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Johnson v. Rodrigues (Ovozco): An Analysis of the Constitutionality of Utah's Adoption Statutes

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I. INTRODUCTION

Adoption statutes attempt to balance the rights and interests of adopted children, adoptive parents, birth mothers, birth fathers, and the states' interests in providing safe and secure homes for children. However, not all involved parties may feel that their interests are properly protected. For example, in *Johnson v. Rodrigues (Orozco)*,[1] the unwed, putative (*i.e.* supposed) father of a child placed for adoption challenged the constitutionality of Utah's adoption statutes, claiming that they violated due process. Under Utah law, an unwed father's parental rights are only recognized if he registers with the Department of Health before an unwed mother consents to the adoption of an infant or relinquishes an infant to an adoption agency.[2] If an unwed father fails to register in a timely manner, he loses his right to notice and consent in an infant adoption proceeding.[3]

In *Johnson v. Rodrigues (Orozco)*, the district court dismissed Johnson's claim based on lack of subject matter jurisdiction.[4] However, on August 28, 2000, the Tenth Circuit Court of Appeals reversed the district court's dismissal of Johnson's claim and allowed, for the first time, the constitutionality of Utah's adoption statutes to be challenged in federal court.[5] The issue of whether federal court is the proper forum for determining the constitutionality of Utah's adoption statutes is very controversial and important; however, this Note focuses only on the issue of the constitutionality of the statutes. This Note finds Utah's adoption statutes facially constitutional with respect to both due process and equal protection rights but recognizes that the statutes may violate due process as applied in certain cases. In order to avoid unconstitutionality as applied in such cases,

1. No. 99-4127, 2000 WL 1217833 (10th Cir. Aug. 28, 2000).
2. *See* UTAH CODE ANN. § 78-30-4.14 (2000).
3. *See id.* § 78-30-4.13.
4. *See Johnson*, 2000 WL 1217833, at *3.
5. *See id.* at *7.

this Note proposes that the Utah State Legislature revise Utah's Adoption Statutes to include a proposed "fraudulent misrepresentation" exception.

Part II of this Note provides a brief overview of Utah's adoption statutes. Part III sets forth the facts of *Johnson v. Rodrigues (Orozco)* and briefly discusses the significance of the Tenth Circuit's decision to hear Johnson's constitutionality claim in federal court. Part IV analyzes the constitutionality of Utah's adoption statutes in terms of due process and equal protection rights based on case law from the United States Supreme Court and from Utah state courts. Part IV also sets forth public policies that support Utah's adoption statutes and proposes an exception to them that will enable the statutes to be constitutional both facially and as applied. Part V concludes that the federal court should find Utah's adoption statutes facially constitutional but also concludes that the Utah State Legislature should adopt this Note's proposed exception so that the statutes will be able to withstand future constitutional attacks both facially and as applied.

II. BACKGROUND

In the early 1990s, the story of "Baby Jessica"[6] had a profound effect on adoption laws throughout the United States. In 1991, a twenty-eight-year-old unwed mother in Iowa, Cara Clausen, gave birth to Baby Jessica. Having broken up with the baby's biological father, Daniel Schmidt, Cara lied about the identity of Baby Jessica's father and placed her for adoption with a couple from Michigan.[7] When Cara reunited with Daniel, she sought to revoke her consent to the adoption, and Daniel sought to intervene in the adoption proceedings on the basis that he never consented to Baby Jessica's adoption.[8] Despite the fact that the adoptive couple "provided exemplary care for the child [and] view[ed] themselves as the parents of [the] child in every respect,"[9] the courts were bound to apply Iowa law as it existed.[10] Thus, after two and a half years, Baby Jessica was taken

6. "Baby Jessica" has also been referred to in court records and by the media as "Baby Girl Clausen," "B.G.C.," and "Jessica Clausen."

7. *See In re* Baby Girl Clausen, 501 N.W.2d 193, 194 (Mich. Ct. App. 1993).

8. *See id.*

9. *In re* Interest of B.G.C., 496 N.W.2d 239, 245 (Iowa 1992).

10. *See id.*

from the only parents she knew and given to her biological father, a man whom she had never seen before.

In response to this story, many states changed their adoption laws to make adoption more secure and permanent. At the time, Utah already had adoption statutes to promote and protect adoption.[11] However, in 1995, the Utah legislature adopted U.C.A. §§ 78-30-4.11 to -4.15 ("Utah's Adoption Statutes"), which clarified the rights and responsibilities of parties involved in adoption proceedings.[12] Utah's Adoption Statutes reflect the state's interest "in providing stable and permanent homes for adoptive children in a prompt manner [and] in preventing the disruption of adoptive placements."[13] An unwed, biological father, "by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests" by complying with the statutes' requirements.[14]

If a child under six months of age is placed for adoption, an unwed father's consent is not necessary unless the father fulfills three requirements.[15] First, the father must file an affidavit with a court stating that he is able and willing to exercise full custody of the child;[16] second, the father must register with the Department of Health (sign the "putative father registry") before the child's mother consents to adoption or relinquishes the child to an adoption agency;[17] third, if the father is aware of the pregnancy, he must have paid a reasonable amount of both the pregnancy and child birth expenses.[18] If a child is placed for adoption more than six months after birth, the unwed father must share a substantial relationship with the child and financially support the child in order to preserve his right to notice and consent.[19]

11. *See* UTAH CODE ANN. § 78-30-1.5 (2000); *Id.* § 78-30-4.1 (repealed 1995).

12. *Compare id.* §§ 78-30-4.11 to -4.15 (2000) *with id.* §§ 78-30-4.0, -4.1 (repealed 1990, 1995).

13. *Id.* §78-30-4.12(2)(a) (2000).

14. *Id.* § 78-30-4.13(1).

15. *See id.* § 78-30-4.14(2)(b).

16. *See id.* § 78-30-4.14(2)(b)(i).

17. *See id.* § 78-30-4.14(2)(b)(ii).

18. *See id.* § 78-30-4.14(2)(b)(iii).

19. *See id.* § 78-30-4.14(2)(a).

The Utah State Legislature enacted Utah's Adoption Statutes to promote the finality of adoptions and to avoid situations like that of Baby Jessica. Putative fathers must strictly comply with Utah's Adoption Statutes in order to preserve their parental rights. If they fail to comply with the statutes, they will lose their right to notice and consent in adoption proceedings.

