

Initial Draft: (Do not circulate without permission of author)

Note that this is an early work in progress--citations have not been completed and I mention some questions at the end that I would especially like feedback on)

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

Concurrent Session Family Law and ...Parentage/Parenthood

Cheryl E. Amana Burris

During the 2012—2013 United States Supreme Court session the Court heard two important cases on marriage equality, *Hollingsworth v. Perry*¹ and *United States v. Windsor*.² The Court's decisions in those cases, along with a major shift on public sentiment towards same sex marriage, dramatically changed the landscape on this issue. By the time the Court heard the arguments in *Obergefell v. Hodges*³ 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.⁴ As I prepare this paper for our June 22nd conference we await the Court's decision regarding this fundamental right.

As I followed the challenges to Proposition 8 and the litigation from the ninth circuit and ultimately to the United States Supreme Court⁵, I noted arguments set forth concerning whether same sex marriages should be supported because of benefits that would be afforded to the children of such unions. It has been my hypothesis, for a number of years, that children raised in loving, stable, supportive families will fare well without regard to sexual orientation. I had prepared a presentation in the late 1990s reviewing literature on child development in children raised in same gender family structures. The studies at the time were more limited and some were criticized as having too small sample sizes or being biased and using self selected families (convenience samples). With the increased focus on children in the context of marriage equality, as well as a growth in the number of LGB families and paths to parenthood, I have found substantially more studies, and more recently studies comparing a variety of family structures. I realized that this would be an opportune time to revisit and further consider what

¹ 133 S. Ct. 2652 (2013).

² 133 S. Ct. 2675 (2013).

³ ___ S. Ct. ___, No. 14-556; 2015 WL213646.

⁴ [insert states (legal, Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Maine, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming & DC; Stayed, Arkansas, Louisiana, Missouri, Nebraska, South Dakota, Texas; Banned, Georgia, Kentucky, Michigan, Mississippi, North Dakota, Ohio, Tennessee) & mention recent NC bill re magistrates and clerks of court 6/2015]

⁵ [Insert *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), Walker opinion and history here]

contributes to a child's well being and my premise that well being is not dependent on parental gender or sexual orientation. The call for works in progress sent forth in preparation for our mid-year meeting and the theme of the workshop fit perfectly with my area of interest. I am pleased to be provided with the opportunity to prepare a draft and in turn receive valuable feedback which I hope to use in completing this article over the summer.

My paper does not attempt to answer the questions raised during the marriage equality debate about whether marriage provides specific benefits to children which are denied to children of same sex couples. I intend to focus more closely on the children of same sex couples, how the opportunity for parenting has expanded for couples and individuals within the LGBT community and some of the obstacles faced by the poor and minority among us in taking advantage of the expanded opportunities. Much of the literature on family structure has focused primarily on married heterosexual, unmarried heterosexual and (presumably heterosexual) single mothers. Since I last examined this issue a number of articles have been completed addressing children raised by same sex couples. It is these materials that I am incorporating as I advocate for a more comprehensive definition of family.⁶

In Part I of this paper I discuss the formation of same sex families, from families formed post heterosexual relationships, to planned parenting which often involves adoption or Assisted Reproductive Technology (ART) including donor insemination and surrogacy. Parts II A and B of the paper are focused on studies of the children in same sex families and their well being. My conclusions after reviewing the data is that a child's well being is tied largely to stability, quality of relationship between the child and the parent/significant adult in his/her life and socioeconomic status, not the sexual orientation of the parent. Well being metrics such as academic performance, social and psychological health, early sexual activity and substance abuse are considered. Part II C reviews issues of stigmatization and arguments set forth by marriage opponents that children of same sex relationships are harmed by the relationships. Part III considers some instances where more research is needed such as comparisons considering more carefully children of ethnic minority same-sex families. My final section will be my conclusion. I am hopeful that all of the above will be improved by feedback gathered during our conference.

