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GLORIOUS BASTARDS: THE LEGAL AND CIVIL BIRTHRIGHT OF ADOPTEES TO ACCESS THEIR MEDICAL RECORDS IN SEARCH OF GENETIC IDENTITY

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*146 Introduction

On a cold winter day in 1979, a teenager gave birth to a baby girl in a New York hospital, and immediately relinquished her. The hospital issued a certificate of birth, identifying the infant as "Baby Grafton." [1] The baby spent four days alone in the hospital until she was delivered to a married couple, per the terms of a pre-arranged private adoption.

A family law attorney administered the placement of Baby Grafton with her adoptive parents. In keeping with the trend of the time, the adoption was closed. [2] The birth parents and adoptive parents had neither contact with one another, nor any exchange of identifying information, including documentation of the genetic history of the birth parents. [3] The only contact occurred when the adoptive parents learned that the eight-months-pregnant birthmother had yet to visit a doctor, and they offered, via the attorney, to pay for her healthcare until she gave birth. Upon completion of Baby Grafton's adoption, in accordance with New York state law, her original birth certificate was sealed and a replacement certificate was issued. [4] The new birth certificate contained the surname her adoptive parents gave her, as well as the family name. All genetically identifying records were then permanently sealed.

When implementing statutes that facilitate adoption, lawmakers often lose sight of the fact that adopted children grow into adults who have questions about their biological pasts and genetic futures. Adults who were adopted through closed proceedings almost never have these questions answered, because their original birth records are permanently sealed upon the legal transfer of parental rights. [5] Currently, only six *147 states give adult adoptees unrestricted access to their records. [6] Although many states have statutory provisions which grant adoptees conditional access to their birth parents' medical history, adoptees must meet high legal standards in order to gain such access, and are often denied. [7]

One of the reasons for issuing new birth certificates stems from the idea that upon adoption, biological ties are severed and a new life begins. [8] Indeed, a new life is a desired and realistic result of adoption. By nature of the process, the parties involved are given the chance to live lives they might not have led otherwise. The bond between an adopted child and his or her adoptive parents can be just as strong as a biological parent-child relationship. However, the genetic connection between adoptees and their birth parents can never be superseded.

I was born Baby Grafton and adopted by my parents four days later. Genetically, I was not a blank canvas before they adopted me. I spent eight months in the womb before being checked on by a doctor, and shortly after my adoption I was misdiagnosed with cystic fibrosis, *148 an incurable hereditary disease that causes progressive disability and leads to premature death. [9] I was in the legal custody of my parents, who did not have any medical history relating to my biological family.

A significant argument for full disclosure of adoptees' medical information is that it can provide guidelines for correct diagnosis and treatment of adopted children. [10]

Although my life truly began on the day I met my parents, the genetic connection to my birth parents is inescapable. I am confronted with it every time I look in the mirror and cannot find a single feature in anyone else in my family. Beneath the surface, I am challenged by a lack of knowledge about my biology. Visits to doctors yield the same frustrating routine because their questions about my parents' medical histories are irrelevant to me, and I have no idea what conditions I might be genetically predisposed to.

Many people assume that adoptees who seek information about their genetic identities are maladjusted, anti-adoption, or ungrateful. [11] This could not be farther from the truth in my case; still, adoptees' rights to access their records are in dire need of restructuring for several reasons. First, many of the statutes regulating adoption are built on outdated concepts of illegitimacy as a shameful badge that needs to be hidden. [12] Second, many of the confidentiality policies enacted to safeguard adopted children end up conflicting with adoptees' best interests upon entering adulthood. [13] Third, adult adoptees must *149 establish "good cause" in order to access their biological parents' medical histories, where such statues are applicable. [14] This legal standard presents an untenable threshold which few adoptees meet unless they are suffering from extreme medical conditions--and even then, there is no guarantee of disclosure. [15] Fourth, federal courts have held that the right to privacy does not extend to birthparents, yet this right is frequently used as a tool to justify the continued denial of medical information to adoptees. [16] Finally, the want of adoptees to gain access to such vital and personal knowledge about themselves could be de-stigmatized if laws reflected a more modern view of adoption, rather than outdated notions of socially acceptable familial structure. [17]

Part I of this Note illustrates how adoption evolved in the United States, why adoption became shrouded in secrecy, and why the rationale for secrecy is obsolete. Part II examines the current domestic law regulating adoptees' rights to access their medical records, with a particular focus on New York law. Part III explores the constitutional issue of denying adoptees' access to their genetic identity, and how this denial conflicts with the fundamental right to privacy and the Equal Protection Clause of the Fourteenth Amendment. Part IV explains why disclosure of genetic information is important to the integrity of adoption, and how it is possible. Finally, this Note sheds light on the issue from the prospective of an adoptee familiar with the process.

I. The Evolution of Adoption

A. The Concept of Adoption

Adoption occurs when an adult who is not a child's biological parent becomes the child's guardian and acquires parentage through a formal process. [18] The legal relationship that results between the adoptee and the adoptive parent terminates any legal relationship to the *150 biological parents. [19] There are generally two kinds of adoptions: open and closed. [20] In an open adoption, the birth parents may decide who their child's adoptive parents will be. [21] The birth parents may maintain contact with the child after the adoption is formalized. [22] In a closed adoption, however, the parties involved remain anonymous to one another and the birth parents relinquish the child to the state, thereby releasing their right to select adoptive parents. [23]

Individuals wishing to adopt may do so through a public or private agency (although both generally adhere to the same state statutory laws), or independently, either through the biological parents or a third-party attorney. [24] In all scenarios, potential parents must petition the court to grant the adoption, in part by demonstrating that the adoption is in the child's "best interest." [25] If the court agrees, the legal adoption process can proceed. [26]

This formal procedure did not become a part of American law until the mid-nineteenth century, when Massachusetts enacted the first adoption statute in 1851. [27] Until then, adoption was a less formal process by which an individual, typically a relative, would take over care for a child. [28] The notion of conveying parental rights further developed when the United States was left with an abundance of orphans in the wake of the Civil War, and again after World War I, where the increase of orphaned children coincided with the development of a feeding formula for newborns, so they could be bottle-fed rather than nursed. [29] Additionally, the dawn of industrialization produced an increase in immigration to cities, where families often found themselves unable to financially support their children and had to transfer parental responsibility to others. [30]

The statutory developments that coincided with the adoption boom *151 were advantageous because they made previously informal family bonds lawfully protected. [31] Adoption became a legally recognized process that gave the parties involved the promise of bright futures: parents who were unable to conceive fulfilled their dreams of having children; birthmothers were given a second chance at life; and children were given opportunities that otherwise might not have been available to them. But below the surface, the dark stigma of illegitimacy infiltrated society and the trend towards closed adoptions began. [32]

B. When and Why Adoption Became Shrouded in Secrecy

Early adoption statutes neither contained confidentiality provisions, nor referred to the sealing of birth records. [33] They were implemented in order to legally solidify the relationship between children and their adoptive parents. [34] Prior to the 1930s, these laws did not address the issue of maintaining the privacy of birth parents. [35] Depression-era laws developed the idea of "amended" birth certificates, in which the names of the adoptee's biological parents were substituted with the names of the adoptive parents. [36] These changes were implemented in a time of growing distaste towards out-of-wedlock birth. [37] Post-World War II, adoption agencies reported hostile attitudes towards illegitimacy, and general unease over bringing babies of unknown heritage into otherwise "normal" households. [38] This cultural shift permeated state statutes, as regulations moved away from legally solidifying adoptions, towards protecting the parties involved from embarrassment regarding the origins of the adoptee. [39]

State statutes eventually required that all adoption records be sealed from the public, in order to shield the adoption process from public scrutiny. [40] Between the mid-twentieth century and the 1980's, all but three states enacted laws that permanently sealed adoption *152 records. [41] Embedded in these statutes were legal hurdles adoptees would face when they later sought to reopen them. What began in 1851 as a legal process designed to ensure the "best interests of the child" became a procedure so cloaked in secrecy, it prohibited adults from accessing records about their own adoptions. [42] Strangely enough, nowhere in any of these new laws was a reference to the need to protect birth parents' privacy. [43]

