BOSN: Welcome to the Judiciary Committee. I'm Carolyn Bosn from Lincoln. I represent District 25 and serve as Chair of the committee. We're going to take up the amendment here quickly. If you're planning to testify, please fill out one of the green testifier sheets, printing clearly and filling it out completely. Please-- if you come up to testify, please state and spell your first and last name to ensure we get an accurate record. We're using a 3-minute light system for all testifiers. If you have any copies of your testimony, please bring up 10 copies. Silence your cell phones. And I'll now have the committee members with us today introduce themselves starting to my left.

STORER: Senator Storer, District 43. I represent 11 counties. Not going to name all those.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeBOER: Hello, my name is Wendy DeBoer. I represent District 10 in beautiful, vibrant northwest Omaha.

McKINNEY: Terrell McKinney, District 11, north Omaha.

ROUNTREE: Victor Rountree, District 3, the place to be, west Bellevue, east Papillion, and the land between.

BOSN: Thank you. Also assisting the committee today to my left is our legal counsel, Denny Vaggalis, and to my far right is our committee clerk, Laurie Vollertsen. Our page for today is Joel Henson, a student at UNL. With that, we will begin the hearing on AM2396 with Senator Hallstrom.

HALLSTROM: Thank you, Chairwoman Bosn, members of the Judiciary Committee. My name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I'm state senator for District 1 and here today to introduce AM2396 to LB1139. I appreciate the committee getting together late in the session to take up what I think is a fairly significant and important issue that we tried to address last session and perhaps have another opportunity to make sure we dot all of our I's and cross all of T's in this area of the law. AM2396 to LB1139 adds two new sections to existing paternity laws, specifically provisions relating to notarized acknowledgments of paternity and when they may be rescinded or challenged. Under current law, Section 43-1409, a notarized acknowledgement creates a rebuttable presumption of paternity. A signatory may rescind the acknowledgement within the earlier of 60

days or the date of the first administrative or judicial proceeding related to the child in which the signatory is a party. After the rescission period, the acknowledgement may be challenged only on the basis of fraud, duress, or material mistake of fact with the burden on the challenger. AM2396 provides that after the rescission period ends, a notarized acknowledgement is treated as a legal finding of paternity. Effectively, the acknowledgment functions as a final legal determination of paternity unless set aside through one of the statutorily limited pathways for challenge. AM2396 adds an additional basis for the challenge of a notarized acknowledgment of paternity by allowing a person who has reason to believe that he is the biological father to challenge an existing acknowledgment using a scientifically reliable genetic test showing the acknowledged father is not the biological father. The amendment requires the test to be performed by a College of American Pathologists accredited or equivalent laboratory. In addition, AM2396 adds an applicability clause making the changes apply to actions under Section 43-1401 to 43-1418 that are pending on the effective date and those filed thereafter. The amendments to Section 43-1412.01, under this AM2396, authorize a court to set aside a final judgment order, support obligation, or other legal determination of paternity if a scientifically reliable genetic test performed in accordance with Section 43-1401 to 43-1418 excludes the individual as the father. Once again, the revisions under Section 43-1412.01 are made applicable to actions that are pending on the effective date of the act and those filed thereafter. To bring you up to speed, last session I introduced and the Legislature adopted the provisions of what was originally LB412 by way of amendment to LB150. Last year's legislation was designed to address the Nebraska Supreme Court decision in the case of Chatterjee v. Chatterjee. Prior to passage of LB150, Nebraska law at Neb.Rev.Stat. Section 42-377 provided a presumption of legitimacy for children born to the parties or to either spouse in a marriage relationship which may be dissolved or annulled. As a result, children born during a marriage were not previously considered to be born out of wedlock. Under these circumstances, the Nebraska Supreme Court had held that the actual father, even with-- armed with genetic testing indicating a 99.99% probability that he was the biological father of the children involved in that case lacked standing to seek a finding of paternity. LB150 resolved the problems inherent in the Chatterjee decision by granting the alleged father to have standing under these circumstances to bring an action to establish paternity. Subsequent to the passage of LB150, the Douglas County District Court entered an order in the case of Enright v. Carlisle, suggesting that notwithstanding the provisions of

LB150, the court was not able to grant relief from a determination of paternity if the individual named his father had completed a notarized acknowledgement of paternity. Based on the provisions of 43-1412.01, the alleged father pursuant to genetic testing results was not able to disestablish the paternity of the individual who had signed the notarized acknowledgment of paternity without having the acknowledgment set aside. And as I indicated earlier, the only basis upon which under current law that you can set aside that signed notarized acknowledgement of paternity is based on fraud, duress, or mistake of fact. In conclusion, AM2396 to LB1139 would add an additional basis upon which a signed notarized acknowledgement may be challenged and set aside after the rescission period to include an individual armed with a scientifically reliable genetic test that establishes that the acknowledged father is not the biological father of the child. I would encourage the committee to adopt this amendment to LB1139 and advance the bill to the floor for further consideration. In closing, I, I would note the, the leading case in this area, which kind of highlights the need for the changes proposed under the amendment, is Tyler F. v. Sara P., which is found at 306 Neb. 397, 945 N.W.2d 502. And in that particular case, we had assigned notarized written acknowledgement the mother was wanting to disestablish the paternity acknowledgment. There were a lot of procedural snafus, but the bottom line was that the case basically determined that there could only be two parents, a mother and a father. And if you had the signed written acknowledgment, that undercurrent law constitutes a legal finding of paternity. And unless you overturn that based on fraud, duress, or mistake-- material mistake of fact, it stands even in the face of the genetic testing results. And so in that case, you basically had the mother challenging the paternity because they had determined that through a genetic test that the alleged father or the acknowledged father was not, in fact, the biological father. And the court basically said because the mother had reason to believe that there might have been multiple fathers even though the acknowledged father had no idea that he was not, in fact, the father, that that did not constitute a material mistake of fact. I look at it, my thought is how much more material mistake of fact that you can have and you're not actually the father? But they don't allow that evidence to come in. Our amendment would allow that to be done as long as it's done within the statute of limitations and it would apply even after the rescission period. Be happy to address any questions.

