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The Regnerus Study – Fact or Fiction?

I. Introduction

In July 2011, Mark Regnerus¹ launched the New Family Structures Study (NFSS) to gather new data in order to evaluate whether biological relatedness and the gender of young adults' parents are associated with important social, emotional and relational outcomes.² Prior to the NFSS, very few long-scale studies³ had been done of young adults who have spent time in households with two parents of the same sex.⁴ The continually changing definition of the “best environment” for children created confusion around the subject as well.

Leading up to and through the mid-1990's, most family scholars affirmed the elevated stability and social benefits of the married, heterosexual, biological two-parent household when contrasted to single mothers, cohabitating couples, adoptive parents, divorced parents, and gay or lesbian parents.⁵ In the early 21st century, the trend shifted towards recognizing some differences in outcomes between children in same-sex and heterosexual homes, but not as many as scholars might have expected. This movement

¹ Mark Regnerus is an associate professor of sociology at the University of Texas at Austin. His areas of research concentrate on sexual behavior and formation.

² *About the Study*, THE NEW FAMILY STRUCTURES STUDY, UNIV. OF TEX. AT AUSTIN POPULATION RESEARCH CTR., www.prc.utexas.edu/nfss/ (last visited Feb. 26, 2013).

³ According to the Regnerus Study, no long-scale studies had been done prior to the NFSS, however, during my research for this paper, I came across at least one substantially similar study completed in 1996. Susan Golombok & Fiona Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings From a Longitudinal Study of Lesbian Families*, 32 DEVELOPMENTAL PSYCHOL. 3 (1996).

⁴ *Id.*

⁵ Mark Regnerus, *Queers as Folk, Does it really make no difference if your parents are straight or gay?*, SLATE (June 11, 2012), http://www.slate.com/articles/double_x/doublex/2012/06/gay_parents_are_they_really_n_o_different_.html.

gave rise to the “no differences” theme used in various studies, reports and depositions.⁶ By 2005, the matter seemed settled when the American Psychological Association (APA) issued a brief on homosexual parenting. The APA asserted, “not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents.”⁷ The differences in scholarly opinions and the continually changing climate led Mark Regnerus to conduct the NFSS study across a wider range of study participants than had ever been done before.⁸

II. Cultural Background

Homosexual parenting existed as a source of constant controversy from the time it was brought to light. Between 1990 and 1995, law review literature on the subject of same-sex families experienced a nine-fold increase from when it was first seriously raised in the United States two decades prior.⁹ In a 1997 University of Illinois Law Review article on the impact of homosexual parenting on children, Professor Lynn D. Wardle argues that the legal academic and social science communities came to the defense of gay marriage to hastily, without considering the effects on children.¹⁰ Professor Wardle further asserts that law review articles supporting homosexual parenting have relied on methodologically flawed and inadequate social science studies comparing the effects of

⁶ Alicia Crowl, Soyeon Ahn & Jean Baker, *A Meta-Analysis of Developmental Outcomes for Children of Same-Sex and Heterosexual Parents*, 4(3) JOURNAL OF GLBT FAMILY STUDIES 385, 386-89 (2007) (suggesting that children raised by same-sex parents fare equally well to children raised by heterosexual parents).

⁷ *Id.*

⁸ *Id.*

⁹ Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 1997 U. ILL. L. REV. 833, 834 (1997).

¹⁰ *Id.* at 833.

same-sex and opposite-sex parenting.¹¹ Additionally, he suggests that these studies have ignored significant potential effects of gay childrearing on children. These effects include increased development of homosexual orientation in children, emotional and cognitive disadvantages caused by the absence of heterosexual parents, and economic security.¹²

Wardle's article continues to advance the position that the willingness to honestly state opposing positions, to meet those arguments directly, and for commitment to the "fair and vigorous exchange of informed opinions ideal of legal scholarship" is generally absent from most of the current law review literature addressing homosexual marriage and parenting.¹³ There is no group with a strong vested interest in presenting a competing point of view because advocates of the proposed legalization of same-sex parenting are not explicitly seeking to deny legal rights or interests to any other identified group.¹⁴ He then posits that as a result, the problem goes beyond rational uniformity of belief and involves strong intellectual taboos about criticizing or opposing the pro-legalization viewpoint.¹⁵

Regarding the issue of whether homosexual parenting is generally as good for children as heterosexual parenting, Wardle suggests that the issue is a factual problem for the legislature, not the courts.¹⁶ In his view, the question requires a factual comparison of the general childrearing abilities of heterosexual and homosexual couples as individuals and as classes.¹⁷ While many of the social science studies revealed no differences

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 834.

¹⁴ *Id.*

¹⁵ Wardle, *supra* note 9, at 840.

¹⁶ *Id.* at 842.

¹⁷ *Id.*

between heterosexual and homosexual parenting, Wardle faults most of the studies for being based on “very unreliable quantitative research, flawed methodologically and analytically (some of little more than anecdotal quality), and provide a very tenuous empirical basis for setting public policy.”¹⁸ These methodological flaws do not create conclusive results, but instead invite questions that need to be further examined.