Part I—Parenting

⁶ Although the majority of my sources are grounded in social science, I have been informed by the works of Professor Nancy Polikoff who has been at the forefront of scholars examining same-sex families (particularly lesbian families) for multiple decades. (see i.e. *This Child Does Have Two Mothers: Redefining Parenthood to meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families* (1990)); moreover, the materials produced by the Williams Institute (Gates, Goldberg et al.) have been invaluable.

LGBT parents may become parents under a variety of circumstances. According to Dr. Fiona Tasker, among others, “lesbian and gay parenting after a heterosexual relationship ends in separation or divorce was established as a field of research in the 1980s.”⁷ The opportunity for planned parenting for individuals with the resources has increased the number of families with children who are not the product of a prior heterosexual relationship. One can only estimate the number of children living with same sex parents.⁸ The estimates can be aided by census data as well as analyses of National Health Interview Survey (NHIS) data. A sexual orientation identity measure was added to the 2013 survey. Findings include that “an estimated 19% of same sex couples and LGB individuals who were not in a couple were raising children under the age of 18 in the home.”⁹

There has not been as much research considering how post-heterosexual separation/divorce parenting may differ from planned parenting via adoption and ART. It is apparent, however, that planned LG families are becoming an integral part of recognized social structures in the United States and many Western Countries.¹⁰ At the same time there is not as much scholarship examining bisexual parenting experiences and even less on transgender families.¹¹

A. Lesbian Mother Families:

Lesbian parent families are similar to heterosexual parent families in that they exist in a variety of forms. As mentioned above one or both mothers may have children from a previous heterosexual relationship.¹² The lesbian mothers may have children together through adoption, foster care or donor insemination.¹³ Some earlier studies on lesbian parents evolved during the 1970s and 80s as lesbian women began to fight for custody of their children upon divorce.¹⁴ As increasing numbers of lesbian parents are becoming parents using donor insemination, some studies have reviewed family forms in which the children have been raised in the absence of a father from the start. Although there is insufficient data to generalize on the development of these children compared to those where children may have lived with their fathers, comparison

⁷ (Tasker, Lesbian and Gay Parenting Post Heterosexual...)

⁸ Tasker, Lesbian Mothers, Gay Fathers and Their Children... [this 2005 article estimated that in US one in five lesbians identify as mothers and one in ten gay men identify as fathers]

⁹ Gary J. Gates, LGB Families and Relationships...Williams Institute Oct. 2014 [insert info 30,000 under 18 have married same sex parents; 170,000 have unmarried same-sex parents; between 1.1 & 2 million children under 18 have an LGB parent not part of married or unmarried couple].

¹⁰ Henny Bos article Lesbian-Mother-Families...; Rachel Farr & Charlotte Patterson article Lesbian and Gay Adoptive Parents and their Children

¹¹ Lori Ross & Cheryl Dobinson, Where is the “B” in LGBT Parenting...; Jordan Downing, Transgender-Parent Families.

¹² Tasker, LG Parenting post heterosexual... supra note 7 at

¹³ Henny Bos, Lesbian-Mother Families...

¹⁴ Susan Golombok et al., Children With Lesbian Parents: A Community Study (reference also Charlotte Patterson study 1995).

between these parents and children in two-parent heterosexual families have been completed. The comparisons find little difference with respect to gender development or psychological well-being.¹⁵ Several studies have been conducted with couples who planned to parent reviewing decision making concerning who would conceive and bear the children. Some of the factors considered included age of the partners, interest in a genetic connection, employment and job flexibility.¹⁶ For mothers using donor insemination they may have the option of “unknown donor” where the sperm donor will remain anonymous and “identity-release donor” whom the offspring can meet once reaching the age of 18.¹⁷ Despite the opportunity for lesbians to parent, it is not always an easy option. There are still those who challenge the fitness of lesbians, as well as others in the LGBT community, to parent.¹⁸

B. Gay Men and Surrogacy

Similar to lesbian women there are several paths to parenthood for gay men. In addition to adoption, fostering, shared parenting and as mentioned in Part I as a result of a previous heterosexual relationship, surrogacy is among methods of choice for a number of gay men with the resources to take advantage of it.¹⁹ As surrogacy becomes the option of choice for gay men with such resources, one must be cognizant of gender and class dynamics. Issues of class and race that have arisen with surrogacy generally will be equally applicable in this context.