III. *JOHNSON V. RODRIGUES (OROZCO)* AND ITS SIGNIFICANCE

In 1996, Monica Rodrigues (Orozco) allegedly conceived a child with Victor Johnson in Arizona.[20] The child, known as "Baby Orozco," was born in Orem, Utah, and placed for adoption with a Utah couple.[21] Johnson claims that because Rodrigues told him that she had an abortion during her first trimester, he did not know about the baby's existence until two months after its birth.[22] After learning about Baby Orozco's existence, Johnson attempted to locate the baby and prevent finalization of the adoption; however, his efforts were unsuccessful.[23]

On August 5, 1998, Johnson filed suit in the United States District Court for the District of Utah, averring jurisdiction under the diversity statute, the federal question statute, and the declaratory judgment act.[24] In filing this action, Johnson alleged that Utah's Adoption Statutes are unconstitutional because they deny an unwed father the "fundamental right to maintain a parent-child relationship."[25] Johnson claimed that the statutes violate due process because they do not require a mother to produce the name of a possible father and because they only require notice to an unwed father of adoption proceedings if the father has signed in a timely fashion the state's putative father registry.[26]

20. Johnson v. Rodrigues (Orozco), No. 99-4127, 2000 WL 1217833 (10th Cir. Aug. 28, 2000), has not yet proceeded beyond a motion to dismiss. The facts set forth in this Note are those facts pleaded by Plaintiff Johnson, viewed in the light most favorable to the Plaintiff, as the courts viewed them in determining whether to grant a motion to dismiss.

21. *See Johnson*, 2000 WL 1217833, at *1.

22. *See id.* at *1–2.

23. *See id.*

24. *See id.* at *1.

25. *Id.* at *2.

26. *See id.*

The district court dismissed Johnson's claim for lack of subject matter jurisdiction.[27] However, on August 28, 2000, the United States Court of Appeals for the Tenth Circuit reversed the district court's decision and allowed, for the first time, the federal courts to evaluate the constitutionality of the statutes.[28] Since the 1800s, matters dealing with child custody have been decided in state courts[29] based on the United States Supreme Court's mandate that federal courts not exercise diversity jurisdiction over domestic relations cases.[30]

Instead of following precedent and dismissing Johnson's constitutional claim,[31] the Tenth Circuit distinguished between Johnson's custody request and his constitutional claim. The court held that the domestic relations exception to diversity jurisdiction barred the court from adjudicating Johnson's custody claim.[32] However, "[the] underlying claims making a general challenge to the constitutionality of the Utah adoption statutory scheme . . . [fall outside the domestic relations exception and] must be considered in the context of federal question jurisdiction."[33] Thus, the Tenth Circuit remanded Johnson's constitutional claim to the federal district court and noted that if the district court were to find Utah's Adoptions Statutes unconstitutional, the parties could bring the custody and adoption issues to state court for new proceedings.[34] On remand, the district court will likely find Utah's Adoption Statutes facially constitutional

27. *See id.* at *3.

28. *See id.* In 1987, a case challenging the constitutionality of Utah's adoption statutes was filed in United States District Court. The federal court held that it was "appropriate to exercise discretion by requiring resolution by the state courts of the questions here presented." Swayne v. L.D.S. Soc. Servs., 670 F. Supp. 1537, 1546 (D. Utah 1987). All other cases challenging the constitutionality of state adoption statutes prior to *Johnson v. Rodrigues (Orozco)* have also been decided by state courts.

29. *See* Fay v. South Colonie Cent. Sch. Dist., 802 F.2d 21, 31 (2d Cir. 1986); Peterson v. Babbitt, 708 F.2d 465, 466 (9th Cir. 1983); Magaziner v. Montemuro, 468 F.2d 782, 787 (3d Cir. 1972); *Swayne*, 670 F. Supp. at 1546 ("[F]ederal courts ordinarily should defer to the state courts based upon the state's strong interest in domestic relations matters, the superior expertise of the state courts in settling such disputes and the possibility of incompatible state and federal orders.").

30. *See* Barber v. Barber, 62 U.S. 582, 584 (1858); *In re* Burrus, 136 U.S. 586, 593–94 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.").

31. *Compare* Johnson v. Rodrigues (Orozco), No. 99-4127, 2000 WL 1217833 (10th Cir. Aug. 28, 2000), *with* Swayne v. L.D.S. Soc. Servs., 670 F. Supp. 1537 (D. Utah 1987).

32. *See Johnson*, 2000 WL 1217833, at *7.

33. *Id.*

34. *See id.*

likely find Utah's Adoption Statutes facially constitutional but may find that because of the alleged misrepresentation to the biological father, the statutes violate due process as applied to the particular facts of *Johnson v. Rodrigues (Orozco)*. A proper finding of the facts will be necessary in order to determine whether there actually was misrepresentation.

IV. ANALYSIS

The Tenth Circuit's decision to hear Johnson's constitutional claim against Utah's Adoption Statutes could affect many adopted children and their families. Utah state courts have previously found Utah's Adoption Statutes constitutional.[35] However, federal courts may interpret and value Utah's statutes differently and may not share the same state interest in promoting adoptions and providing early and uninterrupted bonding between children and parents. If the federal court determines that Utah's Adoption Statutes are unconstitutional, unwed, putative fathers may be able to collaterally attack and undo adoptions finalized in Utah state courts. This could cause serious emotional and psychological trauma to adopted children and their families. Furthermore, without the assurance of finality in adoption, potential adoptive couples may be deterred from adopting, which will cause children to miss out on the opportunity of being placed for adoption with stable families. Lastly, similar state adoption statutes in states belonging to the Tenth Circuit will also face the risk of being collaterally attacked in federal court, and adoptions finalized in those states will likewise face uncertainties and dangers.

This Note analyzes Johnson's due process claim and possible equal protection claims regarding Utah's Adoption Statutes and concludes that, under case law from the United States Supreme Court and Utah state courts, Utah's Adoption Statutes are facially constitutional. However, as applied in certain cases, Utah's Adoption Statutes may violate due process. Thus, in order to avoid such findings of unconstitutionality as applied in certain cases, this Note proposes a "fraudulent misrepresentation" exception to Utah's current adoption statutes.

