdiction to act. The responding tribunal, in hearing child support issues, is recognized as sometimes having first to “determine parentage.” 24 In so

17. UNIF. PARENTAGE ACT § 605.
18. Id. § 311.
20. The 2000 comment (amended 2002) points to § 303 of the UIFSA, while the 2017 comments point to the 2000 UPA as well as the 1996 UIFSA. The 2000 comment does not expressly speak to its newly adopted choice of law doctrine not found in the 1973 UPA.
22. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301(b) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 2008); UNIF. INTERSTATE FAMILY SUPPORT ACT § 301(c) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 1996).
23. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301(b) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 2008); UNIF. INTERSTATE FAMILY SUPPORT ACT § 301(c) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 1996).
determining, the 1996 UIFSA declares that the responding tribunal shall “apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in its state.”25 It also declares that a determination of “the duty of support and the amount payable” should be in accordance with its own state’s “law and support guidelines.”26

For a child support proceeding in a responding tribunal, the 2008 UIFSA declares the responding court shall apply “the procedural and substantive law generally applicable to similar proceedings originating” in the state.27 The 2001 UIFSA28 struck the provision on employing at times “the rules on choice of law.”29 As in the 1996 UIFSA, the 2008 UIFSA declares that the determination of the duty of support and amount payable should be in accordance with its own state’s “law and support guidelines.”30 States following the 2008 UIFSA, when making no reference to possibly employing its own “rules on choice of law,” generally view these reference failures as non-substantive.31

Seemingly, both the 2000 UPA on “parent-child relationship” adjudications and the 2017 UPA on “parentage” adjudications32 require one U.S. state court, presumably using its own choice of law rules or the Full Faith and Credit Clause33 dictate, to respect another U.S. state

25. Id. § 202 (emphasis added).
26. Id. § 303(2). These provisions continue to operate in several American jurisdictions. See, e.g., 5 GUAM CODE ANN. § 35303 (2018); P.R. LAWS ANN. tit. 8, § 543(b) (2018); WIS. STAT. § 769.303 (2018); see also UNIF. INTERSTATE FAMILY SUPPORT ACT § 701(b) (“In a proceeding to determine parentage, a responding tribunal of this State shall apply the laws of this State, including ‘the rules . . . on choice of law.’” (emphasis added)).
27. UNIF. INTERSTATE FAMILY SUPPORT ACT § 303(1) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 2008).
29. Id. § 303(1). The 2001 UIFSA sole provision on choice of law seemingly did not mandate that a responding tribunal utilize the parentage determination laws of another state. Id. § 604; see also id. § 701(b) (eliminating the reference to a responding court’s use of its rules on choice of law).
30. UNIF. INTERSTATE FAMILY SUPPORT ACT § 303(2) (NAT’L CONF. OF COMM’RS ON UNIF. ST. LAWS 2008). These provisions on child support decisions and guidelines, without referencing a choice of law rule, operate in several American jurisdictions. See, e.g., COLO. REV. STAT. § 14-5-303 (2018); IOWA CODE § 252K.303 (2018); NEV. REV. STAT. ANN. § 130.303 (LexisNexis 2018); VA. CODE ANN. § 20-88.46 (2018).
31. See, e.g., IOWA CODE § 252K.303 (statutory note); NEV. REV. STAT. ANN. § 130.303 (statutory note); VA. CODE ANN. § 20-88.46 (statutory note).
32. In the 2017 UPA, the Comment does not address what, if any, difference exists between adjudications of “the parent-child relationship” and adjudications of “parentage.” UNIF. PARENTAGE ACT § 105 cmt. (UNIF. LAW COMM’N 2017).
33. U.S. CONST. art. IV, §1.
court's earlier formal recognition of a person's parentage. Such a formal recognition can clearly arise from an actual civil or administrative case judgment or from a VAP.34

In following the UPAs, U.S. states may have childcare parent laws dependent upon a marital-related birth or upon a residency or holding out of a child as one's own.35 Here, there is no formal parentage recognition in the initiating state even though the parentage requisites have been met. Further, the 2017 UPA introduces a new form of legal parenthood, de facto parentage, which is far less precise.36 As with marital or resident and hold out parentage, this new form usually goes unrecognized in the initiating state via a formal act, like a court judgment, as soon as, or shortly after, its standards have been met. So, the 2000 and 2017 UPAs invite a responding tribunal to employ its own forms of imprecise childcare parentage to cases where the relevant acts wholly or substantially occurred in the state of the initiating tribunal.

Both the 2000 and 2017 UPAs suggest that forum law on childcare parentage shall apply to "adjudicate" issues of "parent-child relationship" and "parentage" under imprecise parentage laws. State

34. UNIF. PARENTAGE ACT § 311 ("The court shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the acknowledgement or denial was in a signed record and otherwise complies with law of the other state."). Undoubtedly, this need to recognize properly executed VAPs from other states was prompted by the federal statutory mandate (for states participating in the federal Temporary Assistance for Needy Families (TANF) program covering welfare subsidies) that "full faith and credit" be given to "other state" VAPs. 42 U.S.C. § 666(a)(5)(C)(iv) (2018). Once recognized, a VAP from another state potentially can be overcome, usually through a recession by a signatory within sixty days or by a challenge thereafter. While any post-sixty-day challenge is required by federal statute to be founded on "fraud, duress, or material mistake of fact," 42 U.S.C. § 666(a)(5)(D)(iii) (2018), state laws vary on what those requisites mean, as well as on other procedures for VAP challenges, including who can challenge and when challenges are untimely (either due to failure to meet a prescribed time period or due to equitable estoppel principles). On variations in state VAP laws, see infra Section IV(B).

35. In these latter two settings, the recognition would not be embodied in a formal act, but in the satisfaction of a norm guiding "parent-child" or "parenthood" establishments. No precedents have been found that deem such satisfaction in one state prompts legal status recognition without a court order (or other formal act) in that state.

36. The 1973 UPA recognized a significant form of imprecise parentage when it deemed presumptive natural fatherhood in a man who, "while the child is under the age of majority . . . receives the child into his home and openly holds out the child as his natural child." UNIF. PARENTAGE ACT § 4(a)(4) (UNIF. LAW COMM'N 1973). The imprecision was dramatically reduced in the 2000 and 2017 UPAs, which require a holding out parent (who could be a woman under the 2017 UPA) to reside in the same household with the child for the first two years of the child's life. UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. LAW COMM'N 2017); see also UNIF. PARENTAGE ACT § 204(a)(5) (amended 2002) (UNIF. LAW COMM'N 2000).
lawmakers have, in fact, dictated the use of forum laws in these imprecise parentage cases. Thus, in Virginia, by statute the courts must employ the Virginia assisted reproduction laws “without exception, in any action . . . to enforce or adjudicate any rights or responsibilities.”

U.S. state parentage laws do vary a bit in their language on choice of law in particular circumstances. Some special laws speak to the need to give “full faith and credit” to a paternity acknowledgment undertaken in another American state “according to its procedures.” Where allowed, maternity acknowledgments are similarly deemed creditable. Other special U.S. state laws additionally require explicitly that “full faith and credit” be given to a “denial of paternity” in a VAP if undertaken in another state in compliance with the law of the other state. Other special U.S. state laws on choice of law in parent-child and parentage settings are broader. Thus, some state laws speak to the need to give “full faith and credit” not only to a sister state VAP, but also to a sister state paternity “determination” made “through an administrative or judicial process.”

A few U.S. states recognize “full faith and credit” respect for a paternity determination via an administrative or judicial process in a sister state by expressly recognizing the need to defer to a paternity determination “made by any other state or jurisdiction.” Importantly though, there still needs to be a “determination.” This suggests there needs to be a formal U.S. state recognition elsewhere of a particular childcare parent, rather than a law elsewhere that just recognizes

38. See, e.g., CONN. GEN. STAT. § 46b-172(a)(4) (2018); 23 PA. CONS. STAT. § 5103(d)(18); see also HAW. REV. STAT. ANN. § 584-3.5(g) (LexisNexis 2018) (“full faith and credit to affidavits” for VAPs, which “constitute legal findings”); LA. STAT. ANN. § 9:393 (2018) (“in accordance with the laws and procedures of that state”).
40. See, e.g., ALA. CODE § 26-17-311 (LexisNexis 2018); DEL. CODE ANN. 13, § 8-311 (2018); N.D. CENT. CODE § 14-20-21 (2018); N.M. STAT. ANN. § 40-11A-311 (2018); OKLA. STAT. tit. 10, § 7700-311 (2010); TEX. FAM. CODE ANN. § 160.311 (West 2018); WYO. STAT. ANN. § 14-2-611 (2018). Noncompliance can involve, for example, signing a VAP form outside the state whose VAP form was used. See, e.g., Teague v. Teague, 999 So. 2d 86, 92 (La. Ct. App. 2008) (Indiana form signed in Louisiana).
41. See, e.g., CAL. FAM. CODE § 5604 (Deering 2018); New York Family Court Act § 516-a(d) (2018); see also N.H. REV. STAT. ANN. § 168-A:2(II) (LexisNexis 2018) (“[paternity] established by court or administrative order”). California has a separate statute addressing only the “force and effect” of a VAP. CAL. FAM. CODE § 7573 (Deering 2018).
42. KAN. STAT. ANN. § 23-2208(d) (2018) (including a determination “established by judicial or administrative process or by voluntary acknowledgement”). Similar is CAL. FAM. CODE § 5604 (Deering 2018). Cf. N.H. REV. STAT. ANN. § 168-A:2(II) (2018) (containing language similar to Kansas statute, but also requiring full faith and credit to a paternity “determination” by “operation of another state’s law”).

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generally that childcare parentage can arise from certain imprecise conduct (namely, parental-like acts).

III. BEYOND BIOLOGY AND FORMAL ADOPTION: EXPANDED FORMS OF PARENTAGE UNDER THE UPA

The UPAs have always recognized some form of childcare parentage not necessarily dependent upon actual proof of biological ties or formal adoptions. Under all three UPAs childcare parentage can arise, or be challenged, under less precise standards. Such standards involve marital births; VAPs; residency or hold out parenting; de facto parenting; and parenthood via assisted human reproduction agreements. It is with the employment of the less precise standards in establishing and disestablishing childcare parentage that choice of law and full faith and credit issues can arise.

A. Spousal Parentage

The 1973 UPA recognizes that "[a] man is presumed to be the natural father of a child if . . . he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated."43 Seemingly, for children born to their spouses via "artificial insemination" utilizing the semen not donated by the husbands, there are additional requirements, including husband "consent" and "supervision of a licensed physician."44

The 2000 UPA, as amended in 2002, similarly recognizes presumptive marital parentage as well as non-presumptive marital parentage via consent to "assisted reproduction" and non-presumptive parentage via a "validated" gestational mother "agreement."45 The marital parentage presumption expressly applies to a man married to the mother when "the child is born," or that was married to the mother when the child is born "within 300 days after the marriage is terminated."46 As to a child born

43. UNIF. PARENTAGE ACT § 4(a)(1) (UNIF. LAW COMM'N 1973). The 1973 UPA also recognizes male parentage presumptions in certain men who married or attempted to marry the natural mothers before or after the births. Id. § 4(a)(2), (3).

44. Id. § 5. Other forms of artificial insemination, raising "complex and serious legal problems," are not dealt with, as was noted in the § 5 comment. Id. Failure to follow § 5 mandates may nevertheless prompt a marital parentage presumption under § 4 for a child born of artificial insemination. See, e.g., id. § 4(a)(1) (presuming the husband is the natural father of a child born to his wife "during the marriage").


46. Id. § 204(a)(1), (2). As with the 1973 UPA, there is also a marital parentage presumption for a man who attempted to marry the birth mother before the child's birth and the child is born "during the invalid marriage or within 300 days after its termination,"
to a married mother via assisted reproduction, a husband is a parent if he "provides sperm for, or consents to, assisted reproduction" per the UPA requisites.\textsuperscript{47} Within two years of birth, the husband may dispute paternity if he did not consent.\textsuperscript{48} If the husband did not provide sperm and did not consent, he may pursue "at any time" an adjudication of non-paternity where he and the mother "have not cohabited since the probable time of assisted reproduction" and he "never openly held out the child as his own."\textsuperscript{49} As to a child born to a gestational carrier where there is a validated agreement, a husband and his wife are parents unless the agreement is terminated.\textsuperscript{50}

The 2017 UPA also recognizes a marital parentage presumption. It expressly applies to both male and female spouses who are married to the birth mother at the time of birth; married to the birth mother within 300 days of the marriage's termination; or married to the birth mother after the child's birth as long as the spouses "asserted parentage."\textsuperscript{51} Non-presumptive parentage attaches to consenting spouses of birth mothers, as under the 2000 UPA, who give birth via "assisted reproduction."\textsuperscript{52} Non-presumptive parentage also attaches to married spouses (and others) where there are either gestational or genetic surrogacy agreements.\textsuperscript{53}

\textbf{B. Voluntary Parentage Acknowledgment}

The 1973 UPA recognized that "[a] man is presumed to be the natural father of a child," thus prompting parental childcare interests, if "he acknowledges his paternity ... in a writing" filed with the state, which is not disputed by the birth mother "within a reasonable time after being informed."\textsuperscript{54} Rebuttal of such a presumption occurs only with "clear and convincing evidence" of no biological ties and "a court decree establishing paternity of the child by another man."\textsuperscript{55}

\begin{itemize}
  \item id. \S 204(a)(3), as well as for a man who married or tried to marry the mother "after the birth of the child" and who "voluntarily asserted his paternity of the child." \textit{Id.} \S 204(a)(4).
  \item Id. \S 703 (containing the consent requisites in \S 704).
  \item Id. \S 705(b).
  \item Id. \S 806.
  \item UNIF. PARENTAGE ACT \S 204(a)(1) (UNIF. LAW COMM'N 2017).
  \item Id. \S 703 (containing the consent requisites in \S 704).
  \item Id. §§ 802–807 (containing comparable requirements for each form of agreement, with additional special rules for gestational surrogacy pacts, at §§ 808–812, and for genetic surrogacy pacts, at §§ 813–818).
  \item UNIF. PARENTAGE ACT \S 4(a)(5) (UNIF. LAW COMM'N 1973).
  \item Id. \S 4(b).
\end{itemize}
The 2000 UPA, as amended in 2002, recognized no parentage presumption for a male VAP signor.\textsuperscript{56} It did recognize the birth mother and "a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity."\textsuperscript{57} The 2000 UPA declared a VAP could be rescinded within sixty days of its effective date by a "signatory."\textsuperscript{58} Thereafter, a signatory could commence a court case to "challenge" the VAP, but only on "the basis of fraud, duress, or material mistake of fact" within two years of the VAP filing.\textsuperscript{59}