Although there are limited studies on the number of gay men using surrogacy, at least one organization, Growing Generations, has specialized in surrogacy arrangements for gay men.²⁰ Although working through an agency when making surrogacy arrangements can be expensive,

¹⁵ *Id.* at 21 (referencing Brewaeys et al. indicating only clear difference was co-mothers were more involved in parenting than fathers in two-parent heterosexual homes).

¹⁶ Bos note 10 *supra* and Abbie Goldberg 2006 study Transition to Parenthood for Lesbian Couples

¹⁷ Goldberg *id.* (finding 59% of women wanted an unknown donor to avoid third party interference) for women choosing the known donor option there was a concern that using unknown donors might cause psychological or identity problems for the children during adolescence or later see Gartrell et al. 1996 national lesbian family study and Gartrell et al. 2011 Planned Lesbian Families... [see also part II for more discussion on donor status and offspring behavior]

¹⁸ See e.g. Clarke What About the Children? Arguments Against Lesbian and Gay Parenting (2001)

¹⁹ Surrogacy is one method of ART. There are generally two types of surrogacy, traditional and gestational. Traditional surrogacy involves insemination of a woman who gives birth to a child to whom she is genetically related and gestational, which uses in vitro fertilization (IVF another form of ART). The gestational surrogate births a child to whom she is not genetically related. Gestational surrogacy is increasingly the more common option accounting for 95% of all surrogate pregnancies. U. Smerdon, Crossing Bodies, Crossing Borders...

²⁰ The agency, that was established in 1996, has worked with over 1,000 clients

(<http://www.growinggenerations.com/>) There have been two fairly recent studies (Bergman et al. using couples from growing generations (2010) and Greenfeld & Seli recruiting men from the Yale Fertility Center (2011). Both interviewing the men about their experiences.

given the potential for legal problems, it is probably well advised to do so.²¹ Because of the high cost of surrogacy it ultimately is an option for a small, relatively affluent, predominately white portion of gay men.²²

Surrogacy is similar to donor insemination used by lesbians in that it can allow for one parent to be genetically related to the child. There can also be similar considerations concerning surrogacy and donor insemination such as fertility, health and age considerations. Another similar consideration can be one partner's stronger desire for a genetic connection. Another complexity that can arise involves the family of origin. There has been evidence that with both surrogacy and donor insemination there has been more investment from the family of origin or a resistance to viewing the non-biological parent as a legitimate parent.²³ On the other hand some studies have shown an increased level of acceptance and support from the families of origin as well as from their partners' family. Some couples have addressed the issue of biology by inseminating eggs with sperm from each partner resulting in twins who are half siblings or mixing sperm before insemination. The latter option could prove temporary as there could always be a paternity test later.

C. Lesbian and Gay Adoptive Parents

As with the issue of same sex parenting generally, there has been continuing controversy over whether gay and lesbian adults should be able to adopt children.²⁴ Because adoption has been used as a path to parenthood for a longer period than ART, there is significantly more research on children adopted by lesbians and gays.²⁵ While some states prohibit discrimination on the basis of sexual orientation²⁶ for many years states prohibited adoptions by lesbians and gays. Florida was the last state to have such a ban overturned.²⁷ There has still been resistance to second-parent adoption in some states, although a majority of states now permit such adoptions.²⁸ Demographically lesbian and gay adoptive parents are similar to heterosexual

²¹ For a discussion of some of the legal problems facing those who rely on surrogacy see Robert Zimmer Jr., Note & Comment, *The Surrogacy Minefield: Legal Challenges and Opportunities for Prospective LGBT Parents and Their Attorneys* (2014)

²² The 2010 Bergman study, *id.*, found that 37 of the 40 men who answered the question concerning income had a mean household income of \$270,000. According to growing generations prices for commercial surrogacy can range from \$115,000 to \$150,000. In both of the above studies the men were predominately white (80% Bergman & 90% Greenfield) and neither study included African American men.