35. *See, e.g.*, *In re* Adoption of Baby Boy Doe, 717 P.2d 686 (Utah 1986); Wells v. Children's Aid Soc'y of Utah, 681 P.2d 199 (Utah 1984); Sanchez v. L.D.S. Soc. Servs., 680 P.2d 753 (Utah 1984); Ellis v. Soc. Servs. Dep't of the Church of Jesus Christ of Latter-day Saints, 615 P.2d 1250 (Utah 1980).

A. The Constitutionality of Utah's Adoption Statutes

1. Do Utah's Adoption Statutes violate due process?

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law."[36] The United States Supreme Court has stated that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[37] In *Johnson v. Rodrigues (Orozco)*, Johnson claimed that Utah's Adoption Statutes violated his due process rights by denying him notice and an opportunity to be heard in the adoption proceedings of "Baby Orozco."[38] This section analyzes Johnson's due process claim under case law from the United States Supreme Court and from Utah state courts, concluding that Utah's Adoption Statutes do not facially violate due process but in certain cases, may violate due process as applied.

a. United States Supreme Court precedent. In the 1970s and 1980s the United States Supreme Court issued several opinions that provided general guidelines regarding unwed fathers' parental rights. Generally, the Court seemed to hold that parental rights stem more from the nature of a father-child relationship than from biological ties.

In 1972, Peter Stanley brought, for the first time, the issue of unwed father's rights before the United States Supreme Court.[39] Stanley fathered three children with Joan Stanley over the course of an eighteen-year extramarital relationship.[40] When Joan passed away, Illinois law, which presumed that unwed fathers were unfit to raise their children, mandated that Stanley's children become wards of the state.[41] The Court held that irrebuttably denying unwed fathers their parental rights violated due process.[42] The court remanded the case

36. U.S. CONST. amend. XIV, § 1.

37. Matthews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

38. *See Johnson*, 2000 WL 1217833, at *1.

39. *See* Stanley v. Illinois, 405 U.S. 645 (1972).

40. *See id.* at 646.

41. *See id.*

42. *See id.* at 658.

for a determination of Stanley's fitness as a father, noting that "nothing in [the] record indicate[d] that Stanley is or has been a neglectful father who has not cared for his children."[43]

In 1983, the Supreme Court had the opportunity to clarify its position with regard to unwed father rights when it decided *Lehr v. Robertson*.[44] In *Lehr*, the Court held that an unwed father who did not establish a significant relationship with his child did not have a constitutional right to receive notice of an adoption proceeding involving his child.[45] The Court clearly distinguished between the rights of an unwed father who actively supports and cares for his child and one who does not,[46] finding that the father in *Lehr*, unlike the father in *Stanley*, did not demonstrate a "full commitment to the responsibilities of parenthood . . . [such that he] acquire[d] substantial protection under the due process clause."[47] The Court explained that while biology alone is not enough to trigger an unwed father's constitutionally protected rights, biology plus a significant and supportive relationship with a child is sufficient.[48]

Based on the Supreme Court's decisions in *Stanley* and *Lehr*, Utah's Adoption Statutes do not violate principles of due process. Unlike the Illinois law that the Supreme Court held unconstitutional in *Stanley*, Utah's Adoption Statutes do not irrebuttably deny unwed fathers their parental rights. Rather, Utah's Adoption Statutes follow the reasoning in *Lehr* and recognize the parental rights of an unwed father when there is a biological tie with a child plus a willingness to establish paternity and fulfill parental duties. In the adoption of a child who is under six months of age, Utah's Adoption Statutes recognize a father's right to consent to an adoption if a father has both signed in a timely fashion the state's putative father registry and has filed a sworn affidavit stating that he is fully able and willing to have full custody of his child.[49] In the adoption of a child who is over six months of age, the state recognizes an unwed father's parental rights and requires his consent if a father has developed a substantial rela-

43. *Id.* at 655.
44. 463 U.S. 248 (1983).
45. *See id.* at 265.
46. *See id.* at 266–68.
47. *Id.* at 261.
48. *See id.*
49. *See* UTAH CODE ANN. § 78-30-4.14(2)(b) (2000).

tionship with his child and has financially supported her.[50] When an unwed father shares only a biological tie with a child, his parental rights are not recognized. Under the *Lehr* and *Stanley* holdings, the denial of parental rights under Utah's Adoption Statutes to unwed fathers who do not show a "full commitment to the responsibilities of parenthood"[51] does not violate due process. When applied to the case of *Johnson v. Rodrigues (Orozco)*, because Johnson shared only a biological tie with Baby Orozco and did not take action to establish a relationship with the child, due process was not violated by denying Johnson his parental rights.

b. Utah state court precedent. The Utah Supreme Court has consistently found Utah's Adoption Statutes facially constitutional.[52] The court has reasoned that Utah's Adoption Statutes prescribe a procedure to terminate the parental rights of an unwed father that is not arbitrary.[53] Rather, the court has found that Utah's Adoption Statutes are consistent with principles of due process because they "show (1) a compelling state interest in the result to be achieved and (2) . . . the means adopted are 'narrowly tailored to achieve the basic statutory purpose.'"[54] The compelling state interest involves "speedily identifying those persons who will assume a parental role over newborn illegitimate children" and providing the opportunity for "early and uninterrupted bonding between child and parents" through irrevocable adoption decrees.[55] In order to promote this state interest, Utah courts have generally required strict compliance with the state's adoption statutes.[56]

However, despite the Utah Supreme Court's repeated findings that the statutes are facially constitutional with respect to due process, the court has remanded cases to determine whether they have violated due process as applied. For example, in *Ellis v. Social Services*

50. *See id.* § 78-30-4.14(2)(a).

51. *Lehr*, 463 U.S. at 261.

52. *See, e.g.*, *In re* Adoption of Baby Boy Doe, 717 P.2d 686 (Utah 1986); Wells v. Children's Aid Soc'y of Utah, 681 P.2d 199 (Utah 1984); Sanchez v. L.D.S. Soc. Servs., 680 P.2d 753 (Utah 1984); Ellis v. Soc. Servs. Dep't of the Church of Jesus Christ of Latter-day Saints, 615 P.2d 1250 (Utah 1980).

