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"Till Debt Do Us Part": An Analysis of the Seventh Circuit States' Laws Relating to College Contributions During Divorce Proceedings

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INTRODUCTION

The Seventh Circuit, which governs Illinois, Indiana, and Wisconsin, does not have a uniform law regarding which parent, if any, is responsible for paying for college contributions for their child(ren), and to what extent they need to pay following divorce proceedings. In fact, the three states in the Seventh Circuit all have different laws regarding divorced parents' responsibilities regarding college tuition for their children. Illinois requires both parents to contribute at least some amount of money to college depending on various factors, such as their income. Whereas Wisconsin places no legal obligation on parents to finance college tuition for their children. Indiana falls in the middle of the two – giving the right to the custodial parent to ask the non-custodial parent[2] to pay a portion during divorce proceedings.

There is no question that college is expensive. There are some families, whether divorced or not, who cannot afford sending their child to college. As the cost of divorce proceedings and college tuition change, an effective way of finding the best practices in divorce litigation and payment allocation is through a comparative lens of these three states and their current practices. The comparison of the state laws hones in on the question of whether a state should have a say in how families, divorced or not, decide on how to pay for college. If so, who should the law center itself around: the child's college choices or the parents' financial obligation? More broadly, who has the right to determine college contributions – the state, the federal government, or the family?

This article will explore Illinois, Indiana, and Wisconsin divorce law as it relates to parental college contribution and the policies behind the state laws. Through an analysis of each of the laws, the article will illustrate potential downfalls and issues that each law allows. Finally, this article will determine what, if any, state or federal legislation should be enacted regarding college contributions during divorce proceedings.

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[2] Custodial parent refers to the parent who the child lives with and cares for all or most of the time, while the other parent is considered the non-custodial parent. Melissa Heinig, *What is a Custodial Parent?*, DIVORCENET, https://www.divorcenet.com/resources/what-is-a-custodial-parent.html (last visited May 16, 2022).

I. ILLINOIS

The Illinois Marriage and Dissolution of Marriage Act (IMDMA) states that parents must make provisions to pay for post-secondary educational expenses during divorce proceedings.[3] Funding for college is normally laid out in a Marital Settlement Agreement (MSA), a written document that explains the terms of the parties' divorce.[4] The lawyer for the relevant parties presents the MSA in front of a judge during a Prove-Up hearing where the divorce is finalized.[5]

The college payment plan is typically based on multiple socioeconomic factors, such as both parents' financial affidavits, the standard of living the child would have experienced if not for the divorce, the financial resources of the child, and academic performance when determining if the college contributions provision is fair and appropriate.[6] College contributions begins when the child turns 19 or finishes high school, whichever comes first.[7] Payment ends when the child turns 23, fails to maintain a "C" average, receives a baccalaureate degree, or marries.[8] During the divorce proceedings, a substantial change in circumstances could result in a change to the college contributions payment scheme after a divorce is finalized.[9] The court determines financial changes in circumstances for divorce proceedings, whether it be college contributions, maintenance, or child support, on a case-by-case basis.[10]

An important caveat to IMDMA regarding college contributions is that parents must pay for educational expenses, but not for the entirety of a child's post-secondary schooling. Educational expenses, according to the Act, are limited in scope. The IMDMA lays out a non-exhaustive list of what defines educational expenses, "which includes tuition, housing, food, utilities, books and supplies, living expenses during recess, as well as medical and dental expenses.[11]

The Act, however, notably dictates that the tuition and fees covered by the statute cannot exceed the amount of in-state tuition, fees, and housing expenses for the University of Illinois at Urbana Champaign in the same year as the divorce.[12] Housing expenses are further defined as the cost of a double-occupancy dormitory room and a standard meal plan in a residence hall.[13] In essence, while Illinois law dictates that both