²³ Dana Berkowitz, *Gay men and surrogacy referencing inter alia Mitchell & Green article Different Storks for different folks: Gay and Lesbian parent's experiences with alternative insemination and surrogacy* (2007)

²⁴ Charlotte Patterson, *Children of Lesbian and Gay Parents...*(2009).

²⁵ See *e.g.*, Rachel Farr & Charlotte Patterson, *Lesbian and Gay Adoptive Parents and Their Children* (2013); Patterson, *Children of Lesbian and Gay Parents* (2009)

²⁶ Insert California & Mass. Statutes as examples)

²⁷ Insert case

²⁸ Insert states for (26) and against (4) and Polikoff article

adoptive parents.²⁹ The adoptive parents are also similar in that they adopt because they want to have children. There are; however, some clear distinctions. A majority of heterosexual adopting parents do so because of fertility problems, while less than half of same sex couples report this as a reason.³⁰ Lesbian and gay parents are more likely to choose adoption as their first choice to parenthood.³¹ They are also more open to transracial adoption.³² Perhaps because there has more likely not been a struggle with fertility, gay and lesbian parents are less likely to internalize stigma because they are adoptive parents.³³ ‘Among couples with children, same-sex couples are approximately 4.5 times more likely than different-sex married couples (14.3% v. 3.2% respectively) and nearly 10 times more likely than unmarried different sex couples 91.5%) to have an adopted child.’³⁴

Whatever the path to parenthood, once a same sex couple or individual becomes a parent they can expect a decline in the quality of their relationship as they transition into becoming parents.³⁵ Nevertheless as will be discussed in the next section, whether the children in these relationships fare well is not dependent on sexual orientation.

Part II—Outcomes for Children

No matter how an LGBT family has become a parent, one thing is abundantly clear, after over thirty years of extensive examination data overwhelmingly shows that children raised by LGBT parents fare as well as or as poorly as , depending on the circumstances, similarly situated children raised by heterosexual parents. Social scientists have been gathering data since at least the mid 1980s.

A. Early Studies

²⁹ The parents in all instances are often “older, well educated, affluent and predominately white (Farr & Patterson at 42 relying on Farr et al. (2010); Gates et al. (2007) and others)

³⁰ Farr & Patterson supra

³¹ Id.; see also Goldberg et al. Research Report on LGB Families (2014) indicating that same-sex couples are approximately 4.5 times more likely than different-sex married couples and close to 10 times more likely than unmarried different-sex couples to have an adopted child.

³² Id. This willingness may be impacted by the fact that same sex couples are more likely to be interracial.

³³ A study by Abbie Goldberg et al. concluded that gay and lesbian parents were less likely to internalize adoption stigma. Perception and internalization of Adoption of Stigma among gay, lesbian and heterosexual adoptive parents.

³⁴ Goldberg et al., Research Report on LGB-Parent Families (Williams Institute, July 2014) see fig. 3

³⁵ Goldberg et al. Pre-adoptive factors predicting lesbian, gay and heterosexual couple’s relationship quality... (2010); for a more in depth discussion of the considerations facing anyone who chooses to use adoption and/or ART and the plethora of laws to be aware of see Susan Frelich Appleton & D. Kelly Weisberg, Adoption and Assisted Reproduction: Families Under Construction (2009)

Early studies focused more on lesbians because, as mentioned in my introduction, lesbian mothers had begun to fight for their children when their heterosexual relationship had ended in separation or divorce.³⁶ Charlotte Patterson and British researchers Fiona Tasker and Susan Golombok were at the forefront in examining families where the children were being raised by lesbians, either alone or with a partner.³⁷ As may be apparent, I am relying on these researchers, among others, throughout my paper.