BOSN: Questions? Senator DeBoer.

DeBOER: What's the-- you said within the statute of limitations, what's the status on that?

HALLSTROM: There's a 4-year statute of limitations. Mr. Enright, who is part of the, the case that I mentioned, is here today and will testify and, and give his, his thoughts on the matter. But, basically, his, his case was filed within the statute of limitations. It's been, I think, 3 going on 4 years that the case is still pending, which is why last year we put the applicability provisions in. It applies to cases that are still pending and have not gone to final judgment. He had appealed that decision and it's, it's currently on appeal. And so if the committee chooses to move forward with this and we move the bill forward, I'm going to ask and talk to committee counsel with regard to having an emergency clause on this particular provision.

DeBOER: When does the 4 years begin to toll? What's it-- what, what is the--

HALLSTROM: Well, it's, it's probably based on some-- I've, I've read through a boatload of cases and there were some that suggested that it, it might not run until it's discovered by the father with the genetic testing results. But that, that may or may not be the case. That would extend it further in--

DeBOER: So you think it's from the-- somewhere between the time when the acknowledgement gets signed and-- or is it the birth of the child? It's not the birth of the child.

HALLSTROM: That I'd have to look into closer. I was just looking at the 4-year statute of limitations.

DeBOER: Right, that's what I'm, that's what I'm saying. So does the statute start at the--

HALLSTROM: I think it's from the birth of the child.

DeBOER: Birth of the child, potentially, the, the signed acknowledgment or the--

HALLSTROM: Yeah, in, in most cases you're going to have a fact pattern where the, the biological father may in many cases have some reason to believe or have been made known by the mother that, gosh, you, you may be one of the handful of characters that I've engaged in sexual relations with that, that may be the, may be the father and that would be enough to trigger--

DeBOER: The statute.

HALLSTROM: Yeah. And, and the one thing that I found interesting in reviewing the cases is that if, if the-- in this case if Mr. Enright is armed with the genetic testing results, but neither the mother nor the acknowledged, by written acknowledgement of paternity father decide to challenge it, there's, there's no grounds for somebody armed with that information to come in and prove their fatherhood, which I think is a crying shame.

DeBOER: So this set-aside of the signed acknowledgement, so if it gets set aside, then that person is no longer considered to be the father, so that then you can have the other two parents without creating a third parent, is that right?

HALLSTROM: Correct.

DeBOER: OK.

HALLSTROM: And I think from reading the, the cases because it's permissive in nature even under the current statute that you may set aside, the court decisions have, have indicated that the best interest of the child will still make their way into the determination by the court. As you might imagine, you know, if it's-- in this case it's been 7 years. One of the issues that, that may be problematic, quite frankly, is how does the court separate out. I think one of the things with the-- I think it's the Obergefell case from the U.S. Supreme Court is that our statutes have not been changed to recognize anything other than one mother and one father. And I think that's why the way we've got it set up will still be consistent with that. But it will allow for the replacement of the acknowledged father who now has been set aside to allow the actual father, the biological father, to step in and subject to best interest of the child, which may involve issues involving visitation, things of that nature that could all come into play, but a recognition that there may, at the end of the day, be certain recognized rights of both the acknowledged father who's had his acknowledgement set aside and the biological father who has proven up his parentage by way of the genetic test.

DeBOER: OK. Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chair Bosn. And thank you so much for this testimony and listening. So in a case like that, the genetic test

from outside has proven parentage and fathership now. Would it also be an opportunity for mandated child support for the--

HALLSTROM: Yeah, that, that would be-- actually what we have, interestingly enough, and it may be intuitive, is that even in the cases where they could not-- they had not set aside the written acknowledgement, but in the face of the genetic test that at least everybody standing on the sidelines would say this is the biological father. They can't go after the biological father because it hasn't been proven up in the court of law. The final determination and the final rendering of judgment is that notwithstanding the genetic test, that the acknowledged father, and, and by acknowledging that, if it's not set aside, even if they ultimately aren't the actual father, by acknowledging it they have accepted the responsibility, that custody, visitation, and child support. The positives and the negatives depending on your perspective, all go along with that, with that determination.

ROUNTREE: All right, thank you.

BOSN: Just for clarification, so-- and I think you kind of talked about best interest still has to be taken into consideration. In your fact pattern, if the acknowledged father says, well, I've now been raising this child and I'm bonded to this child and I've paid child support over this period of time and engaged in visitation, do they have standing to object?

HALLSTROM: Yeah, I, I think that, I think that-- I don't know that they'd have standing to object, but I think their interest under the best interest standard would be taken into consideration for those, for those very reasons. And, again, the court cases that I reviewed indicated that the fact that the set-aside is permissive was the connection that the court made under existing law to say that even if we get to the set-aside, we're still going to have this determination of the best interest of the child to determine if any of those considerations should be included.

