

# THE FOREVER FAMILY’S LEGAL LOOPHOLE: A 50-STATE SURVEY ON ADOPTION DISSOLUTION

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*Adoption is said to be “forever”—longing parents fulfill their dream of parenthood and children get a “forever family.” While the legal system intends for adoptive parent-child relationships to be permanent, a happily-ever-after ending is elusive when adoptions are enabled to fail. In the United States, each state can set its own standard for when courts may grant a request to dissolve an adoption, as well as time limits within which a parent may ask the court to vacate the adoption decree. This legal loophole, known as adoption dissolution, has been met with controversy about the permissibility of parents giving up on their adopted child, especially as states do not provide this additional avenue of termination to biological parents. Nonetheless, the fact remains that, sometimes, dissolution could be in the child’s best interests.*

*This Note surveys how each state approaches adoption dissolution in order to uncover regulatory trends across the country. It finds that while adoption statutory schemes generally seek to effect permanence, many states retain dissolution statutes that vary as to the substantive and procedural ways to terminate the adoptive relationship. As such, this Note proposes a more uniform statutory scheme reframed around the well-being of the child rather than the needs or desires of the adult or the judicial nature of the adoptive relationship. When it comes to the legal procedures surrounding a child, the “best interests” standard should prevail, regardless of the adoptive or biological nature of the parent-child relationship.*

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## INTRODUCTION

Adoption is supposed to last a lifetime—it is meant to be “an unswerving commitment, for better or for worse.”<sup>1</sup> The phrase “forever family” is frequently used to describe and promote the hopeful permanency ideology of adoption.<sup>2</sup> The ultimate goal is for children available for adoption to become full and permanent legal members of another family.<sup>3</sup> The adoption procedure vests parental rights and duties in adoptive parents, providing the equivalent legal status of biological parents.<sup>4</sup> And, an adopted child has identical corresponding legal rights and privileges as a biological child.<sup>5</sup> But the United States’ current adoption system cannot guarantee that adoptive parents will not change their minds about their decision to adopt a child.<sup>6</sup>

In 2017, Myka and James Stauffer, social media parenting influencers, adopted Huxley, a two-year-old from China with

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<sup>1</sup> SUSAN FRELICH APPLETON & D. KELLY WEISBERG, *ADOPTION AND ASSISTED REPRODUCTION: FAMILIES UNDER CONSTRUCTION* 200 (Vicki Been et al. eds., 2009).

<sup>2</sup> “Forever family” is a colloquial phrase often used by child welfare professionals and adoptive families to emphasize an adoptee’s permanent ties to their adoptive parents. See CHRISTINE ADAMEC & LAURIE C. MILLER, *THE ENCYCLOPEDIA OF ADOPTION* 107 (3d ed. 2007); see also *National Adoption Month Communications Toolkit*, FLA. DEP’T OF CHILD. & FAMS. (Nov. 2020), <http://www.adoptflorida.org/docs/National-Adoption-Month-Communications-Toolkit.pdf> [<https://perma.cc/69Q8-2MN5>] (“For the child, [“forever family”] exemplifies the meaning of permanency. For the parent, it speaks to how adoption is a lifetime commitment to a child.”).

<sup>3</sup> *Adoption*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/permanency/adoption> [<https://perma.cc/MJ73-NKEW>].

<sup>4</sup> See, e.g., MINN. STAT. § 259.59 (2024) (“Upon adoption, the adopted person shall become the legal child of the adopting persons and they shall become the legal parents of the child with all the rights and duties between them of birth parents and legitimate child.”). Although statutes and case law interchange the words “biological,” “birth,” “natural,” and “genetic,” this Note will use the term “biological” to denote the parent(s) whose DNA a child carries. See *Biological Parent*, DICTIONARY.COM, <https://www.dictionary.com/browse/biological-parent> [<https://perma.cc/3NK6-8ZZ5>].

<sup>5</sup> See, e.g., GA. CODE ANN., § 19-8-19(a)(2) (West 2024) (“A decree of adoption shall create the relationship of parent and child between each petitioner and the adopted individual, as if the adopted individual were a child of biological issue of that petitioner.”).

<sup>6</sup> See Sally Haslanger & Charlotte Witt, *Introduction: Kith, Kin, and Family*, in *ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS* 1, 12 (Sally Haslanger & Charlotte Witt eds., 2005) (“Parental love, sometimes idealized as absolute, unconditional, and unitary, reveals a more complex, less unified dynamic when viewed from the perspective of adoption.”); see also JaeRan Kim, *Rethinking “Forever Family”*, HARLOW’S MONKEY (Nov. 24, 2019), <https://harlows-monkey.com/2019/11/24/rethinking-forever-family> [<https://perma.cc/X9UN-VGEZ>] (arguing from the perspective of an adoptee that the term “forever family” should no longer be used due to the realities of impermanence in adoption).

developmental disabilities.<sup>7</sup> But after more than three years of documenting their adoption journey and monetizing from their life with Huxley as “special-needs-adoption advocate[s],”<sup>8</sup> the Stauffers changed their minds. Through a YouTube video, they announced that Huxley was no longer part of their family.<sup>9</sup> They had worked with an agency to place Huxley with a “new forever family.”<sup>10</sup> In their defense, the Stauffers blamed the lack of transparency in the adoption process.<sup>11</sup> They claimed that while they had planned to adopt a child with a disability,<sup>12</sup> they had not been made aware of the extent of Huxley’s behavioral problems and developmental disabilities.<sup>13</sup> They rationalized that their decision was in Huxley’s best interests because they were not able to take care of him in the ways that he needed.<sup>14</sup>

The Stauffers received backlash<sup>15</sup> from their decision to “rehome” Huxley.<sup>16</sup> Some people criticized the Stauffers, questioning whether the parents would abandon their biological children if they were to be

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7 Caitlin Moscatello, *Un-Adopted: YouTubers Myka and James Stauffer Shared Every Step of Their Parenting Journey. Except the Last.*, CUT (Aug. 18, 2020), <https://www.thecut.com/2020/08/youtube-myka-james-stauffer-huxley-adoption.html> [<https://perma.cc/7QAJ-HEZB>].

8 *Id.* It started in 2016 when the Stauffers announced their plans to adopt on social media and “their intent to take viewers along with them on their ‘journey.’” *Id.* They even held a fundraiser where they asked viewers to donate money in exchange for puzzles featuring a photo of Huxley. *Id.* Their fanbase increased after they posted a video of their family going to China to adopt Huxley. *Id.* After the first year with Huxley, Myka’s YouTube channel grew to over 400,000 subscribers, providing the opportunity to work with more sponsors. *Id.* Their social media brand expanded “from family-and-lifestyle vlogger to special-needs-adoption advocate.” *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.* When the Stauffers took Huxley’s medical file to their doctor to review, the physician told them that his disability would be “severe” and that there were “unknown elements.” *Id.* In response, when sharing this news with her viewers, Myka Stauffer reportedly said that she knew that “no matter what state he came to us . . . we would love him” and that her “child [was] not returnable.” *Id.*

13 *Id.*

14 *Id.*

15 *Id.* (“In the kindest light, Myka, now 33, and James, 35, were painted as well-meaning but naïve parents who had gotten in over their heads; in the harshest, they were fame-hungry narcissists who’d exploited a child for clicks and profit only to discard him when caring for him proved too difficult.”); see also *Demand the Stauffers Remove All Monetized Content Ft. Huxley from Their YouTube Channel*, CHANGE.ORG (May 26, 2020), <https://chng.it/Yts2jLHhc5> [[perma.cc/68H8-HXBZ](https://perma.cc/68H8-HXBZ)] (displaying a petition for the Stauffer parents to stop exploiting and profiting from their content with Huxley).

16 The Stauffers “rehomed” Huxley by hand-selecting a family who they deemed better equipped to handle Huxley’s needs. Stephanie McNeal, *A YouTuber Placed Her Adopted Autistic Son from China with a New Family—After Making Content with Him for Years*, BUZZFEED NEWS (May 28, 2020, 8:45 PM), <https://www.buzzfeednews.com/article/stephaniemcneal/myka-stauffer-huxley-announcement> [<https://perma.cc/7J48-UGMF>].

diagnosed with a developmental disability or condition.<sup>17</sup> Others empathized with the Stauffers' choice from their own personal experiences and applauded the parents for doing what they thought was "best" for Huxley.<sup>18</sup> But the story became bigger than the Stauffers, garnering questions, doubts, and debates about the legality of parents giving up on their adopted child.<sup>19</sup>

This legal loophole, known as "adoption dissolution,"<sup>20</sup> terminates the legal status of an adoptive parent and an adopted child after the judicial adoption decree is finalized.<sup>21</sup> This process enables adoptive parents to voluntarily rescind an adoption and absolve themselves of their obligations and responsibilities to an adopted child.<sup>22</sup> Adoption dissolution statutes are also used by biological parents and third parties to contest adoptions.<sup>23</sup> Although biological parents' rights constitute an

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<sup>17</sup> Ashley Boucher, *YouTuber Myka Stauffer Reveals Adoption Dissolution 2 Years After Welcoming Son Home from China*, PEOPLE (May 27, 2020, 11:26 PM), <https://people.com/parents/youtuber-myka-stauffer-adopted-son-with-autism-adoption-dissolution> [<https://perma.cc/BT7V-ZM8X>].

<sup>18</sup> See Kaitlin Stanford, *YouTube Mom Admits She 'Rehomed' Her Boy with Autism 2 Years After She Adopted Him*, CAFEMOM (Oct. 11, 2022), <https://cafemom.com/parenting/225478-myka-stauffer-backlash-adoption-rehoming-son-austism> [[perma.cc/J897-94Y6](https://perma.cc/J897-94Y6)] (listing social media comments that were both critical of the Stauffers and supportive of the parents' choice).

<sup>19</sup> Scott Stump & Diana Dasrath, *YouTuber Myka Stauffer Will Not Face Charges After Investigation into Adopted Son's Welfare*, TODAY (July 1, 2020, 6:23 PM), <https://www.today.com/parents/youtuber-myka-stauffer-will-not-face-charges-after-investigation-adopted-t185729> [<https://perma.cc/62DD-CAG6>].

<sup>20</sup> The labels "abrogation" and "annulment" are used interchangeably when referring to adoption dissolution proceedings. See Margaret M. Mahoney, *Permanence and Parenthood: The Case for Abolishing the Adoption Annulment Doctrine*, 42 IND. L. REV. 639, 641 (2009) (referring to adoption dissolution as "[t]he doctrine of adoption abrogation or annulment" (emphasis added)). Courts and statutory language also use the terms "set aside" and "vacate" when referring to dissolving the adoption decree. Elizabeth N. Carroll, *Abrogation of Adoption by Adoptive Parents*, 19 FAM. L.Q. 155, 155 n.1 (1985). This Note will utilize these phrases, but will primarily use the terms "dissolution" and "dissolve."

<sup>21</sup> CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION IN ADOPTIONS AND GUARDIANSHIPS 2 (Aug. 2021) [hereinafter CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION], <https://www.childwelfare.gov/resources/discontinuity-and-disruption-adoptions-and-guardianships> [<https://perma.cc/QXA2-SW5P>].

<sup>22</sup> Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L.Q. 257, 257 (1992).

<sup>23</sup> For example, in *F.E. v. G.F.M.*, pursuant to the Virginia adoption dissolution statute, a biological father challenged the maternal grandmother's adoption of his biological child two years after the final adoption decree on the ground that he was fraudulently induced to sign a "Consent to Adoption" form. 547 S.E.2d 531, 534–35 (Va. Ct. App. 2001). The Virginia Court of Appeals invalidated the statute as applied to the father's case under strict scrutiny because the application of the six-month statute of limitations was not sufficiently narrowly tailored to the legitimate goal of stability. *Id.* at 539.

important development of law,<sup>24</sup> this Note focuses exclusively on adoptive parents' utilization of adoption dissolution statutes to challenge an adoption after the final decree. In such cases, upon dissolution of the legal adoptive parent-child relationship, the child is uprooted and either placed with a new potential adoptive family, sometimes referred to as "rehoming," or returned to the child welfare system.<sup>25</sup>

While there are a few federal adoption-related statutes,<sup>26</sup> adoption is primarily governed by state law with each statutory scheme providing its own unique laws and procedures.<sup>27</sup> With regard to adoption dissolution, statutory schemes across states vary in substantive standards and procedural limits within which an adoptive parent may seek to vacate the final adoption decree.<sup>28</sup> Even though adoption dissolution is statutorily permitted in some states, the question of whether such statutes should exist is controversial and has persisted since the enactment of the adoption dissolution doctrine.<sup>29</sup> This Note conducts a fifty-state survey (the "50-State Survey," or the "Survey") of how adoption dissolution is regulated across the country and proposes a more uniform statutory scheme reframed around the well-being of the child, rather than the needs or desires of the adult.

Part I of this Note sets forth the background of adoption dissolution and provides an overview of the history of adoption dissolution statutes

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<sup>24</sup> For an example of how biological parental rights may be preserved in the context of a fraudulently induced adoption, see IOWA CODE § 600.A.8 (2024) (providing an avenue within Iowa's termination of parental rights statute for an adoptive parent to relinquish their rights where the adoption was fraudulently induced).

<sup>25</sup> See CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION, *supra* note 21, at 2; see also Joanna E. Jordan, *There's No Place Like Home: Overhauling Adoption Procedure to Protect Adoptive Children*, 18 J. GENDER, RACE & JUST. 237, 242 (2015) (explaining that "[t]he end result of disruption or dissolution is typically one of two scenarios": reentry in the foster care system or placement with a new adoptive family).