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[3] 750 ILL. COMP. STAT. 5/513(a) (2022).
[4] Kevin O'Flaherty, *Marital Settlement Agreements Explained*, O'FLAHERTY LAW (Nov. 16, 2020), https://www.oflaherty-law.com/learn-about-law/marital-settlement-agreements-explained.
[5] *Prove Up Checklist for the Domestic Relations Division of the Circuit Court of Cook County*, COOK CNTY., https://www.cookcountycourt.org/Portals/0/Domestic%20Relations%20Division/DRfiles/10-1-20%20Prove-Up%20Checklist.pdf?ver=ZaVOjXVVIg1-U3BXhbQXrw%3D%3D (last visited Apr. 3, 2022).
[6] Janice L. Boback, *Are Divorced Parents Required to Pay for College in Illinois?*, NAT'L L. REV. (June 17, 2020), https://www.natlawreview.com/article/are-divorced-parents-required-to-pay-college-illinois.
[7] 750 Ill. Comp. Stat. 5/513(c) (2020).
[8] 5/513(g).
[9] O'Flaherty, *supra* note 4.
[10] *Id.*
[11] 5/513(d).
[12] *Id.*
[13] *Id.*

custodial and non-custodial parents must come up with a payment plan, that plan has its limitations as to how much the parents need to pay.

For the 2021-2022 academic school year, the estimated in-state cost for the University of Illinois at Urbana Champaign, including tuition, room and board, books and supplies, and other expenses, ranged from $33,060 to $38,154.[14] Tuition itself ranged from $16,866 to $21,960.[15] Meanwhile, the national averages for cost of attendance to 4-year institutions ranged from $25,864 to $53,949.[16] The annual tuition costs for the national average ranged from $9,580 to $37,200.[17] The amount of money that Illinois parents are required to pay is not enough to pay for certain colleges across the country in full.

There is no denying that post-secondary education is expensive. There is also no denying that the concept of divorce, and more broadly socially accepted familial structures, has changed over time.[18] Single-parent households are becoming more accepted as the standard within the United States, and courts acknowledge this change.[19] With these concepts in mind, the Illinois law still presents two potential problems: First, the lack of uniformity between divorced and non-divorced parents' legal responsibilities to pay for college, and second, the financial cap on tuition could limit the child's choice of college.

The first issue is one that Illinois courts have previously addressed.[20] Illinois parents have argued on multiple occasions that the IMDMA regulations for college funding violate their Equal Protection Clause right under the Constitution.[21] The families alleged that the Equal Protection Clause arose from the fact the law treated divorced parents differently than non-divorced families [22] However, the court has consistently upheld the constitutionality of Section 513.[23]

The first case heard by the Illinois Supreme Court regarding divorced parents' equal protection rights was *Kujawinski v. Kujawinski,* decided in 1978.[24] In this case, the father in a pending divorce action brought a suit claiming the IMDMA contained several unconstitutional sections, one being section 513, where the college contributions provisions are laid out.[25] The Illinois Supreme Court found that no equal protection violation occurred and that each parent must pay because children of divorced families

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[14] *Tuition*, THE UNIV. OF ILL. URBANA-CHAMPAIGN UNDERGRADUATE ADMISSIONS, https://admissions.illinois.edu/Invest/tuition (last visited Nov. 3, 2021).
[15] *Id.*
[16] Melanie Hanson, AVERAGE COST OF COLLEGE & TUITION, EDUC. DATA INITIATIVE, https://educationdata.org/average-cost-of-college (last visited Nov. 3, 2021).
[17] *Id.*
[18] *See* Troxel v. Granville, 530 U.S. 57, 63-64 (2000)
(arguing that different family composites have been accepted differently as time goes on).
[19] *Id.*
[20] *See* Kujawinski v. Kujawinski, 376 N.E.2d 1382, 1384 (1978); Yakich v. Aulds, 2019 IL 123667 ¶ 1.
[21] *Kujawinski*, *supra* note 20, at 568.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 569.
[25] *Id.*

face different hardships than other children; with this in mind, the IMDMA attempts to mitigate the detrimental effects of such hardships.[26] The court reasoned that there are economic burdens on the child after divorce, and therefore parents can be required to allocate funds to children when they age beyond minority.[27] The court also found good reason to distinguish divorced parents from non-divorced parents, specifically regarding financial protections that the parents will give to the child.[28] For example, the court held that a child of a divorced family may be neglected by the noncustodial parent if that parent were to start a new family.[29] For those reasons, the Illinois Supreme Court upheld IMDMA sections focused on college contribution payments.[30] The Illinois Supreme Court used the rational basis test when determining the constitutionality of the law and argued that because the state had a legitimate interest in the child, this law was rationally related to the protection of children of divorced families.[31] The rational basis test is the most lenient standard of review, and demands that there must be a legitimate governmental interest and that the law is rationally related to that interest.[32]

