

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

TYLER STRANG,
Petitioner,

v.

CAITLIN MALAY AND CHRISTIAN HERNANDEZ,
Respondents.

No. CV-25-0233-SA
Filed September 14, 2026

Special Action from the Superior Court in Maricopa County
The Honorable Quintin Cushner, Judge
No. FC2024-090462
JURISDICTION ACCEPTED, RELIEF GRANTED

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JUSTICE CRUZ authored the Opinion of the Court, in which CHIEF
JUSTICE TIMMER and JUSTICES BOLICK and MONTGOMERY joined.
VICE CHIEF JUSTICE LOPEZ and JUSTICES BEENE and KING dissented.

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

JUSTICE CRUZ, Opinion of the Court:

¶1 We are asked to determine whether the superior court correctly concluded that biological father Tyler Strang’s efforts to establish paternity were barred by A.R.S. § 25-812(E), thereby preventing the superior court from determining whether his alleged genetic-testing presumption invoked the resolution of competing presumptions prescribed by A.R.S. § 25-814(C). Resolving an apparent conflict among decisions of the court of appeals, we hold that § 25-812(E) does not bar a biological father who was not a party to an acknowledgment of paternity from maintaining the independent statutory action authorized by A.R.S. § 25-803.

BACKGROUND

¶2 In 2021, Tyler Strang and Christian Hernandez each had sexual relations with Caitlin Malay (“Mother”), who conceived a child. The child was born in September 2021. Mother and Hernandez thereafter executed an acknowledgment of paternity (“AOP”), which the state accepted in October 2021. At the time they signed the AOP, both Mother and Hernandez believed that Hernandez was the child’s biological father. Strang maintained that he did not know he was the child’s biological father until genetic testing established that fact in November 2023. The record does not reflect when Strang first learned of the child’s birth.

¶3 In April 2022—more than six months after the AOP was executed—Hernandez obtained genetic testing indicating that he was not the child’s biological father. Nonetheless, Hernandez assumed primary caregiving responsibilities for the child from May 2022 through June 2023 during Mother’s incarceration. In November 2023, Strang obtained genetic testing indicating that he was the child’s biological father, a month after Mother contacted Strang to notify him that Hernandez was not the biological father. A second test conducted in June 2024 confirmed that result.

¶4 In February 2024, Mother petitioned for legal decision-making and parenting time, alleging that Hernandez was not the child’s biological father. Two days later, Hernandez petitioned to establish paternity, legal decision-making, parenting time, and child support, asserting that he was the child’s “natural” father. Neither petition identified Strang as a potential father, and Strang was not made a party to

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

those proceedings. On February 28, 2024, Mother and Hernandez stipulated to temporary orders providing for joint legal decision-making and a parenting plan.

¶5 In August 2024, Strang moved to intervene in the action between Mother and Hernandez to assert his own paternity claim consistent with § 25-803, and in November 2024, he petitioned to establish paternity, legal decision-making, parenting time, and child support. In December 2024, Hernandez objected to Strang’s petition and moved to dismiss, arguing that Strang’s petition was barred because Hernandez’s paternity had already been established through the AOP and could be challenged only under § 25-812, which provides for a challenge after sixty days only on the basis of fraud, duress, or material mistake of fact.

¶6 While his petition to establish paternity remained pending, Strang also moved to set aside Hernandez’s AOP. He argued that the AOP had been executed under the mistaken belief that Hernandez was the child’s biological father and that genetic testing established Strang’s biological paternity, thereby creating a presumption of paternity under § 25-814(A), which defines when a man is presumed to be the father of a child. Hernandez opposed the motion, arguing that any challenge to the AOP was untimely under § 25-812(E) and ran afoul of Arizona Rule of Family Law Procedure 85(c)’s requirement that any motion be urged within six months following entry of judgment.

¶7 Following an evidentiary hearing, the superior court denied relief. The superior court concluded that the AOP had the force and effect of a judgment and that any challenge to it was untimely under § 25-812(E) and Rule 85(c).

¶8 Strang then filed a petition for special action with this Court. Mother and Hernandez did not oppose this Court’s exercise of special action jurisdiction. We accepted jurisdiction, in part, because three court of appeals decisions—*Brummond v. Lucio*, 243 Ariz. 360 (App. 2017); *Roger S. v. James S.*, 251 Ariz. 555 (App. 2021); and *Johnson v. Edelstein*, 252 Ariz. 230 (App. 2021)—appear to conflict on whether a biological father may challenge an AOP after the six-month period referenced in Rule 85(c)(1).

¶9 More specifically, this case requires us to determine how §§ 25-803, -812, and -814 operate together. Section 25-803 authorizes an

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

action to establish paternity. Section 25-812 provides a procedure for voluntarily acknowledging paternity and for challenging that acknowledgment. Section 25-814 establishes several presumptions of paternity and directs courts to resolve competing presumptions according to “weightier considerations of policy and logic.” Because these statutes address related aspects of the same subject, we construe them together so that each retains independent effect. *See Pima Cnty. ex rel. City of Tucson v. Maya Constr. Co.*, 158 Ariz. 151, 155 (1988) (explaining that when “statutes relate to the same subject,” we construe them “together . . . as though they constituted one law” in order to “give effect to all the statutes involved”).

¶10 We accepted special action jurisdiction to resolve this issue of statewide importance concerning the interaction among Arizona’s statutory provisions for establishing paternity. We have jurisdiction under article 6, section 5(1), (4), and (6) of the Arizona Constitution.

DISCUSSION

A. Arizona’s Paternity Statutes Establish a Unified Framework for Determining Legal Parentage

¶11 We review questions of statutory interpretation *de novo*. *S. Ariz. Home Builders Ass’n v. Town of Marana*, 254 Ariz. 281, 284 ¶ 16 (2023). We interpret statutes “according to the plain meaning of the words in their broader statutory context, unless the [L]egislature directs us to do otherwise.” *In re Drummond*, 257 Ariz. 15, 21 ¶ 19 (2024) (quoting *Town of Marana*, 254 Ariz. at 286 ¶ 31). We do not construe statutory provisions in isolation but instead read related statutes together, giving effect to each whenever reasonably possible. *See State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 101 ¶ 13 (2014). Likewise, we avoid constructions that render statutory language superfluous, nullify one provision by another, or add language that the Legislature did not include. *State v. Deddens*, 112 Ariz. 425, 429 (1975); *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017). And where competing constructions are reasonably available, we favor one that avoids serious constitutional questions. *Hayes v. Cont’l Ins. Co.*, 178 Ariz. 264, 273 (1994).

¶12 Arizona’s paternity statutes provide multiple, complementary methods for establishing legal parentage. Section 25-803 authorizes specified persons, including a father or an adult alleging to be

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

the child's parent, to commence a judicial proceeding to establish paternity. § 25-803(A). Section 25-812 permits unmarried parents to voluntarily establish legal paternity by executing and filing an AOP. § 25-812(A)(1). Once properly executed and filed, that AOP has "the same force and effect as a superior court judgment." § 25-812(D). Section 25-814 establishes several presumptions of paternity, including a presumption arising from genetic testing establishing "at least a ninety-five per cent probability of paternity." § 25-814(A)(2).

¶13 Section 25-812 serves a distinct purpose within that statutory framework. It allows unmarried parents to voluntarily establish legal paternity without litigation, thereby promoting certainty, stability, and finality in the parent-child relationship. See *Stephenson v. Nastro*, 192 Ariz. 475, 480–81 ¶¶ 14–18 (App. 1998). To further those interests, the Legislature prescribed specific procedures governing rescission of, and relief from, an AOP. See § 25-812(E), (H). A parent may rescind the AOP within the earlier of sixty days after the last signature or the date of a related proceeding. § 25-812(H). After that sixty-day period expires, an AOP may be challenged only on the statutory grounds of fraud, duress, or material mistake of fact, with the burden of proof on the challenger, § 25-812(E), and the challenge is brought under Rule 85. Although § 25-812(E) refers to "[R]ule 85(c)," that subpart governs only the timing and effect of a motion made under Rule 85(b); the procedural vehicle is therefore Rule 85 as a whole, with subsection (c) prescribing the time within which the motion must be made beyond the sixty-day period. Rule 85(b) supplies the mechanism for relief from a judgment, while § 25-812(E) narrows the grounds available in this context to fraud, duress, or material mistake of fact. Nothing in today's decision alters those statutory procedures or the legal effect afforded a properly executed AOP under § 25-812(D).

¶14 Section 25-803 serves a different function. Rather than governing voluntary AOPs, it authorizes a judicial proceeding through which specified persons may seek to establish parentage. The Legislature thus provided both an administrative mechanism for voluntarily establishing paternity and a separate judicial mechanism for adjudicating disputed claims of parentage. These statutes address different circumstances and perform different functions within the overall statutory scheme. The Legislature imposed no general deadline on a § 25-803 action; such a proceeding may be "instituted during the pregnancy of the mother or after the birth of the child," and is time-barred only where it seeks to

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

establish a support obligation after the child's eighteenth birthday. § 25-804; see *Castillo v. Lazo*, 241 Ariz. 295, 298 ¶ 13 (App. 2016) (explaining that § 25-804, not § 25-812, supplies the limitations rule for a putative father's paternity action).

¶15 Section 25-814 complements those provisions by identifying the presumptions applicable in paternity proceedings and directing courts how to resolve competing presumptions. Subsection (C) provides that "[i]f two or more presumptions apply," the presumption that the court determines, on the facts, as controlling is "based on weightier considerations of policy and logic." § 25-814(C).

¶16 Read together, §§ 25-803, -812, and -814 establish a unified statutory framework governing the determination of legal parentage. Section 25-812 establishes legal paternity by voluntary acknowledgment and prescribes the procedures governing rescission of, or relief from, that acknowledgment. Section 25-803 authorizes a judicial action to establish paternity. Section 25-804 sets the timing for that action, providing that paternity "[p]roceedings . . . may be instituted during the pregnancy of the mother or after the birth of the child," and reserving a fixed eighteenth-birthday deadline only "[f]or the purposes of establishing a duty to pay support or past support." This broad "after the birth of the child" window is a deliberate feature of the framework, and it is what preserves Strang's ability to bring—and thus to intervene in—an action to establish paternity under § 25-803. Section 25-814 identifies the presumptions applicable in such proceedings and directs courts how to resolve competing presumptions when more than one applies. Construing these provisions together gives meaningful effect to each without permitting one statute to subsume the others.

¶17 With that statutory framework in mind, we consider whether the superior court correctly concluded that Hernandez's AOP categorically foreclosed the independent statutory action to establish paternity that Strang asserted under § 25-803. Although Strang raised that action by intervening in the consolidated proceeding initiated by Mother and Hernandez, rather than by filing a separate case, the manner in which he asserted it does not alter its character as the independent action the Legislature authorized in § 25-803. Cf. *Brummond*, 243 Ariz. at 365 ¶ 20 (stating that a father's decision to consolidate his paternity petition with another's "does not change the nature of his petition for paternity as an

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

independent action”).