As gay men began to parent and both lesbians and gays began to have planned pregnancies, the researchers incorporated these families into their control groups.³⁸ Martha Kirkpatrick conducted one of the earlier studies in 1981.³⁹ After comparing the psychological functioning of twenty young children raised by lesbians with twenty children raised by single heterosexual mothers, the researchers concluded there were no differences in the rates of emotional problems between the two groups of children.⁴⁰ The team headed by Susan Golombok published the results of their study in 1983.⁴¹ The researchers found that “only a small minority of [the] children showed significant psychiatric problems,” and of those a majority were raised by heterosexual parents.⁴² This study was particularly useful because the researchers followed up with the families twelve years later, when the children were young adults. The researchers found no differences in levels of anxiety or depression between the children of either group.⁴³

By the late 1980s we were seeing studies based on planned lesbian families and reviewing children raised solely by a female or female partners. In 1994 Charlotte Patterson published a study based on her interviews with sixty-six mothers in the San Francisco bay area most of whom self identified as lesbian.⁴⁴ The study included thirty-seven children aged four through

³⁶ See Tasker note 7, *supra*; see also Susan Golombok et al., *Children in Lesbian and Single Parent Households: Psychosexual and Psychiatric Appraisal* (1983). Note that in many instances the mother’s sexual orientation had been used as a factor to deny custody (see e.g. *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. 1995) in which Sharon Bottoms lost custody based on a trial court’s finding that she was unfit based on the fact that she was living with her female partner. The trial court’s decision was upheld.

³⁷ Cite to Patterson, Tasker & Golombok, Bos and Chan articles among others

³⁸ *Id.*, see also Gates, Goldberg and Rosenfeld (cite works) (Note to date there still has not been extensive studies involving children raised by bisexuals and the transgendered)

³⁹ Martha Kirkpatrick et al. *Lesbian Mothers and Their Children; A Comparative Survey* (1981)

⁴⁰ *Id.* at 547 (note that neither the psychologist nor the child psychiatrist evaluating the child knew the sexual orientation of the child’s parent. *Id.*)

⁴¹ Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal* (1983) This study compared thirty-seven children raised by lesbian mothers with thirty-eight children raised by heterosexual single mothers. This study also examined children all most all of whom had been born into a heterosexual relationship. (*Id.* 569)

⁴² *Id.* at 565

⁴³ Tasker & Golombok, *Adults Raised as Children in Lesbian Families*, (1995 *id.* at 203; see also Tasker & Golombok, *Do Parents Influence the Sexual Orientation of Their Children? Findings From a Longitudinal Study of Lesbian Families* (1996).

⁴⁴ See Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self Concepts, and Sex Role Identity* (Greene & Herek eds., 1994) (note that there was a small subset who self identified as bisexual)

nine. Dr. Patterson found no differences in rates of behavioral problems or social competence between children in the study and national studies of children within the same age group.⁴⁵ Although the children in the Patterson study reported higher levels of stress, they also reported a greater sense of well-being overall.⁴⁶ By 1997, British researcher Golombok published a study based on a study of children raised by lesbian mothers who had conceived using donor insemination.⁴⁷ The researchers combined interviews of the mothers with testing of children and found no differences in the rates of emotional and behavioral problems between the three groups.⁴⁸

There were, however, differences in two other metrics: the children raised in homes without fathers felt more secure in their attachment to their parents and perceived themselves to cognitively less competent. However, given that there were no significant differences between the children of single heterosexual mothers and lesbian mothers, the differences were apparently not associated with parental sexual orientation.⁴⁹ In the late 1990s Susan Golombok and team identified thirty-nine lesbian mother families using the Avon Longitudinal Study of Parents and Children (ALSPAC).⁵⁰ The ALSPAC had enrolled any woman expecting a baby between April 1, 1991 and December 31, 1992 and residing in Avon.⁵¹ The research team initiated the study when the children were approximately 7 years old. The lesbian mother families were compared with two control groups, also drawn from ALSPAC. One control group consisted of seventy-four two parent heterosexual families and sixty families headed by single heterosexual mothers. The study concluded that “children reared by lesbian mothers appear to be functioning well and do not experience negative psychological consequences arising from the nature of their family environment.”⁵²

By 1998, Raymond Chan published a study he conducted with a research team that he headed. He compared lesbian and heterosexual parents (both couples and singles) and likewise found

⁴⁵ Id. at 166-67.