The 2017 UPA again recognizes VAPs establish nonmarital parent-child relationships without a presumption.\textsuperscript{60} Parentage establishments can now be undertaken by an expanded field of VAP signatories, including those who claim to be "an alleged genetic father" of the child born of sex,\textsuperscript{61} a presumed parent (man or woman) due to an alleged or actual marriage or a holding out of the child as one's own while residing in the same household with the child "for the first two years of the life of the child,"\textsuperscript{62} and, an intended parent (man or woman) in a non-surrogacy, assisted reproduction setting.\textsuperscript{63} VAPs now may be undertaken "before or after the birth of the child."\textsuperscript{64} As with the 2000 UPA, signatories may rescind within sixty days.\textsuperscript{65} Challenges may proceed thereafter, "[B]ut not later than two years after the effective date" and "only on the basis of fraud, duress, or material mistake of fact."\textsuperscript{66} While non-signatory VAP challenges may be pursued within "two years after the effective date of the acknowledgement," challenges, except those presented by a child, will be sustained only when a judge finds the child's "best interest" is served.\textsuperscript{67}

\begin{itemize}
  \item \textsuperscript{56} See Unif. Parentage Act § 204(a) (amended 2002) (Unif. Law Comm'n 2000).
  \item \textsuperscript{57} Id. § 301. The accompanying Comment indicates that "a sworn assertion of genetic parentage of the child" is needed though not "explicitly" required by federal welfare subsidy statutes that often prompt state VAP laws, a federal statutory "omission" that is corrected in the 2000 UPA. Id. § 301 cmt. The Comment also recognizes a male sperm donor may undertake a VAP in an assisted reproduction setting where his "partner" is the birth mother. Id.
  \item \textsuperscript{58} Id. § 307.
  \item \textsuperscript{59} Id. § 308(a).
  \item \textsuperscript{60} See Unif. Parentage Act § 201(5) (Unif. Law Comm'n 2017). Some marital parentage presumptions, including marriages occurring after birth, can be prompted by parentage assertions in records filed with the state. Id. § 204(a)(C)(i).
  \item \textsuperscript{61} Id. § 301.
  \item \textsuperscript{62} Id. §§ 301, 204(a)(2).
  \item \textsuperscript{63} Id. §§ 301, 703.
  \item \textsuperscript{64} Id. § 304(b).
  \item \textsuperscript{65} Id. § 308(a)(1) (allowing rescission within two months of their effective dates).
  \item \textsuperscript{66} Id. § 309(a).
  \item \textsuperscript{67} Id. §§ 309(b), 610(b)(1), (2).
\end{itemize}

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Non-signatory challengers are limited. Those with standing include the child; the woman who gave birth who, as yet, has not been deemed a nonparent; a parent under the 2017 UPA; “an individual whose parentage of the child is to be adjudicated;” an adoption agency; and a child support, or other authorized, governmental agency. 68

The explicit recognition in the 2017 UPA that VAPs may be undertaken by those with no biological ties to the children whom they acknowledge is revolutionary, clearly allowing circumvention of formal adoption laws and the safeguards they provide for children, including background checks and best interest findings. A Comment in the 2000 UPA lamented that the federal statutes guiding state VAP laws do not “require that a man acknowledging paternity must assert genetic paternity” and indicated the 2000 UPA was “designed to prevent circumvention of adoption laws by requiring a sworn assertion of genetic parentage of the child.” 69 In 2017 the UPA policy on VAPs changed dramatically.

C. Residency and Hold Out Parentage

The 1973 UPA has the following parentage presumption: “(a) A man is presumed to be the natural father of a child if . . . (4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.” 70 The 2000 UPA altered the holding out parentage presumption. It says, “(a) A man is presumed to be the father of a child if . . . (5) for the first two years of the child’s life, he resided in the same household with the child and openly held out the child as his own.” 71 The 2017 UPA again altered the holding out parentage presumption. It says,

(a) An individual is presumed to be a parent of a child if . . . (2) the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual’s child. 72

While expanding the VAP route to childcare parentage in 2017, the last two UPAs contracted the childcare parentage opportunities for those living with, and supporting, nonmarital children without VAPs or

68. Id. §§ 602, 610(b).
72. UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. LAW COMM’N 2017).
assisted reproduction pacts. Since 2000, an alleged residency or holdout parent must begin to rear the child upon the child's birth.

**D. De Facto Parentage**

The 2017 UPA adds a "de facto parentage provision," an expanded form of childcare parentage that is far less precise than the two-year hold-out parentage presumption. *De facto* parenthood encompasses human acts occurring at no particular time or in no particular place. The 2017 UPA says

(a) A proceeding to establish parentage of a child under this section may be commenced only by an individual who: (1) is alive when the proceeding is commenced; and (2) claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence a proceeding ... (1) before the child attains [eighteen] years of age; and (2) while the child is alive. . . .

(d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence that:

(1) the individual resided with the child as a regular member of the child's household for a significant period;
(2) the individual engaged in consistent caretaking of the child;
(3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
(4) the individual held out the child as the individual's child;
(5) the individual established a bonded and dependent relationship with the child which is parental in nature;
(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and
(7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) . . . [I]f in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements [of paragraphs (1) through (7)] of subsection (d) are satisfied, the court shall adjudicate parentage
under Section 613[, subject to other applicable limitations in this part].

E. Parentage Following Assisted Reproduction Births

1. No Surrogate
In response to the increasing numbers of children born of assisted reproduction, the 2017 UPA has distinct articles on non-surrogacy and surrogacy births. In non-surrogacy settings, the 2017 UPA “is substantively similar” to the 2000 UPA, updated in 2002, with the “primary changes . . . intended to update the article so that it applies equally to same-sex couples.” The 2017 UPA thus recognizes that a donor, in the absence of consent or common residence in the first two years while holding out a child as one’s own, “is not a parent of a child conceived by assisted reproduction.” The non-parental status of one married to a child caring birth mother of a child born by assisted reproduction, even if a gamete donor, may be established by a showing of a lack of consent and of no holding out of the child as one’s own.

2. Surrogate
As to surrogacy, the 2017 UPA—like the 2000 UPA, as amended in 2002—distinguishes between genetic (traditional) and gestational surrogacy. Unlike its 2000 predecessor, the 2017 UPA imposes differing requirements for the two surrogacy forms, with “additional safeguards or requirements on genetic surrogacy agreements,” as only they involve a woman giving birth while “using her own gamete.”

IV. INTERSTATE VARIATIONS IN THE EXPANDED FORMS OF CHILDCARE PARENTAGE LAWS

Of course, there is no need to choose between the childcare parentage laws of two or more interested states in cases involving childcare parentage establishment or disestablishment if all the states have

73. Id. § 609(a), (b), (d), (e).
74. Id. cmt. preceding § 701.
75. Id. § 702.
76. Id. § 705.
77. Id. cmt. preceding § 801.
78. Id. The common safeguards or requirements for all surrogacy pacts are found in §§ 802 to 807 of the UPA.
79. Id. § 801(1). Gestational surrogacy covers births to a woman who uses “gametes that are not her own.” Id. § 801(2). The special rules for gestational surrogacy pacts are found in §§ 808 to 812 of the UPA, while the special rules for genetic surrogacy pacts are found in §§ 813 to 816.
comparable laws. Yet, notwithstanding the efforts of the NCCUSL via their UPAs, its goals of uniform as well as sensible laws across borders, U.S. state laws on establishing and disestablishing childcare parentage now vary drastically. Thus, when relevant conduct occurs in two or more states, a U.S. state court adjudicating parentage or a parent–child relationship potentially may choose to, if not be compelled to, employ non-forum laws. The following sections demonstrate the significant variations in the content and application of U.S. state childcare parentage laws dependent upon neither actual (though presumed at times) biological ties nor formal adoptions. They demonstrate the great potential for “true conflicts” (addressed in Section IV), as well as the failures of many state courts to address such conflicts when they arise (addressed in Section V).

A. Spousal Parentage

Spousal parentage laws, sometimes involving presumptions of biological ties, are recognized in each UPA. Marriages may be actual or attempted. 80 Where places of birth, pregnancy, and conception differ, there may need to be a choice of law if spousal parentage under the law can arise under any of these norms. 81 Thus, a marriage “at conception” norm can prompt different results than a marriage “at birth” norm. 82 Where conflicting spousal parentage laws are based on the place of birth or of pregnancy residence, if not the place of conception, the chances for conflicting governmental interests in declaring parentage at birth arise. However, true conflicts on initial spousal parentage are infrequent as multistate prebirth and at-birth activities typically do not occur. Conduct around the time of birth involving, for example, an existing marriage, the circumstances of conception, an attempted marriage, and a marital residence normally occur in a single state. More likely to arise are

80. See id. § 204; UNIF. PARENTAGE ACT § 204 (UNIF. LAW COMM’N 2000); UNIF. PARENTAGE ACT § 4(a) (UNIF. LAW COMM’N 1973).
81. See, e.g., ARIZ. REV. STAT. § 25-814(a)(1) (LexisNexis 2018) (presuming father with marriage to birth mother at “any time in the ten months immediately preceding the birth”); CAL. FAM. CODE § 7611 (Deering 2018) (presuming husband is natural father of child born to his wife “during the marriage, or within 300 days after the marriage is terminated”); MICH. COMP. LAWS § 722.1433(e) (2018) (defining “presumed father” with marriage to birth mother at the time of the child’s conception or birth); see also State v. E.KB., 35 P.3d 1224, 1229 (Wyo. 2001) (containing facts where the birth mother was married to two different men during her pregnancy, who each qualified as presumed marital fathers under state law).
82. See, e.g., Debra H. v. Janice R., 930 N.E.2d 184, 195 (N.Y. 2010) (determining that civil union at time of birth was key, even though there was no civil union at the time of conception).
conflicting U.S. state interests in the standards on overcoming (as by rebutting or disestablishing) spousal parentage, when a court in one state must assess any continuing childcare interests arising from a marriage (or marital-like relationship) occurring in another state.

State laws on spousal parentage vary significantly. Today, a man in California "is presumed to be the natural [father] of a child" if

(a) [he] and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated . . . or after a judgment of separation is entered by a court; (b) before the child's birth, [he] and the child's natural mother . . . attempted to marry each other . . . although the attempted marriage is . . . invalid, and either . . . the child is born during the attempted marriage, or within 300 days after its termination; (c) after the child's birth, [he] and the child's natural mother have married . . . and either . . . with his . . . consent, [he] is named as the child's parent on the child's birth certificate . . . [or he] is obligated to support the child under a written voluntary promise or by court order.83

As well, though it is said that in California "the child of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage,"84 this presumption can now be rebutted in California with "evidence based on blood tests," at which time "the question of paternity of the husband shall be resolved accordingly."85 One case where such a question was "resolved accordingly" was In re Jesusa V.,86 wherein the California Supreme Court designated as the legal father the husband Paul, a presumed natural father, rather than Heriberto, the actual natural father.87 In doing so, it implicitly recognized that at times (with differing facts), an unwed biological father would prevail over a husband's presumed marital fatherhood.88 An unwed biological father in California faces differing disestablishment norms in California where the husband, with no

83. CAL. FAM. CODE § 7611(a)-(c) (Deering 2018).
84. CAL. FAM. CODE § 7540 (Deering 2018); see also In re M.R., 212 Cal. Rptr. 3d 807, 819 (Cal. Ct. App. 2017) (reading § 7540 as requiring marriage both at the time of conception and birth).
85. CAL. FAM. CODE § 7541(a) (Deering 2018); see also K.S. v. R.S., 669 N.E.2d 399, 406 (Ind. 1996) (allowing putative father to seek to establish paternity though child was born into a marriage and remains living with that marital family).
86. 85 P.3d 2 (Cal. 2004).
87. Id. at 6.
88. See id. at 11.
marital parentage presumption due to no cohabitation, nevertheless was a presumed parent as he held out his wife's child as his own.89

Outside of California, a marital parentage presumption can be subject to different establishment or rebuttal standards. In Michigan, parentage arises for one married to the child's mother at the time of the child's conception or birth.90 In Utah, the standards for rebutting a marital parentage presumption dictate that only the mother or her husband, the presumed father when the child is born during the marriage, can challenge the marital paternity presumption so long as the couple is "committed to remaining married" and to raising "the child as issue of the marriage."91 Somewhat comparably, in Oregon, only a wife or husband can challenge the husband's presumed marital parentage "as long as [the husband and wife] are married and are cohabiting, unless [the husband and wife] consent to the challenge" by a third party.92

In the 1999 decision Strauser v. Stahr,93 a Pennsylvania court held that there is an irrebuttable presumption of paternity based upon marriage as long as the marriage is intact, there was an intact family at all times, and the married couple favors maintaining the presumption.94 The case involved the legal paternity of Amanda Stahr, the third child born to April and Steven Stahr during their marriage. The Stahrs always resided together and never separated. April Stahr, at one time, recognized that Timothy Strauser, not her husband, was Amanda's biological father. She allowed Timothy frequent visits with Amanda, as

89. See, e.g., In re Emma B., 193 Cal. Rptr. 3d 154, 156 (Cal. Ct. App. 2015). No biological father was involved; husband was a presumed parent under CAL. FAM. CODE § 7611, and not a presumed marital parent under CAL. FAM. CODE § 7540. Id. at 158 n.2.
90. MICH. COMP. LAWS § 722.1433(e) (2018); see also ARIZ. REV. STAT. § 25-814(a)(1) (LexisNexis 2018) (presuming husband is the father if married to birth mother "at any time in the ten months immediately preceding the birth").
91. UTAH CODE ANN. § 78B-15-607(1) (LexisNexis 2018); R.P. v. K.S.W., 320 P.3d 1084, 1088, 1093, 1099 (Utah Ct. App. 2014) (reviewing the effects of 2005 legislation and finding it preempted any common law theories unwed fathers might utilize, while noting "no constitutional challenge" had been presented); see also Kielkowski v. Kielkowski, 346 P.3d 690, 692 (Utah Ct. App. 2015) (determining marital presumption was not rebutted though the default divorce contained husband's statement in automated divorce filing that there were "no children at issue in this marriage").
94. Id. at 1055–56; cf. K.E.M. v. P.C.S., 38 A.3d 798, 810 (Pa. 2012) (holding that a mother can sue the biological father for support where the child was born into her marriage; she is not estopped by her own or her husband’s actions at birth and thereafter because the best interests of the child would not be served by estoppel); B.S. & R.S. v. T.M., 782 A.2d 1031, 1037 (Pa. Super. 2001) (allowing biological father to sue for custody where mother and husband had separated from time of conception to well after birth, during which time biological father parented the child).
voluntary blood tests showed a high probability that Timothy was the biological father. After April began to interfere with his visitation with Amanda, Timothy sued in paternity for childcare opportunities. April’s husband, Steven, intervened, requesting that the paternity suit be dismissed because of the presumption that he was Amanda’s father. 95

