

5-1-2014

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Kylie Alexandra Cohen

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### Recommended Citation

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Kylie Cohen

Professor Poirier

Law and Sexuality AWR

April 29, 2013

## 2 Moms, 2 Dads, Too Bad: A Contextual Analysis of the Regnerus Study

Homosexuals engage in what “the church considers an aberration, a moral evil.”<sup>1</sup>  
“Homosexuality threatens to undermine the country’s traditional moral values.”<sup>2</sup>

### **I. Introduction**

*Kulturkampf*, the struggle to control American culture (culture war),<sup>3</sup> is the driving force behind the movement to malign parenting skills of the gay and lesbian community. Conservative participants in this culture war offer information with a biased and prejudicial slant to maintain control over America’s traditional model for parenting and to ensure there will not be any permanent shift within it. This is the motivation for their acceptance of the New Family Structures Study (the Regnerus Study), conducted by sociologist and professor Mark Regnerus.<sup>4</sup> This study found that gay parenting can be less effective for the well being of children as

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<sup>1</sup> Douglas Martin, *Anthony J. Bevilacqua, Retired Cardinal of Philadelphia, Dies at 88*, THE NEW YORK TIMES, Feb. 1, 2012, [http://www.nytimes.com/2012/02/02/us/anthony-j-bevilacqua-retired-cardinal-in-philadelphia-dies-at-88.html?\\_r=0](http://www.nytimes.com/2012/02/02/us/anthony-j-bevilacqua-retired-cardinal-in-philadelphia-dies-at-88.html?_r=0) (Cardinal Bevilacqua, a staunch conservative and pro-life supporter, was archbishop of Philadelphia from 1988 until 2003. Pope John Paul II promoted him to cardinal in 1991.).

<sup>2</sup> HEATHER M. CAMPBELL, BRITANNICA GUIDE TO POLITICAL AND SOCIAL MOVEMENTS THAT CHANGED THE MODERN WORLD 316 (2010) (This was said by the members of the Moral Majority in 1979, who were outraged by what they felt were movements that would change the American culture and society. E.g., the homosexual revolution, the Civil Rights Movement, sexual revolution and the legal rights of abortion.)

<sup>3</sup> *Introduction*, in CULTURE WARS 10 (Mary E. Williams ed., 2003) (The phrase “culture wars” is derived from the German word “Kulturkampf,” which literally defined means “a struggle for the control of the culture.”).

<sup>4</sup> Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study* 752 (Mar. 12, 2012), <http://www.baylorisr.org/wp-content/uploads/Regnerus.pdf> (This was a social science study that collected data measuring 40 different social, emotional and relational outcomes among young adults who said their mothers had same-sex relationships with other women, or their fathers had relationships with other men, as compared to young adults living in still-intact, two-parent heterosexual married biological families.).

compared to the well being of children living in a traditional two-parent family with married biological parents.<sup>5</sup>

Much of the other existing research is indicative of diametrically opposite findings to the Regnerus Study. The study is also based on flawed research. However, mainstream America still indulges its findings. The study contains myths and propaganda, which are deliberately used to spread these ideas and opinions to influence others to preserve America's traditionalism. People who want to preserve the traditionalist idea wish to sway the pendulum on gay parenting back to orthodox conservative policy. They want to maintain what Americans have been socialized to accept, that homosexuals are not equal and should not be sanctioned as parents. Therefore, the traditionalists work to propagate the ideal that a home with two biological parents, a husband and wife, is the only adequate place to rear well-adjusted children.

The conservative right finds it a danger for the Regnerus Study to be discounted. If the study is rejected, a change in policy and cultural attitudes may follow. Americans may also begin to believe many other studies that purport to find no difference exists in parenting skills of homosexuals as compared to heterosexuals. There could be a further breakdown of traditional family values, which could lead to a different America, one that conservatives could not support. Traditionalists resort to any means necessary to propagate their conservative views and preserve an America that fits their comfort zone. This will ensure American society reflects that the only legitimate family is a biological mother and father parenting their children.

The *Kulturkampf* surrounding the issue of who makes for better parents—a biological mother and father or a homosexual couple—is spearheaded by the needs of specific groups to perpetuate their opinions and beliefs. Their goals are achieved by offering propaganda in the

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<sup>5</sup> *Id.* at 764.

form of programs, advertisements, speeches, data and information to the group they want to persuade to accept their viewpoint of the facts and judgments on issues.

In and of itself, the term “propaganda” can be a neutral term. The meaning is attached to a negative impression depending on which side of an issue you stand, and which information is reaching you. Taking this into account, propaganda may be honest or dishonest, or good or bad. Propaganda can be as simple as a peace sign or as complex as an adaptation of information to parallel the goals and views a specific group wishes to impart.

Both sides on the issue of gay parenting have their own messages to spread and invariably do rely on propaganda to ensure that their information will be attractive in order to influence groups to subscribe to the ideas and beliefs they espouse. Generally though, traditionalists utilize relentless propaganda to ensure their traditional ideal of American culture is preserved. They believe their conservative values and laws must survive so that the Lesbian, Gay, Bisexual, Transgender (LGBT) subculture does not infiltrate the minds of Americans, which they believe could lead to a change in tradition. Specifically, their traditional ideal of children being raised with their biological mother and father is offered to the American people as the only means of defining a family. This will ensure that family, the culture’s most basic unit where children are indoctrinated with American values, is aligned with their entire American right wing agenda. This community has become a significant force using traditional forms of propaganda to convince Americans to believe if they accept the conservative point of view they will be “protecting the idealized family from moral harm.”<sup>6</sup> This group has also worked to instill

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<sup>6</sup> Ian Lekus, *Up They Come Again: The Rise of Family Values Politics* (2012), <http://www.ultimatehistoryproject.com/marriage-lgbt.html>.

in Americans the religious values that, “If a man lies with a male as with a woman, both of them have committed an abomination. They shall be put to death, their blood is upon them.”<sup>7</sup>

Conservatives have always been vocal when trying to hinder the rights of the gay community. Moreover, it is common knowledge that conservatives have opposed the LGBT influence on government, and their right to have the same freedoms as heterosexuals. Yet the ultimate conservative propaganda campaign has been aimed at limiting gays’ freedom to join together as a family unit where they have the opportunity to parent children. This paper focuses on that campaign. This first section was an introduction about propaganda utilized by conservatives to support traditional views of marriage, as well as an overview of the Regnerus Study. In the second section, I will detail the propaganda that right wing conservatives propagate in order to sustain their cultural and familiar beliefs. I will also discuss progressives’ ideas in opposition to these conservative attitudes. In the third section, I will discuss how proponents of the Regnerus Study deal with its flaws by rationalizing with propaganda, while progressives offer opposition. The fourth section is a discussion of negative attitudinal opinions of the court opposing gay parenting and some changes which have been occurring. In the fifth section, I will give an analysis of the findings in this paper. The sixth section will be my conclusion.

## **II. Background**

### **(a) Proponents for Conservatism Speak Out**

“Without question...the greatest danger to our moral perspective and to the family and indeed to the nation is the homosexual activist movement.”<sup>8</sup>

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<sup>7</sup> *Leviticus* 20:13.

<sup>8</sup> Jim Whittle, *The Right Is Intensifying the Culture Wars*, in *CULTURE WARS* 26, 31 (Mary E. Williams ed., 2003) (This was said by James Dobson, who initiated the formation of the Family Research Council, a conservative group backed by the Religious Right, which denounced the homosexual activist movement.).

To understand why propaganda is heavily relied upon to support the Regnerus Study, it is important to understand how propaganda has been and is used by conservatives to maintain the traditional culture of mainstream America, while many rally against these discriminatory ideals.

In 1977, at the inception of an ordinance that banned discrimination against homosexuals in Miami-Dade County, born-again Christian entertainer and conservative spokeswoman, Anita Bryant, emerged to promote the conservative view. She mobilized social conservatives to participate in the culture war against the LGBT community and its right to be accepted as a family unit. Her “Save Our Children” campaign denounced homosexuals as “pedophiles determined to corrupt children.”<sup>9</sup> Bryant utilized “glittering generalizations”<sup>10</sup> to project her traditional beliefs when she criticized the ordinance as taking away children’s freedom to live in a healthy decent community.<sup>11</sup> She used name calling to label the gay community as child snatchers, and she propelled a media blitz, using the slogan “Please remember homosexuals don’t reproduce! They recruit!”<sup>12</sup> The fear of cultural change was instilled in the community when Bryant made the issue of homosexuality personal for many people by arguing that taking America’s children was absolutely necessary for the survival and growth of homosexuality.<sup>13</sup> Bryant pounded home the image of gays and lesbians as being immoral and most importantly as a threat to the American family structure. She succeeded! 70% of the liberal Miami-Dade County voters repealed the ordinance.<sup>14</sup> At the onset of Bryant’s “Save Our Children” campaign,

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<sup>9</sup> Liz Highleyman, *What was the Save Our Children Campaign?*, SEATTLE GAY NEWS (Mar. 18, 2005), <http://www.sgn.org/sgnnews11/page18.cfm> (The “Save Our Children” campaign stressed the dangers homosexuals posed to American children because homosexuals were seen as trying to disrupt traditional societal values and encourage children to accept the homosexual lifestyle.).