<sup>26</sup> *E.g.*, Adoption and Safe Families Act of 1997, 105 Pub. L. No. 89, 111 Stat. 2115 (codified as amended at 42 U.S.C. §§ 670–679). The Adoption and Safe Families Act is a federal law that imposes time requirements on states to move children from foster care and into adoption. *Id.*; see Abigail Lindner, *Understanding the Adoption and Safe Families Act (ASFA)*, NAT'L COUNCIL FOR ADOPTION (Oct. 5, 2023), <https://adoptioncouncil.org/publications/understanding-the-adoption-and-safe-families-act-asfa> [https://perma.cc/YT8Z-UZEJ].

<sup>27</sup> Joan Heifetz Hollinger, *State and Federal Adoption Laws*, in FAMILIES BY LAW: AN ADOPTION READER 37, 37 (Naomi R. Cahn & Joan Heifetz Hollinger eds., 2004) ("[S]tate adoption laws are not and never have been uniform . . .").

<sup>28</sup> Carroll, *supra* note 20, at 173–74 (concluding after an analysis of statutes and case law across the country that there are a "patchwork of approaches").

<sup>29</sup> See Joseph T. Helling, *Adoption: Annulment of Status*, 29 NOTRE DAME L. REV. 68, 69 (1953) ("The fundamental problem in this field is whether it is possible to annul or set aside an adoption."); see also Mahoney, *supra* note 20, at 641 (2009) (discussing the additional "doctrinal avenue" of the termination of parental rights for adoptive parents).

in the United States.<sup>30</sup> With that context, Part I then discusses the dichotomy between biological and adoptive families and compares the legal avenues available for the termination of parental rights and obligations.<sup>31</sup> Part II provides findings from the 50-State Survey of whether and how each state, including the District of Columbia and Puerto Rico, addresses adoption dissolution.<sup>32</sup> Part II categorizes the jurisdictions into three groups: (A) states with explicit grounds for dissolution,<sup>33</sup> (B) states with a statute of limitations within which a party may challenge a final adoption decree based on a procedural defect,<sup>34</sup> and (C) states that do not statutorily delineate adoption dissolution in their child welfare or adoption schemes.<sup>35</sup>

Based on the findings of the Survey, Part III proposes that adoption dissolution should be statutorily provided for under a general “termination of the parent-child relationship” scheme rather than a separate adoption-specific dissolution statute.<sup>36</sup> Even though the abrogation of all adoption dissolution provisions may promote the ultimate equitable treatment of biological and adoptive families, this Note proposes the boundaries of permissible dissolution be explicitly provided.<sup>37</sup> This is an alternative approach in line with the proposition that adoption is a creature of statute<sup>38</sup> and thus must be statutorily delineated.<sup>39</sup>

The scope of the proposed statutory scheme should be guided by the “best interests of the child” standard<sup>40</sup>—the historically leading legal standard in child welfare and protection—rather than the perspective of

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<sup>30</sup> See *infra* Section I.A.

<sup>31</sup> See *infra* Section I.B.

<sup>32</sup> See *infra* Part II.

<sup>33</sup> See *infra* Section II.A.

<sup>34</sup> See *infra* Section II.B.

<sup>35</sup> See *infra* Section II.C.

<sup>36</sup> See *infra* Part III.

<sup>37</sup> See *infra* Part III.

<sup>38</sup> *In re Adoption of Black*, 293 N.Y.S.2d 797, 798 (Sur. 1968) (“Adoptions were unknown at the English common law and proceedings for such are wholly governed and strictly limited by statute . . .”).

<sup>39</sup> Carroll, *supra* note 20, at 166 (“[T]he absence of any statutory guidelines allows courts to apply whatever standard they deem appropriate. Such a situation should not exist.”). Elizabeth Carroll further argues that where dissolution is not statutorily based, a court is enabled to apply different legal standards which often do not comport with the best interests standard. *Id.*

<sup>40</sup> Although there is no uniform definition of the best interests of the child standard, it is thought of as a legal concept to guide holistic judicial determinations regarding placement and child custody. CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD 2 (Sept. 2023) [hereinafter CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS], <https://www.childwelfare.gov/resources/determining-best-interests-child> [https://perma.cc/MQM9-A6AS].

the parent's rights.<sup>41</sup> As such, there should be no explicit ground, substantive or procedural, applicable uniquely to a finalized adoption decree that is unavailable to biological families for the termination of the parent-child relationship.<sup>42</sup> Further, the proposal set forth in Part III advocates for a probationary period to substitute the statute of limitations after the finalization of an adoption decree in order to reinforce the goals of familial permanency and equal treatment of biological and adoptive families.<sup>43</sup>

## I. BACKGROUND

### A. *Background and History of Adoption Dissolution*

The normalization of what may be generally considered as “adoption failure”<sup>44</sup> occurs through either “dissolution” or “disruption.”<sup>45</sup> The term, “dissolution,” refers to a legally finalized adoption ending permanently before the child has reached adulthood.<sup>46</sup> On the other hand, “disruption” occurs before an adoption is legally finalized but after a child has been placed in an adoptive home.<sup>47</sup> The instability of dissolution and disruption both have harmful effects on children that last throughout their lives.<sup>48</sup> While disruption is a critical challenge in the child welfare system, this Note will focus on state-sanctioned adoption dissolution.

Historically, the adoption dissolution doctrine has empowered state courts to enter orders setting aside earlier adoption decrees in certain circumstances, typically unrelated to the best interests of the child standard.<sup>49</sup> Even in jurisdictions where adoption dissolution statutes were not established, a court's non-statutory authority to vacate official adoption decrees was assumed based on the principle that a decree

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<sup>41</sup> See *infra* Section III.A.

<sup>42</sup> See *infra* Section III.B.

<sup>43</sup> See *infra* Section III.C.

<sup>44</sup> See Chuck Johnson, Kristen Hamilton & Ryan Hanlon, *When Adoptions Fail*, NAT'L COUNCIL FOR ADOPTION (June 3, 2020), <https://adoptioncouncil.org/blog/when-adoptions-fail> [<https://perma.cc/6PDP-JU5B>].

<sup>45</sup> Jennifer F. Coakley & Jill D. Berrick, *Research Review: In a Rush to Permanency: Preventing Adoption Disruption*, 13 CHILD & FAM. SOC. WORK 101, 102 (2007).

<sup>46</sup> *Id.* at 102, 110.

<sup>47</sup> *Id.*

<sup>48</sup> See CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION, *supra* note 21, at 2.

<sup>49</sup> See Carroll, *supra* note 20, at 156–57 (“Although the best interests of the child is uniformly proclaimed as the applicable standard when the fate of any child is at stake, a look at current statutes and case law belies such proclamations.”).



created by a court may also be set aside by a court order.<sup>50</sup> Notwithstanding, many jurisdictions structured adoption dissolution through their own statutory scheme as adoption is “purely a creature of statute.”<sup>51</sup> Such states provided statutory authority for both substantive and procedural grounds of dissolution,<sup>52</sup> which have significantly shifted over the decades.

Just as with biological parenting, adoption comes with no guarantees.<sup>53</sup> But while an adoptive parent cannot set aside an adoption decree solely based on mere dissatisfaction with the arrangement,<sup>54</sup> jurisdictions previously delineated other substantive grounds for dissolution. For example, specific grounds for vacating an adoption have included an adoptee’s misconduct and misbehavior.<sup>55</sup> Furthermore, some jurisdictions provided for dissolution where adoptive parents were unaware of certain characteristics of a child prior to adoption, such as developmental disabilities<sup>56</sup> and racial differences.<sup>57</sup> The rationale for

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<sup>50</sup> See Helling, *supra* note 29, at 69 (highlighting that adoption is thought of as a “status” created by order or decree). Non-statutory authority to dissolve adoption decrees is typically premised on the Federal Rules of Civil Procedure, which allow courts to grant relief from final court judgments or orders in certain circumstances. Mahoney, *supra* note 20, at 670; accord FED. R. CIV. P. 60.

<sup>51</sup> Tiffany Woo, *When the Forever Family Isn’t: Why State Laws Allowing Adoptive Parents to Voluntarily Rescind an Adoption Violate the Adopted Child’s Equal Protection Rights*, 39 SW. L. REV. 569, 572 (2010).

<sup>52</sup> See Mahoney, *supra* note 20, at 641–42 (setting forth that the law of adoption annulment consists of “two intertwined strands”: procedural and substantive).

<sup>53</sup> Dirk Johnson, *Debate on Adoption Is Focusing on Rights to See Family Histories*, N.Y. TIMES (Feb. 11, 1990), <https://www.nytimes.com/1990/02/11/us/debate-on-adoption-is-focusing-on-rights-to-see-family-histories.html> [<https://perma.cc/RD6Y-XQ4M>] (“In adoptions, just as in biological reproduction, there are many wild cards and no guarantees.”); see also Tad Sherman, *What NOT to Say...*, ROAD TO ADOPTION (Mar. 21, 2022), <https://road-to-adoption.com/2022/03/21/what-not-to-say> [<https://perma.cc/WV9N-PMWZ>] (explaining that “[o]f course everyone wants a healthy child” but “there are no guarantees even when you have a biological child”).

<sup>54</sup> See *Buttrey v. West*, 102 So. 456, 459 (1924) (dismissing the appellant adoptive parent’s view that their own “desire” to annul the adoption constitutes “good cause”). *But see* Helling, *supra* note 29, at 75 (finding that seven states in the 1950s listed broad grounds such as “good cause shown” or “the welfare of the child”).

<sup>55</sup> See, e.g., N.Y. DOM. REL. LAW § 118(b) (repealed 1974) (“A foster parent who in pursuance of this article or of any act repealed hereby shall have adopted a foster child from an authorized agency may apply to a judge or surrogate of the court in which the original adoption took place for the abrogation of such adoption because of the wilful desertion of such foster parent by such foster child or because of any misdemeanor or ill behavior of such child.”).

<sup>56</sup> See Helling, *supra* note 29, at 75–76 (listing eight states where adoptions could be dissolved “on the grounds that the child is feebleminded or epileptic”).

<sup>57</sup> Two state statutes contained provisions permitting an adoptive child to be returned if it turned out that their race was different from that of their adoptive families. See MO. ANN. STAT. § 453.130 (1952) (repealed 1982); KY. REV. STAT. ANN. § 199.540(1) (West 2021) (amended 2022) (providing for an annulment if the child proves to have a different “ethnological ancestry” from the adoptive parents and the petition). Although the Kentucky statute was enacted in 1950 and remained good law for over seventy years, there is no case law applying the provision nor any

such adoption dissolution grounds stemmed from a desire to protect adoptive parents from being unprepared for the unknown.<sup>58</sup> To date, state legislatures have amended or repealed almost all substantive grounds for dissolution relating to the condition of the adopted child.<sup>59</sup> The only remaining substantive ground that exists today is in California on the basis of a child's previously unknown developmental disability.<sup>60</sup>

States have also provided procedural grounds for an adoptive parent to petition to vacate an adoption based on an irregularity in the initial judicial proceeding.<sup>61</sup> Procedural and contractual defenses applied because of both the court's inherent equitable authority and the judicially created nature of the adoptive parent-child relationship.<sup>62</sup> As such, some state statutes statutorily set forth that courts may set aside final adoption decrees in cases where the initial adoption order was based on fraud, mistake, or duress.<sup>63</sup> This procedural workaround, originating from the civil litigation process, was established to achieve the ultimate goals of fairness and justice in cases where errors affected adoption proceedings.<sup>64</sup>

Although prevalent today,<sup>65</sup> statute of limitations provisions for filing for adoption dissolution were previously nonexistent or

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legislative history to provide an interpretation of the statute. See Martin R. Levy & Elaine C. Duncan, *Constitutional Implications of Adoption Revocation Statutes*, 8 PAC. L.J. 611, 623 (1977) (reviewing the Kentucky adoption dissolution statute and arguing it was unconstitutional).

<sup>58</sup> See, e.g., Levy & Duncan, *supra* note 57, at 619 (“In regard to the family who adopts a child who later develops different ethnological traits . . . the family has not prepared itself for the resulting pressures, as would a family who knowingly entered into such a relationship. Problems are inevitable for the child, particularly in the adolescent years when the parents of its peers show disapproval of interracial dating. Adoptive parents who are not prepared to cope with the resulting pressures may well increase the child's chances of experiencing a severe identity crisis.”).

<sup>59</sup> The New York statute providing misconduct as a substantive ground was repealed in 1974. N.Y. DOM. REL. LAW § 118(b) (repealed 1974). The Missouri statute was repealed in 1982. MO. CODE ANN. § 453.130 (1952) (repealed 1982). The Kentucky statute was ultimately amended in 2022 to eliminate any substantive basis for adoption dissolution on the basis of race. KY. REV. STAT. ANN. § 199.540(1) (West 1950) (amended 2022).

<sup>60</sup> CAL. FAM. CODE § 9100 (West 2024).

<sup>61</sup> See Mahoney, *supra* note 20, at 641 (discussing the procedural strand of adoption dissolution statutes).

<sup>62</sup> Anne Harlan Howard, Note, *Annulment of Adoption Decrees on Petition of Adoptive Parents*, 22 J. FAM. L. 549, 550 (1984); see, e.g., *Adoption of Kay C.*, 278 Cal. Rptr. 907, 912 (Ct. App. 1991) (stating that an adoption decree may be vacated on the grounds that would entitle the court to vacate any other order or decree such as fraud, duress, mistake, inadvertence, or surprise).

<sup>63</sup> Howard, *supra* note 62, at 558–61 (discussing fraud as a “recognized ground for the annulment of an adoption”).

<sup>64</sup> Mahoney, *supra* note 20, at 641–42.