53. *See Wells*, 681 P.2d at 206.

54. *Id.* (quoting *In re Boyer*, 636 P.2d 1085, 1090 (Utah 1981)).

55. *Id.* at 206–07.

56. *See, e.g.*, C.F. v. D.D., 984 P.2d 967 (Utah 1999); Beltran v. Allan, 926 P.2d 892 (Utah Ct. App. 1996).

Department of the Church of Jesus Christ of Latter-day Saints,[57] the Utah Supreme Court recognized that in certain situations, it may be "impossible" for an unwed father to comply with the requirements of Utah's Adoption Statutes "through no fault of his own."[58] In such cases, the court held that due process would be violated by the demand for strict compliance with the statutes. Instead, an evidentiary hearing allowing unwed fathers an opportunity to show why they could not reasonably comply with the statutes should be allowed.[59] In *Ellis*, the unwed father alleged that the child's mother left California just prior to the child's birth without telling the unwed father where she was going and immediately thereafter placed the child for adoption.[60] The unwed father was allowed an opportunity to show, on remand, that it was "impossible" for him to comply with Utah's Adoption Statutes "through no fault of his own" because he could not have reasonably known that his child would be born in Utah.[61]

In *In re Adoption of Baby Boy Doe*,[62] an unwed couple who conceived a child agreed to marry and raise their child together.[63] While the unwed father was looking for housing in Arizona, the illegitimate child was born earlier than expected and placed for adoption in Utah.[64] Because the father was out of town and was misled by the mother's family with regard to the baby's adoption proceedings, the court held that terminating the father's parental rights for failing to strictly comply with Utah's Adoption Statutes violated basic notions of due process.[65] Thus, the court "deemed [the father] to have complied with the statute" because he "came forward within a reasonable time after the baby's birth."[66]

Since the decisions of *Ellis* and *Baby Boy Doe*, Utah's Adoption Statutes have been amended and revised. The current version includes a provision that attempts to protect against finding the adop-

57. 615 P.2d 1250 (Utah 1980).

58. *Id*. at 1256.

59. *See id*.

60. *See id*.

61. *Id*.

62. 717 P.2d 686 (Utah 1986).

63. *See id*. at 687.

64. *See id*.

65. *See id*. at 691.

66. *Id*. (quoting *Ellis v. Soc. Servs. Dep't of the Church of Jesus Christ of Latter-day Saints*, 615 P.2d 1250, 1256 (Utah 1980)).

tion statutes unconstitutional when applied to situations similar to *Ellis*. The provision recognizes that there may be circumstances in which an out-of-state, unwed father may not reasonably be aware that he needs to comply with Utah's Adoption Statutes.[67] Thus, under certain circumstances,[68] strict compliance with the statutes' requirements is waived, and an evidentiary hearing is allowed.[69]

While Utah's Adoption Statutes have been revised to avoid future findings of unconstitutionality as applied in cases similar to *Ellis*, changes in the statutes have not reflected the same goal with respect to cases of misrepresentation as in *Baby Boy Doe*. Instead, the statutes seem to have become more stringent with respect to an unwed father's responsibility to protect himself from fraudulent representation.[70]

Under case law from the United States Supreme Court and Utah state courts, Utah's Adoption Statutes do not facially violate principles of due process. However, as applied in certain cases, Utah's Adoption Statutes have been found to violate due process. While the Legislature has responded to past findings of unconstitutionality by revising the statutes, additional revisions should be made to avoid the statutes being found unconstitutional when applied in cases involving fraudulent misrepresentation.

2. Do Utah's Adoption Statutes violate equal protection rights?

The Equal Protection Clause of the United States Constitution[71] guarantees that states may not enact legislation that treats persons

67. *See* UTAH CODE ANN. § 78-30-4.15(4) (2000).

68. In order for the provision to apply, the following requirements must be met:

> (a) the unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided; (b) the mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Utah; (c) the unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Utah; and (d) the unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and right in the child in cases of adoption.

Id.

69. *See id.*

70. Part IV.B of this Note discusses the changes that have occurred in Utah's Adoption Statutes with regard to fraudulent representation and proposes changes that should be made to the statutes to avoid future findings of unconstitutionality as applied.

71. U.S. CONST. amend. XIV, § 1.

who are "similarly situated" differently[72] unless the disparate treatment is based on differences that are relevant to a legitimate governmental objective or an important state purpose.[73] Johnson's complaint does not claim that Utah's Adoption Statutes violate his equal protection rights; however, Johnson could argue that the statutes violate principles of equal protection in three ways. First, Johnson could argue that Utah's Adoption Statutes treat unwed mothers and unwed fathers differently because they unconditionally require the consent of unwed mothers prior to infant adoption proceedings but do not require the consent of unwed fathers unless they have signed the putative father registry in a timely manner. Second, Johnson could argue that the statutes mandate different treatment of fathers who sign the putative father registry and fathers who do not. Third, Johnson could argue that Utah's Adoption Statutes treat unwed fathers and married fathers differently by requiring unwed fathers to sign the putative father registry in order to preserve their rights to notice and consent in infant adoption proceedings of their children. As the following subsections demonstrate, under case law from the United States Supreme Court and Utah state courts, the three possible equal protection rights claims fail.

a. Unequal treatment of unwed fathers and unwed mothers.

(1) United States Supreme Court precedent. In *Caban v. Mohammed*,[74] the Supreme Court held that a New York law, which permitted unwed mothers but not unwed fathers to block an adoption by withholding consent, violated the Equal Protection Clause because the distinction between unwed mothers and fathers bore no substantial relation to an important state interest.[75] The Court rejected the argument that mothers should be treated differently because they bear a closer relationship with their children than do fathers.[76] The Court also rejected the argument that requiring the consent of unwed fathers would interfere with the state's interest in protecting adoptions, reasoning that unwed fathers are no more

72. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985).

73. *See* Craig v. Boren, 429 U.S. 190, 197–99 (1976); Reed v. Reed, 404 U.S. 71, 76 (1971).

74. 441 U.S. 380 (1979).

75. *See id.* at 388–94.

