

TIME TO DECIDE? THE LAWS GOVERNING MOTHERS' CONSENTS TO THE ADOPTION OF THEIR NEWBORN INFANTS

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Adoption in the United States is a complex patchwork of law and practice that involves payments of nearly two billion dollars annually in fees and expenses. The adoptions that involve domestically born, voluntarily placed infants raise unique issues. In these as in all adoptions involving parental consent, two generally accepted goals of ethical and humane practice are first, avoiding unnecessary separation of families by ensuring that birth parents make informed and deliberate decisions and second, protecting the finality of placements. The two goals are ideally complementary, but in the case of domestic infant adoptions, there is a danger that pressure to increase the number of adoptions is causing the second one to eclipse the first.

This Article surveys the present day "adoption market" in which these adoptions take place and in which demand for adoptable infants far exceeds supply. It examines best practices for conducting the adoptions, reviews the state laws governing mothers' consents to the adoption of their newborn infants, and evaluates those laws in light of cases around the country in which mothers have sought, usually unsuccessfully, to set aside their consents. Most state laws, in contrast to the laws of many other countries, provide that consent may be given and become irrevocable almost immediately after the child's birth. Under the laws in more than half the states, irrevocable consent can be established in fewer than four days. The Article concludes that the laws of most states do not sufficiently promote mothers' deliberate decisionmaking. It recommends laws that make it more likely mothers will be offered skilled, unbiased counseling; will receive clear, complete information; and will have adequate time to decide.

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