<sup>65</sup> See *infra* Appendix B.

exceedingly long in duration.<sup>66</sup> By the 1980s,<sup>67</sup> more statutes of limitations were implemented and existing provisions became more time-restrictive in recognition of the necessity of finalizing the adoptive parent-child relationship in order to provide adoptees with a more secure and stable environment.<sup>68</sup> Nonetheless, there is debate amongst legal scholars and child welfare experts over whether the availability of time limitations after the adoption's finalization is proper due to the uncertainty a child faces during the period.<sup>69</sup> Ultimately, this must be balanced to determine whether statutorily-provided time limitations are preferable to a state without any guidance or constraints of when or how an adoptive parent may petition for dissolution.<sup>70</sup>

Legal reforms in substantive and procedural provisions of adoption dissolution statutes have moved toward the goal of permanency.<sup>71</sup> Yet legislators, courts, and scholars continue to struggle to reconcile the need for a conclusive effect of adoption decrees, the prevention of fraud by adoption agencies or birth parents, and the child's interests.<sup>72</sup> Moreover, there is a delicate balance between providing permanent homes for children without caregivers and providing children for childless adults or adults who desire to expand their families.<sup>73</sup> Although these two goals of adoption overlap, it remains unclear how laws and practices can resolve the underlying conflicts between the best interests of children and the desires of prospective parents.<sup>74</sup>

Instability and impermanence derived from the potential of adoption dissolution runs contrary to legislative action and case law indicating a general public policy to strengthen the finality of adoption

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<sup>66</sup> Helling, *supra* note 29, at 72, 75–76. For example, in the 1950s, the grounds for dissolution based on a statutorily delineated condition could have been brought to court within five years of the finalized adoption decree. *Id.* at 75–76 (finding that adoptions could be annulled within five years of the original decree on the grounds that the child had a “permanent or serious disability,” “[i]ncurable disease and/or psychosomatic or mental disturbance,” “venereal disease,” diagnosis of “feeble-minded[ness] or epilep[sy],” or different “racial ancestry” than the adoptive parents).

<sup>67</sup> See Mahoney, *supra* note 20, at 655 (finding that adoption dissolution statutes underwent major reforms by 1983 and that those changes “marked the beginning of the modern era of abrogation law”).

<sup>68</sup> Howard, *supra* note 62, at 563.

<sup>69</sup> JOSEPH GOLDSTEIN, ALBERT J. SOLNIT, SONJA GOLDSTEIN & ANNA FREUD, *THE BEST INTERESTS OF THE CHILD* 41–45 (1996).

<sup>70</sup> See Carroll, *supra* note 20, at 166 (“As adoption is a purely statutory proceeding, its abrogation should also be statutorily based.”).

<sup>71</sup> Mahoney, *supra* note 20, at 656.

<sup>72</sup> Lynch, *supra* note 22, at 260.

<sup>73</sup> Hollinger, *supra* note 27, at 37, 42.

<sup>74</sup> *Id.*

orders.<sup>75</sup> Further, there is a strong argument that dissolution is at odds with the best interests of the child standard that governs states' other child welfare proceedings.<sup>76</sup> Adoption dissolution statutes are used by adoptive parents for their own benefit.<sup>77</sup> Adopted children likely rarely have a say in the dissolution procedure. Allowing adoptive parents this legal recourse exclusively to advance their own interests is inconsistent with a system that otherwise prioritizes children's welfare and interests above all else.<sup>78</sup>

Nonetheless, there is a similarly strong interest in obviating mistreatment to adoptive parents in the adoption system. The transactional nature of adoption has seemingly created a supply-and-demand business for children.<sup>79</sup> And the perception of this consumer venture is filled with stories of corruption and fraudulent activity inducing otherwise well-intentioned people who just want to be parents to adopt.<sup>80</sup> Adoptive parents may not feel equipped to handle behavioral or physical challenges that they were not prepared for due to nondisclosure.<sup>81</sup> Or they may not have the adequate resources or financial means to maintain the well-being of a child that requires additional support.<sup>82</sup> Adoptive parents may also turn to dissolution for the safety and well-being of other family members, who may be at risk due to a

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<sup>75</sup> See, e.g., *Matter of Kane*, 427 N.Y.S.2d 575, 578 (Fam. Ct. 1980) (“Legislative action in recent years indicates a public policy to strengthen the conclusive effect of orders of adoption.”).

<sup>76</sup> CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS, *supra* note 40, at 2 (explaining that the best interests of the child standard evaluates what will best serve the child and who is best suited to take care of the child); see Carroll, *supra* note 20, at 156–57.

<sup>77</sup> E.g., Gregory Luce, *Adoptee Rights and Adoption Annulment*, HARVARD L. PETRIE-FLOM CTR. (May 13, 2022), <https://blog.petrieflom.law.harvard.edu/2022/05/13/adoptee-rights-adoption-annulment> [<https://perma.cc/UJ6V-V3AJ>] (discussing how generally “[a]nnulling or legally ending an adoption . . . has rarely applied to the benefit of adopted people” as it is “a ‘right of return’ policy for adoptive parents”).

<sup>78</sup> Howard, *supra* note 62, at 563–64 (“Only in rare circumstances should a final adoption decree be annulled by the adoptive parents and only when it is in the best interest of the child.”).

<sup>79</sup> See Olga Khazan, *The New Question Haunting Adoption*, ATLANTIC (Oct. 19, 2021), <https://www.theatlantic.com/politics/archive/2021/10/adopt-baby-cost-process-hard/620258> [<https://perma.cc/Z59S-YWNY>] (discussing the shortage of “adoptable babies” and questioning whether the purpose of adoption is to “provide babies for families, or families for babies”).

<sup>80</sup> During the pre-placement process, the fraud involved typically relates to the health or background of the prospective adoptive child. John R. Maley, *Wrongful Adoption: Monetary Damages as a Superior Remedy to Annulment for Adoptive Parents Victimized by Adoption Fraud*, 20 IND. L. REV. 709, 712 (1987).

<sup>81</sup> Johnson, Hamilton & Hanlon, *supra* note 44.

<sup>82</sup> Mahoney, *supra* note 20, at 665 (“Fraud may also provide the basis for adoptive parent annulment in cases where the parent’s motivation is avoidance of financial responsibility for the child.”).

child's unexpected disruptive or potentially harmful behaviors.<sup>83</sup> Ultimately, however, each parent-child relationship has a unique set of facts and circumstances. Rather than impose bright-line rules, the issues must be assessed to consider whether particular situations are severe enough to warrant dissolution and whether the inquiry has been centered around the child's best interests, to be in an environment that will best serve their needs.

Adoptions have reportedly been set aside since the early 1900s,<sup>84</sup> but data surveying adoption dissolution rates is unreliable due to inaccurate, modified, or closed adoptee records, uncaptured data outside of the public child welfare system, and inconsistent reporting.<sup>85</sup> Studies report that between one and ten percent of finalized adoptions dissolve in the United States each year.<sup>86</sup> But most of the research on adoption dissolution focuses on adoptions from foster care and does not encompass other adoptions such as those from private placements.<sup>87</sup> From the available statistics gathered, adoption dissolution rates overall have remained steady over the past two decades with no signs of a downward trend.<sup>88</sup> While adoption dissolution is not a frequent problem, it remains a consistent one.

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<sup>83</sup> See, e.g., Moscatello, *supra* note 7 (citing the Stauffers' struggles with Huxley and highlighting his "severe aggression" toward their other children).

<sup>84</sup> See, e.g., *In re Trimm*, 63 N.Y.S. 952 (Surr. Ct. 1900) (discussing an order of adoption being set aside).

<sup>85</sup> See, e.g., Coakley & Berrick, *supra* note 45, at 102 (stating that adoption dissolution is "difficult to track because of confidentiality laws and because adoption cases are closed upon finalization and, if reopened, would be so under a new name and identification number"); Aleszu Bajak & Marisa Kwiatkowski, *Broken Adoptions, Buried Records: How States Are Failing Adoptees*, USA TODAY (Apr. 18, 2023, 9:11 PM), <https://www.usatoday.com/in-depth/news/investigations/2022/05/19/bad-data-accountability-adoption-subsidies/9722162002> [<https://perma.cc/9ZCU-PJWC>] (reporting that "[n]o one knows how well each state is fulfilling its mission of finding children their forever homes" because federal agencies "remove evidence that would illuminate the child's past journeys through the system").

<sup>86</sup> See CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION, *supra* note 21, at 4; see also Johnson, Hamilton & Hanlon, *supra* note 44 (finding that adoption dissolution data ranges "with some studies showing a 1-5% dissolution rate and others indicating the rate could be as high as 9%").

<sup>87</sup> Johnson, Hamilton & Hanlon, *supra* note 44. A recent investigation by USA Today found that adoptions, specifically originating within the foster care system, failed at a rate of nearly three percent between 2008 and 2020. Marisa Kwiatkowski & Aleszu Bajak, *Far from the Fairy Tale: Broken Adoptions Shatter Promises to 66,000 Kids in the US*, USA TODAY (June 6, 2022, 11:07 AM), <https://www.usatoday.com/in-depth/news/investigations/2022/05/19/failed-adoptions-america-foster-care-troubles/9258846002> [<https://perma.cc/RX9R-LTNY>] (compiling available data from sixteen states and reporting that of the 60,000 children adopted out of foster care from 2008 to 2010 in those states, 1,973 children returned to foster care within a decade).

<sup>88</sup> Compare CHILD WELFARE INFO. GATEWAY, ADOPTION DISRUPTION AND DISSOLUTION 6 (June 2012), [https://www.govinfo.gov/content/pkg/GOVPUB-HE23\\_1200-PURL-gpo145740/pdf/GOVPUB-HE23\\_1200-PURL-gpo145740.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-HE23_1200-PURL-gpo145740/pdf/GOVPUB-HE23_1200-PURL-gpo145740.pdf) [<https://perma.cc/93Q4-5H5F>] (reporting that an

## B. *Adoptive Versus Biological Rights, Duties, and Obligations*

Family law jurisprudence in the United States has developed based on the importance of marriage and the structure of the nuclear family.<sup>89</sup> However, as the reliance on the marital relationship has diminished, the law appears to have refocused to a bionormative<sup>90</sup> concept of family.<sup>91</sup> For instance, case law on parental rights claims based solely on DNA continues to develop and succeed in part due to the focus on and preference for biological connection.<sup>92</sup> But adoptive families are not the product of biological ties; adoption is solely a creation of the law.<sup>93</sup>

Conventional views of adoption contain prejudice demarking the process as a “second best” alternative to forming a family.<sup>94</sup> Having a child of “one’s own” signifies commitment, connection, and belonging,<sup>95</sup> while

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individual study of dissolution in public adoption agencies in Illinois found a 6.6% dissolution rate between 1976 and 1987), with Trudy Festinger, *After Adoption: Dissolution or Permanence?*, 81 CHILD WELFARE 515, 527 (2002) (reporting a 3.3% dissolution rate from 1996 and 2000 in a New York City study focused on public and voluntary agencies), and ANNETTE SEMANCHIN JONES & TRACI LALIBERTE, ADOPTION DISRUPTION AND DISSOLUTION REPORT 4 (May 17, 2010) (noting that “[r]ecent studies on adoption dissolution after legal finalization indicate that rates of dissolution range from 1% to 7%”).

<sup>89</sup> *E.g.*, Michael H. v. Gerald D., 491 U.S. 110, 119–21 (1989) (plurality opinion) (reinforcing the traditional marital family unit and the strong presumption that any child born into a family is born of the husband and wife).

<sup>90</sup> Bionormativity is a term describing cultural attitudes and norms that place superiority on biological ties in families. Françoise Baylis & Carolyn McLeod, *Introduction to FAMILY-MAKING: CONTEMPORARY ETHICAL CHALLENGES* 1, 2 (Françoise Baylis & Carolyn McLeod eds., 2014). In the legal context, bionormativity is the norm that parental rights and obligations align with biological parenthood. Katharine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 652–56 (2008).

<sup>91</sup> See Baker, *supra* note 90, at 653 (finding that “the demise of the marital regime” is being replaced with “the potential rise of [a] biological one”); see also Charlotte Witt, *Family Resemblances: Adoption, Personal Identity, and Genetic Essentialism*, in ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS, *supra* note 6, at 135, 135 (“The biological view of the family undergirds both family law and social policy on family issues—to the detriment of families not united by biology.”).

<sup>92</sup> Jacqueline Stevens, *Methods of Adoption: Eliminating Genetic Privilege*, in ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS, *supra* note 6, at 68, 69.

<sup>93</sup> FAMILIES BY LAW: AN ADOPTION READER, *supra* note 27, at 1.

<sup>94</sup> *Id.* at 1, 3. Further, a research study on the societal perceptions about adoption reported commonly-held beliefs that the biological tie is important for parental bonding and love, that adopted children are viewed as “second rate” because of their unknown genetic past, and that adoptive parents are not “real” parents. Charlene E. Miall, *The Stigma of Adoptive Parent Status: Perceptions of Community Attitudes Toward Adoption and the Experience of Informal Social Sanctioning*, 36 FAM. REL. 34, 34–39 (1987).

<sup>95</sup> Janet Farrell Smith, *A Child of One’s Own: A Moral Assessment of Property Concepts in Adoption*, in ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS, *supra* note 6, at 112, 130.

adopting may come with connotations of shame.<sup>96</sup> For the adoptive parents, adoption often is associated with the presumption of infertility.<sup>97</sup> And the biological bias surrounding adoption pushes prospective parents to pursue infertility treatment before they resort to adoption.<sup>98</sup> For the adopted child, adoption carries a badge of inferiority for being “unwanted.”<sup>99</sup> Further, some adoptees who grow up without knowledge of their biological ancestry struggle with their own personal identities due to the societal stigmatization surrounding not knowing one’s “roots.”<sup>100</sup> In tandem with the shifting legal emphasis on consanguineal ties, society’s normative understanding of the family has historically emphasized and endorsed the nuclear biological family as superior to other family structures.<sup>101</sup>

Even so, there is a compelling argument that there should be no distinction between how an adoptive child and a biological child are treated under the law due to the strong public policy underlying that innocent and vulnerable children should be protected.<sup>102</sup> Historically, adopted children faced discriminatory laws until state statutes and federal law evolved to provide them with the same rights as biological children.<sup>103</sup> The modern legal process of adoption functions to provide adoptive parent-child relationships with the same legal status as biological parent-

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<sup>96</sup> Haslanger & Witt, *supra* note 6, at 1, 4.