76. *See id.* at 388–89.

likely than unwed mothers to object to the adoption of their children.[77]

Although the Supreme Court ruled the sex-based distinction in *Caban* unconstitutional, it is important to note that the Court based its reasoning on the fact that the father in *Caban* shared a significant relationship with his children.[78] The holding, therefore, was that the sex-based distinction was unconstitutional as applied to the facts of the *Caban* case. The unwed father in *Caban* was identified on his children's birth certificates, and he provided support for his children, often visiting them and communicating with them.[79] Because the mother and father shared relationships of equal quality and significance with their children, the Court felt that the mother and father should also have equal rights with regard to their consent in the adoption proceedings.[80] However, the Court, in dicta, explained that "in those cases where the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause precludes the State from withholding from him the privilege of vetoing the adoption of that child."[81]

For example, in *Lehr v. Robertson*,[82] the Supreme Court held that an adoption granted with the sole consent of the birth mother did not violate the unwed father's equal protection rights because the father was inattentive and had not established a significant relationship with his child. The Court stated that "[i]f one parent has . . . either abandoned or never established a relationship [with the child], the Equal Protection Clause does not prevent a state from according the two parents different legal rights."[83]

Based on the Supreme Court's holdings in *Caban* and *Lehr*, equal protection rights are not violated by Utah's Adoption Statutes' disparate treatment of unwed mothers and unwed fathers who do not show interest in their children or in protecting their parental rights. When a newborn infant is placed for adoption immediately after birth, a father may not have the chance to develop a significant relationship with his child. However, by signing a state's putative fa-

77. *See id.* at 391–92.
78. *See id.* at 382–83.
79. *See id.*
80. *See id.* at 392–94.
81. *Id.* at 392.
82. 463 U.S. 248 (1983).
83. *Id.* at 267–68.

ther registry, a father can show his desire to develop a relationship with his child and can simultaneously safeguard his parental rights.

(2) Utah state court precedent. In accordance with principles set forth by the United States Supreme Court, the Utah Supreme Court has held that Utah's Adoption Statutes' disparate treatment of unwed mothers and unwed fathers who do not show an interest in their children does not violate equal protection rights. In *Ellis*,[84] an unwed father claimed that Utah's Adoption Statutes violated his equal protection rights by only requiring the mother's affirmative consent in the adoption of a child born out of wedlock.[85] The unwed father in *Ellis* relied on *Caban* to support his position that the "permitting of unwed mothers, but not unwed fathers, to veto the adoption of a child by withholding consent violated the Equal Protection Clause."[86] In response to the unwed father's argument, the Utah Supreme Court emphasized the fact that the United States Supreme Court's holding in *Caban* only applies when an unwed father claims paternity, supports his child, and maintains a significant relationship with his child.[87] However, when an unwed father does not share a substantial relationship with his child, the state can withhold from an unwed father the right to veto an adoption without violating equal protection rights.[88]

The Utah Supreme Court has upheld this decision in subsequent cases. For example, in *Wells v. Children's Aid Society of Utah*,[89] the court stated, in construing *Ellis*, that Utah's Adoption Statutes do not violate equal protection rights because "there are reasonable bases for the classifications in the statute (between unwed mothers and fathers . . .) and that these classifications are reasonably calculated to serve a proper government objective."[90] The reasonable basis for the difference in classification between unwed mothers and unwed fathers is the need to identify fathers.[91] Identification of a child's mother is usually automatic because of her participation in the birth

84. 615 P.2d 1250 (Utah 1980).
85. *See id.* at 1255.
86. *Id.*
87. *See id.*
88. *See id.*
89. 681 P.2d 199 (Utah 1984).
90. *Id.* at 204.
91. *See* Swayne v. L.D.S. Soc. Servs., 795 P.2d 637, 641 (Utah 1990).

process; however, identification of a father is not always automatic.[92] If a mother does not voluntarily identify a father, putative father registries can help in the identification process. The government objective is to "(1) promptly determin[e] whether there is a man who will acknowledge paternity and assume the responsibilities of parenthood and, if not, (2) speedily mak[e] the child available for adoption."[93]

Therefore, under Utah case law, because the difference in classification of unwed mothers and unwed fathers in Utah's Adoption Statutes has a reasonable basis and fulfills a government objective, Utah's Adoption Statutes do not violate equal protection rights. The disparate treatment of unwed mothers and unwed fathers under Utah's Adoption Statutes is not arbitrary but is tied to the important state interest of identifying unwed fathers and facilitating speedy and permanent placement of adopted children.

b. Unequal treatment of unwed fathers who sign the registry and those who do not.

(1) United States Supreme Court precedent. According to case law from the United States Supreme Court, disparate treatment of fathers who sign the registry and fathers who do not sign the registry does not violate principles of equal protection. In *Lehr*,[94] the unwed father argued that New York's putative father registry violated principles of equal protection based upon the way it "distinguishe[d] among classes of fathers."[95] However, the Court held that such a distinction was "rational" and, therefore, did not violate the Equal Protection Clause.[96]

States with putative father registries have a rational interest in quickly identifying putative fathers who are entitled to notice of adoption proceedings and who are willing to parent children born out of wedlock. The registries provide a legal means to promptly de-

92. *See id.*

93. *Wells*, 681 P.2d at 204.

94. 463 U.S. 248 (1983).

95. *Id.* at 268 n.27.

96. *Id.* In determining whether statutes violate the Equal Protection Clause, different levels of scrutiny are applied to different types of classifications. For example, "strict scrutiny" is applied in cases involving "classifications based on race or national origin and classifications affecting fundamental rights." Clark v. Jeter, 486 U.S. 456, 461 (1988). "Rational-basis scrutiny" only requires that the discriminatory classification relate to a legitimate governmental purpose. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 17 (1973).

termine whether an unwed father desires to exercise his parental rights and fulfill his parental duties. They also help to ensure the permanency of an adoption and uninterrupted bonding between a child and adoptive parents by terminating the rights of an unwed father to veto an adoption once he has failed to sign the registry in a timely manner. Therefore, because the disparate treatment of fathers who sign the registry and those who do not sign the registry is related to the legitimate governmental purposes of quickly establishing the rights of all parties involved in the births and adoptions of illegitimate children, of facilitating planning for the future, and of protecting the best interests of the children, it passes the "rational-basis scrutiny" test and does not violate equal protection rights.[97] Under this rule, Utah's Adoption Statutes pass the "rational-basis scrutiny" test and do not violate equal protection rights by treating unwed fathers who sign the registry differently from unwed fathers who do not sign the registry.