B. Strang’s Claim to Paternity Is Not Categorically Barred by A.R.S. § 25-812

¶18 The parties’ dispute reduces to a single interpretive question: what is the effect of an AOP when a man who did not sign it later comes forward with a competing genetic-testing presumption? Hernandez, relying on *McQuillen v. Hufford*, 249 Ariz. 69, 73 ¶ 11 (App. 2020), and *Gutierrez v. Fox*, 242 Ariz. 259, 269 ¶ 40 (App. 2017), contends that because an AOP has “the same force and effect as a superior court judgment,” § 25-812(D), it is a “court decree establishing paternity” that “rebutts the presumption” under the final sentence of § 25-814(C), ending the inquiry. Strang counters that § 25-814(A)(4) expressly lists an AOP as one of several presumptions of paternity, so an AOP cannot simultaneously be a mere presumption and a conclusive decree that extinguishes every competing presumption listed in the same subsection. We agree with Strang.

¶19 Reading an AOP as a “court decree” that always rebuts a competing presumption cannot be reconciled with § 25-814(A)(4), which expressly identifies a signed AOP as one of the statutory presumptions of paternity—each of which “shall be rebutted by clear and convincing evidence,” § 25-814(C). If an AOP invariably operates as a conclusive decree under the final sentence of § 25-814(C), § 25-814(A)(4) would be superfluous, because the presumption it creates could never be weighed against any other. We read statutes “as a cohesive whole so that no word or provision is rendered superfluous.” *State v. Serrato*, 259 Ariz. 493, 497 ¶ 16 (2025) (citation modified). The final sentence of § 25-814(C) is best understood to apply to a litigated decree establishing paternity entered after adjudication—not to a voluntary AOP, which subsection (A)(4) already classifies as a presumption subject to the subsection (C) balancing. To the extent *McQuillen* and *Gutierrez* hold otherwise, we disapprove them.

¶20 The dissent notes that § 25-812(E) permits a challenge not only by “the mother” and “father” but also by “the child” and “a party to the proceeding on a [R]ule 85(c) motion,” and argues that this list of non-signatories is inconsistent with reading the subsection’s limits as running only to signatories. *See infra* ¶ 79. It is not. The relevant boundary is not who executed the AOP but whose parentage it fixes. Mother, father, and child are the three persons whose legal relationships the AOP establishes.

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

Section 25-812(E) accordingly extends standing to challenge the AOP to each member of that fixed relationship, not to any stranger who might wish to assert a competing claim of his own.

¶21 A “party to the proceeding on a [R]ule 85(c) motion” fits the same pattern: it identifies who may participate once such a challenge is under way, not a freestanding grant of standing to initiate one. Strang is neither a signatory to the AOP nor a person whose parentage it purports to establish; he stands outside the relationship § 25-812(E) governs altogether, which is precisely why his own claim proceeds under § 25-803 rather than as a challenge to Hernandez’s AOP.

¶22 This construction also avoids a serious constitutional difficulty. A biological father’s interest in the opportunity to establish a relationship with his child is constitutionally protected, *see Lehr v. Robertson*, 463 U.S. 248, 258–61 (1983), and construing § 25-812(E) to extinguish a non-party father’s § 25-803 paternity action would permit that interest “to be erased without any notice or opportunity to be heard,” *Brummond*, 243 Ariz. at 364 ¶ 17. Where a construction avoids that concern and gives effect to every provision, we adopt it. *State v. Burbey*, 243 Ariz. 145, 149 ¶ 17 (2017); *Hayes*, 178 Ariz. at 273. That the AOP carries “the same force and effect as a superior court judgment,” § 25-812(D), does not dispel this difficulty, because the binding force of a judgment reaches only the parties to it and those in privity with them. A “person who is not a party to an action is not bound by the result,” and “the preclusive effect of a judgment is limited to parties and persons in privity with parties.” *Scottsdale Mem’l Health Sys., Inc. v. Clark*, 157 Ariz. 461, 466 (1988). “[A] stranger to a litigation may not be bound by a determination made therein for purposes of subsequent litigation.” *Fremont Indem. Co. v. Indus. Comm’n*, 144 Ariz. 339, 342 (1985). That limitation is a requirement of due process: a decision purporting to bind by its findings “a person who was not a party thereto and who had no notice or right to a hearing . . . deprives that person of property without due process of law,” and a court may not evade the requirement of notice and hearing by labelling the proceeding “in rem.” *Id.* at 344 (quoting *Rediker v. Rediker*, 221 P.2d 1, 5 (Cal. 1950)). We borrow that formulation for its due-process principle only; a father who is not a party to the AOP does not stand to lose a property interest, but rather his own liberty interest in the opportunity to establish a parental relationship. The AOP’s judgment status, and § 25-812(E)’s limits on obtaining relief from it, therefore bind only those who are a party to it; that limited effect is precisely

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

why they leave a non-party father's § 25-803 action untouched. *See Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008) (application of preclusion to nonparties runs against the deep-rooted historic tradition that everyone should have his own day in court).

¶23 Nor would the analysis change if a non-party father knew that the AOP had been executed and filed with the state. Notice of that kind is not the “opportunity to be heard” that due process requires. An AOP is a voluntary instrument executed by the mother and the acknowledging man, § 25-812(A); a man who did not sign it has no means to participate in or contest it, and his awareness that others executed and filed it does not make him a party to it. As we have recognized in the analogous setting of a judgment entered without joinder, “[e]ven if the owner knew of the suit, any judgment is void because having not been a party, the owner cannot be bound.” *Ballard v. Laws. Title of Ariz.*, 27 Ariz. App. 168, 170 (1976). A non-party father's opportunity to be heard on his own claim of paternity lies not in the acknowledgment but in the independent action the Legislature authorized in § 25-803. Because the meaning we give § 25-812(E) governs every case alike, the dissent's emphasis on Strang's own notice and delay does not bear on the interpretive question before us; whether a construction raises serious constitutional doubt is measured by its operation in the ordinary case of a father who had no notice and no opportunity to be heard. His knowledge of the AOP, and any delay in asserting his claim, may bear on the equitable defenses the superior court remains free to weigh on remand, including delay, laches, prejudice, and reliance. But it neither enlarges the AOP's preclusive reach nor converts § 25-812(E)'s limits—specific to those whose parentage the AOP fixes—into a bar on a non-party's separate statutory action.

¶24 We conclude that the superior court erred by treating Hernandez's AOP as ending the statutory inquiry. Although the AOP established Hernandez's legal paternity under § 25-812(D), it did not answer the separate question whether Strang could pursue the independent action authorized by § 25-803 or, if so, whether the superior court was required to resolve competing statutory claims under § 25-814(C).

¶25 Hernandez relies on § 25-814(C)'s final sentence, which provides that “[a] court decree establishing paternity of the child by another man rebuts the presumption.” We do not read that sentence in isolation. Rather, we construe it together with the remainder of subsection (C) and

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

the related provisions governing paternity. *See Harris*, 237 Ariz. at 101 ¶ 13. Reading the subsection as Hernandez proposes would effectively prevent the superior court from ever reaching the statutorily prescribed balancing inquiry in subsection (C). We therefore decline to construe the subsection in a manner that renders the express directive in one of its subsections largely inoperative. *See Serrato*, 259 Ariz. at 497 ¶ 16 (We “read[] statutes as a cohesive whole so that no word or provision is rendered superfluous.”) (citation modified).

¶26 The superior court correctly recognized that Hernandez’s AOP has the same force and effect as a superior court judgment. § 25-812(D); *McQuillen*, 249 Ariz. at 72 ¶ 12. We likewise agree that § 25-812(E) governs efforts to rescind or obtain relief from an AOP and that Rule 85 supplies the procedure for such relief. *See McQuillen*, 249 Ariz. at 73 ¶¶ 14–15. Nothing in today’s decision alters those settled principles. We agree with *McQuillen* insofar as it recognizes the force and effect afforded an AOP under § 25-812(D) and the procedures governing efforts to obtain relief from that AOP under § 25-812(E). For the reasons already explained, we disapprove *McQuillen*—and *Gutierrez*—only insofar as they treat an AOP as foreclosing the balancing § 25-814(C) requires; we do not read them to hold that those provisions invariably foreclose the independent statutory action authorized by § 25-803. The question here is whether those principles foreclose the separate judicial action the Legislature authorized in § 25-803.

¶27 Strang commenced the judicial proceeding authorized by § 25-803(A)(2), alleging that genetic testing established he is the child’s biological father. If proven, that testing gives rise to the statutory presumption recognized in § 25-814(A)(2). Thus, this case implicates not only § 25-812, but also the Legislature’s separate provisions authorizing a paternity action and directing courts how to resolve competing statutory claims of paternity. We must construe those provisions together. *See Harris*, 237 Ariz. at 101 ¶ 13; *Navarro*, 240 Ariz. at 195 ¶ 9.

¶28 Hernandez contends that because his AOP has the force and effect of a judgment, § 25-812(E) precludes any later assertion of paternity by another man once the Rule 85 time limits have expired. We do not read the statutory scheme so broadly. Section 25-812 governs the establishment of paternity by acknowledgment and the procedures for the parties to that acknowledgement to obtain relief from it. Nothing in § 25-812(E) states that

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

a properly filed AOP extinguishes the separate judicial action the Legislature expressly authorized in § 25-803. Nor will we infer such a limitation where the Legislature has not imposed one. *See Stambaugh*, 242 Ariz. at 509–10 ¶¶ 7, 15. Had the Legislature intended such a consequence, it could have said so. Nor does the canon that a specific statute controls over a general one aid Hernandez. Sections 25-812 and 25-803 do not conflict: § 25-812(E)’s limits operate on the parties who signed the AOP and their efforts to obtain relief from it, while § 25-803 authorizes a putative father who never signed to establish his own paternity. Because a man who signs or consents to an AOP is a party to it, § 25-812(E) supplies his exclusive avenue for relief, and nothing in today’s decision permits such a person to use § 25-803 to undo an AOP he helped create; our holding reaches only a putative father who was a stranger to the AOP and had no means to participate in it. Given full effect together, neither subordinates the other. We will not read into § 25-812(E) a limitation that the Legislature did not include. *See In re M.N.*, 259 Ariz. 120, 141 ¶ 28 (2025) (“We ‘will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.’” (quoting *Mussi v. Hobbs*, 255 Ariz. 395, 402 ¶ 34 (2023))).