<sup>97</sup> *Id.*

<sup>98</sup> ELIZABETH BARTHOLET, *FAMILY BONDS: ADOPTION & THE POLITICS OF PARENTING* 35–38 (1993).

<sup>99</sup> Haslanger & Witt, *supra* note 6, at 1, 4.

<sup>100</sup> BARTHOLET, *supra* note 98, at 173.

<sup>101</sup> Charlotte Witt, *Adoption, Biological Essentialism, and Feminist Theory*, in *FAMILIES BY LAW: AN ADOPTION READER*, *supra* note 27, at 280, 280; *see also* Smith, *supra* note 95, at 112–13 (“Neither society nor the state should valorize the biological tie as paradigmatic, normal, primary, and most desired”). Bionormativity persists today, yet statistics about contemporary parenting arrangements reveal an increasing number of nongenetic relationships in family configurations. Baker, *supra* note 90, at 697. Thus, while legal reliance on biological connections is an evolving area of law, “the time has come for the law to choose the relative weight it gives to the qualities of parenthood that accompany a bionormative regime.” *Id.* at 715.

<sup>102</sup> *See* Woo, *supra* note 51, at 572, 579–80 (arguing that adoption dissolution statutes violate the Fourteenth Amendment’s Equal Protection Clause by treating adopted children differently from biological children in how they may lose their parent-child relationship).

<sup>103</sup> *See, e.g.*, Michael S. Melbinger, *Medical Coverage for Adopted Children Under the Omnibus Budget Reconciliation Act of 1993*, 6 *LOY. CONSUMER L. REV.* 11, 14 (1993) (noting that the Omnibus Budget Reconciliation Act of 1993 eliminates differential treatment applicable to adopted dependent children and guarantees adopted children the same access to health insurance as birth children); *see also* Naomi Cahn & Joan Heifetz Hollinger, *Adoptees’ Inheritance Rights*, in *FAMILIES BY LAW: AN ADOPTION READER*, *supra* note 27, at 78, 78–79 (explaining that adoptive children did not receive equal treatment for purposes of intestacy inheritance rights until state amendments allowed them such rights).

child relationships.<sup>104</sup> But the legal edifice separating biological and adoptive families remains. Adoptive parents' obligations are not held to the same standards as biological parents when it comes to terminating parental rights and responsibilities.<sup>105</sup>

Grounds for the termination of parental rights and responsibilities can be categorized into two circumstances: involuntary and voluntary termination. Involuntary grounds are statutorily limited for the protection of minor children subject to abuse or neglect.<sup>106</sup> Such parental rights termination proceedings are evaluated under a state's heightened standard of proof to comport with the inherent due process rights of parents to care for and raise their own children.<sup>107</sup> Fundamentally, the law applies the same processes and legal standards to biological and adoptive parents who abandon, endanger, neglect, or abuse their child.<sup>108</sup>

Voluntary termination typically occurs when a parent consents to the relinquishment of their rights after a judicial finding of abuse or neglect or when biological parents surrender their rights in order to place a child up for adoption.<sup>109</sup> Two other laws dealing with voluntary termination of parental rights, "safe haven" laws<sup>110</sup> and disestablishment-of-paternity laws,<sup>111</sup> are also limited and narrowly tailored doctrines. For biological parents, any other motivations to voluntarily relinquish parental status, such as financial considerations or behavioral issues, are

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<sup>104</sup> FAMILIES BY LAW: AN ADOPTION READER, *supra* note 27, at 1; see also *Michael J. v. County of L.A., Dep't of Adoptions*, 247 Cal. Rptr. 504, 513 (Ct. App. 1988) (discussing the equivalence of adoptive parents' and biological parents' "legal, moral, social, and financial obligations" toward their child).

<sup>105</sup> Woo, *supra* note 51, at 574–77.

<sup>106</sup> See 59 AM. JUR. 2D *Parent & Child* § 16 (2024) (listing grounds for termination of the parent-child relationship, such as neglect of the child; deprivation suffered by the child at the parent's hands; untreated substance abuse of the parent; emotional illness, mental illness, or mental deficiency of the parent; abandonment; and sexual assault by the father upon the child's mother, resulting in the birth of the child).

<sup>107</sup> *Santosky v. Kramer*, 455 U.S. 745, 768–70 (1982). The Supreme Court in *Santosky* highlighted that due to the fundamental liberty interest of parents in the "care, custody, and management" of their child, any state-initiated proceeding that interferes with that interest must provide fundamentally fair procedures. *Id.* at 753–54.

<sup>108</sup> Woo, *supra* note 51, at 578.

<sup>109</sup> Mahoney, *supra* note 20, at 640.

<sup>110</sup> "Safe haven" laws allow birth parents to surrender their newborn at a hospital, fire station, or other safe haven without fear of prosecution for abandonment or abuse. See CHILD WELFARE INFO. GATEWAY, INFANT SAFE HAVEN LAWS 1 (Sept. 2021), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/safehaven> [<https://perma.cc/45X4-ZL85>].

<sup>111</sup> State laws permit legal fathers to "disestablish paternity" to voluntarily relinquish their parental rights. *Paternity Laws and Forms: 50-State Survey*, JUSTIA, <https://www.justia.com/family/child-custody-and-support/paternity-forms-50-state-resources> [<https://perma.cc/DMV2-8HNE>].



determined based on the best interests standard through the judicial system.<sup>112</sup>

In contrast, adoptive parents may voluntarily give up an adopted child by petitioning the court to rescind the adoption decree pursuant to the court's inherent authority over adoption orders it created.<sup>113</sup> Further, adoption dissolution statutes across states may provide adoptive parents with grounds to dissolve an adoption unrelated to the protection and welfare of children.<sup>114</sup> This additional legal avenue for termination of the adoptive parent-child relationship results in inequitable treatment for adoptees as biological children are given the protection of the best interests of the child standard while the adoption dissolution doctrine prioritizes safeguarding adoptive parents.<sup>115</sup>

Although parents have a fundamental right to the care, custody, and control of their children,<sup>116</sup> the United States Supreme Court has not addressed whether a child has a corresponding right to the parent-child relationship.<sup>117</sup> Whether or not a constitutional right exists, adoptive children are treated differently from biological children where laws enable the loss of a parent-child relationship upon separate substantive and procedural grounds not otherwise available to biological families.<sup>118</sup> The social stigma that “blood is thicker than water”<sup>119</sup> may underlie the legal differential treatment of adoptive children from biological children.<sup>120</sup> But the legal tension remains to determine whether adoptive

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<sup>112</sup> Mahoney, *supra* note 20, at 640.

<sup>113</sup> Helling, *supra* note 29, at 69–70.

<sup>114</sup> Mahoney, *supra* note 20, at 641.

<sup>115</sup> See *id.* at 669 (“The abrogation doctrine results in unequal treatment for adopted children vis-a-vis their biological counterparts, for whom protection under the best interests of the child standard is always available.”).

<sup>116</sup> *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

<sup>117</sup> *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (asserting that although the Court has not had the opportunity to opine, Justice Stevens believes children have “liberty interests in preserving established familial or family-like bonds” to the extent that “parents and families have fundamental liberty interests in preserving such intimate relationships”); see also Woo, *supra* note 51, at 582–84 (characterizing the parental fundamental right as “the right to keep the family together” and arguing that “a child surely has the correlative right to keep the state from breaking up the parent-child dyad by taking away her parent, whether adoptive or birth”).

<sup>118</sup> Woo, *supra* note 51, at 591.

<sup>119</sup> This common idiom is used to say that genetic ties are stronger than any other relationship. See *Blood is Thicker than Water*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/blood%20is%20thicker%20than%20water> [https://perma.cc/RN24-WSPZ].

<sup>120</sup> Ellen Herman, *We Have a Long Way to Go: Attitudes Toward Adoption*, in *FAMILIES BY LAW: AN ADOPTION READER*, *supra* note 27, at 134, 134–35; see also Irving Leon, *Nature in Adoptive Parenthood*, in *FAMILIES BY LAW: AN ADOPTION READER*, *supra* note 27, at 88, 89 (discussing that American culture and attitudes lead to the popular belief that genetic connection brings an inevitable emotional bond that may not be present with adoptive parents).

parents should continue to be granted this additional procedure to terminate their parental rights when the goal of adoption law is to create the equivalent legal status of biological families.<sup>121</sup>

## II. FINDINGS AND ANALYSIS: 50-STATE SURVEY OF ADOPTION DISSOLUTION

Commentators have surveyed and discussed adoption dissolution statutes over the years.<sup>122</sup> The latest compilation of key adoption dissolution trends in 2009 revealed that while adoption dissolution statutes had undergone reform to eliminate substantive grounds, procedural avenues for dissolution remained prevalent in both legislation and judicial opinions.<sup>123</sup> Given the present momentum of adoption dissolution in the media and public conversation,<sup>124</sup> it is helpful to compare, contrast, and analyze state approaches to adoption dissolution to identify policy trends and sociological perspectives that have shifted state legislatures to update and change their adoption dissolution laws over the past decade.

Researching statutes that have enabled adoptive parents to dissolve final adoption decrees reveals varied approaches that may be categorized into three groups. The first group, hereinafter referred to as “Group A” states, consists of jurisdictions with statutes that include explicit grounds for dissolution in the adoption statutory scheme.<sup>125</sup> For the most part, substantive grounds for adoption dissolution have been eliminated and replaced by statutes providing for the effect and validity of final adoption decrees.<sup>126</sup> However, fraud remains prevalent as a common ground explicitly mentioned in eleven state statutes.<sup>127</sup> Other states within

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<sup>121</sup> See *supra* note 4 and accompanying text.

<sup>122</sup> 50-State Surveys on adoption dissolution were last officially compiled in the 1980s. See, e.g., Howard, *supra* note 62, at 565 (assembling a table of state statutes highlighting their years of limitation and grounds for dissolution); Carroll, *supra* note 20, at 159, 178–80 (organizing the states into three categories: states that treat adoption dissolution the same as other civil cases or do not have statutes at all, states that only deal with procedural defects and irregularities, and states that have substantive grounds for adoption dissolution).

<sup>123</sup> Although it was not an official 50-State Survey, Margaret Mahoney evaluated many statutory schemes across the country to argue that the “doctrine of adoption annulment” should be abolished. Mahoney, *supra* note 29, at 674.

<sup>124</sup> See, e.g., Boucher, *supra* note 17.

<sup>125</sup> See *infra* Appendix A. This excludes states that only have grounds for general procedural irregularities within the set statute of limitations period as discussed. See *infra* Section II.B.

<sup>126</sup> But see CAL. FAM. CODE § 9100 (West 2024) (providing for dissolution on the grounds of a child’s developmental disability or mental illness).

<sup>127</sup> Twelve states list fraud as an explicit ground for dissolution, but the conditions of the fraud vary. See *infra* Appendix A.

“Group A” range from retaining narrow and specific grounds or broad general cause as a ground for dissolution.<sup>128</sup> And some statutory schemes generally provide for adoption dissolution to follow the state’s general rules of civil procedure.<sup>129</sup> Overall, “Group A” jurisdictions vary in whether they provide a statute of limitations for the explicit ground listed in the statute.<sup>130</sup>

Instead of delineating a particular ground for dissolution in the statute, “Group B” states provide a catch-all provision for dissolution based on any jurisdictional or procedural defect until the statute of limitations expires.<sup>131</sup> Afterwards, the statute of limitations promotes finality of the adoption and insulates the final decree of adoption from attack.<sup>132</sup> Between “Group A” and “Group B,” only five states overlap in providing both explicit grounds for dissolution and an otherwise applicable statute of limitations period for general procedural irregularities.<sup>133</sup> Finally, “Group C” states are categorized together as jurisdictional statutory schemes without specific adoption dissolution laws.<sup>134</sup> Thus in theory, courts in “Group C” states could otherwise invoke their judicial authority to vacate final adoption decrees.

In summation, the Survey shows that of the fifty-two jurisdictions reviewed, fifteen contain explicit grounds for adoption dissolution, twenty-nine provide for general procedural irregularities based on the adoption decree within a statute of limitations period (five of which also list explicit grounds for dissolution), and thirteen do not statutorily delineate the procedure or grounds for adoption dissolution.

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<sup>128</sup> Four states explicitly provide for an appeal from a final adoption decree in the same manner as other civil actions. See *infra* Appendix A.

<sup>129</sup> Six states include language and references to apply the general rules of civil procedure to adoption proceedings. See *infra* Appendix A; see e.g., IOWA CODE § 600.14(1) (2024) (“An appeal from any final order or decree rendered under this chapter . . . shall be taken in the same manner as an appeal is taken from a final judgment under the rules of civil procedure.”).

<sup>130</sup> See *infra* Appendix A. Compare CONN. GEN. STAT. § 45a-24 (2024) (no statute of limitations for fraud provided), with ME. STAT. tit. 18-C, § 9-315(1) (2024) (one-year statute of limitations for fraud, duress, or illegal procedures).

<sup>131</sup> See *infra* Appendix B; see, e.g., MD. CODE ANN., FAM. LAW § 5-3B-26 (West 2024) (“If a petition to invalidate an order under this subtitle on the basis of a jurisdictional or procedural defect is filed more than 1 year after entry of the order, a court shall dismiss the petition.”).

<sup>132</sup> See, e.g., MASS. GEN. LAWS ch. 210, § 6 (2024) (“Every decree of adoption entered by the court shall include the words ‘This adoption is final and irrevocable.’”).

<sup>133</sup> See *infra* Appendix B (marking the overlapping states with an asterisk).

<sup>134</sup> See *infra* Appendix C.

