

Abstract & Bibliography: Concurrent Session Family Law and Parentage

Time to Consider—Expanding the Definition of Family for the 21st Century

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During the 2012—2013 United States Supreme session, the court heard two important cases on marriage equality, Hollingsworth v. Perry and United States v. Windsor. Its decisions in those cases, along with a major shift in public sentiment towards same sex marriage, dramatically changed the landscape on this issue. By the time the Court heard arguments in Obergefell v. Hodges concerning whether there is a fundamental right to marry for same sex couples, a majority of states and the District of Columbia recognized such a right. Hopefully this question will be resolved when the Court renders its decision in June (2015).

Social science literature regarding child well-being was used within these cases. My paper is focused on reviewing this and additional literature to determine how children raised in same sex relationships fare when compared to those raised in different sex relationships. It has been my hypothesis, for a number of years now, that children raised in loving, stable supportive families will fare well without regard to sexual orientation. Fortunately, the studies in this area are much more definitive and there are many more available than when I last visited this issue some ten years ago. Earlier research in this area employed nonprobability studies and were criticized as having too small sample sizes or being biased. More recent studies have used national probability studies such as the National Longitudinal Study of Adolescent Health and the Early Childhood Longitudinal Study—Kindergarten Cohort (ECLS-K) to compare academic achievement of children growing up in various structures. Although there are still criticisms that the studies are biased, the overwhelming accumulated empirical evidence supports a conclusion that a child's well-being is not dependent on parental gender or sexual orientation.

In Part I of my paper I provide some context for the discussion. The availability of ART (Assisted Reproductive Technology) and the right to adopt in most states has resulted in many more same sex families. Although literature on family structure has focused primarily on married heterosexual, unmarried heterosexual and (presumably heterosexual) single mothers, for at least the last fifteen years there have been a number of articles and several longitudinal studies on children raised by same-sex couples. Moreover, enough time has passed to provide sufficient data on the well-being of these children from birth through their minority.

Part II forms the bulk of my paper and is focused on the children and the factors that contribute to their wellbeing. At this point it is uncontested that child well-being is tied largely to stability, the quality of the relationship between the child and the parent/significant adult in his/her life and socioeconomic status, not the sexual orientation of the parent. There is a modest advantage for children raised by married biological parents, which lends some support to

arguments for marriage equality. However, there are some studies which discount the relevancy of a biological connection to a child's well-being.

Well-being metrics such as academic performance, social and psychological health, early sexual activity and substance abuse will be considered in my analysis. At the end of the day it appears that as the court stated in DeBoer v. Snyder, "[G]ay couples no less than straight couples, are capable of raising children and providing stable families for them."

Part III of the paper addresses some studies dealing with stigmatization and its impact on a child's well-being. I also review some of the studies used by marriage opponents to argue that children of same sex couples fare worse and in fact may be harmed by these relationships. I critique their methodology and discuss their conclusions.

I conclude with my findings based on the overwhelming empirical data indicating that there is no negative impact on a child's well-being based on the sexual orientation of the parent, that children raised by same sex couples fare as well as and in some areas better than those raised by opposite sex couples. Consistent with the Sixth Circuit's recognition in DeBoer, it appears that the quality of the relationship, and the capacity to raise children within them, turns not on sexual orientation but on individual choices and individual commitment [to each other and the family].

Given that based on the 2010 Census, over 111,000 households in the United States are headed by same sex partners with children under 18, I find this topic particularly compelling as we consider definitions of family and family structures. (*note that this figure is widely assumed to underestimate the actual number of same sex couples who are raising children since the Census does not directly assess the reporter's sexual orientation; rather, it reflects households headed by cohabiting same sex partners who voluntarily report their relationship status).

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