BOSN: Senator DeBoer.

DeBOER: So that raised a thought for me. So imagine that there is a parent, a father, who's now going to have his acknowledgment set aside who has been paying child support during the child's life. They are no longer the father, according to the set-aside, do they get a refund of their child support?

HALLSTROM: I would guess not. Until, until that determination is overturned, that's what the state of the law is.

DeBOER: OK.

BOSN: All righty, thank you very much. We'll take our first proponent. Anyone here to testify in support? Good afternoon and welcome.

ROY ENRIGHT: Hi. I'm Roy Enright. I'm speaking on behalf of my 6-year-old son and my current paternity case that's ongoing right now in Douglas County. I've been pursuing rights to my son for several years now. I've not had any success so far challenging the acknowledgement of paternity that was mistakenly signed by another person. I've done everything possible to step in and try to take responsibility for my son legally, financially. I believe I'm a good person that would be suitable to take care of my son. I developed a relationship with him for over a year, and then the mother took him away from me and my family without reason. It really had to do with the court case taking place. I felt like-- she felt like she needed to remove him from me because the, the legal father and, and I have not seen eye to eye on things. But I've been fighting for him for the longest time. I love my son so much. I just want to be a part of his life of this stuff. I'm a firefighter for the city of Omaha. I've served the city of Omaha for 5 years now, and as a volunteer as well at Boys Town, I feel like I've served my community and I've been a good person. I just feel that doing things like that, I, I, I feel that I should-- I don't understand really why I could not have a place in my son's life. And I've never given up hope that there's, there's a chance that this could work out somehow. My, my case is still active. I'm preparing to appeal it, the recent decision. And I just love my son very much and I'm not going to stop fighting for him. I just want to be a part of his life more than anything. And I just would like to thank you for allowing me to speak here today on his behalf. And I'm just trying to advocate for all fathers, not just myself, but for all biological fathers that, that love their children and just want to be part of their children's life. And it's just thinking on their behalf, too. So I'd just, I'd just like to say thank you for, for letting me be here today. So thank you.

BOSN: Thank you very much for sharing your story with us.

ROY ENRIGHT: Yep.

BOSN: Are there any questions for this testifier? Senator Rountree.

ROUNTREE: Thank you, Chair Bosn. And thank you so much for your testimony today. Thank you for serving the city of Omaha and for wanting to have a relationship with your son. It was just a couple of things, you mentioned the, I guess I'll call it the on paper legal father mistakenly signed. Just wanted to ask, how did that come about? And then for you, were you aware that your son was probably your son from birth or through the pregnancy process and birth or was it discovered later on that you came in and took the genetic test and you found out that, yes, this is my son?

ROY ENRIGHT: Yes, I wasn't told that anything-- an acknowledgement had been signed or the birth certificate had been signed. We had a DNA exam done when he was about a year old and then I, I hired legal representation and they, they found out that an acknowledgement had been signed and I was unaware of this. And by the time I found out, I, I was being told by my attorney that there was a 60-day rescission period, and I had no idea of-- about this. But I've, I've been through four different attorneys at this point. Several of them felt that I had no legal standing to even pursue rights to him. So there's been a lot of things that have taken place since I found out he was my son in 2020. And I'm now on my fourth attorney. So I'm still pursuing things despite the legal hurdle that I'm experiencing, so.

ROUNTREE: So when you found out and you were-- was the relationship then such that you were allowed to see your son, he would come spend time with you and develop the relationship that you have now, but then it was cut off because of the other legal parent didn't want that to happen?

ROY ENRIGHT: Yes, sir, that's correct. Yes.

ROUNTREE: OK. All right, thank you.

ROY ENRIGHT: Yeah.

BOSN: Senator Storer.

STORER: Thank you for being here. I just want to make sure I understand this correctly. So you were aware that, that the child had been born but in the interim before anyone could genetically prove who the father was another individual signed--

ROY ENRIGHT: Yes, she was speaking to me in private when she was pregnant, but was withholding this information to the person that signed the acknowledgment. So he was under the belief that, that was

his biological son when he signed. So she was only speaking to me and withholding this information from him. So he was-- I believe that he was under the mistaken belief that was his biological child.

STORER: And the courts won't allow that to be appealed or contested with any-- currently, law will not allow that to be contested with any sort of genetic proof, if I understand right?

ROY ENRIGHT: That's what, that's what I've been led to believe. There was a court-ordered DNA exam, and it's proven that he's my, he's my biological son.

STORER: So that's already been done.

ROY ENRIGHT: What's that?

STORER: The genetic testing has actually already been done.

ROY ENRIGHT: Yes.

STORER: OK.

ROY ENRIGHT: Yes.

STORER: But the courts, there's no pathway that the courts will acknowledge that is what I'm understanding?

ROY ENRIGHT: I believe that the argument by my attorney wasn't raised correctly. I have a new attorney now, so-- but I believe that there was a mistake-- there was a material mistake in fact made when the other person signed.

STORER: OK. Thank you.

ROY ENRIGHT: Yes.

BOSN: Senator McKinney.

McKINNEY: Thank you. And thank you for your testimony and your service. I guess what I'm trying to wrap my head around is how did you lose your rights if you didn't know you had the rights?