A. “Group A”: Ground for Dissolution Statutorily Provided

1. Developmental Disability or Mental Illness

Presently, California is the only remaining state that retains a substantive ground to dissolve a finalized adoption. The California statute provides that if a child exhibits symptoms of a developmental disability or mental illness as a result of conditions prior to adoption, an adoptive parent may petition to set aside the order of adoption within five years of the final order.<sup>135</sup> This provision is limited to “undo[ing]” adoptions granted by California state courts and does not extend to adoptions granted by other jurisdictions.<sup>136</sup>

The statute originates from the early twentieth-century perception that adoption agencies could guarantee a “perfect child” free of any physical, emotional, or mental defects.<sup>137</sup> Social workers and adoption agencies would determine whether a child would be “adoptable” based on their health, heredity, intelligence, and personality.<sup>138</sup> Children with less than “normal” intelligence would be excluded from the adoption market as “defectives.”<sup>139</sup> When a “bargained for” child fails to meet the expectations of adoptive parents and proves to be more costly than an average child,<sup>140</sup> California permits dissolution.<sup>141</sup> California case law has analogized setting aside a decree of adoption on developmental disability grounds to the procedural ground of mistake.<sup>142</sup> The statute is intended to ensure that pivotal information is not withheld from prospective adoptive parents.<sup>143</sup> Thus, the legislative rationale for dissolution is that an adoptive parent should not be required to continue raising the adopted child where knowledge or notice of such a condition would have affected their original agreement to adopt.<sup>144</sup>

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<sup>135</sup> CAL. FAM. CODE § 9100 (West 2024). Even amidst legislative amendments to the Family Code in 2022, the substantive provision remains. 2022 Cal. Legis. Serv. ch. 870 (West).

<sup>136</sup> *Adoption of M.S.*, 103 Cal. Rptr. 3d 715, 720–21 (Ct. App. 2010). The court stressed that a California court did not have the authority to adjudicate over a petition that originated outside of California’s counties as the statutory scheme places the responsibility for the support of the resulting unadopted child on the county of California where the adoption proceeding occurred. *Id.* at 720.

<sup>137</sup> Brian Paul Gill, *Adoption Agencies and the Search for the Ideal Family, 1918–1965*, in *FAMILIES BY LAW: AN ADOPTION READER*, *supra* note 27, at 64, 68.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> CAL. FAM. CODE § 9100 (West 2024).

<sup>142</sup> *Adoption of Kay C.*, 278 Cal. Rptr. 907, 913 (Ct. App. 1991).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

## 2. Fraud

While the judiciary has the inherent power to deal with fraud absent statutory authority, twelve jurisdictions provide for dissolution based on fraud within their adoption dissolution statutory scheme.<sup>145</sup> For instance, in addition to its substantive statute, California lists fraud as a basis to dissolve an adoption.<sup>146</sup> Under the California provision, an action to set aside an order of adoption based on fraud may be brought within three years after the finalized adoption decree or within ninety days of discovery of the fraud, whichever is earlier.<sup>147</sup> The California legislature specifically accorded a three-year period to bring a petition based on fraud, rationalizing that the interests of the child and the biological parent whose consent had been fraudulently obtained must be balanced against one another.<sup>148</sup>

In some of these jurisdictions, fraud is the only exception to a statute that otherwise promotes the finality of the adoption decree.<sup>149</sup> For example, Puerto Rico annuls adoption decrees when they have been obtained as a result of fraud upon the court,<sup>150</sup> but otherwise statutorily provides that the adoption decrees should be irrevocable.<sup>151</sup> In contrast, South Carolina provides for dissolution specifically on the more narrow exception of “extrinsic fraud.”<sup>152</sup> However, South Carolina otherwise does not permit an adoption’s validity to be attacked for any other defect or irregularity.<sup>153</sup> Colorado narrows the conditions of the fraud exception, according stepparents specifically a longer statute of limitations to attack

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<sup>145</sup> Alabama, California, Connecticut, Hawai‘i, Louisiana, Maine, New York, North Carolina, Puerto Rico, South Carolina, and South Dakota all contain the term fraud explicitly as a ground for adoption dissolution. See *infra* Appendix A.

<sup>146</sup> CAL. FAM. CODE § 9102(b) (West 2024); *infra* Appendix A.

<sup>147</sup> FAM. § 9102(b).

<sup>148</sup> Adoption of B.C., 125 Cal. Rptr. 3d 727, 733 (Ct. App. 2011).

<sup>149</sup> See, e.g., CONN. GEN. STAT. ANN. § 45a-24 (West 2024) (“All orders, judgments and decrees of courts of probate, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.”).

<sup>150</sup> P.R. LAWS ANN. tit. 8, § 1086p (2024).

<sup>151</sup> *Id.* § 1086o.

<sup>152</sup> S.C. CODE ANN. § 63-9-770(B) (2024) (defining “extrinsic fraud” as “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard” but highlighting that a court is not obligated to grant a person relief from judgment “if the person might have prevented the judgment by the exercise of proper diligence”).

<sup>153</sup> *Id.* § 63-9-770(A).

the final decree of adoption based on fraud upon the court or fraud upon a party.<sup>154</sup>

Hawai‘i is distinct in that it provides that fraud, and only fraud, is an exception to the statutory scheme that otherwise does not permit a final decree of adoption to be contested after the statute of limitations.<sup>155</sup> In Hawai‘i, the Intermediate Court of Appeals narrowly construed the term fraud as excluding duress and undue influence based on the intent of the legislature to “sharply curtail[]” setting aside an adoption decree after one year.<sup>156</sup> The Hawai‘i court reasoned that unlike duress and undue influence, fraud involves deception, which decreases the likelihood that a person may become aware of their victimization within a year.<sup>157</sup>

In contrast, other jurisdictions may characterize the ground more generally within various species of fraud. Louisiana, for example, provides for both fraud and duress as grounds for dissolution.<sup>158</sup> In Maine, any claim to reverse and annul an adoption decree on the grounds of fraud, duress, or illegal procedures must be brought within a year of the adoption decree.<sup>159</sup> North Carolina stipulates that fraud and duress are exceptions to the finality of an adoption decree, and further specifies the parties that may move to have the decree of adoption set aside on these grounds.<sup>160</sup>

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<sup>154</sup> COLO. REV. STAT. § 19-5-214(1) (2024). Stepparents may attack a final adoption decree on the basis of fraud for up to one year while all other attacks have a statute of limitations of ninety-one days. *Id.*

<sup>155</sup> HAW. REV. STAT. § 578-12 (2024).

<sup>156</sup> *Matter of Adoption of Male Minor Child*, 619 P.2d 1092, 1097 (Haw. Ct. App. 1980).

<sup>157</sup> *Id.* (“By its nature, fraud involves deception, which may not come to light during the year following entry of the decree. Duress and undue influence, however, do not depend on deception, but rather on the overcoming of one’s free will. In our view, it is likely that the victims of duress or undue influence will become aware of their victimization within a year, if ever. A victim of fraud, however, might not.”).

<sup>158</sup> LA. CHILD. CODE ANN. art. 1262 (2024). Louisiana specifies two separate circumstances for fraud and duress. The first category, based on fraud or duress perpetrated by anyone other than the adoptive parent, must be brought no later than one year from the final adoption decree. *Id.* art. 1263A. However, when perpetrated by an adoptive parent, the claim must be brought within two years. *Id.* art. 1263B.

<sup>159</sup> ME. REV. STAT. tit. 18-C, § 9-315(1) (2024). After one year, the adoption decree may not be attacked on these grounds. *Id.* tit. 18-C, § 9-315(1)(B).

<sup>160</sup> N.C. GEN. STAT. ANN. § 48-2-607(c) (2024). The parties include “[a] parent or guardian whose consent or relinquishment was obtained by fraud or duress” and “[a] parent or guardian whose consent was necessary under this Chapter but was not obtained.” *Id.* The statute further provides the procedure for any action for damages against the adoptee or the adoptive parents. *Id.*

### 3. Narrow Exceptions and Broader Grounds

Two states establish narrow explicit grounds in addition to fraud.<sup>161</sup> South Dakota provides that a final adoption decree may not be collaterally attacked except in cases of fraud or cases controlled by the Indian Child Welfare Act.<sup>162</sup> And Alabama lists two situations in addition to fraud under which a final judgment of adoption may be collaterally attacked: where an adoptee has been kidnapped and where an adoptive parent subsequent to the final judgment has been convicted of a sexual offense involving the adoptee.<sup>163</sup>

Other states provide for dissolution on broader grounds more encompassing than fraud or other specific reasons.<sup>164</sup> For example, in Hawai'i, the court is permitted to set aside or modify adoption decrees for "good cause."<sup>165</sup> There is no definition of "good cause"<sup>166</sup> found in the legislative history materials nor in any reported cases construing the term under the Hawai'i statute. Similarly, in New York, an adoption order may be set aside under the broad powers of a court of general jurisdiction for fraud, newly discovered evidence, or other sufficient cause.<sup>167</sup> Nonetheless, these broad statutory grounds have not led to liberal use of the statutes. An examination of the case law surrounding these statutes reveals that these states consistently follow the principle that final

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<sup>161</sup> S.D. CODIFIED LAWS § 25-6-21 (2024); ALA. CODE § 26-10E-25(f) (2024).

<sup>162</sup> S.D. CODIFIED LAWS § 25-6-21.

<sup>163</sup> ALA. CODE § 26-10E-25(f).

<sup>164</sup> See *infra* Appendix A.

<sup>165</sup> HAW. REV. STAT. § 578-12 (2024). Such a claim of good cause must be brought within the statute of limitations of one year for a party to attack the final adoption decree. *Id.*

<sup>166</sup> One of the more recent articles on adoption dissolution, by Margaret Mahoney, categorized Hawai'i's "good cause" statute within the substantive strand of statutes. Mahoney, *supra* note 29, at 654–55. However, Mahoney correctly cautioned that a modern court could focus on matters arising from procedural errors when determining "good cause." *Id.* at 658. As seen in the most recent Hawai'i Intermediate Court of Appeals case in 2020, section 578-12 is not a separate ground for dissolution but rather a statute of limitations. See *Interest of KKA*, No. CAAP-19-0000602, 2020 WL 7024365, at \*3 (Haw. Ct. App. Nov. 30, 2020). Therefore, this Note does not label Hawai'i's statute as substantive.

<sup>167</sup> N.Y. DOM. REL. LAW § 114(3) (McKinney 2024). While no statute of limitations is applicable in the New York statute, the New York courts have found that a party seeking to set aside an adoption must seek relief within a reasonable time. See *Matter of Kevin G.*, 622 N.Y.S.2d 420, 421 (Fam. Ct. 1995), *aff'd*, 643 N.Y.S.2d 590 (App. Div. 1996) ("Although [N.Y. Dom. Rel. Law § 114] might permit the vacatur of an adoption on the basis of such misrepresentations, a claim seeking that relief could only be considered if asserted promptly after the adoption was granted and before any significant parent-child relationship had an opportunity to develop.").

adoption decrees should not be set aside lightly as the prime consideration is always the best interests of the child.<sup>168</sup>

Still, some jurisdictions have other general grounds that guide adoption dissolution procedure according to the state's rules of civil procedure.<sup>169</sup> This finding indicates remnants of the judicial-creation ideology of adoption.<sup>170</sup> For example, Iowa, Minnesota, and Montana provide that a final order may be appealed in the same manner as other civil cases.<sup>171</sup> Similarly, listed as another exception to its statutory scheme that otherwise promotes the finality of adoption orders, North Carolina states that only a party to an adoption proceeding may appeal the final decree of adoption under the rules of civil procedure.<sup>172</sup> Alaska and Arkansas likewise refer to the procedure of civil actions,<sup>173</sup> however both provide a specific time limitation separate from what is provided for in other civil proceedings for purposes of dissolution.<sup>174</sup> Such procedures for seeking relief from certain specific types of judgments and orders, such as adoption, preempt the general rules of civil procedure.<sup>175</sup>

#### B. "Group B": Statute of Limitations for General Procedural Irregularities

Approximately three-fifths of the states impose a time limit after which an adoption cannot be challenged based on an alleged defect in the adoption process or decree.<sup>176</sup> The overall implication of such statutes of limitations comes from the widespread recognition of the necessity of

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<sup>168</sup> See, e.g., *Matter of Kevin G.*, 643 N.Y.S.2d at 622–23 (“To foster stability and permanency in the lives of the children affected by adoption, final orders should not be lightly set aside.”); see also *Interest of KKA*, 2020 WL 7024365, at \*3 (“[W]e have held that HRS § 578-12 is a one-year statute of limitations prohibiting a direct attack on an adoption decree except for fraud which renders the decree void ab initio.”).

<sup>169</sup> See *infra* Appendix A (listing the states that include adoption dissolution procedures according to the state's general rules of civil procedure).

<sup>170</sup> See *infra* text accompanying note 51.

<sup>171</sup> IOWA CODE § 600.14 (2024); MINN. STAT. § 259.63 (2024); MONT. CODE ANN. § 42-5-203 (2024).

<sup>172</sup> N.C. GEN. STAT. § 48-2-607 (2024).

<sup>173</sup> ALASKA STAT. § 25.23.140 (2024); ARK. CODE ANN. § 9-9-216 (2024).

<sup>174</sup> See *infra* Section II.B for further discussion on these states' statute of limitations.

<sup>175</sup> See Mahoney, *supra* note 29, at 671 n.193 (“Where enacted, the adoption annulment provisions preempt the general rules of civil procedure.”). See generally Steve R. Johnson, *When General Statutes and Specific Statutes Conflict*, 57 STATE TAX NOTES 113, 113–14 (2010) (explaining that specific statutes covering the given subject matter will prevail over the general language of the same or another statute which might otherwise prove controlling).

