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IN THE CIRCUIT COURT FOR THE NINETEENTI
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOI:

DEMETRIUS WILSON, 1
Petitioner, i
and ; No: 95 F 2566
MICHELLE BRUMMITT, i
Respondent.)

BRIEF IN RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Respondent has filed a second Motion to Dismiss DEMETRIUS WILSON's Petition for Determination of the Existence of the Father and Child Relationship, which was brought pursuant to the Illinois Parentage Act of 1984, 750 ILCS 45/1 & sea. She now argues that the instant case should be dismissed because Petitioner failed to register timely with the Putative Father Registry, provided for in the Adoption Act, 750 ILCS 50/1 & u., 50/12.1. For the reasons set forth below, Respondent's Motion to Dismiss should be denied.

I. S T A T -

JULIAN BRIAN BRUMMITT was born on August 18, 1995 in Waukegan, Illinois to Respondent MICHELLE BRUMMITT. Petitioner DEMETRIUS WILSON believes he is the natural father of JULIAN, as he had sexual relations with Respondent during or about December 1994. Petitioner and Respondent are not married.

Prior to the child's birth on August 18, 1995, Petitioner and Respondent were in contact with Adoption Connection, an adoption agency. Both parties were considering putting the child up for adoption. While no definite decisions regarding the adoption had

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been made prior to the child's birth, the parties had selected a couple from the various profiles presented to them, whom they felt might be appropriate adoptive parents.

Petitioner went to meet with this couple's attorney before the child was born to sign a consent to adoption. However, upon reviewing the papers, he could not bring himself to sign the consent and left the attorney's office without doing so.

On August 18, 1995, Petitioner went to Victory Memorial Hospital to see Respondent and the baby, JULIAN, who had just been born. He held the child and stayed at the hospital until visiting hours were over. The following day, Petitioner contacted Respondent by telephone at home to inquire about JULIAN. Respondent informed Petitioner that the child had been given to the couple they had previously selected. Petitioner then told Respondent he could not go through with the adoption. Respondent was upset by this news and the conversation ended.

Petitioner subsequently requested to see JULIAN but Respondent told him she did not want him to visit. Petitioner persisted by calling and leaving several telephone messages on the answering machine at Respondent's home but received no response. Finally, in late August or early September of 1995, Petitioner called again and asked to see JULIAN. He spoke with Respondent's mother, who told him to talk to his lawyer and hung up the telephone.

On September 10, 1995, Petitioner was served with documents entitled, "In the Matter of Notice to DEMETRIUS WILSON, Putative

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Father," 1'Declaration of Paternity with Entry of Appearance," and
**Denial of Paternity with Entry of Appearance and Consent to
Adoption." These documents were served on him in connection with
an adoption action that had been filed by the prospective adoptive
parents mentioned above. The notice to putative father instructed
Petitioner to file the enclosed declaration of paternity within 30
days after receiving it, if he was in fact the father of the child
and intended to retain his legal rights with respect to the child
or wished to be notified of any further proceedings with respect to
custody or adoption of the child.

DEMETRIUS WILSON signed the document entitled "Declaration of
Paternity with Entry of Appearance" and filed it on September 29,
1995. The declaration of paternity states in part that "1
[DEMETRIUS WILSON] further understand that I am also obligated to
establish my paternity pursuant to the Parentage Act of 1984 within
thirty days of my receiving this notice." On that same day,
consistent with the declaration of paternity, Petitioner filed the
instant case pursuant to provisions of the Parentage Act, 750 ILCS
4517. No mention of the Putative Father Registry was made in any
of the documents DEMETRIUS WILSON received on September 10, 1995.
Subsequent to the filing of the instant case, the prospective
adoptive parents dismissed their Petition to Adopt JULIAN BRUMMITT.

Since that time, Petitioner DEMETRIUS WILSON has made
child support payments to Respondent directly and to her attorney
Charles Smith. In response to Petitioner's Petition, Respondent

filed a Motion to Dismiss, which this Court denied after a hearing on November 13, 1995. Thereafter, Respondent filed a second Motion to Dismiss arguing that DEMETRIUS WILSON's failure to file with the Putative Father Registry, 750 ILCS 50/12.1, within 30 days of JULIAN's birth bars him from bringing the instant case to establish paternity.

Until informed by his attorneys after he had filed the Declaration of Paternity and this lawsuit, Mr. WILSON had never heard of the Putative Father Registry. He had received notice of neither its existence nor its requirements.

Although the Adoption Act was amended in 1994 to require the Department of Children and Family Services (DCFS) to establish the Putative Father Registry and promulgate rules for its operation, DCFS has not promulgated regulations to implement this statutory requirement. In response to a Freedom of Information Act request, DCFS has responded that it has no documents reflecting the policies or procedures concerning dissemination to the public of information about the Registry. Although DCFS has a telephone number for the Registry, it is presently unlisted. DCFS has not advertised the existence of the Registry on signs or billboards.