More recently, the Illinois Supreme Court in 2019 heard *Yakich v. Aulds*.[33] In this case, the parties were never married but in 1997 signed an agreed order addressing multiple child-related issues. [34] The agreement did not, however, mention anything about college tuition.[35] The mother, Aulds, wanted the father, Yakich, to contribute to college expenses.[36] Yakich argued that he did not need to pay because he was not involved in the college selection process.[37] Yakich further argued that the *Kujawinski* ruling was archaic, and that because of the change in societally accepted family structures, there is an Equal Protection violation under the IMDMA.[38]

The trial court found that there was an Equal Protection violation, reasoning that the IMDMA does not allow separated parents equal ability to provide the same level of input as married parents have and that there is no rational basis for this differentiation.[39] The trial court did not follow the *Kujawinski* reasoning, but rather looked to rulings in other states regarding college contribution regulations in light of the changing societal ideas toward single family households.[40] Specifically, the trial court emphasized that considering societal changes, the IMDMA no longer passes the rational basis test, as the

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[26] *Id.* at 580.
[27] *Id.* at 581.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 579.
[31] *Id.* at 581.
[32] City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).
[33] Yakich v. Aulds, 2019 IL 123667.
[34] *Id.* at ¶ 3.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* at ¶ 5.
[39] *Id.* at ¶ 11.
[40] *Id.* at ¶ 12; *See also* Curtis v. Kline, 666 A.2d 265, 270 (Pa. 1995) (reasoning that there was no rational reason to distinguish between divorced and nondivorced families for the purposes of college contributions because they were similarly situated).

distinction between divorced and nondivorced families is too minute.[41] Following a series of appeals, the Illinois Supreme Court reasoned that the trial court had no power to overrule such precedent, and therefore vacated the trial court's ruling.[42]

While the Illinois courts have not yet ruled- nor are they likely to rule[43]- that requiring parents to contribute financially to their child's college education is in fact an Equal Protection violation, the concept behind these equal protection claims blend into the second concern that IMDMA poses: the concept of school choice. Specifically, who has the right to dictate certain barriers that stop children from choosing the college of their choice? The IMDMA brings into question how much a family must spend on college, the average grade point average the child must maintain, and even the time that college must be completed by.[44] Some may argue that these elements are not for the state or the federal government to decide. Rather, it should be a familial decision with little to no government intervention. Some states, specifically those in the Seventh Circuit, have created laws that are more tailored to this line of thinking.

II. INDIANA

Unlike Illinois, Indiana divorce law states: "there is no absolute legal duty" for divorced parents to pay for their child's college tuition.[45] In a typical Indiana divorce case, the custodial parent would seek an order requiring the non-custodial parent to pay some amount toward college tuition. There is case law that points toward authority that allows Indiana courts to order parents to pay for college contributions, as it is in the interest of the parents for their child to attend college.[46] Specifically, when parents are divorced, the state, as well as the family, develops a legitimate interest in making sure that the child attends college.[47] The court reasoned there is a legitimate interest present in such cases because after a divorce, the state becomes responsible for the welfare of the child.[48] However, Indiana still acknowledges the fact that there is no common law duty for a parent to pay for their child's college.[49]

Typically, in Indiana, the parent seeking an order requiring the other parent to contribute to college expenses bears the burden of proving the type of lifestyle and financial resources a child would have access to absent divorced parents.[50] The court takes into account the parents' and the child's resources, including, but not limited to,

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[41] *Yakich*, *supra* note 20, at ¶ 12.
[42] *Id.* at ¶ 15.
[43] Mia C. McDonald, *Court-Ordered College: The Constitutionality and Effects of Post-Majority Support*, 69 DePaul L. Rev. 171, 174 (2019).
[44] 750 ILL. COMP. STAT. 5/513 (2022).
[45] McKay v. McKay, 644 N.E.2d 164, 166 (Ind. Ct. App. 1994).
[46] *Id.* at 166.
[47] *Id.*
[48] *Id.*
[49] Neal v. Austin, 20 N.E.3d 573, 577 (Ind. Ct. App. 2014).
[50] Bryan L. Ciyou, *Payment of College Expenses by Divorced Parents*, CIYOU & DIXON, P.C., https://www.ciyoudixonlaw.com/family-law/child-support/payment-of-college-expenses-by-divorced-parents/ (last visited, Apr. 3, 2022).

