

# DO MOMS AND DADS MATTER? EVIDENCE FROM THE SOCIAL SCIENCES ON FAMILY STRUCTURE AND THE BEST INTERESTS OF THE CHILD

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In a legal system where “the best interests of the child” is the preeminent standard for a variety of family law issues, including both adoption placements<sup>1</sup> and child custody determinations,<sup>2</sup> evidence from the social sciences on child well-being is having an increasingly significant impact in both law and culture.<sup>3</sup> Presently, one of the most

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1. 2 AM. JUR. 2D *Adoption* § 136 (1994) (“In determining whether to grant a decree or order for the adoption of a minor child, the welfare or “best interests” of the child are of paramount consideration.”) (citing *Lindley v. Sullivan*, 889 F.2d 124, 132 (7th Cir. 1989); Appeal in Navajo County Juvenile Action No. JA-691, 831 P.2d 368, 374 (Ariz. Ct. App. 1991); Re Adoption of Minor Child, 279 So. 2d 55 (Fla. Dist. Ct. App. 1973); *Stalder v. Stone*, 107 N.E.2d 696, 701 (Ill. 1952); *B.G. v. H.S.*, 509 N.E.2d 214, 217 (Ind. App. 1987); Re Adoption No. 10087 in Circuit Court, 597 A.2d 456, 465 (Md. 1991); *Eggleston v. Landrum*, 50 So. 2d 364, 367 (Miss. 1951); *G.S.M. v. T.H.B.*, 786 S.W.2d 898, 903 (Mo. App. 1990); *Oxendine v. Catawba County Dept. of Social Services*, 281 S.E.2d 370, 376 (N.C. 1981); Re Adoption of Hess, 608 A.2d 10, 14 (Pa. 1992); *Dunn v. Dunn*, 380 S.E.2d 836, 837 (S.C. 1989); *Magevney v. Karsch*, 65 S.W.2d 562, 566 (Tenn. 1933); *Sonet v. Unknown Father of Hasty* 797 S.W.2d 1, 5 (Tenn. App. 1990); *Frye v. Spotte*, 359 S.E.2d 315, 317 (Va. App. 1987); *State ex rel. Smith v. Abbot*, 418 S.E.2d 575, 577 (W.Va. 1992); Re Adoption of *Tschudy*, 65 N.W.2d 17, 22 (Wis. 1954); Re Adoption of *AMD*, 766 P.2d 550, 552 (Wyo. 1988)).

2. 24A AM. JUR. 2D *Divorce and Separation* § 968 (1998) (“When the issue of custody is raised, the duty of the court is to make such order as the evidence shows to be for the best interests of the child.”); see also ALASKA STAT. § 25.24.150(c)(Michie 2002); ARIZ. REV. STAT. §25-403(a) (2000 & Supp. 2003); ARK. CODE ANN. §9-13-101(a)(1)(A) (Michie 1987 & Supp. 2003); CAL. FAM. CODE APP. § 4600(b) (West); COLO. REV. STAT. § 14-10-124 (1997); FL. STAT. ANN. § 61.13(2)(b) (West 1997 & Supp. 2004); HAW. REV. STAT. § 571-46 (1999); IDAHO CODE § 32-717 (Michie 1996); 750 ILL. COMP. STAT. ANN. 5/602 (West 1999 & Supp. 2003); IND. CODE § 31-14-13-2 (1997 & Supp. 2001); KAN. STAT. ANN. § 60-1610 (1994); KY. REV. STAT. ANN. § 403.270(2) (Michie 2003); MASS. GEN. LAWS ch. 209C, § 10 (1998 & Supp. 2003); MICH. COMP. LAWS § 722.26a (1993 & Supp. 2001-2002); MINN. STAT. § 518.17 (1990 & Supp. 2004); MO. REV. STAT. § 452.375(2) (2003 & Supp. 2004); N.M. STAT. ANN. § 40-4-9 (Michie 1978 & Supp. 2003); OKLA. STAT. tit. 10, § 21.3(C)(2) (Supp. 2004); TENN. CODE ANN. § 36-6-101(a)(1) (2001 & Supp. 2003); VA. CODE ANN. § 20-124.3 (Michie 1950); WASH. REV. CODE § 26.10.100 (1997 & Supp. 2004).

3. A number of significant adoption cases have relied on conclusions from social science studies, literature, and expert testimony, particularly in the context of adoptions by same-sex couples. See *In re Hart*, 806 A.2d 1179 (Del. Fam. Ct. 2001); *Bezio v. Patenaude*, 410 N.E.2d 1207 (Mass. 1980) ; *In re Opinion of the Justices*, 530 A.2d 21 (N.H. 1987); *In the Matter of the Adoption of a Child by J.M.G.*, 632 A.2d 550 (N.J. Super. Ch. 1993); *Matter of Adoption of Caitlin*, 622 N.Y.S.2d 835 (N.Y. Fam. Ct. 1994); *Matter of Adoption of Evan*,

important and contentious debates in law, scholarship, and the public arena is the question of family structure: Are children more likely to flourish when they are raised by their own married mothers and fathers, or are alternative family forms just as good? This comment reviews the role evidence from the social sciences on this issue has played in informing “the best interest” standard for legal scholars and decision-makers.