In a 4–3 decision, the Pennsylvania high court dismissed the unwed biological father’s paternity suit. 96 The court found the marital presumption (“one of the strongest presumptions known to the law”) could only be rebutted by proof of the husband’s sterility or lack of access to his wife during the period of conception, at least where “the marriage into which Amanda was born continues” (and, perhaps, where there has never been any legal separation of the spouses). 97 This standard was said to insure that “marriages which function as family units should not be destroyed by disputes over the parentage of children conceived or born during the marriage.” 98 The court did not investigate Timothy’s assertion that there was truly “no marriage to protect” since the union between April and Steven lacked “love and intimacy” and had prompted April’s adultery, which caused Steven to exhibit an “attitude of indifference” toward Amanda. 99 The court also did not investigate whether “it would be in the child’s best interests” for Timothy to be granted some childcare rights. 100 Two dissenters opined that the marital presumption “should be open to rebuttal by reliable blood test evidence.” 101

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95. Strauser, 726 A.2d at 1052–53.
96. Id. at 1053.
97. Id. at 1063–55. A husband who is not biologically tied cannot always himself challenge a marital paternity presumption. K.E.M., 38 A.3d at 799–800 (allowing the common law doctrine of paternity by estoppel to bar husband’s denial of paternity where the bar will serve the child’s best interests); see also R.K.J. v. S.P.K., 77 A.3d 33, 42 (Pa. Super. 2013) (using paternity by estoppel to support a child support order against a non-biological father who acted like a father for six years).
98. Strauser, 726 A.2d at 1054 (quoting Brinkley v. King, 701 A.2d 176, 180 (Pa. 1997)).
99. Id. at 1055–56.
100. Id. at 1053. Similar norms operate in Alabama. See, e.g., B.C. v. J.S.U., 158 So. 3d 464, 467 (Ala. Civ. App. 2014) (quoting Ex parte S.E., 125 So. 3d 720, 721 (Ala. Civ. App. 2013) (determining that putative biological father cannot challenge marital parentage presumption where presumed parent “wishes to persist” in parentage under law)); cf. Pena v. Diaz, 125 So. 3d 356, 359 (Fla. App. 5th 2013) (Griffin, J., specially concurring) (noting “intact” marriage rule operates in Florida, but finding, contrary to other Florida judges, it is inapplicable when divorce action was pending when child was born into marriage, even if divorce case is later voluntarily dismissed); C.G. v. J.R., 130 So. 3d 776, 782 (Fla. App. 2014) (denying biological father standing to upset husband’s paternity; no support in Florida law for “two legally recognized fathers” for childcare purposes where the married couple only separated a few years after the child’s birth).
welcomed blood tests as well as a “case-by-case” analysis on “what is best for Amanda.”

In Illinois, there are different marital parentage presumption and rebuttal standards. The Illinois Parentage Act creates a few parentage presumptions founded on marriage and marital-like relationships. One is that a person is presumed to be the parent of a child “born to the mother during . . . marriage . . . or [a] substantially similar legal relationship.” The marital and marital-like parentage presumption in Illinois is not conclusive, as it may be challenged in a proceeding to adjudicate the parentage of a child. A challenge seeking to disestablish a marital parentage presumption may be brought by a presumed parent, acknowledged parent, adjudicated parent, or alleged parent, as well as by the child. A challenge may be foreclosed, however, due to the earlier conduct of the challenger, inequity, or the child’s best interests.

Disestablishments by unwed biological fathers of the marital parentage in other men are easier in Mississippi. The Mississippi Supreme Court has recognized a strong parental presumption for those biologically connected. In one case a child was born in 2004 into the 2004 marriage of Amy and Scott, who were divorced in 2009. T.J., the child’s biological father who first learned of his genetic ties in 2011, sued for custody in 2011. While T.J., for quite some time, “did little to nothing to inquire or otherwise try to involve himself in the life of a child

102. Id. at 1056, 1057 (Nigro, J., dissenting).
104. 750 ILL. COMP. STAT. 46/204(a)(1) (2018). Except as provided by a valid gestational surrogacy contract or other law. Id.
105. 750 ILL. COMP. STAT. 46/610(a) (2018) (covering other challenges to, for example, acknowledged and adjudicated parents).
106. Id. Where the challenger was earlier involved in a lawsuit in which a presumed parent was deemed an adjudicated parent, a challenge may be foreclosed. See, e.g., In re Griesmeyer, 707 N.E.2d 72, 79 (Ill. App. Ct. 1998) (dismissing parentage petition due to earlier dissolution proceeding, where both mother and child were parties and where there was an “uncontested judgment” declaring child was “born as a result of [the marriage]”; cf. Simcox v. Simcox, 546 N.E.2d 609, 611 (Ill. 1989) (determining, as child was not a party to earlier dissolution proceeding, no preclusive effects as to child). Outside of Illinois there is, for example, Myers v. Myers, 13 N.E.3d 478, 483–84 (Ind. App. 2014) (barring ex-wife by laches from challenging ex-husband’s paternity since earlier dissolution case deemed ex-husband the legal father though it recognized there were no biological ties).
107. 750 ILL. COMP. STAT. 46/610(a)(1)–(3) (2018); see also Buchanan v. Logan, 92 N.E.3d 600, 604 (Ill. App. Ct. 2017) (foreclosing child’s action to establish fatherhood in biological dad due to failed earlier attempt where there was a presumed marital father).
108. E.g., In re Waites, 152 So. 3d 306, 310 (Miss. 2014).
109. Id. at 307–08.
110. Id. at 308.
that could have been his,"111 he nevertheless was found entitled to the "natural-parent presumption" which could only be overcome by "clear and convincing evidence of abandonment, desertion, immoral conduct detrimental to the child, [or] unfitness."112 By contrast, in Louisiana, barring maternal "bad faith," a biological father cannot seek to undo a marital parenthood presumption one year after the child is born.113

Disestablishment norms for spousal parenthood presumptions not only vary interstate, but also can vary intrastate. Thus, in Louisiana, an unwed biological father has only one year from birth to seek disestablishment while the birth mother has two years from birth.114 Further, spousal parenthood norms can vary for purposes beyond child custody or visitation. Whatever the circumstances allowing establishment or rebuttal of spousal parenthood, once rebutted, at least by the marital parent, the disestablished parent usually will no longer have child support duties.115 Yet, may such a disestablished parent recover any earlier support, or perhaps other monies tied to the one-time parenthood? In 2012, the Tennessee Supreme Court allowed a man who rebutted, as of April 2009, his marital parenthood earlier recognized in a February 2001 dissolution decree, to recover—on an intentional misrepresentation of facts claim against his ex-wife—the child support, medical expenses, and insurance premiums he had paid on the child's behalf following the dissolution.116 Elsewhere, as in West Virginia, there is a differing assessment of damages or culpability.117

It should be noted that even when spousal parenthood is established and then rebutted or subject to rebuttal, the spousal parent (current or former) may still have avenues to childcare. Thus, in a 1996 New Hampshire case, a husband who lost his presumptive parenthood became a stepfather, as he remained married to the birth mother.118 In that state,

111. Id.
112. Id. at 314.
a stepparent can be granted child custody if it serves the child’s best interest, as long as the stepparent acts in loco parentis by admitting the child into the family and treating the child as a family member.119 The Missouri high court in 2018 allowed a disestablished spousal parent to pursue a nonparent childcare order after the biological father joined a pending divorce case.120 In some states, a marital parent—whose status is more easily rebutted by a lack of biological ties—can sign a VAP, though not biologically tied, prompting childcare parentage,121 making an effort to disestablish childcare parentage more difficult.

So, there are many interstate differences in spousal parentage. Some were prompted by the differences in the UPAs. When marital families wholly or partially move across U.S. state borders, and childcare parentage issues then arise, choice of law issues can emerge.122

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119. Id. at 1183.
122. Incidentally, beyond childcare, spousal parentage presumptions can vary interstate in other settings. Two Florida cases illustrate this point. The issue in the cases was whether a deceased man’s biological son was his survivor under the state Wrongful Death Act where the son’s mother was married to another man at the time of the son’s birth and where the husband’s presumptive parentage had never been, and would likely never be, rebutted. The cases differ in result. In Daniels v. Greenfield, 15 So. 3d 908 (Fla. Dist. Ct. App. 2009), approved & remanded for hearing, 51 So. 3d 421 (Fla. 2010), the court found the son was a survivor, especially as the decedent was listed as the father on the birth certificate and was the only father known to the child. Daniels, 15 So. 3d at 914. In 2001, another appeals court, in Achumba v. Neustein, 793 So. 2d 1013 (Fla. Dist. Ct. App. 2001) disapproved in Greenfield v. Daniels, 51 So. 3d at 422, the court found no survivorship, at least where the husband’s name was on the child’s birth certificate. Achumba, 793 So. 2d at 1014. Of course, here there is typically less potential harm to an intact family. And here, one family will benefit financially by the legal recognition of a second father, with likely financial detriment to another family.

The financial detriment to other family members of a decedent who is labeled a presumptive parent has led to some lawsuits wherein those family members seek to disestablish a marital presumption favoring the child of the decedent. In a 2006 Minnesota Supreme Court probate case involving a decedent’s heirs, the decedent’s daughter sought to disestablish the decedent’s son (then her brother) via a marital paternity presumption by proving the decedent had no biological ties to his presumed son, born in the late 1940s. In re Estate of Jotham, 722 N.W.2d 447, 450 (Minn. 2006). The daughter lost, but only because the Parentage Act required an action “declaring the nonexistence of the father and child relationship presumed” be brought no later than three years after the child’s birth. Id. (employing MINN. STAT. § 257.55 (2018)). A daughter also may not have had standing to seek disestablishment within three years as the Parentage Act granted standing to a child, the child’s biological mother, or a man presumed to be the child’s father, meaning the daughter might only be able to knock out her brother’s recovery from the estate if her mother sued. Had the decedent died earlier, the sister’s attempt to disestablish the parentage of her father as to her then brother might have been successful. Elsewhere, the
B. Voluntary Parentage Acknowledgment

State VAP statutes can also, but need not, involve parentage presumptions. With and without presumptions, VAP statutes on parentage establishment typically recognize that signed and state-filed parentage declarations can establish childcare parentage for the signors, having the force and effect of court judgments. Signors are sometimes without alleged biological ties and do not undertake formal adoptions. VAP laws vary whether there is an express requirement of possible biological ties. As well, VAP laws are subject to differing disestablishment standards, though all norms, due to federal welfare subsidy mandates, must conform to certain federal Social Security Act requisites.

VAP statutes usually are employed by birth mothers and unwed men, with or without biological ties to children born of sex, who

sister would be barred by a lack of standing to challenge the presumption. See, e.g., In re Estate of Lamey, 689 N.E.2d 1265, 1270 (Ind. Ct. App. 1997) (prohibiting uncle from challenging paternity of his brother’s daughter for purposes of determining heirship in his brother’s estate).

Marital paternity presumptions can also be rebutted in child support reimbursement settings where husbands, once presumed fathers, seek reimbursement from biological fathers. In 2012, the New Jersey Supreme Court recognized such a former husband’s claim against the biological father, his former brother-in-law, where the child was nineteen. D.W. v. R.W., 52 A.3d 1043, 1045 (N.J. 2012). A statute recognized such a claim and there was no showing of good cause for not requiring genetic testing. Id. Seemingly, good cause might well bar a court order on genetic testing in a reimbursement setting where the child was nine, and not nineteen, years old and where the relevant marriage remained intact.


124. State statutes on the effects of VAPs vary in their language though federal law (tied to state participation in TANF, a federal welfare subsidy program) requires that VAPs from other states be given “full faith and credit.” 42 U.S.C. § 666(a)(5)(c)(iv) (2018).


seek to establish legal paternity. Increasingly though, VAP establishments can be undertaken by birth mothers and other women.

VAP statutes on parentage disestablishment via VAP challenges often are used by one or both of the signatories (like the birth mother or putative father). Further, others sometimes employ them, like the state or a non-signing man with actual biological ties to the child. VAPs are typically distinguished from birth certificate recognitions of childcare parents encompassing those married to birth mothers who never undertake VAPs. Thus, in Alaska and Nevada the forms do not speak to biological ties, with the signing man indicating only that he is the “father.” In Wyoming and Washington, there is no explicit requirement for the signing man to affirm a belief in biological ties, though the signor elsewhere is referred to as the “natural father.”

Only in some places can a VAP be returned prior to birth. Additionally, only in some places must information as to any completed genetic testing be submitted; may forms be used by residents for out-of-state births; are witnesses or notaries needed; and must forms require parental or guardian consent when the signing mothers are young.

Further, notwithstanding any designated “conclusive” status, voluntary acknowledgments usually may be rescinded within sixty days. After sixty days, however, VAPs usually may only be challenged in court on the basis of “fraud, duress, or material mistake of fact.”

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127. But see In re Adoption of Sebastian, 879 N.Y.S.2d 677, 692–93 (2009) (suggesting woman whose ova was used by her partner to bear a child born of assisted reproduction might employ the voluntary acknowledgment process).

128. See, e.g., Parness & Townsend, supra note 123, at 82–86.

129. See, e.g., Castillo v. Lazo, 386 P.3d 839, 842 (Ariz. Ct. App. 2016) (holding birth certificate naming husband is not “equivalent” to a VAP).

130. Alaska Bureau of Vital Stat., Form No. 06-5376 VS Form 16, Affidavit of Paternity (rev. Jan. 2009); Nevada Declaration of Paternity, Nevada Vital Records, Form No. NSPO, Declaration of Paternity (rev. July 2008). These and other cited forms, were collected for Parness & Townsend, supra note 123, and are on file with the Author.


133. The varying state forms are reviewed in Parness & Townsend, supra note 123, at 63–87.

standards prompted by the federal Social Security Act. The following cases demonstrate significant interstate variations on such VAP challenges, notwithstanding the federal standards.

A Connecticut superior court, in Thompson v. Fulse, ruled on a motion by a male voluntary parentage acknowledger to reopen a December 1989 Connecticut court judgment. That judgment was based on a voluntary acknowledgment signed in Florida by the male, Willie Fulse, in October 1989, about seven months after the birth of Rishawn Fulse to Andrea Thompson in Connecticut. As to fraud, the court held that a challenger must prove the following:

1. a false representation was made as a statement of fact;
2. it was untrue and known to be untrue by the party making it;
3. it was made to induce the other party to act upon it; and
4. the other party did so act upon the false representation to his detriment.