C. Why the Need for Secrecy is Obsolete

Paradoxically, following the trend towards closed adoptions, society evolved away from the idea that women having babies out of wedlock was morally shameful. [44] Social attitudes changed drastically in the 1960s and 1970s as a result of considerable political, social and moral changes, and a civil rights movement towards open adoptions began. [45] The stigma attributed to out-of-wedlock birth began to fade, as more unmarried women kept their babies. [46] During this time there was also an increase in divorce rates, which contributed to the societal acceptance of single parenthood. [47] As the shame associated with illegitimacy diminished, the need to seal birth certificates in order to protect adoptees became obsolete. [48]

New York was one of many states to enact a statute that reflected the social revolution of this era. [49] Influenced by adult adoptees who wanted access to information about themselves, *153 Public Health Law section 4138 declared that adoption records should be made available to the private parties involved in an adoption. [50] This statute allowed for non-identifying disclosure of the genetic characteristics of the biological parents, so that adoptees could access this information while maintaining the birth parents' anonymity. [51] Although this was a step forward in recognizing the needs of adult adoptees, the statute contained provisions which restricted the rights of adoptees to utilize it. [52]

Presently, most states require that adoption records be kept permanently sealed and opened only by court order. [53] The prevailing modern justification for these confidentiality provisions is the protection of birth parents' privacy. However, while searching historical records during the time adoption became shrouded in secrecy, legal and social commentators have not found a single discussion of a need to protect birth parents from adoptees who seek information about their birth families. [54] Indeed, the need to protect unwed mothers and illegitimate children from public scorn is an outdated notion that has been superseded by modern views on families and parenting. If birthparents' right to privacy is not a fundamental rationale for confidentiality provisions, it is irrational to use that right as a contemporary justification for inhibiting adoptees from accessing their genetic identity.

II. Current Laws Regulating Adoptees' Rights to Access Medical Records

Although federal laws provide guidelines and standards pertaining to adoption, regulation of the process is predominantly governed by states. [55] In forty-four states, adoptees have to hurdle over legal *154 obstacles to access their genetic history by proving “good cause” to unseal records while offering a “compelling need” for disclosure. [56] Ironically, these legal barriers are entrenched in statutes that were initially enacted in the “best interest” of adoptees. [57]

A. Statutory Restrictions

Most jurisdictions employ statutes that prohibit adoptees from accessing their original birth certificates. [58] Many jurisdictions will give adoptees non-identifying information about their birth parents that has been extracted from their adoption records; however, because these statutes are applied retroactively, this information is limited to whatever was available at the time of the adoption. [59]

For example, in Florida, non-identifying information, including family medical history of the birth parents, is given to the adoptive parents before the adoption becomes final "and to the adoptee, upon the adoptee's request, after he or she reaches majority." [60] The only information an adoptee could have access to, under this statute, is what was provided by the birth parents at the time of adoption--which could be outdated by the time the adoptee reaches majority. [61] Adoptees who seek non-identifying medical information that is not contained in their *155 adoption records will hit a dead end unless they petition the court, for "good cause shown," to "appoint an intermediary or a licensed child-placing agency to contact a birth parent" for information. [62] Because Florida permanently seals the original birth certificates of adoptees, if the intermediary is unable to contact the birth parents, or the birth parents do not wish to release any information, adoptees have little recourse after this step. [63]

In New York, Domestic Relations Law section 114 states that if available medical information has been provided at the time of the adoption, it shall be included with the adoption papers filed with the court. [64] Such medical information may include: "diseases believed to be hereditary"; any drugs taken by the birthmother during pregnancy; and other information that might influence a child's "present or future health." [65] This data, however, is to be kept sealed by a judge and withheld from further inspection, unless an adoptee demonstrates "good cause" for disclosure. [66]

*156 "Certification from a physician licensed to practice medicine" in New York, stating that access to medical information on file is "mandatory" due to an adoptee's "serious physical or mental illness" is considered "prima facie evidence of good cause." [67] However, the certification is only evidence, and it is not conclusive. [68] Even in situations where adoptees demonstrate proof of a serious illness, disclosure authorized by a judge is not guaranteed. [69] Further, adoptees who are not "seriously" and certifiably ill, but who simply wish to know their genetic history, generally fail to meet this burden. [70] For many adoptees, these statutory regulations leave only one recourse for updated and sufficiently detailed genetic information: their biological parents. And no statute anywhere in the country requires biological parents to provide adoptees with this information--even through a third-party intermediary.

B. Judicial Interpretation of the "Good Cause" Requirement

Aside from statutory means, adoptees have another avenue by which they may attempt to access their genetic records: arguing their case before a judge. [71] Starting in the late 1970s, there was an increase in the number of adults who petitioned the courts to unseal their adoption records. [72] There was no black letter definition of what constituted "good cause" to open records. [73] As a result, interpretation *157 of this clause was often in the hands of a judge and courts were in conflict as to whether statutes which restricted the release of information were fair. [74]

The majority of adoption statutes that grant judges permission to unseal records vary by jurisdiction in their requirements, but judges continue to demand that adoptees prove "good cause," "exceptional circumstances," or "compelling" reasons for disclosure. [75] Countless cases highlight the problem in giving judges this much discretion. For example, in Golan v. Louise Wise Services, an adoptee filed a motion to examine the medical records of his biological parents. [76] He enjoyed a successful career as an airline pilot, yet he developed a rare hereditary heart condition that threatened to end his career if he did not seek proper treatment. [77] The judge believed that

the success of adoption depended on the preservation of privacy for biological parents. [78] Arguing that the opening of medical records could threaten this privacy, the judge held that the petitioner did not satisfy the "good cause" requirement and could not access the medical information he needed. [79]

In spite of his holding, the judge considered in his opinion the medical dangers many adoptees face, in the absence of information regarding potential genetic diseases. [80] The judge acknowledged that disclosure of medical conditions such as diabetes, heart disease and cancer would be desirable to adoptees for treatment. [81] However, he concluded that a law which automatically granted disclosure to adoptees confronted with medical conditions would "swallow" the state's public policy against disclosure. [82] The judge then suggested that the adoptee seek the help of a guardian ad litem in order to correspond with his biological parents, as an alternative way of getting information--even though the adoption agency had stated on the record that it had been *158 unsuccessful in tracking them down. [83]

Courts have also denied requests for information based solely on curiosity about genetic design. [84] In Sandra L.G. v. Bouchey, the adoptee petitioner argued that there could have been a genetic factor in her background which might have predisposed her to a medical problem, and that she had a right to know either way. [85] She cited an interest in birthing children as one reason for her inquiry. [86] The court denied her petition, holding that mere curiosity about one's genetic identity was not sufficient "good cause" to warrant access to medical records. [87]

Interestingly, the judge in this case also mentioned the medical dangers faced by adoptees who were unaware of their genetic make-up. [88] The judge recognized that nearly 11% of childhood deaths were due to genetic diseases; however, he stated that from "time immemorial," biological parents were assured that their identities would be kept anonymous as an "inducement toward surrendering their children." [89] The historical record of adoption, as discussed above, indicates that this is simply not true--yet the judge denied the petitioner access to her medical records in light of this assurance. [90]

In contrast with the Sandra decision, in Chattman v. Bennett, the Supreme Court of New York, Appellate Division, Second Department held that a woman's concern over a potential genetic disposition, when considering whether to start a family, constituted "good cause" for gaining access to medical information contained in her adoption records. [91] Further, the court believed that medical information concerning adoptees should be freely disclosed to them. [92] Although this decision was a huge step forward for adoptees, decisions regarding adoption are made on a case-by-case basis and therefore have limited precedential value. [93] The holding does, however, illustrate the fickle definition of what constitutes "good cause" to access genetic information.