DCFS has prepared a brochure concerning the Registry but distributed such brochures only to selected community organizations, the Illinois Department of Public Aid, county health department offices and some hospitals throughout the state." The brochure is entitled, "Protect Your Rights as a

Father." It speaks solely of the Registry and adoption. It makes no mention of any consequences that failing to register might have on a subsequent Parentage Act proceeding. (See copy of the Freedom of Information Act request and the response of DCFS, attached hereto as Exhibits B and C, respectively.) No one provided Mr. WILSON with a copy of this brochure until December 1995, well beyond the 30 day time for filing with the Registry.

Even if Mr. WILSON had looked at the Parentage Act, 750 ILCS 50/1 & sea., he would not have learned of the Registry. That statute was not amended to include provisions about the Registry.

II. DISCUSSIO#

Ms. BRUMMITT contends that Mr. WILSON's paternity action should be dismissed because he failed to register with the Putative Father Registry. Section 12.1 of the Adoption Act, 750 ILCS 50/12.1 purports to bar a putative father from "bringing or maintaining any action to assert any interest in the child," if he does not register with the Registry within 30 days after the birth of the child. Ms. BRUMMITT argues that since Mr. WILSON did not sign up with the registry within 30 days of JULIAN's birth, Mr. WILSON may not maintain this action under the Parentage Act, brought less than six weeks after JULIAN was born.

As set forth in Discussion Section C below, Ms. BRUMMITT misreads Section 12.1. By its terms that section does not bar a paternity action for failure of the father to register with the

Putative Father Registry. If Petitioner's argument on that point is rejected and Ms. BRUMMITT's construction of the statute is adopted by this Court, then the statute fails on constitutional grounds as violative of due process and equal protection.

A. Barrina DEMETRIUS WILSON from establishinu his naternity of JULIAN BRUMMITT for failina to reaister with the Putative Father Reaistry within 30 days of JULIAN's birth would deorive Mr. WILSON of due txocess as established by the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution.

The Due Process Clauses of both the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution provide that the state shall not "deprive any person of life, liberty or property without due process of law." As a putative father seeking to assert his parental relationship with JULIAN, DEMETRIUS WILSON has both a fundamental liberty interest and a protected property interest in establishing himself as JULIAN's father of which he may not be deprived without due process. Depriving him of those interests because he failed to abide by a requirement - registering with the Putative Father Registry - when he was neither informed of this obligation nor knew of it or could have known of it, violates his right to both procedural and substantive due process.

1. DEMETRIUS WILSON's riaht to establish his parental interest in JULIAN is a fundamental liberty interest and a property riaht both Protected by the due orocess clauses of the United States and Illinois Constitutions.

a. Fundamental Liberty Interest

Both the United States Supreme Court and the courts of this state have long recognized that parents under most circumstances have a fundamental liberty interest in their status as parents that is protected by constitutional due process. See, Lehr v. Robertson, 463 U.S. 248, 256, 103 S.Ct. 2985, 2990 (1983), quilloin v. Wolcott, 434 U.S. 246, 98 S.Ct. 549 (1978), Slawek v. Covenant Children's Home, 52 Ill.2d 20, 284 N.E.2d 291 (1972), Pritz v. Chesnul, 106 Ill.App.3d 969, 436 N.E.2d 631, 633 (1st Dist. 1982). Each of these decisions has recognized this right in the context of an unwed father seeking to establish his parenthood of a child.

In Pritz, as in this case, the putative father sought to file an action declaring him the father of an unwed child. At the time, the Parentage Act did not contain, as it does now, a provision permitting an action by a putative father to declare paternity. Relying in part on the United States Supreme Court's decision in Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208 (1972) and on the decision of the Wisconsin Supreme Court in Slawek v. Stroh, 62 Wis.2d 295, 215 N.W.2d 9 (1974), the court found that a putative father of a child has the constitutional right to establish his natural parentage protected by due process. Similarly in In Interest of C.J., 272 Ill.App.3d 461, 650 N.E.2d 290 (3rd Dist. 1995), the court found that an incarcerated mother who had no contact with her child since a short period after birth maintained a parental interest in her child that was a fundamental liberty interest protected by constitutional due process.

To a degree these decisions are refined by the decision of the United States Supreme Court in Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985 (1983). In that case a putative father who had not visited with his child or offered child support for a period of approximately two years after birth, sought to prevent an adoption of that child asserting due process protection of his right to consent. The Supreme Court explained that a biological relationship alone was insufficient to implicate a liberty interest protected by due process. Rather, the Court explained, a putative father must demonstrate some commitment and interest in the child in order for his liberty interest to be constitutionally protected.

Consistent with Lehr, court decisions before and after that Supreme Court opinion have looked to some act of commitment on the part of the putative father in justifying the finding of a constitutionally protected liberty interest. Pritz v. Chesnut, 106 Ill.App.3d 969, 436 N.E.2d 631, 633 (1st Dist. 1982); Pena v. Mattox, 880 F.Supp. 567, 571 (N.D. Ill. 1995).

In determining the existence of commitment in the context of a newborn child, the courts have looked to several indicia. In Pena v. Mattox, 880 F.Supp. 567, 571 (N.D. Ill. 1995), the court looked to whether the putative father of a newborn child had availed himself of state remedies to indicate his paternity. In In re Adoption of B.G.S., 556 So.2d 545, 551 (La. 1990), the Supreme Court of Louisiana found commitment by a putative father based upon his opposing adoption of the child and acknowledging that the child

was his. In Johnson v. Studley-Preston, 119 Idaho 1055, 812 P.2d 1216, 1221 (1991), the Supreme Court of Idaho found evidence of commitment in a putative father's willingness to assume financial responsibility for the child.