Willie was unable to show fraud because Andrea did not “intentionally” keep her sexual liaisons with Trevor, her former boyfriend, from Willie. While pregnant, Andrea did tell Willie he was the father. Around March 1990, Willie learned from Andrea that he “was not Rishawn’s father.” Willie did not challenge the VAP because he thought “the matter had been taken care of” by Andrea. Willie only realized the acknowledgment continued in effect in April 2003, when he was served with papers to appear in a Connecticut child support proceeding, seemingly prompted by Andrea’s receipt of state assistance in Connecticut. The state wanted reimbursement of the state aid from Willie. Before then, Willie “had some minimal contact” with Rishawn, but

138. Id. at *15.
139. Id. at *1.
140. Id. at *7.
141. Id. at *8.
142. Id. at *2.
143. Id. at *4.
had never been asked by Andrea for child support. While Willie failed to prove fraud, the trial court said he might still disestablish his VAP parentage due to a material mistake of fact. In this “unique” setting, the court found Willie’s arguments “slightly more persuasive, particularly from Rishawn’s point of view” as the child might be helped “from a medical history standpoint” if Trevor was named the legal father. The trial court retained jurisdiction and ordered genetic testing of Andrea, Willie, and Rishawn. Here, a mistake as to biological ties seemingly sufficed for a successful VAP challenge.

An Oklahoma appellate court ruled in 2004 on a VAP challenge by Billy J. Chisum, who sought disestablishment of a VAP signed on the date of the child’s birth in June 1999. The acknowledgment was used in a 2000 administrative child support order. The challenge came in April 2001 after Billy had private testing done that was prompted by the mother’s statement that Billy was not the father. The appellate court held there was a “material mistake of fact” even though Billy could have insisted on biological testing before his acknowledgment. It held no “neglect” by Billy due to his failure to seek testing earlier. It reasoned that any testing at birth would “likely” have injected “an element of hostility into . . . already volatile emotional relationships,” would have been “expensive,” and may have prompted unfortunate perceptions about “an attack on the mother’s veracity and an attempt to shirk responsibility for the child.” The court rejected arguments about the applicability of a best-interests-of-the-child test, or of an equitable estoppel analysis. Again, mistake as to biological ties sufficed for a successful VAP challenge, with an accompanying rationale that is sensible. Yet here, unlike in Fulse, there was little talk of helping the child.

In Rousseve v. Jones, the Louisiana Supreme Court held that an acknowledgment of an illegitimate child only creates a presumption of biological parentage that can be overridden whenever biological ties are lacking, “absent some overriding concern of public policy.” The court in
Rousseve recognized, however, that when a VAP forms the basis of a court judgment for child support, Louisiana law expressly allowed an attack on the judgment only if it was procured "by fraud or ill practice" and only if it was brought within a year of discovery of the fraud or ill practice. By contrast, the court noted that an action to disavow the paternity of a child by a man who was at some time the husband of the mother "generally must be filed within 180 days after the husband has learned or should have learned of the birth of the child." Yet, where such a husband "erroneously believed, because of misrepresentation, fraud, or deception by the mother, that he was the father of the child then the time for filing suit for disavowal of paternity shall be suspended during the period of such erroneous belief or for ten years, whichever ends first." Because unwed Matthew Rousseve had not yet proven his allegations "that he had just become aware of fraud or misrepresentation by the child's mother" when he sought a paternity disavowal involving a court judgment founded on his VAP, the high court remanded the case for an additional hearing. Clearly, because Matthew had never been married to the mother, he had more time to "sit on" his newfound discovery of non-paternity (one year) than a married man would have had (180 days), but far less time to escape a paternity court judgment based on a VAP than an acknowledged father would have had to undo a VAP that was unaccompanied by a court order. In Louisiana, mistakes on biological ties are sufficient for VAP challenges, but not for paternity judgment disestablishments where "fraud or ill practice" must be shown. As well, mistakes are insufficient for marital presumption disestablishments where, after 180 days, "the mother's fraud, misrepresentation or deception" must be shown.

In Indiana, some precedents maintain that a male VAP signatory can challenge his parentage only "in extreme and rare instances" where the evidence of a lack of biological ties "has become available independently of court action." This has been read to mean that the evidence of no ties "was not actively sought by the putative father, but was discovered almost inadvertently in a manner that was unrelated to child support..."
Inadvertent discovery can occur when the putative father receives "ordinary medical care," but not when he is told by the child that he may not be the biological father.164 Yet other precedents make disestablishment of a "paternity affidavit" easier.165

Finally, in Michigan, a post-sixty-day challenge to a VAP requires not only fraud, duress, or mistake, but also a child's best interest analysis. Such a proceeding is treated like a request to set aside a paternity determination.166

The foregoing cases illustrate only some of the many differences between state laws on how fraud, duress, or material mistake of fact may be used to undo VAPs.167 The cases raise difficult policy questions. Is there a certain time within which one can challenge a VAP regardless of the reason, or should there be no absolute time limit? Is there usually a "material mistake" whenever an acknowledging person, who must be genetically-tied, is wrong about biological ties, though there is no fraud?168 Must any "material mistake of fact" be "mutual"?169 Can a concern for justice, or a child's best interests, bar a signing person's challenge even though fraud, duress, or mistake is proven?170 How should a state welfare agency's interests in welfare payment reimbursements from non-signing biological fathers be considered when determining VAP challenges? The absence of more explicit federal guidelines allows the noted interstate differences. Further, this absence is sometimes coupled

165. See, e.g., In re Paternity of I.I.P., 92 N.E.3d 1158 (Ind. Ct. App. 2018) (including a strong dissent urging that judicial action on disestablishment violates the statutory norms on VAPs, which follow the federal Social Security Act).
167. State statutes on rescinding or challenging voluntary paternity acknowledgments are collected and summarized in Roberts, supra note 126, at 82-90; see also Leslie Joan Harris, Reforming Paternity Law to Eliminate Gender, Status and Class Inequality, 2013 MICH. ST. L. REV. 1295 (2013) (suggesting rescission reforms for voluntary parentage acknowledgments); Parness & Saxe, supra note 136, at 185-205 (varying state VAP challenge laws); Caroline Rogus, Fighting the Establishment: The Need for Procedural Reform of Our Paternity Laws, 21 MICH. J. GENDER & L. 67 (2014) (suggesting reforms easing burdens on those seeking rescissions of voluntary parentage acknowledgments).
168. See, e.g., Rogers v. Weisel, 877 N.W.2d 169, 178 (Mich. Ct. App. 2015) (signing man can have some doubt as to biological ties but still be mistaken and thus eligible to rescind).
169. See, e.g., Gordon v. Hedrick, 364 P.3d 951, 954 (Idaho 2015) (holding yes); see also State v. Smith, 392 P.3d 68, 79 (Kan. 2017) (allowing no VAP challenge when both signers knew signing man was not the biological father).
170. Flores v. Sanchez, 137 So. 3d 1104, 1111 (Fla. Dist. Ct. App. 2014) (holding best interests test must be met before testing ordered on behalf of a mother that might result in a rescission of a voluntary paternity acknowledgement by a non-biological father who raised the child for four years).
with state general assembly inaction, leaving those within a single state to wonder how VAP challenge processes operate.\textsuperscript{171}

Beyond the variations in the state procedures available to non-biological acknowledging fathers seeking to challenge their VAPs, there are also interstate differences on when and how others (including, but not limited to, signing mothers) can contest such earlier acknowledgments. By federal statute, "any signatory" has a right to rescind a voluntary acknowledgment within sixty days.\textsuperscript{172} Thereafter, states participating in the federal TANF program "must have in effect laws" allowing a post-sixty-day "contest" of a signed voluntary acknowledgment where the "challenger" must show "fraud, duress, or material mistake of fact" and where the legal responsibilities of any signatory usually continue "during the challenge."\textsuperscript{173} Does this federal law require fraud and the like only of signatories who contest after sixty days, or must anyone who challenges meet these requirements? Who is a "challenger?" Can others besides acknowledging fathers even challenge? Federal statutes speak of both a "signatory" and a "challenger." At least in Indiana, "[T]here is no provision . . . that would permit [the] Mother to attempt to rescind the paternity affidavit."\textsuperscript{174} Of course, allowing non-signatories to challenge, even where there are no marriages, would often disrupt intact families. Nevertheless, in Alabama, a statute provides that for a child with an acknowledged father, a non-signatory can seek an adjudication of paternity "if the court determines that it is in the best interest of the child."\textsuperscript{175}

If a child challenges a VAP (for example, in order to establish legal parentage in the real biological father), it may be difficult to ask the child to prove fraud, duress, or material mistake of fact since any such acts occurred, if at all, by or to another. When a mother has custody of an acknowledged child, might she be able to challenge a VAP on the child's behalf when she herself could not challenge due to her own fraud? While her own challenge may be estopped because of her own conduct (for example, deceiving a man as to his biological ties while allowing him to develop a loving parental relationship with her child), the child may not be assessed responsibility for such maternal conduct.

\textsuperscript{171} See, for example, the problems posed for the Vermont Supreme Court Justices in McGee v. Gonyo, 140 A.3d 162, 169, 178 (Vt. 2016) (Dooley, J., concurring and Robinson, J., dissenting) (including several justices' call for legislative reforms).

\textsuperscript{172} 42 U.S.C. § 666(a)(5)(D)(ii).

\textsuperscript{173} Id. § 666(a)(5)(D)(iii) (providing temporary assistance for needy families).

\textsuperscript{174} A.G.P.M.O. v. R.K.P., 13 N.E.3d 564 (Ind. Ct. App. 2014) (including facts where the mother was also denied rescission authority as she "cannot take advantage of the fraud she herself perpetrated on the court").

\textsuperscript{175} ALA. CODE § 26-17-609(b) (2018).
Further, if an alleged unwed biological father is allowed to challenge another man’s VAP (for example, to establish his own childcare parentage), would only fraud personal to him (if fraud is even required) be sufficient? Or could an alleged unwed biological father rely on the fraud committed against the acknowledging father by the mother, or on the fraud perpetrated on the government by each of the two signatories? In one, quite sensible, ruling, a biological father was found able to contest a VAP signed by another man in order to avoid the formal adoption process, though the contesting father may not always prevail. In addition, what about allowing challenges to VAPs by state welfare agencies looking to recover child support expenditures from “deadbeat” dads, or looking to protect children from abuse or neglect by an acknowledging man via a VAP challenge rather than via an abuse or neglect petition?

Answers to these and other questions on VAP challenges after sixty days will come from state laws as long as federal lawmakers are silent. As noted, there is some diversity of approach in the state requirements for VAP challenges, as with the norms on fraud, duress, and mistake. Further illustrations of interstate variations on VAPs follow, demonstrating additional chances for “true conflicts” to arise in court proceedings involving VAPs where relevant human conduct occurred in two or more U.S. states.

On challenges by non-signatories to voluntary paternity acknowledgments, there are some written state laws. In Arizona, “the mother, father or child,” as well as the state, seemingly may challenge a VAP (which earlier was used to prompt a court order) after the sixty-day period only on the basis of fraud, duress, or material mistake of fact. In Virginia, fraud and the like are required of “the person challenging” the voluntary statement acknowledging paternity. In Wisconsin, “a determination of paternity” arising from a statement acknowledging paternity “may be voided at any time upon a motion or petition stating facts that show fraud, duress[,] or a mistake of fact.” In Delaware, after sixty days “a signatory of an acknowledgment” may commence a proceeding to challenge on the basis of fraud, duress, or material mistake of fact. In Michigan, the mother, the signing man, the child, or a

177. In Illinois, the state may not pursue a rescission against an alleged abuser in a neglect proceeding, but a child, via a guardian, may. In re N.C., 12 N.E.3d 23, 37 (Ill. 2014).
prosecuting attorney may seek revocation of a parentage acknowledgment.\textsuperscript{182} In Utah, after sixty days, only "a signatory" or "a support-enforcement agency" may bring challenges.\textsuperscript{183} Finally, in Vermont, "a person who is neither the child nor a signatory" can pursue a VAP challenge.\textsuperscript{184}

These differences in explicit state statutes on non-signatory challengers may not prompt as much interstate variations as first appear. In many places, though unrecognized in explicit VAP statutes, non-signatories may challenge VAPs by civil actions, such as, seeking declarations of the existence or nonexistence of father–child relationships under law.\textsuperscript{185}

There are other differences in current state VAP laws. For example, there are varied time limits on VAP challenges. Even with fraud, duress, or mistake, challenges must be commenced under written law within a year in Massachusetts,\textsuperscript{186} within two years in Delaware,\textsuperscript{187} and within four years in Texas.\textsuperscript{188} In Utah, a statutory challenge may be made "at any time" on the ground of fraud or duress, but only within four years for material mistake of fact.\textsuperscript{189} Where there are no written time limits (often quite broad), trial court discretion reigns.\textsuperscript{190} Further, there are differences in whether the effects of a successfully challenged VAP include the elimination of past child support arrearages.\textsuperscript{191}

\textsuperscript{182} MICH. COMP. LAWS § 722.1437(1) (2018).
\textsuperscript{184} VT. STAT. ANN. tit. 15C, § 308(b) (2018) (requiring that person also seek to adjudicate parentage).
\textsuperscript{185} See, e.g., Sandoval v. Botello (In re Unknown), 951 N.E.2d 1220, 1224 (Ill. App. Ct. 2011) (holding that an alleged biological father can challenge another man’s VAP via a paternity suit seeking a child care order).
\textsuperscript{186} MASS. GEN. LAWS § 209C(ll)(a) (West 2018); see also Smith, 392 P.3d at 76–77 (holding that a one-year, after-birth limit on signatory challenges applied even though technical violations were found; for example, a VAP that was not properly notarized).
\textsuperscript{188} TEX. FAM. CODE ANN. § 160.308(a) (West 2018).
\textsuperscript{189} UTAH CODE ANN. § 78B-15-307 (LexisNexis 2018).
\textsuperscript{190} See, e.g., In re Neal, 184 A.3d 90, 96 (N.H. 2018) (holding that the trial court's exercise of discretion was sustainable where a 2009 VAP was challenged by male signatory in 2015 after a 2012 paternity test revealed that he was not the biological father; challenge was brought in November 2015, after child contact was cut off in March 2014).
Notwithstanding, some federal-law demands on national uniformity in VAP establishments and disestablishments, as seen in U.S. state laws—both statutes and judicial precedents—vary greatly. Variations may significantly diminish should U.S. state legislators enact the 2017 UPA provisions on VAPs. Current laws often reflect the earlier model VAP provisions in the 1973 or 2000 UPA. Should many states choose to follow the 2017 UPA, interstate variations may lessen, but some “true conflicts” will likely continue. One probable continuing interstate variation involves whether “unnatural” VAPs are permitted, that is, VAPs not necessarily dependent upon alleged or believed biological ties.