<sup>10</sup> *Propaganda Techniques* (2001), <http://library.thinkquest.org/C0111500/proptech.htm> (“Glittering generalities” is one of the propaganda techniques identified by the Institute for Propaganda Analysis in 1938 linking words to highly valued concepts.).

<sup>11</sup> Lekus, *supra* note 6.

<sup>12</sup> Neil Miller, *Anti-Gay Organizing on the Right* (1995), <http://www.pbs.org/outofthepast/past/p5/1977.html>.

<sup>13</sup> Lekus, *supra* note 6.

<sup>14</sup> Miller, *supra* note 12.

the homosexual community was blindsided by Dade County's generally liberal community opposing a proposition offering homosexual civil rights.<sup>15</sup>

A parallel event occurred in San Francisco, California in 1978, when conservative State Senator John Briggs jumped aboard the anti-gay bandwagon. He used propaganda to assert homosexuals were deviants who threatened the American family structure by being anti-life, anti-family and vicious killers against whom our children needed to be defended.<sup>16</sup> Briggs also resorted to name-calling and fear mongering propaganda by referring to gays and lesbians as "perverted and twisted"<sup>17</sup> people whose very existence threatened the traditional family.

Harvey Milk, the first openly gay city supervisor and gay rights activist, had heated debates with Briggs denouncing Proposition 6 (The Briggs Initiative of 1978), which would legalize homosexuals not being hired as teachers, as well as firing any teacher who publicly supported homosexuality.<sup>18</sup> These debates also included propaganda, specifically transfer and association.<sup>19</sup> Like Bryant in Florida, Briggs, sponsor of the anti-gay bill, was successful in getting many to oppose civil rights for gays. Briggs twisted the words of Milk during their debates.<sup>20</sup> Briggs asserted that Milk and homosexuals like him had an agenda, which was to recruit and convert others to become homosexual.<sup>21</sup> His ultimate goal was to convince the American people that homosexual teachers would similarly want to convert children into

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<sup>15</sup> Lokus, *supra* note 6 (The LGBT community took for granted that the Dade County voters would support the ordinance and so support their human rights. The homosexual community was unorganized and could not defeat Bryant's accusation that they were a threat to the American family.).

<sup>16</sup> *Id.*

<sup>17</sup> Heidi Beirich, *The Anti-Gay Movement* (2013), <http://www.splcenter.org/get-informed/intelligence-files/ideology/anti-gay/the-anti-gay-movement>.

<sup>18</sup> Aaron Goldstein, *Reagan and Milk: Who did more to stop Proposition 6?* (Feb. 26, 2009, 6:08 AM), <http://spectator.org/archives/2009/02/26/reagan-and-milk/print>.

<sup>19</sup> Propaganda Techniques, *supra* note 10 ("Transfer and association is a technique used to get people to view one item as they view another," in this case homosexuality with converting. An example used here is that homosexuality is associated with converting heterosexuals to homosexuality.).

<sup>20</sup> *Harvey Milk Meets John Briggs* (Oct. 10, 2012), <https://diva.sfsu.edu/collections/sfbatv/bundles/190667>.

<sup>21</sup> *Id.*

homosexuals.<sup>22</sup> Further, he wanted to demonstrate the idea that homosexual teachers were generally poor role models for students.<sup>23</sup> Conservative attitudes against homosexuals actually turned into violent actions when Dan White, another San Francisco supervisor and a proponent of conservatism, assassinated Milk.<sup>24</sup> Brutal confrontations between police and gays followed, when White, who was innocently characterized by the media as “an all-American boy,”<sup>25</sup> was only convicted of voluntary manslaughter rather than murder.<sup>26</sup>

Traditional conservatives relentlessly resumed their attempt to force-feed the American public the notion that a household with a homosexual couple was a poor environment in which to raise children. During the 1970s and 1980s, sex researcher and psychologist Paul Cameron carried the propaganda torch by offering misleading ideas that included myths that children raised with homosexual parents were molested, became bisexual or homosexual and were dissatisfied with their childhood.<sup>27</sup> His anti-gay rants were proven to be nonscientific, and his unorthodox, baseless claims that gays were disproportionately responsible for child molestations, serial killings and the spread of sexually transmitted disease, resulted in his expulsion from the American Psychological Association in 1983.<sup>28</sup> Yet he continued advertising his absurdities with anti-gay pamphlets generally aimed at garnering the support of the Fundamental churches in

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Robert Lindsey, *Dan White, Killer of San Francisco Mayor, a Suicide*, THE NEW YORK TIMES, Oct. 22, 1985, <http://www.nytimes.com/1985/10/22/us/dan-white-killer-of-san-francisco-mayor-a-suicide.html>.

<sup>25</sup> *Id.* (White was considered an “all-American boy”. He was a star athlete and worked as a paratrooper in Vietnam, a policeman, a firefighter. All-American boy has the connotation of a representation of all that is good in America: patriotism and support of the country’s values.).

<sup>26</sup> *Id.*

<sup>27</sup> Paul Cameron, *SAME-SEX MARRIAGE: Til Death Do Us Part?* (1997), <http://www.biblebelievers.com/cameron1.html>.

<sup>28</sup> Beirich, *supra* note 17.

the hopes that the message would enforce the conventional beliefs that traditional marriage was the best context in which to raise children.<sup>29</sup>

Jerry Falwell, a powerful leader of Christian Fundamentalists and the Moral Majority, a political organization opposing equal rights for homosexuals, founded in 1979, also believed conservatives needed to propagandize against the gay community to ensure their traditional view of America continued.<sup>30</sup> As Falwell put it, the gay rights movement threatened to undermine “the country’s traditional moral values.”<sup>31</sup> He depicted homosexuals as disrespecting the family unit as God had established it, hoping to persuade Americans to accept the conservative ideal that the responsibility of each moral citizen was to take a stand against the homosexual revolution.<sup>32</sup> He expanded on Bryant’s anti-gay slogans by insisting, “Please remember homosexuals don’t reproduce, they recruit, and they are out after my children and yours.”<sup>33</sup> In his *I Love America* rallies, Falwell linked words to important concepts that the Moral Majority felt were clear-cut choices, like redeeming religion and patriotism and family values over the evils of homosexuality and equal rights for them to be a family.<sup>34</sup>

Falwell’s tirades included rallying against the Civil Rights Restoration Act of 1988, which called for an end to sex discrimination and other discrimination in federally assisted programs.<sup>35</sup> The Moral Majority disregarded what the Act was truly about. It forged ahead in its campaign against homosexuals and continued to offer generalities to Americans that

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<sup>29</sup> Cameron, *supra* note 27.

<sup>30</sup> Interhemispheric Resource Center, *Moral Majority* (Jan. 2, 1990), [http://rightweb.irc-online.org/articles/display/Moral\\_Majority](http://rightweb.irc-online.org/articles/display/Moral_Majority).

<sup>31</sup> Campbell, *supra* note 2.

<sup>32</sup> Jerry Falwell, *Listen America* (1980), [http://www.wwnorton.com/college/history/archive/resources/documents/ch36\\_02.htm](http://www.wwnorton.com/college/history/archive/resources/documents/ch36_02.htm).

<sup>33</sup> Miller, *supra* note 12.

<sup>34</sup> *People & Ideas: Jerry Falwell* (Oct. 11, 2010), <http://www.pbs.org/godinamerica/people/jerry-falwell.html> (This campaign mixed religion and patriotism to attack what the Moral Majority felt were evils, like equal rights and the homosexual revolution, that were tearing down America.).

<sup>35</sup> *The Facts: Civil Rights Restoration Act* (Sept. 1, 2011), [http://www.fhwa.dot.gov/environment/environmental\\_justice/facts/restoration\\_act.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/facts/restoration_act.cfm).

conservatives stood for patriotism, biblical morality and the intact traditional family, while homosexuals were anti-country, anti-traditional values and anti-family.<sup>36</sup> He used scare tactics by warning that the Act could allow “practicing homosexual drug addicts with AIDS to be a teacher or a youth pastor.”<sup>37</sup> His fabrications had conservative senator Alan Simpson, a Republican from Wyoming, accusing the Moral Majority of holding a “massive misinformation campaign”.<sup>38</sup>

Propaganda was highly visible when it was used in Colorado in 1992 as a means to gain support for the Colorado Constitution’s 2<sup>nd</sup> Amendment, which stated that homosexuals should not be recognized as a special class or treated to what conservatives felt were special privileges, which in homosexuals’ views was essentially equal protection.<sup>39</sup> Professing to use the own words of representatives of the homosexual community, proponents of the Amendment used scare tactics to alarm Americans, trying to convince them to believe that the homosexuals’ goal was to eliminate the family unit, and sodomize and seduce society’s sons.<sup>40</sup> They distorted the facts by professing their agreement with progressives that hate is not a family value, stating they were not the ones promoting any hatred at all, and homosexuals were actually the ones “putting hate on their agenda.”<sup>41</sup> A main goal of Amendment 2 proponents was to promote that homosexuals were asking for rights that were above and beyond any rights to which others had access.<sup>42</sup> Without including all the facts, these proponents left out clear reasons why homosexuals, as a targeted class, should have received protected class status.

