St. Mary's Law Journal

Volume 15 | Number 1 Article 5

3-1-1983

Texas Adoption Laws and Adoptee's Rights of Access to Confidential Records.

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I. INTRODUCTION

In our society the family is the fundamental unit "responsible for and capable of providing a child, on a continuing basis, with an environment which serves his numerous physical and mental needs during immaturity."[1] A child's birth parents are regarded as being the primary social force responsible for producing and providing this environment. On many occasions, however, this social unit fails to provide an adequate environment. When such failure occurs, the state steps in, through the adoption process, and provides the child with another family.

The adoption process consists of two phases: the legal termination of the relationship between the birth parents and the child[2] and the adoption itself.[3] This process can be accomplished in one proceeding or in two separate and distinct proceedings.[4] In its quest to provide the child with the

1. J. GOLDSTEIN, A. FREUD & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 13 (1973).

2. *See* TEX. FAM. CODE ANN. § 15.07 (Vernon 1975). Although section 15.07 terminates all "legal rights, privileges, duties and powers" between the birth parent and child, the child still retains his right to inherit through and from his birth parents. *See id.*

3. *See id.* §§ 16.01-16.12.

4. *See id.* §§ 16.03(d), 16.08(b) (Vernon Supp. 1982-1983).

type of home and family that society expects, the court's paramount concerns are the rights and welfare of the adopted child; no decision is to be made unless the court finds it to be in the "best interest" of the child.[5] Upon entry of the court's decree of adoption, a parent-child relationship is created between the adoptive parent and adopted child "as if the child were born to the adoptive parents during marriage."[6]

Notwithstanding statutes which seek to place a child with a deserving family, many adoptees retain an emotional desire, and often a psychological need, to ascertain the identity of their birth parents.[7] This desire or need is in direct conflict with state statutes mandating that adoption information be sealed and remain confidential.[8] The purpose of this comment is

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5. *See id.* § 16.08(a) (Vernon 1975); *see also* Davis v. Collins, 147 Tex. 418, 424-25, 216 S.W. 2d 807, 811 (1949) (rights and welfare of child paramount in adoption proceeding); Stanford v. Stanford, 201 S.W.2d 63, 64 (Tex. Civ. App.—Austin 1947, writ ref'd n.r.e.) (rights of child must be carefully guarded and protected).

6. TEX. FAM. CODE ANN. § 16.09(a) (Vernon 1975); *see* Clark v. West, 96 Tex. 437, 442, 73 S.W. 797, 799 (1903); Go Int'l, Inc. v. Lewis, 601 S.W.2d 495, 498 (Tex. Civ. App.—El Paso 1980, writ ref'd n.r.e.); Vaughn v. Gunter, 458 S.W.2d 523, 525 (Tex. Civ. App.—Dallas), *aff'd*, 461 S.W.2d 599 (Tex. 1970).

7. *See* Linda F. M. v. Department of Health, New York, 418 N.E.2d 1302, 1304, 437 N.Y.S.2d 283, 285 (1981). The petitioner summarized her desire "'[t]o know who I am. I feel cut off from the rest of humanity. I was given birth to the same way as everyone else, but everyone else can send away three dollars and get a copy of their birth certificate. I want to know who I am. The only person in the world who looks like me is my son. I have no ancestry. Nothing.'" *Id.* at 1304, 437 N.Y.S.2d at 285.

8. *See* ALA. CODE § 26-10-28 (Supp. 1982); ALASKA STAT. § 25.23.150(b) (Supp. 1982); ARIZ. REV. STAT. ANN. § 8-120 (Supp. 1982-1983); ARK. STAT. ANN. § 56-117 (1971); CAL. HEALTH & SAFETY CODE § 10439 (Deering Supp. 1982); COLO. REV. STAT. § 19-4-104(1) (1978); CONN. GEN. STAT. ANN. § 45-68e (West 1982); DEL. CODE ANN. tit. 13, § 924 (1981); D.C. CODE ANN. § 16.311 (1981); FLA. STAT. ANN. § 63.162(12) (West Supp. 1982); *Ga. Code Ann.* § 74-417 (Supp. 1982); HAWAII REV. STAT. § 578-15 (1976); IDAHO CODE § 16.1511 (1979); ILL. REV. STAT. ch. 40, § 1522 (1980); IND. CODE ANN. § 31-3-1-12 (Burns 1980); IOWA CODE ANN. § 600.16 (West 1981); KAN. STAT. ANN. § 59-2279 (1976); KY. REV. STAT. ANN. § 199.570(2) (Bobbs-Merrill 1977); LA. REV. STAT. ANN. § 81a (West Supp. 1982-1983); ME. REV. STAT. ANN. tit. 19, § 534 (Supp. 1982-1983); MD. ANN. CODE art. 16, § 85 (Supp. 1982); MASS. ANN. LAWS ch. 46, § 13 (Michie/Law. Co-op. 1973); MICH. STAT. ANN. § 27.3178 (555.67) (Callaghan Supp. 1982-1983); MINN. STAT. ANN. § 259.31 (West 1982); MISS. CODE ANN. § 93-17-25 (1973); MO. ANN. STAT. § 453.120 (Vernon 1952); MONT. CODE ANN. § 40-8-126(2) (1981); NEB. REV. STAT. § 43-113 (1978); NEV. REV. STAT. § 127.140 (1981); N.H. REV. STAT. ANN. § 461:11 (1968); N. J. STAT. ANN. § 26:8-40.1 (West Supp. 1982-1983); N.M. STAT. ANN. § 40-7-16 (1978); N.Y. DOM. REL. LAW. § 114 (Consol. 1977); N.C. GEN. STAT. § 48-25 (Supp. 1981); N.D. CENT. CODE § 14-15-16(2) (1981); OHIO REV. CODE ANN. § 3705.18 (Baldwin 1982); OKLA. STAT. ANN. tit. 10, § 60.17 (West 1966); OR. REV. STAT. § 432.420 (1981); PA. STAT. ANN. tit. 23, § 2905 (Purdon Supp. 1982-1983); R.I. GEN. LAWS § 23-3-15 (Supp. 1982); S.C. CODE ANN. § 20-7-1780(b) (Law. Co-op. Supp. 1982); S.D. CODIFIED LAWS ANN. § 34-25-16.4 (1977); TENN. CODE ANN. § 36-130 (1977); TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983); UTAH CODE ANN. § 26-15-16 (1976); VT. STAT. ANN. tit. 15, § 452 (1974); VA. CODE § 63.1-235 (Supp. 1982); WASH. REV.

to examine the premises supporting confidentiality and to determine whether the concept of confidentiality runs counter to the needs of the adult adoptee. During this examination, cases in which these statutes have been attacked and the rationales for repulsing these challenges will be examined. Additionally, this comment will suggest procedures to be implemented by the Texas legislature to assist the adult adoptee in a quest for the identity of his birth parents and, simultaneously, to protect the needs of the birth parents and adoptive parents.

Although the purpose of this comment is to examine the adult adoptee's right to access under Texas law, at the time of this writing, no Texas case has been reported that deals with the application of Texas Family Code Section 11.17(d),[9] the pertinent statute. Therefore the arguments raised by inquiring adoptees in cases from other jurisdictions and the reasoning applied by the addressing courts will be relied upon in this analysis.

II. HISTORY

The practice and custom of adoption has been accepted throughout history, dating back to the Code of Hammurabi (2000 B.C.) and to ancient Rome.[10] The concept was carried over into countries where the Roman legal system survived;[11] however, adoption was not initially accepted under the English common law.[12] Thus, in those jurisdictions, like Texas,

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CODE ANN. §§ 26.32.120(2), 26.32.150 (Supp. 1982); W. VA. CODE § 48-4-4 (1980); WIS. STAT. ANN. § 48.93(1) (West Supp. 1982-1983); WYO. STAT. § 1-22-104(d) (1982).

9. TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983). This section provides:

> The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this subtitle or on an order of the court which issued the decree or of a district court of Travis County for good cause.

Id.

10. *See* Hockaday v. Lynn, 98 S.W. 585, 585-86 (Mo. 1906); H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 602 (1968); Huard, *The Law of Adoption: Ancient and Modern,* 9 VAND. L. REV. 743, 744 (1956); Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV. 817, 817 (1978). The Romans had two forms of adoption: the *adoptis* form, the predecessor to modern adoption, was a court order that transferred an unemanciated minor from the birth father to the adoptive father; adults were adopted through a form called *adrogatio*. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 602 (1968).

11. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 602 (1968). Primarily, these countries were France, Germany and Spain. *See id.* at 602.

12. *See id.* at 603. The concept of adoption was not accepted under the English common law because of the prevalent English belief that land should only be inherited by blood relatives. *See id.* at 603; *see also* Huard, *The Law of Adoption: Ancient and Modern,* 9 VAND. L. REV. 743, 745 (1956); Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV. 817, 817-18 (1978).

which base their civil law upon the English common law, adoption is purely a statutory creation.[13]

The existence of adoption statutes rests solely upon the state's public policy interest in providing another family for a misplaced child when the relationship between the birth parent and child has failed.[14] To achieve its goal of providing for the child's best interest and placing him with a deserving and qualified family,[15] the court must make intensive inquiry into intimate details concerning the lives of the involved parties—the adoptive parents, the birth parents, and any other persons associated with the adoption.[16]

Realizing the intimacy of these details, the legislatures of the fifty states and the District of Columbia have enacted statutes which seal adoption records, thus clothing adoption files with an aura of confidentiality and restricting access to the information found therein.[17] State restrictions vary,[18] but access to adoption files is governed by two basic types of statutes.[19] In those states with "open" disclosure statutes, an adult adoptee has an absolute right to inspect his adoption records.[20] The second type of

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13. *See, e.g.,* Eckford v. Knox, 67 Tex. 200, 205, 2 S.W. 372, 373 (1886) (adoption purely statutory); Lutheran Social Servs., Inc. v. Farris, 483 S.W.2d 693, 695 (Tex. Civ. App.—Austin 1972, writ ref'd n.r.e.) (adoption exists solely by reason of statute); Norton v. Stark, 294 S.W. 689, 690 (Tex. Civ. App.—Fort Worth 1927, no writ) (in those states adopting common law, adoption depends entirely upon statutes).

14. *See In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct. 1976).

15. TEX. FAM. CODE ANN. § 16.08(a) (Vernon 1975). "If the Court is satisfied that . . . the adoption is in the best interest of the child, the court shall make a decree granting the adoption . . . . " *Id.*

16. *See In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct. 1976); People v. Doe, 138 N.Y.S.2d 307, 308 (Erie County Ct. 1955).