¶29 Our construction preserves the finality interests reflected in § 25-812 while recognizing the Legislature’s separate authorization of a judicial action under § 25-803. By contrast, Hernandez’s construction would substantially limit the operation of both § 25-803 and § 25-814(C), which expressly contemplates circumstances in which “two or more presumptions apply.” We decline to adopt a construction that renders those provisions largely inoperative. *See Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019); *Navarro*, 240 Ariz. at 195 ¶ 9. Reading § 25-812(E) to extinguish every later judicial action would likewise prevent the superior court from ever performing the analysis the Legislature expressly prescribed in the opening sentence of § 25-814(C), with the sometimes-perverse result that the rights of a claimed parent would automatically nullify the rights of an actual parent.

¶30 Our interpretation is consistent with *Stephenson*, which recognized the Legislature’s strong interest in promoting stability and finality in parentage determinations. 192 Ariz. at 480–81 ¶¶ 16–17. Today’s construction preserves those interests while also giving effect to the Legislature’s independent authorization of a judicial paternity action under § 25-803 and the reconciliation procedure prescribed by § 25-814(C).

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

¶31 We also agree with *Brummond* that a biological father is not categorically precluded from maintaining the judicial action to establish paternity authorized by § 25-803 merely because another man's paternity has previously been established by acknowledgment. See 243 Ariz. at 364–65 ¶¶ 14–21. *Brummond* recognized that the Legislature provided multiple statutory mechanisms for determining parentage and that a biological father's judicial action is not displaced simply because an AOP exists, which the biological father may never have known about. *Id.* We adopt *Brummond*'s core reasoning that § 25-803 authorizes an independent action a non-party father may bring, but not any suggestion that § 25-812(E) never applies; that subsection continues to govern challenges to an AOP brought by its signatories. See *id.* at 364–65 ¶¶ 16–18. We do not, however, read *Brummond* as diminishing either the force and effect afforded an AOP under § 25-812(D) or the procedures governing challenges to that AOP under § 25-812(E). Rather, today's decision harmonizes those provisions by recognizing that an AOP remains fully effective while the superior court adjudicates the independent action authorized by § 25-803 and, if applicable, resolves competing statutory claims pursuant to § 25-814(C).

¶32 The court of appeals addressed § 25-812(E) in *Roger S.* There, the court held that, after the sixty-day rescission period, a voluntary AOP may be challenged only through a timely Rule 85 motion alleging fraud, duress, or material mistake of fact, reading § 25-812(E) together with the corresponding federal requirement. *Roger S.*, 251 Ariz. at 558 ¶ 16. We agree with *Roger S.* to that limited extent: § 25-812(E) supplies the exclusive grounds and procedure for setting aside an AOP as between those whose parentage it fixes. To the extent *Roger S.* applied those limitations to bar a non-party biological father from pursuing the independent action authorized by § 25-803, we disagree, for the reasons already stated. *Id.* ¶ 17. *Roger S.* construed only § 25-812; it did not address § 25-803 or § 25-814, and it did not decide the question presented here. *Id.* Our holding is limited to the conclusion that § 25-812(E) does not categorically bar a biological father who was not a party to an AOP from maintaining the independent action authorized by § 25-803 and, upon establishing the statutory prerequisites, obtaining the determination required by § 25-814(C). We disapprove *Roger S.*, *McQuillen*, *Gutierrez*, and *Johnson* only insofar as they treat an AOP as foreclosing the § 25-814(C) balancing or as barring a non-party father's independent § 25-803 action, and we leave undisturbed their holdings on the questions those courts actually decided, including *Roger S.*'s statement about third-party fathers, which was unnecessary to a disposition reached

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

without the § 25-803 and § 25-814 analysis now before us.

¶33 Nor does Rule 85 compel a different result. Rule 85 governs relief from judgments and orders, including AOPs challenged pursuant to § 25-812(E). See Ariz. R. Fam. Law P. 85(c). But Rule 85 also expressly provides that it “does not limit the court’s power to entertain an independent action.” Ariz. R. Fam. Law P. 85(d)(1). Consistent with that language, we conclude that Rule 85 regulates efforts to obtain relief from an AOP itself; it does not extinguish an independent statutory cause of action that the Legislature has authorized elsewhere.

¶34 Hernandez’s reliance on *Johnson* is misplaced. *Johnson* involved a direct effort to obtain relief from an existing judgment establishing paternity and therefore turned on the procedural rules governing such relief. 252 Ariz. at 233–35 ¶¶ 15–22. It did not consider the independent judicial action authorized by § 25-803 or the interaction among §§ 25-803, -812, and -814 when a biological father who was not a party to an AOP asserts a competing statutory claim. To the extent *Johnson* disagreed with *Brummond* and suggested that any challenge to an acknowledgment-based determination—whatever its form—is subject to § 25-812(E), we decline to follow it as applied to a non-party father’s independent action under § 25-803. Because *Johnson* otherwise involved a direct effort to set aside an existing paternity judgment, it does not control the disposition of this case.

¶35 We do not decide whether Strang is entitled to relief from Hernandez’s AOP under Rule 85. The issue we decide is whether the existence of Hernandez’s AOP categorically barred the superior court from considering the independent action Strang asserted under § 25-803. Because the statutory scheme does not compel that result, the superior court erred in concluding that § 25-812(E) ended its inquiry.

¶36 Once Strang alleged facts that, if proven, would establish the statutory presumption arising under § 25-814(A)(2), the superior court was required to determine whether Strang established the presumption recognized in § 25-814(A)(2) and, if so, conduct the analysis required by § 25-814(C) for competing presumptions. At that point, the superior court could not decline to perform the inquiry that § 25-814(C) expressly requires whenever the statutory prerequisites for its application are satisfied. We express no opinion concerning how the superior court should ultimately

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

resolve that analysis. The Legislature committed that determination to the superior court based upon the facts presented and the “weightier considerations of policy and logic.” See § 25-814(C). Once the superior court resolves any competing presumptions under § 25-814(C), its determination establishes which presumption controls under Arizona’s statutory framework.

¶37 This construction also accords with the settled principle that courts should avoid deciding constitutional questions unless necessary to resolve the case. See *Hayes*, 178 Ariz. at 273. Because the statutes may reasonably be harmonized without nullifying any provision, we have no occasion to decide whether § 25-812(E) would withstand constitutional scrutiny if construed to forever bar a biological father who received no notice and was not a party to an AOP from maintaining the independent action authorized by § 25-803. The interest that gives us pause is not a vested parental status but the unwed father’s opportunity to be heard on his own claim of paternity – the very opportunity *Lehr* recognized – and the avoidance canon asks only whether the competing construction raises a serious constitutional doubt, not whether the claimant would ultimately prevail. So, the dissent’s reliance on *Lehr*’s observation that a biological link alone is not dispositive mistakes both the interest at stake and the office of the canon.

¶38 In conducting that analysis, the superior court remains free to consider any arguments or defenses properly preserved and not inconsistent with this opinion. We express no opinion concerning the ultimate resolution of the parties’ competing claims, the applicability of any equitable defenses (which may include delay, prejudice, laches, reliance interests, and the child’s welfare), or whether any party may be entitled to relief from the AOP under § 25-812(E) and Rule 85. Those questions remain for the superior court to resolve in the first instance as appropriate.

C. The Dissent’s Objections

¶39 The dissent’s principal objections share a single methodology: each collapses a distinction that the statutes take care to keep apart. The dissent treats establishing paternity and disestablishing an AOP as one act; a rebuttable presumption and a preclusive judgment as one effect; and an AOP’s force between the two people who signed it and its effect on a stranger who did not as one and the same. Kept distinct, as the text keeps

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

them, the dissent's objections dissolve.

1. A Perfected Acknowledgment of Paternity Is a Presumption Under § 25-814(A)(4), Not a Self-Executing "Court Decree" Under § 25-814(C)

¶40 The dissent's central premise is that a perfected AOP, because it carries "the same force and effect as a superior court judgment," § 25-812(D), is itself the "court decree establishing paternity of the child by another man" that ends the inquiry under the final sentence of § 25-814(C). To preserve that premise, the dissent must limit § 25-814(A)(4) to *unfiled* AOPs, reasoning that only an unperfected AOP is a mere presumption while a perfected one is a decree. The statute will not bear that division.

¶41 Section 25-814(A)(4) presumes paternity where "[a] notarized or witnessed statement is signed by both parents acknowledging paternity." Its text contains no filing requirement and no cross-reference to § 25-812; it does not distinguish a filed AOP from an unfiled one. The dissent supplies that distinction, but "courts will not read into a statute something which is not within the manifest intention of the [L]egislature as indicated by the statute itself," and courts "will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions." *In re M.N.*, 259 Ariz. at 141 ¶ 28 (citation modified). That the Legislature knew how to condition an AOP's legal force on filing – and did so expressly in § 25-812 – confirms that the unqualified presumption in § 25-814(A)(4) was not meant to carry the same limitation. *See Stambaugh*, 242 Ariz. at 511 ¶ 15.

¶42 The dissent's reading also violates the whole-text rule it invokes elsewhere. We read the paternity statutes "as a cohesive whole so that no word or provision is rendered superfluous." *Serrato*, 259 Ariz. at 497 ¶ 16 (citation modified). If every perfected AOP were a § 25-814(C) "court decree" that rebuts all competing presumptions, the presumption that § 25-814(A)(4) creates could never be weighed against any other, and subsection (A)(4) would do no work at all. Our construction, by contrast, gives each provision meaning: § 25-814(A)(4) supplies the presumption, and the final sentence of § 25-814(C) is best read to speak to a litigated decree entered after adjudication – not to a clerk-issued AOP that subsection (A)(4) already classifies as a presumption. Section 25-812(D)'s "same force and effect as a superior court judgment" fixes what the AOP accomplishes between the parties who executed it; it does not transform the

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

AOP into a § 25-814(C) decree that forecloses a stranger's claim.

¶43 The dissent points finally to § 25-815, under which a paternity determination made in another state “by a court . . . or voluntary acknowledgment” has “the same force and effect in this state as if . . . granted by a court in this state,” and to §§ 25-813 and -818, which refer to “order[s] of paternity” without distinguishing their source. Section 25-815 is a recognition provision: it directs our courts to give a sister-state determination whatever effect a like determination would receive here, and so it imports the effect Arizona law assigns rather than defining it. That effect, as between the signatories, is the judgment status § 25-812(D) confers and that we have already acknowledged; § 25-815 does not make an AOP into the “court decree establishing paternity of the child by another man” that the final sentence of § 25-814(C) employs to resolve a contest of presumptions. Sections 25-813 and 25-818 confirm the distinction rather than erase it: § 25-813(1) enters an order only where the service of summons is complete and the respondent fails to appear or otherwise answer—the adjudicative process a stranger to an AOP never receives—and § 25-818’s transmittal requirement is a recordkeeping rule, not a measure of an instrument’s power to rebut a competing presumption. The Legislature itself drew the line the dissent says is missing when it classified a signed AOP as a presumption in § 25-814(A)(4); provisions governing interstate recognition and clerical recording cannot silently override that classification.