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<sup>36</sup> Interhemispheric Resource Center, *supra* note 30.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> WILLIAM N.ESKRIDGE, JR. & NAN D. HUNTER, SEXUALITY, GENDER, AND THE LAW 1098 (3<sup>RD</sup> ED. 2011).

<sup>40</sup> *Id.* at 1101.

<sup>41</sup> *Id.* at 1100.

<sup>42</sup> *Id.* at 1098.

The Christian Right needed to continue gay bashing with innuendos to keep the notion in the heads and hearts of Americans that homosexuals were eroding the moral tradition of America. Pat Buchanan, a candidate for United States President in 1992 and 1996, resurrected the strength of the Christian Right. He insisted, “There is a culture revolution in this country, a struggle for the nation’s soul between liberal and conservative where we must stand against the amoral idea that gay and lesbian couples should have the same standing in law as married men and women.”<sup>43</sup> The Defense of Marriage Act (DOMA), enacted in 1996, sanctioned traditionalist sentiments by denying recognition of same-sex marriages for federal purposes, social security benefits for those married legally in their home states, and it insisted that the United States did not have to recognize marriage from elsewhere as long as strong policies to the contrary existed.<sup>44</sup> As Karl Rove, key George W. Bush White House political strategist and member of the right wing conservative Family Research Council (FRC), a lobbying group hostile to the separation of church and state,<sup>45</sup> which has ties to the groups that funded the Regnerus Study,<sup>46</sup> informed the public, our President Bush believes in “marriage between a man and a woman, period. We should not carve out special privileges for people on the basis of sexual orientation.”<sup>47</sup> This testimonial<sup>48</sup> connected the conservative right’s traditional ideas to the most visible person in our land holding America’s most esteemed office, the President of the United States. Linking a propagandized view with someone who has held a respectable office in society, helps to garner support for that specific viewpoint.

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<sup>43</sup> Patrick Buchanan, *1992 Republican National Convention Speech* (Aug. 17, 1992, 12:00 AM), <http://buchanan.org/blog/1992-republican-national-convention-speech-148>.

<sup>44</sup> Campbell, *supra* note 2.

<sup>45</sup> Whittle, *supra* note 8, at 27.

<sup>46</sup> Rich Ferraro, *Flawed Paper Claims to Overturn 30 Years of Credible Research that Shows Gay and Lesbian Parents are Good Parents* (June 11, 2012, 9:03 PM), <http://www.glaad.org/blog/flawed-paper-claims-overturn-30-years-credible-research-shows-gay-and-lesbian-parents-are-good>.

<sup>47</sup> Whittle, *supra* note 8, at 28.

<sup>48</sup> Propaganda Techniques, *supra* note 10 (A testimonial is an endorsement in or out of context connected to a famous or respected person.).

As groups attempt to challenge laws against same-sex marriage and homosexuals' legal right to be families, conservatives still continue to fight to maintain the traditional family structure. Conservatives insist politicians need to feel the heat before they can see the light. They believe, "We need to twist their arms and stomp our feet and sometimes kick up some dust to make politicians do what they might not want to do."<sup>49</sup> Kenneth L. O'Connor's (one founder of the FRC) opinion from 2002 that we must "help family in our country advance a society that is informed with a Judeo-Christian worldview that reflects in final analysis the sovereignty of the Lord over all aspects of our life"<sup>50</sup> continues to be quoted by conservatives. To further their cause, conservatives quote D. James Kennedy, a conservative and president of Coral Ridge Ministries, who in 2003 said, "The holy war on gays must be renewed."<sup>51</sup> Kennedy believed, "These wars are not going to be over in 2000 or 2004 or 2006 or 2008 or 2010. We are in this for the long haul."<sup>52</sup> He propagandized that homosexual parenting must be denounced in an effort to fight for God, truth, morality and decency.<sup>53</sup> Conservatives insist that redefining laws governing an institution as sacred as the family will prove to be homosexuals' most difficult challenge.<sup>54</sup> To support this contention, conservatives offer the fact that 80% of white evangelical Christians still disapprove of gay marriage today, which is comparable to the amount that disapproved of it in 2003.<sup>55</sup>

(b) Proponents for Gay Rights Speak Out

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<sup>49</sup> Whittle, *supra* note 8, at 33.

<sup>50</sup> *Id.* at 27.

<sup>51</sup> Beirich, *supra* note 17.

<sup>52</sup> People for the American Way, *The Culture Wars Are Not Over*, in *CULTURE WARS* 22, 23 (Mary E. Williams ed., 2003).

<sup>53</sup> *Id.* at 25.

<sup>54</sup> Scott Harris, *2 Moms or 2 Dads—and a Baby*, *THE L.A. TIMES*, Oct. 20, 1991, [http://articles.latimes.com/print/1991-10-20/news/mn-470\\_1\\_artificial-insemination](http://articles.latimes.com/print/1991-10-20/news/mn-470_1_artificial-insemination).

<sup>55</sup> *Gay Marriage: How Traditionalists Lost the Argument*, *THE WEEK*, Apr. 12, 2013, at 16.

The gay community has been diligent in remaining vocal in keeping its fight on the front burners—by posting YouTube videos showing the average family wanting to see their gay children marry legally, as well as using benign names for their organizations, such as Minnesotans United for All Families, which is much more palatable for everyday Americans to accept.<sup>56</sup>

The newest assertion for same-sex marriage to be legalized is the \$1 million ad campaign by the Respect for Marriage Coalition<sup>57</sup>—leading with testimonials by famous and respected figures to spin their own propaganda so that Americans can identify with those supporting gay marriage as mainstream Americans:

- Former First Lady Laura Bush: “When couples are committed to each other and love each other then they ought to have the same sort of rights that everyone has.”<sup>58</sup>
- Former Secretary of State Colin Powell: “Allowing them [homosexuals] to live together with protection of law, it seems to me, is the way we should be moving in this country.”<sup>59</sup>
- Former Vice-President Dick Cheney: “Freedom means freedom for everyone.”<sup>60</sup>
- President Barack Obama: “Our journey is not complete until our gay brothers and sisters are treated like everyone else under the law.”<sup>61</sup>

In some parts of the United States, the issue of gay parenting is no longer perceived as an extremist fight for a radical nontraditional cause. Rather the approval towards gay unions and

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<sup>56</sup> Lekus, *supra* note 6.

<sup>57</sup> Kevin Bohn & Kevin Liptak, *Laura Bush: Take me out of pro-gay marriage ad* (Feb. 21, 2013, 10:10 AM), <http://politicalticker.blogs.cnn.com/2013/02/21/laura-bush-take-me-out-of-pro-gay-marriage-ad/> (The Marriage Coalition is a political group that believes in supporting equal marriage rights.).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

acceptance and the idea that this is now the new tradition of America has infiltrated some religious mindsets.

In 2012, the Army Chaplain at the Cadet Chapel at West Point hosted a same-sex marriage.<sup>62</sup> This happened in tandem with the “Don’t Ask, Don’t Tell” policy being revoked.<sup>63</sup> This symbolizes that institutions that are traditionally thought to be conservative are now being aligned with same-sex marriage, a more liberal view.

Similarly, the Washington National Cathedral will soon be a venue for same-sex marriages, keeping in line with the new laws approving same-sex marriage in the District of Columbia and Maryland.<sup>64</sup> The Cathedral’s dean, the Very Reverend Gary Hall, has stated, it is his Christian duty to carry out same-sex marriages. “I read the Bible as seriously as Fundamentalists do. I think it’s being faithful to the kind of community Jesus would have us to be.”<sup>65</sup>

Acceptance of children with homosexual parents has also become more mainstream in classrooms across America. Training for educators is now part of the curriculum in colleges, for example through “Making Room in the Circle,” which educates them about how to deal effectively with children who are being raised by LGBT families.<sup>66</sup> Specifically, in Wisconsin, grant money is used to create libraries on this subject in classrooms.<sup>67</sup> Twenty years ago this was

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<sup>62</sup> *West Point, N.Y. – Same-sex wedding*, THE WEEK, Dec. 14, 2012, at 5.

<sup>63</sup> *About “Don’t Ask, Don’t Tell”* (2013), <http://www.sldn.org/pages/about-dadt> (“Don’t Ask, Don’t Tell” was a law passed by Congress in 1993, which prohibited openly gay, lesbian, and bisexual men and women from serving in the military. In 2011, the law was repealed.)

<sup>64</sup> *Washington, D.C.- Gay weddings okayed*, THE WEEK, Jan. 18, 2013, at 7.

<sup>65</sup> *Id.*

<sup>66</sup> Carrie Kilman, *Mimi’s Moms*, 43 TEACHING TOLERANCE, Spring 2013, at 50-52 (“Making Room in the Circle” is a curriculum started by the California-based Parent Services Project, a national non profit, working with early childhood educators to improve parental involvement and to train educators to improve their support of LGBT families.)