In the instant case, Mr. WILSON's connection to his child is more than a mere biological link. DEMETRIUS WILSON has committed himself to the responsibilities of parenthood as evidenced by his actions on numerous occasions to become involved in JULIAN's life. Mr. WILSON was at the hospital on the day that JULIAN was born. He has acknowledged JULIAN as his son. Since JULIAN's birth he has asked repeatedly to see and to visit his child; these requests have been denied by the Respondent. He has tendered child support payments to Ms. BRUMMITT and to her attorney. He timely filed the Declaration of Paternity and initiated this paternity case to establish his paternity of JULIAN within 30 days of receiving the notice to putative father in the adoption case. In short, he has taken substantial actions to evidence his interest and commitment to being JULIAN's father. Under the case law, he possesses a fundamental liberty interest that is protected by constitutional due process.

b. Protected Property Interest

In addition to and separate from his possessing a fundamental liberty interest in establishing that he is JULIAN's father, Mr. WILSON also has a property interest in his right to establish himself as JULIAN's father, of which he may not be deprived without

due process. The United States Supreme Court has established that a property interest protected by constitutional due process emanates from existing rules or understandings that stem from an independent source, such as state or federal law. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972).

Property interests . . . are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Board of Regents v. Roth, 408 U.S. at 577. The Court has also held that a cause of action is a property interest protected by the due process clause of the Fourteenth Amendment. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 657 (1950); Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 1154 (1982).

The Illinois legislature has created such a property interest. In 1984, the legislature enacted the Illinois Parentage Act. Section 7 of that Act provides in relevant part, "An action to determine the existence of the father and child relationship . . . may be brought by . . . a man presumed or alleging himself to be the father of the child or expected child." 750 ILCS 45/7(a).

In section 8 of the Parentage Act the legislature established a specific time limit within which a putative father can file a paternity action. 750 ILCS 45/8(a)(2). Under that provision,

DEMETRIUS WILSON is entitled to file a paternity action seeking that he be declared the father of JULIAN until such time as JULIAN turns 20 unless Mr. WILSON fails to show interest in the child for a period of 36 months. Thus, the provisions of the Parentage Act create a right of action and accordingly a property interest to the benefit of DEMETRIUS WILSON as a putative father. He is entitled under the statute to bring an action to declare himself the father of JULIAN. Such interest is protected by United States and Illinois Constitutions and cannot be taken away without due process of law.

2. Annlyvina Section 12.1(a) to oreclude DEMETRIUS WILSON from brinaina a naternity action would violate his riaht to both nrocedural and substantive due urocess.

Ms. BRUMMITT's attempt to preclude a Parentage Act action by Mr. WILSON based upon his not registering with the Putative Father Registry within 30 days of JULIAN's birth seeks to deprive him of his right to assert his status as JULIAN's parent although he had no knowledge and was provided no notice that he would suffer such deprivation if he did not register. Such a result constitutes a procedural defect that would operate to deny Mr. WILSON adequate process guaranteed by the due process clauses of the United States and Illinois Constitutions. S e e.
DeDt. of Public Aid, 129 Ill.App.3d 566, 472 N.E.2d 877 (1st Dist. 1984).

In addition, even if the procedures afforded Mr. WILSON were considered adequate, he possesses a recognized fundamental liberty

interest in asserting his status as a parent of JULIAN. Applying section 12.1(g) of the Adoption Act to prevent an action under the Parentage Act would constitute an overbroad interpretation of that statute not adequately in furtherance of a state interest and would violate due process. See, People v. R.G., 131 111.2d 328, 546 N.E.2d 533 (1989).

a. Procedural Due Process

During the 30 day period after JULIAN was born, DEMETRIUS WILSON never heard of the Putative Father Registry, his obligation to register with it or any consequences that would befall him if he did not register. No one told him about the Registry. No one provided him any notice of its existence. He was totally unaware of the Registry and its requirements until well after the 30 day time limit to register, when he was informed of the Registry by his attorneys.

He did receive a notice of the adoption action that had been filed and which has since voluntarily been dismissed by the petitioners in that case. The notice informed him that he must file a 1^t Declaration of Paternity¹ form within 30 days of receiving the notice, which Mr. WILSON did. The Declaration of Paternity form instructed him to establish his paternity pursuant to the Parentage Act within 30 days of receiving the notice. Mr. WILSON did that also, filing this proceeding within 30 days of receiving the notice in the adoption case. Nothing he received told him to register with the Putative Father Registry provided for in the

Adoption Act. 750 ILCS 50/12.1.

Even if Mr. WILSON had searched for the existence of the Registry he probably would have been unsuccessful. The Registry has an unlisted number. Searching the telephone book or calling Information would not have helped. Had he examined the provisions of the Parentage Act, the statute under which he filed this action, he would not have learned of the Registry's existence or the consequences of not registering. The Parentage Act does not mention the Putative Father Registry.