2. Section 25-803 Is an Independent Action to Establish Paternity, Not a Rule 85 Motion for Relief from a Judgment

¶44 The dissent faults our earlier discussion for quoting Rule 85(d)(1)’s reference to “an independent action” while omitting its remaining words, “to relieve a party from a judgment.” *See infra* ¶ 81. The criticism misapprehends the role that Rule 85(d)(1) plays in our reasoning. We do not rest Strang’s action on Rule 85(d)(1), and we do not need to. The full text of the rule provides that Rule 85 “does not limit the court’s power to . . . entertain an independent action to relieve a party from a judgment.”

¶45 Strang’s authority to proceed comes from the paternity statutes themselves, not from Rule 85. Section 25-803 authorizes “[t]he father” to commence a paternity proceeding and, more broadly, permits “[a]n adult . . . to establish the adult’s biological parent.” Section 25-804

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

supplies the time for that proceeding, which “may be instituted during the pregnancy of the mother or after the birth of the child,” subject only to the eighteenth-birthday limit for support obligations. We cited Rule 85(d)(1) for the narrow and correct proposition that Rule 85 does not *foreclose* an independent statutory action the Legislature authorized elsewhere; the rule governs relief from a judgment, and it leaves that separate cause of action untouched. The dissent’s point ultimately reinforces ours: because Strang seeks to establish his own paternity rather than relief from the AOP, he needs no Rule 85 vehicle, and the AOP is not a judgment from which he must first be freed.

3. Section 25-812(E) Is Complete for Challenging an Acknowledgment, But It Is Not the Exclusive Path for a Non-Party to Establish Paternity

¶46 The dissent reads § 25-812(E) as a complete and, therefore, exclusive answer to this case: it supplies a fraud-duress-mistake gateway, a burden on the challenger, mandatory genetic testing, mandatory vacatur on clear and convincing proof, and a prospective-only effect. *See infra* ¶ 79. Each of those features is real, and each confirms what § 25-812(E) is *for*. Section 25-812(E) governs a challenge to a “voluntary acknowledgment of paternity”—an effort to unwind an existing AOP and vacate the determination it produced. A § 25-803 petition by a man who never signed the AOP does something different: it establishes his own paternity in the first instance.

¶47 That the Legislature built a complete mechanism for disestablishing an AOP says nothing about whether a separate mechanism exists for establishing paternity by a putative father who was not party to the AOP. The two provisions do not conflict, so the canon that a specific statute controls a general one has no occasion to operate; statutes on the same subject are “construed together . . . as though they constituted one law” so as “to give effect to all the statutes involved.” *See Maya Constr. Co.*, 158 Ariz. at 155. Section 25-812(E)’s limits, by their terms, run to a challenge to the AOP; we will not read those limits into § 25-803, where the Legislature placed no such restriction. *See Stambaugh*, 242 Ariz. at 509, 511 ¶¶ 7, 15. To hold otherwise would require us to “inflate, expand, stretch or extend” § 25-812(E) beyond a challenge to the AOP and onto an independent establishment action it never mentions. *See City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965).

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

4. The Federal Implementing Statute Confirms Our Construction

¶48 The dissent contends that our reading transgresses 42 U.S.C. § 666, the federal provision Arizona’s acknowledgment statute implements, invoking subparagraphs (a)(5)(D) and (E). *See infra* ¶ 101. To the contrary, that statute supports the construction we adopt. Subparagraph (D)(iii) provides that, after sixty days, a signed AOP “may be challenged in court only on the basis of fraud, duress, or material mistake of fact.” 42 U.S.C. § 666. By its terms that clause governs a *challenge* to the AOP; it is the federal analogue to § 25-812(E), and Strang’s independent action to establish his own paternity is not such a challenge.

¶49 Subparagraph (E) requires procedures “under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.” 42 U.S.C. § 666. Our construction does not ratify the AOP; it leaves the AOP “fully effective” while the superior court adjudicates the separate § 25-803 action, and the § 25-814(C) balancing neither confirms nor sets aside the AOP. Most tellingly, subparagraph (L) requires procedures “ensuring that the putative father has a reasonable opportunity to initiate a paternity action” —precisely the § 25-803 action we preserve. 42 U.S.C. § 666. The dissent would cap that “reasonable opportunity” at the period of pregnancy plus the six months after an AOP is signed, but no such limitation appears in the federal text; far from contravening the federal scheme, our construction is what subparagraph (L) affirmatively requires.

5. The Remand Resolves a Real Question, and No “Two Fathers” Problem or Unauthorized Vacatur Arises

¶50 The dissent argues that neither § 25-803 nor § 25-814 empowers a court to vacate an AOP, so that a remand either decides nothing or forces the superior court to vacate a judgment it has no authority to reach, because “a child cannot have two legal fathers.” *See infra* ¶ 92. Section 25-814(C) answers the objection. It directs that, where “two or more presumptions apply,” the court determine which presumption, “based on weightier considerations of policy and logic[,] will control.” § 25-814. That determination — deciding which presumption controls — is the operative act the Legislature prescribed; it does not require the court to first vacate the AOP.

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

¶51 If Strang establishes the genetic-testing presumption of § 25-814(A)(2) and that presumption prevails under the § 25-814(C) balancing, the court’s resulting adjudication is itself a litigated “court decree establishing paternity of the child by another man” — the very decree the final sentence of § 25-814(C) contemplates, which rebuts the competing presumption. The child is thus not left with two legal fathers: the § 25-814(C) determination fixes which presumption of paternity controls. What becomes of the earlier AOP, and of any support obligations or arrearages, together with any relief available under § 25-812(E) and Rule 85, remains for the superior court to address on remand, consistent with any applicable equitable defenses. The remand therefore decides the precise question the superior court declined to reach — whether Strang may pursue the independent action at all — rather than deciding “nothing.”

6. Treating the Acknowledgment As a Judgment Between Those Whose Parentage It Fixes and As a Presumption in a Stranger’s Action Is Not Inconsistent

¶52 The dissent presses a final asymmetry: if the AOP does not bind Strang because he is a stranger to it, how can it carry any weight against him in the § 25-814(C) balancing? And if it carries weight, why do § 25-812(E)’s protections not travel with it? The answer to both questions is that the AOP’s binding effect and presumptive weight are different things, and Arizona law has long treated them so. A judgment’s *preclusive* effect “is limited to parties and persons in privity with parties”; “a person who is not a party to an action is not bound by the result.” *Clark*, 157 Ariz. at 466. It is “a violation of due process for a judgment to be binding on and enforceable against a litigant who was not a party or a privy, and therefore has never had an opportunity to be heard.” *Specialty Cos. Grp. v. Meritage Homes of Ariz., Inc.*, 251 Ariz. 365, 369 ¶ 22 (2021) (quoting *Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 180 ¶ 151 (App. 2004)).

¶53 But a determination that cannot *bind* a stranger may still be given *presumptive* effect against him, subject to rebuttal. We have recognized exactly that distinction: although “a stranger to a litigation may not be bound by a determination made therein,” a court may accord such a determination “presumptive validity, subject to rebuttal,” precisely because the stranger retains the opportunity to challenge it. *Fremont Indem.*, 144 Ariz. at 342, 345. So too here. The AOP’s weight in Strang’s § 25-803 action is not preclusive; it is the presumption the Legislature independently

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

created in § 25-814(A)(4), which the court weighs under § 25-814(C) and which clear and convincing evidence may rebut. The AOP enters the balancing because the statute lists it as a presumption, not because its judgment status binds a man who never signed it—just as a court may take notice that a judgment exists without binding a nonparty “to the evidence in that record.” *See Clark*, 157 Ariz. at 468. And § 25-812(E)’s protections do not “travel” to that action because they attach to a *challenge* to the AOP; Strang does not challenge the AOP, so there is nothing for those protections to govern.

¶54 Nor is our analysis affected by the administrative consequences an AOP carries beyond its signatories—that the clerk transmits the order to the Department of Health Services and the Department of Economic Security, § 25-812(B), and that the acknowledging man is named on the child’s birth certificate, § 36-334(C)(2). Those provisions give the AOP ministerial effect in the state’s records; they do not adjudicate that any other man is not the father, and they bind no one to a determination in a way that forecloses his own claim—the only sense of preclusion our due-process analysis concerns. If anything, § 25-812(F)’s requirement that the signing parties receive notice of the AOP’s legal consequences reinforces the point: the instrument binds those who knowingly execute it, and a man who received no such notice and signed nothing stands outside its force.

¶55 The AOP remains conclusive between Mother and Hernandez, who executed it, and as to the two of them. It may be disestablished only through § 25-812(E) and Rule 85. It functions as a rebuttable presumption in the independent action that § 25-803 authorizes a non-party to bring, and it is weighed there under § 25-814(C). Those propositions are not in tension; they are what it means to give each provision of a unified statutory scheme its intended effect. *Nicaise*, 245 Ariz. at 568 ¶ 11. This construction, and not the dissent’s, honors the text, the federal framework it implements, and the finality interests the Legislature built into § 25-812.

CONCLUSION

¶56 The superior court concluded that Hernandez’s AOP and the time limitations incorporated by § 25-812(E) categorically barred Strang from maintaining his action to establish paternity. Because the superior

STRANG v. MALAY/HERNANDEZ
Opinion of the Court

court ended its statutory inquiry before considering the independent action authorized by § 25-803 and the analysis required by § 25-814(C), it applied an incomplete view of Arizona's paternity statutes.

¶57 Our holding is a narrow one. We hold that § 25-812(E) does not bar a biological father who was not a party to an acknowledgment of paternity from maintaining the independent action authorized by § 25-803, and that once he establishes a competing presumption under § 25-814(A), the superior court must resolve the competing presumptions under § 25-814(C). We do not set aside Hernandez's AOP. We do not determine whether Strang is the child's legal father, which statutory presumption ultimately controls under § 25-814(C), or whether any party is entitled to relief from the AOP under Rule 85. Nothing in this opinion predetermines the outcome of the superior court's analysis under § 25-814(C).

¶58 For these reasons, we accept jurisdiction and grant relief by vacating the superior court's dismissal order and directing the court to conduct further proceedings consistent with this opinion. In our discretion, we also decline each party's request for attorney fees.

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

LOPEZ, V.C.J., joined by BEENE, J. and KING, J., dissenting:

¶59 The majority’s interpretation and application of the paternity statutes, inspired by several erroneous premises and conclusions, unsettles the Legislature’s carefully crafted scheme intended to achieve finality in determining parentage and providing stability for children. The majority’s false premises include fundamental misreadings of the statutory scheme’s operation—that conclusive determination of paternity can only arise from judicial application of A.R.S. § 25-814’s balancing of “presumptions”; the implied superiority of biological paternity over other forms of legal paternity, *supra* ¶ 29 (warning against the “sometimes-perverse result that the rights of a claimed parent would automatically nullify the rights of an actual parent”); and the assertion that its interpretation is necessary because any other interpretation may create constitutional difficulties, *supra* ¶ 22.