<sup>67</sup> *Id.*

unheard of—no books were even available on the subject.<sup>68</sup> Since Heather Has Two Mommies was published in 1989, many more LGBT family-themed books are now available.<sup>69</sup> The idea of a LGBT family unit as being a new norm is beginning to get recognition in schools where young children encounter their first lessons on the family unit. Now those seven million LGBT parents who have children in United States schools can be included in the teachings.<sup>70</sup>

### III. Propaganda and the Regnerus Study

#### (a) The Regnerus Study Findings

“Outcomes for children of homosexuals rated suboptimal in almost every category.”<sup>71</sup>

The 2011 Regnerus Study is touted as the largest and most comprehensive study on the subject of homosexual parenting.<sup>72</sup> The conservative Witherspoon and Bradley Foundations funded it, and ultra-conservative Mark Regnerus chaired it.<sup>73</sup> The study has ties as previously mentioned to the conservative FRC, as well as the ultra-conservative Catholic group Opus Dei, which both have a mission to maintain traditional values and the family structure.<sup>74</sup>

Regnerus compared the lives of young adults ages 18 through 39 reared in same-sex families with those who grew up in intact biological families with one male husband and one female wife.<sup>75</sup> Regnerus studied how his subjects responded to questions regarding 40 different social, emotional and relational situations.<sup>76</sup>

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* (This book was written by Leslea Newman and is a LGBT-family themed book.)

<sup>70</sup> *Id.*

<sup>71</sup> Peter Sprigg, *New Study on Homosexual Parents Tops All Previous Research* (2012), <http://www.frc.org/issuebrief/new-study-on-homosexual-parents-tops-all-previous-research> (This is a quote by Peter Sprigg, a Senior Fellow for Policy studies at the Family Research Council.)

<sup>72</sup> C.M., *Experts Condemn Flawed Regnerus Study On Same-Sex Parenting* (June 22, 2012), <http://equalitymatters.org/factcheck/201206220001>.

<sup>73</sup> Regnerus, *supra* note 4, at 755.

<sup>74</sup> Ferraro, *supra* note 46.

<sup>75</sup> Regnerus, *supra* note 4, at 755.

<sup>76</sup> *Id.* at 752.

Regnerus found that young adults reared by lesbian couples scored suboptimally in 25 out of the 40 outcomes, as compared to those young adults raised in biologically intact families.<sup>77</sup> Those young adults raised with gay fathers scored suboptimally in 11 out of the 40 outcomes, as compared to those young adults raised in biologically intact families.<sup>78</sup>

His study generally found young adults reared by gay fathers had a statistically significant negative difference in educational attainment, in suffering more bouts of depression, and they committed crimes more than those young adults raised in biologically intact families.<sup>79</sup> He found that young adults raised by lesbian mothers also were statistically significantly different from young adults raised in biologically intact families. Specifically he found young adults reared by lesbian parents were more likely to be unemployed, be on public assistance, had lower educational attainment and more likely pled guilty to non-minor offenses and were touched sexually by a parent or adult care giver than those young adults raise in biologically intact families.<sup>80</sup>

The numbers Regnerus offers for some outcomes of his study reflect a breakdown in traditions Americans have been socialized to accept and keeps at the forefront the notion that homosexuals should not be given equality in parenthood.

- 23% of young adults parented by homosexuals v. 2% of young adults raised by biologically intact families have been touched sexually by a parent or adult caregiver<sup>81</sup>

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<sup>77</sup> *Id.* at 764.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 761-62.

<sup>80</sup> *Id.* at 761-62.

<sup>81</sup> *Id.* at 763.

- those parented in lesbian households were twice as likely than those in heterosexual intact biological families (19% vs. 8%) to report currently being in counseling for depression<sup>82</sup>
- 69% of young adults parented by lesbian mothers and 57% of young adults parented by gay fathers reported their families received public assistance, as compared to 17% of young adults raised by biologically intact families<sup>83</sup>

Regnerus concluded from these findings that children of same-sex parents experience greater instability in many outcomes, and it would be a “social gamble to support this new family form.”<sup>84</sup> Regnerus maintains that children succeed better as adults on many counts when they spend their entire childhoods raised in intact families with their married biological mothers and fathers.<sup>85</sup>

#### (b) The Propaganda and Flaws in the Regnerus Study

As previously noted, propaganda relies on tapping into beliefs and feelings to nudge groups to accept a particular way of thinking. Deeply instilled feelings are difficult to change.<sup>86</sup> For conservatives to indoctrinate others to believe the findings of the Regnerus Study and in turn accept traditional beliefs regarding same-sex parenting, they resort to propaganda and rationalization to compensate for this study’s flaws.

However, studies that traditionalists quote to uphold their position can be questioned as findings show there is no empirical evidence to point to in order to emphatically say that

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<sup>82</sup> *Id.* at 762.

<sup>83</sup> *Id.* at 761.

<sup>84</sup> Mark Regnerus, *Does it Really Make No Difference If Your Parents are Straight or Gay?* (Jun. 11, 2012, 6:02 AM), [http://www.slate.com/articlesdouble\\_x/doublex/2012/06/gay-parents-are-they-really-no-different-.2.html](http://www.slate.com/articlesdouble_x/doublex/2012/06/gay-parents-are-they-really-no-different-.2.html).

<sup>85</sup> Regnerus, *supra* note 4, at 766.

<sup>86</sup> Jill M. Crawford, *Gay and Lesbian Couples Should Have the Right to Adopt*, in *ADOPTION* 102, 110 (Roman Espejo ed., 2002).

homosexuals are not good parents,<sup>87</sup> as mostly these ideals are propagated by myth.<sup>88</sup> Yet, conservatives like Lynn Wardle, a Brigham Young University law professor, insist that research that is pro same-sex parenting is “flawed by using a sample size of a few dozen, with samples of convenience, where those subjects are recruited through advertisements in homophile publications.”<sup>89</sup> Most Americans cannot accept erosion of values and traditions, so traditionalists continue to object to full equality between homosexuality and heterosexuality.<sup>90</sup>

Proponents of the study disregard the fact that Regnerus did not measure what he purported to—family structure. Rather he compared young adults raised in intact biologically related families to young adults living in same-sex households where there were divorces and single-parent households. Regnerus himself states that, “A failed heterosexual union is clearly the modal method.”<sup>91</sup> “In fact, this is the most common characteristic for the group he lumps in with same-sex headed households.”<sup>92</sup> Proponents rationalize Regnerus continuing his study despite poor samples because “it is difficult to obtain representative samples because the population of homosexuals raising children is so small.”<sup>93</sup>

Proponents of the Regnerus Study also disregard that Regnerus accepts his suboptimal outcomes even though the length of time spent with each type of family is not comparable. Those young adults who lived in intact biological families did so for at least 18 years, while young adults living in same-sex households lived there for a much shorter time. Only 23% of those with a lesbian mother and only 2% of those with a homosexual father had spent as long as

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<sup>87</sup> American Psychological Association, *Sexual Orientation, Parents & Children* (Jul. 28 & 30, 2004), [www.apa.org/about/policy/parenting.aspx](http://www.apa.org/about/policy/parenting.aspx).

<sup>88</sup> Crawford, *supra* note 86, at 112.

<sup>89</sup> Lynn D. Wardle, *Gay and Lesbian Parenting May Not Be Beneficial*, in *ADOPTION* 113, 115-16 (Roman Espejo ed., 2002).

<sup>90</sup> Stanley Kurtz, *Neither the Right Nor the Left Can Win the Culture Wars*, in *CULTURE WARS* 35, 37 (Mary E. Williams ed., 2003).

<sup>91</sup> Regnerus, *supra* note 4, at 757.

<sup>92</sup> C.M., *supra* note 72.

<sup>93</sup> Sprigg, *supra* note 71.

three years living in a household with the homosexual parent and the parent's partner at the same time.<sup>94</sup> Regardless of this, proponents rationalize that these findings as they stand are acceptable because Regnerus could not find young adults living long term in same-sex households because their parents had short-lived relationships.<sup>95</sup>

Regnerus also compared young adults brought up in heterosexual households where their parents were still married with those reared in homosexual households where the parents of the young adults only had a "relationship."<sup>96</sup> As Laurie Essig, assistant professor of sociology and women and gender studies at Middlebury College, states, one group had an intact relationship while the other "might have only had a two week fling."<sup>97</sup>

Regnerus did not accurately sort participants into control groups for children raised by homosexual parents and those raised by two biologically related parents. As Regnerus explains, he overlapped populations and "forced mutual exclusivity for analytical purposes."<sup>98</sup> For example, a respondent whose mother had same-sex relationships might also be divorced and single, but to maximize the sample size of young adults with lesbian mothers and gay fathers, this respondent would be only labeled as having a lesbian mother.<sup>99</sup> John Corvino, chair of the Philosophy Department at Wayne State University and co-author of *Debating Same Sex Marriage*, asks,

“Question: What do the following all have in common?