In Part I, we will highlight ways in which social science research and testimony has been influential in high profile litigation, and not only that involving adoption and custody determinations, but also in same-sex marriage litigation. Part II briefly examines the growing scientific consensus that child well-being is closely related to the intact marital family structure. In Part III, we will consider an emerging body of competing evidence which attempts to compare children of same-sex couples with children of married mothers and fathers. We will also note various critiques of this research and methodological obstacles, which limit the usefulness of many same-sex parenting studies. Finally, in Part IV, we conclude that the best evidence from the social sciences strongly suggests that family structure does matter, and that a married mother and father is the family structure that best protects children. At the same time, courts and legal elites have often downplayed the importance of mothers and fathers in a child’s well-being. If protecting the best interests of the child is the primary obligation of family law, the importance of intact marriages for child well-being should be an integral focus of the family law debate.

### I. SOCIAL SCIENCE EVIDENCE IN THE LEGAL DEBATE

In many ancient cultures, adoption existed to further the interests of adults or the family lineage. The American tradition of adoption, however, is firmly rooted in the “best interests of the child.”

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583 N.Y.S.2d 997 (N.Y. Sur. 1992); Conkel v. Conkel, 509 N.E.2d 983 (Ohio App. 1987) ; Blew v. Verta, 617 A.2d 31 (Pa. Super. 1992).

Prominent among the studies cited by the courts have been works by Charlotte Patterson and Richard Green. See Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, in *ADVANCES IN CLINICAL CHILD PSYCHOLOGY*, 235 (Thomas H. Ollendick and Ronald J. Prinz Eds., 1997); Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 *ARCHIVES OF SEXUAL BEHAV.* 2:167 (1986).

Adoption was created in America as a legal structure explicitly in order to meet the needs of children, not the desires or interests of adults. As noted by Professor Ruth-Arlene Howe of Boston University, while “Roman law was based upon the needs and rights of the adoptive parents; . . . American law, from the beginning, protected the welfare of adopted children.”<sup>4</sup> In all 50 states, the “best interest of the child” standard in some form is supposed to govern adoption law.<sup>5</sup> For example, the Pennsylvania adoption statute provides, “[T]he court shall decide [an adoption’s] desirability on the basis of the physical, mental and emotional needs and welfare of the child.”<sup>6</sup> The Texas statute is very straightforward: “If the court finds that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall grant the adoption.”<sup>7</sup> The Washington adoption statute opens with a legislative finding: “The legislature finds that the purpose of adoption is to provide stable homes for children. . . . The guiding principle must be determining what is in the best interest of the child.”<sup>8</sup>

The last forty years have seen a dramatic increase in alternative family forms such as divorced households, unwed mothers, single fathers, stepfamilies, cohabiting unions and same-sex couple households.<sup>9</sup> The question of whether family structure matters (i.e., whether children do better raised by their own married mothers and fathers, as compared to other family structures) has been the subject of increasingly intense scrutiny and debate among legal advocates, decision-makers, legislators, family scholars, as well as opinion leaders and the American public. Such questions have obvious application to cases involving adoption and custody determinations, which explicitly hinge upon a “best interests” determination. Increasingly, however, questions of family structure and child well-being have played a prominent role in the same-sex marriage debate,

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4. Ruth-Arlene W. Howe, *Adoption Practice, Issues, and Laws 1958-1983*, 17 FAM. L. Q. 173, 175 (1983) (citing Henry H. Foster, *Adoption and Child Custody: Best Interests of the Child*, 22 BUFFALO L.REV. 1 (1973)).

5. See *infra* note 30.

6. 23 PA. CONS. STAT. § 2724.

7. TEX. FAM. CODE ANN. § 162.016

8. WASH. REV. CODE § 26.33.010; see also FLA. STAT. ANN. § 63.022; IDAHO CODE § 16-1506; MONT. CODE ANN. § 42-1-102; N.J. STAT. ANN. § 9:3-37; OKLA. STAT. tit. 10, § 7501-1.2; TENN. CODE ANN. § 36-1-101; UTAH CODE ANN. § 78-30-1.5.

9. See, e.g., Jay D. Teachman, et al., *The Changing Demography of America’s Families*, 62 J. Marriage & The Fam. 1234 (Nov. 2000).

as judges and policymakers consider the role of marriage in providing mothers and fathers for children.

The first of the same-sex marriage cases to gain national attention arose in Hawaii in the early 1990's when three same-sex couples filed suit challenging Hawaii's marriage law.<sup>10</sup> In 1993, the Hawaii Supreme Court denied the state's motion to have the case dismissed on the pleadings, remanding the case for trial under a "compelling state interest" analysis.<sup>11</sup> When the case came to trial, social science data on child well-being played a central role in the state's defense of the marriage law. At trial, the state presented several expert witnesses in an attempt to demonstrate that the unique contributions of a mother and a father were important to healthy child development.<sup>12</sup> These experts included Dr. Kyle Pruett, a child development psychiatrist; Dr. David Eggebeen, a sociologist with expertise in child and family demographics; Dr. Richard Williams, a psychologist with expertise in research methodology and statistical analysis; and Dr. Thomas Merrill, a child development psychologist with expertise in gender development and relationships.<sup>13</sup>

