

PERMANENCE AND PARENTHOOD: THE CASE FOR ABOLISHING THE ADOPTION ANNULMENT DOCTRINE

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INTRODUCTION

Most parent-child relationships are biological relationships, established by procreation. Although the state is not involved in the formation of such family relationships, the legal system immediately recognizes and assigns great significance to them. In the eyes of the law, the parent-child status is laden with rights and obligations during the child's minority and even after the child reaches adulthood.¹

Under the family laws of every state, the parent-child relationship may also be created by adoption.² Such a relationship comes into existence by an order of a family court, exercising clearly articulated statutory powers.³ Thereafter, the adoptive parent-child status involves the same legal rights and duties as the parent-child status established by procreation. For example, the Connecticut adoption statute summarizes the legal effect of adoption as follows:

All rights, duties and other legal consequences of the biological relation of child and parent shall thereafter exist between the adopted person and the adopting parent and the relatives of such adopting parent. Such adopted person shall be treated as if such adopted person were the biological child of the adopting parent, for all purposes.⁴

As a general rule, the legal system intends the parent-child status to be permanent. Whatever the realities of the relationship between a biological or

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1. See generally SCOTT E. FRIEDMAN, *THE LAW OF PARENT-CHILD RELATIONSHIPS* (1992) (describing regulation of parent-child relationships in various legal fields); MARGARET M. MAHONEY, *STEPFAMILIES AND THE LAW* (1994) (same).

2. Additional methods exist for establishing parent-child relationships in the law. See Paula Roberts, *Truth and Consequences: Part I. Disestablishing the Paternity of Non-Marital Children*, 37 FAM. L.Q. 35, 35-36 (2003) [hereinafter Roberts, *Disestablishing Paternity*] (describing methods for establishing the paternity of children born outside of marriage); Paula Roberts, *Truth and Consequences: Part II. Questioning the Paternity of Marital Children*, 37 FAM. L.Q. 55, 55-56 (2003) [hereinafter Roberts, *Questioning Paternity*] (describing the presumption of paternity in marriage, which creates the legal status of fatherhood for the husband of a child's biological mother).

3. See 2 JOAN HEIFITZ HOLLINGER, *ADOPTION LAW AND PRACTICE* § 1.01[1], at 1-3 (2007).

4. CONN. GEN. STAT. ANN. § 45a-731(1) (West 2004); see also Mark F. Testa, *The Quality of Permanence—Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption*, 12 VA. J. SOC. POL'Y & L. 499, 532 (2005) (“Equating the duties of adoption with the legally binding obligations of natural parenthood is sound policy.”).

adoptive parent and his or her child as it unfolds over the years, in the eyes of the law, the connection is important and lasts until the death of either party. This Article focuses on the phenomenon of parents seeking to terminate the relationship status earlier, most often before their children reach adulthood. As described at length herein, two legal doctrines govern in this area: the termination of parental rights statutes enacted in every jurisdiction and the abrogation of adoption doctrine.

The primary legal vehicle for terminating the parent-child status is the termination of parental rights statute, enacted in each state, which authorizes judicial orders terminating all of the rights and responsibilities of parenthood. These laws are designed primarily for the benefit and protection of minor children. For example, child welfare officials may seek a termination order based on a judicial determination that the parent is unfit to rear the child and that severance of the legal status would serve the child's interests.⁵

Regarding the *voluntary* termination of parental rights, these state statutes anticipate two primary circumstances in which the court may accept a parent's voluntary surrender of his or her role. First, the parent may agree to terminate his or her status in order to free a child for adoption by another adult.⁶ Second, the parent may consent to end his or her legal relationship as to a child who has been adjudicated dependent or neglected within the child welfare system, whether or not adoption by another adult is planned.⁷

The termination of parental rights statutes may also be applied in other, less common situations, which are the focus of this Article. The reported cases involving parents who seek to end their legal status outside the contexts of a pending adoption or child welfare proceeding fall into a few discrete categories.

As to both biological and adoptive noncustodial parents, a common theme is the desire to be released from child support obligations.⁸ In addition, the noncustodial parent may be motivated by a desire to completely sever ties with the child's custodial parent. This motivation surfaces, for example, in termination cases involving an adoptive stepparent who is subsequently divorced from the child's custodial parent.⁹ Finally, noncustodial parents who have not maintained contact with their children may believe that a termination order

5. See HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 9.4, at 357 (2d ed. 1988).

6. See 2 HOLLINGER, *supra* note 3, § 2.01[1], at 2-5 to -7.

7. See DOUGLAS E. ABRAMS & SARAH H. RAMSEY, *CHILDREN AND THE LAW* 506-09 (2000) (discussing permanent, non-adoptive placements that may be preceded by termination of parental rights).

8. See *Cottrell v. Cottrell*, 522 S.W.2d 433, 434 (Ark. 1975) (stating that a stepfather seeking to terminate his status four years following a final adoption decree "admitted that he was trying to set aside the adoption of the child because he didn't think he should pay child support" following divorce from child's mother); see also *infra* text accompanying notes 60-66 (discussing additional cases).

9. See 2 HOLLINGER, *supra* note 3, § 8.02[3][b], at 8-47 to -48 (collecting cases).

would align their legal status with the parties' real relationships.¹⁰

Financial considerations play a less significant role in most cases where *custodial* parents seek to terminate the parent-child relationship. Exceptional cases arise, however, when parents who are overwhelmed by the expense of caring for a child with special needs seek to terminate their status.¹¹ Another category of cases involves custodial parents who believe that their children, for whatever reasons, have not bonded with other family members, have behaved in ways that disrupt the family, or present a danger to themselves or others.¹² Often, the custodial parents in these circumstances assert that removal of the child from the family would be the best result for all family members.¹³ Recent media coverage of international adoptions involving troubled children has raised public awareness of this final category of cases.¹⁴

Whatever the motivations of parents who seek to terminate their status under state termination of parental rights statutes, the best interest of the child standard will govern the judicial analysis of their claims. As to adopted children, however, a second doctrinal avenue exists in many jurisdictions for the parent-initiated termination of parental rights. The doctrine of adoption abrogation or annulment empowers the courts in certain circumstances, generally unrelated to the protection and welfare of children, to enter orders setting aside earlier adoption decrees. The basic rationale for this additional termination doctrine appears in an early law review article about the abrogation doctrine: "Under the principle that what the court has created through its order, it can also put asunder, there would seem to be legal basis for setting aside adoption orders."¹⁵

The law of adoption annulment has two intertwined strands. The first strand, which dominates modern abrogation legislation and many judicial opinions in this field, is procedural. Namely, state rules of civil procedure generally allow for the subsequent vacation of final court orders in limited circumstances, such as where fraud or procedural irregularity tainted the initial judicial proceeding.¹⁶ The authority of courts to set aside final orders in this manner creates an exception to the general principle of finality in civil litigation. The exception is designed to achieve the ultimate goals of fairness and justice in cases where

10. See, e.g., *In re Jessica M.*, 802 A.2d 197, 199 (Conn. App. Ct. 2002) (involving petition of mother who had not seen her children for more than six years).

11. See, e.g., *In re Jurga*, 472 S.E.2d 223 (N.C. Ct. App. 1996); see also *infra* notes 29-32, 52-57, and accompanying text.

12. See 2 HOLLINGER, *supra* note 3, § 8.02[3][a], at 8-44 to -46 (discussing adoption annulment cases involving children with behavioral issues).

13. *Id.* § 8.02[3][a], at 8-44.

14. See, e.g., Cindi Lash, *More American Parents Find They Can't Cope with Troubled Russian Children*, PITTSBURGH POST-GAZETTE, Aug. 14, 2000, at A1; Pat Wingert, *When Adoption Goes Wrong*, NEWSWEEK, Dec. 17, 2007, at 58.

15. Joseph T. Helling, Note, *Adoption: Annulment of Status*, 29 NOTRE DAME LAW. 68, 69 (1953-54) (footnotes omitted).

16. See *infra* notes 189-93 and accompanying text (discussing the doctrines that authorize courts to set aside final decrees in limited circumstances).

errors affected the litigation outcome. Adoption annulment involves the application of judicial power to set aside final orders in this manner to final adoption decrees.

The second strand of the abrogation doctrine is substantive. The state statutes establish specific grounds for judicially setting aside an adoption decree, thereby terminating the legal parent-child relationship.¹⁷ The grounds set out in the state adoption codes for this purpose have shifted significantly over the decades. Early abrogation statutes established grounds relating to the condition of the adopted child, such as the child's race, mental or physical health, or behavior.¹⁸ With a few notable exceptions, the state legislatures have repealed these bases for adoption annulment.¹⁹ At the same time, many state legislatures and courts have established grounds relating to problems surrounding entry of the initial adoption order, such as fraud or procedural irregularity. These grounds for annulment of the adoption order re-focus the analysis on the first strand of abrogation law, the procedural strand, which embodies the power of courts to set aside final orders in the interests of justice.²⁰

This Article evaluates both strands of the doctrine of adoption annulment and concludes that neither procedural nor substantive considerations justify its continued existence. As discussed in Part V, adoption decrees differ in significant ways from the typical court order in the system of civil litigation for which judicial power to set aside the decree in appropriate cases is deemed necessary. The ultimate goal of justice in civil litigation is not furthered by allowing the adoptive parent, whose own successful petition to the court gave rise to the adoptive parent-child relationship, to subsequently challenge the propriety of that process. Additionally, as discussed in Part IV, abrogation rules establishing substantive grounds for the voluntary termination of the adoptive parental status, unrelated to the welfare of children, are inconsistent with basic family law principles. These principles include the evenhanded treatment of parent-child relationships in the law, and public policies favoring permanency in parent-child relationships except in the circumstances carefully defined in parental termination statutes. Thus, the abrogation of adoption doctrine should itself be abrogated.

Part I of this Article describes the general principle of permanence of parent-child relationships in the law and briefly focuses on formal family law programs designed to support the goal of stability. Part II focuses on the termination of parental rights statutes enacted in every state as an avenue for parents who seek to terminate their status and the operation of the best interest of the child standard in this context. Part III explains the alternative avenue for terminating parental rights, the abrogation of adoption doctrine, and explores the historical development of the doctrine, the modern statutes, and the limited role of

17. See *infra* Part III.A (discussing evolution of the grounds for adoption annulment under state abrogation statutes).

18. See Helling, *supra* note 15, at 75-76.

19. See *infra* notes 115-18 and accompanying text.

20. See *infra* note 118.

considerations relating to the child's welfare. Part IV sets forth the substantive reasons for preferring termination of parental rights statutes as the exclusive avenue for legally ending parent-child relationships at the behest of the parent. Part V takes the position that the judicial adoption model does not necessitate or justify rules authorizing the judicial setting aside of final adoption decrees. There are compelling reasons to eliminate the abrogation doctrine, and no good reason for maintaining it as a means for adoptive parents to terminate legal ties to their children. Finally, the Conclusion of this Article summarizes additional recommendations associated with the proposal to abolish the adoption annulment doctrine such as enhanced family support programs, standing for all parents to file petitions under state termination of parental rights statutes, and continued application of the best interest of the child standard to resolve requests to terminate the parent-child status.

I. THE PERMANENCE OF PARENT-CHILD RELATIONSHIPS

The permanence of parent-child relationships, whether created by procreation or adoption, is an important principle in our family law system. Generally speaking, the stability that results from the maintenance of existing family ties serves the interests of children, their families, and society as a whole.²¹ Family laws reflect this view about the importance of stable family relationships.²²

Most parents share the view embodied in this legal principle about the permanency of their status.²³ Throughout history, however, there have been parents who, for a variety of reasons, prefer at some point in time to relinquish the rights and responsibilities of their status.²⁴ Some parents make alternative, informal arrangements for their children's care, or simply abandon them.²⁵ Others, however, seek a legal declaration terminating the parent-child relationship.²⁶ In the modern context, the primary legal vehicle for parents who

21. See ANNE L. ALSTOTT, *NO EXIT: WHAT PARENTS OWE THEIR CHILDREN AND WHAT SOCIETY OWES PARENTS* 16-20 (2004).

22. See generally Symposium: *The State Construction of Families: Foster Care, Termination of Parental Rights, and Adoption*, 12 VA. J. SOC. POL'Y & L. 365 (2004-05); Testa, *supra* note 4, at 499 (distinguishing the concept of legal permanence from family commitments that are not legally binding, within the child welfare system).

23. See ALSTOTT, *supra* note 21, at 5 ("To be sure, parents do not ordinarily perceive 'Do Not Exit' as a command from the state. Good parents provide their children with continuity of care out of love and a sense of moral obligation.").