Following publication of Wardle’s article, several legal scholars responded with criticisms. Among them was an exceptionally insightful article by Carlos A. Ball and Janice Farrell Pea, *Warring with Wardle: Morality, Social Science, and Gay and Lesbian Parents*.¹⁹ Ball & Pea were doubtful of Wardle’s accusation that there was an “intellectual taboo”²⁰ in the legal academic community that stifles anti-gay rights views for three main reasons.²¹ First, given that gay rights literature generally tends to be of an advocacy nature, it is not surprising that a majority of law review articles on the topic are in favor of gay rights positions, in the same way that most law review articles about racial and gender discrimination are pointed at formulating ways of dealing with those topics respectively.²² Second, Wardle does not point to any article that has been submitted to legal journals criticizing same-sex marriage or homosexual families that has not been published.²³ Third, Wardle does not mention those law review articles that, while perhaps not written exclusively on the issues mentioned here, are generally critical of gay rights.²⁴

¹⁸ *Id.*

¹⁹ Carlos A. Ball & Janice Farrell Pea, *Warring With Wardle: Morality, Social Science, and Gay and Lesbian Parents*, 1998 U. ILL. L. REV. 253 (1998).

²⁰ Wardle, *supra* note 9, at 840.

²¹ Ball & Pea, *supra* note 19, at 256.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

In Wardle's article, he also posits two reasons to garner support for his public proposal calling for a codified presumption that homosexual parenting is not in the best interests of the children.²⁵ The first reason is founded on arguments seeking to show that homosexual relationships are morally suspect.²⁶ The second reason uses the social science literature that has studied the children of homosexuals to argue that those children actually suffer harm from the intimate relationships of their parents.²⁷ Ball and Pea discuss each reason in turn.

In discussing the morality of homosexual parenting, specifically in second-parent adoption situations, Wardle states that

one gets the sense that same-sex partner adoptions are often for the sake – status and security – of the adult adopting partner. The objective seems to be to provide a clear basis for claiming relational rights if the same-sex relationship breaks up, rather than to provide for the best interests of the child.²⁸

Additionally, in his conclusion, Wardle notes that “children are the innocent victims who suffer the most from choices their parents make to experiment for personal self-gratification with extramarital sexual relationships.”²⁹ Ball and Pea counter this argument with the assertion that it is unlikely that the decision-making process regarding whether to have or adopt a child is significantly different for homosexual couples as compared to heterosexual couples.³⁰ This comparison invites the question, why are we

²⁵ Wardle, *supra* note 9, at 842.

²⁶ Ball & Pea, *supra* note 19, at 257. Ball and Pea's article depicts Professor Wardle as viewing most homosexuals in intimate relationships as primarily selfish actors who are concerned with their own sexual gratification and promoting their rights as adults, than with the interests of children.

²⁷ *Id.* at 257-58.

²⁸ Wardle, *supra* note 9, at 882.

²⁹ *Id.* at 897-98.

³⁰ Ball & Pea, *supra* note 19, at 262.

having children? The literature on parenthood suggests that couples decide to have children for a host of reasons that often are as much about themselves as they are about children.³¹ A leading study³² of why heterosexual couples decide to have children found that “the most frequent reason both men and women gave ... for becoming a parent was their desire for an intimate and special relationship with their children.”³³ Other frequent reasons given were related to the “changes they thought parenthood would make in their sense of themselves,”³⁴ as well as wanting to demonstrate and maintain the strength of the relationships between the adults.³⁵

Regarding Wardle’s argument about second-parent adoptions being sought “for the sake – status and security – of the adult adopting partner,”³⁶ Ball & Pea note that a majority of the courts that have looked at the issue have concluded that the best interests of children are promoted by the recognition of second-parent adoptions because the children are better off as a result.³⁷ The authors also point to the irony that homosexuals have to defend and explain their desire to love and nurture children when such desires are expected of the rest of the population, and when such desires are lacking, it is often considered by many to be “abnormal.”³⁸

³¹ *Id.*

³² CAROLYN PAPE COWAN & PHILIP A. COWAN, WHEN PARTNERS BECOME PARENTS, 36 (1992).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Wardle, *supra* note 9, at 882.

³⁷ Ball & Pea, *supra* note 19, at 266. *See* *In re M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. Cir. 1995). The court, consistent with the best interests of the child, approved the second-parent adoption by the gay partner of the adoptive parent.

³⁸ Ball & Pea, *supra* note 19, at 266.

The question then follows of how to best counter these arguments. The authors suggest that there are two options. The first being that homosexuals abide by the traditional liberal position that matters of morality should be outside any discussion of rights.³⁹ The second is to have supporters of homosexual families raise normative arguments of their own, relating to the value and goodness of those families provide as much stability, continuity, and support for children as heterosexual homes.⁴⁰ The existence of an emotional commitment between two adults, where loyalty and fidelity exist, is not necessary nor sufficient to guarantee a child's well being can provide a solid source of stability and nurture for a child.⁴¹ It is the opinion of the authors that Professor Wardle's policy proposal disregards the value, both intrinsic and instrumental, of commitment, loyalty, and love in forms of human associations other than the intimate heterosexual relations of two adults.⁴²

Ball & Pea then turn their attention to Wardle's use of the social science literature to support his argument that children raised in homosexual homes fare worse than those in heterosexual homes. Wardle contends that the researchers leading these studies, as well as the participants in the studies, have predetermined conclusions and a bias in favor of homosexual parenting.⁴³ However, the methodological shortcomings in the social science studies referenced by Professor Wardle are discussed in the studies themselves. Some of the weaknesses include

[1] comparing children raised by lesbians and their partners with children raised by single heterosexual mothers, [2] a lack of studies on family

³⁹ *Id.* at 267.

⁴⁰ *Id.* at 268.

⁴¹ *Id.* at 269.

⁴² *Id.* at 270.