Although section 12.1 of the Adoption Act requires the Illinois Department of Children and Family Services to establish the registry and rules to implement its operation, DCFS has promulgated no rules and has prepared no documents indicating policies or procedures for informing affected persons about the existence and purpose of the Registry. A review of the responses to the FOIA request demonstrates that DCFS has targeted its publicity efforts largely at adoptive families and their representatives rather than at putative fathers. Although DCFS has prepared a brochure for fathers concerning the Registry, the Department has limited distribution of that brochure to specific locations such as the Department of Public Aid and certain hospitals. Since Mr. WILSON does not receive public aid and since he apparently had no contact with a hospital that might hand out the brochures, he has never received one.

Even if he had received this brochure, it would not have told

him to register with the Registry if there was no adoption action pending and he wished to preserve his right to bring just a paternity action under the Parentage Act. In sum, there was virtually no way for DEMETRIUS WILSON to know that if he did not register with the Putative Father Registry within 30 days after JULIAN was born, he might be precluded from bringing an action under the Parentage Act of 1984 declaring that he was the father of JULIAN.

Decisions of the courts of this state as well as the United States Supreme Court have determined that depriving a person of a fundamental liberty interest or a protected property interest without informing him or her of the existence of a requirement or an action that must be taken to preserve that interest violates due process. In Brenola-Sorrentino v. Illinois Dept. of Public Aid, 129 Ill. App.3d 566, 472 N.E.2d 877 (1st Dist. 1984), the Illinois Department of Public Aid denied plaintiff certain medical welfare benefits because she owned assets exceeding the Department's eligibility limit of \$400.00. Department personnel neglected to inform Ms. Brenola-Sorrentino of their asset reduction policy whereby an applicant for these welfare benefits could legally reduce his or her assets to become eligible for medical assistance for currently outstanding medical bills. Because plaintiff did not avail herself of the opportunity to divest herself of her assets, she was precluded from receiving welfare for those medical bills. The court found that the Department violated plaintiff's due

process rights by failing to advise her of its asset reduction policy, thus preventing her from becoming eligible for these welfare benefits.

Similarly, in Giacone v. Schweiker, 656 F.2d 1238 (7th Cir. 1981), an applicant for Social Security lost retirement benefits when he did not demonstrate good cause for untimely filing a request for redetermination of an initial adverse decision. No one had told the applicant that if he could demonstrate good cause for missing the deadline, his failure to request redetermination on time would be waived. Noting that there were no procedures whereby applicants would be informed of the existence of the good cause exception, the court found that the failure to notify Mr. Giacone of a right that would prevent him from being precluded from receiving Social Security deprived him of due process.

Of similar import is the decision of the United States Supreme Court in Guilloy v. Walcott, 434 U.S. 246, 98 S.Ct. 549 (1978). There, a stepfather of an illegitimate child petitioned for adoption. The natural father who had taken no steps toward legitimation over an eleven year period was not permitted under Georgia law to withhold consent. He was however provided a best interest hearing. Although finding that affording the natural father a best interest hearing preserved his due process, the Court nevertheless found that the natural father's lack of knowledge of the procedure for legitimation until after the adoption action had been filed precluded the state from permitting the adoption to go

forward on the basis of the mother's consent alone without the hearing.

Each of these cases supports the principle that one cannot be deprived of a fundamental liberty interest or a protected property interest without adequate notice of an existing method that would preserve or protect that interest. In this case, not only did DEMETRIUS WILSON have no notice that he might be required to register with the Putative Father Registry to protect his interest in his relationship with his son, but he was led to believe precisely the opposite. He received notices in the adoption action which informed him that what he needed to do to protect his interest was file the declaration of paternity and file the instant action. Under these circumstances depriving Mr. WILSON of his right to bring an action under the Parentage Act violates due process under both the 14th Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution.

b. Substantive Due Process

Applying section 12.1 of the Adoption Act to preclude Mr. WILSON from bringing an action under the Parentage Act additionally deprives Mr. WILSON of constitutional due process because under the circumstances the application would be overbroad and not adequately in furtherance of a state interest. The Illinois Supreme Court has explained the requirements of substantive due process:

Under substantive due process . . . a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest [cite] . . . If the life, liberty or property

interest is a fundamental right, then any statute limiting that right @may be justified only by a compelling state interest and . . . must be narrowly drawn to express only the legitimate state interests at stake.'

Peonle v. R.G., 131 111.2d 328, 546 N.E.2d 533 (1989).

In Bovnton v. Kusner, 112 111.2d 356, 494 N.E.2d 135 (1986), the Court further explained that when the operation of a statute may interfere with the exercise of a fundamental right, then the effect of that statute must be subject to strict scrutiny. Under strict scrutiny, the application of the statute cannot be upheld unless it is supported by sufficiently important state interests and it is closely tailored to effectuate only those interests.

Bovnton v. Kusner, 494 N.E.2d at 141.

As discussed above, the courts have long recognized that putative fathers like DEMETRIUS WILSON have a fundamental liberty interest in asserting their parental status. Lehr v. Robertson, 463 U.S. 248, 256, 103 S.Ct. 2985, 2990 (1983); Cuilloin v. Wolcott, 434 U.S. 246, 98 S.Ct. 549 (1978); Slawek v. Covenant Children's Home, 52 111.2d 20, 284 N.E.2d 291 (1972). Because Mr. WILSON possesses this fundamental interest, the application of Section 12.1 to preclude him from bringing a paternity action is subject to strict scrutiny. Under a strict scrutiny standard, such application violates due process.