income, grants, and financial loans.[51] In essence, the parent's burden of proof is to show the judge that if the parties had remained married that the child would have had ample access to resources to attend college.[52] Proving that a parent has resources to provide higher education to a child is nuanced, but Indiana courts will primarily look to the resources the family had before the divorce proceedings and the aptitude of the child.[53]

Indiana's payment schemes are set up in a way in which educational expenses are separate from child support.[54] Thus, if college contributions are not in the divorce petitions, it is implied that the parents' consent that the issue of college contributions was properly pleaded.[55] However, the caveat to this rule that Indiana courts apply is the idea that child support and college expenses can, and often do, overlap, and therefore a child support order can include educational expenses within it.[56] Because of this, Indiana courts have held that it is well within their statutory right to require a parent to pay educational expenses through an order such as an income withholding order because the statute is vague in what child support really means.[57] Dissimilar to the fact that Indiana courts have interpreted "support" broadly, Indiana narrowly defines "postsecondary" to only educational endeavors that provide a child with a baccalaureate degree.[58] Anything beyond that, such as graduate school, is not within the state's statutory authority to require divorced parents to pay.[59]

Essentially, while Indiana law allows for more parental autonomy in deciding who, if anyone, assists in college contributions, the case law proves that Indiana clearly has no black and white rules about it. Because of the nuances of state divorce provisions, case holdings can be unpredictable. This can be an issue for families in the future. While it makes sense to look at families holistically when making financial decisions, having no solid answer can cause lots of problems for families both during the divorce proceedings and long after the divorce is finalized. Indiana law, therefore, has the potential to create unnecessary litigation and familial issues due to its lack of clear consensus and authority.

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[51] Sutton v. Sutton, 773 N.E.2d 289, 296 (Ind. Ct. App. 2002).
[52] *Id.*
[53] Ciyou, *supra* note 50; *see also McKay*, 644 N.E.2d at 166
[54] *Indiana's New Child Support Law*, CORDELL CORDELL, https://cordellcordell.com/resources/indiana/new-child-support-law/ (last visited May 16, 2022).
[55] Ind. Code § 31-16-6-2 (2020); *see also Sutton*, 773 N.E.2d at 296.
[56] Eldredge v. Ruch, 149 N.E.3d 1200, 1204 (Ind. Ct. App. 2020).
[57] *Id.* at 1205. An income withholding order is an order from the court sent to an employer telling the employer to deduct a certain amount from the parent's wage to pay for support, either current or retroactive. *See* Jean Murray, What to Do with an Income Withholding Order for an Employee, BALANCE SMALL BUS. (Feb. 12, 2020), https://www.thebalancesmb.com/income-withholding-orders-what-employers-need-to-know-4795931.
[58] Allen v. Allen, 54 N.E.3d 344, 347 (Ind. 2016).
[59] *Id.* at 349.

III. WISCONSIN

In stark contrast to Illinois and Indiana, Wisconsin law states that there is no legal obligation for a family to pay for a child's college.[60] Unlike Indiana, Wisconsin does not place college contributions under the umbrella of "child support."[61] Instead, the state sees them as different entities, and therefore, the state has no law regarding college contributions.[62] The logic behind this is the idea that most children are 18 by the time they begin college and because of this, there is no legal duty to pay for the child, as they are emancipated.[63] Emancipation implies that there is no longer a legal duty to provide for the child, as they are no longer considered a child in the eyes of the law.[64] The law is silent about postsecondary school, as it is assumed that most students are emancipated by the time they begin college.

The most relevant Wisconsin law states that child support ends at the age of 18 and can be extended to the age of 19 only for educational endeavors that lead toward the acquisition of a high school diploma or its equivalent.[65] Similarly, another relevant factor during Wisconsin divorce proceedings, though not binding authority in determining who is to pay for college, are 529 plans.[66] 529 plans are savings accounts dedicated to a child's higher education plans.[67] 529 plans allow for state tax deductions and subtractions from income, and therefore, many families use a 529 plan to pay for college.[68] However, these plans are usually held in just one parent's name.[69] If divorced parents created a 529 plan prior to divorce proceedings, it is in their best interest to treat the plan as divisible property.[70]

Wisconsin divorce law favors family autonomy the most compared to Illinois and Indiana laws. Because Wisconsin views children starting college as emancipated adults, parties can contractually agree to extend support for postsecondary education, but there is no legal duty to do so.[71] Since there is no substantial law regarding college contributions, there is little case law that speaks to this issue in Wisconsin. Instead, most college contribution issues during divorce proceedings are handled in private negotiations