ROY ENRIGHT: What's that? Sorry, my hearing's not--

McKINNEY: How, how did you lose your rights as a parent prior to even knowing that you were the parent?

ROY ENRIGHT: Well, she was-- she's been in and out of a relationship with this man--

McKINNEY: Yeah.

ROY ENRIGHT: --and they just recently have been married as this court case has gone on. But she was in and of the relationship with him, and then she was allowing me to develop a relationship with him at the same time with my family. We were celebrating holidays and his birthday together, you know, we-- I had a bond, a father and son bond develop with him, and then she just took him away from me. So it was very frustrating.

McKINNEY: Yeah, I'm sure. And I guess I'm more confused more by the courts than what you even explained, because I always thought that if you took the DNA test and then you were acknowledged as the father, you were the father. So I guess I've never known that somebody could sign some papers and say they're the dad, but there is a dad. That's crazy. But--

ROY ENRIGHT: Yeah.

McKINNEY: --thank you.

ROY ENRIGHT: It's been a tough situation to, to deal with, mentally exhausting, so, you know.

BOSN: All right, thank you very much for your testimony and thanks for being here.

ROY ENRIGHT: Thank you.

BOSN: Yes. Next proponent. Anyone else here in support? Good afternoon and welcome.

TERESA RANDALL: Hi. Thank you. Thank you, Senator Hallstrom. Thank you, committee. My name is Teresa Randall. I'm the partner of Roy Enright. From day one of meeting him, I've never met a person speak so highly of his son. The fact that he had tried so hard, so diligently, to pursue all odds to get his son, the first day that I met him, that's all he spoke of is his son. A person that genuinely wants to be in their son's life, in my opinion, wouldn't have even made it this far, would have stopped, would have given up all hope, wouldn't have sat and spoke before committees, wouldn't have attended hearings, wouldn't have pursued multiple attorneys. But as many times as I

encountered him, even with his son, there were situations where I was able to be involved with family outings, just being around a family. I've never seen a son enjoy being with his dad more. And he knew that Roy was his dad. I don't particularly know the explicits of how do you explain as a mother that you have this in and out father, but then you have this father that-- there are-- it seems almost as if there were a couple in and out people. But the last time that he saw his son was December 26 of 2023. He was supposed to have his son on Christmas. She'd called that morning and said something came up and she couldn't attend. So all of the presents that went-- sat under the tree were moved into a room to be out of his face so he didn't have to sit and deal with the pain of not being able to not even just see his son on the holidays, but even be able to provide a Christmas present. I remember the Batman airplane that he got him because at the time that was his favorite superhero. So throughout this case, I've continued to tell Roy that he is Batman. He's going through all odds. He's trying his hardest to continue even being an amazing human being. And, in my opinion, I don't know how anyone could even mentally do the job that he does as a firefighter. Mentally stay a sane person and continue to, in my opinion, defy all odds to go after his son, which I know whom he loves with all of his heart and his family adores him. And just being able to experience all of that with them and the fact that it wasn't just taken away over a period of time, it was taken away on Christmas after all of the experiences they had had together up to that point, being an outsider looking in that was hard so I could only imagine what that looks like for the son himself. So I'd like to thank you again for sitting here and listening to us today and also let's put this in place so that way we can get a father the rightful ability to be a father. Thank you.

BOSN: All right. Any questions for this testifier? So do you practice in the area of child custody cases and stuff?

TERESA RANDALL: I do not. No, ma'am.

BOSN: OK. Sorry. I thought I heard you say that at the beginning so I was just going to ask you some questions about that.

TERESA RANDALL: Awesome.

BOSN: All right, thank you.

TERESA RANDALL: Yeah.

BOSN: Thanks for being here

TERESA RANDALL: Thank you so much.

BOSN: Yes. Next proponent. All right, neutral testifiers. Welcome.

JOSH LIVINGSTON: Good afternoon, Chair Bosn. My name is Josh Livingston, J-o-s-h L-i-v-i-n-g-s-t-o-n. I'm a family law attorney and I'm here to testify in a neutral capacity regarding the proposed amendment to LB1139. By way of background, I practiced for several years within Nebraska's child support program, which in addition to collecting support, is responsible for establishing parentage for children across the state. As this committee has heard in prior hearings, family law and paternity establishment, in particular, is dynamic and complex. The amendment before you today reflects that reality. I've had the opportunity to speak with Senator Hallstrom about this amendment, and as I understand it and has been testified to today, the goal is to ensure that a paternity acknowledgement does not become an immovable barrier that prevents biological parents from forming relationships with their children. I would be hard-pressed to identify a more well-intentioned objective. However, in practice, challenges to paternity acknowledgments often fall victim to the law of unintended consequences. Without clearer guardrails, I'm concerned that the language could create new problems while attempting to solve an existing one. Currently, a paternity acknowledgement may only be set aside if the challenger proves that the document was signed due to material mistake of fact, fraud, or duress. That's the challenge you're making that. This framework stems largely from the Tyler F. case that Senator Hallstrom pointed out. That decision provided important clarity for signatories who later seek to set aside the acknowledgement and made clear that genetic testing alone is not definitive proof of those elements. From the outside, this standard left a potential biological father who did not sign the acknowledgement with little ability to determine their parentage or take steps to challenge the form. In its purest form, this amendment seeks to provide that remedy. This change, however, raises additional concerns. Allowing an individual to challenge an acknowledgement without also requiring that person then to establish their own parentage could create a situation where a child loses an established legal parent without gaining another. For example, if a mother and legal father end their relationship, the mother could approach the individual she believes may be the biological father and encourage him to challenge the acknowledgement. If genetic testing confirms that possibility, then that acknowledgement could be set aside. Then the,