Dr. Pruett testified regarding the results of a 10-year longitudinal study of fifteen families, which he had conducted. The study found "that there were unique paternal contributions made by a father," but that these contributions were "small" and "not essential to being a happy, healthy and well-adjusted child."<sup>14</sup> Dr. Pruett went on to articulate his opinion that "same-sex relationships do not provide the same type of learning model or experience for children as does male-female parenting," such that "most children are more likely to reach their optimal development being raised in an intact family by their mother and father," while also conceding that alternative family forms often raise children that are happy, healthy and well-adjusted.<sup>15</sup>

Dr. Eggebeen testified regarding demographic data showing that children in single-parent and step-parent families are exposed to a heightened risk of "(1) poverty or economic hardship; (2) poor

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10. Several earlier cases had been litigated in the 1970's. *See, e.g.,* Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971), *appeal dismissed for lack of substantial federal question*, 409 U.S. 810 (1972); Jones v. Hallahan, 501 S.W.2d 588 (Ky. 1973); Singer v. Hara, 522 P.2d 1187 (Wash. Ct. App. 1974); Adams v. Howerton, 486 F.Supp. 1119 (D.C. Cal. 1980);

11. Baehr v. Lewin, 852 P.2d 44 (1993).

12. Baehr v. Miike, No. 91-1394, 1996 WL 694235, at \*3-4 (Haw. Cir. Ct. Dec. 3, 1996).

13. *Id.*, at \*4, \*6, \*8, \*9.

14. *Id.* at \*4.

15. *Id.* at \*5.

academic performance; (3) behavior problems and conduct disorders; and (4) premarital or teenage birth for girls.”<sup>16</sup> Next, the sociologist equated unisex parenting with step-parent families, stating that “same-sex marriages where children [are] involved is by definition a step parent relationship.”<sup>17</sup>

Dr. Williams, with his background in statistical analysis and research methodology, reviewed a series of studies of children raised by gay and lesbian parents.<sup>18</sup> At trial, he expressed specific concerns with respect to each study and noted general concerns that: “(1) there was non-representative sampling of heterosexual, gay and lesbian parents; (2) inadequate sample size was employed; and (3) comparison groups used in the studies were not comparable in terms of household make up.”<sup>19</sup>

Dr. Merrill, the state’s final expert, testified that “different-sex parents are important because both parents serve as models and as objects for a child’s learning and development.”<sup>20</sup> Although biological parents are at times replaced through adoption or remarriage, these changes produce different influences on children, potentially altering a child’s developmental outcome.<sup>21</sup> Dr. Merrill concluded that the available data on same-sex parenting was insufficient for him to form a professional opinion as to how such a family structure would impact a child’s development.<sup>22</sup>

The other half of this battle of the experts, including a pediatrician, two child developmental psychologists, and a sociologist, appeared on behalf of the plaintiff same-sex couples, testifying that gay and lesbian parents are as fit and loving as parents composed of opposite-sex couples, and that children raised by same-sex couples develop normally.<sup>23</sup> Dr. Pepper Schwarz, a sociologist testified to the parental fitness of gay and lesbian parents, and suggested that “the

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16. *Id.* at \*7

17. *Id.* at \*7 (Dr. Eggebeen also conceded that “gay and lesbian couples can, and do, make excellent parents,” “that they are capable of raising a healthy child,” and “that children of same-sex couples would be helped if their families had access to or were able to receive [specific] benefits of marriage.”).

18. *Miike* 1996 WL 694235 at \*8.

19. *Id.* (The court discounted Dr. Williams’ testimony because of his underlying “bias against the social sciences” and “severe views,” such as his belief “that there is no scientific proof that evolution occurred.”).

20. *Id.* at \*9.

21. *Id.*

22. *Id.* at \*9.

23. *Id.* at \*10 (The court indicated that it found the testimony of Dr. Schwartz and Dr. Brodzinsky to be particularly credible.).

primary quality of parenting is not the parenting structure, or biology, but is the nurturing relationship between parent and child.”<sup>24</sup>

Dr. Charlotte Patterson, a sociology professor at the University of Virginia, testified concerning two studies which she had conducted on the children of gay and lesbian parents. Based on these studies, Dr. Patterson testified that children raised in gay and lesbian households appear to develop normally, and that “sexual orientation of the parents was not a good predictor of how well children do in terms of a child’s well-being and adjustment.”<sup>25</sup> She continued, explaining that there was “no data or research which establishes that gay fathers and lesbian mothers are less capable of being good parents than non-gay people.”<sup>26</sup>

A third expert witness for the plaintiffs, Dr. David Brodzinsky, professor of psychology at Rutgers University, was asked about the advantages of being raised by one’s biological parents, and responded that:

[T]he issue is not the structural variable, biological versus nonbiological, one parent versus two parent. . . . The issue is really the process variables, how children are cared for, is the child provided warmth, is the child provided consistency of care, is the child provided a stimulated environment, is the child given support. . . . And when you take a look at structural variables, there’s not all that much support that structural variable in and of themselves are all that important.”<sup>27</sup>

In response to the proposition that the state would prefer one family structure over another as the better environment in which to raise children, Dr. Brodzinsky responded:

I find that offensive truthfully. I find it offensive because it tends to suggest that there's only one way of being a parent. It excludes all nonbiological parenting which would be adoptive parenting, stepparenting, foster parenting, parenting by gay and lesbians. It suggests that if there are some additional issues that

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24. *Miike* 1996 WL 694235 at \*11.

25. *Id.* at \*13.