C. Residency and Hold Out Parentage

The current UPA limitation of the “holding out” parentage presumption to one residing with a child “for the first two years of the [child’s life],” first established in 2000, lessened considerably the prospects of conflicting governmental interests. The state of residence on the child’s second birthday should typically be key, with such residency usually limited to a single state. While the “same household” may be maintained for a child in several different states before the child reaches two, only one state will usually qualify as the child’s residence at the time of the child’s second birthday, the key to prompting the UPA presumption. Yet the residency and holding out parentage norms in the 1973 UPA, which do not require residency and holding out in the first two years, present more serious choice of law problems where implemented.

As with spousal parentage, there are varying U.S. state laws on parentage arising from the nonmarital acts of residency or holding out. In California, a man is “presumed to be the natural [father] of a child” if he “receive[d] the child into his . . . home and openly holds out the child as his . . . natural child.” There is no explicit requirement that a residency or hold out man have any beliefs about his actual biological ties. California cases have in fact recognized as presumed fathers men

192. On the need for state law reforms, as well as a review of current voluntary paternity acknowledgment processes, see Rogus, supra note 167, at 67; Harris, supra note 167, at 1295; and Parness & Saxe, supra note 136, at 185–205 (analyzing varying state laws on VAP challenges).

193. UNIF. PARENTAGE ACT § 204 (UNIF. LAW COMM’N 2017).

who knew there were no biological ties, but who acted in the community as if there were. For example, in In re Jesusa V.,\(^{195}\) both Paul (the husband) and Heriberto (the biological father) were each judicially declared to be "presumed" California fathers because each had received Jesusa into his home and held her out as his natural child.\(^{196}\)

Elsewhere, the requisites for nonmarital childcare parentage arising from residency and hold out differ. For example, some laws do not require receipt into the home.\(^{197}\) Some laws require hold out for a definite time period, which often must start at birth.\(^{198}\) Some laws explicitly require existing parents to agree to such matters as residency and hold out by nonparents, who can later morph into new childcare parents\(^{199}\) on equal footing with existing parents.\(^{200}\) Disestablishment norms for even similar nonmarital parentage founded on residency and hold out also vary interstate.\(^{201}\) Incidentally, where a single state has two distinct forms of

\(^{195}\) 85 P.3d 2, 14 (Cal. 2004).


\(^{197}\) See, e.g., N.J. STAT. ANN. § 9:17-43(a)(4)-(6) (West 2018) (either receives into his home or "provides support for the child"); DEL. CODE ANN. tit. 13, § 8-201(c) (2018) ("parental role" and "bonded and dependent relationship... that is parental in nature").

\(^{198}\) See, e.g., TEX. FAM. CODE ANN. § 160.204(a)(5) (2018) (defining man as a presumed father if "during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own"); WASH. REV. CODE § 26.26.116(2) (2018) (similar); cf. MONT. CODE ANN. § 40-6-105(1)(d) (2018) (presuming person is the natural father if "while the child [was] under the age of majority," the person "receives the child into the person's home and openly represents the child to be the person's natural child").

\(^{199}\) Even when the statutes only explicitly recognize hold out by men, women are often deemed eligible to be presumed parents under these statutes. See, e.g., Nancy D. Polikoff, From Third Parties to Parents: The Case of Lesbian Couples and Their Children, 77 L. & CONTEMP. PROBS. 195, 212-19 (2014).

\(^{200}\) See, e.g., D.C. CODE § 16-831.01(1) (2018) (addressing single parent's "agreement" to same household residency for one wishing to be deemed a de facto parent); cf. N.J. STAT. ANN. § 9:17-43(a)(4), (5) (West 2018); N.J. STAT. ANN. § 9:17-40 (West 2018) (allowing a man to be presumed the biological father of a child on equal footing with the unwed birth mother, if he "openly holds out the child as his natural child" and either "receives the child into his home" or "provides support for the child").

\(^{201}\) See generally Roberts, supra note 126, at 47-51. Particular differences include variations in the time limits for rebutting or disestablishing residency/hold out parentage. Compare, e.g., ALA. CODE § 26-17-204(a)(5), (b) (LexisNexis 2018), and ALA. CODE § 26-17-607 (LexisNexis 2018) (allowing presumed residency/hold out father to "disprove paternity at any time"), with DEL. CODE ANN. tit. 13, § 8-204(a)(5), (b), and DEL. CODE ANN. tit. 13, § 8-607(a) (2018) (stating presumed residency/hold out father may not seek to "adjudicate the parentage of a child having a presumed father... [two] years after the birth of the child"), and COLO. REV. STAT. § 19-4-105(1)(d), (2)(a) (2018) (allowing presumed residency/hold out father to rebut presumption "in an appropriate action"). As well, state
nonmarital parentage, as with VAPs and residencies/hold outs, their disestablishment norms can also vary. So, interstate variations in residency/hold out parentage laws, involving either parentage establishment or disestablishment, can prompt choice of law issues in childcare parentage disputes.

D. De Facto Parentage

By contrast to spousal, acknowledged, and residency/hold out parentage, de facto parentage under the 2017 UPA and comparable state laws (often employing different terminology, like equitable adoptive parent or presumed parent) should more frequently prompt the interests of several forums. Recall that de facto parentage under the 2017 UPA can involve some residency, child support, child caretaking, and support by a legal parent of the parental-like acts of a then nonparent. These acts need not begin at birth, and may extend well beyond a two-year period, unlike the presumptive residential parentage recognized in the 2000 UPA. Relevant acts preceding a dispute over de facto parentage under the 2017 UPA can thus occur in several states, which may or may not include the forum state where parentage is to be adjudicated.

Choice of the appropriate de facto parentage law—to resolve either a custody/visitation request by an alleged de facto parent or a child support request against an alleged de facto parent—will be necessary, of course, in settings where de facto parenthood laws materially differ in two or more interested U.S. states. While generally seeking to promote nationwide uniformity through individual state lawmaking (via statute or precedent, though statute seems preferred), the NCCUSL laws vary on who may seek to rebut a residency/hold out presumed parentage. Compare, e.g., ALA. CODE § 26-17-204(a)(5), (b), and ALA. CODE § 26-17-607(a) (LexisNexis 2018) ("If a presumed father persists in his status as the legal father ... neither the mother nor any other individual may maintain an action to disprove paternity."); with DEL. CODE ANN. tit. 13, § 8-204(a)(5), (b), and DEL. CODE ANN. tit. 13, § 8-607(a) (providing that usually, the "mother or another individual" can bring a proceeding "to adjudicate the parentage of a child having a presumed father").

202. See, e.g., HAW. REV. STAT. § 584-4(a)(4), (6) (2018) (providing presumed natural fatherhood for man who receives child into his home while openly holding out the child as his natural child or who executes a voluntary paternity acknowledgment). Here, disestablishment norms will inevitably vary given the federal mandates on VAP challenges and the very different prerequisites to parentage establishment via residency/hold out.

203. UNIF. PARENTAGE ACT § 609.

204. Id. § 609(d)(1)–(7).

205. See infra Section (V)(A)(1) (reviewing North Dakota and Ohio cases where courts were asked to assess de facto parentage conduct occurring outside their state borders).

206. See, e.g., UNIF. PARENTAGE ACT § 1001 (stating courts "need to promote uniformity" when "applying and construing" the UPA provisions adopted in their states). On separation
recognizes reasonable policymaking can yield differing results. Thus for *de facto* parenthood, the 2017 UPA provides alternative models on the issue of whether a child may have more than two custody/visitation parents.\textsuperscript{207} The first two states to substantially enact the 2017 UPA, including its *de facto* parent provisions, have differed on this issue. In Vermont, proceedings "to adjudicate competing claims of parenthood or challenges to a child's parenthood by two or more persons," adjudications must serve "the best interests of the child."\textsuperscript{208} In Washington, a child may be adjudicated to have more than two parents only if a failure to so recognize "would be detrimental to the child."\textsuperscript{209}

There are other material differences in U.S. state *de facto* parent laws. The 2017 UPA, followed in Vermont\textsuperscript{210} and Washington,\textsuperscript{211} requires an alleged *de facto* parent to prove "consistent caretaking," holding out the child as the individual's child; and residing with the child "as a regular member of the child's household for a significant period of time."\textsuperscript{212} In Delaware, whose statute served as a model for the 2017 UPA,\textsuperscript{213} the *de facto* parentage law has none of those requirements.\textsuperscript{214} Maine, whose statute also served as a model for the 2017 UPA on *de facto* parentage,\textsuperscript{215} does not require a holding out, though it does demand, unlike the 2017 UPA, Vermont, Washington, and Delaware provisions, "[C]lear and
convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed[,] and responsible parental role in the child's life." So, interstate variations on de facto childcare parentage can prompt choice of law issues.

E. Parentage Following Assisted Reproduction Births

Fortunately, the 2017 UPA updates the 2002 (and 1973) UPA by providing suggested state-law norms on legal parentage arising from assisted human reproduction, whether or not the woman giving birth intends to raise the child and whether or not there are biological ties between intended parent(s) and children. If the 2017 UPA has a reception in U.S. state legislatures, U.S. state laws on assisted human reproduction will be more sensible and respectful of intended family structures, however nontraditional to some.217

For children born of assisted reproduction, the long-standing dual parentage policies within U.S. state laws have been loosened, for good reasons. Some state laws now recognize that unwed women can secure single parenthood through giving birth via assisted reproduction where the sperm donors are not recognized as legal parents.218 Further, some state laws now recognize that unwed men can secure single parenthood through the services of gestational (if not genetic) carriers (also known as surrogates) who are not recognized as legal parents.219 In some states,

216. ME. STAT. tit. 19-A, § 1891(3) (2018). Note that these requirements on de facto parentage, however different state to state, are sometimes also used in nonparent childcare settings. See, e.g., Holtzman v. Knott (In re H.S.H.-K.), 533 N.W.2d 419, 435–36 (Wis. 1996) ("parent-like relationships;" same household residence; and "bonded, dependent relationship parental in nature").

217. Here, there is no exploration of interstate and intrastate variations on childcare parentage arising from births due to assisted reproduction involving semen placement in a uterus and a fertilized embryo placement in a uterus. See, e.g., Patton v. Vanterpool, 806 S.E.2d 493 (Ga. 2017) (holding artificial insemination statute on presumptive legitimacy of children born within wedlock does not apply when children are born of in vitro fertilization).

218. See, e.g., OHIO REV. CODE ANN. § 3111.89 (LexisNexis 2018) ("non-spousal artificial insemination for the purpose of impregnating a woman so that she can bear a child that she intends to raise as her child" through using the semen of a man who is not her husband); Szafranski v. Dunston, 34 N.E.3d 1132, 1163 (Ill. App. Ct. 2015) (holding ex-girlfriend is not enjoined, due to earlier contract, from using cryopreserved pre-embryos she created with her ex-boyfriend, while observing ex-boyfriend could later sue for a declaration that he was not "the natural father" of any later-born child). "Due process safeguards," however, together with state contract law principles may prompt some sperm donors under the statute to be fathers under law, C.O. v. W.S., 639 N.E.2d 523, 525 (Ohio Comm. Pl. 1994), as when future parental childcare interests were not subject to earlier waivers and, in fact, were expressly recognized by both the donors and birth mothers.

219. Compare Ark. CODE ANN. § 9-10-201 (2018) (unwed sperm donors can utilize surrogates), and In re Roberto D.B, 923 A.2d 115 (Md. 2007) (similar), with In re Paternity
assisted reproduction via gestational surrogacy arrangements can even prompt single legal parentage for those with no biological ties to their children. These assisted reproduction laws, leaving children with only one legal parent at birth, make sense as they provide parentage opportunities for women and men who may otherwise be unable to parent. These laws reasonably assume single intended parents will become good parents; they aim to insure informed decision-making by those involved in child creation; and, they clarify the legal status of those involved in assisted reproduction, as by relieving certain semen and egg donors of later financial obligations and by insuring intended parents of


220. Compare In re J.T.S., 16 A.3d 386 (N.J. Super. Ct. App. Div. 2011) (reasoning that husband is the father of a child born to gestational carrier who used the husband’s sperm and anonymously donated ovum, but his infertile wife could not be listed as a parent on the child’s birth certificate even with the husband’s consent), aff’d, 54 A.3d 263 (N.J. 2012), with 750 ILL. COMP. STAT. ANN. 46/703(a) (LexisNexis 2018) (husband’s consent to his wife’s pregnancy via assisted reproduction with anonymously donated sperm can lead to the husband being a presumed natural father).

221. State assisted reproduction laws are often guided by the models developed by such entities as the NCCUSL and the American Bar Association (ABA). Charts briefly describing, and citing to, American state laws on varying forms of assisted human reproduction (such as, donor insemination; marital presumptions; nonmarital nonbiological parentage; intended parentage; and gestational surrogacy) are found in Douglas NeJaime, The Nature of Parenthood, 126 YALE L.J. 2260, 2363–81 (2017). Techniques for assisted human reproduction are reviewed in Charles Thomas, Novel Assisted Reproductive Technologies and Procreative Liberty: Examining In Vitro Gametogenesis Relative to Currently Practiced Assisted Reproductive Procedures and Reproductive Cloning, 26 S. CAL. INTERDISC. L.J. 623, 625–29 (2017).

222. At times, permissive assisted reproduction laws require that intended parents cannot otherwise have children outside of formal adoption. See, e.g., FlA. STAT. ANN. § 742.15(2) (LexisNexis 2018) (allowing gestational surrogacy contract only where the commissioning mother “cannot physically gestate a pregnancy to term” or otherwise safely deliver a child).
opportunities for childrearing. Unfortunately, some limited assisted reproduction laws prompting at birth only a single legal parent, the birth mother, make no sense. In 2017, for example, the Idaho Supreme Court rejected an unwed woman’s claim to parenthood of a child born of assisted reproduction to her former partner because the statute only addressed parenthood of a birth mother’s consenting spouse. What happened to equality principles involving the wed and unwed, and the dual parenthood at birth policy, if not the privacy interest in having children? Are unwed lesbian couples more likely to be worse parents than wed lesbian (or wed opposite sex) couples, or more likely not to understand the childcare agreements they undertake? I think not.

Unfortunately, most U.S. state lawmakers have yet to resolve the standards on single parenthood arising from assisted reproduction involving frozen embryos where only one of the two donors wishes to prompt a pregnancy and birth, while the other objects to employing any artificial reproductive techniques.