<sup>176</sup> See *infra* Appendix B (listing twenty-nine states that provide a statute of limitations within which to bring a claim to set aside a final adoption decree).



finalizing the familial status created by an adoption decree.<sup>177</sup> While these statutes are predominantly utilized by biological parents who were misinformed or did not consent to the adoption process,<sup>178</sup> they are also available to adoptive parents as an avenue to dissolve their adoptions based on procedural irregularities.<sup>179</sup>

Nebraska has codified the longest statute of limitations period, stating that an action attacking an adoption decree must be brought within two years.<sup>180</sup> Most commonly, twelve states provide that an adoption may not be subject to attack after one year from the date the adoption decree is entered and do not provide for any other ground for dissolution.<sup>181</sup> Interestingly, Tennessee recently reduced the statute of limitations in their statutory scheme from one year to nine months.<sup>182</sup> In seven states, a final adoption decree may not be subject to an attack after six months,<sup>183</sup> and three states have a statute of limitations period under six months.<sup>184</sup>

A few states with explicit alternative grounds for dissolution from “Group A” provide that, notwithstanding an application of a statutorily provided for ground, the applicable statute of limitations for dissolution is one year.<sup>185</sup> For example, among these states, South Dakota establishes that an adoption proceeding shall be legalized and valid one year after the finalization of the adoption,<sup>186</sup> notwithstanding the aforementioned

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<sup>177</sup> Howard, *supra* note 62, at 560–61.

<sup>178</sup> See, e.g., *Skipper v. Paul*, 846 S.E.2d 444, 445 (Ga. Ct. App. 2020) (illustrating a case where a biological parent utilized the statute to file a motion to set aside the final adoption decree).

<sup>179</sup> See, e.g., Carroll, *supra* note 20, at 166–68 (discussing state statutes where adoptive parents may seek dissolution pursuant to such statutory provisions).

<sup>180</sup> NEB. REV. STAT. § 43-116 (2024).

<sup>181</sup> ALASKA STAT. § 25.23.140 (2024); ARIZ. REV. STAT. ANN. § 8-123 (2024); ARK. CODE ANN. § 9-9-216 (2024); D.C. CODE § 16-310 (2024); FLA. STAT. § 63.182 (2024); 750 ILL. COMP. STAT. 50/20b (2024); KY. REV. STAT. ANN. § 199.540 (West 2024); MD. LAW CODE ANN., FAM. LAW § 5-3B-26 (West 2024); MO. REV. STAT. § 453.140 (2024); N.H. REV. STAT. ANN. § 170-B:21 (2024); N.M. STAT. ANN. § 32A-5-36 (2024); N.D. CENT. CODE ANN. § 14-15-15 (West 2024).

<sup>182</sup> The nine-month statute of limitations became effective on July 1, 2024. TENN. CODE ANN. § 36-1-122 (2024).

<sup>183</sup> DEL. CODE ANN. tit. 13, § 918 (2024); GA. CODE ANN. § 19-8-18(h) (2024); IDAHO CODE § 16-1512 (2023); MISS. CODE ANN. § 93-17-15 (2024); OHIO REV. CODE ANN. § 3107.16 (West 2024); VA. CODE ANN. § 63.2-1216 (2024); W. VA. CODE § 48-22-704 (2024).

<sup>184</sup> See *infra* Appendix B. Michigan permits the order to be set aside up to twenty-one days after the final order of adoption. MICH. COMP. LAWS § 710.64 (2024). Colorado provides that the court may not be attacked after ninety-one days. COLO. REV. STAT. § 19-5-214(1) (2024). Oklahoma's time limit is three months. OKLA. STAT. tit. 10, § 7505-7.2 (2024).

<sup>185</sup> See *infra* Appendix B (denoting states that provide other explicit grounds for dissolution with an asterisk). *But see* COLO. REV. STAT. § 19-5-214(1) (providing the general statute of limitations is not one year but ninety-one days while the statute of limitations for cases of stepparent adoption is one year).

<sup>186</sup> S.D. CODIFIED LAWS § 25-6-21 (2024).

exceptions.<sup>187</sup> Alabama also imposes a one-year statute of limitations on all claims other than fraud.<sup>188</sup> Other than the bases of developmental disability and fraud contained within the California statute, any other action or proceeding to vacate an adoption order must be brought within a year.<sup>189</sup>

### C. “Group C”: No Explicit Adoption Dissolution Statutes

There are twelve states that do not have specific adoption dissolution statutes.<sup>190</sup> But even without explicit statutory authority, most of these states have not completely abrogated the adoption dissolution doctrine.<sup>191</sup> For instance, absent a statute governing how to set aside an adoption, the Supreme Court of Rhode Island found that the adoption decree amounted to a final decree subject to the state’s civil procedure provisions.<sup>192</sup> Similarly, while Kansas does not have a specific statute addressing the dissolution of an adoption order, Kansas’s general statute governing the setting aside of decrees has been used to challenge adoptions.<sup>193</sup> Even so, some of these states have taken explicit steps in their adoption statutory schemes to make clear that adoptions are final and that dissolution is strongly disfavored.<sup>194</sup>

Interesting outliers are Texas and Indiana, whose statutory schemes eliminated differentiations between adoptive parents and birth parents when severing the parent-child relationship.<sup>195</sup> Both states separate the provisions of their statutory schemes that govern adoption and that provide for the termination of parental rights.<sup>196</sup> Further, the states

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<sup>187</sup> See *supra* text accompanying note 162.

<sup>188</sup> ALA. CODE § 26-10A-25 (2024).

<sup>189</sup> CAL. FAM. CODE § 9102(a) (West 2024).

<sup>190</sup> See *infra* Appendix C.

<sup>191</sup> Courts in these states may rely on their broad equitable powers to vacate any decree on proper grounds even when asserted by an adoptive parent. Carroll, *supra* note 20, at 160.

<sup>192</sup> *In re Lisa Diane G.*, 537 A.2d 131, 133 (R.I. 1988) (finding that the family court had the power to adjudicate adoptive parents’ request to set aside the adoption on grounds that final decree was procured by fraudulent conduct or misrepresentations).

<sup>193</sup> LINDA D. ELROD, KANSAS FAMILY LAW § 6:42, Westlaw (database updated Feb. 2024).

<sup>194</sup> For example, Massachusetts does not have a specific statute addressing the dissolution of an adoption order but rather statutorily requires that each adoption decree notes that the adoption is “final and irrevocable.” MASS. GEN. LAWS ch. 210, § 6 (2024).

<sup>195</sup> IND. CODE §§ 31-35-1-1 to -6-4 (2024); TEX. FAM. CODE ANN. §§ 161.001–.304 (West 2024).

<sup>196</sup> In Texas’s Family Code, title 5 subtitle B regulates suits affecting the parent-child relationship. TEX. FAM. CODE ANN. §§ 151.001–162.702. The termination of the parent-child relationship is governed by chapter 161 while adoption regulations are separated under chapter 162. *Id.* §§ 161.001–.304, 162.001–.702. Similarly, under title 31 of the Indiana Code, the

delineate scenarios of whether the termination is voluntary or involuntary.<sup>197</sup> In Indiana, the subchapters of the statutory scheme also include specific guidance for when the termination concerns the condition of the child, such as involving safe haven infants<sup>198</sup> or regarding a delinquent child or a child in need of welfare services.<sup>199</sup> Instead of limiting the grounds by which an adoptive parent can petition to dissolve the adoption, Texas's and Indiana's statutory schemes provide for voluntary termination to both biological and adoptive parents so long as they can make the requisite best interests showing.<sup>200</sup> However, Texas provides an exception to the best interests of the child standard where genetic testing excludes the petitioner as the child's genetic father.<sup>201</sup>

### III. PROPOSAL

The lack of continuity across states addressing adoption dissolution leaves adoptive families, courts, and the general public unsettled over the availability and permissibility of setting aside final adoption decrees.<sup>202</sup> Although states take various approaches to adoption dissolution, all jurisdictions agree that the best interests of the child standard should govern when dealing with matters such as adoption, child custody, guardianship, and visitation.<sup>203</sup> Grounded in the best interests of the child standard, this Note proposes that states should adopt an overarching "termination of the parent-child relationship" statutory scheme that applies to both biological and adoptive parents. There may be select provisions that exclusively concern adoptive parents, however, this differentiation in treatment should only apply to the adoption proceeding

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termination of the parent-child relationship is found under article 35 while adoption proceedings are found under article 19. IND. CODE §§ 31-35-1-1 to -6-4, 31-19-1-1 to -29-6 (2024).

<sup>197</sup> For example, in Indiana, article 35, chapter 1 governs when the termination of the parent-child relationship by the parents is voluntary. *Id.* §§ 31-35-1-1 to -12. But chapters 3 and 3.5 also outline when the termination involves an individual convicted of a criminal offense or an individual who committed an act of rape. *Id.* §§ 31-35-3-1 to -9, 31-35-3.5-1 to -12.

<sup>198</sup> *Id.* §§ 31-35-1.5-1 to -11.

<sup>199</sup> *Id.* §§ 31-35-2-1 to -8.

<sup>200</sup> See TEX. FAM. CODE ANN. § 161.005; Woo, *supra* note 51, at 581 (highlighting that Texas expands the right of adoptive parents to set aside the adopted order to birth parents "who may also petition the court to allow them to give up a child when the parent can make the requisite best interest showing"); see also IND. CODE § 31-35-1-4(b)(2)(C) (2024) (requiring that a petition for the termination of the parent-child relationship be in the child's best interest).

<sup>201</sup> TEX. FAM. CODE ANN. § 161.005(h) (West 2024).

<sup>202</sup> See Idaho Dep't of Health & Welfare v. Doe I, 408 P.3d 81, 94 (Idaho 2017) ("[R]eliance on [other jurisdictions'] cases is limited due to such decisions being founded on the specific nature of the respective jurisdictions' statutory schemes.").

<sup>203</sup> GOLDSTEIN, SOLNIT, GOLDSTEIN, & FREUD, *supra* note 69, at 5–16.

before the finalization of the adoption decree and under the auspice of the best interests of the child standard. Regardless of how one came to be a parent, parenthood should rest on a uniform foundation of responsibility to the child.<sup>204</sup>

This Note's proposal is similar to the approach Texas and Indiana took in eliminating the distinction between biological and adoptive parent-child relationships,<sup>205</sup> and there are some aspects of the scheme that should be adopted in this proposal. For example, the statutory structure should separate voluntary and involuntary avenues of termination.<sup>206</sup> Moreover, the proposal endorses Indiana's requirement that a voluntary petition for termination be accompanied by a care and treatment plan for the child.<sup>207</sup> However, this Note does not propose that either state's current statutory schemes be adopted in full as there are additional principles that should apply to the provisions.

A statutory scheme delineating the termination of parental rights should be explicitly subject to the best interests of the child standard set forth in each state with no exceptions. Each petition to terminate parental rights and obligations should be evaluated on a case-by-case basis with the child's interests at the forefront of the consideration. As such, grounds for dissolving an adoption without balancing the child's needs would not be permissible. Finally, any procedural grounds provided for adoptive parents should be restricted to a prescribed probationary period between the initial adoption placement and the finalization of the adoption decree.

#### A. *The Best Interests of the Child Standard Explicitly Governs*

The best interests of the child standard is the presiding legal doctrine governing child placement and custody determinations.<sup>208</sup> Adoption law in the United States developed based on a child-centric model to find families for children, rather than children for families.<sup>209</sup> This legal standard aims to serve and safeguard the rights of children who lack the

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<sup>204</sup> See Smith, *supra* note 95, at 122 (finding that the differences of biological production, genetic ties, or minimum requirements in becoming an adoptive parent do not justify a division in the moral foundation of adoptive versus biological parents).

<sup>205</sup> See *supra* notes 195–201 and accompanying text.

<sup>206</sup> See *supra* note 197 and accompanying text.

<sup>207</sup> IND. CODE § 31-35-1-4(b)(2)(D) (2024).

<sup>208</sup> Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 337 (2008); see also CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS, *supra* note 40, at 1.

<sup>209</sup> Kohm, *supra* note 208, at 347–48. Adoption law in the United States, which focuses on children's rights, departed from Roman legal concepts that emphasize adoption as a means of establishing family heirs for purposes of inheritance. *Id.* at 348–52.

autonomy and decision-making capacity to determine their own interests.<sup>210</sup> Adults on the other hand are presumably responsible for themselves and competent to decide their own affairs.<sup>211</sup>

The best interests of the child are the paramount consideration in parental rights proceedings,<sup>212</sup> yet adoption dissolution statutes enable adoptive parents' interests to be put first.<sup>213</sup> According to the 50-State Survey, only five out of thirty-nine states with adoption dissolution statutes reference the best interests of the child.<sup>214</sup> In contrast, the approaches of Texas and Indiana embed the best interests of the child throughout the statutory scheme governing the termination of any parental rights.<sup>215</sup> Therefore, by explicitly following the best interests standard, the foremost concern in adoption dissolution cases becomes the child's safety and stability,<sup>216</sup> not the needs or desires of the relinquishing parents. All states have statutes describing the factors or guidelines for the courts to use in considering the child's best interests when evaluating custody or placement.<sup>217</sup> Thus, this Note suggests that the "termination of the parent-child relationship" statutory scheme should contain a provision explicitly stating that it is governed by the best interests standard in each state.

There are times when adoption dissolution procedures do serve a child's best interests. For example, the parent-child relationship formed may be mutually strained or the adoptive parent may no longer meet the child's basic needs.<sup>218</sup> And, admittedly, these could be situations where an adoptive parent's rights and obligations should be terminated. However,

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<sup>210</sup> GOLDSTEIN, SOLNIT, GOLDSTEIN, & FREUD, *supra* note 69, at 5.

<sup>211</sup> *Id.*

<sup>212</sup> See CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS, *supra* note 40, at 1.

<sup>213</sup> See Mahoney, *supra* note 29, at 665 ("[T]he statutory grounds for adoption annulment, such as fraud or procedural irregularity, do not routinely take into consideration the present and future welfare of the adopted child.").