A heterosexually married female prostitute who on rare occasion services women;

A long-term gay couple who adopt special-needs children;

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<sup>94</sup> *Id.*

<sup>95</sup> Ana Samuel, *New Family Structures Research and the “No Differences” Claim* 1, 2 (2012), <http://www.familystructurestudies.com/files/NFSS-summary-20120809.pdf>.

<sup>96</sup> C.M., *supra* note 72.

<sup>97</sup> *Id.*

<sup>98</sup> Regnerus, *supra* note 4, at 758.

<sup>99</sup> *Id.*

A never-married straight male prison inmate who sometimes seeks sexual release with other male inmates;

A woman who comes out of the closet, divorces her husband, and has a same-sex relationship at age 55, after her children are grown;

Ted Haggard, the disgraced evangelical pastor who was caught having drug fueled-trysts with a male prostitute over a period of several years;

A lesbian who conceives via donor insemination and raises several children with her long-term female partner;

Give up? The answer—assuming that they all have biological or adopted adult children between the ages of 18 and 39—is that they would all be counted as “Lesbian Mothers” or “Gay Fathers” in Mark Regnerus’s new study, “How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study” (NFSS).”<sup>100</sup>

Advocates of the Regnerus Study admit this study does not answer all the questions regarding same-sex parenting, yet they do intimate that because other studies use non-representative samples of the larger society, their findings that children in gay and lesbian households do not differ in well-being and adjustment to those children in heterosexual households are unacceptable.<sup>101</sup> For example, the Avon Longitudinal Study of Parents and Children, conducted throughout the 1990s, enrolled over 18,000 mothers, but only 18 were lesbians.<sup>102</sup> In the National Longitudinal Study of Adolescent Health, conducted throughout the

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<sup>100</sup> John Corvino, *Are Gay Parents Really Worse For Children? How a New Study Gets Everything Wrong*, THE NEW REPUBLIC, Jun. 11, 2012, <http://www.newrepublic.com/blog/plank/104001/are-gay-parents-really-worse-children-how-new-study-gets-everything-wrong>.

<sup>101</sup> American Psychological Association, *supra* note 87.

<sup>102</sup> Paul R. Amato, *The well-being of children with gay and lesbian parents* 771, 772 (2012), <http://www.baylorisr.org/wp-content/uploads/Amato.pdf>.

1990s and early 2000s,<sup>103</sup> only 44 of the 12,000 children interviewed had gay or lesbian parents.<sup>104</sup> Proponents point to the Regnerus Study as having a much better sample size, with 15,058 young adults polled, where 175 had lesbian mothers and 73 had gay fathers.<sup>105</sup> Regnerus' study is held as being "a representative population-based sample that is large enough to draw scientifically and statistically valid conclusions."<sup>106</sup>

Regnerus also disputes other studies' findings that offer a positive view of gay parenting. For example, he criticizes the 2011 National Longitudinal Lesbian Family Study, as the subjects in that study were recruited from lesbian events, lesbian bookstores and lesbian newspapers.<sup>107</sup> He argues that the study's findings are biased because its subjects have a vested interest in the outcome.<sup>108</sup> Regnerus' propaganda helps to negate positive studies towards LGBT parenting as he insists their samples are too small, too biased, non-representative and are mainly computed by lesbian and gay activists, many who have an ideological bias.<sup>109</sup> As Regnerus believes, "It certainly happens that propaganda influences groups. Propaganda does have a negative connotation but it is a powerful factor in sharing opinions because we are very social creatures."<sup>110</sup>

Regnerus would like his findings to steer the public to accept his propagandized assertions that although his implication is not to pinpoint homosexuality as the cause for the suboptimal behaviors in areas such as education, depression, employment and marijuana use for young adults parented by same-sex parents, his findings do equate with the challenges these

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<sup>103</sup> *The National Longitudinal Study of Adolescent Health*,  
[http://www.cpc.unc.edu/projects/lifecourse/research\\_projects/add\\_health](http://www.cpc.unc.edu/projects/lifecourse/research_projects/add_health).

<sup>104</sup> Amato, *supra* note 102.

<sup>105</sup> *Id.*

<sup>106</sup> Sprigg, *supra* note 71.

<sup>107</sup> Regnerus, *supra* note 4, at 753.

<sup>108</sup> *Id.*

<sup>109</sup> C.M., *supra* note 72.

<sup>110</sup> Email from Mark Regnerus to author (Feb.-Mar. 2012) (on file with author).

negativities will put on public health, psychotherapy, substance abuse and public assistance.<sup>111</sup> The drain it will put on these sectors of society might convince the American public to choose to support a more traditional mode of parenting where children do not face all of the above dilemmas. Conservatives who subscribe to the findings in the Regnerus Study try to dispel as myth the information offered in some studies that children of homosexual parents are “no different” from other children and suffer “no harm” from being raised by homosexual parents.<sup>112</sup> They dispel any positive findings by their constant use of propaganda. They insist that children will still be living in an immoral environment, playing on a subjective theory that goes to the heart of deeply instilled values.<sup>113</sup>

#### (c) Studies Opposing Regnerus’ Findings

Opponents to the Regnerus Study offer generalities<sup>114</sup> to shift the thinking away from Regnerus’ conservative rants that same-sex parents only suffice to promote negative outcomes for the children raised by them. Their generalities promote the ideology that “everyday people in this country see real life examples of love, commitment and care these people provide to their children. These parents are raising their children to be kind to their friends and neighbors, support their communities, and uphold America’s values.”<sup>115</sup> Many studies attest to this sentiment. Over 25 years of studies of non-heterosexual parents compared to heterosexual parents have shown “in sexual identity, self-esteem, adjustment or qualities of social relationships, results are consistent, offspring of lesbian or gay parents have been found to be at least as well adjusted overall as those of other parents.”<sup>116</sup>

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<sup>111</sup> Regnerus, *supra* note 4, at 766.

<sup>112</sup> Sprigg, *supra* note 71.

<sup>113</sup> Crawford, *supra* note 86, at 110.

<sup>114</sup> Propaganda Techniques, *supra* note 10.

<sup>115</sup> Ferraro, *supra* note 46.

<sup>116</sup> Charlotte J. Patterson, *Children of Lesbian and Gay Parents: Psychology, Law, and Policy* 727, 732 (2009), <http://people.virginia.edu/~cjp/articles/p09b.pdf>.

A study completed by Thomas Biblarz and Judith Stacey has shown that any difference between children raised by gay and lesbian parents and those of heterosexual parents in psychiatric evaluations, school adjustment, intelligence and behavior problems is not caused by the fact that the children are raised by homosexual parents.<sup>117</sup> Rather, Biblarz and Stacey believe that the stigma from society placed on homosexual parenting causes these differences.<sup>118</sup> Furthermore, Fiona Tasker and Susan Golombok found there are no statistically significant differences between young adults from lesbian and heterosexual family backgrounds with respect to sexual orientation.<sup>119</sup>

In their attempt to dispel Regnerus' findings, opponents to his study offer testimonies by respected groups like the American Psychological Association, the American Academy of Pediatrics and the National Association of Social Workers to conclude that LGBTs have effective parenting skills.<sup>120</sup> The opponents maintain that there is no scientific evidence that parenting effectiveness is related to parental sexual orientation.<sup>121</sup>

Nathaniel Frank, visiting scholar at Columbia's Gender and Sexuality Law Center, disputes Regnerus' findings. He succinctly characterizes the Regnerus Study when he says, "A small proportion of the sample spent a few years living in a household headed by same-sex couples. What Regnerus is actually comparing with heterosexual families is not families headed by same-sex couples, but couples who broke up and are in a failed heterosexual union."<sup>122</sup>

#### **IV. The Courts**

##### **(a) Propaganda – Determining Court Cases**

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<sup>117</sup> Judith Stacey & Timothy J. Biblarz, (*How*) *Does the Sexual Orientation of Parents Matter?* Amer. Sociological Rev., Vol. 66, No. 2, 159, 171 (Apr. 2001), [http://faculty.law.miami.edu/mcoombs/documents/Stacey\\_Biblarz.pdf](http://faculty.law.miami.edu/mcoombs/documents/Stacey_Biblarz.pdf).

<sup>118</sup> *Id.* at 178-79.

<sup>119</sup> *Id.* at 171.

<sup>120</sup> Ferraro, *supra* note 46.

<sup>121</sup> C.M., *supra* note 72.

<sup>122</sup> Nathaniel Frank, *Dad and dad vs. mom and dad* (Jun. 13, 2012), <http://articles.latimes.com/2012/jun/13/opinion/la-oe-frank-same-sex-regnerus-family-20120613>.