the individual, the third party, could decline to establish parentage and accept that responsibility. This could result in a child who once had a legal-- who had legal clarity about a parent now without that clarity. And as far-fetched and unlikely as this scenario may sound, the underlying circumstances are strikingly similar to the facts of Tyler F. In that case, the challenge failed because the required legal standards could not be met by the signatory. This amendment unintentionally would create a new pathway that would allow the nonsignatory to use this law as a proverbial sword to collude against the legal father. For that reason, I would encourage the committee to consider requiring that any individual who successfully challenges an acknowledgment also be required to establish their own parentage if genetic testing so confirms it. The challenger should be required to meet the same legal standard that currently applies to signatories by demonstrating that the signature-- that no signature was due to material mistake of fact, fraud, or duress. The question of why this individual did not sign is well within the court's capabilities to determine. I see that I'm out of time. I--

BOSN: You can finish.

JOSH LIVINGSTON: Thank you. With a few additional guardrails, including a limitation on the time frame for the challenge, this amendment could accomplish a goal without allowing it to be used as a weapon against current signatories, thereby creating unintended gaps in parentage. I would simply encourage this committee to ensure that any successful challenge demonstrates why they did not sign the document originally and, and demonstrates that they are prepared to assume the legal responsibilities that come with being the parent. I'd be happy to answer any questions.

BOSN: Thank you. Senator DeBoer.

DeBOER: I'm trying to understand the change that you're suggesting. You're saying that the not signing of the biological father has to be a mistake of fact, fraud, or duress.

JOSH LIVINGSTON: Under a number of circumstances, if the-- so the courts-- right now the standard is material mistake of fact or duress, and the person seeking to set it aside has to demonstrate that.

DeBOER: Right.

JOSH LIVINGSTON: So as we discussed earlier in the Tyler F. situation, the reason that Sara P. was unsuccessful is because she alleged that there was a material mistake of fact as to the legal parent.

DeBOER: Right.

JOSH LIVINGSTON: The problem was she created that material mistake of fact. So the court found that she couldn't benefit from her own actions and that. So a third party would have to demonstrate, under my suggestion, that would demonstrate that they did not sign this document or could not sign this document due to that material mistake of fact, fraud, or duress.

DeBOER: But it would seem to me that the reason most likely that they didn't sign was because they didn't have the opportunity to do, which probably doesn't rise to the level of duress or fraud.

JOSH LIVINGSTON: That certainly is a possibility that the person didn't know. And then the material mistake of fact that they didn't sign was that they did know the possibility of them being the parent. The other--

DeBOER: No, I mean, they knew they were the parent. They didn't know that the, the-- now I can't say it-- the acknowledgement of paternity was being signed, right? So, so, quite often, someone who thinks they are the legal father-- or sorry, thinks they're the biological father may not know that some other person is signing an acknowledgment of paternity.

JOSH LIVINGSTON: Sure, and so when that matter comes before the court, because we as a policy through the state through several of the cases that have come up, has been a policy that we want to establish parentage for these children.

DeBOER: Sure, but not-- like, I think it would be very difficult for anyone to meet the standard of showing that they didn't sign because of fraud, duress, or mistake of fact, because the gentleman you heard testify earlier--

JOSH LIVINGSTON: Sure.

DeBOER: --knew he was the father. But who knows if he knew, and it doesn't really matter. Certainly we can imagine a scenario in which he didn't know that someone else was going to sign that acknowledgment of paternity. Now he's seeking to set it aside under Senator Hallstrom's

bill. He's not going to be able to show that it was a mistake of fact, fraud, or duress that caused him not to sign it. He just didn't know the other guy was going to sign one.

JOSH LIVINGSTON: Without knowing all of the details of the particular case, my suggestion to that scenario would be that the individual who seeks to, to set it aside, if they say, look, I didn't know this acknowledgment was signed, had I known better, I would have done this. You can overcome that material mistake. You can also prove that the individuals-- in the event that maybe mom, under this circumstance, whereas I understand with, with the testimony, mom had informed certain people that they may be the potential father, the fraud element becomes a little easier to prove.

DeBOER: I-- I'm just-- I guess I'm not following how your suggestion-- because if your suggestion makes it better, great, we'll make it better. But I'm following how it does because I think that now creates an additional level of difficulty for someone who is the biological father. So now you're throwing up the hurdle that if they are the biological father, we're not going to set aside the acknowledgement of paternity unless they can show not only that they're the biological father, but that they would have signed or that they would have signed the, the acknowledgement of paternity first, I guess.

JOSH LIVINGSTON: Well, I don't want to create a race to the courthouse with respect to this. I mean, the, the reality is you don't want to a create a race to the courthouse--

DeBOER: Right.

JOSH LIVINGSTON: --where two people are sprinting there to sign this document. And, quite frankly, with this document it has to be signed by both putative parents. It's not just an acknowledgment by just the father, both parents sign it.

DeBOER: The mother has to sign.

JOSH LIVINGSTON: The mother has to sign it.

DeBOER: That's how you keep it from being a random person.