26. *Id.*

27. *Id.* at \*14.

come with some of these nontraditional families that should be reason for excluding rather than taking that information and using it not in a punitive way but in a proactive, kind of supportive way to help families deal with the inevitable issues that come up in life. And there are going to be some unique issues in varying forms of family. But to talk about one form of family that is best, I find that, you know, truthfully offensive and a distortion of the research literature.<sup>28</sup>

While this courtroom battle of the experts has not been repeated in subsequent marriage litigation, the debate has instead taken place by proxy as courts have looked to published studies related to same-sex parenting as part of their constitutional review of the marriage laws. Since the Hawaii litigation, several courts have turned to social science data in more narrow inquiries regarding matters such as the number of children being raised by gay or lesbian parents,<sup>29</sup> or the relationship between parental sexual orientation and that of children raised in the home.<sup>30</sup>

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28. *Id.* at \*15.

29. *Baker v. State*, 744 A.2d 864, 881-882 (Vt. 1999) (rejecting the state's argument that marriage laws served the legitimate purpose of "furthering the link between procreation and childrearing," the court turned to social science data to show "that increasing numbers of same-sex couples are employing increasingly efficient assisted-reproductive techniques to conceive and raise children.") (citing D. Flaks, et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 *Dev. Psychol.* 105, 105 (1995) (citing estimates that between 1.5 and 5 million lesbian mothers resided with their children in United States between 1989 and 1990, and that thousands of lesbian mothers have chosen motherhood through donor insemination or adoption)); G. Green & F. Bozett, *Lesbian Mothers and Gay Fathers*, in *HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY* 197, 198 (J. Gonsiorek et al. eds., 1991) (estimating that numbers of children of either gay fathers or lesbian mothers range between six and fourteen million); C. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity*, in *LESBIAN AND GAY PSYCHOLOGY* (B. Greene et al. eds., 1994) (observing that although precise estimates are difficult, number of families with lesbian mothers is growing); E. Shapiro & L. Schultz, *Single-Sex Families: The Impact of Birth Innovations Upon Traditional Family Notions*, 24 *J. Fam. L.* 271, 281 (1985) ("[I]t is a fact that children are being born to single-sex families on a biological basis, and that they are being so born in considerable numbers.").

30. *Dean v. District of Columbia*, 653 A.2d 307 (D.C. 1995) (Ferren, J., concurring and dissenting). The dissenting portion of Judge Ferren's opinion quoted a 1985 law review article summarizing various parenting studies which address the relationship between parental sexual orientation and that of their children. *Id.* ("[E]very study on the subject has revealed that the incidence of same-sex orientation among the children of gays and lesbians occurs as randomly and in the same proportion as it does among children in the general population; as they grow up, children adopt sexual orientations independently from their parents.") (quoting Steve

The relationship between family structure and child well-being was prominently revisited by the Massachusetts Supreme Judicial Court in its November 2003 decision *Goodridge v. Department of Public Health*.<sup>31</sup> In *Goodridge*, seven same-sex couples filed suit challenging the constitutionality of the state's marriage law. As the case proceeded on cross-motions for summary judgment, the parties presented the court with little social science research, leaving the task of making the scientific case to *amicus curiae* briefs.<sup>32</sup> In its opinion, the four justice majority of the SJC stated that "[t]he 'best interests of the child' standard does not turn on a parent's sexual orientation or marital status," and cited three child custody cases.<sup>33</sup> With the state having conceded that gay and lesbian couples may make "excellent"

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Susoeff, Comment, *Assessing Children's Best Interests When a Parent Is Gay or Lesbian: Toward a Rational Custody Standard*, 32 U.C.L.A. L. Rev. 852, 882 (1985). Other studies cited by Judge Ferren in support of the proposition include: Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 AM. J. PSYCHIATRY 692, 696 (1978) (reporting normal behavior and typical aspirations among the subject children); Green, *The Best Interests of the Child with a Lesbian Mother*, 10 BULL. AM. ACAD. PSYCHIATRY & L. 7, 14 (finding "no significant [gender identity] differences for the boys or the girls in either [the heterosexual or lesbian] set of families"); Cohen, *Children of Homosexuals Seem Headed Straight*, PSYCHOLOGY TODAY, Nov. 1978, AT 44-45; Hoefler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 542 (1981) (noting no significant difference in the acquisition of sex-role traits between the children of lesbian and heterosexual mothers and hypothesizing that children's peers have the greatest influence on their sex-role development); Weeks, *Two Cases of Children of Homosexuals*, 6 CHILD PSYCHIATRY & HUM. DEV. 26-32 (1975) (finding it impossible to distinguish specific aspects of the children's development that are directly related to their parents' sexuality); Note, *The Avowed Lesbian Mother and Her Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied*, 12 SAN DIEGO L. REV. 799, 861 (1975) (quoting psychiatrist George Weinberg: Most homosexuals have had parents who are exclusively heterosexual or primarily so. As this fact suggests, homosexual men and women do not learn their sexual preferences by watching the sexual activities of their parents . . . . The occasional concern that a homosexual parent will rear homosexual children is unwarranted by the evidence); Susan Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. CHILD PSYCHOL. & PSYCHIATRY 4:551 (1983); Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES OF SEXUAL BEHAV. 2:167 (1986); Mary B. Harris & Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. HOMOSEXUALITY 2:101 (1986).

31. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

32. 798 N.E.2d at 951. See Appellants' Brief at 105, n.66, *Goodridge v. Dep't of Pub. Health*, Docket # SJC-08860, reported at 798 N.E.2d 941 (Mass. 2003) (citing to brief *amicus curiae* of Massachusetts Psychological Association).

33. *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941, 963 (Mass. 2003) (citing *Doe v. Doe*, 452 N.E.2d 293 (Mass. App. Ct. 1993) (mother's same-sex partnership did not preclude joint custody of child); *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999) (former same-sex partner entitled to child visitation as "de facto parent"); as well as *Sylvia v. Sylvia*, 400 N.E.2d 1330 (Mass. App. Ct. 1980) (subsequent remarriage does not relieve a parent's duty of child support).

parents,<sup>34</sup> the court concluded that children of gay and lesbian couples were entitled to the benefits, which may flow from their parents' marriage.<sup>35</sup> The three dissenting justices strongly criticized the majority's reasoning. In an opinion joined by Justices Spina and Cordy, Justice Sosman wrote:

[W]e may be of the view that what matters to children is not the gender, or sexual orientation, or even the number of adults who raise them, but rather whether those adults provide the children with a nurturing, stable, safe, consistent, and supportive environment in which to mature, just as opposite-sex couples do. . . . It is not, however, our assessment that matters. Conspicuously absent from the court's opinion today is any acknowledgement that the attempts at scientific study of the ramifications of raising children in same-sex couple households are themselves in their infancy and have so far produced inconclusive and conflicting results.<sup>36</sup>

Justice Cordy, writing separately and also joined by Justices Sosman and Spina, continued this argument:

We must assume that the Legislature (1) might conclude that the institution of civil marriage has successfully and continually provided this structure over several centuries;<sup>37</sup> (2) might consider and credit studies that document negative consequences that too

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34. *Goodridge*, 798 N.E.2d. at 963.

35. *Id.* at 964.

36. *Id.* at 979.

37. *Id.* at 998, n.22 (citing C.N. Degler, *The Emergence of the Modern American Family*, in *THE AMERICAN FAMILY IN SOCIAL-HISTORICAL PERSPECTIVE* 61 (3d ed. 1983); A.J. Hawkins, *Introduction*, in *REVITALIZING THE INSTITUTION OF MARRIAGE FOR THE TWENTY-FIRST CENTURY: AN AGENDA FOR STRENGTHENING MARRIAGE* xiv (2002); C. Lasch, *Social Pathologists and the Socialization of Reproduction*, in *THE AMERICAN FAMILY IN SOCIAL-HISTORICAL PERSPECTIVE*, 80 (3d ed. 1983); W.J. O'DONNELL & D.A. JONES, *THE LAW OF MARRIAGE AND MARITAL ALTERNATIVES* 1 (1982); L. SAXTON, *THE INDIVIDUAL, MARRIAGE AND THE FAMILY* 229-230, 260 (1968); M.A. SCHWARTZ & B.M. SCOTT, *MARRIAGES AND FAMILIES: DIVERSITY AND CHANGE* 4 (1994); Wardle, "Multiply and Replenish": *Considering Same-Sex Marriage in Light of State Interests in Marital Procreation*, 24 *HARV. J.L. & PUB. POL'Y* 771, 777-780 (2001); J.Q. WILSON, *THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES* 28, 40, 66-67 (2002)).

often follow children either born outside of marriage or raised in households lacking either a father or a mother figure,<sup>38</sup> and scholarly commentary contending that children and families develop best when mothers and fathers are partners in their parenting;<sup>39</sup> and (3) would be familiar with many recent studies that variously support the proposition that children raised in intact families headed by same-sex couples fare as well on many measures as children raised in similar families headed by opposite-sex couples;<sup>40</sup> support the proposition that children of same-sex couples fare worse on some measures;<sup>41</sup> or reveal notable differences between the two groups of children that warrant further study.<sup>42</sup>

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38. *Id.* at 998, n.23 (citing Rodney, *Behavioral Differences Between African American Male Adolescents with Biological Fathers and Those Without Biological Fathers in the Home*, 30 J. BLACK STUD. 45, 53 (1999) (African-American juveniles who lived with their biological fathers displayed fewer behavioral problems than those whose biological fathers were absent from home); Chilton, *Family Disruption, Delinquent Conduct and the Effect of Subclassification*, 37 AM. SOC. REV. 93, 95 (1972) (proportion of youth charged with juvenile offenses who were not living in husband-wife family was larger than comparable proportion of youth charged with juvenile offenses who were living in husband-wife family); Hoffmann, *A National Portrait of Family Structure and Adolescent Drug Use*, 60 J. MARRIAGE & FAM. 633 (1998) (children from households with both mother and father reported relatively low use of drugs, whereas children from households without their natural mothers and from other family type households had highest prevalence of drug use). *See also* D. BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* 25 (1995).

39. *Id.* at 999, n.24 (citing H.B. Biller & J.L. Kimpton, *The Father and the School-Aged Child*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 143 (3d ed. 1997); H.B. BILLER, *FATHERS AND FAMILIES: PATERNAL FACTORS IN CHILD DEVELOPMENT* 1-3 (1993); Lynne Marie Kohm, *The Homosexual "Union": Should Gay and Lesbian Partnerships be Granted the Same Status as Marriage?* 22 J. CONTEMP. L. 51, 61 & nn.53, 54 (1996) ("statistics continue to show that the most stable family for children to grow up in is that consisting of a father and a mother").