24. See Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375, 388-99 (1996) (collecting work of family historians).

25. ALSTOTT, *supra* note 21, at 44-47 (noting that de facto abandonment of children in families is often accompanied by breakdown of the parents' relationship); Gregory A. Loken, "Thrownaway" Children and Throwaway Parenthood, 68 TEMP. L. REV. 1715, 1716-27 (1995); Sanger, *supra* note 24, at 390-95.

26. The number of parents who seek to legally terminate their parental status is not large, and is not clearly documented. For example, a follow-up study of 516 foster children who were adopted

wish to achieve this end is the termination of parental rights statutes enacted in every state. The doctrine of adoption abrogation is an alternative route to terminating one's parental status, available only to adoptive parents.²⁷

Various public and private programs that provide assistance to families support the goals of maintaining stable parent-child relationships and avoiding child abandonment or the legal termination of parental status. The design and implementation of effective family support programs may address the concerns of parents, biological or adoptive, who might otherwise desire to terminate their status. For example, public programs designed to encourage the adoption of children in foster care provide financial support and other types of services to help sustain post-adoption relationships for this category of families.²⁸

in New York City in 1996 attempted to answer the question: "Had any adoptions been abrogated, or had adopted parents' parental rights been terminated?" Trudy Festinger, *After Adoption: Dissolution or Permanence*, 81 CHILD WELFARE 515, 526 (2002). The study revealed that nine of the children "were in placement during the study period," *id.* at 527, although the author did not clearly conclude that adoption abrogation or termination of parental rights had taken place in these cases. Festinger noted generally that "[l]ittle is known about the frequency of dissolution following legal adoption because it is so difficult to obtain accurate data." *Id.* at 517.

Another measure of the frequency of parent-initiated termination proceedings is the number of reported judicial opinions on point. As to adoption abrogation, a scholar collecting cases on this topic observed that "[t]he cases in which the [adoptive] parent has himself sought annulment . . . are few in number." T.C. Williams, Annotation, *Annulment or Vacation of Adoption Decree by Adopting Parent or Natural Parent Consenting to Adoption*, 2 A.L.R.2d 887 § 3 (1948 & Supp. 2007). As to petitions by parents under the state termination of parental rights statutes arising outside the settings of a child welfare proceeding or proposed adoption, research for this Article uncovered fewer than fifty cases on point.

27. Additional doctrines authorize the voluntary relinquishment of children by their parents. In recent years, many state legislatures have enacted so-called "safe haven" laws that allow the parents of newborns to leave them, anonymously and without any continuing responsibility, in designated locations. See Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 754-55 (2006). Sanger collected statutes from forty-six states, enacted within the period 1999 to 2006. *Id.* at 754 n.5. Another avenue for voluntarily relinquishing parental rights is established under state laws that permit legal fathers to "disestablish paternity," by proving the biological paternity of another man. See generally Roberts, *Disestablishing Paternity*, *supra* note 2 (regarding non-marital children); Roberts, *Questioning Paternity*, *supra* note 2 (regarding marital children).

Divorcing parents have, on occasion, tried to terminate the parental rights of one of them by contract or stipulation. The law confers no authority on parents to end their rights and responsibilities in this manner. See, e.g., *R.H. v. M.K.*, 603 A.2d 995, 998-99 (N.J. Super. Ct. Ch. Div. 1991) (refusing to incorporate into divorce decree the parents' agreement to terminate father's rights); see also *In re Marriage of Jackson*, 39 Cal. Rptr. 3d 365, 371-75 (Ct. App. 2006) (affirming the trial court's reversal of its earlier order granting mother's post-divorce motion, unopposed by custodial father to terminate her parental rights).

28. See CYNTHIA R. MABRY & LISA KELLY, *ADOPTION LAW THEORY, POLICY, AND PRACTICE* 728-29 (2006) (discussing post-adoption services); see also ALSTOTT, *supra* note 21, at 40

In the case of *In re Jurga*,²⁹ the North Carolina Court of Appeals described the direct connection between the limitations of a public support program and the decision of parents to file a petition under the state termination of parental rights statute. The petitioning parents in *Jurga* lost state support for their son's institutional care in North Carolina when they moved out of state. Their petition to terminate parental status was part of a plan to shift legal responsibility for their child to willing relatives who remained in North Carolina.³⁰ The state court of appeals ruled that the parents lacked standing under the child welfare code to seek termination of their status in these circumstances.³¹ In reaching this result, the *Jurga* court acknowledged the "dilemma faced by the [parents]" who were confronted with a choice between their own relocation and the continuation of their son's care.³²

Parent-child relationships may also be threatened in cases where parents consider their children to be impossible to live with, disruptive to the family, or a danger to themselves or others. At the most formal level, the courts that supervise child welfare and juvenile justice systems are the sources of state support for families in these circumstances.³³ Here, parents may seek support and necessary services,³⁴ ranging from family counseling to the placement of children outside of the family home.³⁵ The goal is the resolution of underlying problems, enabling the family to function and obviating the parents' inclination

(highlighting the need for support for parents of children with disabilities, in order to avoid abandonment of children by parents).

29. 472 S.E.2d 223 (N.C. Ct. App. 1996).

30. *Id.* at 224.

31. *Id.* at 225. For a general discussion of limitations on parental standing under state termination of parental rights statutes, see *infra* text accompanying notes 49-58.

32. *In re Jurga*, 472 S.E.2d at 226.

33. In many states, courts exercise jurisdiction within the child welfare system over children who are abused or not receiving adequate care from responsible adults. See SARAH H. RAMSEY & DOUGLAS E. ABRAMS, *CHILDREN AND THE LAW IN A NUTSHELL* 1-2 (3d ed.). At the same time, the state juvenile courts traditionally have exercised jurisdiction over "delinquent" children, who commit offenses that would be criminal if committed by an adult, see DAVID J. HERRING, *EVERYDAY LAW FOR CHILDREN* 102-05 (2006) (discussing the evolution of "the juvenile court movement"), as well as children who are determined to be "in need of supervision." See CLARK, *supra* note 5, § 9.5, at 361; RAMSEY & ABRAMS, *supra*, at 417-18, 445-56. The latter category is often defined by statute to include minors who are truant from school, disobedient toward their parents, or generally "incorrigible." See *id.* at 418-19. In recent decades, reformers have called for the transfer of jurisdiction over such "status offenses" from the juvenile justice system to the child welfare system. See CLARK, *supra* note 5, § 9.5, at 361-62; RAMSEY & ABRAMS, *supra*, at 417 (describing a Pennsylvania statute, 42 PA. CONS. STAT. § 6302 (2004), which includes status offenses within the definition of child dependency under the child welfare law).

34. See Carol S. Stevenson et al., *The Juvenile Court: Analysis and Recommendations*, *THE FUTURE OF CHILDREN*, Winter 1996, at 4, 13-14 (describing parent-initiated jurisdiction of the juvenile courts in the case of "ungovernable" children).

35. See CLARK, *supra* note 5, § 9.5, at 365-66.

to terminate family relationships.

The connection between the remedial purposes of judicially supervised family support programs and the permanence of family relationships became clear in the Indiana case of *In re Adoption of T.B.*³⁶ The adoptive mother in *T.B.* first “sought the intervention of the . . . Juvenile Court[,] . . . [which] entered a preliminary order finding [her daughter] to be a child in need of services and placed [her] in a residential care facility.”³⁷ Just weeks later, the mother “filed a petition to revoke [her daughter’s] adoption in the . . . court which originally granted the adoption.”³⁸ In spite of opposition by the department of social services, the trial court granted the annulment, on the ground of fraud in the initial adoption proceeding.³⁹ Notably, a threshold issue on appeal in this case questioned the jurisdiction of the adoption court to act at a time when jurisdiction in the juvenile court continued. The Indiana Supreme Court ruled that simultaneous jurisdiction was proper, but reversed the trial court’s annulment decree on the merits.⁴⁰ As a result, the troubled mother-daughter relationship remained the subject of the “child in need of supervision” proceeding in the juvenile court.

Both the mother in *T.B.* and the parents in the *Jurga* case⁴¹ sought to terminate all legal ties to their children following involvement with state support programs that did not meet their needs. These cases illustrate that in some situations, surely, enhanced support programs for families would deter parents from taking such drastic action.

The two cases discussed in this Part illustrate the two legal avenues available to parents who seek to terminate their legal status. The biological parents in *Jurga* filed a petition in family court to terminate their parental rights under the state child welfare code,⁴² while the adoptive mother in *T.B.* sought an adoption annulment order in the adoption court.⁴³ These two avenues for terminating the parent-child status, and the differences between them, are discussed at length in the following Parts of this Article.

36. 622 N.E.2d 921 (Ind. 1993).

37. *Id.* at 922.

38. *Id.* at 923.

39. *Id.* For a discussion of fraud as the basis for annulment claims see *infra* text accompanying notes 139-58.

40. *Id.* at 924-25. In approving the simultaneous jurisdiction of the juvenile court and the adoption court in the annulment proceeding, the Indiana Supreme Court stated: “An action for adoption and a CHINS [child in need of services] proceeding . . . are separate actions which affect different rights. The CHINS proceeding is directed at helping the child directly by assuring that the child receives necessary assistance. Adoption, on the other hand, establishes a family unit.” *Id.* at 924 (citation omitted).

41. See *supra* notes 29-32 and accompanying text.

42. *In re Jurga*, 472 S.E.2d 223, 224 (N.C. Ct. App. 1996).

43. *T.B.*, 622 N.E.2d at 923.

II. TERMINATION OF PARENTAL RIGHTS STATUTES

The termination of parental rights statutes in every state provide for severance of the legal parent-child relationship by judicial order based on specific statutory standards relating to the welfare of the child. The effect of such a court order is the complete severance of legal ties. For example, the Tennessee statute provides:

An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent . . . and of the child The parent . . . shall have no further right to notice of proceedings for the adoption of that child . . . and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent . . . for future child support or other future financial responsibilities even if the child is not ultimately adopted.⁴⁴

These state laws usually operate in one of two legal contexts: child welfare and state adoption codes.

First, child welfare codes authorize various forms of state intervention in families in order to protect children, and provide for the ultimate judicial termination of children's relationships with their parents.⁴⁵ The serious step of termination in this context may occur either with the consent of the parent or involuntarily. Notably, state laws require the courts in these cases to address the future disposition of the affected child, whose well-being is the central concern of the termination order.⁴⁶

Second, the termination of parental rights is also addressed in the state adoption codes, where the voluntary or involuntary termination of rights is a prerequisite to the adoption of children by other adults. Common fact patterns involve the surrender of newborn children, and consent by noncustodial parents to the proposed adoption of older children by their stepparents. As in the child welfare system, the best interest of the child is the governing standard in these circumstances under the state adoption codes.

The analysis in this Article focuses on efforts by parents to obtain a judicial order terminating their legal status, outside these common settings of a pending adoption or child welfare proceeding. The analysis is complicated by a lack of uniformity among the states in organizing their child welfare laws, adoption laws, and other provisions affecting children.⁴⁷ A particular state may have more than

44. TENN. CODE ANN. § 36-1-113(l)(1) (West 2002).

45. See ABRAMS & RAMSEY, *supra* note 7, at 375-76.

46. CLARK, *supra* note 5, § 9.4, at 359.

47. Traditionally, child welfare laws and adoption laws constituted separate areas of statutory regulation. See, e.g., OKLA. STAT. ANN. tit. 10, § 7006-1.1(C) (West 2007) ("The provisions of this section [dealing with termination of parental rights within the child welfare system] shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child. Such proceedings and actions shall be governed by the Oklahoma

one statutory provision to which parents may look when they initiate the termination of their rights.⁴⁸

A threshold question here is whether the state legislatures intended to allow parents to initiate the judicial termination of their status outside the context of a child welfare proceeding or proposed adoption. The laws in some states appear, on their face, to create such standing for parents, and have been so construed by the state courts. For example, a provision in the Texas Family Code states that “[a] parent may file a suit for termination of the petitioner’s parent-child relationship. The court may order termination if termination is in the best interest of the child.”⁴⁹

Other state statutes, however, are less clear about the standing of parents to seek judicial termination of their status outside the specific context of a pending adoption or dependency adjudication. Further, some state courts have construed ambiguous adoption and child welfare codes to deny standing.