17. For a complete list of pertinent state statutes see *supra* note 8 and accompanying text.

18. *See, e.g.,* CONN. GEN. STAT. ANN. § 45-68e (West 1981) (requires certain information regarding birth parents be given, in written form, to adopting parents by finalization of adoption); DEL. CODE ANN. tit. 13, § 925 (1981) (petitioner must set forth reason for request; request granted after investigation only if court finds information necessary, in interests of child, and disclosure will not prejudice birth or adoptive parents); N.C. GEN. STAT. § 48-26 (1976) (following filing of motion, information released if judge finds it serves bests interests of child or public). In a few states the release of adoption information is controlled by specific statutory requisites. *See also* N.D. CENT. CODE § 14-15-16(5)(d) (1981) (information released only upon consent of birth parent). *See generally* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 473 (1982); Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV. 817, 847-52 (1978).

19. *Compare* KAN. STAT. ANN. § 59:2279 (1979) (adoption record open to inspection by parties and their attorneys) *with* TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983) (adoption records opened only upon showing of good cause).

20. *See* ALA. CODE § 26-10-5(a) (Supp. 1982) (open only to parties in interest); IDAHO

standard, which is followed by a majority of states, allows access upon the showing of good cause by the petitioner.[21]

CODE § 16-1511 (1979) (seal may be broken upon motion of adopting parents or adopted person); KAN. STAT. ANN. § 59:2279 (1976) (open to inspection by parties and their attorneys); KAN. STAT. ANN. § 65:2423 (original birth certificate opened upon demand of adult adoptee); N.C. GEN. STAT. § 48-25 (Supp. 1981) (nonidentifying information released to adoptee upon reaching age of 21); TENN. CODE ANN. § 36-128 (1977) (information released if judge finds it serves best interest of child). *See generally* Note, *Confirming the Constitutionality of Sealing Adoption Records,* 46 BROOKLYN L. REV. 717, 720 n.12 (1980); Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 474 n.159 (1982).

21. *See, e.g.,* ALASKA STAT. § 18.50.220(b)(1) (Supp. 1982) (original birth certificate opened upon court order); ARIZ. REV. STAT. ANN. §§ 36-326(B), 8-120(B) (Supp. 1982) (adoption records and birth certificate opened upon court order); FLA. STAT. ANN. § 63.162(2) (West Supp. 1982) (adoption records opened upon court order). These statutes require a court order to gain access to records, and the order will not be granted without a showing of good cause. *See In re* Maples, 563 S.W.2d 760, 763-64 (Mo. 1978) (en banc); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 648 (N.J. Super. Ct. Ch. Div. 1977); *see also* D.C. CODE ANN. § 16-311 (1981) (open to inspection only when in best interest of child); GA. CODE ANN. § 88-1714(b) (1979) (birth certificate); GA. CODE ANN. § 74-417 (1981) (adoption records open upon court order to parties of interest); ILL. REV. STAT. ch. 40, § 1522 (1980) (open only for inspection upon specific court order); IND. CODE ANN. § 31-3-1-12 (Burns 1980) (adoption records); KY. REV. STAT. ANN. § 199.570(l) (Bobbs-Merrill 1977) (adoption records); MASS. ANN. LAWS ch. 46, § 13 (Michie/Law. Co-op. 1973) (court order); MINN. STAT. ANN. § 259.31 (West 1982) (adoption records); MO. ANN. STAT. §§ 193.250(l), 453.120(1) (Vernon 1983) (birth certificate and adoption records); NEV. REV. STAT. § 127.140 (1981) (adoption records); N.J. STAT. ANN. § 26:8-40.1 (West Supp. 1982-1983) (adoption records); N.M. STAT. ANN. §§ 40-7-16(A), 24-14-17(B) (1978) (adoption records and birth certificate); OHIO REV. CODE ANN. §§ 3705.18(e), 3107.17 (Baldwin 1982) (birth certificate and adoption records); OR. REV. STAT. § 432.420 (1981) (adoption records); R.I. GEN. LAWS § 23-3-15 (Supp. 1982) (adoption records); S.D. Codified Laws Ann. § 34-25-16.4 (1977) (adoption records); VA. CODE § 63.1-235 (Supp. 1982) (adoption records). *See generally* Hanley, *A Reasonable Approach to the Adoptee's Sealed Record Dilemma,* 2 OHIO N.U.L. REV. 542, 544 (1975) (showing of good cause inferred in statutes requiring court order); Comment, *Confirming the Constitutionality of Sealed Adoption Records,* 46 BROOKLYN L. REV. 717, 720 (1980) (court order statutes infer showing good cause); Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 483, n.220 (1982) (good cause requirement implied in statutes requiring good cause). A second group of state statutes provide for access simply upon showing of good cause. *See* ALASKA STAT. § 25.23.150(b) (Supp. 1982); ARK. STAT. ANN. § 56-117 (1971); CAL. HEALTH & SAFETY CODE § 10439 (Deering Supp. 1983); COLO. REV. STAT. § 19-4-104(1) (1978); IOWA CODE ANN. § 600.16 (1981); MICH. STAT. ANN. § 27.3178 (555.67) (Callaghan Supp. 1983-1984); MISS. CODE ANN. § 93-17-25 (1972); MONT. CODE ANN. § 40-8-126(2)(a) (1981); NEB. REV. STAT. § 43-113 (1978); N.H. REV. STAT. ANN. § 461.11 (1968); N.Y. DOM. REL. LAW § 114 (Consol. 1977); N.D. CENT. CODE § 14-15-16-(2) (1981); OKLA. STAT. ANN. tit. 10, § 60.17 (West Supp. 1982-1983); S.C. CODE ANN. § 20-7-1780(b) (Law. Co-op. Supp. 1982); TENN. CODE ANN. § 36-130 (1977); TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983); UTAH CODE ANN. § 26-15-16 (1976); VT. STAT. ANN. tit. 15, § 452 (1974); WASH. REV. CODE ANN. § 26-32-120(2) (Supp. 1983-84); W. VA. CODE § 48-4-4 (1980); WIS. STAT. ANN. § 48.93(1) (West Supp. 1982-1983); WYO. STAT. § 1-

III. CONFIDENTIALITY

In achieving its goal of promoting the "best interests of the child," legislation mandates[22] that adoption information remain confidential.[23] Confidentiality furthers this broad legislative purpose in several ways. First, confidentiality permits the relinquishing birth parents to surrender their child without public knowledge or moral judgment, and, therefore, assists them in building a new life.[24] Moreover, adoptive parents are protected from outside forces that can interfere with their creation of a viable family unit.[25] Secondly, confidentiality assists in maintaining the integrity of the

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22-104(d) (1982). *See also* Comment, *Confirming the Constitutionality of Sealed Adoption Records,* 46 BROOKLYN L. REV. 717, 720 (1980) (general standard is that petitioner show that good cause for release exists); Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 474 (1982) (most prevalent standard allows for disclosure upon showing of good cause). Courts have not, however, established a definition for "good cause". *See infra* pgs. 25-30 and accompanying notes.

22. *See* TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983).

23. *See* Whalen v. Roe, 429 U.S. 589, 599 (1977). "Confidentiality" has been defined as the "individual's interest in avoiding disclosure of personal matters." *Id.* at 599.

24. *See, e.g., In re* Roger B., 418 N.E.2d 751, 754 (Ill. 1981) (statutes assure birth parent that their identity will not be publicly disclosed); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 649 (N.J. Super. Ct. Ch. Div. 1977) (assurances of secrecy regarding birth parents' identity affects placing of child with reputable adoption agency and assures birth parents their actions will not become public knowledge); *In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct. 1976) (assures that discretion of birth mother will be protected); *see also* People v. Doe, 138 N.Y.S.2d 307, 309 (Erie County Ct. 1955) (assures birth parent discretion will not be divulged); *In re* Spinks, 232 S.E.2d 479, 483 (N.C. Ct. App. 1977) (assurance of confidentiality is important part of birth parents' decision to relinquish child); *In re* Sage, 586 P.2d 1201, 1203 (Wash. Ct. App. 1978) (confidentiality protects private lives of birth parents from trauma and disruption in future). *See generally* Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law,* 11 FAM. L.Q. 185, 188 (1977); Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV. 817, 826 (1978); Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677 (1980) (rationale for adoption closure laws).

25. *See, e.g., In re* Roger B., 418 N.E.2d 751, 754 (Ill. 1981) (adoptive parents should be given opportunity to create stable family relationship); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 649 (N.J. Super. Ct. Ch. Div. 1977) (adoptive parents must be free from intervention by birth parents); *In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct. 1976) (sealed records assure adoptive parents that birth parents will be unable to locate child); *see also* People v. Doe, 138 N.Y.S.2d 307, 309 (Erie County Ct. 1955) (assures adoptive parents that they may raise child as their own); *In re* Spinks, 232 S.E.2d 479, 483 (N.C. Ct. App. 1977) (adoptive parents should be free from interference by birth parents); *In re* Sage, 586 P.2d 1201, 1203 (Wash. Ct. App. 1978) (adoptive family should be given opportunity to create stable relationship without outside interference); Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law*, 11 FAM. L.Q. 185, 188 (1977) (statutes assure adoptive parents that birth parents will not interfere and they can develop healthy environment for child); Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,*, 48 S. CAL. L. REV. 1196, 1200 (1975) (provides environment in which child is encouraged to identify with adoptive family); Comment, *Confidentiality of Adoption Records: An Examina-*

adoption process because it encourages complete investigations which assist the court in placing the child with the proper family.[26] Finally, and most importantly, confidentiality protects the child from stigma related to his birth, severs the child from such possible stigma, and gives him the opportunity to form a strong and healthy relationship with the adoptive family.[27]

As logical and well-intentioned as confidentiality statutes may be, the adoptee [28] nevertheless often develops a need to learn the identity of his birth parents.[29] In recent years, courts across the country have considered

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tion,, 52 TUL. L. REV. 817, 826-27 (1978) (protects adoptive parents from outside influences that may interfere with development of close family unit); Comment, *The Current Status of the Rights of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677, 682-83 (1980) (confidentiality overcomes adoptive parents' concern of social stigmas attached to child).

26. *See, e.g.,* Hubbard v. Superior Court, 11 Cal. Rptr. 700, 704 (Cal. Dist. Ct. App. 1961) (facilitates adequate investigation); *In re* Roger B., 418 N.E.2d 751, 755 (Ill. 1981) (protection of integrity of adoption process is state's goal); *In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc) (primary interest of state is to preserve integrity of adoption process); *see also In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct.) (1976) (confidentiality encourages and facilitates adequate investigation into factors for planning adoption and placing child); *In re* Sage, 586 P.2d 1201, 1204 (Wash. Ct. App. 1978) (confidentiality encourages and facilitates pre-adoption investigation); Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law* 11 FAM. L.Q. 185, 196-97 (1977) (public's primary interest is protection of integrity of adoption process); Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,* 48 S. CAL. L. REV. 1196, 1199-1200 (1975) (confidentitality encourages and facilitates agency's investigation into factors relevant to adoption); Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677, 682 (1980) (closure statutes encourage adequate investigations required during the proceeding).