“So imbued is the court with law professions anti-anti-homosexual culture, that it is seemingly unaware that the attitudes of that culture are not obviously ‘mainstream’.”<sup>123</sup>

The attitudes toward gay marriage and parenting still mimic the myths and propaganda espoused by traditional conservatives. Conservative United States Supreme Court Justice Scalia says, “If we cannot have moral feelings against homosexuality, can we have it against murder? Can we have it against other things?”<sup>124</sup> Justices use research as benchmarks to aid in their decision-making regarding child and family law. And with the proponents of the Regnerus Study believing the study should be accepted as the gold standard,<sup>125</sup> its findings could influence court rulings and cases in relationship to the tolerance of parenting by same-sex couples. Although Regnerus insists he does not want his findings to make any social policies, he does hedge the point by adding, “Social science is a resource that offers insight to political and legal decision makers, and this study with its methodological strengths, deserves scholarly attention.”<sup>126</sup>

The climate within the courts throughout history has reflected the belief that domestic scenes in gay households “rattle classic notions of the nuclear family.”<sup>127</sup> This attitude is reflected in the Adoption Assistance and Child Welfare Act of 1980, which calls for a preservation of the traditional family, leaving much speculation and interpretation of how accepted a non-traditional family would be.<sup>128</sup> The Federal Adoption and Safe Families Act of

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<sup>123</sup> Jo Piazza, *From reasonable justice to culture warrior: Scalia’s gay evolution* (Dec. 11, 2012), [http://current.com/groups/news-blog/93986604\\_from-reasonable-justice-to-culture-warrior-scalias-gay-evolution.htm](http://current.com/groups/news-blog/93986604_from-reasonable-justice-to-culture-warrior-scalias-gay-evolution.htm) (comment by Chief Justice Scalia).

<sup>124</sup> *Id.*

<sup>125</sup> Sprigg, *supra* note 71 (Because proponents believes that the Regnerus Study has included specific comparisons between the children of homosexual parents and the children of heterosexual parents, and because unlike all other studies it is a representative, population-based sample that draws statistically and scientifically valid conclusions, it should be considered the gold standard in this field.).

<sup>126</sup> Regnerus, *supra* note 4, at 755.

<sup>127</sup> Harris, *supra* note 54.

<sup>128</sup> Crawford, *supra* note 86, at 103 (The Adoption Assistance and Child Welfare Act of 1980 is a piece of conservative legislation that generally had the traditional nuclear family in mind when discussing adoption, certainly not sanctioning parenting by gay or lesbian couples.).

1997 did not fare any better in accelerating the definition of homosexual parenting liberties.<sup>129</sup> Gay parenting is defined through a hodgepodge of occurrences, like lesbian and gay couples, homosexual, biological or adoptive parents, homosexual prospective legal parents or homosexuals individually seeking to adopt children or become parents by means of assisted procreation.<sup>130</sup> To conservatives, it would seem these different terms represent too many variations and too many groups who are trying to define and restructure the traditional family, which leads to conservatives being skeptical of it all.

While applicants should be evaluated on their abilities to parent, not on their sexual preference, the propaganda used by those in opposition to gay parenting can influence attitudes of those sitting on the courts. Conservatives allege, “Gay adoption knocks marriage out of its special status as the proper place for rearing children.”<sup>131</sup> Their propaganda pinpoints the problem of gay parenting as a “loss for children.”<sup>132</sup> Proponents of disallowing gay parenting argue the better option for children is to be raised by biologically related, married mothers and fathers. This directly connects to the conservative idea that traditional marriage between a man and a woman must be preserved. However, making distinctions between homosexual and heterosexual parenting and allowing the intrusion of personal beliefs about marriage makes the focus of custody cases on the parents involved, rather than the children. However, the children should be the main focus, as the general standard used in all courts is to keep the best interests of the *child* at the forefront.<sup>133</sup>

#### (b) The Legal Framework in Child Custody Cases

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<sup>129</sup> *Id.* at 104 (The Federal Adoption and Safe Families Act of 1997 worked just to speed up the planning process for adoption, but also did not answer the question of who should be considered an appropriate family for adopted children.).

<sup>130</sup> Wardle, *supra* note 89, at 114.

<sup>131</sup> Crawford, *supra* note 86, at 105.

<sup>132</sup> *Id.* at 106.

<sup>133</sup> Rachel Sinness, *The Best Interests of the Child and the Rights of the Parent- Damron v. Damron and the Future of Parenting*, 84 N.D. L. REV. 999, 1008-09 (2008).

The system under which courts traditionally evaluate child custody cases lends itself to allowing personal beliefs to play a part in judges' decisions. Judges in child custody cases utilize the best interests of the child as the main standard, which certainly leaves the subject open to interpretation, as it is broad and general.<sup>134</sup> Applying this idea, judges take into consideration three options when evaluating child custody cases:<sup>135</sup>

- The Per Se Rule where a parent's homosexuality as a matter of course renders him or her unfit for parenting (a court case in which this rule was used was in 1981, in the case of *Jacobson v. Jacobson*, where the North Dakota Supreme Court found homosexuality was a significant factor to deny custody to homosexual parent)<sup>136</sup>;
- The Middle Ground where judges presume the child will be adversely affected in some way by the homosexuality of a parent; the homosexuality of a parent is not the only factor used, but the court looks to see if the child will be socially or morally harmed (in 1993, in *Johnson v. Schlotman*, a North Dakota court gave custody to the heterosexual parent as the children would be embarrassed by the mother's homosexuality)<sup>137</sup>; or
- The Nexus Test, which requires evidence that the homosexual parent's contact will likely or does affect the child's best interests (in 2003, in *Damron v. Damron*, a North Dakota court found that the noncustodial father did not offer proof

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<sup>134</sup> Eileen P. Huff, *The Children of Homosexual Parents: The Voices the Courts Have Yet to Hear*, 9 AM. U. J. GENDER SOC. POL'Y & L. 695, 698-99 (2001).

<sup>135</sup> *Id.*

<sup>136</sup> *Sinness*, *supra* note 133, at 1010-12 (analyzing *Jacobson v. Jacobson*, 314 N.W.2d 78 (N.D. 1981) overruled by *Damron v. Damron*, 670 N.W.2d 871 (N.D. 2003)).

<sup>137</sup> *Id.* at 1012 (analyzing *Johnson v. Schlotman*, 502 N.W.2d 831 (N.D. 1993)).

sufficient to show that the relationship of the homosexual parent would endanger the children or actually harmed them).<sup>138</sup>

The three options however are vague, and the deciding factor for the judges' decisions are their own value systems and personal backgrounds. Many times their beliefs parallel the larger traditional culture.

A case that clearly exemplifies why the vague best interests of the child standard may allow for the intrusion of personal beliefs is *M.J.P v. J.G.P*, a case from 1982 that was decided in Oklahoma.<sup>139</sup> A lesbian mother was initially awarded custody of her child, however, the trial court then decided to modify the initial custody decision, granting custody to the father.<sup>140</sup> The Supreme Court of Oklahoma utilized the best interests of the child standard.<sup>141</sup> The outcome created a situation where in focusing on the best interests of the child, the court looked for more concrete factors for its decision.<sup>142</sup> The overriding, determining factor in this case was the mother's lesbianism and the future harm it posed to her child.<sup>143</sup> Therefore, the court found that the father should be granted custody.<sup>144</sup>

(c) Standard of Scrutiny that Should Be Used by Courts When Deciding Child Custody Cases Involving Homosexual Parents

Because the courts sometimes emphasize differences between homosexuals and heterosexuals when analyzing child custody cases, as is evidenced in the cases discussed, there might be an equal protection claim that could be formed, as it seems homosexuals are getting

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<sup>138</sup> *Id.* at 1012-14 (analyzing *Damron v. Damron*, 670 N.W.2d 871 (N.D. 2003)).

<sup>139</sup> Katja M. Eichinger-Swainston, *Fox v. Fox: Redefining the Best Interest of the Child Standard for Lesbian Mothers and Their Families*, 32 TULSA L.J. 57, 61-62 (1996) (analyzing *M. J. P. v. J. G. P.*, 640 P.2d 966 (Okla. 1982)).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

different treatment than heterosexuals.<sup>145</sup> In equal protection cases, there is question about the standard of scrutiny used by the court to make its decision.<sup>146</sup> The type of scrutiny—rational basis, intermediate, or strict<sup>147</sup>—used in a case can have a major impact on the outcome of the case. Because it can be argued homosexuals might be considered a “suspect class,” which is one that has been subjected to unequal treatment, and usually refers to an immutable trait, it can be said cases like child custody cases regarding gay parenting should be decided under a heightened level, possibly intermediate or even strict scrutiny.<sup>148</sup> If homosexual child custody cases were evaluated using a heightened level of scrutiny, it would create a system with less allowance for personal beliefs regarding whether judges in particular cases believe homosexuality is right or wrong, and more emphasis on the facts in front of them. It would also help with the goal of ensuring that the child’s best interests are at the forefront of judges’ minds, to ensure that the standard is effectively utilized.

(d) Homosexuality as Immoral Guiding Courts in their Decisions in Child Custody Cases

Similarly, the traditional notion that homosexuality is immoral has guided courts in their decisions regarding child custody. In *Johnson v. Schlotman*, in 1993, the North Dakota Supreme Court was faced with a child custody case where the mother was a lesbian.<sup>149</sup> The court’s major focus was on the mother’s relationship, and the court discussed all aspects of her relationship, including her living arrangements.<sup>150</sup> Although the court reprimanded the children’s father for

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<sup>145</sup> Sinness, *supra* note 133, at 1022-23.