For example, in *C.J.H. v. A.K.G.*,⁵⁰ the Tennessee Court of Appeals denied standing to unmarried parents who filed a joint petition to terminate the father’s status under the voluntary termination provision of the state adoption code. According to the court, “there is no statutory authority for use of these procedures outside the context of an adoption or a plan for an adoption.”⁵¹

Adoption Code.”). In recent years, certain states have implemented reforms that unify many aspects of the legal regulation of children, including the standards and procedures for terminating parental rights. See Barbara A. Babb & Gloria Danziger, *Introduction to Special Issue on Unified Family Courts*, 46 FAM. CT. REV. 224, 225 (2008); Andrew Schepard, *Editorial Notes*, 46 FAM. CT. REV. 217, 218-19 (2008). For example, an Indiana law titled “voluntary petition” authorizes the filing of a petition to terminate rights, upon the request of the parent, either by a “licensed child placing agency” in probate (adoption) court or by the “office of family and children” in juvenile (child welfare) court. See IND. CODE § 31-35-1-4 (2008).

48. See, e.g., *State ex rel. B.M.S.*, 2003 UT App 51, 65 P.3d 639 (Utah Ct. App. 2003) (ruling that father must proceed under a voluntary relinquishment statute containing a presumption against termination when child support was at issue, rather than another termination provision that omitted the presumption regarding parental obligations). See generally *In re H.J.E.*, 359 N.W.2d 471, 474 (Iowa 1984) (disallowing on jurisdictional grounds a biological father’s petition to terminate his rights under the Iowa voluntary relinquishment provision, in light of a pending proceeding under the state’s involuntary termination provision).

49. TEX. FAM. CODE ANN. § 161.005(a) (Vernon 2002), applied in *Linan v. Linan*, 632 S.W.2d 155, 156 (Tex. App. 1982) (denying the petition of an adoptive, noncustodial father under the best interest of the child standard). In a recent opinion, the Texas Court of Appeals observed that “[a]lthough this provision was enacted in 1973, it has not been widely invoked.” *Dockery v. State*, No. 03-05-00713-CV, 2006 WL 3329794, at *1 (Tex. App. Nov. 14, 2006) (footnote omitted).

50. *C.J.H. v. A.K.G.*, No. M2001-01234-COA-R3-JV, 2002 WL 1827660, at *1 (Tenn. Ct. App. Aug. 9, 2002).

51. *Id.* at *7; but see *In re Bruce R.*, 640 A.2d 643, 645 (Conn. App. Ct. 1994) (rejecting mother’s argument that a voluntary termination provision in the state adoption code, currently codified at CONN. GEN. STAT. ANN. § 45-a-715(a) (West 2004), “was ‘not conceived’ to allow a

Parental standing has also been denied in some cases when parents proceeded under the voluntary termination provision of the state child welfare code. For example, in *In re Jurga*,⁵² discussed in Part I,⁵³ the North Carolina Court of Appeals denied standing to biological parents who sought to terminate their rights as part of a plan to assure ongoing institutional care for their minor son after they moved out of state.⁵⁴ The court ruled that the termination provision of the child welfare code established “the *exclusive* judicial procedure to be used in termination of parental rights cases,”⁵⁵ and that “it expressly limits the persons and agencies who may petition for termination, and in no wise includes natural parents jointly seeking termination of their *own* parental rights.”⁵⁶ Although the court expressed sympathy for the parents and their goals in this case, their sympathetic circumstances did not change the result. According to the court, “[w]hile not insensitive to [the child’s] circumstance and the dilemma faced by the [parents], we must follow established law.”⁵⁷

The denial of access to the courts in this manner precludes parent-initiated severance even in cases where the court might determine on the merits that the child’s interest would be served by such a result. The better legal model, illustrated by the rest of the cases discussed in the remainder of this Part and the Texas statute quoted above,⁵⁸ authorizes parent petitions to terminate their rights subject to strict substantive standards that protect the interests of children.

Most courts ruling on parental requests for the termination of all ties to their children assert a strong presumption that children’s interests are *not* served by removing a parent from the legal picture, at least where no dependency adjudication has been made and no adoption by another adult is pending. In many cases, the potential loss of financial support for the child is a crucial consideration. For example, the Utah termination statute creates “a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child’s best interest where it appears to the court that the primary purpose

parent to seek and receive a termination of his or her own parental rights ‘absent pending adoption [or] state custodial placement’”) (quoting statement of mother), *aff’d*, 662 A.2d 107 (Conn. 1995).

52. 472 S.E.2d 223 (N.C. Ct. App. 1996).

53. See *supra* notes 29-32 and accompanying text.

54. 472 S.E.2d at 226.

55. *Id.* at 225 (quoting *In re Curtis*, 410 S.E.2d 917, 919 (N.C. Ct. App. 1991)).

56. *Id.* at 226 (citation omitted).

57. *Id.*; see also *In re K.L.S.*, 350 S.E.2d 50, 51 (Ga. Ct. App. 1986) (ruling that the term “written consent of the parent” in the termination provision of the child welfare code anticipated consent to the proposal of another party, usually the state, and did not authorize “petitions by parents seeking judicial imprimatur of their own, voluntary abandonment of parental responsibility”); *In re B.L.G.*, 731 S.W.2d 492, 499 (Mo. Ct. App. 1987) (stating that under termination statute requiring all petitions to be filed by a juvenile officer, “the juvenile officer who files the petition must act in a role beyond that of a mere tool of a parent whose primary motivation is that of avoiding parental responsibilities”).

58. See TEX. FAM. CODE ANN. § 161.005(a) (Vernon 2002); *supra* note 49 and accompanying text.

is to avoid a financial support obligation.”⁵⁹

The financial support factor was determinative in the case of *Ex parte Brooks*,⁶⁰ when the Alabama Supreme Court denied the joint petition of divorced parents to terminate the noncustodial father’s parental rights. In *Brooks*, the child’s parents had divorced during the mother’s pregnancy, “mainly because [the mother] would not agree to her husband’s insistence that she have an abortion.”⁶¹ During the next four years, the father did not provide financial support to, or communicate with, his son. The parents’ petition to terminate the father’s status under the Alabama Child Protection Act was supported by a court-appointed social worker but opposed by the child’s guardian ad litem.⁶² In filing the petition, the mother expressed concern that the father might interfere with her sole custodial authority sometime in the future, and the father clearly wished to be free of any future obligation to the child.⁶³

After the trial court in *Brooks* denied the parents’ termination petition, the intermediate appellate court reversed, ruling that a termination order would serve the best interests of the child.⁶⁴ Finally, the Alabama Supreme Court reinstated the trial court order, stating that the child welfare code authorized termination only “[w]hen a child’s welfare is threatened by continuation of parental rights” and “was not intended as a means for allowing a parent to . . . avoid his obligation to support the child.”⁶⁵ As to the mother’s concern about possible custodial interference by the father, which might harm the child in the future, the court noted the absence of any such conduct to date and the availability of remedies, including the ultimate termination of parental rights, if problems arose

59. UTAH CODE ANN. § 78-3a-414(6) (West 2004 & Supp. 2008) (current version at UTAH CODE ANN. § 79A-6-514 (West Supp. 2008)), applied in *State ex rel. B.M.S.*, 2003 UT App 51, 65 P.3d 639 (Utah Ct. App. 2003).

60. 513 So. 2d 614 (Ala. 1987), overruled by *Ex Parte Beasley*, 564 So. 2d 950 (Ala. 1990).

61. *Id.* at 615.

62. *Id.* at 616.

63. *Id.*

64. The opinion of the intermediate appellate court appears at *In re Stephenson*, 513 So. 2d 612, 614 (Ala. Civ. App. 1986), overruled *sub nom. Ex Parte Brooks*, 513 So. 2d 614 (Ala. 1987).

65. *Brooks*, 513 So. 2d at 617; see also *In re Jessica M.*, 802 A.2d 197, 206 (Conn. App. Ct. 2002) (reversing probate court decision that granted voluntary termination petition of mother who had not seen her children for more than six years); *In re Bruce R.*, 640 A.2d 643, 647-48 (Conn. App. Ct. 1994) (reversing trial court decision to grant father’s termination petition, and remanding for full consideration of financial issues), *aff’d*, 662 A.2d 107 (Conn. 1995); *Dockery v. State*, No. 03-05-00713-CV, 2006 WL 3329794, at *3 (Tex. App. Nov. 14, 2006) (disallowing voluntary termination petition of father who owed child support arrearages to his adult, nineteen-year-old son, because father “provided no evidence that termination was in the child’s best interest”); *Linan v. Linan* 632 S.W.2d 155, 156 (Tex. App. 1982) (denying voluntary termination petition filed by noncustodial, adoptive father two years following his divorce from the child’s adoptive mother); *State ex rel. R.N.J.*, 908 P.2d 345, 351 (Utah Ct. App. 1995) (“Only in the most aggravated and difficult cases do the best interests of the child call for the court to relieve a living, capable, and solvent parent of the obligation to support the parent’s child.”).

in the future.⁶⁶

Quite clearly, on the facts of the *Brooks* case, the state termination statute could have been used *against* the father in an involuntary termination proceeding initiated in a different context, such as a stepfather adoption proceeding. The fact that the father's past behavior constituted grounds for termination (most likely abandonment) in such a proceeding did not, however, enhance the parents' claim in the voluntary termination proceeding.⁶⁷

The courts in other states have assigned even greater weight to the issue of financial support. Thus, in a case involving a divorced, adoptive stepfather, the Minnesota Court of Appeals ruled that noncustodial parents generally have *no standing* to seek to terminate their status unless adoption by another adult is pending.⁶⁸ According to the court, "the best interests of a child are not served by permitting a noncustodial parent to terminate parental rights voluntarily unless that termination is accomplished to facilitate adoption of the child. Adoption assures that the child will not lose valuable rights to support."⁶⁹

There are fewer reported cases involving *custodial* parents who initiate termination of their status outside the context of a child welfare proceeding or pending adoption. Often, these cases involve children who present special demands or challenges that their parents feel unable to meet. For example, the parents in *In re Welfare of D.C.M.*⁷⁰ adopted a twelve-year-old child who had been diagnosed with emotional and behavioral problems. One year after the adoption was final, the parents successfully petitioned to terminate their rights, because they were "unable to cope with D.C.M.'s problems and the way his behavior affected their family."⁷¹

The termination statute in Minnesota, applied in the *D.C.M.* case, included two prongs: first, "[t]he juvenile court may upon petition, terminate all rights of a parent to a child . . . with the written consent of a parent who for good cause desires to terminate parental rights";⁷² and, second, "the best interests of the child must be the paramount consideration, provided that the conditions [relating to good cause] are found by the court."⁷³ The juvenile court in *D.C.M.* applied this statute and granted the parents' petition. On appeal by the county, the court of

66. *Brooks*, 513 So. 2d at 617.

67. *See In re T.M.C.*, 52 P.3d 934, 937 (Nev. 2002) ("Even if the parent engages in conduct that satisfies the parental fault provisions of [the child welfare code], the child's best interests must be served by the termination of parental rights for such termination to be appropriate. Here, [the father's] contention that the child would be better off without him and his continued financial support is unpersuasive.").

68. *In re Welfare of J.D.N.*, 504 N.W.2d 54, 57 (Minn. Ct. App. 1993).

69. *Id.* at 58; *see also* *Cartwright v. Cartwright*, 635 S.E.2d 691, 693 (Va. Ct. App. 2006) (denying standing to noncustodial parents under the provision of the state child welfare code that permits voluntary termination petitions by parents).

70. 443 N.W.2d 853 (Minn. Ct. App. 1989).

71. *Id.* at 854.

72. MINN. STAT. ANN. § 260C.301(1)(a) (West 2007).

73. *Id.* § 260C.301(7).

appeals affirmed, ruling that evidence of the child's disruptive behavior satisfied the statutory "good cause" requirement.⁷⁴ As to the requisite best interests of the child analysis, the appellate court highlighted the testimony of professionals who favored termination and observed that "[t]he [parents'] rejection of [the child] appears complete and . . . [s]ubjecting [the child] to additional reunification counseling is not in his best interests."⁷⁵

The number of reported cases involving petitions filed by parents pursuant to state termination of parental rights statutes, outside the setting of a child welfare proceeding or pending adoption, is small. However, the stakes in each case, for the family and society, are very high. Termination laws presume a strong correlation between permanence in established parent-child relationships, whether biological or adoptive, and the best interests of the child. As illustrated by the case of *D.C.M.*, the state statutes that confer standing on parents enable them to disprove this correlation and terminate their legal status. As in *D.C.M.*, a termination order will be entered based on the court's assessment that this result is best for the child.