27. *See, e.g., In re* Roger B., 418 N.E.2d 751, 755 (Ill. 1981) (confidentiality protects child in his new family and insulates him from stigma of illegitimacy); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 649 (N.J. Super. Ct. Ch. Div. 1977) (protects child from stigma of illegitimacy and facilitates new relationship between adoptee and adoptive parents protected from intervention by birth parent); *In re* Anonymous, 390 N.Y.S.2d 779, 781 (Sur. Ct. 1976) (assures protection from stigmas attached at birth); *see also* Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law,* 11 FAM. L.Q. 185, 188 (1977) (closure statutes intended to protect child from stigmas attached to birth out of wedlock); Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV., 817, 827 (1978) (shields adoptee from status as illegitimate and assists in forming a strong and healthy relationship with new parents); Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents*, 58 WASH. U.L.Q. 677, 683 (1980) (guarantees that relationship with new parents will develop into "loving and natural environment").

28. Throughout the remainder of this comment the use of the word "adoptee" pertains only to adopted persons who have reached adulthood or the age of majority.

29. Interview with Dr. Richard Grant, Executive Director, Children's Service Bureau of San Antonio, in San Antonio (January 17, 1983). This comment is concerned only with the adult adoptee's access to information identifying the birth parents. Most adoption agen-

several cases challenging the validity of confidentiality statutes on constitutional grounds.[30] Primarily, adoptees have asserted that confidentiality statutes deny them a fundamental right to privacy,[31] a right to receive information,[32] and a right to equal protection of the laws.[33]

IV. CONSTITUTIONAL CHALLENGES

A. *Challenge Based upon Right to Privacy*

Adoptees argue that their identity as human beings is determined in a large part by the identity of their birth parents;[34] therefore, by denying

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cies are willing to release to a requesting adoptee all information contained in their adoption file concerning medical information and ethnic and religious background, excluding any information as to the names of the birth parents. The agencies do, however, reserve the right to use discretion in releasing this information if the relinquishing situation presents circumstances that would breach the promise of confidentiality.

30. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1227 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); Yesterday's Children v. Kennedy, 569 F.2d 431, 432 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978); *In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 762 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 650 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Department of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978).

31. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 761 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 648 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978), *aff'd. sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

32. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1230 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); Yesterday's Children v. Kennedy, 569 F.2d 431, 432 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978); *In re* Roger B., 418 N.E.2d 751, 752 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 761 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 648 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

33. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1228 (2d Cir.), *cert. denied,* 444 U.S. 995 (1977); Yesterday's Children v. Kennedy, 569 F.2d 431, 432 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978); *In re* Roger B., 418 N.E.2d 751, 752 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 761 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 648-49 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau, 274 S.E.2d 418, 422 (S.C. 1981); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978).

34. *See, e.g., In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981) (adoptee alleged right to determine one's natural identity); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 650 (N.J. Super. Ct. Ch. Div. 1977) (part of adoptee's identity revolves around informa-

them automatic access to their birth records, the state is abridging their constitutional right to privacy.[35] Recognized in a series of landmark Supreme Court cases,[36] the right to privacy obtains its constitutional dimension from the penumbra of the express guarantees of the first,[37] fourth,[38] fifth,[39] and ninth[40] amendments, which are made applicable to the states through the fourteenth amendment.[41] In challenging the confi-

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tion about birth parents); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978) (right to receive information regarding birth parent is protected by right to privacy), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

35. *See, e.g., In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981) (right to determine one's natural identity finds basis in one's right to privacy); *In re* Maples, 563 S.W.2d 760, 762 (Mo. 1978) (en banc) (privacy abridged by statutes' interference); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978) (deprives fundamental right to privacy), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

36. *See* Roe v. Wade, 410 U.S. 113, 152 (1973). The Constitution does not explicitly mention any right to privacy. The Supreme Court, however, in a line of decisions has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. Roots of the right have been recognized in the first amendment, *see* Stanley v. Georgia, 394 U.S. 557, 565 (1969), in the fourth and fifth amendments, *see* Terry v. Ohio, 392 U.S. 1, 8-9 (1968); Katz v. United States, 389 U.S. 347, 350 (1967), in the penumbra of the Bill of Rights, *see* Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965), in the ninth amendment, *see* Griswold v. Connecticut, 381 U.S. 479, 487-99 (1965) (Goldberg, J., concurring), and in the concept of liberty guaranteed by the fourteenth amendment, *see* Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

37. U.S. CONST. amend. I. The first amendment to the Constitution provides that "Congress shall make no law . . . abridging the freedom of speech . . . ." *Id.*

38. U.S. CONST. amend. IV. The fourth amendment to the Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . . " *Id.*

39. U.S. CONST. amend. V. The fifth amendment to the Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand Jury, . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or without due process of law . . . .

Id.

40. U.S. CONST. amend. IX. The ninth amendment to the Constitution provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." *Id.* This amendment was added to the Constitution upon the insistence of James Madison. Madison introduced the amendment to "quiet fears that a bill of specially enumerated rights could not be sufficiently broad to cover all essential rights and that the specific mention of certain rights would be interpreted as a denial that any others were protected." *See* Griswold v. Connecticut, 381 U.S. 479, 488-89 (1965) (Goldberg, J., concurring).

41. U.S. CONST. amend. XIV, § 1. Section 1 of the fourteenth amendment provides in part that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

dentiality statutes, adoptees rely upon Supreme Court cases which recognize a right to privacy in family relationships.[42] Thus, they argue that, since their status as an adoptee is part of a family relationship, they possess a right to privacy in regard to the identity of their birth parents.[43] The Supreme Court in *Roe v. Wade,*[44] however, declared that the guarantee of personal privacy only applied to those personal rights which are deemed " 'fundamental' "[45] or " 'implicit in the concept of ordered liberty'."[46] While the Court has been reluctant to expand the list of fundamental rights,[47] the key in determining whether such right is "fundamental" is not found in comparing relative social significance, but rather by ascertaining if the asserted right is guaranteed, either explicity or impliedly, by the Constitution.[48] Based upon this Supreme Court case, state courts have refused to recognize that the adoptee has a fundamental right to privacy in ascertaining the identity of his birth parents.[49]

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42. *See* Roe v. Wade, 410 U.S. 113, 153 (1973). Several areas within the family relationship are deemed to be protected by the right to privacy. *See id.* at 153 (right to terminate pregnancy); Eisenstadt v. Baird, 405 U.S. 438, 453-54 (1972) (contraception); Loving v. Virginia, 388 U.S. 1, 12 (1967) (marriage); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (family relationships); Skinner v. Oklahoma, 316 U.S. 535, 541-42 (1942) (procreation); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (child rearing and education); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (child rearing and education); *see also* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979). As the *Alma* Court noted, adoption situations really deal with two families: first, the birth parents who have surrendered the child for adoption, and relinquished their relationship with the child, and second, the adoptive family, which has nurtured the adoptee into adulthood. *See id.* at 1231.

43. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231 (2d Cir.) (right to privacy exists based on familial relationship of adoption), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981) (right to determine identity is privacy right and rests upon family relationships); *In re* Maples, 563 S.W.2d 761, 763 (Mo. 1978) (en banc) (right to privacy abridged by state interference in family relationship). Other adoptees have asserted that they possess a fundamental right to privacy. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 650 (N.J. Super. Ct. Ch. Div. 1977) (confidentiality statutes abridge fundamental right to privacy); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978) (sealed record statute denies fundamental right to privacy), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

44. 410 U.S. 113 (1973).

45. *See id* at 152; *see also* Snyder v. Massachusetts, 291 U.S. 97, 105 (1934) (fundamental right is one "so rooted in the traditions and conscience of our people as to be ranked as fundamental"); Herbert v. Louisiana, 272 U.S. 312, 316 (1926) (fundamental right is one "which lie[s] at the base of all our civil and political institutions").

46. Roe v. Wade, 410 U.S. 113, 152 (1973).

47. *See id.* at 152.

48. *See id.* at 152. The Court provided that personal privacy is only afforded to those " 'fundamental' " rights, or those " 'implicit in the concept of ordered liberty.' " *See id.* at 152.

49. *See, e.g., In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981) ("We have found no case

The right to privacy, even when constitutionally protected, is not absolute.[50] Since no fundamental right to privacy in regard to adoption relationships has been found,[51] the challenged statute will be upheld if it bears a reasonable reltionship to a permissible state objective.[52] The legislative purpose of confidentiality statutes is to protect the adoption triad—the birth parents, the adoptive parents, and the child.[53] Based upon state court decisions, this purpose clearly falls within the ambit of a permissible state objective.[54] In *Mills v. Atlantic City Department of Vital Statistics*,[55] the

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holding that the right of an adoptee to determine his geneological origin is explicitly or implicitly guaranteed by the Constitution"); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 650 (N.J. Super. Ct. Ch. Div. 1977) ("information regarding the heritage, background or physical and psychological heredity . . . is not so intimately personal as to fall within the zones of privacy implicitly protected in the penumbra of the Bill of Rights".); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct. 1978) (no right to privacy is involved), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

50. *See* Roe v. Wade, 410 U.S. 113, 155 (1973); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977).

51. *See In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

52. *See, e.g.,* Belle Terre v. Boraas, 416 U.S. 1, 8 (1974) (where fundamental right not involved, restriction will be upheld if not " 'unreasonable, not arbitrary,' " and bears a " 'rational relationship to a [permissible] state objective.' "); F. S. Royster Guano Co. v. Virginia, 253 U.S., 412, 415 (1920) (classification is permitted, but it must be "reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike").

53. *See, e.g., In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (confidentiality performs vital social and legal role of balancing interests of child, birth parents, and adoptive parents); *In re* George, 630 S.W.2d 614, 621 (Mo. Ct. App. 1982) (statute protects maintenance of viable system of adoption); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 649 (N.J. Super Ct. Ch. Div. 1977) (purpose of Adoption Act is to promote policies and procedures socially necessary and desirable for protection not only of child placed for adoption, but also for birth and adoptive parents); *see also In re* Linda F. M., 409 N.Y.S.2d 638, 646 (Sur. Ct. 1978) (encouragement of adoption of children, "indisputably" legitimate legislative goal), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau, 274 S.E.2d 418, 420 (S.C. 1981) (state adoption statutes are designed to promote policies and procedures necessary for protection of all parties involved in adoption); *In re* Sage, 586 P.2d 1201, 1203 (Wash. Ct. App. 1978) (legislation must not only serve "best interests of the child," but must also be sensitive to others involved in adoption—the birth and adoptive parents).