(2) Utah state court precedent. The Utah Supreme Court has held that the disparate treatment of fathers who sign the registry and those who do not does not violate principles of equal protection.[98] The court's holdings are based on the fact that there are "reasonable bases for the classifications [in Utah's Adoption Statutes] (. . . between fathers who file and fathers who do not) and . . . these classifications are reasonably calculated to serve a proper governmental objective."[99] The reasonable basis for the disparate treatment of fathers who file and fathers who do not is the need to distinguish between fathers who are willing to accept legal responsibility for their children and fathers who are not.[100] The proper governmental objective is to "facilitate permanent and secure placement of illegitimate children whose unwed mothers wish to give them up for adoption and whose unwed fathers take no steps to officially identify themselves and acknowledge paternity."[101]

Thus, if the federal court in Utah follows the reasoning and holdings of Utah state courts, it should hold that Utah's Adoption

97. *See Lehr*, 463 U.S. at 264 n.20.

98. *See, e.g.*, Swayne v. L.D.S. Soc. Servs., 795 P.2d 637, 641 (Utah 1990); Wells v. Children's Aid Soc'y of Utah, 681 P.2d 199 (Utah 1984); Ellis v. Soc. Servs. Dep't of the Church of Jesus Christ of Latter-day Saints, 615 P.2d 1250 (Utah 1980).

99. *Wells*, 681 P.2d at 204.

100. *See Swayne*, 795 P.2d at 641.

101. *Id.*

Statutes do not violate principles of equal protection with respect to its unequal treatment of unwed fathers who sign the putative father registry and those who do not. Because the disparate treatment under Utah's Adoption Statutes of unwed fathers who sign the registry and those who do not is tied to a reasonable basis and proper governmental objective, the federal court hold that it is constitutional.

c. Unequal treatment of unwed fathers and married fathers who divorce or separate from their spouses.

(1) United States Supreme Court precedent. According to case law from the United States Supreme Court, parental rights are not equally bestowed upon all fathers. In *Quilloin v. Walcott*,[102] an unwed father claimed that the State of Georgia violated his equal protection rights by disallowing him the right to contest the adoption of his child, while allowing married fathers that right.[103] The unwed father argued that his interests and rights should have been "indistinguishable from those of a married father who is separated or divorced from the mother and is no longer living with his child."[104] However, the Court held that because the source of parental rights is not biology but rather the nature of the father-child relationship, divorced or separated fathers (who are presumed to have shouldered significant responsibility for the rearing of their children during the period of marriage) should be entitled to more protection of their parental rights than unwed fathers (who are presumed to have not supported their children or established a significant tie with them).[105]

Based on this case law from the United States Supreme Court, the disparate treatment under Utah's Adoption Statutes of unwed fathers and married fathers who divorce or separate does not violate the Equal Protection Clause. Utah's Adoption Statutes do not unconditionally treat unwed fathers differently from married fathers. Rather, Utah's Adoption Statutes follow the Supreme Court's reasoning that parental rights depend on the nature of the father-child relationship and allow unwed fathers who timely sign the putative father registry the same parental rights as married fathers based on

102. 434 U.S. 246 (1978).
103. *See id.* at 255–56.
104. *Id.* at 256.
105. *See id.*

their demonstrated interest in establishing a relationship with their children and in protecting their parental rights.

(2) Utah state court precedent. Utah state courts have held that unwed fathers are not entitled to the same protection of their parental rights as married fathers. In *Sanchez v. L.D.S. Social Services*,[106] the Utah Supreme Court held Utah's Adoption Statutes constitutional.[107] The court strongly endorsed marriage as the proper institution for the "procreation and rearing of children"[108] and stated that because illegitimate children disproportionately contribute to serious social problems, "[i]t is not too harsh to require that those [who bring] children into the world outside . . . of marriage should be required . . . to comply with those statutes that accord them the opportunity to assert their parental rights."[109]

The state of Utah has a strong interest in having children reared within the bonds of marriage. Because of this strong interest, Utah state courts are likely to uphold the disparate treatment of unwed fathers and married fathers mandated by Utah's Adoption Statutes to encourage the procreation and rearing of children within the bonds of marriage.

3. Policy reasons for upholding the constitutionality of Utah's Adoption Statutes

While as currently written, Utah's Adoption Statutes may be found to violate the Constitution as applied in certain cases, Utah has strong policies supporting the state's enforcement of such statutes.

a. Adoption provides benefits to society as a whole. Utah's strong state interest in promoting and protecting adoption is founded on the benefits it provides to adopted children, unwed mothers, adoptive families, and society as a whole. For varying reasons, biological parents are sometimes unwilling or not prepared to raise the children they conceive. Adoption provides a solution in such situations by allowing children to join established families who are ready to raise children and by giving biological parents the opportunity to pursue other goals and to prepare for parenthood in the future.

106. 680 P.2d 753 (Utah 1984).

107. *See id.* at 755.

108. *Id.*

109. *Id.* at 756.

Studies conducted on the consequences of adoption have reported positive results with regard to adopted children.[110] According to a study conducted by Search Institute, a public policy organization that researches issues of concern to states and cities, children adopted at birth were more likely as teenagers to be living in a middle-class family with both parents present than children born into intact families.[111] The adopted children were also less involved in alcohol abuse, vandalism, fighting, weapon use, theft, and police trouble than children raised by single parents.[112] In another study, adopted teens scored higher than teens raised by single parents on self-esteem, confidence in personal judgment, self-directedness, and feelings of security within families.[113]

Data from the federal government indicated that adopted children enjoyed a better quality of home environment and had superior access to health care when compared to children raised by unmarried mothers, to children of intact families, and to children raised by grandparents.[114] Adopted children also repeated grades less often, had better class standing, saw mental health professionals less often, and had fewer behavioral problems than illegitimate children raised by a single mother.[115]

Teenage mothers who choose adoption also enjoy many benefits. When compared to teenage mothers who choose to be single parents, teenage mothers who choose adoption are more likely to finish school, to be employed within one year of giving birth, and to even-

110. For a discussion of possible negative effects of adoption, see *Common Clinical Issues Among Adoptees Who Have Received Psychological Treatment* (visited Nov. 28, 2000) <http://www.adopting.org/commonis.html>; Carol Komissaroff, *The Angry Adoptee* (visited Nov. 28, 2000) <http://www.oara.org/info_angry_adoptee.html>; Amy Stevens, *Understanding Adoption Therapy* (visited Nov. 28, 2000) <http://www.adopting.org/rwtherpy.html>

111. *See* Patrick F. Fagan, *Adoption: The Best Options*, *in* ADOPTION FACTBOOK III 2, 2–3 (Connaught Marshner & William L. Pierce eds., 1999) (citing PETER L. BENSON ET AL., GROWING UP ADOPTED: A PORTRAIT OF ADOLESCENTS AND THEIR FAMILIES (1994)).