40. *Id.* at 999, n.25 (citing Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. MARRIAGE & FAM. 1052, 1060, 1064-1065 (2000) (concluding that there are no significant differences between children of same-sex parents and children of heterosexual parents in aspects of personal development)).

41. *Id.* at 999, n.26 (citing Cameron, *Homosexual Parents*, 31 ADOLESCENCE 757, 770-774 (1996) (concluding results of limited study consonant with notion that children raised by homosexuals disproportionately experience emotional disturbance and sexual victimization)).

42. *Id.* at 999, n.27 (citing Stacey, *(How) Does the Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 172, 176-179 (2001) (finding significant statistical differences in parenting practices, gender roles, sexual behavior but noting that "heterosexism" and political implications have constrained research). *See also* Coleman, *Reinvestigating Remarriage: Another Decade of Progress*, 62 J. MARRIAGE & FAM. 1288 (2000) (concluding that future studies of impact of divorce and remarriage on children should focus on

Justice Cordy also noted that critiques of the research on unisex parenting have found serious methodological flaws,<sup>43</sup> specifically mentioning “that the sampling populations are not representative, that the observation periods are too limited in time, that the empirical data are unreliable, and that the hypotheses are too infused with political or agenda driven bias.”<sup>44</sup>

These examples illustrate the increasingly prominent role that social science findings are likely to continue playing in the marriage debate. In that debate, and any debate using social science findings on family structure, it is imperative that courts and policymakers are equipped with the best available evidence upon which to rest their decisions.

## II. MARRIAGE AND CHILD WELL-BEING: THE EMERGING CONSENSUS

Given the increasing presence of social science evidence in a variety of legal debates, the current state of evidence on family structure and child well-being is important. In the last thirty years literally tens of thousands of studies evaluating the consequences of marriage have been conducted in various disciplines (*e.g.*, psychology, sociology, economics, medicine). As a group, these studies point to powerful advantages of intact marriages of a mother and a father for children.<sup>45</sup>

Twelve leading family scholars recently summarized the research literature stating that: “Marriage is an important social good associated with an impressively broad array of positive outcomes for

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“nontraditional” stepfamilies, particularly same-sex couples with children, because impact of such arrangements have been overlooked in other studies)).

43. *Id.* at 999 (citing as examples, “R. LERNER & A.K. NAGAI, NO BASIS: WHAT THE STUDIES DON’T TELL US ABOUT SAME-SEX PARENTING, MARRIAGE LAW PROJECT (Jan. 2001) (criticizing forty-nine studies on same-sex parenting -- at least twenty-six of which were cited by amici in this case -- as suffering from flaws in formulation of hypotheses, use of experimental controls, use of measurements, sampling and statistical testing, and finding false negatives); Stacey, (*How*) *Does the Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 159-166 (2001) (highlighting problems with sampling pools, lack of longitudinal studies, and political hypotheses).”).

44. *Id.* at 999.

45. For summaries, see LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER AND BETTER-OFF FINANCIALLY* (2000); WILLIAM J. DOHERTY ET AL., *WHY MARRIAGE MATTERS: TWENTY-ONE CONCLUSIONS FROM THE SOCIAL SCIENCES* (2002).

children and adults alike. . . . [W]hether American society succeeds or fails in building a healthy marriage culture is clearly a matter of legitimate public concern.”<sup>46</sup> In addition, they made the following conclusions about family structure:

1. Marriage increases the likelihood that children enjoy warm relationships with both parents.<sup>47</sup>
2. Cohabitation is not the functional equivalent of marriage.<sup>48</sup>
3. Children raised outside of intact married homes are more likely to divorce or become unwed parents themselves.<sup>49</sup>
4. Marriage reduces child poverty.<sup>50</sup>
5. Divorce increases the risk of a school failure for children, and the likelihood that they will not graduate from college and achieve high status jobs.<sup>51</sup>
6. Children in intact married homes are healthier, on average, than children in other family forms.<sup>52</sup>
7. Children born to married parents have sharply lower risk of infant mortality.<sup>53</sup>
8. Children from intact married homes have lower rates of substance abuse.<sup>54</sup>
9. Divorce increases rates of mental illness and distress in children, including the risk of suicide.<sup>55</sup>
10. Boys and young men from intact married homes are less likely to commit crimes.<sup>56</sup>
11. Married women are less likely to experience domestic violence than cohabiting and dating women.<sup>57</sup>

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46. WILLIAM J. DOHERTY, ET AL., WHY MARRIAGE MATTERS: TWENTY-ONE CONCLUSIONS FROM THE SOCIAL SCIENCES 6 (2002) (co-authors include William J. Doherty, William A. Galston, Norval D. Glenn, John Gottman, Barbara Markey, Howard J. Markman, Steven Nock, David Popenoe, Gloria G. Rodriguez, Isabel V. Sawhill, Scott M. Stanley, Linda J. Waite, and Judith Wallerstein).

47. *Id.* at 7.

48. *Id.* at 7-8.

49. *Id.* at 8.

50. *Id.* at 9.

51. *Id.* at 10-11.

52. DOHERTY, *supra* note 46, at 11-12.

53. *Id.* at 12.