54. *See In re* Roger B., 418 N.E.2d 751, 755 (Ill. 1981) (a rational relationship exists between creation of the status of adoptee and state's interest in promoting adoption process); *In re* Maples, 563 S.W.2d 760, 762 (Mo. 1978) (en banc) (statute's protection of adoption process is exercise of a valid state interest); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978) (development of a procedure which will promote, encourage, and facilitate adop-

court asserted that "constitutional and other personal rights may be limited for the protection of other individuals or the public, and where the absolute exercise of the right harms those other elements, it may be restricted."[56]

The right to privacy asserted by adoptees conflicts with the right to privacy possessed by the birth parent, namely the right to be left alone.[57] This right has been deemed the "most comprehensive of rights and the most valued by civilized man."[58] Following the surrender of his or her child, the birth parent often desires solely to be left alone.[59]

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tion is legitimate area of state concern), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978) (policy of confidentiality is rationally related to state's objective in maintaining integrity of adoption process). Relying upon the United States Supreme Court's holding in Roe v. Wade, 410 U.S. 113 (1973), one commentator has argued that the state's interest in limiting access to adoption records declines as the adoptee attains adulthood. *See* Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,* 48 S. CAL. L. REV. 1196, 1211-12 (1975). In *Roe,* the Court recognized that as the pregnancy progressed, the various rights of the mother, the state, and the unborn child "shifted" in importance. *See* Roe v. Wade, 410 U.S. 113, 163-64 (1973). Accordingly, this same "shifting" of rights is evidenced in adoption. When the child is young and first adopted, the rights of the child, the adoptive family, and the birth parents to privacy and the interest of the state in protecting the adoption process are paramount. This scale of rights becomes balanced as the child reaches adolescence. At this point the state can regulate access through good cause statutes; however, once the adoptee attains adulthood, his interests override all others and access should be granted upon demand. *See* Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,* 48 S. CAL. L. REV. 1196, 1211-12 (1975). This analogy was also presented in the concurrence in *Maples. See In re* Maples, 563 S.W.2d 760, 767 (Mo. 1978) (en banc) (Seiler, J., concurring). The *Mills* court rejected this analogy, holding that the privacy rights of all the parties to the adoption process remain constant. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977).

55. 372 A.2d 646 (N.J. Super Ct. Ch. Div. 1977).

56. *Id.* at 651.

57. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231 (2d Cir.) (birth parent has countervailing right of privacy and right to be left alone), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 754 (Ill. 1981) (confidentiality protects birth parent's right to privacy and right to be left alone); *In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc) (birth parents right to privacy shall be protected); *see also* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (right to privacy asserted by adoptees conflict with right to privacy and right to be left alone possessed by birth parents); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct. 1978) (if any privacy right is involved it is perhaps that of birth parent), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau of S.C., 274 S.E.2d 418, 421 (S.C. 1981) (statute creating expectation of confidentiality is protected by right to privacy).

58. Stanley v. Georgia, 394 U.S. 557, 564 (1969) (Brandeis, J., dissenting) (citing Olmstead v. United States, 277 U.S. 438, 478 (1928)).

59. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979).

Since the 1944 decision of *Prince v. Massachusetts,*[60] the courts have recognized that there exists a "private realm of family life" from which the state is precluded.[61] Encompassed within this realm is the right of any individual to marry, to establish a home, and to bring up children without state interference.[62] Based upon this recognized realm of privacy, courts have argued that disclosure of adoption information could frustrate the privacy and right to be left alone enjoyed by the birth parent.[63] The surrendering birth parent, perhaps unwed at the time of the child's birth,[64] may later be married and may not have apprised the spouse of the existence of a child.[65] The appearance of this surrendered child, now an adult, may not only be an unpleasant surprise, but it could also adversely affect the birth parents' current marital relationship.[66] The courts, therefore,

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60. 321 U.S. 158 (1944).

61. *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944). The Court has continued to recognize this realm of privacy and has affirmed the freedom of the family from various state inteferences. *See, e.g.,* Moore v. Cleveland, 431 U.S. 494, 503-06 (1977) (plurality) (housing ordinance); Cleveland Bd. of Educ. v. LeFleur, 414 U.S. 632, 639 (1974) (mandatory leave for pregnant teachers); Boddie v. Connecticut, 401 U.S. 371, 374 (1971) (court cost payments to obtain divorce).

62. *See* Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

63. *See, e.g., In re* Roger B., 418 N.E.2d 751, 754 (Ill. 1981) (birth parent's privacy rights not to be lightly infringed upon) (citing *In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc)); *In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc) (birth parent's need of privacy comes readily to mind); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (birth parent has a privacy interest, a right to be left alone); *see also* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 455 (1982).

64. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 455 n.27 (1982). Studies have suggested that between 60% and 90% of adopted children are born to unwed parents. *See id.* at 455 n.27.

65. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977). The court called attention to the likelihood that the birth parent has chosen not to reveal to his or her spouse or others the facts of an "emotionally unsettling and potentially socially unacceptable occurrence eighteen or more years ago." *See id.* at 651; *see also In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc) (adoptee should not be allowed to present himself to birth parent's new family and reveal tragic secrets of past).

66. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 655-56 (N.J. Super. Ct. Ch. Div. 1977). The *Mills* court presented two incidents of reconciliations, each with limited acceptance. One natural mother rebuffed her reappearing daughter because she had never told her spouse or other family members of the existence of the child. *See id.* at 655. After waiting over four years for the birth mother to tell her family, the adoptee decided she had an absolute right to approach her half-brother and identify herself. She did so and the encounter was a positive one. *See id.* at 655. This, however, was in direct disregard of the birth parent's wishes and, therefore, an invasion of her privacy. *See id.* at 655. A second incident with another adoptee and birth parent resulted in the disruption of the birth mother's marriage when her spouse learned of the child's illegitimate birth. *See id.* at 656. Although these two instances had varied results, two facts were established and recognized by the court: first, many adoptees who are rebuffed by the birth parent upon the first en-

have held that the right to be left alone applies to a birth parent and his or her new family's right to privacy and will protect them from unwanted intrusions.[67]

Another aspect of the birth parents' right to privacy—the freedom to choose—might also be abridged by disclosure of adoption information.[68] Personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education have been recognized by the Supreme Court as being within one's right to privacy;[69] thus decisions in these areas should be as free from state interference as possible.[70] Since decisions to begat and bear a child or to terminate one's pregnancy are within this recognized zone of constitutionally protected privacy,[71] any decision to surrender a child for adoption should likewise fall within this zone.[72] Many birth parents rely on the anonymity of the adoption process

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counter will attempt other meaningful encounters, and secondly, any such unexpected contact from the adoptee is an invasion of the birth parent's privacy. *See id.* at 656; *see also In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc). The Missouri Supreme Court held that interference with the family life of the birth parent involves state action and therefore the right to privacy is protected by the fourteenth amendment due to the participation of the state judicial system's disclosure of the information to the adoptee. *See id.* at 763.

67. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979) (birth parent's right of privacy and a right to be left alone recognized as vital interest in Stanley v. Georgia, 394 U.S. 557, 564 (1969)); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (citing Stanley v. Georgia, 394 U.S. 557, 564 (1969)) (birth parent "has a right to privacy, a right to be let alone, that . . . has . . . been recognized as a vital interest by the United States Supreme Court"); Bradey v. Children's Bureau, 274 S.E.2d 418, 421 (S.C. 1981) (birth parent's expectation of privacy is constitutionally protected). *See generally* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 454-57 (1982).

68. *See generally* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 457-61 (1982).

69. *See* Roe v. Wade, 410 U.S. 113, 152-53 (1973). In Griswold v. Connecticut, 381 U.S. 479 (1965), the Court did not decide whether the right to privacy was limited to married persons or whether it was also applicable to unwed individuals. This issue was resolved in Eisenstadt v. Baird, 405 U.S. 438 (1972), where the Court protected the right of unmarried persons to use contraceptives. The *Eisenstadt* Court stated: "[I]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Id.* at 453; *see also* Carey v. Population Servs. Int'l., 431 U.S. 678, 687 (1977) (*Griswold* provides that an individual's decision in matters of childbearing are protected by the Constitution from unjustified state intrusion).

70. *See* Carey v. Population Servs. Int'l., 431 U.S. 678, 687 (1977); Roe v. Wade, 410 U.S. 113, 153 (1973).

71. *See* Carey v. Population Servs. Int'l., 431 U.S. 678, 685 (1977) ("the decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices"); Roe v. Wade, 410 U.S. 113, 153 (1973) (right to privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy).

72. *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (privacy extends to choices

when assessing the alternatives of giving birth to a child.[73] Open records could possibly induce surrendering birth mothers to seek abortions or, alternatively, to place a child illegally through the black market[74] instead of relinquishing their child to an adoption agency that will place the child. By maintaining open adoption files, the state could impinge upon the birth mother's right to privacy by restricting the exercise of her freedom to choose.[75] State action in disclosure of adoption information thus potentially conflicts with a birth parent's right to privacy by interfering with his or her constitutionally protected freedom of choice; this conflict can only be resolved by limiting disclosure to protect the birth parent's right to privacy.[76]

A third aspect of the birth parent's constitutional right to privacy, the right of confidentiality, can also be abridged by the release of identifying information.[77] Although this aspect of the right to privacy has rarely been dealt with by the Supreme Court, [78] the concept has been defined as "the

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involving relationships); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (privacy extends to child bearing). Therefore privacy should also apply to the decision to surrender a child for adoption, as this decision relates to family relationships and childbearing. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 458 (1982).

73. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 458 (1982); Comment, *The Adult Adoptee's Right to Know His Natural Heritage,* 19 N.Y.L.F. 137, 147 (1973).

74. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231-32 (2d Cir.) (sealing of adoption records "may indeed have been a consideration in the willingness of the real parents to give up the child for adoption"), *cert. denied,* 444 U.S. 995 (1979); Kirsch v. Parker, 375 So. 2d 693, 699 (La. Ct. App. 1979) (closed records statute is pro-adoption and anti-abortion), *modified,* 383 So. 2d 384 (La. 1980); Massey v. Parker, 362 So. 2d 1195, 1199 (La. Ct. App. 1978) (Schott, J., dissenting) (disregard of birth mother's privacy would discourage adoption as viable alternative to abortion), *rev'd on other grounds,* 369 So. 2d 1310 (La. 1978); *see also* Klibanoff, *Geneological Information in Adoption: The Adoptee's Quest and the Law,* 11 FAM. L.Q. 185, 196 (1977); Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 458 (1982).

75. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231-33 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); Massey v. Parker, 362 So. 2d 1195, 1199 (La. Ct. App. 1978) (Schott, J., dissenting), *rev'd,* 369 So. 2d 1310 (La. 1979); *see also* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 458 (1982).

76. *See* Klibanoff, *Geneological Information in Adoption: The Adoptee's Quest and the Law,* 11 FAM. L.Q. 185, 195 (1977); Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 461 (1982).

77. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 462-65 (1982).