112. *See id.*

113. *See id.* at 3 (citing Kathleen S. Marquis & Richard A. Detweiler, *Does Adoption Mean Different? An Attributional Analysis*, 48 J. PERSONALITY & SOC. PSYCHOL. 1054 (1985)).

114. *See id.* (citing NICHOLAS ZILL ET AL., HEALTH OF OUR NATION'S CHILDREN, VITAL AND HEALTH STATISTICS 10).

115. *See id.*

tually marry.[116] Such mothers are also less likely to suffer from poverty, to receive public assistance, and to suffer from depression than their single-parent counterparts.[117]

Finally, adoptive families also benefit from adoption. Many couples who are childless or who are unable to have more children are overjoyed by the opportunity to welcome a new member into their family through adoption. Because many adoptive parents wait years before adopting a child, they are often well prepared to be parents and responsibly fulfill their parental duties. Furthermore, siblings of adopted children also enjoy the companionship of their adopted brothers or sisters.

The benefits of adoption to adopted children, unwed mothers, and adoptive family members result in benefits to society as a whole. Utah has a strong interest in promoting adoption because adoption allows members of society to enjoy a greater quality of life, education, and health while diminishing the likelihood of suffering from psychological disorders and being involved in various forms of delinquency.

b. Utah's Adoption Statutes provide a mechanism for protecting adoption and the benefits it offers. States that have a strong interest in promoting adoption must have means by which the finality and permanency of adoptions can be guaranteed. Without such means, the risk of losing an adopted child may deter families from considering adoption. Utah's Adoption Statutes protect the permanency and finality of infant adoptions by requiring unwed fathers to timely sign the state's putative father registry in order to preserve his right to notice and to consent.[118] If an unwed father fails to timely sign the state's putative father registry, he is barred from later bringing an action to assert parental interest in the child.[119]

Rankings of states on the Adoption Option Index[120] indicate the effectiveness of putative father registries in promoting adoptions. Of the ten states ranked the highest on the Adoption Option Index in

116. *See id.* at 4 (citing Patrick F. Fagan, *Liberal Welfare Programs: What the Data Show on Programs for Teenage Mothes*, *in* BACKGROUNDER 1031 (1995)).

117. *See id.*

118. *See* UTAH CODE ANN. § 78-30-4.13 (3)(a) (2000).

119. *See* Beltran v. Allan, 926 P.2d 892, 898 (Utah Ct. App. 1996).

120. The *Adoption Option Index* is a standardized ratio calculated by dividing the number of domestic infant adoptions by the sum of abortions and births to unmarried women in each state multiplied by 1,000. *See* ADOPTION FACTBOOK III, *supra* note 111, at 42.

1992, seven of those states had putative father registries.[121] As states have become more aware of the benefits of adoption and the need to promote and protect it, states have established putative father registries.

Thus, putative father registries provide a way for states to protect the finality of adoptions by terminating the parental rights of unwed fathers who do not register in a timely manner. Because there is a high correlation between states with putative father registries and high adoption rates, states with putative father registries are able to enjoy the societal benefits offered by adoption at a higher level.

c. Utah's Adoption Statutes provide a simple way for unwed fathers to protect their parental rights. Allegations have been made that Utah's Adoption Statutes violate principles of Due Process and Equal Protection by requiring an unwed father to sign in a timely fashion the state's putative father registry in order to preserve his right to notice and consent in adoption proceedings. As discussed in Part IV.A.1-2, these charges are not supported by case law from the United States Supreme Court or Utah state courts. In reality, Utah's Adoption Statutes actually provide a simple means through which an unwed putative father may assert and protect his parental rights.

Putative father registries, like the one provided for by Utah's Adoption Statutes, are especially helpful in protecting the parental rights of an unwed father when a mother does not want a father to have any involvement in a child's life. By simply signing the state's putative father registry, an unwed father may preserve his right to notice and consent in the adoption proceedings of his child without having to maintain contact with the child's mother. Even if an unwed mother does not disclose the identity of an unwed father in an adoption proceeding, the father can ensure that he will receive notice of the proceeding and the right to consent by timely signing the putative father registry.

If an unwed mother flees without informing an unwed father of her whereabouts, an unwed father will better be able to protect his parental rights in states that have a putative father registry. In states that do not have a putative father registry, although the consent of an unwed father may be necessary for an adoption to be finalized, an unwed mother may be able to lie about a father's identity and finalize the adoption without the real father's consent. In states with a

121. *See id.*

putative father registry, however, as long as an unwed father timely signs the registry, he will receive notice and the right to consent to the adoption of his child. Furthermore, by signing a state's putative father registry, an unwed father can learn of an unwed mother's location because he will be notified if adoption proceedings commence in that state.

Signing a putative father registry is very simple and can be done without traveling to the state of each registry. For example, a widely available adoption handbook, *The Complete Idiot's Guide to Adoption*,[122] provides a simple way for unwed fathers to learn about the adoption laws of each state. The handbook includes a chart that lists all the states with a putative father registry.[123] A request for the proper forms may be made by phone, and the signing of the registry may be done through the mail.

Thus, the putative father registry provides a simple and effective means through which an unwed father can protect his parental rights. Utah's Adoption Statutes, which require an unwed father to timely sign a putative father registry in order to preserve his parental rights, offers an unwed father a means through which he can protect his parental rights and receive notice of adoption proceedings in Utah even when an unwed mother chooses not to maintain contact with him.