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[60] Wis. Stat. § 767.511 (2021).
[61] *Am I Responsible For My Child's College Education Expenses in a Divorce?,* J.G. FAM. L. (Oct. 7, 2019), https://www.jgfamilylaw.com/2019/10/am-i-responsible-for-my-childs-college-education-expenses-in-a-divorce.
[62] *Id.*
[63] *Child Support*, CAL. CTS., https://www.courts.ca.gov/selfhelp-support.htm (last visited Apr. 3, 2022).
[64] *Id.*
[65] *Id.*
[66] *College Expenses and Child Support*, REDDIN & SINGER LLP, https://www.reddinsinger.com/college-expenses-and-child-support.html (last visited Apr. 3, 2022).
[67] *What's a 529 Plan?,* WIS. 529 COLL. SAV. PROGRAM, http://529.wi.gov/section.asp?linkid=1806&locid=188 (last visited Apr. 3, 2022).
[68] *Id.*
[69] *Child Support*, *supra* note 63.
[70] *Id.*
[71] *Child Support Requirements for Post-Secondary Education by State*, DIVORCENET, https://www.divorcenet.com/states/washington/wa_art02 (last visited Apr. 3, 2022).

between the parents.[72] Parents have autonomy in these negotiations, and can set a fixed amount they will pay, a future agreement, or even a percentage of what each of them will pay once they see the total cost of the college the child chooses to attend.[73] These private negotiations leave most, if not all, of the college decision-making factors in the hands of the family, not the state. Some may find this to be a problem, as it is no secret that some parents going through a divorce may not want to negotiate with one another. A potential consequence of this could be that because of the parents' lack of communication and agreement, a child may not have the resources to attend college at all.

COMPARISONS AND ANALYSIS

The three states in the Seventh Circuit have drastically different laws, but they fall on a continuum that allows for easy comparison. Illinois lies on one end of the spectrum, which not only allows for government intervention, but it demands that the state assist families in deciding who pays for college.[74] Indiana falls in the middle of this continuum, as it does not require families to pay, but has provisions within its divorce laws that give families a roadmap to maneuver through if they do decide to include college contributions in their divorce agreement.[75] Wisconsin falls on the other end of the spectrum. It does not require families to pay for college contributions, nor does it give much guidance for families in its laws.[76] This scheme allows families to privately negotiate college contributions without state intervention.[77] The comparison between these state laws highlights the positive and negative elements of each state law.

The biggest issue within these state laws stems from the long-standing argument of state intervention versus parental rights. The level of state intervention is the crux of the disparities between these laws, and states are familiar with this issue in a myriad of different parental legal issues.[78] This section will compare these laws with this distinction in mind.

I. BACKGROUND ON STATE INTERVENTION IN RELATION TO PARENTAL RIGHTS

The idea that a state can intervene when parents cannot provide for their children is a policy matter that dates back to sixteenth century law.[79] The *parens patriae* doctrine

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[72] *Child Support*, *supra* note 63.
[73] *Id.*
[74] 750 ILL. COMP. STAT. 5/513(a) (2022).
[75] McKay v. McKay, 644 N.E.2d 164, 164 (Ind. Ct. App. 1994).
[76] Wis. Stat. § 767.511 (2021).
[77] *Child Support Requirements for Post-Secondary Education by State, supra* note 71.
[78] *See* Meyer v. Nebraska, 262 U.S. 390, 402 (1923) (reasoning that the government may not interfere with the liberty of parents to direct the education of children under their control because education is a natural duty under the parenthood umbrella); *see also* Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510 (1925) (reasoning that those who nurture children have high duties and therefore the right to have a say in the upbringing and education of children under their control).
[79] Sir William Blackstone, *Commentaries on the Laws of England* 447 *47 (1893).

allows states to intervene against parents who abuse or neglect their children.[80] This doctrine has justified many seminal Supreme Court cases.[81] A *parens patriae* doctrine issue arises when there is governmental interest in the child, and thus, allows the state to act with parental authority.[82]

Parens patriae begs the question: Is a child attending college a governmental interest? If so, how should the government go about making sure a child attends college, and to what extent should this power reach? The Seventh Circuit states' divorce laws give some insight as to where the states stand on this question.

