Are Limitations Necessary on Paternity?

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1935 building accessible to the
disabled. 25

1. Title II of the ADA of 1990, 42 USC §§ 12131-12165
regulates all services, programs, and activities conducted by
a "public entity," defined to include the States and their
departments, agencies, and instrumentalities, 42 USC §
12131(1). "No qualified individual with a disability shall,
by reason of such disability, be excluded from participation in
or be denied the benefits of the services, programs, or
activities of a public entity, or be subject to any discrimina-
tion by any such entity." 42 USC § 12132.

2. The abrogation part of the ADA provides:"A State shall
not be immune under the Eleventh Amendment to the
Constitution of the United States from an action in a
Federal or State court

3. "No state shall ... deprive any person of life, liberty, or
property, without due process of law; nor deny to any per-
son within its jurisdiction the equal protection of the laws."
U.S. CONST. amend. XIV § 1.

666, that required all states participating
in the federal child support pro-
gram to have procedures to establish
the paternity of any child who is
under the age of eighteen. 5 The lead-
ing case on this issue is Mills v.
Habluetzel, where the Court held that
a one-year time limit for establishing
paternity denied children born to
unwed parents in Texas equal protec-
tion of the laws. 6 The Court empha-
sized in its holding that "once a state
posits a judicially enforceable right of
children to support from their natural
fathers, the Equal Protection Clause
of the Fourteenth Amendment pro-
hibits the state from denying that
same right to illegitimate children. 7

5. When two married persons
have a child, paternity is assumed and
there is no limitation on that child's
ability to establish paternity. On the
contrary, statutes of limitations exist
in most states that limit the time
frame within which a child born out
of wedlock may legally establish
paternity. The use of a statute of limi-
tation to paternity actions serves to
create classifications of children who
are treated differently in terms of their
parental rights. 1

6. Statutes of limitations estab-
lish the time period within which a
cause of action must be commenced. 8
These statutes attempt to halt the li-
litigation of stale and fraudulent claims
by ensuring that suits are commenced
within a reasonable period of time,
before memories have faded and evi-
dence has been lost. 9 It is difficult
to understand why, then, statutes of
limitations are applied in a paternity
context. A child's right to support is con-
tinuing and since a determination of
paternity is necessary before child
born out of wedlock may enforce the
right to support, an action to deter-
mine paternity should never be
viewed as stale. 4

7. The United States Supreme
Court presided over numerous cases
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Statutes of limitations are a
matter of legislative discretion and, by
definition, incorporate an arbitrary
time period. 8 Public policy dictates
that legislatures may alter or abolish
a limitations period that no longer
serves the public interest. 9 Paternity
statutes were enacted to protect
fathers by ensuring an accurate deter-
mination of paternity. 10 Whatever
merit this contention may have had in
the past, the ever-increasing effective-
ness of both blood and genetic tests
significantly reduces the chance that a
defendant will be compelled to sup-
port a child he did not sire. 11 In
2002, the accuracy of paternity tests
was measured at around 98-99 per-
cent. 12

The Uniform Parentage Act
has attempted to reconcile this inconsistency by promoting equality for parents and children without regard to marital status. Under the new amendments to the Act, enacted in 2002, a proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after the child becomes an adult. Presently, nine states do not have statutes of limitations on establishing paternity. In Illinois, under 750 ILCS § 45/9, paternity may only be established until a child reaches the age of twenty.

In Nguyen v. I.N.S., the U.S. Supreme Court addressed the issue of a limitations period for establishing paternity. The crux of the Court’s rationale was based on immigration policies and the Court’s need to grant extreme deference to Congress’ authority on these matters. In this case, a biological father did not establish paternity until his son, who was born in Vietnam to unwed parents, was 28 years old. The Supreme Court ruled that the son could not be considered a citizen of the U.S. since his father had failed to comply with the requirements of the United States Code § 1409. The Court found that a statute of limitation on establishing paternity did not violate a person’s constitutional rights.

In an immigration context, statutes of limitation are viewed as essential to avoid an influx of immigrant children into the United States. The United States Congress views this as an important goal and to change statutes of limitation would greatly affect this area of public policy. As a result, the legislature has been unwilling to completely abandon statutes of limitation on paternity actions.

In inheritance suits, though, the courts have been quite lenient and have allowed children born to unmar-ried parents to inherit from their fathers even though paternity was not established within the applicable statute of limitations. In In re: Estate of Palmer, Michael Smith was born on February 10, 1959, but he did not bring any proceeding to adjudicate paternity until April 16, 2001. The Supreme Court of Minnesota allowed Smith to establish parentage even though the statute of limitations had tolled.

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The United States Immigration Service considers a child born out of wedlock as having a sole parent, his or her mother, unless the child has or had a bona fide relationship with the father. This policy helps to secure U.S. borders from the arrival of countless children born abroad to fathers who are U.S. citizens. In light of this important goal, a clear issue arises between fairness for children born out of wedlock and immigration concerns. Margaret Stapleton, a senior attorney at the Sargent Shriver National Center on Poverty Law, is interested in changing the statute of limitations for establishing paternity in Illinois.

Even though immigration law dictates that paternity limitations are necessary, opponents argue that depriving a child of the right to paternity is unconstitutional. Although little has changed in the area of immigration, statutes of limitations in inheritance and other areas of the law are beginning to be reformed and progress is being made towards abolishing these limitations.