III. ABROGATION OF ADOPTION STATUTES

The laws of most states provide an alternative legal avenue for adoptive parents who seek to terminate legal ties to their children. The doctrine of adoption annulment or abrogation involves the judicial setting aside of a final adoption order, which created the parent-child status, upon petition of the adoptive parent.⁷⁶ Unlike the provisions of the termination of parental rights statutes, the standards expressed in most of the state abrogation laws do not focus on the welfare of the adopted child whose ongoing status is the subject of the parent-initiated proceeding. This failure renders the abrogation doctrine unacceptable as a legal basis for terminating parent-child relationships.

A. *The History of Adoption Abrogation Laws*

Adoption statutes in every state authorize the establishment by court order of the legally significant parent-child status between an adoptive parent and child. It is often said that adoption is a creature of statute, because common law courts did not assume the power to create new family relationships in this manner

74. *D.C.M.*, 443 N.W.2d at 854-55.

75. *Id.* at 855. A dissenting judge opined that this analysis and result failed to place "paramount" importance on the best interests consideration, as required by the state statute, focused instead on "lessening the [parents'] burdens" under the good cause portion of the statute. *Id.* (Nierengarten, J., dissenting).

76. Adoptive placements may also be interrupted during the period prior to entry of a final adoption decree. This circumstance, sometimes called "disrupted adoption," see D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW* 1209 n.2 (2d ed. 2002), or "failed adoption," see Celia Bass, *Matchmaker-Matchmaker: Older-Child Adoption Failures*, 54 *CHILD WELFARE* 505, 506-07 (1975), is beyond the scope of this Article.

prior to the authorizing legislation in each state.⁷⁷ The adoption statutes were relatively late additions to state family codes, with the first enactments taking place in the mid-nineteenth century.⁷⁸

For example, in the case of *Buttrey v. West*,⁷⁹ decided in 1924, the Supreme Court of Alabama summarized the historical development of the state's adoption laws prior to that date. According to the *Buttrey* court, the first Alabama adoption statute was enacted in 1852 to supplement the more limited common law in loco parentis doctrine as a means for establishing legal ties between biologically unrelated adults and children.⁸⁰ Under the statute, "the adoption of a child . . . accompanied by taking the child into the family, create[d] the status of parent and child, with the duty of care, maintenance, training, and education, along with the right to the custody, control, and services of the child."⁸¹

The judicial authority to *set aside* an adoption order is similarly conferred by statute in most states, although some courts assumed nonstatutory authority for this purpose once their basic authority to enter adoption orders was established by statute.⁸² Thus, the Alabama Supreme Court in *Buttrey* observed that the first annulment provision in Alabama, enacted in 1897, established judicial authority to annul an adoption "for good cause shown" and on "petition of [the] child, or the party adopting the child."⁸³

The grounds for annulling an adoption during this early phase of regulation focused primarily on the post-adoption condition of the child. A law review note published in 1953, by Joseph Helling, provides a summary of the early laws,⁸⁴ noting that "[t]he vast majority of jurisdictions [had] adopted the view, either by statute or decision, that an adoption order can be annulled."⁸⁵ As to the grounds for annulment, eight state laws included the physical or mental disability of the

77. See CLARK, *supra* note 5, § 20.1, at 851.

78. See *id.*; LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 211-12 (2d ed. 1985).

79. 102 So. 456 (Ala. 1924).

80. *Id.* at 457-58.

81. *Id.* at 458.

82. Nonstatutory authority to annul adoption decrees in this manner is typically premised on general rules governing civil litigation, which allow for the vacation of final court orders in certain circumstances. See *infra* notes 189-93 and accompanying text.

83. 102 So. at 458. The standing of the child to petition for adoption annulment, a feature of early annulment statutes, including the Alabama law quoted in the text, does not continue in modern abrogation doctrine. Additionally, some early laws included grounds relating to mistreatment of the child by the adoptive parents. See Williams, *supra* note 26, § 8[b] (discussing New York abrogation statute that allowed an annulment petition by the child or the child's representative based on the adoptive parent's "cruelty, . . . misuse, . . . refusal to support, . . . attempt to change . . . the religion of the child[,] or . . . any other violation of duty"). In the modern context, parental misconduct may be the basis for the termination of parental rights by the state under the child welfare laws discussed in Part II of this Article.

84. See Helling, *supra* note 15, at 68.

85. *Id.* at 69; see also *id.* at 70 n.9 (collecting the state abrogation statutes).

child,⁸⁶ two states included “discovery . . . that the racial ancestry of the child is different than that of the adopting parents,”⁸⁷ and the New York statute established “misconduct or wilful desertion by the child” as a ground for adoption annulment.⁸⁸

Other state annulment statutes, including the Alabama law quoted above, contained the more general ground of “good cause,”⁸⁹ which could be construed broadly to include the same types of child-related conditions and circumstances. For example, the Supreme Court of Alabama in *Buttrey v. West*⁹⁰ made the following statement about the state’s “good cause” standard: “[T]he [adoptive] parent has rights as well as duties . . . [and] [i]f these ends are defeated, without fault of the [adoptive] parent, by misfortune, . . . or by perversity or ingratitude of the child . . . , the statute opens the door [to annulment].”⁹¹ It appears that the court here was anticipating the more specific circumstances, such as illness or misconduct of the child, that appeared in other statutes of this era. These grounds for annulment enabled the adoptive parent to petition the court for termination in circumstances where the parent-child relationship proved to be difficult or contrary to the parent’s expectation.

Notably, the time limits for filing petitions under many early abrogation statutes were very lengthy or nonexistent. According to the 1953 summary of adoption laws, the “good cause” provisions generally involved no limitation whatsoever.⁹² For example, the Alabama court in *Buttrey* considered the father’s (unsuccessful) claim to set aside his twelve-year-old daughter’s adoption ten years after the adoption became final.⁹³ As to the disability and race-based grounds for adoption abrogation, a five-year statute of limitations was the norm.⁹⁴

Besides the child-related grounds, the first generation of adoption annulment laws sometimes included grounds, such as fraud, duress, or procedural irregularity in the initial judicial proceeding, as a basis for vacating a final judgment under the state’s general rules of civil procedure.⁹⁵ According to the 1953 law review note, these grounds for annulment were often established by the courts themselves rather than the legislatures, and often involved no time limit.⁹⁶

By the 1980s, most state legislatures had significantly revised their adoption abrogation laws. According to Anne Howard, the author of another law review note, published in 1983, almost all of the state legislatures by then had repealed the substantive grounds for annulment relating to the condition of the adopted

86. *Id.* at 75-76.

87. *Id.* at 76.

88. *Id.*

89. *Id.* at 75 (citing seven “good cause” statutes).

90. 102 So. 456 (Ala. 1924).

91. *Id.* at 459.

92. Helling, *supra* note 15, at 75.

93. *Buttrey*, 102 So. at 457-58.

94. *See* Helling, *supra* note 15, at 75-76.

95. *Id.* at 76.

96. *Id.* at 71-76.

child.⁹⁷ Thus, only “[r]emnants of each of these grounds [could] be found in various state statutes.”⁹⁸ Specifically, only one state (Kentucky) retained racial differences as a ground for annulment,⁹⁹ a provision that remains to this day in the Kentucky statute.¹⁰⁰ Similarly, in 1983 only one state, California, retained (and retains to the present day)¹⁰¹ a ground relating to the child’s health.¹⁰² The final remnant of the traditional grounds appearing in current abrogation laws is the “good cause” provision retained in the Hawaii adoption statute.¹⁰³

By 1983 many of the state legislatures had either replaced the traditional child-related grounds with, or retained standards in the annulment statutes relating to, problems in the entry of initial adoption decrees, such as fraud and procedural irregularities.¹⁰⁴ The reformers had also addressed the issue of time limitations on annulment petitions, by adding statutes of limitation for the first time or reducing the time available for filing a petition.¹⁰⁵ These substantive and procedural changes marked the beginning of the modern era of abrogation law.

The relevant provisions of the Uniform Adoption Act (UAA), revised twice since its first promulgation in 1953, illustrate this evolution in abrogation doctrine. The original UAA annulment provision allowed an adoption to be set aside if “a child develop[ed] any serious and permanent physical or mental malady or incapacity as a result of conditions existing prior to the adoption and of which the adopting parents had no knowledge or notice.”¹⁰⁶ Next, the updated annulment section in the UAA of 1969 provided:

[U]pon the expiration of [one] year after an adoption decree is issued the decree cannot be questioned by any person including the [adoptive parent], in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of

97. Anne Harlan Howard, Note, *Annulment of Adoption Decrees on Petition of Adoptive Parents*, 22 J. FAM. L. 549, 554 (1983-84).

98. *Id.*

99. *Id.* at 556.

100. See KY. REV. STAT. ANN. § 199.540(1) (West 2006); see also *infra* notes 123-24 and accompanying text.

101. See CAL. FAM. CODE § 9100(a) (West 2004); see also *infra* notes 125-35 and accompanying text.

102. See Howard, *supra* note 97, at 554-56. Similar health-related abrogation statutes were repealed in Missouri in 1982, *id.* at 554, New York in 1974, Elizabeth N. Carroll, *Abrogation of Adoption by Adoptive Parents*, 19 FAM. L.Q. 155, 171 n.122 (1985), and Utah in 1975, *id.*

103. See HAW. REV. STAT. ANN. § 578-12 (LexisNexis 2005). As to the misconduct of the child, the traditional ground discussed earlier in the text, New York’s repeal of this ground in 1974 removed it completely from annulment doctrine nationwide. See Howard, *supra* note 97, at 557 n.41.

104. Howard, *supra* note 97, at 554.

105. *Id.* at 560-61.

106. *Id.* at 553 (quoting UNIF. ADOPTION ACT (1953), Historical Note, 9 U.L.A. 11 (1979)).

jurisdiction of the parties or of the subject matter.¹⁰⁷

This version shifted the substantive focus from concerns relating to the condition of the child to procedural irregularities in the initial adoption proceeding, and added a one-year time limit on all annulment actions. The current annulment provision, introduced as part of the UAA of 1994, simply states that “[a] decree of adoption . . . is not subject to a challenge begun more than six months after the decree . . . is issued,”¹⁰⁸ thus further restricting the time period for setting aside final adoption orders.

Howard provided the following explanation for these legislative trends: “Over time, statutes have become more restrictive as to . . . grounds . . . and . . . the time in which an action may be filed. . . . [T]he overall implication of such a statutory survey is widespread recognition of the necessity of finalizing the familial status created by an adoption decree.”¹⁰⁹ The same goal of finalizing adoptive relationships was emphasized in the legislative commentary when the Alabama legislature, which had earlier enacted the broadly-construed “good cause” provision discussed earlier, reformed the state annulment statute.¹¹⁰ The Alabama drafters stated: “[I]t is imperative that the adoptee be assured a secure and stable environment without an untimely and unfounded interruption.”¹¹¹

This commentary accurately notes that the abrogation doctrine threatens the stability of family relationships. The legal reforms of the late twentieth century moved toward the goal of family stability by placing important limitations on the substantive and procedural scope of state abrogation laws. Even in their modern form, however, adoption annulment laws continue to fall short of the Alabama legislature’s goal, “that the adoptee be assured a secure and stable environment without an untimely and unfounded interruption.”¹¹²

B. Current Abrogation Statutes

Currently, the adoption codes in approximately two-thirds of the states include judicial annulment provisions, which permit designated persons, including the adoptive parents,¹¹³ to petition to set aside a final adoption

107. UNIF. ADOPTION ACT § 15(b) (1969), 9 U.L.A. 203 (1999).

108. UNIF. ADOPTION ACT § 3-707(d) (1994), 9 U.L.A. 98 (1999). The current provision includes additional limitations on the possible claims of *biological* parents seeking to set aside the final decree of adoption. *See id.* §§ (b), (d).

109. Howard, *supra* note 97, at 563.

110. *See supra* notes 90-91 and accompanying text (discussing the broad construction of the statutory “good cause” provision in the case of *Buttrey v. West*, 102 So. 456 (Ala. 1924)).

111. ALA. CODE § 26-10A-25 cmt. (1992). This commentary accompanied the enactment of the current Alabama annulment law, which provides that “[a] final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any.” *Id.* § 26-10A-25(d).

112. *Id.* § 26-10A-25 cmt.