⁴³ Wardle, *supra* note 9, at 851.

processes and interactions (as opposed to assessments of child adjustment), [3] a lack of studies on gays and lesbians who had or adopted children after they became open about their sexual orientation, and [4] a lack of longitudinal studies.⁴⁴

There are three main points related to social science research that Wardle relies on in his arguments. First, the types of methodological flaws that he discusses in his article, such as small sample sizes and lack of diversity in the samples, are not issues limited to the study of homosexual families.⁴⁵ When it comes to studying homosexual behavior, it is difficult to obtain large, representative samples because many subjects are not willing to identify themselves as homosexuals.⁴⁶ Professor Wardle suggests that more homosexual households be studied before the law sanctions homosexual parenting, but at the same time, suggests that the law be as difficult as possible for homosexuals to maintain custody of their children or to adopt.⁴⁷ Second, Wardle oversimplifies the research by implicitly arguing that there are only “biased” and “unbiased” social science studies.⁴⁸

The scientist’s goal is to strive toward unbiased work, but the view that totally value-free work will actually be achieved has been criticized as scientifically naïve for some time. Part of the methodological norms for reporting research is to make clear to the reader how the research was conducted so that the reader will be able to make an informed judgment about the quality of the research, including the problem of bias.⁴⁹

Lastly, there are ongoing efforts to address some of the methodological problems raised by Professor Wardle.⁵⁰ Longitudinal studies of the children of lesbian parents are being

⁴⁴ Ball & Pea, *supra* note 19, at 272.

⁴⁵ *Id.* at 273-74.

⁴⁶ *Id.* at 274.

⁴⁷ *Id.*

⁴⁸ *Id.* at 275.

⁴⁹ *Id.*

⁵⁰ Ball & Pea, *supra* note 19, at 275.

conducted, and additionally, there are now a sufficient number of studies of homosexual families to make meta-analysis of the data possible.⁵¹

Professor Wardle's focus seems to be on the purported indicia of potential harm from homosexual parenting. He argues that the children are harmed because there is a greater risk that they will suffer in several areas, including same-gender intimacy (which he posits will lead to HIV infection, drug abuse, and suicide⁵²), as well as having issues with gender roles, gender identities and self-esteem.⁵³ Wardle also suggests that some of the children of homosexual parents will be at risk of being sexually molested.⁵⁴

Ball and Pea identify two ways of addressing this particular harm argument. The first is to deny the risk identified by Wardle constitutes harm because there is nothing wrong with being homosexual and courts should not be making decisions based on such a classification.⁵⁵ Unfortunately, the reality is that many judges, legislators and members of the public view homosexuality as a negative trait.⁵⁶ Due to these realities, it becomes necessary to attack Wardle's argument head on and show, first, a lack of convincing proof that there is a greater chance of homosexuality among children raised by homosexuals⁵⁷, and second, that even assuming *arguendo*, that there was a greater risk,

⁵¹ Meta-analysis is a method of accumulating data and assessing the ability to permit a generalized knowledge claim, or in lay terms, reducing sampling error by increasing the sample size.

⁵² Wardle, *supra* note 9, at 854.

⁵³ *Id.* at 854-55.

⁵⁴ *Id.* at 865-66.

⁵⁵ Ball & Pea, *supra* note 19, at 281.

⁵⁶ *Id.*

⁵⁷ Interestingly, it appears that Wardle believes a child's sexual orientation can be affected in some unspecified way by observing and being around a homosexual parent. Wardle, however, does not explain why, if this is true, the vast majority of homosexuals are raised by heterosexual parents.

interventions by the judiciary and legislature seeking to influence those orientations would be highly inappropriate.⁵⁸

In response to Wardle's position that children of homosexual homes are more apt to engage in negative and self-destructive behaviors, Ball and Pea note that the vast majority of adolescents who engage in such behavior, whether straight or gay, are raised in heterosexual homes.⁵⁹ The social science literature that has studied gay adolescents has concluded that to the extent these problems exist among a sub-population of homosexual adolescents (to a greater extent than among heterosexual adolescents), it is largely the result of the hostility they face from society in general and their peers in particular.⁶⁰

In furtherance of his position that there are "significant differences"⁶¹ between children raised by lesbian mothers and those raised by heterosexual mothers in family relationships, gender identity and gender behavior, Wardle relies on the Belcastro review⁶² of the social science research.⁶³ Belcastro's review included analysis of the findings of Green, et al.⁶⁴ that daughters of lesbian mothers were more likely to cross-dress, choose traditionally masculine jobs, engage in more rough-and-tumble play, to

⁵⁸ *Id.*

⁵⁹ *Id.* at 290. It is only homosexual parents, however, who under Wardle's proposal would be burdened as a matter of law with a rebuttable presumption as a way of addressing these potential harms.

⁶⁰ *Id.* at 291.

⁶¹ Wardle, *supra* note 9, at 852.

⁶² Philip A. Belcastro et al., *A Review of Data Based Studies Addressing the Affects of Homosexual Parenting on Children's Sexual and Social Functioning*, 20 J. DIVORCE & REMARRIAGE 105 (1993).

⁶³ Ball & Pea, *supra* note 19, at 292.