JOSH LIVINGSTON: That's how you keep it from being anybody in the whole entire world.

DeBOER: Yeah.

JOSH LIVINGSTON: So with respect to this-- with this situation, the, the question that I think really has to be asked, and I think what we're demonstrating here is the complexity of this issue, right? Because a legal father who did not know-- a legal father under the current law who did not know better signed this document fully believing-- with the assumption that they fully believed that they were the biological parent of this child. And we want to also make sure that we create that certainty, because my concern is not the particulars of this case, it's the case that's similar to the Tyler F. situation, where when the two parents, when, when the two parents-- the legal parents decide that the relationship is over, we don't want this to become a sword for a bad actor to use a third party to get rid of somebody and effectively circumvent the court and become a sole custodian of a child that now has no legal parent, they're the only-- and if that's, if that's a child--

DeBOER: They would have the mother.

JOSH LIVINGSTON: Correct, sorry, one legal parent, not, not two legal parents. So we went from two legal parents, potentially three to one under the Tyler F. scenario. Does that make sense?

DeBOER: It does, but I don't know that what you are suggesting here would solve that problem. Because I think what Senator Hallstrom has suggested is that they have to-- well, I'll ask Senator Hallstrom, but I think what he's saying is they have to join the case first, and they do that, and I can't remember what we did last year, whether or not we required some sort of paternity test to join the case in the first place, but I do think we did.

JOSH LIVINGSTON: So I, I had-- on that LB150 from last year, that was for married couples. It's a, it's a different scenario. It's the same type of situation, but it's a different scenario. And ultimately here, this-- the way it's written now doesn't, doesn't require that affirmative establishment. So the issue of material mistake of fact, fraud, duress, that's an issue for the courts to determine. That would be my position. But with respect to the way this is written, what ultimately could happen is third party could challenge and say I want to set aside this acknowledgement and then if there's no, if there's no pending court action now to establish paternity, the child will be without a legal, biological-- a legal father.

DeBOER: Couldn't we just do this more easily if instead of making them prove a material mistake of fact, fraud, or duress caused them not to act, which is kind of a difficult thing.

JOSH LIVINGSTON: Sure, proving the negative.

DeBOER: Couldn't we just say that if someone wanted to challenge the acknowledgement of paternity that they needed to show a positive DNA test?

JOSH LIVINGSTON: Well, and I think that brings me back to the concern that I have is showing that test alone would effectively vitiate the responsibility of the legal parent, but then we don't have that affirmative responsibility now on that third party to then establish themselves as the father. So what happens--

DeBOER: You're saying because they would, they would-- the order of operations is wrong, that the order of operations of getting rid of the acknowledgment of paternity before having one that will just snap into place afterwards is the problem for you.

JOSH LIVINGSTON: Essentially. We need to make sure that if, if paternity-- the paternity acknowledgement is set aside in favor of a third party that there is an affirmative responsibility of that third party to then establish their parentage.

DeBOER: Got it.

BOSN: And couldn't you just do that? Couldn't you require that it's a set-aside acknowledgement and establish paternity as a joint filing?

JOSH LIVINGSTON: I, I, I think that would make sense. I just don't see that as the requirement as written, which is why [INAUDIBLE].

BOSN: Sure, but I think where Senator DeBoer is going is you could require someone to-- prior to setting a-- prior to the order to set aside to have filed the request to establish paternity, right, in the same filing without going through the demonstration of material mistake of fact, fraud, or duress. Do you see what she's saying?

JOSH LIVINGSTON: Yeah, no, I understand, I understand the question. I think having those factors, those factors have been-- obviously, those factors are controversial in any, any direction that you're going to have it. My position is that if we're going to have a third-party challenger to a document that already requires that standard in order

to set aside, have that consistency. The goal is not to make sure that-- I mean, I want biological fathers to have access to their children. I just don't want to make-- I want to make sure that the way that this is happening doesn't fall into those unintended consequences.

BOSN: Right, but, I mean, a paternity acknowledgment, what are they, 99.9% valid, shouldn't we allow a biological parent the right to parent their child, even if there was no mistake of fact, there was no fraud, and there was no duress? I mean, if he's willing to sign-- if he's willing to say, OK, I'd like to set it aside based on my paternity, genetic test, and establish parent-- you know, my paternity in the same filing, who cares if it was a mistake, who cares if it was fraud. What, what-- is there a fact pattern, I'm asking genuinely, where we would have a loser in that situation?

JOSH LIVINGSTON: I think if you, if you had-- and I'm going to, I'm going to throw--

BOSN: That's OK.

JOSH LIVINGSTON: --we're in, we're in the world of hypotheticals, OK?

BOSN: It's a place we go often here.