While there is case law that dictates states can act as the role of the parent when a governmental interest is in question[83], the state interest itself changes. The state interest specifically at issue regarding divorce law and college contributions is the level of education children should receive. The broad concept of providing education to children is not foreign to the courts nor to current state laws.[84] Compulsory education laws require children to attend school for a certain period of time, with several exceptions to the rule.[85] These laws, however, do not extend to higher education requirements. Before intervening, the state should establish that there is in fact a governmental interest in a child attending some sort of postsecondary school.

Having an educated society is something that the government has a strong interest in. There are copious studies that link societies with educated citizens to greater health and better productivity. And more qualified candidates can lead to lower unemployment rates.[86] States have a vested future interest in students attending college to a certain extent. Moreover, if a family cannot provide that college-level education to a student, in this case because of a disagreement or lack of resources due to a divorce, it is appropriate for the state to assist the students in some way.

The Seventh Circuit has already acknowledged this, and Indiana law bases the logic of its divorce law and college contributions on this fact.[87] The dichotomy between governmental interest and divorce law is that the government has an interest in students attending college, but some parents who are divorced may not be able to provide their child with the resources necessary to attend college.[88] The state will want to intervene for

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[80] JILL GOLDMAN & MARSHA K. SALUS WITH DEBORAH WOLCOTT & KRISTIE Y. KENNEDY, U.S. DEP'T OF HEALTH & HUM. SERVS., *Which Laws and Policies Guide Public Intervention in Child Maltreatment? in* A COORDINATED RESPONSE TO CHILD ABUSE & NEGLECT: THE FOUNDATION FOR PRACTICE 51, 51 (2003), https://www.childwelfare.gov/pubPDFs/foundation.pdf.

[81] *Child Support Requirements for Post-Secondary Education by State*, *supra* note 71.

[82] *Pierce*, 268 U.S. 510 at 534.

[83] *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

[84] *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, NAT'L CTR. FOR EDUC. STATISTICS, https://nces.ed.gov/programs/statereform/tab5_1.asp (last visited Apr. 3, 2022).

[85] *See Yoder*, 406 U.S. at 214 (holding that religious exemptions exist and therefore, Amish children are exempt from compulsory education laws).

[86] *Benefits of Education are Societal and Personal*, UNIV. OF THE PEOPLE, https://www.uopeople.edu/blog/benefits-of-education-are-societal-and-personal/ (last visited Apr. 3, 2022).

[87] Neal v. Austin, 20 N.E.3d 573, 577 (Ind. Ct. App. 2014).

[88] *Id.*

the betterment of society and argue that they do in fact have an interest in the number of children attending college.

While states do have an interest in furthering the education of their citizens, there is still the question as to how much intervention is necessary or appropriate. A state may see the benefits of sending more kids to college, but that does not necessarily mean they can or should step in as a parental figure when divorced families cannot or will not provide the resources the child needs to attend college. The state, even under *parens patriae*, does not replace the parent. This balancing scale between parent's rights and state's rights, therefore, comes to a head when focusing on college contributions for divorced families. A perfect example of this is Illinois' law and the equal protection claims previously mentioned.

II. STATE INTERVENTION TAILORED TOWARD DIVORCE LAW AND COLLEGE CONTRIBUTIONS IN THE SEVENTH CIRCUIT

Illinois' divorce law brought equal protection claims stemming from the question of whether the government can decide who, and to what extent, should pay for college in a divorced household[89]. In other words, in the state of Illinois, the state intervenes at a very early stage of the divorce litigation to ensure Illinois children have a certain level of resources at their disposal if they choose to pursue postsecondary education. While the equal protection claims were never affirmed by the court[90], these cases depict the issues that come with heavy government intervention in relation to college decisions.

Because Illinois law dictates certain college contribution requirements for divorced parents, the state acts as a third parent in the college decision making process. Illinois law specifically demands divorced families to provide a certain level of funding for their children to attend college. Then the state, like a parent, tells the child the resources they are willing to provide to assist the child in attending college. College is not cheap. Students, parents, and the government know this. Illinois divorce law tries to rectify this fact and provide children with divorced parents the same opportunities as children with parents who are still married. While a state interest for a child to attend college clearly exists, the level to which the Illinois government chooses to integrate itself in the family decision making process may be too invasive. The current Illinois law essentially strips parents of any initial stipulations that they normally can make with their children when it comes to funding college. This, arguably, is too much state intervention. Something as intimate as the college decision making process, where financial abilities are a huge factor, is not a place for the government to intervene.