78. *See* Whalen v. Roe, 429 U.S. 589, 599 (1971). This interest was first discussed as a distinct part of the constitutional right to privacy in *Whalen* where the Court characterized "privacy" as protecting two different kinds of interests: individual interest in avoiding disclosure of personal matters and interest in making independent decisions. *See id.* at 599. The

individual's interest in avoiding disclosure of personal matters."[79] In ascertaining the scope of this right, lower courts have developed two lines of reasoning in support of its existence. The first line of reasoning is based upon a person's legitimate expectation of confidentiality.[80] Secondly, lower federal courts have created a "zone of confidentiality," which is deemed parallel to the zone of privacy protecting intimate decisions.[81] Under this theory, communications pertaining to "family, marriage, human sexuality and physical problems"[82] are within the confines of privacy; therefore, information regarding a person's "intimate relationships"[83] or sexual activities[84] is confidential and is to be protected from disclosure. Under either standard, the release of identifying information can invade the birth parent's right to confidentiality and thus the right to privacy. Based upon the

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right to confidentiality was subsequently referred to in Nixon v. Administrator of Gen. Servs., 433 U.S. 425, 458 (1977). The Court held that Mr. Nixon's privacy rights extended to materials in which he had a "legitimate expectation of privacy" in regard to those papers dealing with his personal matters. *See id.* at 457-59 (citing Katz v. United States, 389 U.S. 347, 351-53 (1967)).

79. Whalen v. Roe, 429 U.S. 589, 599 (1977); *see also* Margaret S. v. Edwards, 488 F. Supp. 181, 189 n.15 (E.D. La. 1980) (freedom to control information available about oneself is protected by right of privacy).

80. *See, e.g.,* Plante v. Gonzalez, 575 F.2d 1119, 1135 (5th Cir. 1978) (state senators have legitimate expectation of privacy in financial records); Martinelli v. District Court In and For Denver, Colorado, 612 P.2d 1083, 1092 (Colo. 1980) (police officer has legitimate expectation of privacy in materials in personnel file; remanded for incamera determination); Byron, Harless, Schaffer, Reid & Assoc. v. State, 360 So. 2d 83, 94 (Fla. Dist. Ct. App. 1978) (persons interviewed and evaluated by psychologists while conducting search for potential applicants for job had legitimate expectation of privacy in papers compiled), *rev'd on other grounds,* 379 So. 2d 633 (Fla. 1980).

81. *See, e.g.,* Hawaii Psychiatric Soc'y v. Ariyoshi, 481 F. Supp. 1028, 1038, 1043 (D. Hawaii 1979) (confidentiality protects psychiatric reports); Shuman v. Philadelphia, 470 F. Supp. 449, 459 (E.D. Pa. 1979) (zone of privacy encompasses matters involved in one's sexual activities); McKenna v. Fargo, 451 F. Supp. 1355, 1380-81 (D.N.J. 1978) (information from psychiatric interview is within protection of confidentiality); *accord* Fultz v. Superior Court, 152 Cal. Rptr. 210, 213 (Cal. Ct. App. 1979) (information regarding one's sexual activities is within zone of privacy).

82. Hawaii Psychiatric Soc'y v. Ariyoshi, 481 F. Supp. 1028, 1038 (D. Hawaii 1979).

83. *See* Martinelli v. District Court In and For Denver, Colorado, 612 P. 2d 1083, 1092 (Colo. 1980); Byron, Harless, Schaffer, Reid & Assoc. v. State, 360 So. 2d 83, 90-93 (Fla. Dist. Ct. App. 1978), *rev'd on other grounds,* 379 So. 2d 633 (Fla. 1980).

84. *See, e.g.,* Shuman v. Philadelphia, 470 F. Supp. 449, 459 (E.D. Pa. 1979) (right to confidentiality justifies policeman's refusal to answer questions about sexual activities when unrelated to job performance); Falcon v. Alaska Pub. Officers Comm'n, 570 P.2d 469, 480 (Alaska 1977) (requiring physician who counselled patients on sexual problems and prescribed contraceptives to reveal patient's names would violate patient's right to privacy); Fultz v. Superior Court, 152 Cal. Rptr. 210, 213 (Cal. 1979) (woman's refusal to answer interrogatories in paternity action within constitutional right to privacy as answers dealt with her sexual relationships).

practices and procedures of adoption agencies and the state, the birth parent has a legitimate expectation in confidentiality.[85] Any disclosure of information would, therefore, breach this expectation of confidentiality and perhaps deter the birth parent from surrendering a child for adoption.[86] Identity of the birth parent also falls within that zone of private matters protected from disclosure: the right to privacy protects a person in his intimate relationships and no relationship is so intimate as one involving sexual activities.[87] Disclosure could allow intimate facts regarding the birth parent to be known and, consequently, violate the right to privacy of the birth parent.[88]

B. *Challenge Based upon Right to Receive Information*

Adoptees have also based constitutional challenges of confidentiality statutes on the right to receive information and ideas.[89] In presenting this argument, adoptees rely on *Stanley v. Georgia,*[90] and other landmark decisions holding that the right to receive information is protected by the first amendment.[91] Commentators have additionally argued that the stifling of this information interferes with the adoptee's development of the positive

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85. *See* Comment, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma,* 4 SAN FERN. V. L. REV. 65, 76-78 (1975). State statutes place some conditions upon the release of identifying information such as requiring the adoptee to show good cause for access or to obtain a court order. Based upon these statutory assurances, some state courts have held that the birth parent has a legitimate expectation of privacy and, thus, a right to confidentiality has been created. *See, e.g.,* Massey v. Parker, 369 So. 2d 1310, 1314 (La. 1979) (real expectation of privacy was created by statute requiring compelling necessity to open records); *In re* Maples, 563 S.W.2d 760, 763 (Mo. 1978) (en banc) (statute releasing adoption information only upon court order caused birth parents to believe they would remain anonymous); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (right of privacy of birth parent is expressly assured by law requiring good cause for disclosure).

86. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 464 (1982).

87. *See id.* at 465.

88. *See id.* at 465.

89. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1230 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 752-54 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 761-62 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 648 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 643 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

90. 394 U.S. 557 (1969).

91. *See, e.g.,* Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 390 (1969) (first amendment's purpose is to preserve marketplace of ideas); Stanley v. Georgia, 394 U.S. 557, 564 (1969) (right to receive information and ideas protected by Constitution); Martin v. Struthers, 319 U.S. 141, 143 (1943) ("This freedom [of speech and press] . . . necessarily protects the right to receive information").

self-image necessary for functioning effectively and confidently in society.[92] The right to receive information is essential in the personal life of the individual.[93] In order to develop into an integrated, healthy person capable of societal participation,[94] many adoptees feel the need to have access to both information and ideas which will contribute to his self-awareness.[95]

While the *Mills* court acknowledged the right of individuals to receive important information,[96] it reiterated the precept that no constitutional or personal right is so absolute as to exclude the constitutional or personal rights of other individuals.[97] Once again, the adoptee's claimed right of access to information conflicts with the birth parent's right to privacy.[98] In holding that the challenged New Jersey statute[99] did not unconstitutionally abridge the adoptee's right to receive information and ideas,[100] the court emphasized that the "good cause" statute did not completely deny access to the information sought.[101] This limitation was viewed by the court as both the exercise of a valid state interest in protecting the integrity of the adoption process and a balancing of the rights of the parties involved.[102]

C. *Challenge Based upon Equal Protection*

Adoptees have also argued that sealed record statutes deny them equal protection of the laws because nonadoptees can readily gain access to their

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92. *See generally* Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,* 48 S. CAL. L. REV. 1196, 1204-05 (1975).

93. *See id.* at 1205.

94. *See id.* at 1205.

95. *See id.* at 1205.

96. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 652 (N.J. Super. Ct. Ch. Div. 1977).

97. *See id.* at 652.

98. *See id.* at 652; *see also* Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677, 695 (1980) (citing Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 652 (N.J. Super. Ct. Ch. Div. 1977) (no constitutional right is so absolute as to exclude rights of other individuals).

99. *See* N.J. STAT. ANN. § 26:8-40.1 (West Supp. 1982-83) (New Jersey good cause statute).

100. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 652 (N.J. Super. Ct. Ch. Div. 1977).

101. *See id.* at 652.

102. *See id.* at 652. The *Maples* court reached the same conclusion as did the *Mills* court but relied on distinguishing the recipients of the information. According to the *Maples* court, Stanley v. Georgia, 394 U.S. 557 (1969), upholds the free flow of information and ideas from one person to another. *See In re* Maples, 563 S.W.2d 760, 762 (Mo. 1978) (en banc). As the information sought here is obtained through a judicial proceeding, the state has a valid interest in the protection of the adoption system. *See id.* at 762.

birth records.[103] Based on the premise that most adoptees are illegitimates,[104] adoptees assert that they are treated differently than nonadopted illegitimates who have unlimited access to their birth records.[105] Adoptees also argue that confidentiality statutes confer upon them the status of a suspect class, therefore subjecting the statute to strict scrutiny.[106] Constitutional principles of equal protection do not require that all persons be treated identically.[107] When the imposed classification abridges a fundamental right, however, its validity will be sustained only when the state shows a compelling reason.[108] To fall within the purview of a suspect class, it must be established that the classification is "an immutable characteristic determined solely by the accident of birth"[109] and secondly, that the class has a history of being discriminated against.[110] Using this established definition to guide their decisions, the courts have unanimously rejected adoptees' suspect class argument.[111] In *Alma Society, Inc. v. Mellon*,[112] the

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103. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc); *In re* Gilbert, 563 S.W.2d 768, 769 (Mo. 1978); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct.), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau, 274 S.E.2d 418, 422 (S.C. 1981); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1979). *See generally* Comment, *The Adult Adoptee's Constitutional Right to Know His Origins,* 48 S. CAL. L. REV. 1196, 1205 (1979); Comment, *The Adoptee's Right to Know His Natural Heritage,* 19 N.Y.L.F. 137, 145 (1973).

104. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 (2d Cir.) (adoptees alleged they were entilted to same constitutional protections afforded illegitimates as majority of adoptees are illegitimates), *cert. denied,* 444 U.S. 995 (1979); *see also* Comment, *Breaking The Seal: Constitutional and Statutory Approaches to Adult Adoptee's Right to Identity,* 75 NW. U.L. REV. 316, 334 (1980) (recognizing most adoptees are illegitimate); Comment, *A Reasonable Approach to the Adoptee's Sealed Record Dilemma,* 2 OHIO N.U.L. REV. 542, 550 (1975) (estimating that 60% of adoptees are illegitimate).

105. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 652 (N.J. Super. Ct. Ch. Div. 1977).

106. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 (2d Cir.) (adult adoptees are suspect class and therefore statute is subject to strict scrutiny), *cert. denied,* 444 U.S. 995 (1979); *In re* Maples, 563 S.W.2d 760, 764 (Mo. 1978) (en banc) (strict scrutiny required as statute imposes status of suspect class); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct. 1978) (more exacting test of strict scrutiny should be applied as statute creates suspect class), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

107. *See* Eisenstandt v. Baird, 405 U.S. 438, 446-47 (1972).

108. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (classification which penalizes fundamental right sustained only upon state's showing of compelling governmental interest).

109. Frontiero v. Richardson, 411 U.S. 677, 686 (1973).

110. *See id.* at 685-87.