The purpose of the Illinois Parentage Act is to achieve for children "the physical, mental, emotional and monetary support of [their parents]1.1' 750 ILCS 45/1.1. Thus, the legislative objective of that statute is to afford children the right to know

and be with their natural parents as families.

Consistent with that objective, the Parentage Act contains specific provisions for achieving relationships between children and their natural parents as families. Precluding a putative father who otherwise qualifies under provisions of the Parentage Act from seeking to assert his status as a natural father based upon a provision of another independent statute, the Adoption Act, is inconsistent with the objectives of the Parentage Act and constitutes an overbroad application of section 12.1 of the Adoption Act in violation of due process.

Moreover, application of the registry requirement to prevent a paternity action has nothing to do with the purpose of the registry provision, section 12.1 of the Adoption Act. The stated reason for the Putative Father Registry contained in section 12.1 is to determine "the identity and location of a putative father of a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice to the putative father." 750 ILCS 50/12.1. Thus, the goal of this statutory provision is to preserve the rights of putative fathers in adoption actions and to clarify for purposes of adoption the existence and identity of a putative father who might have an interest in an adoption proceeding.

There is no adoption proceeding in this case. There is only Mr. WILSON's action brought under the Parentage Act. Applying the registry requirement of section 12.1(b) to preclude a paternity

action does not serve the stated purpose of the registry provision. Such an application would have nothing to do with adoption. And, as discussed above, it would promote a result inconsistent with the objectives of the Parentage Act. Such an application of section 12.1 of the Adoption Act cannot stand up to strict scrutiny and is a violation of due process.

- B. Barrina DEMETRIUS WILSON from establishing his Daternity of JULIAN R ITT
Statute within 30 days of JULIAN's birth
would deprive Mr. WILSON of the equal protection of the
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The Illinois Supreme Court has explained, on a number of occasions, what equal protection requires. Initially, the Court has found that the same analysis is applicable in assessing equal protection claims under both the Federal and State constitutions. People v. Shenard, 152 Ill.2d 489, 499, 605 N.E.2d 518, (1992); People v. Reed, 148 Ill.2d 1, 591 N.E.1d 455, 457 (1992).

The essence of equal protection is that persons who are similarly situated be treated similarly by the government. People v. Shenard, 152 Ill.2d at 499. Both state and federal constitutional equal protection prohibit the state from according dissimilar treatment to categories of similar persons for reasons wholly unrelated to the purpose of the legislation that creates the distinctions. People v. Shenard, 152 Ill.2d at 499, Rinaldi v. Yeacrer, 384 U.S. 305, 309, 86 S.Ct. 1497, (1966).

In reviewing the governmental reasons for statutory

distinctions, the Court has looked for the presence of a suspect classification or a fundamental right. When either a suspect classification such as race or gender is involved or a fundamental right is implicated, the Court strictly scrutinizes the statutory classifications in question to determine if such distinctions are "necessary to promote, and [are] narrowly tailored to serve a compelling State interest." Reonle v. Reed, 148 111.2d 1, 591 N.E.1d 455, 459 (1992).

Similarly, in Trimble v. Gordon, 430 U.S. 762, 97 S.Ct. 1459 t-771 I involving the effect of illegitimacy on inheritance, the Court explained that although illegitimacy was not a suspect class, it was analogous to many of the characteristics of classes which have been held to be suspect and entitled to a higher level of scrutiny. Trimble v. Gordon, 430 U.S. at 766-67. The United States Supreme Court in Lab, 441 U.S. 380, 99 S.Ct. 1760 (1979), has also imposed a strict scrutiny review upon statutory distinctions based upon gender. See Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451 (1976).

As discussed above, the right asserted by DBMETRIUS WILSON, to establish his status as father to JULIAN, is a recognized fundamental right; state interference with that right is subject to a high level of scrutiny. Moreover, insofar as section 12.1 of the Adoption Act creates distinctions based upon illegitimacy or gender, such a distinction also would be subject to strict scrutiny.

Imposing the registry requirement of section 12.1 as a condition to bringing a paternity action under section 7 of the Parentage Act, 750 ILCS 45/7, results in the different treatment of two classes of similarly situated persons. Under section 7 of the Parentage Act, both unwed parents, mothers and fathers, may initiate proceedings to determine the existence of the father and child relationship of the same child. Thus, in terms of who has the right and power to assert the existence of the relationship, both the mother and the putative father, who desire to declare a father-child relationship, stand in similar circumstances. Both have an interest in making the identical declaration of parental status.

Yet, the application of section 12.1 of the Adoption Act creates a distinction. Mothers can assert the existence of a father-child relationship without complying with the registration requirements of section 12.1. Fathers cannot.