¶60 The majority’s reading of the law not only undermines finality, it requires minimizing or ignoring material statutory elements, disavowing several court of appeals opinions spanning nearly a decade—*Gutierrez v. Fox*, 242 Ariz. 259 (App. 2017), *McQuillen v. Hufford*, 249 Ariz. 69 (App. 2020), *Roger S. v. James S.*, 251 Ariz. 555 (App. 2021), and *Johnson v. Edelstein*, 252 Ariz. 230 (App. 2021)—in favor of a single outlier—*Brummond v. Lucio*, 243 Ariz. 360 (App. 2017), rejected by *McQuillen*, *Roger S.*, and *Johnson*—and potentially transgressing the federal implementing statute on which the Legislature based our statutory scheme. For these reasons, and with respect to our colleagues in the majority, we dissent.

I.

¶61 We first offer an interpretation of the paternity statutory scheme that, unlike the majority’s approach, aligns with the purpose of advancing finality and stability in establishing parentage, is consistent with the statutory text and structure, and does not require inferences or creative interpretative work to reconcile statutory provisions. In our view, *McQuillen*, *Gutierrez*, *Roger S.*, and *Johnson* correctly interpret this statutory scheme.

¶62 We agree that A.R.S. §§ 25-803, -812, and -814 comprise a comprehensive scheme to establish and settle disputes concerning paternity. *Supra* ¶ 16. We do not, however, conclude that these statutes

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

must operate together to culminate in a single manner of resolving paternity disputes under § 25-814's presumption balancing test. Instead, § 25-812 provides a statutory mechanism to establish paternity for children born out of wedlock through an "Acknowledgment of Paternity" or "AOP." Section 25-812 provides that once paternity has been established through an AOP, which has the same force and effect of a judgment of the superior court, legal paternity is conclusively established, subject to the exclusive procedures to challenge it under § 25-812(E).

¶63 Section 25-803 provides the statutory mechanism to establish paternity when it has yet to be legally determined. Under § 25-814, the superior court weighs competing presumptions and settles any paternity dispute. However, under § 25-814(C), a "court decree establishing paternity of the child by another man" prevails over any competing presumption. If a clerk of the superior court enters an order on a qualifying AOP under § 25-812(C), "the paternity determination has the same force and effect as a judgment of the superior court." Therefore, such an AOP qualifies as a § 25-814(C) "court decree establishing paternity," and obviates the need for the § 25-814 presumption balancing test. This interpretation, unlike the majority's approach, gives meaning, purpose, and effect to each statutory element and requires no imaginative construction.

II.

¶64 The majority's analysis begins with the conclusion that §§ 25-803, -812, and -814 must operate together such that a conclusive determination of paternity may only result from a judicial balancing of presumptions under § 25-814. *Supra* ¶ 16. To effectuate this premise, the majority works backwards in a futile attempt to reconcile the specific requirements of each statute. Because the majority's premise is wrong, it must repeatedly impute illusory inferences and attempt to smooth analytical edges to make the law work in a way that the Legislature did not establish in the statutory scheme. The majority's analysis ultimately yields a version of the law that is irreconcilable with its text.

A.

1.

¶65 To effectuate its premise that a final paternity determination

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

may *only* result from a contest of presumptions under § 25-814, the majority must contend with two foundational statutory provisions. The first, under § 25-812(A)(1), is that the “state or the parent of a child born out of wedlock may *establish* the paternity of a child by filing . . . [a] notarized or witnessed statement . . . that is signed by both parents acknowledging paternity.” (emphasis added). Under § 25-812(B), once an AOP is filed with the clerk of the superior court, “the clerk . . . shall issue an order establishing paternity” and, under § 25-812(C), “[o]n entry of an order by the clerk of the superior court, the paternity determination has the same force and effect as a judgment of the superior court.” *See also* § 25-812(D) (establishing that an AOP filed with the department of economic security “is a determination of paternity and has the same force and effect as a superior court judgment”).

¶66 The second provision, § 25-814(C), states that “[a] court decree establishing paternity of the child by another man rebuts the presumption” of paternity. The majority concludes that § 25-812’s paternity determination, bearing the “same force and effect as a judgment of the superior court,” does not qualify as a “court decree establishing paternity of the child by another man” under § 25-814(C). *Supra* ¶¶ 40–42. The majority’s premise that all final paternity determinations must occur through § 25-814 requires its conclusion that a legal paternity determination, such as an “order establishing paternity” under § 25-812, does not qualify as “establishing paternity” pursuant to § 25-814(C).

2.

¶67 Having structured its analysis around this flawed premise, the majority labors to reconcile other resulting statutory conflicts. It next conflates *established* paternity with *presumptions* of paternity. *Supra* ¶¶ 40–42. To have legal effect, an AOP must be filed with the clerk of the court or department of economic security and contain both parents’ social security numbers. *See* § 25-812(A)(1), (B), (D). Once these statutory steps are taken to perfect paternity acknowledged under § 25-812(A)(1), paternity is legally established. Section 25-803(A), on the other hand, provides who may commence “[p]roceedings to *establish* the . . . paternity of a child.” (Emphasis added.) Indeed, the majority acknowledges that “Section 25-812 establishes legal paternity” and that “Section 25-803 authorizes a judicial action to establish paternity.” *Supra* ¶ 16. Nevertheless, the majority fails to distinguish *established* paternity from *presumptions* of paternity. Thus, in the majority’s view, an AOP under

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

§ 25-812(A)(1) never creates more than a mere *presumption* of paternity. This erroneous conclusion is necessary to effectuate the majority's initial flawed premise that, under the statutory scheme, paternity is never conclusively established without a § 25-814 contest of presumptions.

¶68 This is wholly inconsistent with the statutory scheme. Notably, § 25-814(A)(4), which describes a presumption arising from any acknowledgment of paternity, does not reference § 25-812, nor does it require the notarized or witnessed statement to comply with the other statutory requirements necessary to establish legal paternity, such as the inclusion of the parents' social security numbers and the filing of the AOP with the superior court or department of economic security. These obvious textual differences generate distinct legal classifications and effects. "As the statute makes clear, the mere execution of a document acknowledging paternity under that provision does not create a judgment; the acknowledgment must be filed with the state—through the clerk of the superior court, ADES, or ADHS—before it establishes paternity with "the same force and effect as a superior court judgment." *McQuillen*, 249 Ariz. at 73 ¶ 12 (citation modified).

¶69 The majority acknowledges that § 25-814(A)(4)'s "text contains no filing requirement and no cross-reference to § 25-812," which it infers to mean that the statute "does not distinguish a filed acknowledgment from an unfiled one." *Supra* ¶ 41. We agree that § 25-814(A)(4) does not specifically distinguish between the two types of acknowledgments, but an express distinction is unnecessary because the obvious distinction arises from the statutory requirements in § 25-812(C) and (D)—absent in § 25-814(A)(4)—which confer upon a perfected AOP the same "force and effect as a judgment of a superior court." An unfiled acknowledgment as described in § 25-814(A)(4), on the other hand, is afforded no such weight in the statutory scheme.

¶70 Despite the majority's assertion that the dissent manufactures this distinction, it is the majority that conflates unfiled and filed acknowledgements without any textual support. Instead, the majority asserts "[t]hat the Legislature knew how to condition an acknowledgment's legal force on filing—and did so expressly in § 25-812—[and this] confirms that the unqualified presumption in § 25-814(A)(4) was not meant to carry the same limitation." *Supra* ¶ 41. Precisely. The Legislature "expressly" delineated between perfected AOPs

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

under § 25-812 and mere presumptions under § 25-814(A)(4). These statutes describe two different AOPs, each with unique requirements and legal significance. But, despite the fact that § 25-814(A)(4) “contains no filing requirement and no cross-reference to § 25-812,” and the Legislature’s specific differentiation between unqualified presumptions and acknowledgments with legal force, *supra* ¶ 41, the majority concludes that § 25-814(A)(4) applies to every AOP signed under § 25-812. As the majority notes but does not heed, “courts ‘will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.’” *Supra* ¶ 41.

3.

¶71 The majority fails to reconcile other statutory indicia that *presumptions* of paternity are only relevant *prior* to the establishment of paternity. Section 25-814(B) specifies that if a man was married to the mother of the child in any of the ten months preceding the birth of the child, “an acknowledgment of paternity may be effected only with the written consent of the presumed father or after the presumption is rebutted.” Section 25-812(A)(1) also contemplates this scenario by providing that “[i]f another man is presumed to be the child’s father pursuant to § 25-814, an acknowledgment of paternity is valid only with the presumed father’s written consent or as prescribed pursuant to § 25-814.” Both sections contemplate a presumed father giving written consent *prior* to an AOP taking legal effect. Written consent is necessary because the AOP rebuts the presumption of the presumed father. The majority does not, and cannot, reconcile its reading of the statutory scheme with these textual inconsistencies. *See Lewis v. Debord*, 238 Ariz. 28, 31–32 ¶ 11 (2015) (“It is not the function of the courts to rewrite statutes.” (quoting *Orca Commc’ns Unlimited, LLC v. Noder*, 236 Ariz. 180, 182 ¶ 11 (2014))).

4.

¶72 The majority’s approach rests on another erroneous conclusion based on the incorrect premise that a § 25-812 paternity determination confers only a presumption of paternity: “If an acknowledgment invariably operates as a conclusive decree under the final sentence of § 25-814(C), § 25-814(A)(4) would be superfluous, because the presumption it creates could never be weighed against any other.” *Supra* ¶ 19; *see also supra* ¶¶ 25, 29. Not so. The majority’s assertion is incorrect because an acknowledgment as described in § 25-814(A)(4) *never*

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

operates as a conclusive decree under the final sentence of § 25-814(C) because it only creates a presumption of paternity. However, a determination of paternity under § 25-812 *always* operates as a decree under the final sentence of § 25-814(C) because it is a paternity determination with “the same force and effect as a judgment of the superior court.” The acknowledgment described in § 25-814(A)(4) is legally distinct from a perfected acknowledgment establishing paternity under § 25-812. See *McQuillen*, 249 Ariz. at 73 ¶ 12; *Gutierrez*, 242 Ariz. at 269 ¶ 40 (“However, § 25-814 specifies mere *presumptions* of paternity to be used if paternity is contested, and is thus subordinate to § 25-812, which governs the voluntary *establishment* of paternity for ‘a parent of a child born out of wedlock.’”). Under our construction, § 25-814(A)(4) would *always* be weighed against other presumptions if the acknowledgment is the type described in § 25-814(A)(4).