<sup>146</sup> *Id.* at 1023.

<sup>147</sup> *History of Equal Protection and the Levels of Review* (2003-2007), [http://nationalparalegal.edu/conlawcrimproc\\_public/EqualProtection/HistoryOfEqualProtection.asp](http://nationalparalegal.edu/conlawcrimproc_public/EqualProtection/HistoryOfEqualProtection.asp). (To pass a rational basis review necessitates a rational relationship between the treatment of the people and a legitimate government purpose; to pass intermediate scrutiny there needs to be a substantial relation between the classification and the government objective; to pass strict scrutiny, there must be a compelling state interest, and the law at issue must be necessary to achieve that interest.).

<sup>148</sup> Sinness, *supra* note 133, at 1023-24.

<sup>149</sup> *Id.* at 1012 (analyzing *Johnson v. Schlotman*, 502 N.W.2d 831 (N.D. 1993)).

<sup>150</sup> *Id.*

trying to instill in his children hatred for homosexuals and explicitly said how a parent trying to implant bigotry in his or her child affects the child's best interests, the court still decided that it was best for the father to have custody of the children.<sup>151</sup> The court further noted that with this decision, the father would still probably "poison" the children with his bigotry.<sup>152</sup> The court ultimately chose a conclusion it predicted would essentially be against the interests of the children because it weighed that against the mother's apparently immoral relationship status.

(e) Gay Parents Seen As Unfit by Courts

The scare tactics continue when traditionalists persist in acknowledging that children will be molested by adoptive parents or will be pressured to become gay and these children will be living in an immoral environment.<sup>153</sup> Many courts have opposed gay parenting because they considered gay parents unfit.<sup>154</sup> For example, in 1974, in *In re Nicholson*, a mother who was a lesbian was deemed unfit to have custody by an Iowa court, because there would be no heterosexual role model in her home for her child.<sup>155</sup> Courts' opinions are open for judges' own subjective and biased opinions where they can rationalize that living in a gay household will be detrimental to the child by reason of "social condemnation."<sup>156</sup> Wardle discusses this stigma, as he is a major proponent of traditional families.<sup>157</sup> He promotes the conventional idea that legalizing homosexual parenting would produce a major change in social values, essentially corrupting them.<sup>158</sup> This notion has continuously been supported. In 1993, in *Bottoms v. Bottoms*, a major part of the court's analysis justifying why it awarded child custody to a

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Crawford, *supra* note 86, at 110.

<sup>154</sup> JUDITH GALAS, GAY RIGHTS 42 (Lucent Books 1996).

<sup>155</sup> Eichinger-Swainston, *supra* note 139, at 67 (analyzing *In re Nicholson*, docket number unavailable because case was sealed by the court, (Iowa Dist. Ct., Iowa County, Nov. 1974)).

<sup>156</sup> GALAS, *supra* note 154, at 43.

<sup>157</sup> Sinness, *supra* note 133, at 1007-08.

<sup>158</sup> *Id.*

grandmother rather than the natural mother included that since the mother was a lesbian, the stigma of her lesbianism would affect her child.<sup>159</sup> On appeal, Judge Compton of the Virginia Supreme Court in 1995, agreed and refused custody to the lesbian mother by propagandizing that living daily under conditions stemming from active lesbianism practiced in the home puts a burden on the child and his relationship in the community would be damaged.<sup>160</sup>

(f) Two Steps Forward, One Step Back

Even when it seemed evident courts were making strides towards breaking away from the traditional notions that homosexuality is equal to poor parenting, some courts were still reluctant to totally eliminate discussion of the immorality of homosexuality. In the 1997 Nebraska case *Hassenstab v. Hassenstab*, a woman's ex-husband argued that because she was openly homosexual this justified awarding him custody.<sup>161</sup> The Nebraska Court of Appeals held that although homosexuality could be a factor considered in a child custody case, it alone would not be the determining factor.<sup>162</sup> This response offered hope for homosexual parents seeking custody of their children. However, the Nebraska Court of Appeals also indicated its concern about homosexual parenting endangering children within its analysis, which shows the power that traditional viewpoints about parenting in general had exerted.<sup>163</sup>

(g) Justice Scalia's Views and the Current Legal State of Homosexual Relationships

In 2003, in response to *Lawrence v. Texas*, which struck down laws banning homosexual sodomy, Justice Scalia in a furious personal dissent insisted this would cause a "massive disruption of the current social order equal to legalizing bestiality and incest,"<sup>164</sup> and he further

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<sup>159</sup> Eichinger-Swainston, *supra* note 139, at 62-63 (analyzing *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. 1995)).

<sup>160</sup> GALAS, *supra* note 154, at 43.

<sup>161</sup> Sinness, *supra* note 133, at 1006 (analyzing *Hassenstab v. Hassenstab*, 570 N.W.2d 368 (Neb. Ct. App. 1997)).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 1007.

<sup>164</sup> Piazza, *supra* note 123 (analyzing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

predicted that this would open the door to gay marriage.<sup>165</sup> In fact, as Scalia predicted, the Supreme Court heard two cases – on Proposition 8, which bans same-sex marriage in California, and the constitutionality of DOMA on March 26<sup>th</sup> and 27<sup>th</sup> (on the tenth anniversary of oral arguments in *Lawrence v. Texas*)<sup>166</sup> – involving the constitutionality of gay marriage. By the time this paper is read, the Supreme Court will have heard the cases, but will not have yet rendered their decision.

The justices do not like to get too far ahead of public opinion, and polls show that 47% of Americans are still against the notion of gay unions, so they will probably limit their rulings.<sup>167</sup> Many traditionalists continue to hope that the courts will not nullify anti-gay marriage laws in the rest of the nation.<sup>168</sup> However, Justice Scalia, a powerful figure, could sway some mildly committed liberal groups to join forces with conservatives. This could result in those groups agreeing with Justice Scalia’s contention that homosexuality deserves to be treated not only with disapproval, but legal disability.<sup>169</sup> The constant conservative need to support their fight by keeping at the forefront traditionalist propaganda denouncing homosexuality will have an impact on any decision made.

Reactionaries in the political arena still point to the propaganda of Cameron’s writings, while overlooking that sociologists and psychologists have rejected his research. For example, in recent times, the chair of the Arkansas Child Welfare Agency Review Board cited Cameron’s writings in her testimony at policy hearings leading to restricting foster child placement to heterosexual parents.<sup>170</sup> Proponents of Cameron’s findings continue to propagandize that

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<sup>165</sup> *Id.*

<sup>166</sup> Arthur Leonard, *No Clear Majority on Merits Evident During Prop 8 Arguments*, GAY CITY NEWS, Mar. 27, 2013, at 12.

<sup>167</sup> *Gay marriage: How will the Supreme Court rule?*, THE WEEK, Dec. 21, 2012, at 4.

<sup>168</sup> *Id.*

<sup>169</sup> Piazza, *supra* note 123.

<sup>170</sup> Stacey & Biblarz, *supra* note 117, at 161.

children of gay unions are at risk of confusion over their gender roles and are more likely to be molested by their homosexual parents, and they probably will lose their homosexual parents to AIDS, substance abuse or suicide.<sup>171</sup> Opponents of gay marriage also point to the findings in Regnerus' study that implicates homosexuals with "sin and mental illness."<sup>172</sup>

(h) A Shift to Less Traditional Thinking With Regard to Gay Parenting

There has been some shifting in the legal system towards a less traditional policy toward gay parenting. In 2003, in *Goodridge v. Department of Public Health*, the Massachusetts Supreme Judicial Court, the highest court in Massachusetts, ruled that not allowing two people to marry because they are of the same-sex would violate the Massachusetts Constitution.<sup>173</sup> In its decision, the court also stated how construing "civil marriage" as meaning "the voluntary union of two persons as spouses,"<sup>174</sup> which led them to their ultimate decision, furthers the State's interest in providing stability for a child being raised by the couple.<sup>175</sup> Thus, that the court acknowledged child rearing in a case where it ruled in favor of same-sex marriage was a positive thought directed at same-sex couples. Similarly, in 2009, Iowa justices upheld a lower court ruling that rejected a state law restricting marriage to a union between a man and a woman.<sup>176</sup>

Progressives have been vocal regarding the Supreme Court hearings on DOMA and Proposition 8. "Supporters of gay marriage insist they will have majorities in nearly every state within a decade."<sup>177</sup> "Older people with anti-gay attitudes are dying and being replaced by accepting younger voters. If the Supreme Court does not throw out gay marriage prohibitions as

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 969 (Mass. 2003).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> Amy Lorentzen, *Same-sex marriage upheld in Iowa*, THE (NEWARK, N.J.) STAR-LEDGER, Apr. 4, 2009, at 3.