54. *Id.* at 12-13.

55. *Id.* at 14-15.

56. *Id.* at 15-16.

12. Children raised outside of intact marriages experience significantly elevated risks of child abuse.<sup>58</sup>

They concluded that:

Marriage is more than a private emotional relationship. It is also a social good. Not every person can or should marry. And not every child raised outside of marriage is damaged as a result. But communities where good-enough marriages are common have better outcomes for children, women, and men than do communities suffering from high rates of divorce, unmarried childbearing, and high-conflict or violent marriages.<sup>59</sup>

In recent years, this scholarly consensus on the importance of marriage for child well-being has broadened and deepened, extending across ideological lines to become the conventional wisdom among mainstream child welfare organizations. For example, a *Child Trends* research brief summed up the scholarly consensus:

Research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two-biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . There is thus value for children in promoting strong, stable marriages between biological parents.<sup>60</sup>

An Urban Institute scholar concluded: “Even among the poor, material hardships were substantially lower among married couples families with children than among other families with children. . . . The marriage impacts were quite huge, generally higher than the effects of education. The impacts [of marriage] were particularly high

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57. *Id.* at 16-17.

58. DOHERTY, *supra* note 46, at 17.

59. *Id.* at 18.

60. Kristin Anderson Moore, et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children and What Can We Do About It?*, CHILD TRENDS RESEARCH BRIEF 1 (June 2002) (available at <http://www.childtrends.org/PDF/MarriageRB602.pdf>).

among non-Hispanic black families.”<sup>61</sup> In addition, a report by the Centers for Disease Control (CDC) notes, “Marriage is associated with a variety of positive outcomes, and dissolution of marriage is associated with negative outcomes for men, women, and their children.”<sup>62</sup> Similarly, a policy brief issued by the Center for Law and Social Policy concludes, “Research indicates that, on average, children who grow up in families with both their biological parents in a low-conflict marriage are better off in a number of ways than children who grow up in single-, step-, or cohabiting-parent households.”<sup>63</sup> Even some prominent critics of the marriage movement, such as Stephanie Coontz, no longer publicly dispute its central premise: “Yes, kids raised by married parents do better, on average, than kids raised in divorced- or single-parent homes. Yes, the long-term commitment of marriage confers economic, emotional and even health benefits on adults as well.”<sup>64</sup>

While there remains considerable scholarly disagreement about the size of the marital advantage and the mechanisms by which it is conferred,<sup>65</sup> the weight of social science evidence strongly supports that idea that family structure is important and that the family structure that is most protective of child well-being is the intact, biological, married family.

### III. THE SOCIAL SCIENCE OF GAY PARENTING: A COMPETING BODY OF EVIDENCE?

#### A. *Scientific Claims Made in Support of Gay Parenting*

The powerful consensus on family structure is on a collision course with a separate emerging issue: the social science literature on

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61. Robert I. Lerman, *Impacts of Marital Status and Parental Presence on the Material Hardship of Families with Children*, THE URBAN INSTITUTE 27 (July 2002) (available at [http://www.urban.org/UploadedPDF/410538\\_MaterialHardship.pdf](http://www.urban.org/UploadedPDF/410538_MaterialHardship.pdf)).

62. Matthew D. Bramlett & William D. Mosher, *First Marriage Dissolution, Divorce, and Remarriage: United States*, CDC ADVANCE DATA no. 323, 1 (May 31, 2001).

63. Mary Parke, *Are Married Parents Really Better for Children? What Research Says About the Effects of Family Structure on Child Well-Being*, CLASP POLICY BRIEF NO. 3, 6 (May 2003).

64. Stephanie Coontz, *Nostalgia as Ideology*, THE AMERICAN PROSPECT, Apr. 8, 2002, at 26.

65. See, e.g., MAVIS E. HEATHERINGTON & JOHN KELLY, FOR BETTER OR FOR WORSE—DIVORCE RECONSIDERED (2002).

sexual orientation and parenting. Judith Stacey, summing up this new challenge to the social science consensus on family structure in testimony before the U.S. Senate, put it this way:

The research shows that what places children at risk is not fatherlessness, but the absence of economic and social resources that a qualified second parent can provide, whether male or female. . . . Moreover, the research on children raised by lesbian and gay parents demonstrates that these children do as well if not better than children raised by heterosexual parents. Specifically, the research demonstrates that children of same-sex couples are as emotionally healthy and socially adjusted and at least as educationally and socially successful as children raised by heterosexual parents.<sup>66</sup>

In December 1999, Stanford University Law Professor Michael Wald released an analysis of Proposition 22, a proposed initiative statute, which would define marriage as the union of one man and one woman under California law. Assessing the claim that “it is better for children to be raised by two opposite-sex married parents,” the author points to social science research and concludes baldly, “[T]he evidence does not support these claims.”<sup>67</sup>

Several highly respected professional organizations, which we note are largely composed of clinicians, not social scientists, have issued policy statements that appear to confirm this assessment of the social science evidence. For example, in 1995, the American Psychological Association (APA) issued a statement indicating that, based upon the available scientific data, children raised by lesbian and gay parents are not “disadvantaged in any significant respect relative

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66. *What is Needed to Defend the Bipartisan Defense of Marriage Act of 1996?: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the Senate Comm. on the Judiciary*, 108th Cong., Sept. 4, 2003 (written statement of Prof. Judith Stacey, Ph.D., Department of Sociology, New York University).