JOSH LIVINGSTON: That's OK. I'm happy to go along on that journey. The concern that I genuinely have and I'm trying to be clear about it, is my concern is not necessarily the biological father coming in and having that relationship. That's what we want, right? It's when a parent is using this, this mechanism to effectively give themselves sole custody of this child because the concern is more finding that third party and that person doesn't really want to have that relationship. They just happen to be a mechanism because if mom under this scenario, because under, again, the Tyler F. scenario, she's not able to set aside the acknowledgement because the material mistake of fact was created by her actions, which is exactly what happened with Tyler F. Well, now if she has a third party who could effectively do that for her, and then even if paternity is established, there's a child support component to that. But there is some questions about the legal parentage that existed up to that point. I know there was questions about child support and all that. And I have thoughts on that. But I think the reality is that I want to avoid that situation. Because if you have a situation where you have the good actors, and it was just a-- it was a genuine concern, I think with the material

mistake of fact, fraud, or duress, you're going to meet that standard with the courts because we've seen that. But if you had a situation when you don't have that good actor, that's what I think we need to prevent, not the-- it's not the good actors, it's the bad actors. And I think right now in its current iteration, it leaves open that possibility in my experience, in my practice, that is where we're going to start-- not start seeing the cases, but that's where we are going to see the more troubling cases. It's the not the ones where this problem-- I mean, I've, I've seen Mr. Enright, and, no, this is not about Mr.Enright in any capacity whatsoever, but it is about the opposite scenario where it's not in the child's best interest, and the best interest standard really is applicable here, but the, the material mistake of fact, those are more pressing concerns in my experience with the court, not necessarily the best interest. Because the best interest standard is going to trump all of those, right, if the judge says, look, I get all of this, but ultimately the best interest is served by having this. So then we've just basically changed the best interest standard and created a new standard. And that would be, obviously, a conversation for a different time, but a big concern as well.

BOSN: Yeah, OK. Senator McKinney.

McKINNEY: Thank you. But couldn't you set up a situation, let's say the biological father, for whatever reason, may not be as ideal as people would like, but couldn't you set a scenario where that individual is still allowed to be the dad under a circumstance of just some type of custody plan or something where you have some-- because what I'm trying to wrap my head around is, I don't think there's a guarantee, guarantee of parentage either way, especially under the scenario where this guy signs that he's the dad--

JOSH LIVINGSTON: Sure.

McKINNEY: --then later on finds out, oh, I'm not the dad anymore.

JOSH LIVINGSTON: Yeah.

McKINNEY: He could just walk away, too.

JOSH LIVINGSTON: And he has, under the current structure, if he, with that material mistake of fact, fraud, or duress, if he decides that he wants to walk away, he has that ability, assuming the court grants it and all of that happens, right? And to your question, just for

clarity's sake, I'm not, I'm not really passing judgment on the quality of the parent, because even if-- I mean, it's more of, if they just-- if it's a person that it was kind of collusive to the idea that mom finds third party and says, hey, I think you're maybe the father, can you just help me out here, then you can be on your way, right? To your specific question, that was-- there's a-- I think it was Caesar F. was the case. I can, I can provide some more clarity on it, but there's been some pretty clear provisions that the courts have said you can't really have three parents.

DeBOER: Caesar F.

JOSH LIVINGSTON: And I think it's Caesar F., thank you. And they're with the three parents on that. Obviously, that's a bigger, larger conversation about the dynamic of how families work. And there's the in loco parentis standard, which the court has addressed on several occasions this is in loco parentis. So the question could be resolved through maybe some, and, and not here, but some clarity about how in loco parentis works, but from a who is the legal parent standpoint, I want to make sure we have clarity there.

McKINNEY: But maybe I'm wrong, I guess. I thought there was a process where you could take a DNA test that is acknowledged in the courts. There's like two where it's not but one that there is.

JOSH LIVINGSTON: So under-- if-- a paternity acknowledgment, after 60 days or the filing of a judicial action is presumed to be a legal finding of parentage.But-- and that's under 43-1409. Under 43-1412, where there's no child-- where there’s no legal parent at this time, that's how, that's how paternity is established. So they differentiate between establishment of paternity and establishment of support. The reason of establishment of support is because you already have a legal parent. You're not filing a case to establish paternity. So this case, this situation where you file under 43-1409, under the current structure, you're not necessarily filing a paternity action, you're filing an action that establishes support, custody, all of those elements. You don't have to prove parentage. It's presumed after 60 days or the filing of a judicial action.

McKINNEY: All right.

JOSH LIVINGSTON: Does that answer your question?

McKINNEY: A little bit.

JOSH LIVINGSTON: To some extent?

McKINNEY: Yeah.

JOSH LIVINGSTON: It's complicated.

McKINNEY: Yeah. Thanks.

BOSN: Senator Storer.

STORER: Thank you, Chair Bosn. I'm going to go back to start a little bit, but have you worked with Senator Hallstrom on some of your concerns prior to the hearing today?

JOSH LIVINGSTON: Yeah, we had, we had a brief conversation and I, I mentioned that my concerns were exactly these, is that we want to make sure that-- my concern would be that the language is creating an affirmative responsibility to then establish a third party, should that acknowledgement be set aside.

STORER: So if there was some language maybe added to what I'm reading and understanding here that just says to Senator Bosn's explanation earlier that if indeed that challenge paternity proved father B is actually the father that it automatically was tied to the obligation or the affirmative parental rights. Is that--

JOSH LIVINGSTON: I, I think that would be appropriate. And I think the idea of how we get to that, I think we're, we're kind of on, on a couple of different tracks here because, generally, if that were to happen, and I think the question about the acknowledgement, the fraud, the mistake, and everything, is kind of the inner workings of how you get to the outcome. But I think the final outcome should require, in even this case, or it would make sense to do it in this case instead of having two different case numbers and then hoping the other parent comes back and does this to say that if this is set aside then the third party who challenges it shall then be found to be, assuming the genetic testing and all those details are met, shall be found be the father. But right now it would set it aside and then it would create this limbo of while somebody could then in the future establish against this person who has genetic testing, who's already done this. But if there's no motivation by the parent who has custody, or if the state doesn't have any reason to get involved, then this child is left in limbo with only one parent.