113. State adoption abrogation laws confer standing on persons other than the adoptive

decree.¹¹⁴ Only three states retain traditional grounds for adoption annulment relating to the condition of the child: Kentucky (race),¹¹⁵ California (disability of child)¹¹⁶ and Hawaii (good cause).¹¹⁷ The remainder of the current state statutes focus on matters that are also the basis for setting aside final court orders under general rules of civil procedure, such as fraud or procedural irregularities in the initial adoption proceeding.¹¹⁸

parents. For example, annulment of a final adoption order may be sought by the biological parent claiming fraud or process violations in the initial adoption proceeding. *See* 2 HOLLINGER, *supra* note 3, §§ 8.02[1] to -[2], at 8-11 to -43. In the past, abrogation laws also conferred standing on an additional category of petitioners, namely, heirs of the adoptive parent who sought to destroy the status of the adopted child at the time of the adoptive parent's death. *See* Williams, *supra* note 26, §§ 8[a]-[b] (collecting cases).

114. ALA. CODE § 26-10A-25(d) (1992); ALASKA STAT. § 25.23.140(b) (2008); ARIZ. REV. STAT. ANN. § 8-123 (2007); ARK. CODE ANN. § 9-9-216(b) (West 2004); CAL. FAM. CODE § 9100 (West 2004); COLO. REV. STAT. ANN. § 19-5-214 (West 2005); CONN. GEN. STAT. ANN. § 45a-24 (West 2004); DEL. CODE ANN. tit. 13, § 918 (West 2006); D.C. CODE § 16-310 (2001); FLA. STAT. ANN. § 63.182 (West 2005 & Supp. 2009); HAW. REV. STAT. ANN. § 578-12 (LexisNexis 2005); IDAHO CODE ANN. § 16-1509A (West 2006); 750 ILL. COMP. STAT. ANN. 50/20b (West 1999); 750 ILL. COMP. STAT. ANN. 55/1 (West 1999); KY. REV. STAT. ANN. § 199.540 (West 2006); LA. CHILD. CODE ANN. art. 1262 (2004); MISS. CODE ANN. § 93-17-15 (West 2007); MISS. CODE ANN. § 93-17-17 (West 2007); MO. ANN. STAT. § 453.140 (West 2003); NEB. REV. STAT. § 43-116 (2004); N.H. REV. STAT. ANN. § 170-B:21(II) (Supp. 2008); N.M. STAT. ANN. § 32A-5-36(K) (West 2003); N.Y. DOM. REL. LAW § 114(3) (McKinney 1999); N.C. GEN. STAT. ANN. § 48-2-607(a), (c) (West 2000); N.D. CENT. CODE § 14-15-15 (2004); OHIO REV. CODE ANN. § 3107.16 (West 2005); OKLA. STAT. ANN. tit. 10, § 7505-7.2 (West 2007); OR. REV. STAT. ANN. § 109.381 (West 2003 & Supp. 2008); S.C. CODE ANN. § 20-7-1800 (1985 & Supp. 2008); S.D. CODIFIED LAWS § 25-6-21 (2004); TENN. CODE ANN. § 36-1-122(b) (West 2002); VA. CODE ANN. § 63.2-1216 (2007).

115. *See* KY. REV. STAT. ANN. § 199.540(1) (West 2006).

116. *See* CAL. FAM. CODE § 9100(a) (West 2004).

117. *See* HAW. REV. STAT. ANN. § 578-12 (LexisNexis 2005).

118. In addition to the laws discussed in the text, several states have also enacted provisions about the amendment of public records, especially birth certificates, upon the adoption of any person in the state or the annulment of an adoption. *See* GA. CODE ANN. § 31-10-13(c) (West 2003 & Supp. 2008); IDAHO CODE ANN. § 39-258(a) (West 2006); 410 ILL. COMP. STAT. ANN. 535/16(2), (3) (West 2005); IND. CODE §§ 31-19-12-1; 31-19-13-3 (2008); IOWA CODE ANN. § 144.21 (West 2005); ME. REV. STAT. ANN. tit. 22, § 2765(3) (2004 & Supp. 2008); TEX. HEALTH & SAFETY CODE ANN. § 192.009 (Vernon 2001 & Supp. 2008); UTAH CODE ANN. § 26-2-25 (West 2004); WYO. STAT. ANN. § 35-1-416 (West 2007). In some of these states, the record-keeping provisions are the only current provisions addressing the topic of adoption annulment.

These record-keeping provisions typically appear in a regulatory compilation dealing with public records, rather than the state family code. Many states adopted for this purpose the provisions of the Model State Vital Statistics Act and Regulation §§ 11-12 (1992), which was promulgated several decades ago by the U.S. Department of Health, Education and Welfare, predecessor to the U.S. Department of Health and Human Services. A prior version of the Act and Regulations dated 1977 is available. *See* Model State Vital Statistics Act and Regulations (1997),

The Hawaii annulment provision authorizes the adoption court to set aside an adoption decree within one year of its entry “for good cause.”¹¹⁹ There are no reported cases construing the phrase “for good cause” under this statute. In the past, as illustrated by the opinion of the Alabama Supreme Court in *Buttrey v. West*,¹²⁰ the same “good cause” language was construed to include many traditional, child-related grounds for abrogation, such as “perversity or ingratitude of the child.”¹²¹ A modern court might construe this standard differently, in a manner consistent with the majority of current abrogation statutes that focus on matters arising from errors made in the original adoption proceeding.¹²²

No similar ambiguity surrounds the abrogation statutes in Kentucky and California, which also retain traditional grounds for adoption annulment. Although all other states have removed race-based grounds from their statutes, the current Kentucky law still allows an adoption to be annulled within five years of the final decree “[i]f a child . . . reveals definite traits of ethnological ancestry different from those of the adoptive parents, and of which the adoptive parents had no knowledge or information prior to the adoption.”¹²³ There is no case law in Kentucky applying this statutory provision. In the modern context, the prospect of a parent relying upon his or her child’s “ethnological ancestry” to terminate their relationship is repugnant, and the Kentucky law is predictably unconstitutional under the Equal Protection Clause.¹²⁴

The traditional ground for adoption annulment retained in the California adoption code refers to disability of the adopted child. The current statute provides:

If [an adopted] child . . . shows evidence of a developmental disability

available at <http://www.cdc.gov/nchs/data/misc/mvsact77acc.pdf>.

119. HAW. REV. STAT. ANN. § 578-12 (LexisNexis 2005). The same provision authorizes suit for annulment in the adoption court based on fraud without any limitation on time to sue, and denies the availability of annulment decrees in any collateral proceeding. *Id.*

120. *Buttrey v. West*, 102 So. 456 (Ala. 1924) (construing the Alabama statute that provided for abrogation based on good cause, which was repealed in 1931); *see also supra* notes 90-91 and accompanying text.

121. *Buttrey*, 102 So. at 459.

122. *See* Carroll, *supra* note 102, at 172-73 (“Although there is no current case law . . . defining ‘good cause shown,’ [this statutory standard] could be interpreted like . . . statutes which treat abrogation of adoption the same as revocation of other civil matters.”).

123. KY. REV. STAT. ANN. § 199.540(1) (West 2006). The statute also provides for the annulment of adoption orders based on procedural defects, subject to a one year time limitation. *Id.* § 199.540(2).

124. *See generally* 3 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 18.5, at 423-26 (4th ed. 2008) (summarizing general ban under the Fourteenth Amendment on state action that discriminates against individuals based on their race); MABRY & KELLY, *supra* note 28, ch. 7 (discussing changing attitudes and rules regarding consideration of race in the placement of adopted children).

or mental illness as a result of conditions existing before the adoption to an extent that the child . . . is considered unadoptable, and . . . the adoptive parents or parent had no knowledge or notice before the entry of the order of adoption, . . . the court . . . may make an order setting aside the order of adoption.¹²⁵

There is a five year time limit on the adoptive parent's right to file a petition for annulment under this provision.¹²⁶

In the 1991 case of *Adoption of Kay C.*,¹²⁷ the California Court of Appeals explained the legislative policy underlying this adoption annulment provision. In *Kay C.*, the court analogized the ground of mental disability to the general grounds established by state law for vacating any final court order, such as fraud, mistake and undue influence. Thus, the disability ground for vacating adoption decrees was described as the "legislatively perceived equivalent of mistake—the adopting parents' lack of knowledge or notice of a serious condition predating the adoption which, if known, would have affected their agreement to adopt."¹²⁸

In two cases decided in 2002, the California Courts of Appeal applied the standard for adoption annulment established in *Kay C.*, requiring a "mistake" based on lack of informed consent by the adoptive parents.¹²⁹ The facts of these two cases were similar in significant ways, but the two trial courts, affirmed on appeal, reached different results. The parents in both cases knew that their children had experienced many difficulties prior to being adopted. In both, the first diagnosis of mental illness came *after* the adoptions were final. The court of appeals in *In re Adoption of Nicole O.*¹³⁰ relied upon the fact that the parents "had no knowledge of [their daughter's] mental illness when they adopted

125. CAL. FAM. CODE § 9100(a) (West 2004). A disability-based ground for adoption abrogation was first enacted in California in 1937. See *In re Adoption of Katherine A. Anderson*, 185 Cal. Rptr. 101, 103 (Ct. App. 1982). In 1993, the legislature replaced the earlier requirement of "evidence of being feeble-minded, epileptic or insane," CAL. CIV. CODE § 227b (West 2007) (repealed 1973), with the current standard of "developmental disability or mental illness."

126. See CAL. FAM. CODE § 9100(b). An additional provision in the California abrogation law establishes a three-year statute of limitations for "[a]n action . . . to vacate . . . an order of adoption, based on fraud." *Id.* § 9102(b). A one-year limit was established for "[a]n action . . . to vacate . . . an order of adoption on any ground, except fraud." *Id.* § 9102(a). The apparent contradiction between the five-year time limit in the disability provision quoted in the text and the one-year limitation for proceedings based on "any ground, except fraud" was resolved by the state court of appeals in favor of the lengthier time limit under the more specific disability provision. See *In re Adoption of Nicole O.*, No. G028897, 2002 WL 453619, at *4 (Cal. Ct. App. 2002) (affirming decision to grant annulment petition filed four and one-half years after entry of final adoption decree).

127. 278 Cal. Rptr. 907 (Ct. App. 1991).

128. *Id.* at 913.

129. *Id.*

130. No. G028897, 2002 WL 453619 (Cal. Ct. App. Mar. 25, 2002).

her,”¹³¹ in finding the requisite lack of informed consent under the *Kay C.* standard. By way of contrast, in *In re Adoption of K.G.*,¹³² decided just a few months later in another division of the state court of appeals, the court ruled that knowledge of the child’s troubled history at the time of adoption prevented the adoptive mother from meeting the “lack of informed consent” standard.¹³³ A notable difference between the two cases involved the absence of any party opposed to the parents’ annulment petition in the trial court proceeding in the *Nicole O.* case,¹³⁴ whereas the Department of Social Services opposed the annulment petition in the *K.G.* case.¹³⁵

Results aside, the California courts in both of these cases applied the disability ground under the state abrogation statute in a straightforward manner, in deciding whether to grant the adoptive parents’ requests for annulment. Neither court expressly considered the welfare of the children in deciding whether to sever legal ties with their parents. Rather, the focus of the analysis under the California statute was on the adults who had changed their minds about parenthood.

Except for the abrogation provisions in Hawaii, Kentucky, and California, the grounds for annulment in modern state adoption statutes address matters that also arise under state-wide rules governing the vacation of civil court orders. The most common are procedural defects, such as the failure to provide notice of an adoption proceeding to the biological parent, and fraud. For example, the Alaska annulment statute provides:

[U]pon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.¹³⁶

Like the old-fashioned grounds retained in Hawaii, Kentucky, and California, the grounds for adoption annulment specified in this Alaska provision do not focus on the welfare of the adopted child. Rather, they highlight the interests of adult parties and the integrity of the judicial system.

Grounds for annulment that involve strictly procedural defects in the initial adoption proceeding are most likely to be invoked by the biological parents of the adopted children, whose rights may have been terminated without adequate

131. *Id.* at *1.

132. No. F039272, 2002 WL 31677027 (Cal. Ct. App. Nov. 26, 2002).

133. *Id.* at *2-3.

134. In the annulment proceeding in *Nicole O.*, the child had been represented by the Department of Social Services, which recommended annulment. The child initiated the appeal from the trial court’s annulment order after she obtained private legal representation. Her claim of ineffective representation in the annulment proceeding was rejected by the court of appeals. 2002 WL 453619, at *6.

135. *See* 2002 WL 31677027, at *1 (identifying the Department of Social Services as a party).

136. ALASKA STAT. § 25.23.140 (2008).

procedural safeguards.¹³⁷ The interests of biological parents in these circumstances may be vindicated under state annulment statutes as well as provisions of the Constitution limiting state interference with parental rights.¹³⁸ By way of contrast, adoptive parents who were the successful petitioners in the initial adoption proceeding are not likely to suffer harm as the result of this type of procedural defect.