111. *See, e.g., In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (statute does not create

court reasoned that adoptees were treated differently due to their status as adoptees, not due to any status as illegitimates.[113] Extending this rationale, the *Mills* court stated that the adoptee does not obtain his status by accident of birth; his status is derived from a legal proceeding which occurs after the child's birth.[114] It is also clear that the second requirement, that the class have a history of being discriminated against, is not met by the class of adoptees.[115] The objectives of the adoption process are to place the child with a new family that is capable of creating a loving, stable relationship.[116] It cannot be said with any degree of accuracy, therefore, that adoptees are being, or have a history of being, discriminated against.[117]

Unless adoptees can establish the existence of a fundamental right or establish that they constitute a suspect class, strict scrutiny will not apply to sealed records statutes.[118] Courts will uphold these statutes as a valid exercise of the state's power if they are reasonable and bear a rational relationship to a legitimate state goal.[119] That the confidentiality statutes meet this

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suspect class); *In re* Linda F. M., 409 N.Y.S.2d 638, 645 (Sur. Ct. 1978) (adoptees not a suspect class), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau, 274 S.E.2d 418, 422 (S.C. 1981) (adoptee's status under law does not constitute suspect class).

112. 601 F.2d 1225 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979).

113. *See id.* at 1234.

114. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977); *see also In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (status of adoptee derived from legal proceeding whose purpose is protecting best interest of child).

115. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1234 (2d Cir.) (adoptees have no history of discrimination), *cert. denied,* 444 U.S. 995 (1975); *In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc) (adoption system protects abandoned or neglected children); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (situation of adopted child is often improved by challenged statute).

116. *See, e.g., In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (adoption improves status of child by providing home, support, family unit, and loving care that might not otherwise be present); *In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc) (adoption provides system of protection for neglected, abandoned, or surrendered children); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (adoption insures home and family relationship which otherwise may not exist).

117. *See In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 653-54 (N.J. Super. Ct. Ch. Div. 1977).

118. *See* Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 314 (1976) (rational basis test applied when strict scrutiny not applicable); *see also In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (suspect class not involved; therefore, state need only have rational basis for statutory classification); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (where fundamental right not penalized, state must only show rational basis for statute); *In re* Linda F. M., 409 N.Y.S.2d 638, 645 (Sur. Ct. 1978) (suspect class not involved; statute must only meet rational basis test), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978) (unless suspect class involved, rational basis is applied).

119. *See, e.g., In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (rational basis met if it

rational basis test is seen by examining the goals of the sealed record statutes: protection of the adoptee from any social stigmas, protection of the privacy rights of the birth parent, protection of the adoptive parents from outside interference, and safeguarding the adoption process.[120] Since the sealed record statutes are rationally related to promoting the interests of the parties to the adoption, the adoptee is not denied equal protection of the law.[121]

D. *Summary of Constitutional Challenges*

In addressing adoptees' constitutional challenges to sealed record statutes, the courts have unanimously held that denial of automatic access to adoption records does not abridge any constitutional right of the adoptee.[122] Challenges founded on the denial of a fundamental right to

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serves legitimate state interest); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 653 (N.J. Super. Ct. Ch. Div. 1977) (if reasonable basis for classification exists and such distinction has rational relationship to objective sought, then equal protection not violated); *In re* Linda F. M., 409 N.Y.S.2d 638, 645-46 (Sur. Ct. 1978) (equal protection not violated if statute bears rational relationship to valid state objective), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); *see also In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978) (except in cases involving suspect class or fundamental rights, equal protection afforded if supported by legitimate state interest).

120. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 (2d Cir.) (state may consider choices of birth parents and protect these choices; may also protect adopting parents and adoptee), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 754-55 (Ill. 1981) (confidentiality protects privacy of birth parents, assists adopting parents in creating family unit and protects adoptee from stigmas); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 649 (N.J. Super. Ct. Ch. Div. 1977) (purpose of Act is protection not only of adoptee, but also of adopting parents and birth parents); *see also* Klibanoff, *Geneological Information in Adoption: The Adoptee's Quest and the Law,* 11 FAM. L.Q. 185, 196-97 (1977).

121. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1234 (2d Cir.) (statute supported by important state interest so equal protection not abridged), *cert. denied,* 444 U.S. 995 (1979); *In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc) (adoption does not deny equal protection); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 654 (N.J. Super. Ct. Ch. Div. 1977) (statute supported by rational state interest; no equal protection violated).

122. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233, 1236 (2d Cir.) (good cause statute is not violation of any constitutional right possessed by adoptees), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 754, 756, 757 (Ill. 1981) (no constitutional right of adoptee violated by sealed records statute); *In re* Maples, 563 S.W.2d 760, 762, 764-65 (Mo. 1978) (en banc) (sealed record statute does not deny any constitutionally protected rights of adoptee); *see also In re* Gilbert, 563 S.W.2d 768, 770 (Mo. 1978); Mills v. Atlantic City Dep't of Health, 372 A.2d 646, 654 (N.J. Super. Ct. Ch. Div. 1977); *In re* Hayden, 435 N.Y.S.2d 541, 542 (Sup. Ct. 1981); *In re* Linda F. M., 409 N.Y.S.2d 638, 644-45 (Sur. Ct. 1978), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); Bradey v. Children's Bureau, 274 S.E.2d 418, 422 (S.C. 1981); *In re* Sage, 586 P.2d 1201, 1206-07 (Wash. Ct. App. 1979). *But see* Yesterday's Children v. Kennedy, 569 F.2d 431, 434-36 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978). The adoptees challenged the constitutionality of a sealed record statute; the federal court abstained from

privacy have not been sustained; the scope of fundamental rights is narrow and adoptees have failed to establish that the right to privacy involved in ascertaining the identity of their birth parents is explicitly or implicitly guaranteed by the constitution.[123] Even if adoptees were able to sustain a right to privacy, the right would not be absolute;[124] this asserted right must be examined in relation to the countervailing right to privacy possessed by the birth parents.[125] Assuming that upon attaining adulthood the adoptee no longer needs the protection of the adoption process, the same cannot be said for the birth parents.[126] Their interest in a right to privacy does not diminish over time; it, perhaps, intensifies.[127] Examined in light of the right of privacy of the birth parents, an adoptee's right to privacy is not violated by confidentiality statutes.

The challenge of the adoptees' right to receive information has also failed. While the *Mills* court recognized that adoptees have a right to receive information, this right is not absolute or paramount to the countervailing rights of others.[128] Again, this right must be balanced with the privacy right of the birth parent.

Challenges based upon denial of equal protection of the laws, thus subjecting the challenged statutes to a strict scrutiny test, also have not succeeded.[129] Since adoptees have failed to establish the existence of a fundamental right[130] or their status as a suspect class,[131] the challenged

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reversing trial court's dismissal due to lack of state court decisions, addressing state statute. *See id.* at 435.

123. *See, e.g., In re* Roger B., 418 N.E.2d 751, 753 (Ill. 1981) (adoptee's right to ascertain identity of birth parent not explicitly or implicitly protected by Constitution); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (information requested by adoptee does not fall within constitutionally protected privacy); *In re* Linda F. M., 409 N.Y.S.2d 638, 644 (Sur. Ct. 1978) (no privacy right of adoptee is involved), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981).

124. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977).

125. *See id.* at 651.

126. *See In re* Roger B., 418 N.E.2d 751, 755-56 (Ill. 1981).

127. *See id.* at 755-56.

128. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977).

129. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1236 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 753-56 (Ill. 1981); *In re* Maples, 563 S.W.2d 760, 762-65 (Mo. 1978) (en banc); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 650-54 (N.J. Super. Ct. Ch. Div. 1977).

130. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1231-33 (2d Cir.) (adoptees possess no fundamental right to receive information in ascertaining birth parents' identity), *cert. denied,* 444 U.S. 995 (1979); *In re* Maples, 563 S.W.2d 760, 762-64 (Mo. 1978) (en banc) (no fundamental right impinged upon); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (no fundamental right involved).

statutes will be upheld only if supported by a valid state objective.[132] The objective of the adoption process is to create a new family environment for a child following the surrender by the birth family. Clearly, this is a valid state objective and the confidentiality statutes are rationally related to this objective.

V. Judicial Interpretation of "Good Cause"

Despite rejection of constitutional arguments presented in support of automatic access to birth records, adoptees are not completely precluded from access to their sought-after information. State legislatures realize that regardless of assurances of secrecy, competing interests may warrant disclosure;[133] therefore, legislatures have formulated statutes granting access conditioned upon compliance with statutory requisites.[134] The Texas legislature, in addition to legislatures in a majority of other states, has enacted a statute providing for disclosure upon the showing of "good cause".[135] Statutes and case law fail to provide a precise definition of good cause.[136] The judge, therefore, is allowed wide discretion and must make his decision on a case-by-case basis.[137] The mere desire to learn the identity of one's birth parents or mere curiosity alone does not constitute good

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131. *See, e.g.,* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1236 (2d Cir.) (status of adoptees does not constitute suspect class), *cert. denied,* 444 U.S. 995 (1979); *In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981) (statute does not create suspect class); *In re* Maples, 563 S.W.2d 760, 765 (Mo. 1978) (en banc) (adoptees not suspect class).

132. *See, e.g., In re* Roger B., 418 N.E.2d 751, 754 (Ill. 1981) (as no fundamental right is involved, statute will be upheld on rational basis test); *In re* Maples, 563 S.W.2d 760, 762 (Mo. 1978) (en banc) (no constitutional infringement so statute will be upheld if exercise of valid state interest); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (as no fundamental right is involved, statute will be upheld if it bears rational relationship to state objective).

133. *See In re* Roger B., 418 N.E.2d 751, 756 (Ill. 1981). Birth parent's right to privacy, however, is not absolute. *See id.* at 756.

134. *See supra* note 21 and accompanying text (states with good cause access statutes).

135. *See* Tex. Fam. Code Ann. § 11.17(d) (Vernon Supp. 1982-1983).

136. *See* Bradey v. Children's Bureau, 274 S.E.2d 418, 421 (S.C. 1981) (to meet "good cause" requirement, adoptee must demonstrate compelling need for identifying information); *see also* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 1304, 437 N.Y.S.2d 283, 285 (1981) (must show compelling and concrete need to establish good cause); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978) (no precise definition; flexibility desired).

137. *See, e.g.,* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 1304, 437 N.Y.S.2d 283, 285 (1981) (courts to decide on case-by-case basis whether good cause exists); Bradey v. Children's Bureau, 274 S.E.2d 418, 421 (S.C. 1981) (determination of compelling need depends on circumstances of each case); *In re* Sage, 586 P.2d 1201, 1206 (Wash. Ct. App. 1978) (judge must be allowed wide discretion and decisions should be made on case-by-case basis).

cause;[138] there must be more. The requesting adoptee must also show a present need for the requested information.[139] Courts have found good cause to exist when: the adoptee's search is inspired by religious beliefs which requires them to trace their ancestry and perform certain religious services for blood relatives;[140] the adoptee desires information to ascertain and establish his inheritance rights from his birth parents;[141] the adoptee is motivated by well-documented emotional or psychological disturbances;[142] and the desired information relates to medical, ethnic, or hereditary information.[143] Although the burden of showing good cause is

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138. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 655 (N.J. Super. Ct. Ch. Div. 1977) (adoptee must show that need is more than mere curiosity); Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 1304, 437 N.Y.S.2d 283, 285 (1981) ("Nevertheless, mere desire to learn the identity of one's natural parents cannot alone constitute good cause, or the requirement of section 114 (good cause statute) would become a nullity").