B. Proposed Exception to Utah's Adoption Statutes

This Note has analyzed the constitutionality of Utah's Adoption Statutes under case law from the United States Supreme Court and from Utah state courts, finding that the statutes do not facially violate principles of due process or equal protection. However, while the statutes seem to be facially constitutional, they have been held to violate due process as applied in *Ellis*[124] and in *Baby Boy Doe*.[125]

Although the Utah State Legislature added an exception to Utah's Adoption Statutes to avoid unconstitutionality as applied in cases similar to *Ellis*, the legislature did nothing to prevent future findings of unconstitutionality as applied in cases similar to *Baby Boy*

122. CHRIS ADAMEC, THE COMPLETE IDIOT'S GUIDE TO ADOPTION (Gary M. Krebs ed., 1998).

123. *See id.* at 120–23.

124. 615 P.2d 1250, 1256 (Utah 1980).

125. 717 P.2d 686, 691 (Utah 1986).

Doe. In fact, for reasons discussed below, the revisions that have been made to Utah's Adoption Statutes since *Baby Boy Doe* seem to intensify the likelihood that Utah's Adoption Statutes will be found unconstitutional when applied in cases similar to *Baby Boy Doe*.

In *Baby Boy Doe*, due to misrepresentations made by an unwed mother's family, a baby was placed for adoption before an unwed father had any reason to know that he needed to sign Utah's putative father registry in order to preserve his right to consent to the adoption of his child. Utah's current adoption statutes include a provision that does not allow fraudulent representation to stand as a defense for unwed fathers for failing to strictly comply with the requirements of Utah's Adoption Statutes.[126] Adoption petitions will not be dismissed, finalized adoption decrees will not be vacated, and custody will not automatically be granted to the defrauded party.[127] The only recourse for a victim of fraudulent representations is to pursue civil or criminal penalties, but custody determinations will be based on the best interest of each child.[128] In most cases, it is unlikely that a court will find it in the best interest of a child who has bonded with her adoptive parents to be removed from a home she knows to be placed with a father whom she has never seen. Thus, in most cases, unwed fathers will probably lose the custody battle.

Although Utah's legislature allows mothers to refrain from disclosing the identity of a father, it should not allow a mother to be able to make fraudulent representations to a father in order to prevent him from properly protecting his parental rights. The legislature should revise Utah's Adoption Statutes to allow for an evidentiary hearing on the issue of why a father did not strictly comply with the statutes if a father can assert a fraudulent representation claim before an adoption is finalized. In Utah, adoptions may be finalized six months after a child is placed with her adoptive parents.[129] Thus, a father will have at least six months from a baby's birth, and about fifteen months from the date of conception, to be able to discover a fraudulent representation. The statute of limitations will allow fathers a reasonable amount of time to discover that a misrepresentation has occurred while reasonably assuring adoptive parents of finality. Un-

126. *See* UTAH CODE ANN. § 78-30-4.15(2) (2000).

127. *See id*.

128. *See id*.

129. *See* ADAMEC, *supra* note 122, at 122–23.

der the proposed exception, if a father misses this deadline, he will have no recourse. This strict condition will prevent the removal of children from their adoptive homes after familial bonding has occurred.

Just as an unwed father is deemed to be on notice that a pregnancy and adoption proceeding may occur if he engages in a sexual relationship with a woman, an unwed mother should be deemed to be on notice that the adoption of a child may not be finalized if a mother engages in fraudulent representations to an unwed father about her pregnancy or plans for choosing adoption. Utah's Adoption Statutes respect an unwed mother's right to privacy with regard to her pregnancy and adoption plans; however, it is not unreasonable to expect an unwed mother to be fair in handling the adoption process. Under the proposed statutory provision, nondisclosure of information to an unwed father or regarding an unwed father will still be acceptable; however, fraudulent disclosure will not be allowed.

With this Note's proposed exception added to Utah's Adoption Statutes, Utah's Adoption Statutes would no longer be found unconstitutional as applied in cases involving misrepresentation, such as *Baby Boy Doe*. Without the proposed exception, the federal court may determine that Utah's Adoption Statutes are unconstitutional as applied to *Johnson v. Rodrigues (Orozco)* because of the alleged misrepresentation by Rodrigues regarding an abortion in her first trimester. Although the facts of *Johnson v. Rodrigues (Orozco)* were pled inconsistently by the parties and, thus, Utah's Adoption Statutes may not ultimately result in a constitutional violation as applied in this case, the facts as presented by the Tenth Circuit's opinion on the motion to dismiss suggest a potential weakness in the statutes that may result in the statutes being found unconstitutional as applied in certain cases. This weakness can be easily cured by the proposed exception. Under the proposed exception, even with the alleged misrepresentation by Rodrigues, the federal court should hold that Utah's Adoption Statutes are constitutional, both facially and as applied in *Johnson v. Rodrigues (Orozco)*. With the addition of the proposed exception, if Johnson had brought his misrepresentation claim before the finalization of Baby Orzoco's adoption, Johnson's parental rights would not have been terminated without an evidentiary hearing to show why he did not strictly comply with Utah's Adoption Statutes.

V. CONCLUSION

Based on case law from the United States Supreme Court and from Utah state courts, the federal court should hold that Utah's Adoption Statutes are facially constitutional. The statutes' requirement that unwed fathers timely sign the state's putative father registry in order to preserve their parental rights is not arbitrary; rather, it is rational and is tied to the legitimate government objectives of identifying fathers who are willing to accept legal responsibility for their children and of facilitating speedy and permanent adoptions. The analysis in Part IV of this Note shows that the statutes do not facially violate due process and equal protection considerations. Moreover, because of the benefits that adoption provides to adopted children, to unwed parents, to adoptive families, and to society as a whole, federal courts should recognize the importance of protecting the finality and permanency of adoption.

However, Utah's legislature should adopt the exception proposed in this Note. Strict compliance with the statutes' requirements should be excused if an unwed father has been fraudulently misled to believe that he did not need to protect his parental rights. The proposed exception that allows for an evidentiary hearing if an unwed father brings his claim of fraudulent representation before an adoption is finalized will enable Utah's Adoption Statutes to withstand constitutional challenge while still protecting the finality of adoptions.

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