Indeed, in most cases arising under modern abrogation laws, adoptive parents have relied upon the grounds of fraud and misrepresentation in the initial adoption proceeding in seeking to annul an adoption.¹³⁹ One category of fraud claims involves an allegation that the agency placing a child for adoption committed fraud by withholding or misrepresenting relevant information about the child.¹⁴⁰ Another significant group of cases involves the claim by an adoptive stepparent that the conduct of his or her spouse, leading to the adoption, was fraudulent.¹⁴¹ For example, in one case “the general tenor of the stepfather’s testimony was that the mother had represented to him that his adoption of [her child] would restore harmony to the marital relationship and put an end to the mother’s legal confrontations with the natural father.”¹⁴² Another adoptive stepfather alleged, as the basis for annulment, that he “was induced to consent to the adoption of [his stepson] as a result of [the mother’s] promise to bear his children.”¹⁴³ And, in a recent case involving the effort of a parent to set aside the adoption of her same-sex partner’s biological child, the annulment petition alleged that the biological mother “was dishonest when she told the [adoption court] that [the petitioner] was her life-long partner, [when] in fact [she] is heterosexual.”¹⁴⁴

Fraud claims like these often receive special deference under state abrogation statutes and from the judges who apply these laws. In this regard, adoption annulment laws follow the model of the general rules of civil procedure in many states, where legislatures and courts have relaxed the usual limits on setting aside

137. See Williams, *supra* note 26, §§ 7[a]-[c] (collecting cases).

138. See 2 HOLLINGER, *supra* note 3, § 2.01[2], at 2-7 to -8.

139. Fraud claims may also be raised by the biological parents of adopted children, for example, by alleging that their consent to adoption was obtained in a fraudulent manner. See 2 HOLLINGER, *supra* note 3, § 8.01[1][b], at 8-8.16 to -8.17.

140. See John R. Maley, Note, *Wrongful Adoption: Monetary Damages as a Superior Remedy to Annulment for Adoptive Parents Victimized by Adoption Fraud*, 20 IND. L. REV. 709, 711-18 (1987).

141. See 2 HOLLINGER, *supra* note 3, § 8.02[3][b], at 8-47 to -49. Fraud claims may arise in other circumstances as well. For example, the New York court in *In re Sohn*, 507 N.Y.S.2d 969 (Sur. Ct. 1986), set aside a stepmother’s adoption of her husband’s children, on the ground that she had misrepresented her intention to rear the children in the orthodox Jewish religion. Notably, the adoptive mother, the father, and the children’s guardian all supported the annulment petition, which was filed after the parents divorced.

142. *C.C.K. v. M.R.K.*, 579 So. 2d 1368, 1370 (Ala. Civ. App. 1991).

143. *In re Adoption of Jason R.*, 151 Cal. Rptr. 501, 503 (Ct. App. 1979).

144. *Mariga v. Flint*, 822 N.E.2d 620, 628 (Ind. Ct. App. 2005).

final judgments for cases involving fraud.¹⁴⁵ This principle enhances the opportunities for adoptive parents, who typically raise fraud claims, in the adoption annulment setting.

One type of statutory preference for fraud-based adoption annulment claims waives the statute of limitations. For example, The South Dakota annulment provision states: “*Except in any case involving fraud*, any proceeding for the adoption of a child . . . shall be in all things legalized, cured, and validated two years after the proceeding is finalized,”¹⁴⁶ apparently permitting fraud claims to be raised at any time. A more limited type of statutory preference involves the creation of a longer limitation period for annulment petitions in cases involving claims of fraud. For example, the Colorado adoption statute establishes a one-year time period to challenge adoptions “in cases of stepparent adoption . . . by reason of fraud upon the court or fraud upon a party,” compared with the ninety day limit for challenges made “by reason of any jurisdictional or procedural defect.”¹⁴⁷

Even in the absence of legislative recognition, the courts may show special deference to adoption annulment petitions involving allegations of fraud. For example, in *M.L.B. v. Department of Health and Rehabilitative Services*,¹⁴⁸ the Florida Court of Appeals allowed the adoptive parents to file an annulment petition five years following a final adoption order based on the alleged fraud of the placing agency in failing to reveal information about the child’s psychological problems.¹⁴⁹ Notably, the Florida statute at that time established “procedural irregularity” as the ground for annulment, without any mention of fraud, and included a one-year statute of limitations.¹⁵⁰ Thus, the court

145. See JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE § 12.6 at 610 (4th ed. 2005) (observing that statutes of limitation may be waived as to “equitable” bases for setting aside judgments, including fraud); RESTATEMENT (SECOND) OF JUDGMENTS § 78 cmt. c (1982).

146. S.D. CODIFIED LAWS § 25-6-21 (1999) (emphasis added); see also ALA. CODE § 26-10A-25(a) (1992) (exempting fraud claims from one-year time limit); CONN. GEN. STAT. ANN. § 45a-24 (West 2004) (barring direct or collateral attack on final orders “except for fraud”); HAW. REV. STAT. ANN. § 578-12 (LexisNexis 1999) (imposing one-year limit on “direct attack upon any ground other than fraud”); LA. CHILD. CODE ANN. art. 1262 (2004) (“No action to annul a final decree of adoption of any type may be brought except on the grounds of fraud or duress.”); N.C. GEN. STAT. ANN. § 48-2-607(a), (c) (West 2000) (exempting fraud claim by biological parent from general rule barring all claims to set aside final adoption order); S.C. CODE ANN. § 20-7-1800 (1985 & Supp. 2008) (“[T]his section [which generally forecloses any direct or collateral attack on final adoption orders] may not be construed to preclude a court’s inherent authority to grant collateral relief from a judgment on the ground of extrinsic fraud [defined as] fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.”).

147. COL. REV. STAT. § 19-5-214(1) (West 2005); see also CAL. FAM. CODE §§ 9102(a), (b) (West 2004) (setting out a three-year time limit for fraud claims and one-year limit for other types of claims).

148. 559 So. 2d 87 (Fla. Dist. Ct. App. 1990).

149. *Id.* at 88.

150. *Id.* The Florida annulment statute applied in the *M.L.B.* case was subsequently amended.

recognized fraud as the basis for an annulment claim, even though it was not set out in the state statute, and waived the one-year statutory time limit.¹⁵¹

Notably, the Florida legislature responded to the decision in the *M.L.B.* case by repealing the “procedural irregularity” provision, and enacting a one-year limit on actions to vacate adoption orders “on any ground.”¹⁵² The legislature apparently intended to affirm the availability of fraud claims, and to simultaneously extend the one-year time limit to all annulment claims, including those based on fraud. The question lingers, however, whether judges will acknowledge the authority of the legislature to impose such a time limit on the inherent, equitable power of courts to cure their own errors in these

See infra text accompanying note 152. A number of state annulment statutes, like the Florida statute applied in *M.L.B.*, refer to any irregularity in the initial adoption proceeding. *See M.L.B.*, 559 So. 2d at 88; ARIZ. REV. STAT. ANN. § 8-123 (2007) (one year time limit); DEL. CODE ANN. tit. 13, § 918 (West 2006) (six month time limit); MO. REV. STAT. § 453.140 (West 2003) (one year time limit); N.C. GEN. STAT. ANN. § 48-2-607(a), (c) (West 2000) (one year time limit as to “any defect or irregularity, jurisdictional or otherwise, in the proceeding” except for claims of fraud by biological parent). Other state annulment statutes refer to “procedural defects” or “jurisdictional defects.” *See* D.C. CODE § 16-310 (2001) (jurisdictional or procedural defect; one year time limit); KY. REV. STAT. ANN. § 199.540(2) (West 2006) (procedural defect; one year time limit); COLO. REV. STAT. ANN. § 19-5-214(1) (West 2005) (jurisdictional or procedural defect; ninety day time limit).

151. *M.L.B.*, 559 So. 2d at 88; *see also* *McAdams v. McAdams*, 109 S.W.3d 649, 651 (Ark. 2003) (permitting adoptive parent’s fraud-based annulment petition to be filed thirty-four years following the adoption, under an abrogation statute providing for procedure-based claims subject to a two-year time limit); *In re Lisa Diane G.*, 537 A.2d 131 (R.I. 1988) (permitting adoptive parents’ fraud-based annulment to be filed five years following adoption, under general family court rule imposing a one-year filing period as to all final court orders).

152. FLA. STAT. ANN. § 63.182(1) (West 2005 & Supp. 2009). A number of state statutes take the same comprehensive approach to regulating annulment actions as the Florida statute quoted in the text. *See* OR. REV. STAT. ANN. § 109.381(3) (West 2003 & Supp. 2008) (“for any reason”; one year time limit); TENN. CODE ANN. § 36-1-122(2) (West 2002) (“[i]n no event, for any reason”; one year time limit); VA. CODE ANN. § 63.2-1216 (2007) (“for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over an person”; six month time limit). A number of the comprehensive state annulment statutes are enactments of the Uniform Adoption Act of 1969, which was not retained in the revised Act of 1994 and provided that

[s]ubject to the disposition of an appeal, upon the expiration of [one] year after an adoption decree is issued the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter. UNIF. ADOPTION ACT § 15 (1969); *see* ALASKA STAT. § 25.23.140 (2004); ARK. CODE ANN. § 9-9-216 (West 2004) (applied in *Pham v. Truong*, 725 S.W.2d 569 (Ark. 1987) to disallow petition for annulment by adoptive father twenty months after entry of adoption decree); N.D. CENT. CODE § 4-15-15 (2004); OHIO REV. CODE ANN. § 3107.16(B) (West 2005).

circumstances.¹⁵³

A related area of judicial activity favoring fraud-based annulment claims embodies the same judicial assumption about inherent power in the courts to correct their own past mistakes. Namely, in states that have no abrogation provision in their adoption codes,¹⁵⁴ the courts may nevertheless entertain petitions by adoptive parents to set aside final adoption orders on the basis of fraud.¹⁵⁵ The Indiana Supreme Court affirmed this judicial authority in the case of *In re Adoption of T.B.*¹⁵⁶ There, the adoptive parents petitioned for annulment five years following the final adoption order, on the ground that the placing agency had failed to disclose the prior sexual abuse of their child.¹⁵⁷ The trial court granted the petition, even though the Indiana adoption code included no provision for setting aside final adoption orders. In affirming the trial court's exercise of jurisdiction, the Indiana Supreme Court stated that "[a]n order granting an adoption is similar to other judgments Consequently, the trial court retained power over its earlier decree of adoption."¹⁵⁸

While applying the general state rule for setting aside any final court order based on fraud at any time, the Indiana Supreme Court in *Adoption of T.B.* acknowledged the unique costs associated with the resulting loss of finality in the adoption context. According to the court, "[a]lthough public policy abhors the idea of being able to 'send the child back,' we recognize that an order of adoption is a judgment and may be set aside pursuant to [the general state rule governing

153. See H.G. Hirschberg, Annotation, *Validity and Construction of Statutes Imposing Time Limitations Upon Actions to Vacate or Set Aside an Adoption Decree or Judgment*, 83 A.L.R.2d 945 § 5 (1962 & Supp. 2007) (collecting cases, primarily involving fraud claims by biological parents, where petitions for annulment were permitted after the statutory period was exhausted). *But see* Susan Kempf LeMay, *The Emergence of Wrongful Adoption as a Cause of Action*, 27 J. FAM. L. 475, 482 (1988-89) (stating that the state statutes imposing time limits on adoption annulment actions "apparently eliminat[ed] the inherent power of courts of general jurisdiction to annul decrees procured by fraud").

154. Approximately one-third of states have no adoption abrogation statute. They are Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, Pennsylvania, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

155. There is no uniform position taken by courts on this jurisdictional issue. Thus, one commentator in the field noted that the courts in some states rely upon the "inherent power of court to set aside its own decree"; while other jurisdictions "hold that the right to set aside an adoption decree must be legislatively provided . . . even in cases of fraud." Maley, *supra* note 140, at 715-16; *see also* Carroll, *supra* note 102, at 160 (noting that in 1985 there were nineteen states without an annulment statute where the courts had exercised annulment authority).

156. 622 N.E.2d 921 (Ind. 1993).

157. *Id.* at 922-23.

158. *Id.* at 923. On the merits, the state high court overturned the adoption annulment order because the relevant standard of fraud required proof of intentional misrepresentation, and the agency in this case had been merely negligent in not learning about the child's abuse in a timely fashion. *Id.* at 925.

vacation of final court orders].”¹⁵⁹ Thus, the court raised a concern about the well-being of the child but concluded, without discussion, that this consideration was not relevant under the abrogation of adoption doctrine.