⁶⁴ Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167 (1986).

play with guns, etc., than children of heterosexual mothers.⁶⁵ However, Belcastro's analysis was a slightly misleading characterization of Green's findings. The Green study assessed the development of sexual identity and social relationships of fifty-six children of fifty lesbian mothers, comparing their results with those of forty-eight children of forty heterosexual mothers, and found no significant differences outside of cross-dressing for girls.⁶⁶ Belcastro's concluded that

[i]t is clear that boys and girls raised from early childhood by a homosexual mother without an adult male in the household for about 4 years do not appear appreciably different on parameters of psychosexual and psychological development from children raised by heterosexual mothers, also without an adult male present.⁶⁷

As a result of their conclusion, Green and his colleagues speculate that "if parental sexual orientation is a role-modeling influence" on children, it is too diluted by other influences to have a major impact.⁶⁸

Additionally, Wardle relied on Belcastro's analysis the Hoeffler study⁶⁹ as evidence of significant differences in psychosocial development among children of homosexuals.⁷⁰ Belcastro interpreted these findings as evidence of a trend that "daughters of lesbian mothers are more likely to value and exhibit male sex-typed traits than

⁶⁵ Ball & Pea, *supra* note 19, at 292.

⁶⁶ *Id.*

⁶⁷ Belcastro, *supra* note 64, at 182.

⁶⁸ *Id.*

⁶⁹ Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536 (1981). Hoeffler compared the children of twenty lesbian and twenty heterosexual single mothers. She notes that not only did the children of lesbian mothers not differ significantly from the children of single heterosexual mothers on measures of sex-typed play, these findings from single-mother families were consistent with studies of two-parent families.

⁷⁰ Belcastro, *supra* note 62, at 118.

daughters of heterosexual mothers,”⁷¹ however, what Hoeffler concluded was that the similarities in sex-role behavior between the two groups of children were much more striking than the differences.⁷²

Lastly, Wardle puts forth the idea that the children of homosexual parents will be at risk of being sexually molested.⁷³ He points out that while “child molesting and incest are independently serious concerns wholly apart from parental sexual behavior ... adults who engage in homosexual relations certainly are not immune to these and other child-damaging behaviors.”⁷⁴ However, neither are heterosexuals “immune” from these behaviors. The vast majority of child molestation acts in this country, including those perpetrated on boys, are perpetrated by heterosexual men.⁷⁵ This fact has had no bearing on the ability of heterosexual men to seek generous child visitation privileges or adoptions, but under Wardle’s reasoning, this fact makes all homosexuals suspect when addressing their custody of children.⁷⁶

Judith Stacey and Timothy Biblarz also depart from Wardle’s theories drastically in their 2001 article, *(How) Does the Sexual Orientation of Parents Matter?*⁷⁷ They suggest that it is the pervasiveness of social prejudice and institutionalized discrimination against homosexuals that exerts a powerful policing effect on the basic terms of psychological research and public discourse on the significance of parental sexual

⁷¹ *Id.* at 119.

⁷² Hoeffler, *supra* note 69, at 543.

⁷³ Wardle, *supra* note 9, at 865-66.

⁷⁴ *Id.*

⁷⁵ Ball & Pea, *supra* note 19, at 307.

⁷⁶ *Id.* at 307-08.

⁷⁷ Judith Stacey & Timothy J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 AM. SOCIOLOGICAL ASS’N 159 (2001), available at <http://www.jstor.org/stable/2657413>.

orientation.⁷⁸ One of the fundamental problems they recognize in sampling the homosexual population involves the ambiguity, fluidity and complexity of definitions of sexual orientation. This invites the question, what defines a parent as homosexual, bisexual or heterosexual?⁷⁹ Historical analysis establishes that sexual identities are modern categories.⁸⁰ The definitions vary widely through culture, space, and time. They even vary among individuals themselves.⁸¹ Also accounted for is the childhood trauma caused by homosexual parents “coming out of the closet,” divorcing, and re-mating, along with the social stigma of homosexuality.⁸²

Stacey & Biblarz examined the results of 21 psychological studies conducted between 1981 and 1998, which they determined as best equipped to address sociological questions surrounding parental sexual orientation matters to children.⁸³ Studies chosen for examination included: (1) a sample of gay or lesbian parents and children against a comparison group of heterosexual parents and children; (2) assessed differences between groups in terms of statistical significance; and (3) included findings directly relevant to children’s development.⁸⁴ Out of those 21 studies, Stacey & Biblarz focused on the findings from six studies they considered as best designed to isolate the unique effect parents’ sexual orientations had on children.⁸⁵

As related to children’s gender preferences and behavior, a majority of the studies revealed that daughters of lesbian mothers more frequently dressed, played and behaved

⁷⁸ *Id.* at 160.

⁷⁹ *Id.* at 165.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Stacey & Biblarz, *supra* note 77, at 167.

⁸⁴ *Id.*

⁸⁵ *Id.*

in ways that did not conform to sex-typed cultural standards as well as demonstrating interest in activities typically associated with both masculine and feminine qualities that involved the participation of both sexes. Conversely, the daughters of heterosexual mothers reported significantly greater interest in traditionally feminine, same-sex activities.⁸⁶ The reviewed studies also showed that sons appear to respond in more complex ways to parental sexual orientations. Sons of lesbian mothers were found to behave in less traditionally masculine ways than those raised by heterosexual single mothers. However, they also exhibited greater gender conformity than daughters of lesbian mothers.⁸⁷

Only one study reviewed children's sexual preferences and behaviors by following those raised in lesbian-headed families into young adulthood. A significantly greater proportion of young adult children raised by lesbian mothers in the study reported having had a homosexual relationship (6 of 25 compared with 0/20 raised by heterosexual mothers).⁸⁸ The young adults raised by lesbian mothers were also significantly more likely to report having thought they might experience homosexual attraction or relationships (64% to 17%).⁸⁹

In light of the historical social prejudices against homosexuality, the major issue discussed by policy makers has been whether children of lesbian and gay parents suffer higher levels of emotional and psychological harm.⁹⁰ The studies analyzed showed no differences in the psychological well being of children raised by heterosexual or lesbian

⁸⁶ *Id.* at 168.