Of course, assisted reproduction via surrogates raises issues arising outside of non-surrogacy settings. These issues are quite controversial, with differing state-law norms. Authorizing states vary on the forms of permissible surrogacy, with some only recognizing gestational carriers. Others prohibit parentage via surrogacy altogether. States generally recognizing surrogacy parentage differ on the details, like the enforceability of selective reduction clauses in surrogacy contracts. While not foreclosing enforcement of a surrogate agreement, a state law


224. Doe v. Doe, 395 P.3d 1287, 1290–91, 1292 (Idaho 2017) (deferring to legislature while rejecting the woman’s constitutional claim as she had a “legally recognized, protected relationship” with the child). In Strickland v. Day, 239 So. 3d 486, 494 (Miss. 2018), in 2018, the Mississippi Supreme Court recognized, without a statute directly on point, that a “then-married” lesbian couple shared parental childcare interests where there was an agreement to employ assisted reproduction, with an anonymous sperm donor, to conceive and raise a child together. But see In re Garnys v. Westergaard, 71 N.Y.S.3d 554 (N.Y. App. Div. 2018) (hinting that only preconception pacts between two women to raise a child together will be honored).


can be so restrictive that few may venture. \(^{227}\) Interstate variations on childcare parentage following assisted reproduction births can prompt choice of law issues.

V. CHOICE OF LAW IN CHILDCARE PARENTAGE CASES

The expanded forms of childcare parentage, now significantly recognized in the 2017 UPA and in U.S. state laws beyond the 2017 UPA, can prompt the interests of several states. This includes states where there were some elements of marital residency, nonmarital residency, child support, child caretaking, or assisted reproduction contracting relevant to a single child. Too often non-forum interests are ignored when courts consider expanded childcare parentage. The 2017 UPA should be amended, and choice of childcare parentage precedents should be (re)formulated, to recognize and balance better the multistate interests often arising in expanded childcare parentage cases. Accounting for multistate interests also helps to avoid significant Full Faith and Credit Clause issues arising when several states have competing interests in family relationships, which are developed, unlike most marriages, without formal state license. \(^{228}\) Before suggesting how choice of law issues involving expanded childcare parentage should be approached, \(^{229}\) a few troubling cases will be reviewed to illustrate the urgent need for reform. The first case, a North Dakota Supreme Court ruling involving 2017 UPA-like childcare parentage for both custody and support purposes, will be examined in great depth. Additional illustrations involving other expanded forms of childcare parentage follow, including examples involving VAP and assisted reproduction laws.

\(^{227}\) See, e.g., IND. CODE ANN. § 31-20-1-1 (LexisNexis 2018) (providing that “public policy” disallows enforcement of a surrogate agreement that requires a surrogate to waive parental rights to a child).

\(^{228}\) In most marital settings, as Professor Aviel well describes, interstate moves come only after one state has “first exercised regulatory authority.” Aviel, supra note *, at 770. While she recognizes there is no such earlier exercise in polygamous marital settings, prompting Full Faith and Credit Clause concerns, there are also no such exercises in common law marriage settings. Id. at 767–68. As with polygamy, unlicensed common law marriages are not generally recognized. See, e.g., Jennifer Thomas, Common Law Marriage, 22 J. AM. ACAD. MATRIM. LAW. 151 (2009).

\(^{229}\) As Professor Aviel concludes regarding possible Congressional action “in administering an interstate recognition regime” involving marriage, Aviel, supra note *, at 763–57, I find unlikely Congressional action in administering a regime involving imprecise parentage (namely, de facto, hold out, or equitable adoption parentage). See, e.g., Jeffrey A. Parness, Federal Constitutional Childcare Parents, 90 ST. JOHN’S L. REV. 965 (2016). Congress, as noted regarding VAPs, has administered such a regime in at least one precise parentage setting. 42 U.S.C. § 666(a)(5)(D) (2018).
A. A Few Troubling Cases

1. UPA-Like De Facto Parentage

The case of *Johnson v. Johnson* (*Johnson I*)\(^{230}\) illustrates how a state parentage law, not unlike the 2017 UPA on de facto parentage, can prompt multistate interests. Trouble can arise when there is an exclusive use of forum childcare parentage laws during an adjudication of a "parent-child relationship" or "parentage" involving parental/parental-like acts in several states. Here, there is usually no clear Full Faith and Credit Clause mandate as there was no earlier out-of-state license or other comparable exercise of regulatory state authority expressly recognizing parenthood under law.\(^{231}\) The Johnsons, Antonyio and Madonna, were married in September 1986. No child was born during this marriage. In August 1988, the Johnsons, then living in New Jersey, took custody of Jessica in Pennsylvania, then three months old and the natural granddaughter of Madonna. While Jessica was scheduled to remain with the Johnsons for only a month, ten years later Jessica was still living with the Johnsons.\(^{232}\) Until she was nine, Jessica believed that Madonna and Antonyio were her biological parents.\(^{233}\) During this first decade, Jessica was raised as the Johnsons' child, residing with them as they regularly changed residences due to Antonyio's Air Force deployments. The Johnsons initiated two separate formal adoption proceedings, one in New Jersey and one in Kentucky (where Jessica's natural parents lived). Neither proceeding was completed due to Antonyio's redeployment.\(^{234}\) From August 1988 to May...
In 1997, the Johnsons resided primarily in New Jersey and Florida, with Antonyio occasionally deployed overseas. In 1997, Antonyio was deployed to Korea while Madonna and Jessica resided in Florida. Antonyio requested that Madonna file for divorce in Florida while he was away, but she never did. In May 1998, Antonyio was sent to Grand Forks, North Dakota. By then, Madonna and Jessica were living in Kentucky. Antonyio filed for divorce in North Dakota in July 1998. There, Madonna sought child support for Jessica, whom she urged had been equitably adopted by herself and Antonyio. From 1997 until 1998, Antonyio voluntarily sent Madonna $500 for support, which a North Dakota court ordered to continue from July 1998 until the beginning of the divorce trial in April 1999, at which point Antonyio stopped making support payments.

The North Dakota Supreme Court concluded in 2000 that “North Dakota law clearly recognizes the doctrine of equitable adoption” founded on “contract to adopt” principles. The court cited North Dakota cases on “contract to adopt” in inheritance settings. Yet, it recognized that the contract principles in the two settings should differ, with a more significant commitment to continuing parent-like care necessary in the child support setting.

Without North Dakota cases directly on point, the North Dakota high court referenced three out-of-state cases imposing a child support duty
upon an equitable adoption parent. In one, the obligor was a stepfather who supported the child during his marriage to the woman who primarily cared for the child; claimed the child as dependent for tax purposes; and promised to adopt the child. In another, the obligor was a stepfather who agreed with his wife to adopt her child from a previous marriage; treated the child as his own; began the adoption process; and acted to terminate the parental rights of the child's natural father. In a third, a soon-to-be ex-husband was the obligor because he brought the child to Maryland from Iran; made adoption promises to his wife and to the Republic of Iran; and lived with the child for four months. While employing these cases, the court in Johnson I recognized that there were differing approaches elsewhere.

The court in Johnson I determined that state public policy supported application of an equitable adoption doctrine “to impose a child support obligation under certain circumstances.” The court found that no North Dakota statutes forbade it. All high court members failed to address in great detail, however, the distinctions between Antonyio's legal parenthood in child support and inheritance settings. The court remanded for resolution of the factual issues relevant to applying the equitable adoption doctrine to child support.

A dissenting justice began, “This is a case of a grandmother and her grandchild who have never lived in North Dakota.” He went on, “[t] is

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243. *Id.* (finding “instructive” Frye v. Frye, 738 P.2d 505, 505 (Nev. 1987)).
244. *Id.* (finding “instructive” Geramifar v. Geramifar, 688 A.2d 475 (Md. 1997)).
245. *Id.* at 104 n.2.
246. *Id.* at 109.
247. *Id.* Such an application of the equitable adoption doctrine, however, was “limited” as the court expressed “preference for adherence to statutory procedures” on formal adoptions. *Id.* at 106 n.3.
248. *Id.* at 101. Antonyio never sought childcare or visitation opportunities; the request from Madonna was solely for monetary support for herself—which was denied—and child support for Jessica. As Antonyio had not sought sole or shared custody of Jessica, or visitation, pursuant to a North Dakota court order, the North Dakota courts did not need to consider how “contract to adopt” principles would apply in childcare settings.
249. It did no “searching inquiry” into the respective state interests at stake. Aviel, *supra* note *, at 770.
250. *Johnson I*, 617 N.W.2d at 109–10. In 2002, the North Dakota Supreme Court sustained some parts of the lower court’s child support orders. *Johnson II*, 652 N.W.2d at 319 (sustaining child support order though it was inappropriately labeled as a “spousal support” order).
251. *Johnson I*, 617 N.W.2d at 112 (Sandstorm, J., dissenting). It is unclear why there was no mention of the possible application of Florida law.
clear that if an 'equitable adoption' took place, it took place in New Jersey or Kentucky and would therefore be governed by the law of one of those states. In both New Jersey and Kentucky, the dissent found there to be no equitable adoption doctrine. New Jersey or Kentucky law was deemed appropriate by the dissent under North Dakota choice of law rules for contract cases because formal adoptions, that is possible contracts, had been attempted there. The majority did not respond.

The dissenting justice did not explain why the equitable adoption policies of neither Pennsylvania (where the child was first placed with the Johnsons) nor Florida (where the Johnsons raised the child for quite some time) would ever apply. No justice explained why a noncontract approach to choice of law was not appropriate. Analogizing the Johnsons' acts to torts would also prompt an interest analysis as did analogizing the acts to contracts, but the tort analysis would include the interests of all the states wherein Jessica had lived. So, no opinion in Johnson I utilized an interest analysis involving all interested states to determine which state's child support law, via an equitable adoption theory or otherwise, might operate. When child support was sought, Antonyio was

252. Id.
253. Id. In New Jersey, regardless of the lack of any expressly recognized "equitable adoption" doctrine, there is a "psychological parent" doctrine allowing a nonparent to morph into a parent in certain settings not necessarily tied to a particular time, which arguably would encompass both Antonyio and Madonna. See, e.g., V.C. v. M.J.B., 748 A.2d 539, 551-52 (N.J. 2000) (stating "legal parent must consent to and foster" the parental-like relationship, which include also the child's residence with the nonparent during which time "parental functions" are performed "for the child to a significant degree"). In Kentucky, beyond any possible expressly recognized "equitable adoption" doctrine, there is, compared to New Jersey, the rather limited "de facto custodial" doctrine. Ky. REV. STAT. ANN. § 403.270(1)(a) (LexisNexis 2018) (allowing custody standing only for one who, "by clear and convincing evidence," was "primary caregiver" and "financial supporter"). The dissent in Johnson I did later opine, however, that a "determination of equitable adoption should be made in Kentucky by declaratory judgment or other proceeding." Johnson I, 617 N.W.2d at 124.
254. Johnson I, 617 N.W.2d at 123.
255. While Pennsylvania's governmental interests seem weak, if wholly absent, Jessica was delivered to the Johnsons in Pennsylvania, where any agreements to future childcare/child support may have been entered and where any waivers of the parental rights of the biological parents may have been undertaken. As to a possible equitable adoption (or comparable legal parentage) doctrine arising in Pennsylvania from contract-like acts, compare, for example, Kilby v. Folsom, 238 F.2d 699 (3d Cir. 1956) (agreeing to adopt and create a parent-like relationship, though no formal adoption) with Miller v. Ribicoff, 209 F. Supp. 460 (E.D. Pa. 1962) (no such agreement or relationship). As to a possible equitable adoption (or comparable legal parentage) doctrine arising in Florida from parental-like acts by nonparents involving childcare or child support, see, for example, Music v. Rochford, 654 So. 2d 1234, 1235 (Fla. Dist. Ct. App. 1st 1995) (determining no inherent authority regarding de facto parentage as "visitation rights are ... statutory").
Antonyio's parental-like acts, including conduct amounting to a contract to adopt, occurred chiefly in New Jersey and Florida, if not Pennsylvania. Further, no opinion considered whether jurisdiction should be declined altogether, or at least over the parentage issue.

Upon remand, the lower court found that Antonyio and Madonna had equitably adopted Jessica and then set child support under North Dakota law. The case returned again to the supreme court on the issue of the amount of support owed by Antonyio.

The use of a North Dakota equitable adoption doctrine allowed a nonparent to become a parent responsible for child support, though he never did or would care for the child in North Dakota. The support obligation conceivably could be applied retroactively to cover any time when there was an equitable adoption via a contract to adopt. For Antonyio, child support could depend on his acts in Pennsylvania, New Jersey, or Florida; the North Dakota courts never determined at which precise moment the contract to adopt, including the requisite parental-like acts, occurred.

The North Dakota Supreme Court held that since the trial court had correctly found Antonyio equitably adopted Jessica, the original $500 order should apply retroactively for the time between the start of the first trial in April 1999 and the end of the second trial in October 2001. It also ruled the $669 support order should operate after the end of the second trial in October 2001. The decision clearly rested on an equitable adoption finding that Antonyio was Jessica's legal parent before he moved to North Dakota and before his divorce case was filed.

256. Brief for Appellant at para. 6, Johnson II, 652 N.W.2d 315 (No. 20010288). The trial court applied the child support calculation standard of North Dakota, but held the payments to begin October 1, 2001, after the court ruled that the equitable adoption occurred; the court also ruled that Antonyio was eligible for interim support of $500 for August and September 2001. Johnson II, 652 N.W.2d at 317.

257. The supreme court recognized in 2002 that Antonyio had been paying Madonna $500 a month in "interim spousal support" from May 1997 (and thus, before he moved to North Dakota) until April 1999, which was "intended to be child support." Johnson II, 652 N.W.2d at 318-19. While Antonyio was ordered to pay child support to Madonna in the amount of $500 through August 1998, the last payment was made on March 3, 1999, before the commencement of the first trial in April 1999; from April 1999 until July 2001, Antonyio was not ordered to pay, and did not pay, anything to Madonna for child support. Id.

258. Id. at 319.

259. Id. at 320. The July 2001 ruling on Antonyio's equitable adoption of Jessica applied the interim child support order to more than two years of back child support from the commencement of the first trial in April 1999. Id.