The grounds for setting aside final adoption orders have consistently ignored the interests of the children who are the subject of abrogation orders. The traditional grounds relating to disability, race, and conduct of the child were concerned with the sensibilities and preferences of the adoptive parents. The focus of modern abrogation laws on problems in the initial adoption proceeding seeks to address the interests of the adult parties and the integrity of the judicial system. Indeed, these interests receive heightened attention in fraud cases, which constitute the large majority of adoptive parent-initiated annulment cases. The failure to assign priority to the well-being of the adopted child under the abrogation of adoption doctrine renders the doctrine unacceptable as an avenue by which parents may seek to terminate their status.

IV. LIMITED CONSIDERATION OF CHILDREN’S INTERESTS UNDER THE ABROGATION DOCTRINE

The Indiana Supreme Court in *In re Adoption of T.B.*¹⁶⁰ acknowledged that allowing parents to “send a child back” following adoption was a prospect that “public policy abhors.”¹⁶¹ The relevant public policy here involves the interest of society in stable families and, especially, the positive impact of stability on the interests of children.

The best interest of the child is a primary consideration under most rules of law governing judicial decisions affecting children, including the voluntary termination of parental rights statutes. As discussed in Part II, parents requesting status termination under these statutes are motivated by the desire to avoid financial responsibility and, in certain cases, the burden of raising a troubled child. The courts rule on each request by assessing the facts and circumstances of the child and the family under the best interest of the child standard.

By way of contrast, the 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. Thus, for example, in *Adoption of T.B.*, the parent-child relationship was judicially terminated, without any consideration of the child’s interests, because the parents were able to prove fraud in the initial adoption proceeding.¹⁶² The parents’ motivation appeared to be the overwhelming responsibility of caring for a child with problems resulting from earlier, undisclosed mistreatment.¹⁶³ 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. The resulting impact upon the child

159. *Id.* at 924.

160. 622 N.E.2d 921 (Ind. 1993); *see also supra* notes 156-59 and accompanying text.

161. *Id.* at 924.

162. *Id.* at 925.

163. *Id.*; *see supra* notes 156-58 and accompanying text.

receives little or no attention under the fraud standard.

There are limited exceptions in the law of adoption annulment to this general observation about the absence of children's interests in the formulation and application of legal standards for terminating adoptive parent-child relationships. For example, the Colorado abrogation statute first sets forth the grounds of "fraud" and "jurisdictional or procedural defect" for setting aside final adoption decrees, and provides the following directive to the courts: "When a final decree of adoption is attacked on any basis at any time, . . . [t]he court shall sustain the [adoption] decree unless there is clear and convincing evidence that the decree is not in the best interests of the child."¹⁶⁴ In other states, courts have sometimes applied the best interests of the child standard in this same limiting fashion, absent a statutory mandate to do so.¹⁶⁵

More often, however, if the courts raise considerations relating to the adopted child, they play a less dominant role in the judicial analysis. For example, in the case of *In re Adoption of B.J.H.*¹⁶⁶ the Iowa Supreme Court ruled on the adoptive stepfather's annulment petition under the state's general provisions for vacating final decrees based on fraud. According to the court,

[A]n additional requirement must be imposed where an adoption decree is the judgment to be vacated. . . . [P]ublic policy requires that we protect the best interests of the children and not annul their adoption for slight cause; on the other hand, judgments should not be sustained when they result from misleading and false circumstances, which would make enforcement unconscionable.¹⁶⁷

In other words, the best interests of the children were not the sole consideration, nor was it an outright limitation on a possible determination of fraud in the case. Rather, in the words of the Iowa court, the analysis under the quoted standard involved the "balance of competing interests."¹⁶⁸

By way of contrast, the courts on occasion have applied the best interests of the child standard to the exclusion of all other considerations.¹⁶⁹ For example,

164. COLO. REV. STAT. ANN. § 19-5-214 (West 2005); *see also* IOWA CODE ANN. § 600A.8(7), 9(3) (West 2001 & Supp. 2008) (imposing a best interest of the child limitation on the ground of fraud as a basis for terminating the rights of adoptive parents under the Iowa termination of parental rights statute).

165. *See* Howard, *supra* note 97, at 561-62 ("[Some courts] use best interests as a limitation on the availability of annulment: no vacation order will issue if it does not serve the child's welfare.").

166. 564 N.W.2d 387 (Iowa 1997).

167. *Id.* at 392.

168. *Id.*; *see also* *In re Adoption of Children by O.*, 359 A.2d 513, 514 (N.J. Super. Ct.) 1976 ("It should be noted that the protection of the natural parents and the adopting parents should be considered along with that of the child.").

169. *See* Howard, *supra* note 97, at 562 ("[Some] courts have recognized the best interest of the child as an independent ground for adoption annulment.").

the Missouri abrogation statute applied in the 1961 case of *In re McDuffee*¹⁷⁰ authorized the annulment of an adoption order based on proof of the child's "venereal infection," "feeble-mindedness," or membership in "a race, the members of which are prohibited by the laws of this state from marriage with members of the race to which the parents by adoption belong."¹⁷¹ The adoptive parents seeking to set aside the two-year-old adoption of their eleven-year-old daughter did not allege any one of these grounds. Rather, they asserted that the welfare of the child, who had emotional health problems, would be served by termination of the parent-child relationship followed by her placement in an institution.¹⁷² The trial court dismissed the petition because the parents had not alleged a statutory basis for annulment. The Missouri Supreme Court reversed, ruling that the general judicial authority to act in the interests of children established jurisdiction here. Thus, "inasmuch as the welfare of the child . . . is ever paramount in *decreeing* adoption, the same principle is likewise a major factor . . . [in] an action to *annul* thenceforward a prior valid decree of adoption."¹⁷³ On the merits, the Missouri Supreme Court in *McDuffee* made its own determination that "the petition . . . is clearly insufficient The record in this case shows that the natural parents abandoned their child. It cannot now be in the best interest of that child that a court of equity, on petition of its adoptive parents, decree it a similar fate."¹⁷⁴

This analysis is similar to the judicial analysis in cases arising under the state termination of parental rights statutes, discussed in Part II, that regularly employ a best interests of the child standard. That is, the *McDuffee* court asserted authority to terminate the parent-child status, upon the parent's request, but only if the court determined on the facts of the case that the child's interests would be served by this result.¹⁷⁵ The crucial difference is the absence of any statement of the best interests standard in the Missouri abrogation statute and its counterparts in other jurisdictions. As a result, in most cases, parents do not plead and courts do not apply the best interests of the child standard when parents seek to annul an adoption.

The absence of concern for the future well-being of the child in abrogation doctrine is revealed not just in the typical statutory standards for judicial decisionmaking, but also in the failure to address the child's future disposition in the event of abrogation.¹⁷⁶ The disposition issue is critical if both adoptive parents seek the annulment or if the adoptive parent individually seeking

170. 352 S.W.2d 23 (Mo. 1961).

171. *Id.* at 25 (citation omitted).

172. *Id.* at 24.

173. *Id.* at 27.

174. *Id.* at 27-28; *see also In re Adoption of G.*, 214 A.2d 549, 552 (Monmouth County Ct. 1965) (applying best interests standard, in the absence of a state abrogation statute, to deny the petition of adoptive parents of a child with severe disabilities).

175. *In re McDuffee*, 352 S.W.2d at 28.

176. *See Carroll, supra* note 102, at 176 ("Few courts have addressed the issue of what happens to the children once an abrogation is granted.").

annulment is the child's sole parent. In these situations, setting aside the adoption would leave the child with no remaining parent. Generally speaking, two dispositional avenues exist in these circumstances. The child may be moved into the custody of the state¹⁷⁷ or the judge abrogating an adoption may reinstate the custodial arrangement that predated the child's adoption. In most cases, the pre-adoption custodians were the biological parents¹⁷⁸ or a public or private adoption agency.¹⁷⁹ The absence of any consistent inquiry into the matter of the child's disposition in the abrogation statutes and judicial opinions reinforces the inevitable conclusion that the legal focus is not on the child's welfare. By way of contrast, the question of what will happen to the child in the event that parental custody is disrupted plays a key role under the termination of parental rights statutes included in the state child welfare codes.¹⁸⁰

In the case of *In re Welfare of Alle*,¹⁸¹ the Minnesota Supreme Court highlighted the divergent foci of that state's adoption annulment and termination of parental rights statutes. In *Alle*, the adoptive stepfather filed a petition under the termination of parental rights provision of the Minnesota child welfare code.¹⁸² The trial court granted the stepfather's petition, over the objections of the custodial mother and the children's guardian ad litem. On appeal, the Minnesota Supreme Court reversed the termination order, stating, "it [cannot] be said that it is in the best interests of the children that their adoptive father's parental rights be terminated"¹⁸³—a necessary finding in the child welfare system.

177. See, e.g., CAL. FAM. CODE § 9101 (West 2004) ("If an order of adoption is set aside . . . , the court . . . shall direct . . . county [officials] . . . to take appropriate action under the Welfare . . . Code. . . . The county in which the proceeding for adoption was had is liable for the child's support until the child is able to support himself or herself.").

178. See, e.g., IOWA CODE ANN. § 600A.9(3) (West 2001 & Supp. 2008) (authorizing "termination of the adoptive parent's parental rights . . . upon a showing that the adoption was fraudulently induced . . . only after the [biological] parent whose rights have been terminated is given a opportunity to contest the vacation of the termination order"); *C.C.K. v. M.R.K.*, 579 So. 2d 1368, 1371 (Ala. Civ. App. 1991) ("[W]hen the [adoption] court set aside the adoption, it also annulled the consent that was given by the natural father . . . [who] . . . remains the legal father . . . and resumes responsibility for child support as of the date of entry of annulment."); *In re Welfare of Alle*, 230 N.W.2d 574, 577 (Minn. 1975) (directing the trial court in considering stepfather's claim for adoption annulment based on fraud to "determine, first, whether the natural father was a party to the fraud . . . , and, secondly, if so, whether it be in the best interests of the children to have their parental relationship with their natural father restored. If the trial court so holds, those rights and obligations may be re-established.").

179. See, e.g., *In re Anonymous*, 285 N.Y.S. 827, 829 (N.Y. Sur. Ct. 1936) (stating, "let the child be returned to the New York Foundling Hospital, the institution from whence she came" upon abrogation of a six-year-long adoption based on the child's "misconduct").

180. See CLARK, *supra* note 5, § 9.4, at 359.

181. 230 N.W.2d 574 (Minn. 1975).

182. *Id.* at 576.

183. *Id.*

At the same time, however, the Minnesota Supreme Court remanded the case back to the trial court to consider whether the earlier adoption order should be annulled, a matter that had not been raised in the father's pleadings. In shifting the analysis to the abrogation doctrine, the *Alle* court also shifted the discussion away from the children's interests. In remanding the case, the court observed that "[t]he trial court based its findings on the motivations and circumstances attendant upon the original adoption proceeding."¹⁸⁴ Thus, "if [the stepfather] is able [on remand] to sufficiently demonstrate that the original adoption decree was obtained fraudulently, then he should be entitled to relief [which] may consist of a direct vacation of . . . the adoption decree that established [his] legal rights and obligations."¹⁸⁵ The *Alle* court understood that the father had two potential avenues to seek to terminate his status and that only one involved the best interests of the children as the primary standard.¹⁸⁶

The abrogation doctrine results in unequal treatment for adopted children vis-à-vis their biological counterparts, for whom protection under the best interests of the child standard is always available. This result is inconsistent with the general goal of adoption laws, as set out in the Connecticut statute, that the adopted child "shall be treated as if [he or she] were the biological child of the adopting parent, for all purposes."¹⁸⁷ Adopted children, like biological children, deserve the protection of rules that focus on their well-being by requiring a court to consider all of the circumstances of the child and family. As a standard for governing the termination of established family relationship, the abrogation of adoption doctrine is an unfair and discriminatory doctrine, which should be abolished.¹⁸⁸

The remaining justification for the adoption annulment doctrine arises under the procedural strand of the theory. The assumption is that courts must have the authority to set aside their own orders, including adoption decrees. The next Part of this Article challenges this assumption and the resulting procedural

184. *Id.*

185. *Id.* at 577.