Judges across the United States are often caught in the middle, *159 weighing the psychological need and demonstrated trauma of adoptees against the potential invasion of privacy to biological parents. For instance, one New Jersey judge came close to holding that a psychological need for medical information constituted "good cause" after considering expert testimony which revealed that much of the emotional trauma demonstrated by adoptees, as a result of being surrendered by their birth parents, was often manifested in physical conditions. [94]

The judge was more concerned, however, over how adoptees might handle information if it were disclosed to them. [95] He felt if adoptees discovered the identities of their birth parents, they might make repeated and invasive steps towards tracking them down to get medical information. [96] This concern was based solely on testimony given by a handful of adoptees who stated that if initially rejected by a biological parent, they might consider reaching out again. [97] He ultimately held that in the interest of birthparent privacy, the adoption records could not be unsealed. [98]

In one Iowa case, an adult adoptee who suffered from severe depression petitioned the court to unseal his adoption records so he could obtain medical information pertaining to his biological parents. [99] He wanted to know if his depression was hereditary, because he was concerned about the potential threat to the mental health of his biological children. [100] The judge noted that although other courts had found mental illness to be good cause for disclosure, the good cause requirement carried a high burden which had to be weighed against the biological parents' "vital" need for anonymity. [101] Although the petitioner had undergone extensive treatment for a serious mental illness, the judge denied his petition and raised the legal threshold by holding that "good cause [includes] no less than a showing of a medical need to save the life of, or prevent irreparable physical or mental harm *160 to an [adoptee]." [102]

The "good cause" requirement has thwarted adoptees for decades. As demonstrated by case law, the fate of many adoptees rests solely in the hands of a judge who may or may not sympathize with their situations, nor understand the weight of their medical needs, both physical and psychological. [103] Adoptees who are seemingly healthy but curious about their identities are denied access, as are adoptees who demonstrate a need for medical information based on substantial conditions that even threaten the pursuit of their profession. [104] These cases raise the question of why a judge is the ultimate authority in determining what constitutes "good cause" when it comes to questions of medical necessity and sheds light on the fundamental principle that a judge cannot measure the effect that non-disclosure has on the mental and physical health of an adoptee. That alone should be sufficient to establish good cause.

C. The "Best Interest" Controversy

The goal of adoption, as stated in case law and statutes, has always been to protect the adopted child's best interests. [105] Confidentiality at the time of adoption can certainly be in the child's best interest; severing legal ties to biological parents upon completion of adoption may better facilitate the bonding process between an adopted child and his or her adoptive parents. [106] Yet as an adoptee matures he or she may outgrow many of the "best interests" that existed at the time of birth. [107] In fact, studies have shown that after adoption is complete, the severance of biological ties may no longer serve a child's best interest because it can lead to an identity crisis known as "genealogical *161 bewilderment," which is prevalent among adopted children. [108]

What may be "best" for a child may be so at the time of adoption, but as adoptees mature, alienation from their genetic roots can cause many of them to suffer psychological problems. [109] By the time they are adults, many adoptees want to know about their genetic history and it is arguably in their best interest to acquire such information about themselves. [110] This is particularly true for adult adoptees who want access to their medical records in anticipation of hereditary health problems, as they approach middle-age or think about having children. [111]

Judges and legislators who prevent adoptees from accessing their genetic information often argue that the state has an interest in preventing the public release of information that might be "embarrassing" or "disruptive" to the relationship between children and their adoptive parents. [112] Yet even in situations where adoptive parents and biological parents consent to the unsealing of adoption records, disclosure may be denied. [113] This does not serve the best interest of adoptees: so whose best interests are being served? [114]

It appears that at some point, a switch occurs and the state stops acting in the best interest of the child and begins to act in the best interest of the birthparents, which was never the stated purpose of adoption laws. [115] Laws designed to protect adoptees at birth and as children ultimately end up being detrimental to their rights as adults, and many current state statutes and judicial decisions regulating adoption fail to take this conundrum into consideration. As adopted *162 children grow and evolve as people, so do their needs and it follows that what is best for them changes as well. Even if it were in the "best interest" of all adopted children to have their adoption records sealed at birth, states should unseal those records when adoptees become adults as there cannot possibly be a universal "best interest" shared by all. The ramifications of adoption last a lifetime, and the time has come for laws and judicial decisions to reflect a more sensitive approach towards the needs of adult adoptees.

III. The Constitutional Issue of Prohibiting Adoptees From Accessing Their Records

Conditional access legislation impedes the disclosure of genetic information to adoptees, and is unconstitutional on several grounds. First, these statutes violate the fundamental right to privacy, which encompasses the right to familial structure, because they withhold genetic information from adoptees that is pertinent to their private decisions about procreation. [116] Second, there is no rational basis for statutes which deny or make difficult adoptees' access to their genetic information when such information can be provided in a way that does not disclose the birthparent's identities to the adoptee, thereby thwarting any concern over privacy. Third, these statutes violate the Equal Protection Clause of the Fourteenth Amendment because they treat adoptees differently than persons raised by their biological parents. [117]

A. The Fundamental Right to Privacy Includes a Right to Access Private Information

The Supreme Court has recognized privacy as a fundamental right under the Fourteenth Amendment. [118] The Court has also held that the right to privacy encompasses a right to family structure. [119] This includes the right to be "free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision" of whether or not to bear children. [120] The freedom to choose whether or *163 not to conceive children is directly related to the reasons many adoptees want genetic information about themselves.

Whether or not a person is a carrier for a dangerous genetic condition is exactly the kind of information people have a right to know about when deciding how and whether to exercise their Constitutionally-given right to have a family. Diabetes; heart disease; depression; Huntington's disease; and skin, lung ovarian, and breast cancers, just to name a few, are all hereditary. [121] People diagnosed with Huntington's, a degenerative brain disorder, have a fifty-percent chance of passing the disease to their offspring. [122] Testing for Huntington's is an expensive and lengthy procedure that involves multiple sessions of counseling, neurological exams, a psychological

interview, and a blood test. [123] Adoptees who are privy to their genetic information can make informed decisions as to how they wish to configure their families. Obstructing adoptees from accessing their genetic information is a denial of knowledge about themselves and their potential children. [124]

If the right to family structure is a fundamental right, states need a compelling interest in enacting laws that infringe on this right. [125] The laws must be narrowly-tailored in furtherance of that interest by implementing the least-restrictive means by which the fundamental right can be regulated. Following this reasoning, the right to familial structure begets a prohibition against statutes that infringe on the rights of all people to be as informed as possible when deciding how to structure their families. It is possible to give adoptees the private information they seek, by giving them data in which the identities of their birth parents have been redacted. They can also receive this information via a third-party beneficiary who can keep the names of the birth parents confidential. And if either of these options fail, privately unsealing an adoptee's original birth certificate, so that they can try and seek medical information another way, is a much less restrictive *164 solution for adoptees than laws that absolutely deny them access to their records. It is for this reason that laws which prohibit or make difficult the access of genetic data to adoptees are not narrowly-tailored; rather, they are unreasonable and unnecessary.

A better argument is that the state has a compelling interest in facilitating the disclosure of medical information to adoptees. [126] The Supreme Court based its holding in Roe v. Wade on the theory that a state's interest in regulating a particular medical procedure may vary over time. [127] Similarly, the state's interest in limiting access to adoption records, although important at the time of the adoption, also changes over time. [128] The state has a continuing interest in protecting the health and welfare of adoptees. [129] A lack of private knowledge about recessive gene traits may impact an adoptee's decision to have children. [130] It is in the state's best interest to protect adoptees and their potential children from unknown health risks, by making these risks known to adoptees so they can make informed choices. [131]

Conditional access legislation perpetuates the myth that upon completion of adoption all biological ties are severed and birth parents are guaranteed infinite privacy; further, it ensures that adoptees cannot access their genetic information without extreme difficulty. These laws force adoptees to embrace a narrowly-defined concept of family structure, and are in direct conflict with the right to family structure guaranteed under the Constitution. [132]

B. The Right to Privacy Does Not Extend to Birthparents

One of the strongest arguments against the disclosure of medical records or the unsealing of original birth certificates is that it infringes *165 on the right to privacy guaranteed to birth parents. [133] A fundamental right to privacy, however, has not been granted to birthparents. [134] The Sixth Circuit Court of Appeals spoke directly to this issue and held that the “federal constitutional right of familial privacy” does not extend as far as birth parents may like. [135] Further, the Constitution does not guarantee a right to “nondisclosure of private information.” [136] If the right to privacy does not extend to birthparents, it follows that adoptees in their search for genetic information should not be thwarted by laws designed to protect birthparents' privacy. [137]

Adoption records are closely guarded, and the process consists of so few people that a concern over "privacy" violations, where information has been disclosed to one person, makes no sense. [138] There is no "privacy" violation if adoptees seek medical records in which information identifying their biological parents is deleted. [139] Such disclosure does not infringe on birth parents' privacy because the birth parents' identities remain anonymous. The benefits to the adoptee far outweigh the threat of privacy to birth parents, and if identifying information is redacted, there is no threat.