⁴⁶ Id. at 168 (the children of lesbian mothers reported that they more often felt angry, scared or upset, but that they also felt more joyful, content and comfortable with themselves as compared with the children of heterosexual mothers. Id.

⁴⁷ Susan Golombok et al., *Children Raised in Fatherless Families From Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers* (1997) (A total of thirty lesbian mothers participated in the study, half of whom were single and the other half of whom lived with female partners. The children (mean age of six) were compared to same age children raised by forty-one single heterosexual mothers and another group of forty-one coupled heterosexual couples. Id. at 785

⁴⁸ Id. at 787-88.

⁴⁹ Id.

⁵⁰ Golombok et al., *Children with Lesbian Parents: A Community Study* (2003)

⁵¹ Id. at 22, Avon is an area of southwest England with a population of 1 million. Id. (describe method of identification/recruitment here)

⁵² Id. at 30 (include Beth Perry study also using ALSPAC families in this note)

no difference between children in the groups in the areas of socioemotional development, school adjustment or peer relations.⁵³

B. Studies from the 2000's⁵⁴

By the mid 2007's studies by Henny Bos' research team in Holland had identified one hundred lesbian couples raising their children from birth and compared them to one hundred heterosexual parent couples.⁵⁵ Using questionnaires, observations and diaries, the researchers found behavior problems between the children were no greater in one group than the other.⁵⁶ Bos and her researchers also found that "[l]esbian [nonbiological] mothers are more committed as a parent than are heterosexual fathers" and also lesbian coparents "are more effective and more committed than heterosexual fathers as a parent."⁵⁷ Bos & Frank van Balen followed up with the children in the sample and found similar scores on psychological adjustments compared to studies based on population samples (Dutch samples used).⁵⁸ They also reported that children in the sample reported low levels of stigmatization.⁵⁹ Other studies have found that LGBT parent families are vulnerable to stigma, rejection and exclusion in school settings.⁶⁰

From the mid-2000s to the present more data has become available, covering more families and including children from birth, through adolescence to adulthood. Studies have also moved beyond convenience samples, which had been criticized because they relied on same-sex parents who were targeted and agreed to participate.⁶¹ There appears to be four nationally representative data sets relied upon by researchers/scholars examining the well being of children. These include the Early Childhood Longitudinal Study Kindergarten Cohort (ECLS-K), the National Longitudinal Study of Adolescent Health (ADD Health), New Family Structures Study (NFSS) and United States Census Data.⁶² For the reasons mentioned in note 61, studies

⁵³ Raymond W. Chan et al., *Psychosexual Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers* (1998)

⁵⁴ Professor Carlos A. Ball has done an excellent job of summarizing a number of studies through 2013 (*Social Sciences Studies and the Children of Lesbians and Gay Men: The Rational Basis Perspective* (2013))

⁵⁵ Henny M.W. Bos et al, *Child Adjustment and Parenting in Planned Lesbian-Parent Families* (2007)

⁵⁶ Id. at 41.

⁵⁷ Id. (similar findings with Brewaeys et al. 1997 study *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, as well as Golombok & Badger, *Children Raised in Mother-Headed Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers, at Early Adulthood* (2010))

⁵⁸ Henny M.W. Bos & Frank van Balen, *Children in Planned Lesbian Families: Stigmatization, Psychological Adjustment and Protective Factors* (2008)

⁵⁹ Id.