It is important to keep in mind that a parent's duty to care for their child, divorced or not, never has extended itself to dictating that parents must pay for a child's college education. This is the crux of the issue in Illinois. Should the state intervene to the point where they are broadening the scope of parental duties? Proponents of the law will say yes, simply because children of divorced families face more hardships than children

[89] *Id.; see also* Kujawinski v. Kujawinski, 376 N.E.2d 1382, 1384 (1978).
[90] Yakich v. Aulds, 2019 IL 123667 ¶ 1.

whose parents did not get divorced. Opponents of the Illinois law will point to states like Wisconsin and argue that Wisconsin acts in a manner more similar to common parental duties.

While Wisconsin is much more "laissez faire" in regard to college contributions, enforcing essentially zero state intervention, this can also cause some issues of its own. For example, Wisconsin has a lower percentage of students going directly from high school to college than both Illinois and Indiana.[91] With zero government intervention, divorced families may be financially strapped and because of those financial barriers, cannot assist their children in attending college without government assistance or directive.[92] As a result less children in Wisconsin go directly to college. While divorce is not the only contributing factor to this trend, having zero state intervention in divorce law regarding funding can play an integral part in the statistics themselves. Divorces can be messy, and as a result, parents may not always agree on certain provisions during the divorce. In a state like Wisconsin, if parents choose not to negotiate their finances during the divorce, a child has no resources present when thinking about attending college. Moreover, the child may be responsible for maneuvering through each parent's financial situations separately to figure out their best course of action. This creates a huge burden on a child, and in order to protect them, some level of state intervention may be necessary.

State intervention through the lens of divorce and college contributions is not black and white. The state clearly has an interest in sending as many children as possible to college. In this regard, the Illinois law makes sense, as it provides children with some sense of security that their divorced parents will assist them in paying for college. However, no other class of parents are required to provide their children with financial resources to attend college, so why should the government intervene only in cases of divorce? Wisconsin law makes sense as well because it leaves the issue of paying for college completely up to parents, even when they are divorced. The two laws, side by side, prove that there is no easy answer to this question, and still does not provide the complete picture for what state intervention does for families deciding where their child should attend college.

Choosing a college is by no means an easy task. Families must think about a variety of factors, including location, financial resources available, the child's areas of interests, and many others when trying to decide on their child's "perfect" college. Not to mention that the college application process itself is so daunting, as students are able to apply to more than 5,000 universities just in the United States alone.[93] Attending college

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[91] Illinois has 61.72% of students going directly to college, Indiana has 61.32%, and Wisconsin has 58.28% in the year 2018. *College-Going Rates of High School Graduates - Directly From High School for 2018*, THE NAT'L CTR. FOR HIGHER EDUC. MGMT. STS., http://www.higheredinfo.org/dbrowser/index.php?submeasure=63&year=2018&level=nation&mode=data&state= (last visited Apr. 3, 2022).

[92] Divorced families statistically have less income than non-separated families. Jane Anderson, *The Impact of Family Structure on the Health of Children: Effects of Divorce*, 81 LINACRE Q. 378, 383 (2014).

[93] *How Many Universities & Colleges Are in the US?*, EDUC. UNLIMITED (Aug. 5, 2019), https://www.educationunlimited.com/blog/how-many-universities-colleges-are-in-the-us/.

is also extremely expensive - so expensive that students are now choosing not to attend college because it is too much of a financial burden for either themselves or their families.[94] In a typical household, the decision of where to attend college would be made jointly by the parents and the child.

Wisconsin divorce law mimics this decision-making process in non-divorced households. Divorced parents have no requirement to pay for college tuition, and instead, can negotiate with one another to see if they are willing and able to assist a child in their college funds. This law mirrors the joint decision-making process between married parents and their child regarding choosing a college that would occur with zero state intervention. The parents would tell the child what they are willing to provide, if anything, and the child, from there, would get to make the decision on where to apply based on what the parents are willing to provide.