<sup>214</sup> California, Colorado, Maine, Oklahoma, and West Virginia subject their adoption dissolution statute to the best interests standard. CAL. FAM. CODE § 9102(c) (West 2024); COLO. REV. STAT. § 19-5-214(2) (2024); ME. REV. STAT. tit. 18-C, § 9-315(1)(A) (West 2024); OKLA. STAT. tit. 10, § 7505-7.2 (2024); W. VA. CODE, § 48-22-704(c) (2024).

<sup>215</sup> TEX. FAM. CODE ANN. § 161.005 (West 2024); IND. CODE § 31-35-1-4(b)(2)(C) (2024).

<sup>216</sup> Jon Bergeron Jr. & Robin Pennington, *Supporting Children and Families When Adoption Dissolution Occurs*, NAT'L COUNCIL FOR ADOPTION (Aug. 1, 2013), <https://adoptioncouncil.org/publications/adoption-advocate-no-62> [<https://perma.cc/7Z3L-HSG8>].

<sup>217</sup> CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS, *supra* note 40, at 1–2. Some states provide specific factors for consideration while others provide more general guidance for the discretion of the courts. *Id.* at 3.

<sup>218</sup> See, e.g., *In re Anonymous*, 285 N.Y.S. 827, 829 (Sur. Ct. 1936) ("To continue the relationship would only strain it; affection is already lost; it will not return, but rather in its place will come dislike, repugnance, and ultimate hatred, all of which is against the interests of the child and the foster parents.").

these decisions should be under the auspice of the best interests of the child standard, made on a case-by-case basis, and not through a separate statutorily provided ground available only to adoptive parents. Such a state-sanctioned and state-regulated mechanism would provide control over situations when adoption dissolution is necessary and, in the child's best interests.<sup>219</sup>

There is robust commentary that the best interests standard should be discarded because each state relies upon its own judicial interpretation of the guideline, which is already exceedingly vague in nature.<sup>220</sup> Opponents of the standard argue that the unpredictability stemming from such a subjective approach increases family law litigation thereby imposing substantial burdens and costs on courts and parties themselves.<sup>221</sup> There is also skepticism as to whether judges have the proper tools and training as decision-makers to weigh the factors in each case.<sup>222</sup> Conversely, supporters contend that the complexity of each family's unique circumstances requires a malleable standard that enables the judiciary to take a wide range of evidence and expert testimony into account.<sup>223</sup> However, this Note does not seek to resolve the intricacies surrounding best interests jurisprudence. There are flaws in the present overarching system, but any potential solution to the inequities of the adoption dissolution doctrine must be resolved based on the legal standard as it stands today. Relinquishment of parental rights should never be granted lightly,<sup>224</sup> and such proceedings involving a child must be subject to a legal standard placing the child's needs first.

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<sup>219</sup> See Andrea B. Carroll, *Breaking Forever Families*, 76 OHIO ST. L.J. 259, 261 (2015) ("Scholars and child welfare authorities alike must begin to set aside their utter disdain for disruption and recognize that, sometimes, disruption is necessary and in the child's best interests. Embracing, and controlling, disruption is the direction in which adoption advocates must now move.").

<sup>220</sup> See Kohm, *supra* note 208 at 372–74 (elaborating on the debates surrounding the best interests of the child doctrine). See generally Kathryn L. Mercer, *The Ethics of Judicial Decision-Making Regarding Custody of Minor Children: Looking at the "Best Interests of the Child" and the "Primary Caretaker" Standards as Utility Rules*, 33 IDAHO L. REV. 389, 391–92 (1997) (finding in the late twentieth century that "the predominant best interests standard has come under increasing attack by legal commentators as being indeterminate and unduly influenced by the courts' unbridled discretion and bias").

<sup>221</sup> Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 LAW & CONTEMP. PROBS. 69, 72–73 (2014).

<sup>222</sup> *Id.* at 73–74.

<sup>223</sup> *Id.* at 73.

<sup>224</sup> *Coonrad v. Sailors*, 209 S.W.2d 859, 861 (Tenn. 1948) ("Where one voluntarily assumes the relationship of parent to a child by formal adoption, it cannot be lightly cast aside.").

B. *Elimination of Grounds for Dissolution Unique to Adoptive Relationships*

Severing legal adoptive parental obligations based on statutorily provided grounds in favor of the parents should not be permitted absent a strong showing that dissolution is in the best interests of the child.<sup>225</sup> These explicit grounds for dissolution do not focus on the child's health or well-being, but rather "highlight the interests of adult parties and the integrity of the judicial system."<sup>226</sup> Further, civil procedure workarounds treating the parent-child relationship as a mere judicial decree denigrates the value of the familial tie to purely a legal relationship. Eliminating the availability of general substantive grounds, contractual defenses, or other judicially created appeals and procedures would serve the policy goals of promoting adoption permanency and balancing the conflict of rights between parents and children.

Scholars have analogized that the termination of familial ties based on fraud is readily available in another legal context, such as state marriage annulment laws.<sup>227</sup> Marriage annulment laws provide that grounds for annulment include the establishment of fraud by one spouse.<sup>228</sup> However, for a marriage to be annulled pursuant to this statutorily provided ground, the fraudulent actor must be one of the parties to the legal relationship being terminated.<sup>229</sup> In contrast, the fraudulent conduct stems from a third party outside of the parent-child relationship, and the child is typically blameless in the context of adoption proceedings.<sup>230</sup> While marriage and adoption are both statutorily created familial relationships, the general legal procedures available do not have to be, and should not be, the same. Acquiring legal

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<sup>225</sup> There are some grounds present in adoption dissolution statutes that do serve important public policy goals. For example, Alabama's current statute requires that a final judgment may be collaterally attacked in situations where the adoptee has been kidnapped or the adoptive parent has been convicted of a sexual offense involving the adoptee. ALA. CODE § 26-10E-25 (West 2024). However, these provisions may be provided for in another section of the statutory scheme, separate from the termination of parental rights.

<sup>226</sup> Mahoney, *supra* note 20, at 660.

<sup>227</sup> *Id.* at 672 n.201 (addressing that while the "termination-of-family-relationship remedy based on fraud is readily available in [the legal context of marriage]," the adoption annulment setting is easily distinguishable due to the impact of such termination upon the child (emphasis added)).

<sup>228</sup> See, e.g., N.Y. DOM. REL. LAW § 140(e) (McKinney 2024) ("An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by force or duress may be maintained at any time by the party whose consent was so obtained. An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by fraud may be maintained by the party whose consent was so obtained within the limitations of time for enforcing a civil remedy of the civil practice law and rules.").

<sup>229</sup> *Id.*

<sup>230</sup> Mahoney, *supra* note 20, at 672 n.201.

rights in parenthood must come with an additional level of responsibility. The best interests standard must supersede any equitable contract analysis.

With regard to other explicit provisions, allowing states to have grounds for adoption dissolution based on unknown factors prior to the adoption proceeding does not overarchingly serve a child's best interests,<sup>231</sup> nor does it likely serve any legitimate state purpose.<sup>232</sup> This is true especially with respect to California's statute explicitly providing for dissolution based on a previously unknown developmental disability,<sup>233</sup> which is essentially a more specific ground for fraud. Other states found the possibility of dissolving an adoption solely on the ground that a child's mental or developmental condition was untenable.<sup>234</sup> In the case of *In re McDuffee*, the Supreme Court of Missouri highlighted that while other parents find themselves in similar situations, to the extent of their means, in most cases such parents are able to get the treatment and help to support their children with additional needs.<sup>235</sup> Statutes that prescribe specific grounds regarding the condition of the child or the judicial proceeding itself exacerbate the discrepancy of treatment between biological and adoptive children.<sup>236</sup>

Other means exist to prevent agencies or other parties from withholding relevant information about a child. Abrogating the right of a parent to dissolve the adoption on the ground of fraud would not preclude an action for the tort known as "wrongful adoption."<sup>237</sup> Such a remedy is preferable because it does not displace the child. This is an alternative to dissolution enabling adoptive parents to potentially recover damages for the emotional distress suffered by the parents as a result of the fraudulent withholding of information.<sup>238</sup> Moreover, it may also provide a remedy for expenses involved in caring for a child's previously unknown condition.<sup>239</sup>

It may be surmised that more children will be adopted if prospective adoptive parents know that they can discontinue the relationship under

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<sup>231</sup> *Id.* at 669.

<sup>232</sup> Woo, *supra* note 51, at 588–90.

<sup>233</sup> CAL. FAM. CODE § 9100 (West 2024).

<sup>234</sup> See, e.g., *In re McDuffee*, 352 S.W.2d 23, 25–28 (Mo. 1961) (holding that adoptive parents were not entitled to have the adoption decree annulled merely because the child needed institutional care).

<sup>235</sup> *Id.* at 28.

<sup>236</sup> Woo, *supra* note 51, at 590–91.

<sup>237</sup> APPLETON & WEISBERG *supra* note 1, at 202.

<sup>238</sup> Mary E. Schwartz, *Fraud in the Nursery: Is the Wrongful Adoption Remedy Enough?*, 26 VAL. U. L. REV. 807, 808 (1992).

<sup>239</sup> *Id.*



certain statutory circumstances, particularly fraud.<sup>240</sup> Proponents of adoption dissolution may argue that without a safety net, prospective adoptive parents would be hesitant to enter into a binding legal relationship with so many unknowns.<sup>241</sup> However, a “general warranty” attitude should not apply to children.<sup>242</sup>

By seeking to adopt in the first place, a parent is making a commitment to create family ties and to raise and support a child, come what may.<sup>243</sup> Providing for exceptions to finality based on undetermined conditions contradicts the value family adoption law seeks to promote.<sup>244</sup> In comparison, when a biological child is diagnosed later in life, the idea that they would then be abandoned is scoffed at.<sup>245</sup> It is unlikely that jurisdictions would statutorily endorse a biological parent terminating their parental rights on the statutorily-provided ground of a developmental or mental condition previously unknown prior to birth.

One may argue that such differences based on natural instincts and biological connection justify how the law deals with parenting obligations of children who develop unexpected conditions.<sup>246</sup> Nonetheless, this differential legal treatment only furthers the contrariety between biological and adoptive families. Relying on biological instinct to ground a parent-child relationship belies the notion that all parents should love

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<sup>240</sup> See *Number of U.S. Adoptions Drop as Hopeful Families Face ‘Slow, Painful Process’*, CBS NEWS (May 1, 2017, 8:11 AM), <https://www.cbsnews.com/boston/news/adoption-process-numbers-foreign-families> [<https://perma.cc/FF98-F5AR>] (“Inevitably, some of the people desperate to adopt fall victim to scams.”).

<sup>241</sup> See Leslie Reed, *Study Finds Couples Who Want Children View Adoption as a Last Resort*, NEBRASKA TODAY (Oct. 22, 2013), <https://news.unl.edu/newsrooms/today/article/study-finds-couples-who-want-children-view-adoption-as-a-last-resort> [<https://perma.cc/EHN9-6NYQ>] (“Some parents are hesitant to adopt children from the foster care system because they fear they will have more behavioral, emotional or academic problems.”).

<sup>242</sup> Tina Traster, *Adopted Kids Do Not Come with a Warranty*, PSYCH. TODAY (May 4, 2015), <https://www.psychologytoday.com/us/blog/against-all-odds/201505/adopted-kids-do-not-come-warranty> [<https://perma.cc/R7EP-J3AF>]; see also Johnson et al., *supra* note 44 (quoting the president of the National Committee for Adoption stating that “we cannot warranty children like automobiles”).

<sup>243</sup> *But see* Helling, *supra* note 29, at 79 (contrasting “what *should* be the attitude of an adoptive parent” with the reality that an adoptive parent may not end up bonding with the child and consider the child truly their own).

<sup>244</sup> *Adoption*, *supra* note 3.

<sup>245</sup> For example, in response to the Stauffer adoption dissolution story, a Twitter user wrote: “So disgusting. If her biological kid gets diagnosed with autism will she abandon that kid too?” Boucher, *supra* note 17.

<sup>246</sup> There are “prominent ideologies about heredity” that “genetic parents have instinctual desires to do well by their children” because they are the ones who created the parent-child relationship. Stevens, *supra* note 92, at 75. On the other hand, the adoptive parent-child relationship is legally created through the judicial process and thus has been thought of as a voluntary contractual arrangement. See *supra* text accompanying note 62.

their children unconditionally.<sup>247</sup> The ability to parent is not a uniquely intrinsic value tied to genetics.<sup>248</sup> Parenthood, and the duties that come along with it, is based on one's capacity to love and care for a child, to make sacrifices for a child, and to be prepared for the unknown. Just like adoptive parents, biological parents can never be fully prepared for how their child may develop or what their child may exhibit. There may be many factors outside a parent's control, but the final responsibility in supporting a child's behavior and conditions should ultimately lie with those who assume parental responsibilities.<sup>249</sup>

### C. Probationary Period Before Adoption Finalization

Many state statutes enable courts to order a probationary period before a final decree of adoption is issued.<sup>250</sup> Under probationary periods, a prospective adoptive parent must have had lawful and actual custody of the child for a prescribed period of time prior to procurement of the adoption decree.<sup>251</sup> This Note proposes that the "termination of the parent-child relationship" statutory scheme enlists a provision unique to adoption proceedings for a probationary period prior to the finalization of the adoption decree. Additionally, this provision should grant a waiver of the probationary period to enter a final order of adoption without delay in limited circumstances where the court finds it is in the child's best interests.<sup>252</sup> This eliminates a statute of limitations period for an adoptive parent to petition for dissolution based on a procedural irregularity, thus establishing the same termination of parental rights for adoptive parents and biological parents after a finalized adoption decree.

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<sup>247</sup> Leo Kim, *Preferring Biological Children Is Immoral*, WIRED (Aug. 31, 2023, 6:00 AM), <https://www.wired.com/story/ethics-children-parenting-family-biology> [<https://perma.cc/SX6W-FK3G>].

<sup>248</sup> *Id.*

<sup>249</sup> Johnson et al., *supra* note 44.