⁸⁷ *Id.* (although they were not more gender conforming than sons with heterosexual mothers).

⁸⁸ *Id.* at 170.

⁸⁹ Stacey & Biblarz, *supra* note 77, at 170.

⁹⁰ *Id.* at 171.

mothers. The few significant differences that were noted tended to favor children with lesbian mothers.⁹¹ Additionally, no correlation was found between parental sexual orientation and measures of children's cognitive abilities.⁹²

Based on their analysis of the studies reviewed, Stacey and Biblarz concluded that despite the limitations in the psychological research on the effects of parental sexual orientation, there is suggestive evidence and good reason to believe that contemporary children and young adults with lesbian or gay parents differ in various ways from children of heterosexual parents.⁹³ The effects of parental gender trump those of sexual orientation.⁹⁴ A varied group of gender theories (including social learning theory, psychoanalytic theory, materialist and symbolic actionist) predict that children with two homosexual parents, and especially with two lesbian mothers, develop in less gender-stereotypical ways than would children of two heterosexual parents.⁹⁵ Additionally, due to the stigmatization of homosexuality, they found that selection effects may generate links between parental sexual orientation and child development that do not stem from sexual orientation itself.⁹⁶

Based on their analysis of the "no differences" claims made by the majority of studies examined, Stacey & Biblarz concluded that apart from the differences associated with parental gender, most of the presently observable differences in child outcomes should diminish under conditions of full equality and respect for sexual diversity.⁹⁷

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 176.

⁹⁴ *Id.*

⁹⁵ Stacey & Biblarz, *supra* note 77, at 176.

⁹⁶ *Id.* at 177.

⁹⁷ *Id.*

Instead of focusing on the categories of lesbian mothers and gay fathers as the decisive characteristic of one's parenting, they propose that homophobia and discrimination are the primary reasons why parental sexual orientation matters. Children are left to carry the burden of vicarious social stigma because homosexual parents do not enjoy the same rights, respect, and recognition as heterosexual parents.⁹⁸ The only difference that seems less likely to disappear is the unique effect parental sexual orientation has on children in terms of the child's sexuality and desires.⁹⁹

It is against the backdrop of these studies and reactions that the New Family Structures Study and Professor Regnerus' findings must be analyzed.

III. The Study

The NFSS was designed by leading family researchers in sociology, demography and human development.¹⁰⁰ The University of Texas at Austin Institutional Review Board approved the Study protocol and associated questionnaire.¹⁰¹ Funding was provided in part by grants from the Witherspoon Institute and the Bradley Foundation,¹⁰² both of which are recognized for their almost exclusive support of conservative causes.¹⁰³

⁹⁸ *Id.*

⁹⁹ *Id.* at 177-78.

¹⁰⁰ Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study*, 41 SOC. SCI. RES. 752, 755 (2012), available at <http://www.sciencedirect.com/science/article/pii/S0049089X12000610>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Andy Birkey, *Gay Marriage Foes Tout Conservative-Backed Parenting Study*, HUFFINGTON POST (June 21, 2012), http://www.huffingtonpost.com/2012/06/21/gay-marriage-parenting-study_n_1614226.html.

The Knowledge Networks (KN) distributed the surveys and collected the response data. KN specializes in research in marketing, media, health and social policy.¹⁰⁴ KN recruited from an online research panel, the KnowledgePanel[®], representative of the United States population through random-digit dialing.¹⁰⁵ Eligible participants received \$20 for their participation in the study.¹⁰⁶ The screener survey was left in the field between July 2011 and February 2012. Questions in the screener survey covered a wide range of topics including: household demographics during childhood; current household composition; calendars of varied lifestyle demographics; parental education; past and present relationships with parents; experience with bullying; survey participant as a parent; economic characteristics; labor force participation; health and physical development and behaviors; religion; psychological; mental health and personality; substance use and risky/illegal behaviors; involvement with the criminal justice system; marital status; history and attitudes; political orientation and affiliation; sexual experiences and STIs.¹⁰⁷ However, the topic and questions that received the most public attention and is the focus of this paper were the sexual behaviors of the respondents' parents.

In late fall 2011, members of the KnowledgePanel[®] were screened and asked, "From when you were born until age 18 (or until you left home on your own), did either of your parents ever have a romantic relationship with someone of the same sex?"¹⁰⁸

¹⁰⁴ *Study Design & Documentation*, Knowledge Networks, Inc. (June 4, 2012), <http://www.prc.utexas.edu/nfss/documents/NFSS-study-design.pdf>.

¹⁰⁵ Regnerus, *supra* note 100 at 756.

¹⁰⁶ *Supra* note 104.

¹⁰⁷ *NFSS Survey Questionnaire* (Feb. 3, 2012), <http://www.prc.utexas.edu/nfss/documents/NFSS-Survey-Instrument.pdf>.

¹⁰⁸ Regnerus, *supra* note 100, at 756 (emphasis in original).

Response choices were limited to: (1) yes, my mother had a romantic relationship with another woman; (2) yes, my father had a romantic relationship with another man; and/or (3) no. If the respondent provided a “yes/mother” or “yes/father” answer, they were asked if they ever lived with that parent while they were in a same-sex romantic relationship. Full surveys were completed with 2988 Americans between the ages of 18 and 39.