¶73 Moreover, § 25-812(A)(1) directly rebuts the majority’s invented superfluousness problem. If a presumed father exists at the time an AOP is signed, and refuses to consent to the AOP, the Legislature expressly provided that the AOP can be “valid only . . . as prescribed pursuant to § 25-814.” § 25-812(A)(1). Why? Because an invalid AOP merely creates a *presumption*, which must be balanced against the *presumption* of the other presumed father under § 25-814. The Legislature explicitly provided the scenarios in which an AOP is subject to balancing under § 25-814, yet the majority declines to address this provision. The illusory risk of § 25-814(C)’s superfluousness is of the majority’s own making by conflating a statutory acknowledgment determining paternity with one creating a mere presumption. The majority’s remedy only compounds the error by vitiating § 25-812’s legal establishment of paternity by excluding it from § 25-814(C)’s final sentence.

5.

¶74 Paternity presumptions are vital to determining paternity when paternity has yet to be established. In that context, establishing and balancing presumptions is the statutory method for determining paternity in the first instance. But mere presumptions of paternity play no role when legal paternity already exists. The Legislature codified this principle in § 25-814(C). The same rationale explains why, “[i]f another man is presumed to be the child’s father pursuant to § 25-814, an acknowledgment of paternity is valid only with the presumed father’s written consent.” § 25-

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

812(A)(1). Thus, if a presumed father is identified *prior* to the establishment of paternity under § 25-812, he must give his written consent *before* an AOP can become legally valid. If he refuses to give such consent, the parties proceed under § 25-814 to balance competing presumptions. See § 25-812(A)(1) (providing that when a presumed father fails to give consent, an AOP can be “valid only . . . as prescribed pursuant to § 25-814”). The Legislature crafted mechanisms to avoid terminating a presumed father’s rights without his consent in § 25-812(A)(1). These mechanisms are necessary precisely because a valid AOP forecloses a presumed father’s rights.

¶75 The majority also fails to offer meaningful analysis supporting its conclusion that legally established paternity under an AOP is synonymous with the rebuttable presumption under § 25-814. *Supra* ¶¶ 40–42. This omission likely arises from the overwhelming evidence to the contrary. Our court of appeals has explained the fundamental difference between a presumption and an established fact: “Prima facie evidence of a particular fact raises a rebuttable presumption of, *but does not conclusively establish*, that fact.” *Barlage v. Valentine*, 210 Ariz. 270, 277 ¶ 27 (App. 2005) (emphasis added). Here, when a court *establishes* paternity, it rebuts the *presumptions*. § 25-814(C) (“A court decree establishing paternity of the child by another man rebuts the presumption.”).

¶76 The Legislature enacted the “presumption” and “establishing paternity” language of § 25-814(C) in 1994. See 1994 Ariz. Sess. Laws ch. 374, § 5 (2d Reg. Sess.) (enacted as A.R.S. § 12-854). In 1994, Black’s Law defined “presumption” as “[a]n inference in favor of a particular fact.” *Presumption*, Black’s Law Dictionary (6th ed. 1990). A “rebuttable presumption” was “[a] presumption that can be overturned upon the showing of sufficient proof.” *Id.* (defining *Rebuttable Presumption* as a subentry under the term *Presumption*). “Establish” meant “[t]o settle, make or fix firmly; place on a permanent footing” and “*put beyond doubt or dispute*.” *Establish*, Black’s Law Dictionary (6th ed. 1990) (emphasis added). In common parlance, “establish” meant to “settle” and “prove,” *Establish*, Webster’s New Dictionary (1994), while to “presume” meant something “that may be assumed as true or valid until the contrary is proved.” *Presume*, Webster’s New Dictionary (1994). As is clear, a “presumption” is anything but “put beyond doubt or dispute” or “settle[d].” See *Establish*, Black’s Law Dictionary (6th ed. 1990); *Establish*, Webster’s New Dictionary

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

(1993). The majority declines to explain the difference between a “presumption” and a fact that has been “established.”

B.

¶77 The majority’s approach to challenging an AOP judgment radically departs from the statutory procedures and effectively nullifies the effect of a determination of paternity under § 25-812.

1.

¶78 The majority’s interpretation allows a putative father to commence § 25-803(A) paternity proceedings despite established legal paternity under § 25-812. This approach appears to lack adequate limits on nullifying § 25-812 paternity. *Supra* ¶ 14. For example, if a father executes an AOP under § 25-812, at any point during the child’s life, another man asserting paternity may petition for paternity to effectively collaterally attack a father’s established legal paternity. This analytical approach allows the sort of absurd result this Court seeks to avoid. *State ex rel. Flournoy v. Mangum*, 113 Ariz. 151, 152 (1976) (“In interpreting a statute a sensible construction should be given which will accomplish the legislative intent and purpose and which will avoid an absurd conclusion or result.”).

2.

¶79 The majority’s interpretation effectively transforms § 25-803(A) from a vehicle for petitioning to establish paternity when it has yet to be determined into a de facto mechanism to collaterally attack legal paternity under § 25-812 at any point during childhood. The statute does not support this interpretation. This method of vacating a judgment is also procedurally unorthodox. In common practice, once a judgment has been entered in a case, the party seeking to relitigate the merits of the underlying action must move to set the judgment aside. *See* Ariz. R. Fam. Law P. 85(b) (“On motion and on such terms as are just, the court may relieve a party or its legal representative from a judgment for the following reasons”); Ariz. R. Civ. P. 60(b) (“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons”). In fact, § 25-812(E) provides precisely such a procedure, establishing that “the mother, father or child, or a party to the proceeding on a rule 85(c) motion, may challenge a voluntary

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

acknowledgment of paternity established in this state at any time after the sixty day period only on the basis of fraud, duress or material mistake of fact."

¶80 Despite the majority's assurance that "[n]othing in today's decision alters those statutory procedures or the legal effect afforded a properly executed acknowledgment under § 25-812(D)," *supra* ¶ 13, the majority jettisons the established statutory procedure in favor of allowing independent actions to proceed under § 25-803. And when presented with the problem of the procedural inconsistencies inherent in deciding that a court decree which rebuts the presumption actually vacates an underlying judgment, the majority simply defers to the superior court to decide a significant issue of law over "[w]hat becomes of the earlier acknowledgement." *Supra* ¶ 51. In doing so, the majority leaves wholly unresolved an issue that implicates additional constitutional concerns about the potential termination of parental rights that their interpretation of the statutory scheme unnecessarily creates.

3.

¶81 The majority's contention that it follows Rule 85's strictures for contesting a § 25-812 paternity determination through an "independent action" is unpersuasive. *See supra* ¶ 33 ("Nor does Rule 85 compel a different result."). The majority reasons that its allowance of a § 25-803(A) paternity action is permitted because Rule 85 "expressly provides that it 'does not limit the court's power to entertain an independent action.'" *Supra* ¶ 33. However, the majority overlooks the remainder of the rule—Rule 85(d)(1) does not limit a court's power to "entertain an independent action *to relieve a party from a judgment.*" Ariz. R. Fam. Law P. 85(d)(1) (emphasis added).

¶82 The words the majority omits from Rule 85 are the operative terms. Rule 85(d)(1) is a savings clause that preserves the historic equitable action for relief from a judgment; it creates no cause of action, and it has nothing to say about a proceeding to establish paternity in the first instance. A petition under § 25-803 does not seek relief from a judgment; it merely seeks to establish paternity where it has yet to be determined. The majority acknowledges the purpose and effect of a § 25-803 petition: it describes Strang's filing as "the independent action authorized by § 25-803," *supra* ¶ 24—a statutory action to establish, not an equitable action for relief.

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

Rule 85(d)(1) preserves the latter and says nothing about the former.

¶83 “It is a basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature as indicated by the statute itself.” *In re M.N.*, 259 Ariz. 120, 125 ¶ 28 (2025) (quoting *Mussi v. Hobbs*, 255 Ariz. 395, 402 ¶ 34 (2023)). A petition under § 25-803(A) to establish paternity is not a Rule 85 motion to set aside a judgment. Section 25-812(E) does not reference § 25-803(A), and the majority acknowledges that “the Legislature prescribed specific procedures governing rescission of, and relief from, an acknowledgment of paternity.” *Supra* ¶ 13 (citing A.R.S. § 25-812(E), (H)); *see also supra* ¶ 13 (“Rule 85(b) supplies the mechanism for relief from a judgment, while § 25-812(E) narrows the grounds available in this context to fraud, duress, or material mistake of fact.”); *supra* at ¶ 16 (“Section 25-812 . . . prescribes *the procedures governing* rescission of, or relief from, that acknowledgment.” (emphasis added)). A petition for paternity is not a challenge to an AOP “[p]ursuant to rule 85(c).” *See* § 25-812(E). And § 25-803(A) does not authorize a cause of action to establish paternity based on “fraud, duress, or material mistake of fact.” Rule 85, on the other hand, recognizes “fraud” or “mistake” as permissible grounds on which to set aside a judgment. *See* Ariz. R. Fam. Law P. 85(b). Thus, the majority’s approach transcends the explicit statutory procedures and allows Strang to seek a judicial declaration that displaces a paternity the Legislature has already deemed legally established, in a statutory proceeding which only provides a cause of action to establish paternity.

¶84 Finally, the majority contends that we “misapprehend[] the role that Rule 85(d)(1) plays in [its] reasoning.” *Supra* ¶ 44. Curiously, the majority claims to have “cited Rule 85(d)(1) for the narrow and correct proposition that Rule 85 does not *foreclose* an independent statutory action the Legislature authorized elsewhere.” *Supra* ¶ 45. But the Legislature need not specifically foreclose an independent statutory action that it forecloses by implication by omitting it from the exclusive statutory remedies. Although the majority posits its own correctness, it fails to consider the entirety of Rule 85(d)(1). Again, Rule 85(d)(1) only concerns independent actions relating to *relief from judgments*. Thus, because the majority declines to classify Strang’s petition for paternity as an action for relief from judgment—as Strang is not apparently bound by any judgment—the actions contemplated by Rule 85(d)(1) are inapplicable to the majority’s analysis because they concern only independent actions *for*

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

relief from judgment. Supra ¶ 45. The majority invokes Rule 85 for a “narrow and correct proposition” that it deems irrelevant to its analysis.

4.