⁶⁰ See i.e. Abbie E. Goldberg & Julianna Z. Smith, *Perceptions of Stigma and Self reported School Engagement in Same-Sex Couples with Young Children* (2014) (addressed in section II C)

⁶¹ Convenience samples were relied upon because of the difficulty in capturing these families on larger scales. Over time, however, longitudinal studies, as well as much larger sample sizes have become available. See e.g. Michael Rosenfeld, *Nontraditional Families and Childhood Progress Through School* (2010)

⁶² The ECLS-K represents the experiences of children who were in kindergarten and first grade in 1999 and 2000 and mid-adolescents in 2010; the Add Health study reflects the experiences of adolescents (12-18) during the mid-

used by those examining same-sex families still more often rely on convenience data sources with the most often used study being the National Longitudinal Lesbian Family Study (NLLFS).⁶³ The studies have consistently shown that children raised in same-sex families fare just as well as those raised in different sex families. ***This section will be developed more fully with discussion of academic performance, cognitive development, social development, psychological health, substance abuse and early sexual activity.**

C. Studies Reporting that Children Fare Worse and Studies Considering Perceived Stigma

Although the overwhelming consensus is that children raised in same sex families are not harmed based on the sexual orientation of their parents, there have been a minority of studies arguing to the contrary. Recently there have been a few studies reporting that children in same sex families fare worse on measures of well-being. The most publicized of the studies are those written by Mark Regnerus.⁶⁴ (Incorporate Regnerus studies and responses here).

Part III—Forgotten Families

A. Minority Communities

From a review of the literature, it appears to me that limited attention has been paid to minority communities of same-sex parents. In part II B, I will discuss stigma against same-sex parents and its impact on their children. I would like to know more about the influence of racism and the stigma that is still associated with sexual orientation and whether the intersection of these factors influence the well being of minority children. The majority of children being raised by same-sex couples are still overwhelmingly the biological children of a partner.⁶⁵ 1 in 3 individuals in same-sex couples raising children are people of color.⁶⁶ Moreover, ethnic minority individuals in same-sex couples are more likely to have children compared to white individuals in same-sex couples.⁶⁷

1990s; the NFSS is not specific to age and timeframe and the census represents school-age children within the most recent census period (2010 w some updates).

⁶³ The NLLFS is based on interviews with donor-inseminated lesbian mothers five times from insemination or pregnancy to the child's 17th birthday.

⁶⁴ Mark Regnerus, *How Different are the Adult Children of Parents Who have Same-sex Relationships? Findings From the New Family Structures Study* (2012); Regnerus, *Parental Same Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children; Answering Critics of the New Family Structures Study with Additional Analyses* (2012); also see also Allen et al., *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*

⁶⁵ U.S. Census Bureau's American Community Survey (ACS) shows approximately 59% of children under 18 in same-sex couple households are biologically related.

⁶⁶ Kastanis & Wilson, *Race/Ethnicity, Gender and Socioeconomic Wellbeing of Individuals in Same-sex Couples* (2014).

⁶⁷ *Id.*

Of African American same-sex partner households, 79% of the families were headed by two Black women or two Black men, while 21% were interracial.⁶⁸ The highest proportion of African American same-sex couples are in the South.⁶⁹ While overall same-sex couples are more likely to have a college degree than different sex couples, the difference is smallest with African Americans and Asian Pacific Islanders.⁷⁰ Despite the higher education the unemployment rates are higher and the median income is lower for African American Same-sex couples.⁷¹ African-American individuals in same sex couples raising children have lower median incomes, with females raising children having the lowest median income.⁷² 41% of African-American same-sex couples are raising children.⁷³ Having children also impacts educational attainment in that people of color in same-sex couples are less likely to have a college degree.⁷⁴

30% of Latina same-sex couples are raising children. They are less likely to have completed college; however, there is no statistical difference in median income between Latina same-sex and different-sex couples raising children. Latina individuals in same-sex couples raising children are least likely to have health insurance.⁷⁵ Geographically Latino/a same-sex couples are situated in the Southwest. Both African-American and Latino/a same-sex couples are less likely to own their own homes and Hispanic women are most likely to qualify for Temporary Aid to Needy Families (TANF).⁷⁶ For Latino/a same-sex couples raising children about 1 in 3 are non-citizens.⁷⁷

