

Is Focusing on Children Bad for the Movement?

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In the quest for marriage equality, the harms to children have become increasingly more relevant. In *United States v. Windsor*, Justice Kennedy's majority opinion cited the economic and psychic harm to the children of same-sex couples as one reason for invalidating the federal Defense of Marriage Act ("DOMA"). The impact on children as a justification to strike down marriage bans, however, may not be the most effective approach to remedy discrimination on the basis of sexual orientation. In the 1970's, feminist scholars criticized a children's rights approach to challenging non-marital laws as "[leaving] the door open for laws discriminating against out of wed-lock-parents based on persistent race and sex stereotypes."¹ It is clear that same-sex marriage bans detrimentally impact children, however, this essay explores whether the focus on the interests of children, even if beneficial in the short-term, leaves intact pernicious gender stereotypes and anti-gay beliefs and practices.

¹ Martha Davis, *Male Coverture: Law and the Illegitimate Family*, 56 RUTGERS L. REV. 73 (2003).