*166 C. Denying Adoptees Access to Their Genetic Information is an Equal Protection Violation

Adoptees are the only group in the United States who are denied access to their genealogy. [140] In addition to arguing that conditional access legislation impedes their right to familial privacy and structure, adoptees have long argued that the concept of sealed records constitutes an equal protection violation. [141] This argument is founded in the belief that adoptees are denied information that non-adoptees can access without difficulty. [142]

Adoptees consistently fight to be recognized by the courts as a suspect or quasi-suspect class. [143] If granted suspect class status, states would need a compelling interest in implementing laws that infringed on adoptees' rights. [144] If adoptees were granted quasi-suspect class, laws regulating adoption, like sealed-record laws, would be subjected to a heightened level of scrutiny. [145] Courts have thus far declined to grant adoptees suspect class status, reasoning that children are not born adopted, but acquire that status through a legal process. [146] Courts have also refused to recognize adoptees as a quasi-suspect class, although they have recognized "illegitimates" as such. As it stands now, it is only necessary that states enact adoption laws that are "rationally related" to a legitimate state interest. [147] This gives states a lot of discretion in enacting adoption laws.

States have a lot of leeway in implementing statutes pertaining to adoption, and one of the more controversial examples of this freedom is a stipulation known as a "contact veto." [148] This provision allows a *167 biological parent to file a statement prohibiting the adoptee from ever contacting them, or from contacting any lineal ancestor of the adoptee. [149] Violation of the contact veto generally results in a misdemeanor offense. [150] Civil actions may also be brought against an adoptee for compensatory and punitive damages, as well as attorneys' fees. [151] This law carries financial and criminal penalties in anticipation of an adoptee "stalking" or otherwise inappropriately contacting a biological parent directly for information. There is no reason for this provision because even if an adoptee were to cross inappropriate boundaries for privacy, a biological parent who felt invaded or harassed would have the same course of legal action available to everyone else who might find themselves in such a situation.

The Supreme Court may not have granted suspect or quasi-suspect class to adoptees, which would offer adoptees a higher measure of protection from laws that threatened their rights, but the Court has held that laws which make a distinct classification amongst people, in a way that suggests animus, are insufficient to meet the rational basis test. [152] Criminalizing the search for one's identity, and threatening adoptees with legal and financial ramifications should they embark on such a search, is beyond irrational--it is insulting to the humanity of adoptees. The contact veto is nothing short of animus, and just another example of legislative protection that is afforded to birthparents, yet supplants the rights of adoptees.

Courts have argued that denying adoptees access to their original birth certificates and genetic history is not an equal protection violation because there is a "reasonable basis" for the legislature's view on the subject of birthparent confidentiality. [153] However, it is possible to provide adult adoptees with the medical information they seek, while preserving the privacy of birth parents, by redacting identifying information. It is also possible to enact laws that better facilitate the solution of what to do when non-identifying information is insufficient, and a biological parent may need to be contacted to provide what is needed. There are better ways to achieve the otherwise legitimate interest in respecting the privacy of biological parents than shutting the door on the needs of adult adoptees.

The sealing of adoption records is unconstitutional because it *168 requires adoptees to obtain a court order to access information about themselves that is generally available to everyone else. [154] Further, it is possible to provide this information to adoptees while giving biological parents the confidentiality to which they are entitled. The denial of an adoptees' identity is an equal protection issue, and should no longer be deceivingly framed within the argument for birthparent privacy.

IV. Why Disclosure of Information Is More Important to The Integrity of Adoption Than Confidentiality

A. Knowledge of Potential Health Problems Leads to More Informed Adoptions

The sheer number of lawsuits filed each year on the grounds of fraudulent adoption based on medical misrepresentation further demonstrates how important an adoptee's medical records are. [155] Without proper disclosure of the medical history of biological parents, adopted parents and adoptees have a significant disadvantage. [156] The diagnosis of medical disorders early on in an adoptee's life is "fundamental to proper health care" and to "well-informed life choices" on behalf of the adopted parents and the adult adoptee. [157]

Social workers report that it is far more advantageous for a child with special needs to be adopted by parents who are aware of these complications, and who have the financial and emotional resources to handle them. [158] Without this kind of disclosure, adoptive parents could find themselves unable to give adopted children the proper medical *169 attention they need. [159] This lack of information could also lead to dissatisfaction on the part of adoptive parents. [160] One need look no further than the disturbing recent case of the Tennessee mother who sent her seven-year-old adopted son back to Russia along with a note saying she no longer wanted him, and that the orphanage had not disclosed the fact that the boy had severe psychological problems. [161] Cases like this could scare potential parents from considering adoption, and dissatisfaction with the outcome of an adoption seems much more of a threat to the integrity of adoption than the possibility of a breach in confidentiality.

B. How and Why Disclosure is Possible

Information regarding the health of an adoptee should not be limited to the time of adoption. If an adoptee's medical history at the time of adoption does not warn of any genetic problems, an adult adoptee will likely never get screened for them. [162] This raises the key issue of who should be

responsible for providing adult adoptees with updated medical history concerning their biological parents, and how updates should be provided to them. [163]

Presently, no state imposes an affirmative duty on biological parents to disclose any updates in family medical history. A legal duty could fairly be imposed upon biological parents to furnish such information if and when it became relevant, because the state has an interest in putting its citizens in the best position to protect themselves and their biological children against genetic diseases. A disclosure requirement would not compromise the privacy of birth parents, because the medical information disclosed to the adoptee could easily *170 be non-identifying.

An alternative to requiring intermittent disclosure could be giving biological parents the opportunity to leave blood samples on file with a state adoption agency, to be used for continued DNA testing. [164] For example, California presently maintains a voluntary program that allows birth parents to leave blood samples for future testing, the results of which are completely confidential and may be made to the adoptee. [165] This may be controversial, but confidential blood samples and state statutes regulating the continued disclosure of non-identifying medical records are viable options. [166] They are also examples of realistic regulations that take into consideration the important and evolving best interests of all parties involved in an adoption. These concepts are not founded in outdated ideas; rather, they are born out of innovative ones that reflect not only societal changes, but advances in science. [167]

Conclusion

In the absence of standardized Federal laws regulating adoption, states continue to enact statutes based on archaic notions that fail to reflect the needs of adult adoptees. We should not have to jump through legal hoops to access our records. We should not have to *171 undergo laborious and expensive genetic testing because our medical history has not been made available to us. We should not have to be at the mercy of a judge who may not agree that we have good cause or a compelling need to access such vital information about ourselves.

Conditional access legislation that requires adoptees to overcome statutory barriers, by proving our mental and physical needs for the same information available to everyone else, is an unconstitutional violation of our civil rights. Too many adoption statutes are trenched in the dated stigmatization of illegitimacy. There is no need to continue to implement these laws when modern alternatives are available, which grant birth parents the privacy they deserve and give adoptees the vital information we seek. [168]

Adoptees have no control over how we came into the world, but we should have control over our futures. The visits to the doctor get more frustrating each year, and the burden of not knowing my genetic identity carries with it a continuous anxiety over the fact that I have no idea what remains. It is time for the burden to be lifted, and sent back to an era when thoughtful and intelligent human beings brought into society by the accident of birth were thought of as nothing more than bastards.