¶85 The majority attempts to bolster its authorization of a § 25-803(A) paternity petition as a procedural avenue to contest a § 25-812 AOP judgment by asserting that “[t]he acknowledgment’s judgment status and § 25-812(E)’s limits . . . bind only its signatories” or parties. *Supra* ¶¶ 21–22; *see also supra* ¶ 28 (“Section 25-812 governs the establishment of paternity by acknowledgment and the *procedures for the parties to that acknowledgement* to obtain relief from it.” (emphasis added)); *see supra* ¶ 28 (“§ 25-812(E)’s limits operate on the parties who signed the acknowledgment and their efforts to obtain relief from it.”). The majority asserts that “[w]e will not read into § 25-812(E) a limitation that the Legislature did not include.” *Supra* ¶ 28. But the Legislature *did* include limitations in § 25-812(E), and despite gliding past those express limitations, the majority reads the “binding only on the parties” limitation into the statute despite its assurance that it will not read into the statute a limitation the Legislature did not include. *See supra* ¶ 28.

¶86 The problem with the majority’s assertion that “[t]he acknowledgment’s judgment status and § 25-812(E)’s limits . . . bind only its signatories” is not just that the statute’s text provides otherwise; it is that the majority’s approach is internally inconsistent. For example, if Hernandez’s AOP is a judgment as to Strang, then Strang must follow § 25-812(E)’s prescribed relief; Rule 85 is the procedural vehicle and § 25-812(E) establishes the legal grounds Strang must prove: fraud, duress, or material mistake of fact. *See supra* ¶ 13 (“Rule 85(b) supplies the mechanism for relief from a judgment, while § 25-812(E) narrows the grounds available in this context to fraud, duress, or material mistake of fact.”). But if the acknowledgment is not a judgment as to Strang, as the majority holds, then he has no recourse under Rule 85(d)(1) for relief from the AOP judgment. *See Ariz. R. Fam. Law P. 85(d)(1)* (declining to limit a court’s power to “entertain an independent action *to relieve a party from a judgment*” (emphasis added)). Consequently, the majority’s textual support for the action it authorizes evaporates because it hinges on Rule 85, as incorporated in § 25-812(E). Faced with this inconsistency, the majority treats the AOP variously and inconsistently based on the circumstance: as a judgment under § 25-812(D), *supra* ¶ 31; a presumption subject to

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

balancing under § 25-814(C), *supra* ¶ 36; and binding on no one but its signatories when Strang's standing is at issue, *supra* ¶ 21. Ultimately, despite its invocation of Rule 85(d)(1)'s "independent action" provision, the majority eschews the rule altogether. *Supra* ¶ 44 ("We do not rest Strang's action on Rule 85(d)(1), and we do not need to.").

¶87 Other statutory provisions further rebut the majority's attempt to cabin an AOP's reach to the signatories. For instance, upon issuing an order establishing paternity based on an AOP, the clerk of the court must transmit "a copy of the order of paternity to the department of health services and the department of economic security." § 25-812(B). Moreover, the state registrar is instructed to state "the name of the father acknowledging paternity" under § 25-812 on the child's birth certificate. A.R.S. § 36-334(C)(2). Additionally, before signing an AOP, "the parties shall be provided notice of . . . the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment." § 25-812(F). Despite the broader effect of an AOP judgment, the majority describes an AOP as a judgment as to the rights solely between the signatories, and it dismisses the sweeping statutory recognition of an AOP's establishment of paternity, and all of the attendant legal obligations and rights, as the mere "ministerial effect in the state's records." *Supra* ¶ 54. In contrast, the statute seems to bind the Department of Health Services, the Department of Economic Security, and the State Registrar to recognize the father's parental rights and enforce his parental obligations.

5.

¶88 The majority's diminution of a § 25-812 paternity determination is also inconsistent with a section of the paternity statutes that establishes "[i]f paternity has been established in another state by a court . . . or *voluntary acknowledgment*, the determination of paternity has the *same force and effect* in this state as if the determination of paternity was granted *by a court* in this state." A.R.S. § 25-815 (emphasis added). The Legislature, thus, equated a voluntary acknowledgement with a judicial determination of paternity without apparent distinction—an approach inconsistent with the majority's analysis.

¶89 Additionally, under the paternity statutes, "[i]n an action to establish paternity, the court shall enter an order of paternity if . . . [t]he service of summons is complete and the respondent fails to appear or

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

otherwise answer.” A.R.S. § 25-813(1). Notably, the statutes do not distinguish different types of paternity orders and require “[t]he clerk of the superior court [to] transmit a copy of each order of paternity or maternity to the department of economic security.” A.R.S. § 25-818(C). The AOP statute includes an identical requirement. *See* § 25-812(B) (“The clerk shall transmit a copy of the *order of paternity* to the department of health services and the department of economic security.” (emphasis added)). The paternity statutes do not distinguish between different types of “orders of paternity” and § 25-812(C) explicitly gives AOPs the “same force and effect as a judgment of the superior court.”

¶90 The majority dismisses the import of §§ 25-815, -813, and -818 as a “recognition provision,” service procedure, and “recordkeeping rule,” respectively. *Supra* ¶ 43. It then declares the irrelevance of the statutes’ uniform recognition of paternity “established in another state by a court . . . or voluntary acknowledgment,” § 25-815, based on its conclusion that a perfected AOP under § 25-812 is a mere presumption under § 25-814(A)(4). *Supra* ¶ 43. Of course, these provisions do not “make an acknowledgment the ‘court decree establishing paternity of a child by another man’ that the final sentence of § 25-814(C) employs to resolve a contest of presumptions,” *supra* ¶ 43, but they do illustrate the statutory parity of sources of paternity—an approach wholly inconsistent with the majority’s analysis.

6.

¶91 Section 25-812(E) and Rule 85(b) provide the only mechanisms for vacating an AOP establishing paternity under § 25-812(A). Neither § 25-803 nor § 25-814 provides any procedure for a court to vacate a legally binding AOP. But, having decided that § 25-803 provides a mechanism to effectively collaterally attack such an AOP, the majority declines to explain what the superior court must do if it finds Strang’s presumption weightier than Hernandez’s § 25-812 paternity judgment. *See supra* ¶ 51 (“What becomes of the earlier acknowledgment . . . remains for the superior court to address on remand.”). The majority’s reticence to address this issue is well founded because there is no procedural mechanism anywhere in the statutes, other than in § 25-812, for setting aside the AOP.

¶92 The majority disclaims setting aside Hernandez’s AOP,

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

supra ¶ 57, insists that the AOP remains “fully effective” while the § 25-803 action is adjudicated, *supra* ¶ 49, and asserts that “[t]he acknowledgment remains conclusive between Mother and Hernandez It may be disestablished only through § 25-812(E) and Rule 85,” *supra* ¶ 55. But neither Mother nor Hernandez can rescind the acknowledgment, as the sixty-day window for doing so is long expired, and neither can challenge the acknowledgment on the basis of a material mistake of fact, based on the six-month limitation in Rule 85. *See* § 25-812(E); Rule 85. Thus, even though a child cannot have two legal fathers, the majority effectively creates this result by potentially allowing two legal paternities to exist simultaneously. Under the majority’s interpretation and application of the statutory scheme, Mother is free to continue to enforce Hernandez’s support obligations under the AOP while also potentially collecting support from Strang. To further complicate matters, the superior court also may have to determine custody between three parents.

C.

¶93 The majority’s interpretation of the statutory scheme implicates a fundamental issue the Court must often address: termination of parental rights. “[T]he permanent severance of the parental relationship is a power of awesome magnitude that must be exercised with great rectitude and always cognizant of the fundamental rights at stake.” *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 153 ¶ 26 (2018) (Bolick, J., concurring); *see also Brenda D. v. Dep’t of Child Safety*, 243 Ariz. 437, 449 ¶ 47 (2018) (Timmer, J., concurring in part, dissenting in part) (“Parents have a fundamental liberty interest in the care, custody, and management of their children that is protected by the Due Process Clause. Thus, when the state seeks to terminate that interest, it must provide fundamentally fair procedures.” (internal citations omitted)); *In re Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 93 (1994) (“[P]arents with an existing parental relationship, *either in fact or law*, are entitled to the highest constitutional protection” (emphasis added)).

¶94 “A legal father is one who was married to the mother between the time of conception and birth, has adopted the child, or has *legally established paternity*.” *David C. v. Alexis S.*, 240 Ariz. 53, 56 ¶ 13 (2016) (second emphasis added). The majority unequivocally acknowledges that “Section 25-812 establishes legal paternity.” *Supra* ¶ 16. Section 25-812(F) requires AOP signatories to “be provided notice of the alternatives to, the

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

legal consequences of and the rights and responsibilities that arise from signing the acknowledgment.” These rights and responsibilities have historically been held to “primarily relate to custody and support.” *In re Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. at 94. Arizona law does not distinguish between the rights of legal fathers who are married, adopt, or legally establish paternity. *See David C.*, 240 Ariz. at 56 ¶ 13.

¶95 This Court has repeatedly recognized that, “[i]n Arizona, ‘[t]ermination of parental rights is governed solely by A.R.S. § 8-533.’” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 248–49 ¶ 12 (2000) (quoting *In re Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. at 95). Thus, in order “[t]o justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child.” *Id.* Critically, § 8-533 “does not enumerate proof of nonpaternity, by itself, as a ground justifying terminating a father-child relationship.” *In re Marriage of Worcester*, 192 Ariz. 24, 27 ¶ 9 (1998).

¶96 Today, the majority provides no guidance on how our superior court may extinguish a valid and binding AOP and the legal father’s attendant rights. *See supra* ¶ 51 (“What becomes of the earlier acknowledgment . . . remains for the superior court to address on remand . . .”). Under the majority’s reasoning, the superior court’s finding under § 25-814(C) in favor of Strang would necessarily rebut the “presumption” of the AOP. But what of Hernandez’s legally established parental rights? If the superior court effectively terminates Hernandez’s parental rights under the § 25-814(C) balancing test, the majority’s favored construction will not have avoided “serious constitutional questions,” but rather substituted one serious constitutional issue for another. *Supra* ¶ 11. In due course, perhaps we will write the next chapter in this case if the superior court is unable to craft a constitutionally palatable resolution, all while continuing to leave the determination of the child’s legal father in flux.

¶97 The majority’s approach will result in one of two legally questionable outcomes. In one, the AOP judgment prevails in the § 25-814(C) balancing contest—in which case the proceeding the majority orders decides nothing, as the superior court will have weighed considerations of policy and logic to no effect, other than to impermissibly

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

ratify an unchallenged AOP. In the other, the superior court effectively nullifies the AOP by vacating it even though it lacks statutory authority pursuant to § 25-812(E) to (1) determine whether fraud, duress, or material mistake of fact justified vacating the judgment, or (2) terminate Hernandez's parental rights.

D.