139. *See In re* Linda F. M., 409 N.Y.S.2d 638, 641 (Sur. Ct. 1978) (present need to view records must be shown), *aff'd sub nom.* Linda F. M. v. Dep't of Health, New York, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981). In other words, the adoptee bears the burden of proof. *See In re* Maples, 563 S.W.2d 760, 766 (Mo. 1978) (en banc) (burden on applicant to show good cause); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 654 (N.J. Super. Ct. Ch. Div. 1977) (burden to show good cause upon party seeking access).

140. *See In re* Gilbert, 563 S.W.2d 768, 770 (Mo. 1978).

141. *See, e.g.,* Kirsch v. Parker, 383 So. 2d 384, 387 (La. 1980) (possible inheritance rights constitute compelling reason for opening sealed records); Massey v. Parker, 369 So. 2d 1310, 1314 (La. 1979) (right to inherit from both parents may constitute compelling cause); Chambers v. Parker, 349 So. 2d 424, 426 (La. Ct. App. 1977) (sealed record statute does not prevent adoptees from asserting inheritance rights). Texas provides by statute that upon the termination of the birth parent's legal rights, the child retains the right to inherit from and through the birth parent. *See* TEX. FAM. CODE ANN. § 15.07 (Vernon Supp. 1982-1983). The *Massey* court provided that prior to releasing the requested information, the court should determine whether there is an estate from which the adoptee can inherit. *See* Massey v. Parker, 369 So. 2d 1310, 1314 (La. 1979). The lower court was thus instructed to appoint a curator ad hoc to ascertain if the birth parents were named and, if so, to launch an investigation to ascertain if an estate exists. *See id.* at 1315. If the identity of the birth parents could not be ascertained, then no relief could be granted. *See id.* at 1315. If identifying information on birth parents were found, the court was to determine how the rights of the adoptee could be secured, giving full consideration to the assurances of confidentiality accorded the birth parents. *See id.* at 1315. The court reiterated that the "utmost discretion and confidentiality must be observed" in the steps taken. *See id.* at 1315.

142. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 655-56 (N.J. Super. Ct. Ch. Div. 1977); *In re* Anonymous, 390 N.Y.S.2d 779, 782 (Sur. Ct. 1976). *But see In re* Spinks, 232 S.E.2d 479, 483-84 (N.C. Ct. App. 1977). Without corroboration from an expert witness, the trial court heard applicant's testimony that he was suffering from an emotional disturbance caused by his not knowing the identity of his birth parent; access was granted. *See id.* at 481. The appeals court vacated and remanded the case with instructions that the trial court conduct a full factual determination hearing on the ultimate issue of whether release of the information would be in the best interest of the child. *See id.* at 484.

143. *See* Chattman v. Bennett, 393 N.Y.S.2d 768, 768-69 (N.Y. App. Div. 1977). The *Chattman* court, holding that medical information and information containing genetic or

usually upon the adoptee, the *Mills* court provided that once the adoptee attains majority, the burden shifts to the state to establish that good cause does not exist.[144] In carrying its burden, the state must consider the needs of the adoptee, the rights of the birth parents and the adoptive parents, and the state's interest in maintaining a viable adoption process.[145] Each decision must be made on an individual basis with the court's ultimate decision resting on a balancing of the rights and interests of the parties involved.[146]

To assist the magistrate in arriving at a proper decision, several courts have established inquiry procedures providing for court investigations into access requests.[147] These procedures are designed to protect the rights of

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hereditary information should be freely disclosed, allowed an adoptee to inspect her adoption and medical records as well as those of her birth parents. It was further provided that nonpertinent information, including the names of the birth parents, be deleted. *See id.* at 768-69; *see also* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 655 (N.J. Super. Ct. Ch. Div. 1977) (requests for medical, ethnic, or hereditary background should be granted, absent showing of compelling reason not to disclose); *In re* Female Infant, 5 FAM. L. REP. (BNA) 2311, 2312-13 (1979) (release of medical information about birth family promotes and protects adoptee's welfare); Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677, 699 (1980) (medical information should be released upon request).

144. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 654 (N.J. Super. Ct. Ch. Div. 1977).

145. *See, e.g., In re* Maples, 563 S.W.2d 760, 763-64 (Mo. 1978) (en banc) (state's primary concern is protection of adoption system, thus serving best interests of child); *In re* Anonymous, 390 N.Y.S.2d 779, 782 (Sur. Ct. 1976) (determination of what constitutes good cause must include determination of rights of adopted child and his adoptive parents, determination of rights conferred by statute on birth parents of child, and any common law rights available); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 655 (N.J. Super. Ct. Ch. Div. 1977) (in determining whether records should be released, court must weigh needs of adoptee against birth parent's rights; neither party's right is absolute).

146. *See, e.g.,* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651-52 (N.J. Super. Ct. Ch. Div. 1977) (good cause statute grants court power to weigh and balance competing privacy interests and make determination based on facts and circumstances of individual case); *In re* Spinks, 232 S.E.2d 479, 482 (N.C. Ct. App. 1977) (in making determination, court should carefully weigh interests of child, public, and adoptive and birth parents); Bradey v. Children's Bureau, 274 S.E.2d 418, 421 (S.C. 1981) (court must weigh interests of parties).

147. *See, e.g.,* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 656 (N.J. Super. Ct. Ch. Div. 1977); *In re* Anonymous, 390 N.Y.S.2d 779, 782 (Sur. Ct. 1976); *In re* Daniel Doe, No. 76-CO-2436 (Cir. Ct. Cook County, Nov. 22, 1977) (cited in Yesterday's Children v. Kennedy, 569 F.2d 431, 433-34 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978)). The *Mills* court established a procedure calling for the appointment of an intermediary agency empowered to investigate each request. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 656 (N.J. Super. Ct. Ch. Div. 1977). The agency would be allowed access to court records and would be responsible for conducting an investigation and submitting to the court a report of its findings and recommendations. *See id.* at 656. The agency so appointed would be the agency that originally placed the adoptee; however, if the placing

the parties involved, to lessen the burden on the adoptee where good cause exists, and to effectuate the legislative intent of the access statutes.[148] Each of these procedures share common elements: they require that the birth parents be sought out and, if found, contacted and advised of the pending request.[149] If the birth parent is, in fact, located and contacted, the birth parent may or may not consent to the release of the requested informa-

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agency no longer exists or the placement was private, the court selects an agency. The agency is not allowed to reveal the nature of its inquiry to any persons other than the birth parents. The intermediary attempts to locate the birth parents and to obtain their consent to release the identifying information; if such consent is obtained, the information is automatically released. Upon the request of the birth parents and after securing a court order, the intermediary may also arrange a contact between the adoptee and the birth parents. Such court order will not be granted, however, if the court feels that the meeting would be "harmful" to either of the parties. If the birth parents refuse to consent to the release of identifying information, the adoptee may appeal. The appeals court must resolve the issue by examining both the adoptee's grounds for access and the report of the intermediary. *See id.* at 656. In *In re* Daniel Doe, No. 76-CO-2436 (Cir. Ct. Cook County Nov. 22, 1977) (cited in Yesterday's Children v. Kennedy, 569 F.2d 431, 433-34 (7th cir. 1977), *cert. denied,* 437 U.S. 904 (1978)), an Illinois court also called for an investigation. An investigator was appointed and was instructed to contact the birth and adoptive parents to notify them of the pending proceeding and to advise them that the requested information would be released unless evidence that substantial harm would result from the release of such information was presented to the court. *See* Yesterday's Children v. Kennedy, 569 F.2d 431, 434 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978). Although leave to intervene will be granted, the intervening party must prove by a preponderance of the evidence that substantial harm would result from the release of the requested information. Absent such showing, the court will order the opening of adoption records and the original birth certificate for the adoptee's inspection. If the birth parents are not located within a "reasonable time," the petitioner will be required to publish notice of the pending proceeding for thirty days in a publication of general circulation. If no appearance is made, the access requested will be granted. *See id.* at 434. A New York court in *In re* Anonymous, 390 N.Y.S.2d 779 (Sur. Ct. 1976), declared that the birth parents were necessary parties to the litigation and, thus, were required to be served with notice. *See id.* at 782. In keeping with the concept of confidentiality and cognizant of the fact that the birth parent's anonymity would be destroyed by participating in the litigation, the court provided for the appointment of a guardian ad litem. *See id.* at 782. *But see In re* Spinks, 232 S.E.2d 479, 481 (N.C. Ct. App. 1977) (rejecting argument that birth parents are necessary parties). *See generally* Comment, *The Current Status of the Right of Adult Adoptees to Know the Identity of Their Natural Parents,* 58 WASH. U.L.Q. 677, 700-01 (1980).

148. *See* Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 656 (N.J. Super. Ct. Ch. Div. 1977) (intermediary to attempt to locate and contact birth parents and advise them of pending proceeding).

149. *See, e.g.,* Yesterday's Children v. Kennedy, 569 F.2d 431, 433-34 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978) (citing *In re* Daniel Doe, No. 76-CO-2436 (Cir. Ct. Cook County Nov. 22, 1977)) (investigator to locate birth parents and advise them petition will be granted unless show substantial harm would result from disclosure); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 656 (N.J. Super. Ct. Ch. Div. 1977) (intermediary to attempt to locate and contact birth parents and advise them of pending proceedings); *In re* Anonymous, 390 N.Y.S.2d 779, 782 (Sur. Ct. 1976) (court appoints guardian ad litem to represent served birth parents).

tion.[150] For those contacted birth parents who consent, the court investigations provide an equitable solution to the access problem; however, for those birth parents who refuse to consent to the release of the information, the investigation clearly invades their right to privacy.[151] Years after making the difficult decision to surrender their child, the birth parents are once again confronted with assessing the correctness of that decision and dealing with whatever guilt and emotion may have accompanied the choice.[152]

Faced with the possibility of diametrically opposed reactions, it would seem that a wiser and more efficient approach to this dilemma would be first to require a hearing on the merits of the petition.[153] Then, if the petitioner/adoptee fails to sustain his burden of proof, neither the adoption records nor the privacy of the birth parent would be disturbed.[154] Even if the petitioning adoptee carries forth his burden of good cause, the court should not be required to release all of the information contained in the sealed record.[155] While the good cause shown may necessitate the disclosure of some information within the file, such as medical, ethnic, or hereditary information, it may not necessitate the revelation of the birth parent's identity.[156]

VI. Suggestions for Texas Statutory Reform

The current legislative scheme protects those birth parents, adoptive parents, and adoptees who believe and desire that all adoption records should be kept confidential. In keeping with the legislative goal of serving the best interests of the child, it is imperative that the legislature recognize the need of some adoptees to have access to more information regarding

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150. *See, e.g.,* Yesterday's Children v. Kennedy, 569 F.2d 431, 434 (7th Cir. 1977), *cert. denied,* 437 U.S. 904 (1978) (citing *In re* Daniel Doe, No. 76-CO-2436 (Cir. Ct. Cook County Nov. 22, 1977)) (birth parents may consent to release or intervene to deny release); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 656 (N.J. Super. Ct. Ch. Div. 1977) (consent of birth parents allows adoptee automatic access; refusal by birth parent creates right of adoptee to appeal); *In re* Anonymous, 390 N.Y.S. 2d 779, 782 (Sur. Ct. 1976) (attorney ad litem appointed to protect rights and interests of birth parents).

151. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 Rutgers L. Rev. 451, 455 (1982).

152. *See id.* at 457-61.

153. *See In re* Hayden, 435 N.Y.S.2d 541, 542 (Sup. Ct. 1981).

154. *See id.* at 542.

155. *See In re* Maples, 563 S.W.2d 760, 761 (Mo. 1978) (en banc).

156. *See id.* at 766. The *Maples* court recognized that "[t]he disclosure of some information does not require the entire record be thrown open, instead, only so much information as the court adjudges necessary for the good cause shown should be disclosed." *See id.* at 766; *see also* Chattman v. Bennett, 393 N.Y.S.2d 768, 768-69 (N.Y. App. Div. 1977) (court granted release of requested hereditary and genetic information but ordered deletion of nonpertinent information such as identity of birth parents).

their adoption.[157] There also exists a group of birth parents who would consent to the request for the release of information or who would freely identify themselves to their surrendered child if they knew the child wanted to know.[158] As adoption is a purely statutory creation, any reform must also be statutory.

Many adoptees seeking additional information do not necessarily want identifying information; they desire medical, ethnic, or hereditary information.[159] This request could easily be met by amending the existing Texas confidentiality statute [160] to provide for the division of the adoption file into two parts: identifying information and nonidentifying information.[161] To serve its purpose effectively, the nonidentifying information file should contain information regarding the birth parents:

(1) age at the time of the adoptee's birth;

(2) heritage background, including ethnic, race, and religious background;

(3) education completed at time of adoptee's birth and future education plans;

(4) physical appearance, including height, weight, build, eye and hair color, skin complexion and coloring;

(5) existence of any other blood siblings, their sexes, and ages at the time of the adoptee's placement and whether they were surrendered for adoption; and,

(6) detailed health reports including allergies, blood types, and known family diseases.[162]

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157. *See, e.g., In re* Roger B., 418 N.E.2d 751, 757 (Ill. 1981) (legislature has not totally denied access to adoption records but simply requires court to determine if request is justified); Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (legislature has recognized that countervailing interest of adoptee may warrant disclosure); Bradey v. Children's Bureau, 274 S.E.2d 418, 421 (S.C. 1981) (statute allows access to records upon showing of good cause). By adopting "good cause" and court order statutes, legislatures have recognized that access may be granted.

158. *See* Alma Soc'y, Inc. v. Mellon, 601 F.2d 1225, 1233 n.13 (2d Cir.), *cert. denied,* 444 U.S. 995 (1979). In *Alma,* the appellant cited one study which indicated that of 152 birth families randomly selected, 128 of them agreed to meet their surrendered child, now an adult. *See id.* at 1233 n.13.

159. Interview with Dr. Richard Grant, Executive Director, Children's Service Bureau of San Antonio, in San Antonio (January 17, 1983). Most adoption agencies will release to a requesting adoptee all information contained in their adoption file concerning medical information and ethnic and religious background.

160. *See* TEX. FAM. CODE ANN. § 11.17(d) (Vernon Supp. 1982-1983).

161. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 486 (1982).

162. *See, e.g.,* CONN. GEN. STAT. ANN. § 45-68(e) (West 1982) (calling for compilation and subsequent release of certain information to adoptive parents by date adoption is final);

Nonidentifying information should be released at the adoptee's request.[163]

When identifying information is sought, the court must distinguish between those birth parents who would not object to disclosure and those who would object. One solution to this problem would be to allow the birth parent to sign a consent to the release of the information either at the time of the adoption or any time before the child reaches majority.[164] A better solution to this problem, however, would be the creation of a voluntary registry system where both adoptees and birth parents can register a desire to meet their lost child or parent.[165] Under such a system, consenting birth parents and desiring adoptees could be matched without having to go through the time, expense, or emotion of a court proceeding.[166] Based upon proposals of the Texas Committee for Adoption, legislation has been presented to the sixty-eighth legislature that provides for the creation of a Voluntary Adoption Registry.[167]

IOWA CODE ANN. §§ 600.8(1)(c)(1), 600.8(1)(c)(2) (1981) (birth parents to supply detailed nonidentifying information); N.C. GEN. STAT. § 48-25(d) (Supp. 1981) (providing for compilation of detailed nonidentifying information); *see also* TEX. S.B. 777, 68th Leg. (1983); TEX. H.B. 1174, 68th Leg. (1983). Each of these proposed bills calls for an amendment to section 16.03 of the Texas Family Code. *See* TEX. FAM. CODE ANN. § 16.03 (Vernon 1975). The proposals mandate the compilation of available health, social, educational, and genetic history of the adoptee. Included within the genetic history of the adoptee is information pertaining to the health, medical history, age, education, religious and ethnic information of the birth parents. It is further provided that no adoption may be granted until such report is provided to the adopting parents. *See* TEX. S.B. 777, 68th Leg. (1983); TEX. H.B. 1174, 68th Leg. (1983).

163. *See* CONN. GEN. STAT. ANN. § 45-68(h) (West 1981) (nonidentifying information released to adult adoptee upon request); DEL. CODE ANN. tit. 13, § 924 (1981) (nonidentifying information can be released to any party of adoption proceeding); IOWA CODE ANN. §§ 600.16(1)(b), 600.8(1)(c)(1), 600.8(1)(c)(2) (West 1981) (complete medical information available on request); ME. REV. STAT. ANN. tit. 19, § 534 (Supp. 1982-1983) (medical or genetic information available when adoptee reaches majority); MICH. STAT. ANN. § 27.3178 (555.68(1)) (Callaghan Supp. 1982-1983) (all nonidentifying information released upon request of adult adoptee); N.C. GEN. STAT. § 48-25(d) (Supp. 1981) (nonidentifying information released upon written request by adult adoptee); N.D. CENT. CODE § 14-15-16(3) (1981) (nonidentifying information released upon request).

164. *See* Comment, *Confidentiality of Adoption Records: An Examination,* 52 TUL. L. REV. 817, 853 (1978).

165. *See* LA. REV. STAT. ANN. § 40:91-40:99 (West Supp. 1983) (Louisiana State Voluntary Registry Act).

166. *See* Comment, *Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent,* 34 RUTGERS L. REV. 451, 486 (1982).

167. *See* TEX. S.B. 777, 68th Leg. (1983). The proposed Senate bill provides for the establishment of a central voluntary registry system within the Department of Human Resources and also for the establishment of voluntary registries by placement agencies. Records for adoptions granted after January 1, 1984, will be deposited with the registry, but will remain confidential. For adoptions granted prior to January 1, 1984, records may be voluntarily forwarded to the registry by the placing agency. The registry is designed to assist

Even with the establishment of a voluntary registry system, some adoptees could still be forced to seek identifying information by resorting to the courts. This is particularly true in those situations where the adoptee is asserting his right to inherit from his birth parents.[168] Keeping in mind that the termination procedures sever all legal relationships between the birth parent and child,[169] the retention by the adoptee of his right to inherit from his birth parents seems inconsistent with termination of the birth parent/child relationship and should be abolished.[170]

Adoptees may also resort to the courts under other circumstances. If the birth parent has not filed an application with the registry system, it would stand to reason that he or she does not desire to be put into contact with his or her surrendered child. In these cases, the needs of the adoptee may directly conflict with the privacy rights of the birth parent. When faced with such a conflict, the court should not allow disclosure.

VII. CONCLUSION

The adoptee's right of access to his birth and adoption records has gained increasing public attention in recent years. With this increase in public awareness, and perhaps public empathy, it is not surprising that

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adoptees, birth parents, pre-adoption and post-adoption siblings to locate each other. To qualify for registry participation, each applicant, whether it be adoptee, birth parent or birth sibling, is required to submit a detailed application containing as much pre-adoption and post-adoption information as possible. Each application is reviewed and is subject to acceptance or rejection by the administrator. Acceptance is conditioned upon the applicant's undergoing a counselling session with a professional counselor. Once an application is accepted, it is monitored; the goal is matching another application. If a match is made, the applicant is informed by registered mail, acceptance only by named addressee. Once the applicant is informed of the match, he is advised that he may withdraw his consent or request. Following notification of a match, no identifying information will be released except upon a face-to-face meeting between the applicant and the registry administrator. *See id.*; *see also* TEX. H.B. 1174, 68th Leg. (1983). In addition, the House Bill provides for matching of the adoptee with one birth parent without the registration of the other birth parent under certain circumstances. *See id.* at § 49-015.

168. *See* TEX. FAM. CODE ANN. § 15.07 (Vernon Supp. 1982-1983). This statute provides that upon the termination of the relationship between the child and the birth parent, the child retains his rights to inherit from and through the birth parent. *See id.*

169. *See id.* The statute provides in part that a "decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other . . . . " *Id.*

170. *See* Epstein, *Inheritance Rights of an Adopted Child in Texas,* 6 HOUS. L. REV. 350, 354 (1968). In the last three decades the number of states expressly prohibiting inheritance of adoptees from birth parents has dramatically increased. In 1936, nine states prohibited adoptees inheriting from their birth parents. By 1966 at least 23 states had such prohibiting statutes. *See id.* at 354.

inquisitive adoptees have turned to the courts to challenge the veil of secrecy surrounding their beginnings.

Keeping in mind the purposes of the adoption process, courts have uniformly rejected adoptees' constitutional challenges to the validity of confidentiality statutes. Yet the courts have also recognized that this sought-after information is significant to the adoptee. As the adoption process affects the lives of numerous people, the court must reach a decision that benefits all of the parties involved in the process, with particular attention to the needs of the adoptee and the birth parent.

Inquiring adoptees should be allowed automatic access to all nonidentifying information within the records of the court and the placing agency. Securing this information may satisfy the need of the adoptee for information. Additionally, the release of this type of information does not violate any privacy right of the birth parent, since it would not reveal identity.

For those adoptees seeking to ascertain the identity of their birth parents, the legislature should fashion options, other than court actions, which assist adoptees in ascertaining the identity of their parents. One such option would be a voluntary adoption registry system to assist adoptees and birth parents in locating each other, if both parties so desire. In those situations where the adoptee must resort to the courts, however, the court should again engage in a delicate balancing system in which the privacy interests of the birth parents should predominate.