It is this distinction, which burdens the fundamental right of a putative father to assert the existence of his parental relationship with his child, that is subject to strict scrutiny under settled principles of equal protection. In Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760 (1979), the United States Supreme Court invalidated a statutory provision that afforded different treatment to unmarried mothers and unmarried fathers of the same child in an adoption proceeding finding that permitting adoptions to occur with only the consent of the mother constituted

"an overbroad generalization@' involving a gender based classification in violation of equal protection. The Court concluded that the disparate treatment did not adequately promote the stated interest of the state to promote adoptions of illegitimate children.

As discussed in the argument pertaining to substantive due process, application of section 12.1 of the Adoption Act to an independent action brought under the Parentage Act furthers objectives existing under neither the Adoption Act nor the Parentage Act. Indeed, such application is contrary to the stated purpose of the Parentage Act. Accordingly, under a strict scrutiny review, the distinction created between an unmarried mother and an unmarried father of the same child, each of whom would seek to establish the father-child relationship, as in the decision in Caban, is an overbroad generalization that affects a suspect class and burdens a fundamental right. Such a distinction violates equal protection.

C. Section 12.1 of the Adontion Act Does Not By Its Terms Bar Petitioner's Paternity Action Based on His Failure to Register with the Putative Father Reastrv.

Although the constitutional arguments set out above are substantial and compelling, in fact it is unnecessary in this case for the Court to reach those constitutional arguments. A review of the Adoption Act together with the Illinois Parentage Act, 750 ILCS 45/1 & sea., demonstrates that this case can be decided on

statutory construction grounds. Respondent's interpretation of Section 12.1(g) of the Adoption Act to work as a bar to an otherwise proper paternity action based upon the failure of a petitioning father to register timely with the Putative Father Registry fails upon a close reading and analysis of the law.

Respondent's Motion relies specifically upon two subsections of Section 12.1. One of these subsections, 750 ILCS 50/12.1(h), by its express terms applies only to adoption matters and thus is irrelevant to this case. The other subsection, Section 12.1(g) (which Respondent mistakenly cites as Section 12.1(b)) holds in part that "a putative father who fails to register with the Putative Father Registry as provided in this section is barred from thereafter bringing or maintaining any action to assert any interest in the child." Apparently Respondent's position is that the language "any action" should be read to include a paternity action. Whenever a word or phrase becomes an issue in a legal proceeding its strict meaning is not as important as the sense in which it was used by the lawmaking body... 'A statute or ordinance must receive a sensible construction, even though such construction qualifies the universality of its language.'" City of East St. Louis v. Union Electric Company, 37 Ill.2d 537, 229 N.E.2d 522, 525 (1967). For the reasons set forth below, the words "any action"^{vi} must be read more narrowly, to bar only actions or claims directly challenging an adoption.

1. Respondent's Position is not Supported by the Language of the Adoption Act or the Parentage Act.

Respondent's interpretation of the work @'any" must fail first because there is no language to support it elsewhere in Section 12.1, in the remainder of the Adoption Act, or in the Parentage Act. First, there is no enumeration in Section 12.1 of the specific types of actions allegedly barred by a failure to register.

More significantly, when Section 12.1 was adopted no amendment was made to Section 12a of the Adoption Act, the section on Notice to Putative Father, to reflect a requirement that the putative father register with the registry to preserve his right to bring a paternity action. This is significant, because Section 12a does specifically reference the Parentage Act. Section 12a(2) provides that the Declaration of Paternity which is to be provided to a putative father in an adoption action to enable him to declare his interest in child is to include, inter alia, the following language:

(5) I further understand that [in addition to filing this declaration] I am also obligated to establish my paternity pursuant to the Parentage Act of 1984 within 30 days of my receiving this notice or, if the child is not yet born, within 30 days after the birth of the child...

The fact that this portion of Section 12a was not amended to reference an obligation to file with the registry in addition to filing a court action for paternity suggests that the legislature in fact did not intend filing with the registry to be a requisite

to the maintenance of a paternity action.

Similarly, there is no reference in the Parentage Act whatsoever to the Putative Father Registry or to any requirement that one register with that registry in order to maintain a right to file a paternity action. The absence of such a reference is glaring and belies Respondent's interpretation of Section 12.1(g).

If read as Respondent proposes, Section 12.1(g) of the Adoption Act would effect a very significant change in the Parentage Act, as it would severely limit the right to file an action under that statute. Such a significant change ought to be found only where there is explicit language in the Parentage Act supporting it.

The law disfavors repeal by implication. Decker v. University Civil Service, Etc., 85 Ill.App.3d 208, 406 N.E.2d 173, 176 (4th Dist. 1980). By the same token, such a significant change by implication ought not to be found.

In Burch v. Hearn, 116 Idaho 956, 782 P.2d 1238 (1989), the Supreme Court of Idaho reviewed and rejected an interpretation of that state's adoption statute strikingly similar to the interpretation of the Illinois Adoption Act proposed by Respondent here. "The sole issue on appeal [in Burch] [was] whether a putative father can bring a paternity action pursuant to I.C. S7-1101 et seq. [the paternity statute] without first filing a notice of claim to paternity under I.C. §16-1513(3)." Burch v. Hearn, 782 P.2d at 1238-1239.