¶98 The majority's disavowal of four court of appeals opinions unsettles a decade of jurisprudence applying the paternity statutory scheme. This is difficult to reconcile with the majority's account of its own holding. It disavows *McQuillen* and *Gutierrez*, declines to follow *Johnson* as applied to a non-signatory father, and describes *Roger S.* merely as persuasive support for construing §§ 25-803, -812, and -814 together. *Supra* ¶ 32. But *Roger S.* did not harmonize those provisions the way the majority did; instead, it held that "§ 25-812(E) does not allow a putative third-party father to challenge paternity by means other than a Rule 85 motion alleging fraud, duress, or mistake of fact as prescribed by A.R.S. § 25-812(E)." 251 Ariz. at 558 ¶ 17. In fact, the majority rejected *Roger S.*'s core holding. The majority's holding is anything but "a narrow one." *Supra* ¶ 57.

¶99 The complexity of the majority's analysis traces to its premise that paternity may be conclusively established only through § 25-814's balance of presumptions; it is not the result of the Legislature's failure to craft a cohesive statutory scheme. Nor is it the result of Legislative silence on material aspects of the scheme. The opposite is true. The Legislature's perceived silence is not the majority's to fill, because there is, in fact, no silence. Section 25-812(E) does not merely limit challenges; it prescribes what follows one. Once a challenge is brought under § 25-812(E), the court "shall order the mother, her child or children and the alleged father to submit to genetic testing." If clear and convincing evidence from that testing demonstrates "that the established father is not the biological father of the child, the court shall vacate the determination of paternity and terminate the obligation of that party to pay ongoing child support." *Id.* And an order vacating a determination of paternity "operates prospectively only and does not alter the obligation to pay child support arrearages." *Id.*

¶100 The Legislature thus addressed the precise circumstance before us—an acknowledging father shown by genetic testing not to be the biological father—and supplied a complete answer to it: a gateway of fraud,

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

duress, or material mistake of fact; a burden borne by the challenger; mandatory genetic testing; mandatory vacatur upon clear and convincing proof; and a limit on vacatur's retroactive effect. The majority's construction identifies a route that has none of these features. A § 25-803 petition requires no showing of fraud, duress, or mistake; the § 25-814(C) balancing allocates no burden to the man disturbing the established determination; and neither provision says a word about what becomes of the support obligations, the arrearages, or the amounts previously ordered under § 25-809 when the acknowledgment gives way. The majority does not explain why the Legislature would construct such an intricate mechanism and simultaneously authorize a bypass that effectively nullifies the entire scheme. The more natural inference is that the Legislature intended no such bypass.

E.

1.

¶101 The majority posits its statutory construction as a method of avoiding "a serious constitutional difficulty" that may arise because "[a] biological father's interest in the opportunity to establish a relationship with his child is constitutionally protected." *Supra* ¶ 22. The United States Supreme Court established that "the mere existence of a biological link does not merit [the same] constitutional protection" as the "substantial protection under the due process clause" that arises "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood." *Lehr v. Robertson*, 463 U.S. 248, 261 (1983). This finding is reflected in the federal implementing statute that governs the requirements of a state's voluntary acknowledgment framework which, provides that a state must have "[p]rocedures ensuring that the putative father has *a reasonable opportunity* to initiate a paternity action." 42 U.S.C. § 666(a)(5)(L) (emphasis added). The implementing statute also requires "[p]rocedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity" which, after the 60-day period to rescind, "*may be challenged in court only on the basis of fraud, duress, or material mistake of fact.*" 42 U.S.C. § 666(a)(5)(D)(ii), (iii) (emphasis added). The same statute requires "[p]rocedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity." 42 U.S.C. § 666(a)(5)(E). Under the majority's construction, however, a superior court that conducts

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

the § 25-814(C) balancing test and rules in favor of the acknowledging father has done precisely that – ratified an acknowledgment that was never challenged on any ground the statute recognizes.

¶102 The majority’s construction of Arizona’s paternity statutes essentially ignores the requirements of the implementing statute on which our state’s framework is based. Rather than a legal finding of paternity, a signed and properly filed voluntary acknowledgment of paternity now functions as a mere *presumption* of paternity, subject to a subsequent finding of paternity by a court under § 25-814. Rather than restricting challenges to AOPs to instances of fraud, duress, or material mistake of fact, a collateral challenge is available via a petition to establish paternity under § 25-803. The majority simply asserts that Strang’s § 25-803 action is not a challenge to the AOP. *Supra* ¶ 48. But as the implementing statute makes clear, “judicial . . . proceedings are not . . . permitted to ratify an unchallenged acknowledgment of paternity.” 42 U.S.C. § 666(a)(5)(E). Despite the majority’s contention that its “construction does not ratify the acknowledgment . . . and the § 25-814(C) balancing neither confirms nor sets aside the acknowledgment,” *supra* ¶ 49, we are unpersuaded. The majority’s approach facilitates an end run around the statutory bases for challenging an AOP and serves to ratify an unchallenged AOP.

¶103 Finally, rather than limiting a putative father’s “reasonable opportunity” to initiate a paternity action to the period in which the mother is pregnant, along with the six-month period after an AOP is signed, the majority leaves AOPs indefinitely open to attack at any point during the child’s life. The majority declines to analyze why such a construction is “reasonable,” opting instead to simply disavow the limits that the Legislature imposed. *See supra* ¶ 49. Our acknowledgment statute was enacted to implement § 666(a)(5). *See Roger S.*, 251 Ariz. at 557–58 ¶ 14 (“Our legislature adopted the current system in response to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which conditioned certain federal funding on a state’s adoption of laws and procedures for establishing paternity and enforcing child support obligations.”) A construction beyond those requirements is inconsistent with the Legislature’s statutory framework.

¶104 There is no way to *establish* paternity on the grounds of fraud, duress, or mistake, and there is no reasonable statutory construction that can reframe a petition for paternity as a *challenge* to an AOP. Our statutory

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

scheme already provides the mechanism for challenging an AOP in § 25-812(E), in a manner that *directly* aligns with the federal implementing statute. The majority ignores this precise legislative drafting in favor of its own statutory scheme, which nullifies some provisions of § 25-812 entirely. Essentially, under the majority's construction, the timing and procedural requirements of § 25-812(E) are largely optional, or limited only to the AOP's signatories, and a putative father can simply circumvent them by filing a petition of paternity to accomplish precisely the same result as a Rule 85 motion under § 25-812(E).

¶105 Why would a putative father ever file a Rule 85 motion when he can simply file a new action and attempt to nullify the legal finding of paternity that is established under § 25-812(E)? And, more importantly, why would this Court support such a loophole? The majority seems to insinuate a reason: only biological parents can be “actual parent[s],” everyone else is simply a “claimed parent” whose parental status is open to attack for the *entirety* of their “claimed” child's youth. *Supra* ¶ 29 (lamenting “the sometimes-perverse result that the rights of a claimed parent would automatically nullify the rights of an actual parent”). The majority framework's open-ended avenue of collateral attack on legal paternity under § 25-812 belies the notion that it supports “a preference for finality in paternity determinations.” *See McQuillen*, 249 Ariz. at 73 ¶ 11; *see supra* ¶ 29 (“Our construction preserves the finality interests reflected in § 25-812 . . .”). The majority's construction directly contradicts the acknowledged purpose of the paternity statutes.

2.

¶106 The majority's statutory construction rests heavily on trying to avoid “a serious constitutional difficulty” because “[a] biological father's interest in the opportunity to establish a relationship with his child is constitutionally protected.” *See supra* ¶¶ 11, 22, 37 (explaining the majority's statutory construction rests on avoiding constitutional issues regarding a party having notice and the opportunity to be heard). We acknowledge that certain circumstances could lead to an as-applied due process challenge under the paternity statutes. But the existence of possible as-applied due process claims is no reason to interpret a statutory scheme in a manner inconsistent with its text. *Fann v. State*, 251 Ariz. 425, 433–34 ¶ 23 (2021) (“[W]e will not rewrite a statute to save it.” (quoting *State v. Arevalo*, 249 Ariz. 370, 373 ¶ 9 (2020))).

STRANG v. MALAY/HERNANDEZ

VICE CHIEF JUSTICE LOPEZ, joined by JUSTICES BEENE and KING, Dissenting

¶107 This case does not implicate an as-applied due process concern. Strang had intercourse with Mother, had actual knowledge of her pregnancy, and before the child was born, Strang expressed to Mother and Hernandez his belief that he may be the baby’s father. Over two years later, after Mother told Strang that Hernandez was not the biological father, Strang took a DNA test that confirmed his biological relationship with the child in November 2023. But Strang waited until August 2024, approximately nine months after receiving those results, to file to establish his paternity. Moreover, Strang did not file his Petition to Establish Paternity until November 2024, nearly a year after he had the results from his DNA test confirming his biological relationship with the child, and over *three years* after he first communicated his paternity concerns prior to the child’s birth. Also, Strang waited additional months to file a Motion to Set Aside the Acknowledgment of Paternity, which he filed in February 2025, based on both Rule 85 and § 25-812(E). In that motion, Strang argued that the AOP has the same force and effect as a judgment, but that the judgment “may be set aside *under Rule 85* for reasons including mistake, newly discovered evidence, or fraud.”

¶108 The facts of this case confirm our point. We do not confront a scenario in which a biological father had no notice of a pregnancy and his potential paternity. In fact, Strang communicated his potential paternity to both Mother and Hernandez before the birth of the child and well within the statutory window for him to file a petition for paternity. *See* A.R.S. § 25-804 (“Proceedings to establish the paternity of the child may be instituted during the pregnancy of the mother . . .”). On this record, Strang received actual notice of the pregnancy and believed he was likely the father prior to the child’s birth. Surveying the paternity due process landscape, in an analogous circumstance, a putative father whose child is placed for adoption is deemed, for due process purposes, to have knowledge of the pregnancy and his potential paternity as a result of sexual intercourse, thus triggering his obligation to file with the putative fathers registry. *See* A.R.S. § 8-106.01(F) (“Lack of knowledge of the pregnancy is not an acceptable reason for failure to file. The fact that the putative father had sexual intercourse with the mother is deemed to be notice to the putative father of the pregnancy.”).

¶109 Despite Strang’s actual notice of potential paternity and questionable basis for an as-applied challenge, the majority today implicitly concludes that the paternity statutory scheme is likely facially

STRANG v. MALAY/HERNANDEZ

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constitutionally infirm unless it adopts its “favor[ed]” construction, *supra* ¶ 11, and holds that, in the interest of finality for parental determinations, Strang could have filed a petition to re-establish paternity at any point during the child’s youth, all the way up to the age of majority. A putative father with actual notice of a mother’s pregnancy and his potential fatherhood may now force re-litigation of established parental rights ten, fifteen, even seventeen years into a child’s life, invalidate a legal father’s paternity, and unsettle a child’s life by separating him or her from the only legal and custodial father the child has ever known. As explained, the statutory text does not support, much less compel, this result, nor do we see any “preference for finality” reflected in such a decision. With respect for our colleagues, we dissent.