STORER: So you just feel like there's a loophole here. I mean, as I listen to all this, I'm like in what world would anybody challenge this and go to the genetic testing if they indeed didn't want to be the parent? You're saying there could be a loop hole, somebody could abuse that and make the challenge, actually be the biological parent, but not, but not be the legal parent. Is that what I'm hearing you say?

JOSH LIVINGSTON: So they can make the challenge. So under my thought-- because, again, this is effectively what happened in, in the Tyler F. case, the, the mother in that case and the legal father had decided they no longer wanted to be together.

STORER: Right.

JOSH LIVINGSTON: And mom sought out this individual who she had really good reason to believe was actually legally or biologically the father. And she said-- and this was not a paternity acknowledgement case, this was just an establishment case, where instead-- or it was a paternity acknowledgement case, but ultimately said I need to show genetic-- use genetic testing to show that this person is not the father to create that material mistake of fact. But the material mistake of fact that existed was because she had said to the signatory, you're the father. She had affirmatively said that. Well, she could never create-- you can't create the circumstances that you're seeking to say created the bad part. You can't say, well, I lied, so therefore there was a material mistake of fact, and that's what Tyler F. ultimately found. What, what the concern that I have would be is that you take that in the other direction now, and now a third party who just says, OK, I don't-- whatever you need, I'll, I'll go take genetic testing, because if the next step isn't that they're required to become the legal parent of that child, then there's no skin in the game for them. And that's the concern that I would have. The situation that where, where Mr. Enright testified to, I don't believe that's the situation that we're facing here, but it's the unintended consequence that I'm concerned about when that happens. So I think creating that affirmative responsibility makes sense because then the person who shows up should, you know, if they're going to do the genetic testing and they're going to do all those things, then they should take that next step to be responsible from a-- the legal standpoint, whether they're good parents to Senator McKinney's point, whether they're good parents or whatever, the question is really from a legal standpoint from the state's view.

STORER: Thank you.

JOSH LIVINGSTON: Thank you.

BOSN: All right, we've put you through enough. Thank you for coming.

JOSH LIVINGSTON: Oh, no, you can keep going. Thank you all very much.

BOSN: Thank you. Next neutral testifier. All right, Senator Hallstrom to close

HALLSTROM: I want to thank everyone that came in today to testify and just a couple of things. One, I neglected to indicate that I did work extensively with Mr. Hruza and the Bar Association and a number of their members who came up with the language and thank Andy Conroy up in Bill Drafters for the effort that he put in and he reviewed legal cases and coming to the, the language that we have. Just a few parting shots. I, I think-- if I can-- it got a little bit confusing. I don't think with all due respect that someone not signing, I don't-- I think that's a red herring. It has nothing to do with the issue. What we have is if, if you're the biological father, whether you've signed the acknowledgement-- if you've signed the acknowledgement and you're the biological father, end of discussion. If you haven't signed the acknowledgement because nobody told you but you ultimate-- and nobody else signs it, you're still OK. You do your genetic testing and you prove up. I don't want, in the short time that we have left in this session, perfect to get in the way of good. I'm more than happy to work with Mr. Livingston or continue to work with the Bar if there's a need to address the situation that he has put out here where there's collusion, and I think the easier way, and the way I understood it the first time that, that I talked with Mr. Livingston within the last couple weeks was that what he's talking about is the mother colludes with a third party after the purported father who signed an acknowledgement has signed the acknowledgement. They have difficulties, they're no longer going to be together. So she wants him completely out of the child's picture. So she goes to who she now probably presumes is the father and says I'll pay for the genetic testing. If you'll come in and do the genetic testing so I can get the acknowledged father out of the picture, I don't want anything from you. I don't want you to be in my child's life. I don't want you to pay support. You can just hit and run. Do the genetic testing, be on your way. And if the third party is A-OK with that, I find that hard to believe if you're the natural parent, but if that would happen, I think those cases are so few and far between that I don't want perfect

to get in the way of the good for this session if the committee is inclined to move this bill forward. But we'll work either in the meantime or next session to see if we naturally-- if we, if we need to address that, that issue that Mr. Livingston has raised. I, I don't want that biological father who has the genetic test in arm to just walk away either. And if that, if that can be accomplished by saying the most logical result is I didn't do the genetic testing in 99.9% of the cases, which is what it proves, that you are the biological father, by the way, and then just walk from it. Why would I do that? But in the, in the unlikely event that it could happen, maybe could, could have, would have, should have, then I'm more than willing to do that. But I don't know-- I don't want it to get in the way of getting something done affirmatively this year. Mr. Enright reminds me of my wife's favorite song by Chumbawamba, I get knocked down but I get up again. And he's fighting and I'm trying to get something in law. And it's not just about Roy Enright. This is about everybody like Roy Enright that follows. We may or may not be successful. And I hope to hell we are. Excuse me. I hope to heck we are. But if we aren't, we'll have done good work for similar cases that come down the line in the future. And I think that's what this should be all about.

BOSN: All right, questions for Senator Hallstrom? All right, seeing none, thank you.

HALLSTROM: Thank you.

BOSN: That will conclude-- we had no letters submitted, so that will conclude Senator DeBoer's last Judiciary hearing and all of our last hearing this session.

HALLSTROM: I'm glad I could be a part of it.