Footnotes

d1 Syracuse University College of Law, J.D. 2011; Bennington College, B.A. 2000. Thank you to Professor Sarah Ramsey for her invaluable guidance, edits and suggestions, to Professor Tucker Culbertson for his insight and ideas regarding the Constitutional issue, and to the members of the Syracuse Law Review for their hard work during the form and accuracy process. A special thank you to Alex Paradiso, Amanda Caterina, and to all of my incredibly supportive friends. This Note is dedicated to Ellen Rubin and Guy Caterina, the only parents I will ever want or need.

1 Surname has been changed to protect the birthmother's privacy.

2 Kathleen Silber, Open Adoption History, Independent Adoption Center, http://www.adoptionhelp.org/open_adoption/history.html (last visited Oct. 3, 2010).

3 Open or Closed Adoption, Adoption Services, http://www.adoptionservices.org/birth_mother/birth_mother_open_closed_adoption.htm (last visited Oct. 3, 2010).

4 N.Y. Pub. Health Law § 4138(1)(c) (McKinney Supp. 2010) (stating that a new certificate of birth shall be made whenever "notification is received by, or proper proof is submitted to, the commissioner from or by the clerk as aforesaid of a judgment, order or decree relating to the adoption of such person."). See also N.Y. Dom. Rel. Law § 114(4) (1999) (stating that "the judge ... shall issue an original certificate under seal of the court ... [which] shall be filed with the clerk of the court ... [and] kept by the court as a permanent record and such papers must be sealed by the judge and withheld from inspection. No person shall be allowed access to such sealed records and original certificate ... except upon an order of the court.").

5 Open Records: Why It's an Issue, in The Basic Bastard, Bastard Nation, http://www.bastards.org/bb/1.WhyIts.html (last visited Oct. 3, 2010).

6 Id. Note: in the absence of birth parent consent, U.S. states that currently give adoptees unrestricted access to information contained in their adoption records include: Alabama, Alaska, Kansas, Maine, New Hampshire, and Oregon. Ala. Code §§ 26-10A-31(j) and 22-9A-12(c)-(d) (LexisNexis 2006) (stating that original birth certificates and non-identifying information are available to adoptees age nineteen or older); Alaska Stat. § 18.50.510 (Supp. 2008) (stating that the state registrar may release information regarding birth parents at the request of an adoptee age eighteen or older); Kan. Stat. Ann. § 59-2122(b) (2005) (stating that the department of social and rehabilitation services may contact the adult adoptee at the request of the genetic parents in the event of a health or medical need); Kan. Stat. Ann. § 65-2423(a) (2009) (stating that the original birth certificate may be opened by the state registrar upon the demand of the adult adoptee); Me. Rev. Stat. Ann. tit. 18-A, § 9-310 (West Supp. 2008); Me. Rev. Stat. Ann. tit. 22, § 8205 (West 2004) (stating that any medical or genetic information in court records relating to the adoption must be made available to the adopted child upon reaching age eighteen); N.H. Rev. Stat. Ann. § 170-B:24 (LexisNexis 2001) (stating that requests for non-identifying social or medical information may be made by an adoptee age eighteen or older); Or. Rev. Stat. § 109.500 (2009) (stating that non-identifying genetic and health history may be provided to the adoptee, if available, from an agency upon request); Or. Rev. Stat. § 432.240 (2009) (stating that upon application to the state registrar, any adoptee age twenty-one and older born in of Oregon shall be issued a copy of his or her original birth certificate, with filing fees and waiting periods identical to those imposed upon non-adopted citizens).

7 See N.Y. Pub. Health Law § 4138-c(4)(a) (McKinney 2002) (regulating adoption information registries for children born in the state. This allows adoptees limited and non-identifying disclosure of the health history of their biological parents, so long as the department finds that the "nature of the non-identifying information released pursuant to this section [is in the] the adoptee's, biological sibling's, or parent's best interest.").

8 See A History of Sealed Records in the United States, in The Basic Bastard, Bastard Nation, http://bastards.org/bb/2.SealedHistUS.html (last visited Oct. 3, 2010) (noting that a "new, amended birth certificate and the permanently sealed original fostered the illusion of a brand-new family with no prior ... connections to the birth family ...").

9 See About Cystic Fibrosis, Cystic Fibrosis Foundation, http://www.cff.org/AboutCF (last visited Oct. 3, 2010); R. Scott Smith, Disclosure of Post-Adoption Family Medical Information: A Continuing Birth Parent Duty, 35 Fam. L.Q. 553, 560-61 (2001) (noting that cystic fibrosis "occurs in one out of every twenty-five Caucasians....

Knowledge that the disease occurs within a family can alert the prospective parent to be tested for the gene.").

10 D. Marianne Brower Blair, Lifting the Genealogical Veil: A Blueprint for Legislative Reform of the Disclosure of Health-Related Information in Adoption, 70 N.C. L. Rev. 681, 703 (1992).

11 See A History of Sealed Records in the United States, supra note 8 (noting that many adoptees who seek access to their sealed birth records have "been labeled anti-adoption, anti-birthmother ... stalkers, whiners [and] professional victims," and that it is "assumed that 'well-adjusted' adoptees would have no interest in their origins.").

12 See generally 2-13 Adoption Law and Practice § 13.01[1] (Joan Heifetz Hollinger ed., 2009) (noting that state statutes regulating adoption grew to shroud the process in secrecy in an effort to protect the parties involved from public scrutiny).

13 Alan W. Strasser, Adoption Search and Registry Laws of Vermont and New York: Whose Best Interest is Being Served? 28 Suffolk U. L. Rev. 669, 673-76 (1994) (noting that the goal of adoption, as stated in case law and statutes, is to protect the child's "best interest" but when an adoptee becomes an adult, many of the concerns that warranted protection have existed at the time of birth have dissipated or changed--and that confidentiality policies may no longer be in the adoptees' best interests).

14 In re Adoption of S.J.D., 641 N.W.2d 794, 798, 800 (Iowa 2002) (holding that "good cause" should include no less than an adoptee's life-saving need for medical information).

15 Id. at 800; see also Golan v. Louise Wise Servs., 507 N.E.2d 275, 279 (N.Y. 1987) (holding that an adult adoptee's debilitating genetic heart condition, which precluded him from pursuing his profession, was not sufficient to warrant disclosure).

16 See, e.g., Doe v. Sundquist, 106 F.3d 702, 706 (6th Cir. 1997) (holding that "if there is a federal constitutional right of familial privacy, it does not extend as far as the [biological parent] plaintiffs would like.").

17 See Lawrence Lessig, The Regulation of Social Meaning, 62 U. Chi. L. Rev. 943, 999 (1995).

18 See Adoption: An Overview, Cornell Legal Information Institute, http://topics.law.cornell.edu/wex/Adoption (last visited Oct. 3, 2010).

19 Smith, supra note 9, at 553.

20 Adoption: An Overview, supra note 18.

21 Id.

22 Id.

23 Id.

24 Id.

25 See Adoption: An Overview, supra note 18 (noting that this includes a determination that the petitioners would make suitable parents).

26 Id.

27 Beth Rowen, The History of Adoption, Infoplease.com, http:// www.infoplease.com/us/statistics/history-adoption.html (last visited Oct. 3, 2010).

28 Id.

29 Id.

30 The History of Adoption, Research Etc., Inc., http:// www.researchetcinc.com/historyofadoption.html (last visited Oct. 3, 2010).

31 Id.

32 Id.

33 Id.

34 Id.

35 See A History of Sealed Records in the United States, supra note 8.

36 Open Records: Why It's an Issue, supra note 5.

37 Id.

38 Id.; Elizabeth S. Cole & Kathryn S. Donley, History, Values, and Placement Policy Issues in Adoption, in The Psychology of Adoption 273, 277 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

39 Open Records: Why It's An Issue, supra note 5; see also generally Adoption Law and Practice, supra note 12.

40 Adoption Law and Practice, supra note 12.

41 The three states that did not enact such laws were Alaska, Kansas, and South Dakota. Alaska Stat. § 18.50.500 (2008); Kan. Stat. Ann. § 65-2423(a) (2009); S.D. Codified Laws § 25-6-15 (2004).