Section 16-1513(3) of the Idaho Code states as follows:

16-1513 Claim of Paternity

(3) Any father of such child who fails to file and register his notice of claim to paternity and to assume responsibility for the child shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing of registration shall constitute an abandonment of said child and shall be prima facie evidence of sufficient grounds to support termination of such father's parental rights in accordance with section 16-2005, Idaho Code.

The language of I.C. 16-1513(3) is remarkably similar to the language of Section 12.1(g) at issue in this case. Indeed, the Idaho language more easily lends itself to the interpretation espoused by Respondent BRUMMITT, as it expressly refers to actions to establish paternity. The Idaho Supreme Court, however, flatly rejected the mother's contention that the father's paternity action was barred by his failure to file a claim of paternity. The Court concluded that the I.C. 16-1513(3) ban on paternity actions applies only to

paternity claims that emerge in the context of an adoption or termination proceeding... We conclude that I.C. 16-1513(3) was never intended to prevent a father from voluntarily coming forward and, in the absence of an adoption or termination proceeding, filing an action under I.C. s7-1101 & sea. to establish his rights and obligations with regard to the child without first having filed and registered the notice of claim of paternity required by I.C. 16-1513(3).

782 P.2d at 1239-1240.1 A specially concurring opinion points out that as the more complete procedure, that which establishes a right rather than merely a claim, the filing of a paternity action is preferable to the mere filing with the registry; thus the latter ought not to be a prerequisite to the former. Burch v. Hearn, 782 P.2d at 1240.

The decision in Burch v. Hearn is particularly informative for this Court. For the reasons set forth above as well as those set forth below, this Court should follow the example of that decision and reject the interpretation of Section 12.1(g) proposed by Respondent.

2. Resnondent's Internretation is Beyond the Scone of the Leaislature's Intent in Enactina Section 12.1.

In interpreting a statute, it is "the function of the courts to ascertain and give effect to the intent of the legislature, arriving at such intention not only from the language employed in the legislation, but also from the reason and necessity for the laws, the evils to be remedied, and the objects and purposes to be obtained." Peonle v. Aleios, 97 111.2d 502, 455 N.E.2d 48, 52 (1983). See also In Re Marriaae of Antonich, 148 Ill.App.3d 575, 499 N.E.2d 654, 656 (2nd Dist. 1986). Review of the legislative purpose behind Section 12.1 of the Adoption Act demonstrates that

'Demetrius Wilson did file this suit after he received notice of a pending adoption action regarding his son. That adoption action has been dismissed since, however, while the instant action continues. This case is thus an independent paternity proceeding as contemplated by the Idaho Supreme Court.

barring properly filed paternity actions from proceeding, based upon failure of the father to file with the registry, was neither an intended nor a desired purpose of the legislature in enacting that provision, but rather was well beyond its intended scope.

The purpose of the Putative Father Registry as stated in Section 12.1 is "determining the identity and location of a putative father of a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice to the putative father." Limiting the rights of fathers to pursue paternity actions is not part of the stated purpose of the Putative Father Registry. Conversely, limiting those rights in no way furthers the stated purpose of providing notice to putative fathers of adoption actions.

Similarly, limiting the rights of fathers to bring paternity actions is not part of the unstated purpose of the legislation. The Putative Father Registry is often referred to as the "Baby Richard Law." The law was adopted in response to a very specific event which had received substantial media coverage prior to the law's enactment: the transfer of the four-year-old child known as Baby Richard from the custody of his adoptive parents, with whom he had lived since infancy, to the custody of his natural father, whom he had never met, based upon the lack of notice to that father of the adoption proceedings. Thus the unstated purpose of the Putative Father Registry was to create finality in adoption proceedings so that older adopted children would not be uprooted

from their adoptive families.

Limiting rights of fathers to pursue paternity actions outside of the adoption context is not part of this unstated purpose of the Putative Father Registry nor will the broad interpretation of Section 12.1(g) proposed by Respondent further that unstated purpose. Examination of the intent of the legislature does not support Respondent's reading of Section 12.1(g).

3. Respondent's Reading of Section 12.1(o) is Contradicted by Recent Amendments to the Parentage Act.

While the application of Section 12.1(g) of the Adoption Act to bar the filing of an otherwise proper paternity action for failure to file with the registry is not supported by the language of the statute and in no way furthers either the stated or unstated purpose of Section 12.1, such an interpretation is directly contradicted by recent amendments to the Parentage Act. A literal interpretation of a phrase, such as "any action" in this case, should not prevail where it "would yield a result inconsistent with other provisions which deal with the same subject and no other evidence of an intent to repeal or significantly alter those provisions can be discerned." People v. Aleios, 455 N.E.2d at 52. See also People v. Moffitt, 138 Ill.App.3d 106, 485 N.E.2d 513, 522 (2nd Dist. 1985).