<sup>250</sup> See, e.g., N.Y. DOM. REL. LAW § 112 (McKinney 2024) ("Where the adoptive child is less than eighteen years of age, no order of adoption shall be made until such child has resided with the adoptive parents for at least three months unless the judge or surrogate in his discretion shall dispense with such period of residence and shall recite in the order the reason for such action."); see also ME. REV. STAT. ANN. tit. 18-C, § 9-304 (2024) ("The court may require that a minor child subject to a petition for adoption under this section live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.").

<sup>251</sup> JOHN KIMPFLEN, CORPUS JURIS SECUNDUM § 46, Westlaw (database updated May 2024).

<sup>252</sup> See, e.g., VA. CODE ANN. § 63.2-1210 (2024) (providing that the court may omit the probationary period and enter a final order of adoption under specific circumstances such as when the child has already been in physical custody of the petitioner continuously for at least three years).

A probationary period allows for an initial determination of whether the child's needs will be promoted by the adoption.<sup>253</sup> In most adoption proceedings, the final hearing occurs around six months after placement, although some hearings can happen as little as three months or up to a year after placement.<sup>254</sup> This period between placement and adoption finalization provides for an adjustment period to determine whether the adoption placement is in the child's best interests.<sup>255</sup>

There is no precise time formula for how long it may take a child to acclimate to a new familial environment.<sup>256</sup> Children of different ages have different understandings of continuity and different responses to a waiting period.<sup>257</sup> While this Note does not recommend an ideal or precise period of time to prescribe, guiding principles within the best interests standard illustrate that it should be sooner rather than later in order to provide certainty for both children and adoptive parents.<sup>258</sup>

Proponents of eliminating the probationary period advocate for the adoption decree to be finalized upon placement.<sup>259</sup> Scholars argue that the time of probation subjects the prospective adoptive family to special supervision and intrusion by the state or agency.<sup>260</sup> Moreover, advocates assert that the waiting period exasperates uncertainty for both the child and the prospective adoptive parents.<sup>261</sup> Specifically for the prospective adoptive parents, the willingness and openness to bond with the child may be limited during a precarious trial period.<sup>262</sup>

Allowing the state or an agency to investigate child placements undoubtedly has negative implications.<sup>263</sup> But the state has a duty to intervene and safeguard children in need of protection under its role as

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<sup>253</sup> See KIMPFLER, *supra* note 251.

<sup>254</sup> *What to Expect During Your Adoption Finalization Day*, AM. ADOPTIONS, <https://www.americanadoptions.com/adoption/adoption-finalization> [<https://perma.cc/6ZVL-7TMN>].

<sup>255</sup> See *generally Home Study Requirements for Prospective Parents in Domestic Adoption—Maine*, CHILD WELFARE INFO. GATEWAY (Aug. 2020), <https://www.childwelfare.gov/resources/home-study-requirements-prospective-parents-domestic-adoption-maine> [<https://perma.cc/X649-XVX5>] (explaining that the probationary period allows for an agency to assess “[t]he physical and emotional adjustment and development of the child” in the placement and “[t]he capacity of the adoptive parents to assume the role of parent with respect to the needs of the child”).

<sup>256</sup> GOLDSTEIN ET AL., *supra* note 69, at 41–45.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.* at 42.

<sup>259</sup> *Id.* at 22–23.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 22.

<sup>262</sup> *Id.* at 13–14.

<sup>263</sup> *Id.* at 22 (“[T]he waiting period provides an opportunity to interrupt developing relationships for reasons that would not justify intrusion into any permanent parent-child relationship.”).

*parens patriae*.<sup>264</sup> Under this common law doctrine, the state may interfere in family matters to protect a child's health and well-being.<sup>265</sup> Until an adoption is finalized, the local child welfare services, foster care agency, or adoption agency remains the child's legal guardian with responsibility for the child.<sup>266</sup> Consequently, it is the state or agency's duty, vested with the authority and liability, to conduct due diligence prior to finalization to ensure the child is safe, the placement is secure, and the prospective adoptive parents are the right fit. The probationary period enables the state to be involved, but in a constrained and slightly less intrusive manner than if the state had to intervene after the finalization of an adoption placement because the prospective parents were not assessed properly.

Regardless of whether a waiting period occurs before or after the adoption is finalized, mental uncertainty remains for the adopted child. There are detrimental psychological effects on children stemming from the instability of both adoption disruption and adoption dissolution.<sup>267</sup> While there is no doubt that a probationary period comes with incertitude, having the period before legal rights are finalized is ultimately preferable. The value of finality from the point of view of the child is strengthened. When an adoptee has been told that they are with their "forever family," they should not have a potential dissolution looming and reinforcing the stereotype that they are returnable.

By eliminating the additional avenue to terminate parental rights, adoptive parents may enter the adoption process more aware of the responsibilities of the undertaking.<sup>268</sup> The threat of such finality may encourage prospective adoptive parents to be less naïve and more educated about the possibilities and uncertainties that come along with adoption.<sup>269</sup> The permanency mindset may be reinforced in adoptive

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<sup>264</sup> Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 526 (1996) (explaining that, in essence, *parens patriae* "gives the state authority to serve as a substitute parent and ultimate protector of children's interests").

<sup>265</sup> *Id.* at 521.

<sup>266</sup> *Understanding the Adoption Process*, ADOPTIVE & FOSTER FAM. COALITION, <https://affcn.org/adoption-in-new-york/how-to-become-an-adoptive-parent/understanding-the-adoption-process> [<https://perma.cc/AU39-Z8KA>].

<sup>267</sup> See CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION *supra* note 21, at 2 ("[C]hildren with multiple placements experience more delinquency, aggression, depression, and trauma symptoms during adolescence compared with those with more stable placements." (citation omitted)).

<sup>268</sup> See Stevens, *supra* note 92, at 94 (advocating that it is important to "develop realistic goals that give parents an incentive to stick it out rather than leave in despair").

<sup>269</sup> See *generally* CHILD WELFARE INFO. GATEWAY, DISCONTINUITY AND DISRUPTION, *supra* note 21, at 5 (finding that one factor leading to discontinuity in adoptions is idealized parental expectations).

parents' minds knowing that upon the conclusion of official legal proceedings, they may not change their minds, even if for a limited time.

Removal of the statute of limitations for dissolution merely places the termination of parental rights on par with the same avenues available to biological parents.<sup>270</sup> The probationary period does not prevent an adoptive parent from seeking other legal processes designed to sever legal ties to a child, just as biological parents can under the "termination of the parent-child relationship" statutory scheme.

## CONCLUSION

Our country has long recognized that adoption and its proceedings require critical and consequential considerations.<sup>271</sup> Yet even today, the lack of coherence and uniformity in adoption laws and practices across jurisdictions exposes adoptees to risk and uncertainty due to their legal status. Although the differential legal treatment between adoptive and biological families may never change, state statutes may provide stricter barriers of protection to promote the permanency of adoption and to put the adoptee's interests first.<sup>272</sup>

Without adoption policy reform and a changed narrative on adoption, the normalized attitude toward adoption dissolution and the mindset that a child is "returnable" even after finalization may persist.<sup>273</sup> Eliminating the distinctive avenue adoptive parents may utilize to terminate their parent-child relationship enforces the principles of parental commitment and responsibility.<sup>274</sup> And it is a step toward combatting the societal perception that adoptive relationships are simply secondary substitutes for the biological norm.<sup>275</sup> Grounds for the relinquishment of parental rights should be standard regardless of how the parent-child relationship was formed. And any dissolution procedures must be restricted by the states to promote the true best interests of children. The journey of adoption presents the opportunity of forever—an adjective that represents stability, security, and belonging. And while our system cannot really promise "forever," the proper laws

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<sup>270</sup> See *supra* note 106 and accompanying text.

<sup>271</sup> See, e.g., *Lane v. Pippin*, 158 S.E. 673, 675 (W. Va. 1931) ("Adoption proceedings are serious matters and must not be dealt with lightly.").

<sup>272</sup> Carroll, *supra* note 20, at 174 ("[A]doption is a process of finding suitable homes for children, not finding suitable children for prospective parents.").

<sup>273</sup> Lynch, *supra* note 22, at 265 (describing *In re Anonymous*, 352 N.Y.S.2d 743 (N.Y. 1968), a case in which "[t]he court gave the adoptive parents the ability to return a 'defective product'").

<sup>274</sup> Smith, *supra* note 95, at 130.

<sup>275</sup> *Id.*

can be the foundation and the first step to strengthening and preserving adoptive families across the country.

## APPENDIX A: GROUND FOR DISSOLUTION

<b>State</b>	<b>Relevant Statute</b>	<b>Ground for Dissolution</b>	<b>Statute of Limitations for the Ground?</b>
Alabama	ALA. CODE § 26-10E-25	Fraud Adoptee kidnapping Adoptive parent's sexual offense conviction	None
California	CAL. FAM. CODE § 9100	Developmental disability or mental illness prior to adoption	Five years
	CAL. FAM. CODE § 9102(b)	Fraud	Three years or within ninety days of discovery of fraud
Colorado	COLO. REV. STAT. § 19-5-214	Fraud in cases of stepparent adoption	One year
Connecticut	CONN. GEN. STAT. § 45a-24	Fraud	None
Hawai'i	HAW. REV. STAT. § 578-12	Good cause	One year
		Fraud	None
Iowa	IOWA CODE § 600.14	Appeal through civil procedure	None
Louisiana	LA. CHILD. CODE ANN. art. 1263	Fraud or duress	One year or within six months from discovery of fraud
Maine	ME. REV. STAT. tit. 18-C, § 9-315	Fraud, duress, or illegal procedures	One year

Minnesota	MINN. STAT. § 259.63	Appeal through civil procedure	None
Montana	MONT. CODE ANN. § 42-5-203	Appeal through civil procedure	None
New York	N.Y. DOM. REL. LAW § 114	Fraud, newly discovered evidence or other sufficient cause	None
North Carolina	N.C. GEN. STAT. § 48-2-607	Appeal through civil procedure	None
		Fraud or duress	Six months
Puerto Rico	P.R. LAWS ANN. tit. 8, § 1086p	Fraud on the court	None
South Carolina	S.C. CODE. ANN. § 63-9-770	Extrinsic fraud	None
South Dakota	S.D. CODIFIED LAWS § 25-6-21	Fraud	One year
		Case controlled by the Indian Child Welfare Act	Two years



## APPENDIX B: GENERAL STATUTE OF LIMITATIONS

<b>State</b>	<b>Relevant Statute</b>	<b>Applicable Statute of Limitations for General Procedural Irregularities</b>
Alabama*	ALA. CODE § 26-10E-25	One year
Alaska	ALASKA STAT. § 25.23.140	One year
Arizona	ARIZ. REV. STAT. ANN. § 8-123	One year
Arkansas	ARK. CODE ANN. § 9-9-216	One year
California*	CAL. FAM. CODE § 9102	One year
Colorado*	COLO. REV. STAT. § 19-5-214	Ninety-one days
Delaware	DEL. CODE ANN. tit. 13, § 918	Six months
District of Columbia	D.C. CODE § 16-310	One year
Florida	FLA. STAT. § 63.182	One year
Georgia	GA. CODE ANN. § 19-8-18	Six months
Hawai'i*	HAW. REV. STAT. § 578-12	One year
Idaho	IDAHO CODE § 16-1512	Six months
Illinois	750 ILL. COMP. STAT. 50/20b	One year
Kentucky	KY. REV. STAT. ANN. § 199.540	One year
Maryland	MD. CODE ANN., FAM. LAW § 5-3B-26	One year
Michigan	MICH. COMP. LAWS § 710.64	Twenty-one days
Mississippi	MISS. CODE ANN. § 93-17-15	Six months
Missouri	MO. REV. STAT. § 453.140	One year
Nebraska	NEB. REV. STAT. § 43-116	Two years
New Hampshire	N.H. REV. STAT. ANN. § 170-B:21	One year

New Mexico	N.M. STAT. ANN. § 32A-5-36	One year
North Dakota	N.D. CENT. CODE § 14-15-15	One year
Ohio	OHIO REV. CODE ANN. § 3107.16	Six months
Oklahoma	OKLA. STAT. tit. 10, § 7505-7.2	Three months
Oregon	OR. REV. STAT. § 109.381	One year
South Dakota*	S.D. CODIFIED LAWS § 25-6-21	One year
Tennessee	TENN. CODE ANN. § 36-1-122	Nine months
Virginia	VA. CODE ANN. § 63.2-1216	Six months
West Virginia	W. VA. CODE § 48-22-704	Six months

\*An asterisk indicates that, in addition to the general statute of limitations for procedural irregularities, the state specifically segregates fraud as a separate explicit ground, as seen in Appendix A.

\*\*For purposes of this table, “general statute of limitations” refers to overall procedural irregularities such as fraud, duress, misrepresentation, failure to give notice, lack of jurisdiction, or a combination thereof.

APPENDIX C: NO ADOPTION DISSOLUTION STATUTE FOR ADOPTIVE  
PARENTS

<b>State</b>	<b>Relevant Statutory Scheme</b>
Indiana	Tit. 31, art. 19: Family Law: Adoption
Kansas	Ch. 59, art. 21: Kansas Adoption and Relinquishment Act
Massachusetts	Ch. 210: Adoption of Children and Change of Names
Nevada	Tit. 11, Ch. 127: Adoption of Children and Adults
New Jersey	Tit. 9, Ch. 3: Adoption
Pennsylvania	Tit. 23, Part 3: Adoption
Rhode Island	Tit. 15, Ch. 7: Adoption of Children
Texas	Tit. 5, Ch. 161: Termination of the Parent-Child Relationship
Utah	Tit. 78b, Ch. 6, Part 1: Utah Adoption Act
Vermont	Tit. 15: Adoption Act
Washington	Tit. 26, Ch. 26.33: Adoption
Wisconsin	Ch. 48, subch. XIX: Adoption of Minors; Guardianship
Wyoming	Tit. 1, Ch. 22: Adoption