42 See Cole & Donley, supra note 38, at 277.

43 See Open Records: Why It's An Issue, supra note 5.

44 Cole & Donley, supra note 38, at 277; Silber, supra note 2 (noting that "[p]ressure for change mounted in the l970s and increased in the l980s and l990s. When adoption was the sole alternative to a lifetime of shame, a birthmother had little choice but to accept closed adoption.").

45 Cole & Donley, supra note 38, at 277; Silber, supra note 2 (noting that "[b]irthmothers from past years began clamoring for change. Just as other non-traditional alternatives emerged in those decades, from the civil rights movement to alternative schools--so, too, did open adoption.").

46 Silber, supra note 2 (noting that "as the social mores against unwed motherhood disappeared, so did young people's tolerance of these attitudes. Soon few women were choosing adoption for their child (by 1980, less than 3% of non-married women under 25 years of age).").

47 Id.

48 See generally Open Records: Why It's An Issue, supra note 5.

49 N.Y. Pub. Health § 4138(7) (McKinney 2002); see also Axelrod v. Laurino, 548 N.Y.S.2d 405, 406 (Sup. Ct. 1989) (challenging the law on the grounds that it was unconstitutionally vague).

50 Herbert H. Lehman, Recommendation of Passage of Legislation to Remove Illegitimacy from Children Born Out of Wedlock (1936), reprinted in Public Papers of Herbert H. Lehman: Forty-Ninth Governor of the State of New York Second Term 1936, at 250-52 (1940).

51 See N.Y. Pub. Health § 4138-c (McKinney 2002).

52 The restrictions placed on adoptees wishing to access non-identifying genetic information will be discussed later in this Note.

53 The American Bar Association Family Legal Guide 66 (Random House 3d ed., 2004).

54 Elizabeth J. Samuels, The Idea of Adoption: An Inquiry Into the History of Adult Adoptee Access to Birth Records, 53 Rutgers L. Rev. 367, 385 (2001).

55 See the Indian Child Welfare Act of 1978, 25 U.S.C. § 1902 (2006) (providing examples of Federal regulations, which regulate the adoption of Native American children by establishing federal standards for the removal of such children from their families); see also 42 U.S.C. § 5113(a) (2006) (stipulating that the Department of Health and Human Services shall assist adoption recruitment efforts and other such initiatives to facilitate adoption).

56 Golan v. Louise Wise Servs., 507 N.E.2d 275, 279 (N.Y. 1987); see Uniform Adoption Act § 6-105 (c), (c)(1), 9 U.L.A. 11, 122 (1994). The Uniform Adoption Act was enacted by Vermont in Title 15A of the Vermont Statutes. See Vt. Stat. Ann. tit. 15A, §§ 1-101 to 8-101 (2002).

57 Adoption: An Overview, supra note 18; see generally Joseph Goldstein et al., Beyond the Best Interests of the Child 105-11 (New ed. 1979) (stating that the child's best interest should have priority over other parties, mainly because of the particular psychological needs of children versus adults).

58 Examples of such restrictions include: Cal. Fam. Code §§ 8706; 8817 (West 2004) (stating that non-identifying information about birth parents, such as medical history, psychological evaluations, and developmental history, is provided only to the adopting parents); Cal. Health & Safety Code § 102705 (West 2006) (stating that original birth certificates are available only by court order); Conn. Gen. Stat. Ann. § 45a-746 (West 2004) (stating that non-identifying information about the birth parents shall be provided to the adopting parents prior to finalization of the adoption (the statute does not speak to an adult adoptee's right to access such information); and Conn. Gen. Stat. Ann. § 7-53 (West 2008) (stating that adoptees cannot access their original birth certificates without a written order from the court in the jurisdiction in which the adoptee was adopted or born. The court then determines whether issuing a copy of the birth certificate will be "detrimental to the public interest" or to the welfare of the adoptee or the birth or adoptive parents).

59 See, e.g., Fla. Stat. Ann. § 63.162(6) (West 2005) and N.Y. Dom. Rel. Law § 114(1) (McKinney 1999); see also Smith, supra note 9, at 554-55 (noting that "[p]arents giving up a child to adoption are often young and may not be aware of family medical histories or may not appreciate the significance of this information.").

60 Fla. Stat. Ann. § 63.162(6) (West 2005).

61 Id.

62 Id. § 63.162(7).

63 Id. § 63.162(2) (stating that the original birth certificate is available "only upon order of the court."). Adoptees may find recourse by utilizing adoption agencies to find the information they seek. See Adoption Information Registry, http://www.health.state.ny.us/vital_records/adoption.htm (last visited Oct. 3, 2010). Registries, which will not be discussed in-depth in this Note, allow many adoptees to circumvent state restrictions by enlisting in adoption information registries, in hopes of obtaining information about their birth parents. Id. Relevant information can be made available to adoptees through the registry, provided by either the agency that handled the adoption, or, if the adoption was done privately, information from court documents filed at the time of the adoption. Id. In New York, for example, an adoptee may access identifying information through a registry if the birth parents are also registered and if they give their consent before the exchange of identifying information can occur. See N.Y. Pub. Health Law § 4138-c(6) (McKinney Supp. 2010). Non-identifying information about birth parents, including religious beliefs, race, education and occupation, may be provided to adoptees regardless of whether their birth parents have registered. See id. at §§ 4138-c(3)(b)-(c), 4138-c(3)(e)-(f), 4138c(4)(a). Birth parents can give medical and psychological information to the registry any time after the adoption. Id. at § 4138-c(6)(c). There is no requirement that birth parents provide medical information to the registry. Id. at § 4138-c(6)(f). This makes registries a limited option for many

adoptees because birth parents who conceive children when they are teenagers and are fairly healthy may not have health problems to report at the time of the adoption; rather, they may not encounter health problems until they reach middle-age. See Smith, supra note 9, at 559-60. If such problems arise and adoptees are not made aware of them, they cannot take preventative measures in anticipation of conditions they might otherwise be cognizant of. Examples of various registries across the U.S. can be found at Adoption Institute, States with Passive Registries, http://www.adoptioninstitute.org/policy/polreg1.html (last visited Oct. 3, 2010).

64 N.Y. Dom. Rel. Law § 114(1) (McKinney 1999).

65 Id.

66 Id. § 114(2) (stating that "[n]o order for disclosure or access and inspection shall be granted except on good cause shown ...").

67 Id. § 114(4); see also Alan D. Scheinkman, Practice Commentary, N.Y. Dom. Rel. Law 114, at 158 (McKinney 1999) (noting that "the certification must state that the records are mandatory in order to address (i.e., treat) a serious physical or mental illness. A serious illness is presumably an illness that poses a substantial or significant risk to life or health.").

68 See generally Scheinkman, supra note 67, at 158 ("The certification is prima facie evidence of good cause.").

69 Golan v. Louise Wise Servs., 507 N.E.2d 275, 279 (N.Y. 1987).

70 See, e.g., Sandra L.G. v. Bouchey, 576 N.Y.S.2d 767, 768-69 (Fam. Ct. 1991) (holding not sufficient good cause where the plaintiff sought disclosure of her medical history based solely on the fact that there may have been a possibility of some genetic factor in her background which might have predisposed her to a medical problem).

71 Generally, without the consent of the biological parents, adoptees must seek approval from a judge in order to access the information contained in their adoption records. See Axelrod v. Laurino, 548 N.Y.S.2d 405, 406 (Sup. Ct. 1989).

72 James R. Carter, Confidentiality of Adoption Records: An Examination, 52 Tul. L. Rev. 817, 837 (1978) ("In recent years, adoptees have increasingly sought access to their adoption records ...").