<sup>177</sup> Josh Barro, *How Gay Marriage Advocates Will Stop Worrying and Learn to Love the Ballot Box* (Nov. 7, 2012, 7:24 AM MT), [http://au-gp.org/mike/mike\\_issues\\_lists.php?id\\_to\\_list=353](http://au-gp.org/mike/mike_issues_lists.php?id_to_list=353).

unconstitutional, advocates of gay marriage will have to keep going to the polls. And they will have to get used to winning.”<sup>178</sup>

## V. Analysis

The cultural traditions in America are characteristic of a people’s entire way of life. The family is the most basic unit of culture. Some think it is the most important organization in society. It is within the family unit that children are reared to be responsible members of this society while being educated about America’s cultural beliefs and values. It is obvious that conservatives have relied and continue to rely on propaganda to preserve the customs with which they are comfortable. It is their way to form public opinion so that laws and attitudes remain hostile toward gay and lesbian child rearing. Conservatives limit their propaganda to biased and prejudiced ideas. They spread these ideas by manipulating facts and stereotyping to represent their homophobic attitudes.

Whether it is Bryant and Falwell’s scare tactics that homosexuals are robbing Americans of their children, or whether it is Cameron’s rants inciting Americans with the belief that homosexuals are immoral, or whether it is the study completed by ultra-conservative Regnerus, where he offers findings that are not in-sync with the process he followed, conservatives deliberately and purposefully spread their illogical ideas. Ideas based on embellished and distorted facts many times are taken from unsubstantiated research.

As more Americans realize homosexuality is becoming a more personal issue, negative perceptions may change. Anecdotally, Senator Rob Portman, a staunch conservative from Ohio, after agreeing with the traditional right wing view on the subject, dramatically did a 360, and has

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<sup>178</sup> *Victories for same-sex marriage*, THE WEEK, Nov. 16, 2012, at 8.

now endorsed the concept of gay marriage.<sup>179</sup> By extension, he now would be expected to support gay parental upbringing. Why is he now the only known major Republican federal office-holder with this position? Two years ago, Senator Portman was told by his son that he was gay, yet it took Portman this period of time to publicly adopt and accept his new liberal outlook based upon his son's revelation.<sup>180</sup> Though I support his conversion, still he remained silent during the recent presidential campaign where his party's platform supported DOMA.

Interestingly though, there is an even more prominent national conservative Republican, who has bucked his party's position for many years. Former United States Vice President Dick Cheney has been a supporter of gay rights issues and has been vocal in his point of view that there should be gay marriage equality.<sup>181</sup> Why? Again, as with Portman, the issue was personal, as Cheney's daughter, Mary, came out years ago and has married her partner.

If people would honestly open their eyes, they would find friends, siblings, cousins, aunts and uncles, who are also homosexual. The problem is the stigma, and that has led to so many living their lives in a repressed state. This is possibly why many subjects in the Regnerus Study scored suboptimally on so many outcomes. In fact, homophobia and discrimination are chief reasons why parental sexual orientation matters at all and why their children contend with vicarious social stigma.<sup>182</sup> The blame for all of this turmoil lies at the feet of propagandists like Falwell, Bryant and their mindless unquestioning minions, but "the order is rapidly fading, and the first one now, will later be last, for the times they are a'-changin'."<sup>183</sup> Gay parenting, as well

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<sup>179</sup> Rachel Weiner, *Rob Portman's son on coming out*, THE WASHINGTON POST (Mar. 25, 2013, 9:31 AM), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/03/25/rob-portmans-son-on-coming-out/>.

<sup>180</sup> *Id.*

<sup>181</sup> Alisha Wiersema, *High-Profile Politicians Who Changed Their Positions on Gay Marriage* (Mar. 15, 2013), <http://abcnews.go.com/Politics/high-profile-politicians-changed-positions-gay-marriage/story?id=18740293#.UWi5x83BF7F>.

<sup>182</sup> Stacey & Biblarz, *supra* note 117, at 177.

<sup>183</sup> BOB DYLAN, *THE TIMES THEY ARE A'-CHANGIN'* (Columbia, 1964) (Bob Dylan is an American folk singer.).

as the general acceptance of this persecuted minority, is on a steady path to societal norms as more and more homosexuals feel safe enough to “come out.”

It is my contention that traditionalist propaganda will undoubtedly continue and most probably be stepped up in light of the recent Supreme Court discussions regarding the rights of gays and lesbians. Conservatives refuse to relent when attempting to indoctrinate Americans with their religious views of morality in relationship to good parenting, but their power is diminishing.

Most citizens do not want to be duped into only accepting the conservative messengers’ point of view and then internalizing these ideas without utilizing their own thought process. As citizens in America become better informed on homosexual parenting, they may be able to weed out the lies and distortions offered by conservatives. Yet, when there are still homophobes and when two moms or two dads are being looked at with jaundiced eyes by others, I do not envision this exploitation ending without a long drawn out battle. As Seton Hall University School of Law Professor Marc Poirier has postulated, perhaps the most homosexuals can expect is a piecemeal kind of equality,<sup>184</sup> which, in my view, is no equality at all. Yet, perhaps it is the only kind of equality mainstream America can presently accept to appease the thought that they may be helping to erode tradition.

Perhaps the sentiment of Bret Stephens of The Wall Street Journal may move America closer to granting equal rights to homosexuals as those given to heterosexuals. He insists, “And if gay people want to live traditional middle class lives, that may be lunacy on their part, but a credit to our values.”<sup>185</sup> This statement to me still has a hint of homophobia. On one hand, Americans give homosexuals their rights regarding parenting and family, but then still label them

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<sup>184</sup> Marc R. Poirier, *Piecemeal and Wholesale Approaches Towards Marriage Equality in New Jersey: Is Lewis v. Harris A Dead End or Just A Detour?*, 59 RUTGERS L. REV. (2007).

<sup>185</sup> Bret Stephens, *A prescription for GOP revival*, THE WEEK, Nov. 30, 2012, at 12.

as crazy. But this eases the conscience of conservative America, and traditionalists can pat themselves on the back for being so righteous. Generally, values are subjective and hard to change, especially when that change will specifically erode, in the conservative view, the institution that is considered the most important and is the one Americans hold most sacred, the American family.

It remains to be seen when, not if, the *Kulturkampf* will result in legal equality as it relates to same-sex parenting. One thing is certain, that conservative and progressive groups will continue to spout their propaganda in their respective efforts. The conservatives incite Americans with claims like, “The country is caught up in a cultural collapse of historic proportion”,<sup>186</sup> while equating homosexuality with evil morals like extra-marital relationships. Furthermore, they promote the idea that “homosexuals’ relationships are detrimental to the emotional well-being of children like all extra-marital sexual relationships are detrimental to the well-being of children.”<sup>187</sup> Progressives though demand that the mainstream right understand that same-sex parents should be “fairly assessed on abilities to successfully parent and not on sexual preferences. The needs of the children should be considered.”<sup>188</sup> Their basic crux is still that evidence shows gay men and lesbians make perfectly good parents.<sup>189</sup> The ultimate goal of progressives is, “While the number of children who are aware that they have gay parents is growing, this will infuse the gay rights movement with a sense of family virtues making it mainstream in a way middle America can understand. When today’s children are adults, their

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<sup>186</sup> Williams, *supra* note 3, at 13.

<sup>187</sup> Wardle, *supra* note 89, at 113.

<sup>188</sup> Crawford, *supra* note 86, at 103.

<sup>189</sup> Patterson, *supra* note 116.

experience of growing up with a gay parent, or having a childhood acquaintance who did, is apt to have demystified for many the otherness of gays.”<sup>190</sup>

If trends continue, and there appears to be little reason to doubt, it seems only logical that in a generation or two America will be a land of law protecting equal rights. Civil rights came after years of political battle, just as homosexual rights have started to do the same. This does not and will not guarantee the end of bias toward those who receive legal protection, but at least any illegal violations will no longer be sanctioned by our legal system.

## **VI. Conclusion**

Conservatives organize and participate in a culture war to spread information specifically like that in the Regnerus Study, which confuses facts with flawed statistics to influence public opinion. Their efforts work to formulate negative attitudes towards child rearing by gays and lesbians. Traditionalists argue and persuade others so that America’s religious culture can remain stagnant. They offer flawed logic so that public opinion will be aligned with conservative public policy. Those opposed to gay parenting continue to manipulate studies and statistics to provide the American public with outcomes favorable to maintaining the traditional idea of the family. The result is that many citizens waffle between accepting this information that relies heavily on tapping into the emotional ties people have toward what they have been traditionally socialized to believe, and discounting this information as being deceptive in that it offers little evidence that restrictions on parenting by homosexuals should not be relaxed.

Proponents of biased studies, like the Regnerus Study, continue to repeat flawed findings as undisputed fact. If Americans are caught in the barrage of fear tactics, innuendos, testimonials and generalities that conservatives use to support Regnerus’ findings, they will accept the study’s conclusions that children raised in gay unions do have suboptimal occurrences, and that healthy

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<sup>190</sup> GALAS, *supra* note 154, at 45.

children could not possibly be raised in such unions. This belief enables the preservation of the American mainstream value system and the traditional mindset that the only acceptable way to raise children would be in a biologically intact family with one mother and one father, even though this propagandized idea appears not to be entirely true.