Based on the answers the survey participants provided, they were classified into one of eight categories: (1) IBF (intact biological family of mother and father) from birth to age 18, and the parents are still married; (2) LM (lesbian mother defined as respondent’s mother had a same-sex romantic relationship with another woman, regardless of any other household transitions); (3) GF (gay father defined as respondent’s father had a same-sex romantic relationship with another man, regardless of any other household transitions); (4) adopted (respondent was adopted by one or two strangers at birth or before age two); (5) divorced later or had joint custody (respondent reported living with biological mother and father from birth to age 18, but parents are now divorced); (6) stepfamily (biological parents were either never married or else divorced, and respondent’s primary custodial parent was married to someone else before respondent turned 18; (7) single parent (biological parents were neither never married or else divorced, and respondent’s primary custodial parent did not marry or remarry before respondent was 18; or (8) all others (includes all other family structure/event combinations, such as respondents with a deceased parent).¹⁰⁹ Of the 2899 completed surveys: 919 were classified IBF, 163 were LM, 73 were GF, 101 were adopted, 116 were divorced later or had joint custody, 394 were stepfamily, 816 were single parent,

¹⁰⁹ *Id.* at 757-8.

and 406 were categorized under all other.¹¹⁰ These eight groups are largely, but not entirely, mutually exclusive of each other, however for analytic purposes of the NFSS, Regnerus forced their mutual exclusivity.¹¹¹ If a respondent's mother had a same-sex relationship, that respondent might also qualify for the "divorced" or "single parent" category, but in this study, the analytical interest was in maximizing the sample size of lesbian mothers and gay fathers, so the respondent was categorized as an LM.¹¹² Some categories, such as GFs, were so small and difficult to populate, that they trumped all other categories, even LMs.

The Kinsey scale of sexual behavior was employed with modifications to allow participants to select their sexual orientation rather than their sexual behaviors.¹¹³ Options included 100% heterosexual, mostly heterosexual but somewhat attracted to people of your own sex, bisexual (equal attraction to men and women), mostly homosexual but somewhat attracted to people of the opposite sex, 100% homosexual, or not sexually attracted to either males or females.¹¹⁴ These results were also reduced to either one of two categories: 100% heterosexual or everything else.¹¹⁵

Mark Regnerus and the NFSS interpreted the responses and determined the number of statistically significant differences between IBFs and the other 7 response categories was considerable. Regnerus' results showed the vast majority of cases with optimal outcomes favored IBFs.¹¹⁶ They determined that young-adult children of LMs

¹¹⁰ *Id.*

¹¹¹ *Id.* at 758.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Regnerus, *supra* note 100, at 758.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 761-5.

display worse outcomes and more significant distinctions with respondents than do the children of GFs.¹¹⁷ The claims of few meaningful differences between different groups evaluated were found to be empirically inaccurate.¹¹⁸ Planned gay, lesbian and bisexual (GLB) households have very distinctive characteristics than children of previously heterosexual households, however, planned GLB children still exhibit diminished context of “kin altruism,” creating a risk setting for raising children when compared with married, biological parenting.¹¹⁹ In his discussion, Regnerus was very explicit in stating that it he was not suggesting that growing up with a lesbian mother or gay father causes suboptimal outcomes *because* of the sexual orientation or sexual behavior of the parent; but the groups display numerous, notable distinctions, especially compared with young adults whose biological mother and father remain married.¹²⁰

The utilization of public assistance was significantly higher among LMs and GFs, at 69% and 57% respectively, than that of IBFs (17%).¹²¹ 38% of LMs said they are currently receiving some form of public assistance compared with 10% of IBFs.¹²² Slightly less than 50% of all IBFs reported being employed full-time at present,

¹¹⁷ *Id.* at 763.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Regnerus, *supra* note 100, at 766.

¹²¹ *Id.* at 761.

¹²² Compare John M. Blandford, *The Nexus of Sexual Orientation and Gender in Determination of Earnings*, 56 IND. & LAB. REL. REV. 622, 640-41 (2003) (recent studies have shown that openly lesbian women report earnings 17% to 38% higher than comparable married heterosexual women), with M.V. Lee Badgett, *The Wage Effects of Sexual Orientation Discrimination*, 48 IND. & LAB. REL. REV. 726 (1995) (reported a wage penalty against openly lesbian workers of 12% to 30%). Blandford attributes this disparity to more accurate identification of lesbian workers and from the availability of a larger database. It is important to note, however, that the measured wage premium comes on top of the wages previously diminished by the impact of gender; that is, lesbian women appear to earn more than other female workers but continue to earn less than the group of men as a whole.

compared with 26% of LMs. Only 8% of IBF respondents said they were currently unemployed, and 28% of LM respondents had the same response.¹²³ Additionally, LMs were more than twice as likely (19% vs. 8%) to report being currently or recently in counseling or therapy “for a problem connected with anxiety, depression, relationships, etc.” This outcome was significantly different after including control variables.¹²⁴

The NFSS revealed that the children of lesbian mothers seem more open to same-sex relationships and although they are not statistically different from most other groups in having a same-sex relationship at present, they are much less inclined to identify entirely as heterosexual than IBFs.¹²⁵ Other sexual differences are notable among LMs as well: a greater share of daughters of lesbian mothers reported being “not sexually attracted to either males or females” than among any other family-structure groups evaluated in this study.¹²⁶

Outside the context of sexual results, the NFSS found that the young-adult children of women who have had a lesbian relationship fare worse on: education attainment, family-of-origin safety/security, negative impact of family-of-origin, the CES-D (depression) index, one of two attachment scales, report worse physical health, smaller household incomes than do respondents from still-intact biological families, and think that their current romantic relationship is in trouble more frequently.¹²⁷ When children of gay fathers were contrasted with still-intact biological families, there were reports of more modest educational attainment, worse scores on the family-of-origin

¹²³ Regnerus, *supra* note 100, at 761-62.