73 Id. at 821-22, noting that:

> Although some states give adoptees an absolute right to see either their original birth certificates or the files and reports of the adoption proceedings, the majority of states allow inspection only upon a showing of "good cause." Some states merely require "cause," while others allow inspection only if the welfare of the child or the public is promoted. A few states provide no standard, merely requiring a court order before adoption records may be released. If an adoptee is not allowed absolute access to his adoption records, he must satisfy his particular state's standard.

74 Id. at 821 (noting that "[s]uch inconsistency between confidentiality statutes under a state's domestic relations laws and statutes of disclosure under its vital statistics laws should be examined and corrected by state legislatures.").

75 Axelrod v. Laurino, 548 N.Y.S.2d 405, 407 (Sup. Ct. 1989); Hubbard v. Superior Court of Yuba County, 11 Cal. Rptr. 700, 704 (Cal. Ct. App. 1961); Kirsch v. Parker, 383 So. 2d 384, 388 (La. 1980).

76 507 N.E.2d 275, 276 (N.Y. 1987). The petitioner sought this information from the agency that handled his adoption when he was a child. Id.

77 Id. at 276-77.

78 Id. at 277.

79 Id. at 278, 279.

80 Golan, 507 N.E.2d at 279.

81 Id.

82 Id.

83 Id.; see also id. at 280 (Bellacosa, J., dissenting).

84 Sandra L.G. v. Bouchey, 576 N.Y.S.2d 767, 768, 769 (Fam. Ct. 1991).

85 Id. at 768.

86 Id.

87 Id. at 769.

88 Id. at 768.

89 Sandra, 576 N.Y.S.2d at 768.

90 Id. at 769.

91 393 N.Y.S.2d 768, 768 (App. Div. 1977).

92 Id.

93 See In re Adoption of Spinks, 232 S.E.2d 479, 482 (N.C. Ct. App. 1977).

94 See Mills v. Atl. City Dep't of Vital Statistics, 372 A.2d 646, 655 (N.J. Super. Ct. Ch. Div. 1977). Such conditions noted by the judge include insomnia and a “psychological inability” to lead content and productive lives. Id.

95 Id.

96 Id.

97 Id.

98 Mills, 372 A.2d at 656.

99 In re Adoption of S.J.D., 641 N.W.2d 794, 796 (Iowa 2002).

100 Id. The petitioner in this case had been hospitalized as a teenager because of severe depression, took Prozac regularly as he continued to suffer from the disease, and wanted to know if his depression was hereditary. Id.

101 Id. at 798-800; Juman v. Louise Wise Servs., 608 N.Y.S.2d 612, 618 (Sup. Ct. 1994) (holding that a diagnosis of schizophrenia was good cause for disclosure).

102 In re Adoption of S.J.D., 641 N.W.2d at 801. In an interesting insight into the unsympathetic nature of the judge towards the petitioner's situation, he went on to state that an adoptee's “curiosity” and “restlessness” were not good cause for disclosure. Id. at 802. The judge expressed this sentiment despite the fact that the adoptee had undergone extensive treatment for a serious mental illness. Id. Referring to severe depression as nothing more than restlessness is ignorant and supports the argument that judges should not be deciding what constitutes medical necessity.

103 See Chattman v. Bennett, 393 N.Y.S.2d 768, 768 (App. Div. 1977); Sandra L.G. v. Bouchey, 576 N.Y.S.2d 767, 768-69 (Fam. Ct. 1991).

104 See, e.g., In re Linda, F.M., 409 N.Y.S.2d 638, 642-43 (Surr. Ct. 1978).

105 Adoption: An Overview, supra note 18; see generally, Goldstein et al., supra note 57 at 105-111.

106 Leslie J. Kelley, Tennessee's Adoption Law and the Limitations of the Constitutional Arguments Regarding Open Records, 39 Fam. Ct. Rev 223, 224 (2001).

107 Strasser, supra note 13, at 708.

108 Adoption Law and Practice, supra note 12, at § 13.01(1)(c); see also Tim O'Shaughnessy, Adoption, Social Work and Social Theory: Making the Connections 119 (1994), stating that:

> Knowledge of and definite relationship to his genealogy is ... necessary for a child to build up his complete body image and world picture. It is an inalienable and entitled right of every person. There is an urge, a call, in everybody to follow and fulfill the tradition of his family, race, [and] nation ... The loss of this tradition is a deprivation which may result in the stunting of emotional development.

109 See Eric H. Erickson, Life History and the Historical Moment 26-27 (1975).

110 Blair, supra note 10, at 689 n.43 (making note of cases concerning adoptees seeking medical information).

111 See Chattman v. Bennett, 393 N.Y.S.2d 768, 768 (App. Div. 1977).

112 In re Estate of McQuesten, 578 A.2d 335, 339 (N.H. 1990).

113 Id.

114 See Strasser, supra note 13, at 669 (providing an analysis of this paradigm and why it is difficult to define what, exactly, this best interest is--particularly taking into consideration the fact that many adoptees become interested in learning medical genetic information about their birth parents as they enter adulthood).

115 Jason Kuhns, The Sealed Adoption Records Controversy: Breaking Down the Walls of Secrecy, 24 Golden Gate U. L. Rev. 259, 268-69 (1994).

116 Id.

117 Smith, supra note 9, at 560-61; see also Griswold v. Connecticut, 381 U.S. 479, 484 (1965) (in which Justice Douglas spoke of the “penumbras” of privacy embedded in the Constitution).

118 Id. at 486.

119 Moore v. City of E. Cleveland, 431 U.S. 494, 499 (1977). This right has its limitations of course, as the court has not recognized polygamy, etc. as within the protection of this fundamental right.

120 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 851 (1992) (quoting Eisenstadt v. Baird, 405 U.S. 438, 453 (1972)).

121 Ann T. Lamport, The Genetics of Secrecy in Adoption, Artificial Insemination, and In Vitro Fertilization, 14 Am. J.L. & Med. 109, 113 (1998).

122 See NINDS Huntington's Disease Information Page, National Institute of Neurological Disorders and Stroke, http:// www.ninds.nih.gov/disorders/huntington/huntington.htm (last visited Oct. 3, 2010).

123 See Marilyn J. Wolff, Genetic Testing for Huntington's Disease, Huntington's Disease Soc'y of Am., available at http://www.lkwdpl.org/hdsa/hdtest.htm (last visited Oct. 3, 2010). The testing process generally costs $600- $1500 and is not always covered by insurance. Id.

124 Carter, supra note 72, at 827 (arguing that "denying adoptees automatic access to adoption information abridges their fundamental right to privacy by denying them information necessary for personality growth and development.").

125 Moore v. City of E. Cleveland, 431 U.S. 494, 499 (1977).

126 Smith, supra note 9, at 556.

127 410 U.S. 113, 162-63 (1973).

128 Carolyn Burke, Note, The Adult Adoptee's Constitutional Right to Know His Origins, 48 S. Cal. L. Rev. 1196, 1211-12 (1974) (noting that the state's interest in sealing adoption records becomes less prevalent when the adoptee reaches the age of majority. Burke argues that this is in compliance with the holding in Roe).

129 Id.; see also Barry E. v. Ingraham, 371 N.E.2d 492, 496 (N.Y. 1977) (referencing New York's "vital social interest in the welfare of its children" as "one of its strongest public policies.").

130 Smith, supra note 9, at 555 (stating that an "adoptee's loss of contact with the birth family may impact decisions about procreation arising from uncertainty about the existence of recessive gene traits that may affect the health of offspring.").

131 Id.

132 Moore v. City of E. Cleveland, 431 U.S. 494, 498-99 (1977).

133 Carter, supra note 72, at 833 (stating that "It has been argued that biological parents have a constitutional right to privacy that is infringed by the state's disclosure of adoption information to the adoptee.").

134 Doe v. Sundquist, 106 F.3d 702, 706 (6th Cir. 1997).

135 Id. at 704. The plaintiffs were biological parents who gave their children up for adoption and brought suit in Tennessee to challenge a semi-open records law on the grounds that it violated birthparent privacy. Id. It is interesting to note that the challenged law contained a "contact veto," which will be discussed further in this Note. Id. at 705.