260. Antonyio moved to North Dakota in May 1998 and filed for divorce there in July 1998. His only connection with Jessica during that time was the $500 in child support he
Although Antonyio never sought a childcare order, he was still liable for child support to Madonna, who had custody of Jessica, albeit in Kentucky. The equitable adoption doctrine in North Dakota allowed a previous nonparent like Antonyio to become a parent responsible for child support. The support obligation could be applied retroactively to cover any time when there was a form of childcare parentage. In Johnson II, Antonyio's parentage was recognized as arising (at least) at the time he filed for divorce, though an earlier time seemingly would have been quite reasonable, given the equitable adoption principles guiding inheritance cases.261

Another troubling choice of law case involving UPA-like de facto parentage is S.D. v. K.H.,262 a 2018 Ohio appellate court ruling. A 2007 Ohio divorce decree found a husband and wife to be the biological and legal parents of a child, and then established “full and legal custody” in the mother, with visitation for the father. Thereafter, a California court in 2014 found in a stipulated order that another woman was also a childcare parent for the child. In early 2016, the father sought to set aside in California the 2014 parentage order favoring “Mother 2,” occurring after the natural mother sought a California court order allowing her to relocate with the child to Ohio. The California court denied this request in July 2016. This was followed by Mother 2’s petition in September 2016 asking the Ohio divorce court to enforce the California parentage order—a request opposed by the natural parents. The Ohio court denied, in late 2016, Mother 2’s petition to enforce, though it recognized that she could pursue a child “companionship time” order as an intervener in the 2007 divorce case, she could not pursue a child “parenting time” order because the California court’s parentage order was issued without subject matter voluntarily paid to Madonna in those few months. Id. At least some of the equitable adoption precedents in inheritance cases cited in Johnson I were grounded on parental-like acts in North Dakota that went well beyond a few months of voluntary child support. See, e.g., Fish, 101 N.W.2d at 550–51 (decedent acted as a father from 1917 to 1956, when he died); Ceglowski, 102 F. Supp. at 514–15 (decedent acted as mother for at least twenty-seven years).

261. Johnson II, 652 N.W.2d at 320. A different choice of parentage law issue would have been presented in a divorce proceeding brought by Madonna in Kentucky, in which Antonyio appeared and defended. Might not Kentucky law be reasonably applied to the issue of Antonyio’s parentage, as only child support was sought and Jessica was then living in Kentucky with Madonna, who was in need there of child aid? See, e.g., H.O. v. State (State ex rel. S.O.), 122 P.3d 686 (Utah Ct. App. 2005) (applying Utah law in parental rights termination hearing involving father whose alleged abusive acts occurred in Arizona, where an Arizona court declined jurisdiction over a child custody dispute).

jurisdiction.263 These rulings were affirmed, with "the companionship matter" left for trial.264

The Ohio courts clearly chose not to defer to the employment of California law that recognized Mother 2 could be a third legal parent,265 or to the California court ruling that Mother 2 was such a parent. They did so because "Ohio does not recognize more than two legal parents,"266 thus rejecting Mother 2's argument that Ohio courts apply California's three-parent law to her parentage request because all of Mother 2's parental-like actions occurred in California, as did the concession of her parentage by the natural mother, who had "full and legal custody."267 This failure to defer meant Mother 2's nonparental companionship claim arising from her conduct in California would be adjudicated in Ohio under Ohio law. The Ohio courts failed to consider California's governmental interests in the childcare of a child who had been living in California, where two women shared "joint physical custody" for at least two years and where the child was moved to Ohio by the natural mother before there was a ruling on the motion in the California case on the natural mother's relocation.268 The Ohio courts also, quite reasonably, failed to consider whether a California court provided "a more convenient forum" to resolve the nonparent companionship claim.269

2. Voluntary Parentage Acknowledgment

Another expanded form of childcare parentage, not necessarily dependent upon actual biological ties, actual or attempted marriage, or formal adoption, involves a VAP (usually, but not always, in a paternity setting). Multistate interests rarely arise in initial parentage establishments via signed VAPs. As noted, under federal statute, every U.S. state participating in federal welfare assistance subsidy programs must recognize a VAP properly undertaken in another U.S. state.270 Infrequently, a state-recognized VAP form from one state will be properly

263. Id. at 376–78.
264. Id.
265. CAL. FAM. CODE § 7612(c) (Deering 2018) (to avoid detriment to the child).
266. S.D., 98 N.E.3d at 379.
267. Id. at 376–78.
268. Id. at 376.
269. Id. at 377 n.1 (noting that, per the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) adopted in Ohio, a state court can "decline jurisdiction if another state would offer a more convenient forum"). In the Ohio case, the companionship claim of a California person involved a child and two legal parents who then all lived in Ohio. Id. at 376.
employed in a second state.\textsuperscript{271} So, initial VAP undertakings usually are guided by a single U.S. state’s laws. Here, there is a formal state license, reflecting an exercise of regulatory authority, which typically must be respected in other states.\textsuperscript{272} However, multistate interests do arise where a VAP that is undertaken in one state is later challenged in a second state. Challengers typically come more than sixty days after signing, must demonstrate “fraud, duress, or material mistake of fact,” and (unlike VAP recessions within sixty days) may include non-signatories.\textsuperscript{273} When a VAP signed in state $A$ is challenged in state $B$, whose challenge norms should govern? The federal requirement of fraud, duress, or mistake in VAP challenge cases has not been uniformly interpreted. Further, the need to recognize VAP parentage establishments has not yet been widely read to demand full deference to the VAP disestablishment norms operating where the challenged VAPs were undertaken.\textsuperscript{274} Choice of law issues arise in VAP challenge cases as the norms on timing of challenges, the standing of non-signatories to challenge, and the estoppel barriers to challenges vary widely interstate.

The 2017 UPA provides little guidance on choice of VAP challenge norms. It says only that U.S. state courts shall respect a VAP “effective in another state” if the VAP “was in a signed record and otherwise complies with the law of the other state.”\textsuperscript{275} This seemingly covers issues involving the initial effectiveness of VAPs, not their later ineffectiveness. Current U.S. state statutes on VAP challenges at least sometimes provide little guidance. Thus, in New Hampshire the courts are required to “give full faith and credit to a determination of paternity made . . .

\textsuperscript{271} But see, e.g., Teague, 999 So. 2d at 92 (including facts where an Indiana VAP form was signed and notarized in Louisiana; no need to give full faith and credit to the VAP as the signatures did not follow either Louisiana or Indiana law). On occasion, a VAP form from one state is permitted by that state to be executed outside the state. See, e.g., Parness & Townsend, supra note 123, at 74 (reviewing Illinois Department of Public Health, Division of Vital Records Form No. DPA 3416BC4, Voluntary Acknowledgment of Paternity (rev. Aug. 2000) and also noting Colorado statute, COLO. REV. STAT. § 25-2-112(I) (2018), that allows a Colorado VAP to be used for a child born on a “moving conveyance” within the United States if the child is first removed from the conveyance in Colorado).

\textsuperscript{272} Thus, VAPs are like marriages. But see Aviel, supra note *, at 731–34 (reviewing marriage cases wherein state need not recognize marriage licenses issued in other states due to overriding public policy concerns).

\textsuperscript{273} See, e.g., UNIF. PARENTAGE ACT § 309(a)–(b).

\textsuperscript{274} But see Burden v. Burden, 945 A.2d 656, 664–65 (Md. Ct. Spec. App. 2008) (complying with the Full Faith and Credit Clause respect for out-of-state “records,” court applies South Dakota law in a challenge to a VAP filed in South Dakota, though the ruling is only dicta as the use of Maryland law “would not alter the result in this case”).

\textsuperscript{275} UNIF. PARENTAGE ACT § 311.
through voluntary acknowledgment of paternity." In New Jersey, comparable full faith and credit is to be given to an out-of-state paternity determination via a VAP on behalf of a "natural father." In Connecticut, an out-of-state VAP as to paternity is given "full faith and credit" if "signed" in accordance with the out-of-state procedures. In Oklahoma, there is credit if "signed and otherwise in compliance" with the out-of-state laws. In California, there is some greater indication that California challenge norms shall apply to an out-of-state VAP. There, a "previous determination of paternity," including via a VAP, is to be given "the same effect" as a California-made paternity determination and thus "may be enforced and satisfied in a like manner" as a paternity determination made in California.

In a multistate interest setting involving a state court challenge to a VAP executed elsewhere, the VAP is to be given "full faith and credit" if it is signed "in any other State according to its procedures." General civil procedure judgment modification standards are applied to these challenges in some states. Elsewhere, there operate special civil procedure VAP modification standards. Wherever the origins of the standards, questions can arise where certain VAP challenge standards are deemed substantive and thus must originate in the laws of the state where the VAP was initially executed if those laws differ from the forum state laws. Is a time bar to a VAP challenge substantive? Is a standing barrier on who can challenge a VAP substantive? To what extent can the "fraud, duress, or material mistake of fact" requisite be deemed substantive (as where the natural father—due "a reasonable opportunity to initiate a paternity action"—is unfairly blocked from seeking a parentage determination in the forum state)?

Issues involving the choice of VAP modification standards in multistate settings generally remain unaddressed. Unlike the 2017 UPA's strong suggestion, forum courts should sometimes employ the

278. CONN. GEN. STAT. § 46b-172(a)(4).
279. OKLA. STAT. § 7700-311. Comparable is ALA. CODE § 40-11A-311; TEX. FAM. CODE ANN. § 160.311; WYO. STAT. ANN. § 14-2-611; see also LA. STAT. ANN. § 9:393 (deference to VAP from another state "executed" in accordance with "the laws and procedures" of that state).
280. CAL. FAM. CODE § 5604.
281. Federal statutory directives, in 42 U.S.C. § 666(a)(6)(C)(iv), are generally recognized, as in the UNIF. PARENTAGE ACT § 311 cmt., to prompt such status.
282. See, e.g., Parness & Saxe, supra note 136, at 200–03.
283. See, e.g., id. at 196–99 (reviewing varying special timing limits on VAP challenges).
VAP modification standards of the states where the VAPs were signed and recorded. Consider the 2016 New Hampshire high court employment of New Hampshire law on marriage annulment standards for a 1986 New York marriage of a couple that had resided in New Hampshire since 2008, with earlier marital residences in New York (for four years), Massachusetts (for four years), and New Jersey (for thirteen years).

The petitioner had urged application of New York law to the issue of fraud in the inducement of the marriage since “annulment of marriage concerns whether a marriage is void at its inception.” However, the petitioner, as well as the respondent, agreed that a New Hampshire choice of law analysis was needed. Given the high court’s emphasis, for example, on the length of New Hampshire residency, the protection of offspring in New Hampshire, and a concern for “a potential drain” on New Hampshire, the law of New Hampshire was applied. It is likely that differing facts would have altered the result.

Of course, VAPs may be challenged by non-signatories as well as by signatories, unlike marriage annulments where non-spouses may not challenge. Different state VAP challenge laws might be deemed applicable to different challengers. Consider in a New Hampshire case, a New Hampshire governmental challenge to a New York VAP (in order to pursue the biological father for welfare reimbursement), as compared to a Rhode Island man’s challenge (in order to pursue his own childcare parentage) to the same VAP, where the child was conceived in Rhode Island and the biological father was “thwarted” when an interest in his potential offspring was shown.

3. Parentage Following Assisted Reproduction Births

A further expanded form of childcare parentage, not necessarily dependent upon actual biological ties, actual or attempted marriage, or formal adoption, involves parentage arising from assisted reproduction births. Such births may or may not involve a surrogate. Either way,
significant choice of law issues can arise. Consider the choice of law concerns that prompted two men in Washington state desirous to have a child to employ Oregon surrogacy laws. The men considered utilizing varying out-of-state laws as their home-state laws were not then accommodating. They eventually chose Oregon because under its law their desired mutual goals were quite achievable. They deemed California’s surrogacy laws to have undesirable attributes. A comparably desirous couple without the financial and legal resources may face challenging choice of law issues should it ever split up and dispute childcare parentage issues.

When the birth mother of a child born of assisted reproduction becomes a childcare parent, significant choice of law issues can also arise. Consider cases where semen (and perhaps egg) donation, implantation, pregnancy, or birth is each significantly related to a different U.S. state. Of course, challenging choice of law issues here too can be avoided by reasonable contractual choice of law provisions. Such provisions are unlikely in settings where “do it yourself” assisted reproduction pregnancies are undertaken, and thus where lawyers, doctors, and other professionals are not involved.

An explicit choice of law provision is absent from the statutory “forms” guiding, but “not required” for, non-surrogacy assisted reproduction contracts in California. Here, pregnancies can be undertaken by do it yourselves. The use of such a form in California is said to “satisfy the writing requirement” prompting childcare parentage under law for a sperm donor where the form is signed “prior to the conception of the child.” Employment of these forms can trigger challenging choice of childcare parentage law issues. Should California law necessarily prompt childcare parentage for a sperm donor in another state wherein a court


292. See also, e.g., Hodas v. Morin, 814 N.E.2d 320 (Mass. 2004) (giving effect to choice of Massachusetts law provision in gestational surrogate contract where child was to be born in Massachusetts to Connecticut genetic parents using a New York surrogate).

293. Nicolas, supra note 291, at 1245.

294. See, e.g., In re Marriage of Adams, 551 N.E.2d 635 (Ill. 1990) (holding that a stipulation by parties to use Illinois, not Florida, laws on childcare parentage arising from the birth of a child via assisted reproduction would not be honored as it was unreasonable).

295. CAL. FAM. CODE § 7613.5(e) (Deering 2018) (allowing forms where sperm is not “provided to a licensed physician and surgeon or to a licensed sperm bank”) (emphasis added).

296. CAL. FAM. CODE § 7613(b)(1) (Deering 2018).
is hearing a case to adjudicate parentage, where a California form was used, but birth occurred elsewhere with differing written consent laws? The California form is not required to be filed with a California government official so there is “no license” reflecting a public act. 297

Comparably, with “do it yourself” assisted reproduction nonmarital births in California, a semen or ova donor is not a parent of a later born, biologically tied child if the donor and the birth mother “had an oral agreement” to that effect “prior to the conception.” 298 Should California law necessarily prompt a finding of no legal parentage in a donor where there was such an agreement in California, but where birth occurred in another state where such an agreement would not be honored (perhaps because a writing was required or because it could be unilaterally rescinded during the pregnancy)? 299

B. Principles Guiding Choices of Law on Childcare Parentage

The 2017 UPA provision on choice of law should be amended to contain the language “including the rules on choice of law.” The absence of this language in the 1996 and 2008 UIFSA was far less troublesome then, because, before 2008, expanded forms of childcare parentage were far more limited. Thus, residency/hold out parents were required to reside with children for the first two years of the children’s lives since the 2000 UPA. While the 1973 UPA had no such residency requirement, between 1973 and 1996 there were likely far fewer instances than there are today where residency/hold out parentage might arise. Back then, a greater

297. CAL. FAM. CODE § 7613.5 (Deering 2018); see also Jeffrey A. Parness, Formal Declarations of Intended Childcare Parentage, 92 NOTRE DAME L. REV. ONLINE 87 (2017) (suggesting new mechanisms for formal declarations of intended childcare parentage founded on the California forms available for non-surrogacy assisted reproduction). U.S. state laws on consent by donors to their own future intended childcare parentage (or to their own current intended parentage) operate differently. E.g., COLO. REV. STAT. § 15-11-120(6)(a) (2018) (allowing intended parent to consent to non-surrogacy assisted reproduction, prompting “a parent-child relationship . . . . Before or after the child’s birth”); FLA. STAT. § 742.11 (LexisNexis 2018) (noting non-surrogacy assisted reproduction prompts irrefutable presumption of parenthood for “child born within wedlock” provided spouses “have consented in writing”); MINN. STAT. § 524.2-120(5) (2018) (intended parent signed a record “before or after the child’s birth”); N.M. STAT. ANN. § 40-11A-703 (LexisNexis 2018) (donor or other person can consent); N.M. STAT. ANN. § 40-11A-704(A)-(B) (LexisNexis 2018) (stating failure of intended parent to consent “in a record” signed preconception does not foreclose parentage if the intended parent resided in same household and held out child as the parent’s own for “the first two years of the child’s life”).