186. See also *In re Adoption of T.B.*, 622 N.E.2d 921, 925 (Ind. 1993) (reversing annulment order based on fraud, and denying mother's standing to raise issue of child's best interests under the termination of parental rights provision of the child welfare code); *In re B.L.G.*, 731 S.W.2d 492, 499 (Mo. Ct. App. 1987) (ruling that "[t]estimony seeking to cast doubt upon the validity of the . . . adoption decree had no proper place in [the termination] proceeding" where the sole standard was the best interests of the child); *State ex rel. R.N.J.*, 908 P.2d 345, 346, 351-52 (Utah Ct. App. 1995) (involving adoptive stepfather's dual claims for termination of his status: the first, arising under abrogation theory, was dismissed with prejudice by the trial court; the second, arising under parental termination theory, was denied on appeal under the best interests standard), *superseded by statute, as stated in In re E.H.H.*, 16 P.3d 1257 (Utah Ct. App. 2000).

187. CONN. GEN. STAT. ANN. § 45a-731(1) (West 2004); see also *supra* note 4 and accompanying text.

188. See ALSTOTT, *supra* note 21, at 6 ("Society's 'Do Not Exit' command to parents is grounded in a deep and appropriate commitment to human dignity and equality. . . . Every child deserves a parent who will not exit.").

justification for the abrogation doctrine.

V. JUDICIAL POWER TO SET ASIDE FINAL ADOPTION ORDERS

The abrogation of adoption doctrine involves two intertwined strands of legal regulation. The first, discussed above in Parts III and IV, is the establishment of grounds for the termination of parent-child relationships. The second, discussed in this Part, involves the setting aside of a prior court order.

Every adoptive parent-child relationship is created by court order, and the annulment procedure for terminating such a relationship involves a subsequent court order vacating the adoption decree. The continuing existence of the abrogation doctrine in modern law is premised on the assumption that a vacation doctrine in this setting is a necessary corollary to the court-ordered adoption model. This assumption is reflected in the statutory grounds for adoption annulment, discussed in Part III, which reiterate the grounds, such as fraud, mistake, and procedural error, for vacating court orders under general state rules of civil procedure. The fact that adoptive parent-child relationships are created by judicial decree does not necessitate a legal doctrine that entitles adoptive parents to petition to set aside final adoption orders.

In every state, general rules of civil procedure set out the grounds for and time limits on setting aside any final court order in limited, exceptional circumstances.¹⁸⁹ As a starting premise, final judicial orders are beyond challenge in most circumstances. This principle protects the well-defined interests of parties affected by court orders and the public in the finality of matters that have been earlier resolved in the courtroom.¹⁹⁰ Exceptions to this principle of finality have been created by state lawmakers for cases where the interests of justice appear to require the vacation of a final order based on certain defects, such as fraud or procedural error in the initial proceeding.¹⁹¹ Professor Friedenthal summarized the balancing of interests that occurs in the formulation of legal rules in this context as follows:

The question of when to allow relief from a judgment is difficult because it requires the delicate balancing of two opposing principles: the important goal of finality requiring that there be an end to litigation, and the desire to render justice in individual cases. . . . American courts typically have given greater weight to finality in this hierarchy of values.¹⁹²

189. The comprehensive codes of civil procedure in many states, including provisions for the setting aside of final court orders, are patterned after the Federal Rules of Civil Procedure. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 78 cmt. a (1982). *See generally* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §§ 2851-73 (2d ed. 1995) (discussing Rule 60 regarding relief from final judgments).

190. FRIEDENTHAL ET AL., *supra* note 145, § 12.6, at 608 (“[T]he important goal of finality requir[es] that there be an end to litigation.”).

191. *Id.*

192. *Id.* § 12.6, at 608-09.

Adoption annulment statutes apply this general concept of finality, and create exceptions to it, in the setting of parent-child relationships.¹⁹³

However, the general principles that support the formulation of vacation rules in civil litigation, under which the interests of justice in exceptional circumstances outweigh the presumption of finality, have little or no relevance in cases where the adoptive parent seeks to annul an adoption. Adoption proceedings differ from other types of civil litigation in ways that render the usual concerns addressed by the rules for vacating final court orders less compelling. Here, the interests of the child, the family and the state in finality should prevail.

The typical lawsuit governed by the general rules of civil procedure involves adversarial parties appearing in court over a contested issue, with each side presenting evidence to support its position and the court rendering a decision. This adversary model of litigation is designed to assure that a just result is reached, based on the fair participation of all parties. In this context, the rules for vacating final orders enable the losing party to set aside the order of the court sometime later if a specific defect in the lawsuit, such as mistake, fraud, or procedural error, destroyed that party's right to fair participation.

By way of contrast, the parent whose petition to adopt a child was granted by the court can hardly be characterized as the losing party in a civil litigation. Protections for unsuccessful litigants, who may have lost their case due to a defect in the litigation process, have no application here.¹⁹⁴

Judicial adoption proceedings are initiated by the prospective adoptive parent. Most often, no party opposes the prospective parent's petition to adopt.¹⁹⁵

193. Professor Friedenthal observed that, in addition to general rules of civil procedure, the state legislatures may enact "special statutes [that] authorize specific procedures for seeking relief from certain types of judgments." *Id.* at 609. See also 11 WRIGHT ET AL., *supra* note 189, § 2869 (cataloguing federal laws that fall into this category of "special statutes"). The adoption code provisions that set forth specific grounds and procedures for setting aside an adoption decree fall into this category of specialized rules. Where enacted, the adoption annulment provisions preempt the general rules of civil procedure. See, e.g., *In re Adoption of Hemmer*, 619 N.W.2d 848, 850 (Neb. 2000). In *Hemmer*, the court ruled that a general provision "grant[ing] a county court the general power to modify or set aside its orders" was not applicable in an adoption annulment case, because "[s]pecific statutory provisions relating to a particular subject control over general provisions." *Id.* at 849-50.

194. See generally Lynne D. Wardle, *A Critical Analysis of Interstate Recognition of Lesbian and Gay Adoptions*, 3 AVE MARIA L. REV. 561, 583 (2005) (observing that "[a]doption proceedings are almost *sui generis*—unlike almost any other judicial proceedings . . . [and] are not normally adversary proceedings," so general rules of interstate recognition need not be extended to adoption orders).

195. Although certain adoption proceedings are labeled contested adoptions, the contest refers to the objection of the biological parent to the judicial termination of his or her rights, which is a prerequisite to judicial consideration of the adoption petition. See 2 HOLLINGER, *supra* note 3, § 8.02, at 8-11 to -33.

The general standard applied by the court in deciding whether to grant the adoption petition is the best interest of the child.¹⁹⁶ In applying this standard, the court has the ultimate responsibility to make sure that relevant evidence regarding the circumstances of the child and the prospective adoptive placement is taken into consideration.¹⁹⁷ In addition, the court is responsible for informing the petitioning parent about the nature of the parent-child relationship, including its permanence in the eyes of the law.¹⁹⁸

If subsequent evidence reveals that a final adoption order was based on fraudulent or misleading evidence, the interests of the child should remain paramount in establishing rules to address any harm to the adoptive parent resulting from the tainted proceeding. Specifically, the question whether mistakes made by the adoption court should be corrected by severing the adoptive parent-child relationship can be raised under the termination of parental rights statute within the state child welfare system, where judicial determinations are based on the best interests of the child.

To the extent that the adoptive parent suffered harm by virtue of the fraudulent conduct of another party or other error in the adoption proceeding, setting aside the final adoption decree is an inappropriate remedy. By way of analogy, fraud claims have been raised from time to time by biological fathers who believe that their entry into parenthood was the result of fraudulent conduct by the mother, such as her misrepresentation about the use of contraceptives.¹⁹⁹ The courts in such cases have not set aside the legal parent-child status between father and child as a remedy for fraud.²⁰⁰ This result reflects the importance assigned to the stability of established family ties, even in the face of fraud claims by a reluctant parent.²⁰¹

As discussed in Part III, most annulment claims by adoptive parents fall into one of two categories. The first involves the adoptive stepparent who seeks to terminate the parent-child relationship following divorce from the child's custodial parent; the second involves the adoptive parent who alleges fraud by

196. *Id.* § 1.01, at 1-3 to -8.

197. *See, e.g.*, UNIF. ADOPTION ACT §§ 3-601 to -603 (1994) (requiring court-ordered evaluation of adoptee and prospective adoptive parents).

198. *See, e.g., id.* § 3-705(a)(8) (1994).

199. *See* WEISBERG & APPLETON, *supra* note 76, at 1138-39 n.4 (collecting journal articles on this topic).

200. *See id.* at 1138 n.3.

201. The termination-of-family-relationship remedy based on fraud is readily available in another legal context. Namely, state annulment laws generally establish fraud by one spouse as a ground for annulment of the marriage by the other partner. *See* JOHN DE WITT GREGORY ET AL., UNDERSTANDING FAMILY LAW § 2.08[G], at 60-62 (3d ed. 2005). In this context, however, the fraudulent actor is one of the parties to the legal relationship being terminated as a remedy for such unlawful conduct. By way of contrast, in the adoption annulment setting, the parent seeks to terminate the parent-child relationship based on the fraud of a third party, not the child. The impact of relationship termination upon the child easily distinguishes the adoption annulment doctrine from the laws permitting marriage annulment based on fraud.

the individual or agency that placed the child for adoption.²⁰² To the extent that fraudulent misrepresentations by the custodial parent or an agency give rise in some cases to an equitable claim by the defrauded parent, the appropriate remedy would be damages. This remedy would adjust any cognizable inequity between the parties resulting from the unlawful behavior of one of them. Rescission of the adoption order, on the other hand, dramatically impacts the adopted child, who was not a party to the fraud alleged by the adoptive parent.

The realization that damage remedies are superior to the setting aside of final decrees in the adoption context finds expression in the wrongful adoption doctrine. The doctrine, which emerged in the 1980s, creates a damage remedy in cases where adoptive parents can establish harm resulting from the failure of an individual or agency who placed their child without revealing critical information about the child's physical, mental or emotional condition.²⁰³ If the elements of the wrongful adoption tort can be established, the doctrine entitles the parent to damages from the fraudulent party as a remedial alternative to adoption annulment. Several scholars commenting on the wrongful adoption doctrine have taken the position, reiterated here, that adoption annulment is not an appropriate remedy for the parent who was "defrauded" in these circumstances at the time of the adoption.²⁰⁴

Besides the interests of individual litigants, the rules that generally allow for setting aside final court orders are also intended to vindicate the interests of the court and the judicial system.²⁰⁵ In fraud cases, the court is able to purge the fraud that tainted an earlier proceeding and the judicial system, by subsequently vacating the resulting order. The position taken here is that these institutional interests are not sufficiently weighty to disrupt the parent-child relationship established by an adoption decree when the adoptive parent raises a fraud claim after the adoption order is final.

As compared to most civil court orders, the impact of an adoption order is extraordinary. It creates individual rights and duties and impacts family relationships and social structures. The court's failure to perceive fraud in the initial adoption proceeding, such as misrepresentation by a social service agency or misrepresentation by a custodial parent, does not justify a subsequent action

202. See *supra* notes 139-44 and accompanying text.

203. See generally MABRY & KELLY, *supra* note 28, at 731-36; Danielle Saba Donner, *The Emerging Adoption Market: Child Welfare Agencies, Private Middlemen, and "Consumer" Remedies*, 35 U. LOUISVILLE J. FAM. L. 473 (1996-97); LeMay, *supra* note 153; Maley, *supra* note 140.

204. See Donner, *supra* note 203, at 510-13; LeMay, *supra* note 153, at 482-83; Maley, *supra* note 140, at 717-18.

205. See *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246 (1944) (stating that the extreme fraud perpetuated in that case constituted "a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society"), discussed in 11 WRIGHT ET AL., *supra* note 189, § 2870).

initiated by the adoptive parent to set the adoption aside.²⁰⁶

CONCLUSION

This Article made the case for abolishing the doctrine of adoption annulment. The proposed reform would leave adoptive parents in the same position as biological parents with respect to legal avenues for terminating their status: relief would be available only under the state termination of parental rights statutes.

Several additional recommendations accompany the basic reform proposal in this Article. First, public and private family support programs must be enhanced. Second, the termination of parental rights statutes in every state should clearly extend standing to parents outside the contexts of a dependency proceeding under the child welfare code or a pending adoption. Third, the best interests of the child standard should continue to govern the judicial analysis of such parent-initiated termination petitions.

Permanence in legal parent-child relationships is the norm in the field of family law. Nevertheless, cases arise where termination of the status, initiated by the parent, serves the interests of the child, the family, and the public. Such cases should be resolved by the courts applying the best interests of the child standard under state termination of parental rights laws.

206. See generally Wardle, *supra* note 194, at 588-89 (arguing that the nature and lengthy duration of the relationships established by an adoption decree justify the nonapplication of interstate recognition rules in this area).