Section 12.1 of the Adoption Act was effective July 3, 1994. Section 8 of the Parentage Act, that dealing with statutes of

limitations, was amended effective six months later, January 1995. Prior to 1995, the statute of limitations for a father to file an action to establish the father-child relationship was two years from the birth of the child: "An action brought on behalf of any person other than the child should be barred if brought later than 2 years after the birth of the child." 750 ILCS 45/8(a)(2), since amended. Section 8(a)(1) of the Parentage Act now reads in relevant part:

Except as otherwise provided in this Section, an action brought by a party alleging that he or she is the child's natural parent shall be barred if brought later than 2 years after the child reaches the age of majority. An action brought by a party alleging that he is the child's natural father shall be barred if brought later than 2 years after the child's birth if the party has foregone his parental rights as manifested by his failure for a period of 36 months to visit, provide support for, or communicate with the child although able to do so. This limitation on an action brought by a party alleging that he is the child's natural father does not apply if (i) the party was prevented from visiting, providing support for, or communicating with the child by the child's other parent, another person, or an agency or (ii) the party lacked knowledge of the child's birth.

This amendment is significant for a number of reasons. First, there is no mention of any requirement that the man alleging himself to be the father file with the Putative Father Registry. Thus not only did the legislature fail to add such a requirement to the Parentage Act when it adopted Section 12.1, but it failed to do so at a second opportunity, when it revisited and specifically addressed the requisites for filing a paternity suit. This is strong evidence that the legislature did not intend the bar

Respondent advocates.

Moreover, the amendment of Section 8 of the Parentage Act constitutes a significant broadening of the statute of limitations, from two to, in most cases, 20 years. What Respondent proposes is just the opposite -- eliminating entirely the right to file a paternity case if no action is taken within 30 days of the child's birth -- and thus is inconsistent with the Parentage Act.

Additionally, it is important to note that the amendment to Section 8 limits the right to file a paternity action within the 20 years if there is a failure for 36 months to support or communicate with the child, but specifically excludes from this limitation situations in which the father was unaware of the birth of the child. The Putative Father Registry provisions, however, do not recognize lack of awareness of the birth or pregnancy as a reason for failing to register. Again, the statute of limitations in the Paternity Act is substantially more liberal than the corresponding provisions of Section 12.1 and simply cannot be reconciled with the interpretation of Section 12.1(g) advocated by Respondent.

If Respondent's interpretation of Section 12.1 is adopted, precisely those fathers the legislature likely intended to protect when it amended Section 8 of the Parentage Act will be barred from asserting their parental rights. The prior, two-year statute of limitations worked the greatest hardship on those fathers who lived with their children, either alone or with the children's mothers, during the first two years of the children's lives, and thus saw no

need to file a paternity action until problems arose with the children's mothers, sometimes four, six or more years later, at which point their paternity actions were barred. These same fathers are among those least likely to register with the Putative Father Registry, because they have no reason to anticipate an adoption action.

If Respondent's proposed interpretation of Section 12.1(g) is adopted, the following scenario might occur: a natural father lives with his child and that child's mother for 10 years beginning at the time the child is born; he does not file with the registry within 30 days of the child's birth. When the child is 10, the relationship with the mother breaks down and the father moves out. He files a paternity action in order to establish his visitation rights, an action well within the statute of limitations of the Parentage Act. The action is barred by Section 12.1(g). This simply is not the result the legislature intended by enacting Section 12.1 of the Adoption Act. Indeed, it is precisely this result the legislature sought to prevent when it created the Putative Father Registry: the wrenching of a child from a long-term caretaker. "A statute capable of two interpretations should be given that which is reasonable and which will not produce absurd, unjust, unreasonable or inconvenient results that the legislature could not have intended." Collins v. Board of Trustees, 155 111.2d 103, 610 N.E.2d 1250, 1253 (1993). Respondent's interpretation of Section 12.1(g) leads to just such absurd and

unreasonable results; it must be rejected.

4. The Department of Children and Family Services does not Interpret Section 12.1(a) in the Manner Proposed by Respondent, and the Department's Interpretation is Entitled to be Given Great Weight by the Court.

Under the Adoption Act, the responsibility for establishment and operation of the Putative Father Registry is vested in the Department of Children and Family Services ("DCFSI"). A review of the materials produced by that Department in response to the FOIA request propounded by Petitioner demonstrates that DCFS does not interpret Section 12.1(g) in the manner proposed by Respondent.

In none of the materials produced by DCFS is there mention of failure to file with the registry acting as a bar to an otherwise proper paternity action. Most significantly, DCFS has printed a pamphlet entitled "Protect Your Rights As a Father" and subtitled "Make sure your child is not adopted without your consent." Although the pamphlet has not been distributed widely to putative fathers, it is clear from its contents that the pamphlet is directed to such fathers. Nowhere in the pamphlet is any statement made that registering with the registry is a requisite to the filing of a paternity action. Moreover, the pamphlet includes a section which poses the question: 'What happens if I don't register with the Putative Father Registry?' The answer given does not include any mention of a bar to filing a paternity action

arising from failure to register with the registry.

"[A] reasonable interpretation of a statute by an agency charged with enforcement of that statute is entitled to great weight." Pielot Bros. Tradins v Pollution Control Bd., 110 Ill.App.3d 752, 442 N.E.2d 1374, 1378 (5th Dist. 1982). The interpretation by DCFS of Section 12.1(g) as not affecting the right to proceed with a separate and otherwise proper paternity action is thus entitled to deference by this Court.

III. coWcLuBIoW

For the reasons set forth above, Respondent's Motion to Dismiss should be denied and Petitioner DEMETRIUS WILSON should be allowed to proceed with this case.

Respectfully submitted,
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