Indiana divorce law, which falls in between Illinois and Wisconsin on the spectrum of the level of state intervention, is similar to Wisconsin in such a way that the courts take a hands-off type of approach. That being said, Indiana has loose laws that can cause uncertain legal results for families. Indiana families can be required through child support to fund some part of college tuition, but there are other factors that will come into play as well. These factors would make the college decision process a case-by-case basis for each family with divorced parents. The positive element of this is the fact that each family is unique, and the state recognizes that the college decision-making should be tailored to the family. The downside to this approach is that if a family were to come to court with a college contribution issue, there are many potential outcomes and no clear case law to point to exactly what that family needs in that exact situation in front of the judge.

Illinois divorce law, unlike the other two states, brings stipulations to the table already. Instead of a parent being able to say they *can* pay a certain amount, Illinois *requires* them to pay a certain amount. This distinction shifts the dynamics of the initial college search because there is an automatic baseline for the divorced families to provide to the child, and that limits where a child could decide to attend college. If a family knows that they only must provide the amount that the University of Illinois at Urbana-Champaign costs, that may influence the child of the divorced family feel as though they need to go there in order to save their family from any other financial obligations in the future. Similarly, a child may not want to take out loans in order to avoid being in any kind of future debt. Because the child knows their parent has to pay the set tuition for the state school, they may "settle" on the state university simply because they know that their parent has to pay that amount of tuition. Illinois law can also shape how the parent goes about helping a child choose their college as well.

Essentially, with more state intervention, school choice becomes less and less absolute. With more government intervention comes more questions that a family does not get to decide on their own, which has both positive and negative aspects to it. The

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[94] Michael T. Nietzel, *Latest Numbers Show Largest College Enrollment Decline in a Decade*, FORBES (June 10, 2021), https://www.forbes.com/sites/michaeltnietzel/2021/06/10/updated-numbers-show-largest-college-enrollment-decline-in-a-decade/?sh=fec95901a700.

positive aspect is that children with divorced parents, no matter how much their separated parents disagree, have someone advocating for them at the table and providing them with something when it comes to college resources. The negative aspect is that with this guarantee of some resources, there are less options for the child and the parent to figure out on their own. Therefore, the real dilemma here is to determine whether it is better to see a child choose a college completely based on their own decisions and wants, or to guarantee that a child can attend some college, even if it is not exactly what they want.

RECOMMENDATION

In looking at the comparison between the three states in the Seventh Circuit and their current divorce laws, it is clear that each state has completely different laws that come with not only vastly different results in court, but also, vastly different positive and negative aspects. This begs the question - should there be a blanket law that each state, or even the entire United States, should follow when it comes to divorce law and college contributions? Currently, 24 states and the District of Columbia have authority to require non-custodial parents to pay for some college.[95] Wisconsin is the only state in the Seventh Circuit not to follow this type of payment scheme.

States have an interest in ensuring that as many students as possible are able to attend college in some form. Not only does attending college benefit the state and society as a whole, it also benefits the individual who attends college. College is not for every child; however, every child should have the option to attend college if they want to. Therefore, while government intervention is not necessarily rooted in state law or common law, requiring divorced parents to come up with a payment plan for college during divorce proceedings is not completely outside the scope of what government intervention is intended to achieve.

Illinois case law has proven that courts do in fact find that children in divorced families face certain disadvantages, which, in turn, causes children to have financial troubles, among other troubles, when deciding where they want to attend college. There is no reason to believe that government intervention is inappropriate in this setting. If the state were to implement a state law, it should mirror Illinois or Indiana law. There should be some provisions regarding providing children with divorced parents certain resources to attend college. With such provisions, there would be some government intervention, but tailored to a governmental interest that benefits the state, the child, and society as a whole.

Although some may say that government's involvement exceeds the scope of the government's right to act as a parent, this issue is not about the parent. While the parent's financial situation is important and should not be belittled, these laws would be put in

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[95] Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Jersey, New York, North Dakota, Oregon, South Carolina, South Dakota, Utah, West Virginia and Washington have authority to require college contributions. Bonnie Frost, *Does a Divorced Parent Have to Pay for a Child's College Education?*, EINHORN, BARBARITO, FROST & BOTWINICK, PC (Aug. 9, 2021), https://www.einhornlawyers.com/blog/family-law/will-pay-college-expenses-children-not/.

place to serve the best interest of the child. Going to college is a child's endeavor, and by intervening, the state is guaranteeing that a child has the opportunity to do so. With that in mind, the current Seventh Circuit divorce laws show that college contributions for divorced families are within the rights of the state government. The laws, as they stand now, benefit children of divorce families and allow them a certain level of resources they may not have otherwise had in relation to college funding.