136 Id. at 706 (quoting J.P. v. DeSanti, 653 F.2d 1080, 1090 (6th Cir. 1981)).

137 Id. at 706; see also The Basic Bastard, Bastard Nation, http:// www.bastards.org/documents/bball.html (last visited Oct. 3, 2010).

138 Carter, supra note 72, at 834 (noting the "confidential aspect of adoption records" and the fact that "the information is available to so few individuals"). Carter also gives mention to Jordan v. Pensacola News-Journal, Inc., 314 So. 2d 222, 223 (Fla. Dist. Ct. App. 1975), where the court declared that the state's adoption confidentiality statute did not give participants to the adoption a statutory right of privacy. Carter, supra note 72, at 834 n.113.

139 Carter, supra note 72 (citing Chattman v. Bennett, 393 N.Y.S.2d 768, 768-69 (App. Div. 1977)) (giving mention to the case of Chattman v. Bennett, in which a married woman interested in beginning her own family made a request to inspect her adoption records to ascertain whether there was some genetic or hereditary factor in her background that might be detrimental to her future children). Her request was granted by the court under a statute that required "good cause" for disclosure of adoption records information. Chattman, 393 N.Y.S.2d at 768-69. The court felt that any request for medical information should be freely disclosed. Id. Accordingly, the court allowed the adoptee to inspect her adoption and medical records as well as those of her biological parents. Id. The court directed, however, that any nonpertinent information, such as the names of the biological parents, be deleted. Id.

140 Joanne Wolf Small, The Adoption Mystique 121 (2007) (noting that "[o]nly adopted persons are denied their genealogy by law. Likewise, only adoptees are issued a birth certificate that represents a legalized fraud.").

141 Kelley, supra note 106, at 233; see generally Rhodes v. Laurino, 601 F.2d 1239 (2d Cir. 1979). In the case, the adoptee plaintiff filed suit hoping the judge would declare unconstitutional New York Domestic Relations Law section 114. Rhodes 601 F.2d at 1240. Adoptee also sought a section 1983 action seeking the medical history of his biological parents. Id. at 1241 n.2.

142 Kuhns, supra note 115, at 268.

143 See Alma Soc'y Inc. v. Mellon, 601 F.2d 1225, 1230 (2d Cir. 1979). The Supreme Court has listed "the accident of birth" as one of the qualifying factors for a suspect class. Frontiero v. Richardson, 411 U.S. 677, 686 (1973).

144 See Mellon, 601 F.2d at 1233.

145 Doe v. Sundquist, 106 F.3d 702, 705 (6th Cir.1997).

146 Mills v. Atl. City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (noting--rather ironically--that the legal process of adoption was implemented so adoptees would not be discriminated against or be branded as inferior).

147 Romer v. Evans, 517 U.S. 620, 621 (1996).

148 Doe, 106 F.3d at 705; see also Tenn. Code Ann § 36-1-127(a)(3) (2005).

149 See, e.g., id. § 36-1-130(a)(6)(A)(i).

150 See, e.g., id. § 36-1-130(a)(3).

151 Id.

152 See Romer, 517 U.S. at 635-36 (holding that animus against gays and lesbians is intolerable in any legislative form).

153 In re Linda F.M., 409 N.Y.S.2d 638, 645-46 (Surr. Ct. 1978).

154 See Mills v. Atl. City Dep't of Vital Statistics, 372 A.2d 646, 652 (N.J. Super. Ct. Ch. Div. 1977). In Mills, the plaintiff argued that non-adopted people can access to their birth certificates simply by paying a small fee. Id.

155 See, e.g., Juman v. Louise Wise Servs., 608 N.Y.S.2d 612, 614 (Sup. Ct. 1994) (in which an adoption agency required to disclose information about the medical history of child and natural mother as required by statute was slapped with a wrongful adoption suit by the adoptive parents alleging that the agency failed to disclose the natural mother's lobotomy); Ross v. Louise Wise Servs., Inc., 868 N.E.2d 189, 191 (N.Y. 2007) (in which adoptive parents sued an agency for fraud based on the agency's intentional misrepresentation of facts about birth parents' mental health history, including birth father's diagnosis of paranoid schizophrenia); Juman v. Louise Wise Servs., 620 N.Y.S.2d 371, 372 (App. Div. 1995) (in which adoptive parents brought a wrongful adoption case against an agency to compel disclosure of information withheld

from parents prior to adoption, including "non-identifying" medical and psychological background information pertaining to natural parents, after their adopted son suffered years of psychological disorders and had been diagnosed, treated and hospitalized for schizophrenia).

156 Laura Methvin, Improving Access to Nonidentifying Medical Information in Florida Adoptions: A Call for Legislation, 22 Fla. St. U. L. Rev. 565, 570 (1994).

157 Id.

158 Id. at 571.

159 David Slavin, Personal Injury - Actions, Defenses, Damages § 148.01 (2009).

160 Id.

161 Boy sent back to Russia; adoption ban urged, MSNBC (April 9, 2010), http://www.msnbc.msn.com/id/36322282/ns/world_news-europe. This horrific act led Russian Foreign Minister Sergey Lavrov to suggest a freeze on any adoptions between America and Russia--which would leave countless children without loving homes. Id. Adding to the general concern over adoptions between American and Russia is the fact that fifteen cases of Russian children murdered by their parents have been recorded in the United States since the early 1990s. Sarah Netter & Zoe Magee, Tennessee Mother Ships Adopted Son Back to Moscow Alone, ABC World News (April 9, 2010), http:// abcnews.go.com/WN/anger-mom-adopted-boy-back-russia/story? id=10331728&page=1.

162 Smith, supra note 9 at 555 (stating that if a medical report at the time of the adoption does not "show any sign of the recessive gene disease ... the adoptee may be lulled into a false sense of security that screening is unnecessary.").

163 Id.

164 Cal. Fam. Code §8706(c) (West 1999).

165 Id.

166 Smith, supra note 9, at 563 (noting that the state could "have many ways to enforce compliance with the reporting requirement through civil penalties ....").

167 There are other avenues by which adoptees can look into their genetic history: 23andMe, for instance, is a retail DNA testing service that can run tests based on a saliva sample, and discover potential genetic diseases within six to eight weeks. See 23andme, http://www.23andme.com (last visited Oct. 3, 2010). The service, which costs about $399-$499, provides people with genetic information but does not perform "predictive or diagnostic tests." This may be a great option for adoptees who wish to know more about genetic conditions they may be predisposed to and can afford the service. This solution does not, however, speak to the central principal behind this Note, which is that adoptees should not have to use this kind of resource as their only option. Additionally, as of the writing of this Note, "direct-to-consumer" (DTC) genetic testing companies, including 23andMe, have been brought before Congress to defend the practice of DTC testing on the grounds that it may have consequences to public health. See Dan Vorhaus, From Gulf Oil to Snake Oil: Congress Takes Aim at DTC Genetic Testing, Genomics Law Report (July 22, 2010), available at http://www.genomicslawreport.com/index.php/2010/07/22/from-gulf-oil-to-snake-oil-congress-takes-aim-at-dtc-genetic-testing. Materials from the hearing include a report from the U.S. Government Accountability Office. Direct-to-Consumer Genetic Tests: Misleading Test Results Are Further Complicated by Deceptive Marketing and Other Questionable Practices, Before the H. Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce, 111th Cong. (2010) (statement of George Kutz, Managing Dir. Forensic Audits and Special Investigations), available at http://energycommerce.house.gov/documents/20100722/Kutz.Testimony.07.22.2010.pdf.

168 As of the writing of this Note, New Jersey is on the verge of passing The Adoptees' Birthright Bill, which gives adult adoptees access to their original birth certificates. The Assembly Human Service Committee unanimously approved the bill and it has been moved to the full Assembly for a vote. Birth parents would

have one year from its enactment to submit a request for non-disclosure. However, if passed, this Bill could bring New Jersey adoptees one triumphant step closer to accessing their records after thirty years of fighting. S. 799 and 1399, 214th Leg. (N.J. 2010), available at http://www.njleg.state.nj.us/2010/Bills/S1000/799_U1.PDF.

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