26% of American Indian and Alaskan Native (AIAN) same-sex couples are raising children.⁷⁸ The majority of couples live in the Mountain States.⁷⁹ Of the couples raising children, they and Latino/a couples, were the least likely to have a college degree.⁸⁰ There was no statistical difference in median income and they were also less likely to have health insurance.⁸¹ This ethnic group and African-American women were most likely to have served in the military.⁸²

⁶⁸ Dang & Frazier, *Black Same-sex Households in the United States: A Report From the 2000 Census* (2004)

⁶⁹ Kastanis & Wilson (2014)

⁷⁰ Id. 3-4% compared to 16% for whites.

⁷¹ Id. (unemployment rate is 9% compared to 7% for different-sex couples; for median income, although the median is lower for African American males (\$27,000 vs. \$30,500) it is comparable for African American females (approximately \$22,000).

⁷² Id. \$20,000 compared to \$24,000 for white females.

⁷³ Id. (The majority of African-American same-sex couples are female)

⁷⁴ Id. for African Americans 16% of same-sex vs. 23% of different sex.

⁷⁵ Id. 59% of same-sex vs. 61% different sex Latina couples and compared to 83% white same-sex and 90% different sex. It will be interesting to see if the affordable care act impacts these numbers.

⁷⁶ Moore & Brainer, *Race and Ethnicity in the Lives of Sexual Minority Parents and Their Children*

⁷⁷ Kastanis & Gates (2013) *LGBT Latino/a Individuals and Same-Sex Couples*

⁷⁸ Kastanis & Gates (2013)

⁷⁹ Id.

⁸⁰ Id. 13% and 12% respectively)

⁸¹ Id. 51% compared to 72% of different sex AIAN couples raising children.

⁸² Id.

Asian and Pacific Islanders (API) are mainly on the West Coast.⁸³ 17% of the same-sex couples are raising children. Only API individuals in same-sex couples reported similar unemployment rates compared to different sex API couples. If the same-sex couples are raising children the educational attainment level dropped from 58 to 25%. As with the other ethnic groups discussed above they are less likely to have health insurance.⁸⁴ Although they have a higher median income than African-American, Latino/a and AIAN couples raising children, it is still low and they are unlikely to own their own home.⁸⁵ Citizenship and immigration issues emerge as key issues for both API and Latina/o couples.⁸⁶

This data is striking in that the racial disparities in income and employment are typical of those seen with different sex couples of the same ethnic groups. Yet, when one looks at the information none of the same-sex couples, particularly those headed by females are doing particularly well. As I develop this paper I would like feedback on how to best address the economic and health care disparities for all of the families, and the challenges for ethnic minority families that are compounded by the disparities based on race. As I call for a broader definition of family to incorporate and support same-sex families, I would also like to see recognition and support for the extended family structure.⁸⁷

There is a mountain of information available at this point (much of which I have gathered but still must get through) yet there seems to be a void when addressing transgender families, ethnically diverse families and to a lesser extent bisexual families. Is there a difference based on geographical location? The data suggest that a higher proportion of same-sex couples live in the West,⁸⁸ but a higher proportion of African American same-sex couples are in the South, where the climate may be much less supportive. It seems to be firmly established at this point that the well being of children is not based on sexual orientation. Should there be attention paid to positive differences in children raised by same-sex children? For example, for a number of years now the data shows that children in same-sex parents sometimes have less stereotyped beliefs, and may be more open in their views of societal norms.⁸⁹ A larger number of same-sex couples have adopted children with special needs, what information can be gleaned from the successes with these children?

I look forward to feedback and direction in answering some of the above questions, which can be useful as we expand our definition of family.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Kastanis & Gates; Moore & Brainer

⁸⁶ Moore & Brainer

⁸⁷ See e.g. Justice Marshall's discussion in *Moore v. City of East Cleveland*

⁸⁸ Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*,

⁸⁹ See articles by Patterson; Stacey & Biblarz for example