¹²⁴ *Id.* at 762.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 763.

safety/security and negative impact indexes, less closeness to their biological mothers, greater incidences of depression, lower scores on the current (romantic) relationship quality index and more frequent thoughts that their current romantic relationship is in trouble.¹²⁸

Children of lesbian mothers reported statistically greater marijuana use, more frequent smoking, watch television more often, have been arrested more, pled guilty to non-minor offenses more, and (among women) reported greater numbers of both female and male sex partners than do intact biological family respondents. Female LMs reported on average of just over one female sex partner in their lifetimes, as well as four male sex partners, in contrast to female IBF respondents (.22 and 2.79 respectively). Male LMs reported an average of 3.46 female sex partners and 1.48 male partners, compared with 2.70 and .2, respectively among male IBFs.¹²⁹ Among children of gay fathers, the NFSS reported a greater aptitude than IBFs to smoke, have been arrested, pled guilty to non-minor offenses, and reported more numerous sex partners.¹³⁰

III. Reactions

Following the publication of the NFSS, numerous individuals and organizations came forward voicing both criticism and praise for its findings. The American Psychological Association (APA) affirmed that it opposes discrimination against same-sex parents based on lack of scientific evidence that parenting effectiveness is related to

¹²⁸ *Id.*

¹²⁹ Regnerus, *supra* note 100, at 764.

¹³⁰ *Id.*

parental sexual orientation.¹³¹ Some of the most passionate reactions came, unsurprisingly, from the LGBT community.

Queerty.com, an online publication covering homosexually oriented lifestyles and news, raised several concerns with the NFSS, including Regnerus' objectivity based on previous work he has engaged in, the correlation (or lack thereof) between risky teen behavior and family upheaval in homes that transitioned from heterosexual to homosexual structures coupled with the dismissal of risky teen behaviors as a response to prejudice from others, and the lack of adherence to a "normalcy" standard among children of LBGT homes.¹³²

Additionally, the Family Equality Council, a national advocacy organization committed to securing family equality for lesbian, gay, bisexual, transgender and questioning (LGBTQ) parents, guardians and allies, took issue with the NFSS' "flawed methodology and misleading conclusions" based on the survey responses.¹³³ The New York Times was quick to point out that the NFSS was an undeniable look into the past, not an analysis of the present. "No matter where they lived or how they were treated by their peers, many of his subjects came of age when homosexuality was still marginalized and despised and gay marriage [was] barely on the radar screen."¹³⁴

¹³¹ American Psychological Association, Press Release, *There is No Scientific Evidence that Parenting Effectiveness is Related to Parental Sexual Orientation*, EQUALITYMATTERS (June 11, 2012), <http://equalitymatters.org/factcheck/201206220001>.

¹³² Dan Avery, *U of Texas Gives Thumbs Up to Regnerus' Flawed Gay-Parenting Study*, QUEERTY.COM (Aug. 30, 2012), <http://www.queerty.com/u-of-texas-gives-thumbs-up-to-regnerus-flawed-gay-parenting-study-20120830/>.

¹³³ *About Us*, FAMILYEQUALITY.ORG http://www.familyequality.org/family_equality/about_us/.

¹³⁴ Ross Douthat, *Gay Parents and the Marriage Debate*, N.Y. TIMES (June 11, 2012, 12:06 PM), <http://douthat.blogs.nytimes.com/2012/06/11/gay-parents-and-the-marriage-debate/>.

An article in *The Chronicle of Higher Education*, a publication presenting news and information for college and university faculty and student affairs professionals, discussed the findings of the audit. They cited conflicts of interest among the peer-reviewers, and stated that the “scholars who should have known better failed to recuse themselves from the review process.” Two of the six reviewers were paid consultants to the NFSS, and two of three commentators on the paper in *Social Science Research* were previously paid consultants on the NFSS.¹³⁵ The editor of *Social Science Research*, the publisher of the NFSS, assigned a member of the journal’s editorial board – Darren E. Sherkat, a professor of sociology at Southern Illinois University at Carbondale – to examine how the paper was handled.¹³⁶ Sherkat’s investigation revealed the NFSS should never have been published. He primarily cited problems with the paper’s definition of “lesbian mothers” and “gay fathers.” A woman was identified as a lesbian mother if she had a relationship with another woman at any time after having a child, regardless of the brevity of that relationship and whether or not the two women raised the child as a couple. According to Sherkat, this fact alone should have disqualified the paper immediately from being considered for publication.¹³⁷

During Sherkat’s investigation, Regnerus explained why and how parents are labeled in the paper. Regnerus contends that he chose those labels for “the sake of brevity and to avoid any entanglement in interminable debates about fixed or fluid

¹³⁵ Tom Bartlett, *Controversial Gay-Parenting Study is Severely Flawed, Journal’s Audit Finds*, THE CHRONICLE OF HIGHER EDUC. (July 26, 2012, 10:57 PM), <http://chronicle.com/blogs/percolator/controversial-gay-parenting-study-is-severely-flawed-journals-audit-finds/30255>.