299. See, e.g., MINN. STAT. § 524.2-120(9) (2018).
number of children were born into marriages and fewer children were essentially raised by grandparents like the Johnsons. With the inclusion in the 2017 UPA of this choice of law language, there should also be explicit recognition in the official comments that more than a single state’s parentage laws might be applied in a single case. Differing state interests can apply, for example, to custody/visitation and to child support issues. In Johnson I, Antonyio’s satisfaction of any de facto parent–child custody norm seemingly occurred in New Jersey or Florida, if not in Pennsylvania, while his child support duties would involve funds in North Dakota for a child in Kentucky, seemingly making North Dakota or Kentucky the most interested U.S. state on this aspect of childcare.

An explicit recognition in the 2017 UPA and in state choice of law precedents, that a forum’s choice of law principles might sometimes guide determinations of parental childcare and that differing state interests might arise in the settings involving differing aspects of childcare, like child custody and child support, would follow other general choice of law principles where the substantive legal norms are also imprecise, in that earlier human actions occur at no particular time and in no single place.


302. See Johnson I, 617 N.W.2d at 97; see also Johnson II, 652 N.W.2d at 315.

303. Such an explicit recognition would help state courts choose to apply their own explicit, though general, choice of law rules, which may direct the application of non-forum childcare (including parentage) and child support policies. Consider LA. CIV. CODE ANN. art. 3515 (2018) (“Except as otherwise provided . . . an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.”), whose applicability to both a paternity and then child support issues were assumed, though not implemented in Edwards v. Dominick, 815 So. 2d 236, 238 (La. Ct. App. 2002) (concluding no implementation as alleged father had not “established” the elements of the non-forum laws, so presumptions arose that they were “the same as the existing law of Louisiana”); cf. Crouch v. Smick, 24 N.E.3d 300, 305 (Ill. App. Ct. 2014) (“If an Illinois court is determined to be the home state for jurisdiction, it is necessarily the state with the most significant relationship for choice-of-law purposes and Illinois law applies.”).
Consider, for example, choice of law in contract settings where bargaining, signing, breach, and harm may all have occurred in different states. Here, the American Law Institute (ALI) Restatements of Conflict of Laws have recognized that sometimes a court should employ another state's contract law. For example, one provision says that "the rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties."\(^\text{304}\)

Alternatively, an earlier provision says a court should utilize the local law of the state where the contract was last signed.\(^\text{305}\)

Either ALI provision recognizes the need, at times, for a forum court to apply non-forum law on legal issues pertinent to pending contract claims. While North Dakota courts have employed an interest analysis to determine applicable laws for issues in contract settings,\(^\text{306}\) the majority in \textit{Johnson I} failed to utilize this approach though employing "contract to adopt" principles.\(^\text{307}\) Consider, as well, choice of law in tort settings where negligence, causation, and injury all occurred in different states. Here, too, the ALI Restatements have recognized that sometimes a court should utilize another state's tort law principles. For example, one ALI Restatement of Conflict of Laws provision says, "[T]he rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties."\(^\text{308}\)

Alternatively, an earlier provision encompasses a more precise norm, as with the use of the local law of the "place of wrong" to determine "whether a person has sustained a legal injury,"\(^\text{309}\) where the "place of wrong is in the state where the last event necessary to make an actor liable for an

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\(^{304}\) ReSTATEMENT (SECOND) OF CONFLICT OF LAWS § 188(1) (AM. LAW INST. 1971).

\(^{305}\) ReSTATEMENT (FIRST) OF CONFLICT OF LAWS § 332 (AM. LAW INST. 1934); RESTATEMENT (FIRST) OF CONTRACTS § 74 (AM. LAW INST. 1932) (law of place of contracting, with focus on where last act occurs that prompts a contract formation).

\(^{306}\) See, e.g., Daley v. Am. States Preferred Ins. Co., 587 N.W.2d 159 (N.D. 1998) (analyzing two insurance contracts, one for general personal injury issued to a mother and covering family members, including claimant, and the other issued for a vehicle owned and maintained by the claimant); Plante v. Columbia Paints, 494 N.W.2d 140 (N.D. 1992) (insurance contract).

\(^{307}\) See, e.g., Johnson I, 617 N.W.2d at 108–09.

\(^{308}\) ReSTATEMENT (SECOND) OF CONFLICT OF LAWS § 145(1).

\(^{309}\) ReSTATEMENT (FIRST) OF CONFLICT OF LAWS § 378.
alleged tort takes place,” rather than the use of the state law from the state where an injury to the person was first manifested.

These ALI provisions recognize non-forum substantive tort law may apply to legal issues pertinent to pending tort claims. The court in Johnson I, both majority and dissent, failed to consider these provisions, though the failure to provide child support where no prior court order on such a child support duty was ever entered, has a strong resemblance to many tort claims involving unintentional duty breaches.

Beside a contract or tort approach to choice of law determinations when substantive legal norms are imprecise, in that relevant earlier human actions occur at no particular time or in no particular place, choices between the imprecise childcare parentage laws of two or more interested states can be, and seem better, determined under an interest analysis that is independent of, though somewhat analogous to, the analyses on choices between imprecise contract or tort laws. Such an independent analysis would follow the North Dakota Supreme Court approach in a case involving a former spouse, divorced in North Dakota, who allegedly entered into a common law marriage in Canada. The existence of such a marriage, unrecognized in North Dakota, was germane to the former spouse’s ability to continue to receive alimony under the North Dakota divorce. Here, Canadian law was pertinent under a North Dakota statute declaring “all marriages contracted outside of this state . . . valid . . . where contracted, are valid in this state.”

Even in the absence of a statute, the majority in Johnson I should have more seriously considered whether parentage contracted, or otherwise arising, outside of North Dakota should be respected in North Dakota.

In parental childcare settings outside of North Dakota that implicate competing and different state interests in families, courts have

310. Id. § 377.
311. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 cmt. f (noting that in cases of false advertising and misappropriation of trade values, unlike in cases of other torts, the “principal location of the defendant’s conduct” will be given more weight than the location of the place of injury).
313. Id. (employing N.D. CENT. CODE § 14-03-08 (2018)).
314. Outside of North Dakota, an interest analysis is employed in disputes over conflicting state laws applicable to family issues, even where those laws are non-statutory. See, e.g., Hand v. Hand, 99 N.E.3d 181, 185–88 (Ill. App. Ct. 2018) (applying Illinois common law on issue of spousal immunity in tort claims where Illinois couple was involved in an Indiana accident, with the location of the injury being “merely fortuitous” as was Antony Johnson’s presence in North Dakota).
recognized a need to employ choice of law norms, with out-of-state\textsuperscript{315} and foreign country\textsuperscript{316} laws sometimes applicable. As to choice of foreign law on child custody, for example, the New York high court recognized, as a matter of comity, the parental custody interests in a female partner of a birth mother under Vermont law due to an earlier, valid civil union in Vermont which continued at the time the child was born.\textsuperscript{317}

The failure of both the 2017 UPA and U.S. state courts to recognize explicitly that a forum’s choice of law principles might sometimes guide childcare parentage adjudications invites violations of federal constitutional Full Faith and Credit Clause obligations where the “relationship of the forum State to the parties and the transaction was ... attenuated.”\textsuperscript{318} An “attenuated” relationship between the forum and a substantive legal issue before a court disallows use of forum law. The Supreme Court of the United States found an attenuated relationship, for example, where a Massachusetts corporate insurer issued a life insurance policy for a New York resident in New York. Upon the insured’s death, the surviving spouse moved from New York to Georgia, where she sued on the policy.\textsuperscript{319} The Court found Georgia law could not be applied on issues of material misrepresentation arising during the application for the policy.\textsuperscript{320} Do the Johnsons not seem similar to the insured and his spouse?\textsuperscript{321}

\textsuperscript{315.} See, e.g., Wilson v. Wilson, 271 P.3d 1098 (Alaska 2012) (declining to exercise jurisdiction regarding a request to grant a divorce where a related divorce case was pending in Ohio).

\textsuperscript{316.} See, e.g., Sinha v. Sinha, 834 A.2d 600 (Pa. Super. Ct. 2003) (finding greater forum interest in resolving divorce in Pennsylvania than in India where parties were married and were citizens, and where one spouse had earlier sued for a divorce); Maghu v. Singh, 181 A.3d 518 (Vt. 2018) (granting no deference to Indian law which only allowed a divorce based on fault).


\textsuperscript{320.} Id. at 182. At least, and perhaps only, in Georgia can a Georgia court employing New York common law principles possibly determine the New York common law in ways that differ from New York case precedents. See, e.g., Coon v. Med. Ctr., Inc., 300 Ga. 722, 797 S.E.2d 828 (2017) (indicating that Georgia follows the reasoning employed before the \textit{Erie} doctrine via \textit{Swift v. Tyson}, 41 U.S. 1 (1842), wherein the common law (but not statutory law) is presumed to be the same in all U.S. states). Such a view of a uniform common law operating nationwide may violate full faith and credit mandates.

\textsuperscript{321.} On the failure to recognize that forum parentage law cannot be applied when the forum’s relationship to the parties is attenuated, see, for example, Joslin, supra note 1, at 604 n.89 (”While states are constitutionally required to recognize and enforce out-of-state judgments, including parentage judgments, it is generally constitutionally permissible for courts to apply their own state’s law to an action properly pending before them.”). Reinsertion of the choice of foreign law option in the UPA, UNIF. PARENTAGE ACT § 105, for
Two artificial insemination cases involving the parental interests of sperm donors illustrate how Full Faith and Credit Clause precedents can guide choice of law determinations involving childcare parentage. In one, all relevant activity occurred in Kansas except that the nonmarital insemination was performed in Missouri. The Kansas Supreme Court employed Kansas law in determining male parentage, distinguishing an Illinois case wherein Florida law was employed as all relevant activity leading to conception and birth via a marital insemination occurred in Florida, though the mother and child later moved to Illinois wherein a divorce was later sought.\(^{322}\)

There will be challenges when choosing between differing U.S. state laws for particular issues in childcare parentage disputes. Such challenges arise and have been met elsewhere. Recall that the ALI Restatements on Conflict of Laws guide decisions on an “issue” in contract or in tort. Different issues within a contract or tort claim can prompt the employment of different U.S. state laws.

There are comparable challenges when differentiating between issues in a federalism context where varying choices between federal and U.S. state laws must be made. Consider \textit{Pulliam v. City of Calumet City},\(^{323}\) where a federal district court made choices of law regarding the timing of filing federal civil claims under 42 U.S.C. § 1983.\(^{324}\) The court recognized that state laws would govern the issues of a limitations period and any equitable tolling, while federal laws would govern claim accrual and discovery issues as well as equitable estoppel.\(^{325}\) In a childcare parentage dispute involving an earlier voluntary parentage acknowledgement, comparably both federal (such as, on fraud, duress, and recession issues) and state (such as, on timing of challenge and standing of challengers) laws sometimes must be employed.\(^{326}\)

Special written choice of law norms would be reasonable for certain parentage disputes. For example, in VAP challenge cases, at least post-sixty-day challenges by VAP signatories are typically best guided by the laws of the state where there was signing and filing. It is in that state

\(^{322}\) \textit{In re K.M.H.}, 169 P.3d 1025, 1032 (Kan. 2007) (distinguishing \textit{In re Marriage of Adams}, 551 N.E.2d 635 (Ill. 1990)).


\(^{326}\) \textit{Id.} at *13.
where the earlier necessary fraud, duress, or mistake very likely occurred, and it is in that state where the signatories were actually or constructively informed of the norms on challenges via existing statutes and, more importantly, via information supplied on the VAP form. In child support cases, the laws of the state of the child’s current residence should normally guide as that is where the cost of living and the like will be most relevant.327 In spousal parentage cases, the laws of the state of the ceremonial and registered marriage could usually guide spousal parentage establishment, as here there is certainty (as contrasted with common law marriage), as well as actual or constructive notice of the parentage consequences if a spouse gives birth (perhaps only upon consensual sex). Alternatively, in non-surrogacy assisted reproduction cases, the childcare parentage interests of semen or ova donors should be guided by the effects of a preconception writing founded on a particular state’s recommended form, as exists in California,328 as the effects are recognized in the particular state even where birth occurs outside of that state. This approach respects the intended parent desires of those utilizing the form.

VI. CONCLUSION

The 2017 UPA on “parentage” adjudications follows the 2000 UPA on “parent-child relationship” adjudications in not expressly recognizing that a state court sometimes needs to utilize its rules on choice of law, leading to the application of another state’s laws on parenthood. Express recognition is necessary in the 2017 UPA, as well as in state court precedents on adjudicating childcare parentage, to accommodate parentage issues that are not founded on biological ties or formal adoption. Here, a state court often must assess conduct that occurs outside of its borders. Childcare parentage issues dependent upon out-of-state conduct may involve the initial determination of legal parenthood or the disestablishment of earlier determined legal parenthood. Two or more childcare parent issues in a single case may need to be resolved under differing U.S. state laws, as with child custody and child support. The need to utilize choice of law rules, and sometimes to choose non-forum childcare parent laws, arises due to comity, if not the federal constitutional Full Faith and Credit Clause requirement. The increasing recognition of expanded forms of parentage involving conduct

327. Some current U.S. state laws speak only to full faith and credit to other state VAP laws on signing and on other initial compliance standards, a norm dictated by federal statute, 42 U.S.C. § 666(a)(5)(C)(iv). See, e.g., ALA. CODE § 26-17-311; CONN. GEN. STAT. § 46b-172(a)(4); N.M. STAT. ANN. § 40-11A-311; WYO. STAT. ANN. § 14-2-611.

328. CAL. FAM. CODE § 7613.5.
occurring in two or more states at no particular time demand non-forum parentage laws sometimes be employed in resolving parentage establishment or disestablishment issues.