¹³⁶ *Id.*

¹³⁷ *Id.*

orientations.”¹³⁸ Sherkat found this presentation to be “extremely misleading.” Furthermore, that the reviewers uniformly downplayed or ignored the fact that the study did not examine children of identifiably gay and lesbian parents and none of the reviewers noticed that the marketing-research data were inappropriate for a top-tier social-scientific journal.¹³⁹ Sherkat did not share in the criticisms of others surrounding the editor of *Social Science Research* for his role in the NFSS publication. Due to the unanimous positive reviews of the NFSS, editor James D. Wright had little choice but to go ahead with publication. His review of the editorial process of the NFSS paper revealed that there were no “gross violations” of editorial procedures.¹⁴⁰

The University of Texas’ external investigator, Robert A. Peterson found no evidence of misconduct in the study. Peterson reserved determination of whether the study possessed significant limitations, or was even perhaps seriously flawed, to debates within the academy.¹⁴¹ The University’s definition of scientific misconduct clearly articulates, “[o]rdinary errors, good faith differences in interpretations or judgments of data, scholarly or political disagreements, good faith personal or professional opinions, or private moral or ethical behavior or views are not misconduct.”¹⁴²

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Memorandum from Robert A. Peterson, Research Integrity Officer to Steven W. Leslie, Executive Vice President and Provost, Patricia C. Ohlendorf, Vice President for Legal Affairs, and Juan M. Sanchez, Vice President for Research* (Aug. 24, 2012), <http://www.utexas.edu/opa/wordpress/news/files/Regnerus-Inquiry-Report.pdf>.

¹⁴² University of Texas, Press Release, *University of Texas at Austin Completes Inquiry into Allegations of Scientific Misconduct*, THE UNIV. OF TEX. (Aug. 29, 2012), http://www.utexas.edu/news/2012/08/29/regnerus_scientific_misconduct_inquiry_completed.

Not all reactions to Regnerus' paper and the NFSS were negative. Peter Sprigg of the Family Research Council¹⁴³ found that Regnerus put together a representative, population-based sample that was large enough to draw scientifically and statistically valid conclusions. For those reasons, Sprigg is of the opinion that the NFSS deserves to be the "gold standard" in its field. Additionally, Sprigg found that the NFSS forever shattered the myths that children from homosexual parents are "no different" from other children and suffer "no harm" from being raised by homosexual parents.¹⁴⁴

Glenn Stanton of the Family Formation Studies at Focus on the Family found Regnerus to be a welcome change to the typically gay and lesbian activism led studies of the past. "Nearly all of the existing studies on same-sex homes are conducted, not by mainstream scholars, but those who have long records of lesbian/gay activism. Mark [Regnerus] has no such record on either side of the issue."¹⁴⁵ Stanton also praised Regnerus' methodology for being reviewed pre-start by sociological and demographic peers from an array of leading American universities.¹⁴⁶

Regnerus himself admitted that there were some limitations associated with the study and his paper. He expressed that his evaluation was not correctly executed,

¹⁴³ *About FRC*, FRC.ORG www.frc.org/about-frc (Since 1983, the FRC has advanced faith, family and freedom in public policy and the culture from a Christian worldview. FRC's team promotes these core values through policy research, public education on Capitol Hill and in the media, and grassroots mobilization. Through the FRC's outreach to pastors, they equip churches to transform the culture.

¹⁴⁴ Press Release, Family Research Council, *Regnerus Study Should be Considered the "Gold Standard" when Examining Same-Sex Parenting*, EQUALITYMATTERS (June 21, 2012), <http://equalitymatters.org/factcheck/201206220001>.

¹⁴⁵ Press Release, *Family Formation Studies at Focus on the Family, Unlike Previous Research, New Study Not "Plagued by Devastating Methodological Short-Comings"* EQUALITYMATTERS (June 13, 2012), <http://equalitymatters.org/factcheck/201206220001>.

¹⁴⁶ *Id.*

especially because he was leaning so heavily on how the children of gay parents perceived their parents' sexual orientation.¹⁴⁷

IV. Conclusion

The current social science research on the topic of homosexual parenting and its effects on children is fraught with methodological shortcomings. The studies that have been completed have inadequate sample sizes, issues with self-selection amongst study participants, and a lack of racial and socioeconomic diversity within the samples.

Additionally, the majority of studies are comparing children raised by lesbians and their partners with children raised by single heterosexual mothers and a lack of studies on homosexuals who had or adopted children after they became open about their sexual orientation. Regnerus takes this a step farther by comparing children raised by single homosexual parents with those raised in intact biological families. When these studies are conducted properly, such research can make a valuable contribution to family law analysis and formation.

Although the ultimate choice of a policy is a normative decision, and as such, not something that studies alone could determine, research can inform and improve the quality of the policy debate and public discourse that leads up to law reform.¹⁴⁸ However, until the research is at such a place, it should not be used by either side of the debate to bolster their positions – such use would be a mischaracterization of the results and is an inappropriate justification for legal reform.

¹⁴⁷ Michelle Garcia, *Parenting Study Author Regnerus Admits Faults with Data*, ADVOCATE (Oct. 30, 2012, 12:33 PM), <http://www.advocate.com/politics/marriage-equality/2012/10/30/parenting-study-author-regnerus-admits-faults-data>.

¹⁴⁸ Ball & Pea, *supra* note 19, at 273.