67. MICHAEL S. WALD, *SAME-SEX COUPLES: MARRIAGE, FAMILIES, AND CHILDREN: AN ANALYSIS OF PROPOSITION 22, THE KNIGHT INITIATIVE 11 (1999)* (co-published by The Stanford Institute for Research on Women and Gender and The Stanford Center on Adolescence); *see also id.* at vi (“Some opponents of same-sex couple marriage content that it is harmful for children to be raised by gay or lesbian parents. Again, there is a large body of research available to assess this claim.”) (citing a statement from the American Psychological Association).

to the children of heterosexual parents.”<sup>68</sup> The American Academy of Pediatrics (AAP) issued a similar policy statement, concluding “that the weight of evidence gathered during several decades using diverse samples and methodologies is persuasive in demonstrating that there is no systematic difference between gay and non-gay parents in emotional health, parenting skills, and attitudes towards parenting.”<sup>69</sup>

If true, this body of social science evidence would present a significant challenge to the scholarly consensus that children do best when raised by their own two married parents. Because courts, legislatures, and other policy-makers are increasingly relying on this body of social science to make substantive decisions that will affect child-well-being, coming to accurate conclusions about the state of the social science evidence on unisex parenting is critical.

### *B. The Limitations of Social Science Evidence on Unisex Parenting*

Legal thinkers and decision-makers are grappling with how to evaluate such competing claims about child well-being, both allegedly based on social science. Conceptually, this field covers two distinct questions that are often blurred in both public and scholarly discourse. The first question is: Are gays and lesbians, on average, just as likely to be good parents as heterosexual parents? The second question is: Do children raised by unisex couples do just as well as children raised by married mothers and fathers? While this first question may be relevant to certain policy questions regarding the parental fitness of specific individuals (e.g., in a child custody dispute), it does not speak to the issue of family structure. Our primary interest is in the social science evidence on the latter question, which goes to the core of the family structure debate. Scholars have conducted numerous reviews of the literature on sexual orientation and parenting.<sup>70</sup> At least three

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68. American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* (1995) (available at [www.apa.org/pi/parent.html](http://www.apa.org/pi/parent.html)).

69. American Academy of Pediatrics, *Coparent or Second-Parent Adoption by Same-Sex Parents*, 109(2) PEDIATRICS 339-340 (Feb. 2002) (available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;109/2/339>).

70. *Id.*; Judith Stacey and Timothy Biblarz, *(How) Does The Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159 (2001); C. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. MARRIAGE & FAM. 1052-1069 (2000); M. Kirkpatrick, *Clinical Implications of Lesbian Mother Studies*, 14 (1/2) J. HOMOSEXUALITY 201-211 (1997); American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* (1995) (available at [www.apa.org/pi/parent.html](http://www.apa.org/pi/parent.html)); C. Patterson, *Lesbian Mothers, Gay Fathers and Their Children*, in A. R. D'AUGELLI & C. PATTERSON, *LESBIAN, GAY*

such reviews have pointed to the serious limitations found in this body of research.<sup>71</sup>

Perhaps the most thorough review was prepared by Steven Nock, a sociologist at the University of Virginia who was asked to review several hundred studies as an expert witness for the Attorney General of Canada. Nock concluded: [T]hrough this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of those studies was conducted according to general accepted standards of scientific research.<sup>72</sup> A 1995 review expressed similar concerns, as prominent Berkeley sociologist Diana Baumrind reviewed various parenting studies, including the work of Charlotte Patterson and David Flaks.<sup>73</sup> In her review, Professor Baumrind evaluated, among other things, the claim that children of homosexual parents suffered no adverse outcomes and were no more likely to develop a homosexual sexual orientation than were children not raised in such homes.<sup>74</sup> Baumrind found problems with the research she reviewed including the use of small, self-selected convenience samples, reliance on self-report instruments, and biased study populations consisting of disproportionately privileged, educated, and well-off parents.<sup>75</sup> Due to these flaws, Baumrind questioned the conclusions on both “theoretical

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AND BISEXUAL IDENTITIES ACROSS THE LIFESPAN: PSYCHOLOGICAL PERSPECTIVES 262-290 (1995); C. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025-1042 (1992); G.D. Green & F.W. Bozett, *Lesbian Mothers and Gay Fathers*, in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY (J.C. Gonsiorek & J. D. Weinrich eds., 1991); J.J. Bigner & F.W. Bozett, *Parenting by Gay Fathers*, 14 (3/4) MARRIAGE AND FAM. REV. 155-175 (1990); J.S. Gottman, *Children of Gay and Lesbian Parents*, 14 (3/4) MARRIAGE AND FAM. REV. 177-196 (1990); F.W. Bozett, *Gay Fathers: A Review of Literature*, 18 (1/2) J. HOMOSEXUALITY 137-162 (1989); D. Cramer, *Gay Parents and Their Children: A Review of Research and Practical Implications*, 64 J. COUNSELING AND DEV. 504-507 (1986).

71. Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31(1) DEVELOPMENTAL PSYCHOL. 130, (1995); Aff. of Stephen Lowell Nock, *Halpern v. Attorney General of Canada*, No. 684/00 (Ont. Sup. Ct. of Justice); ROBERT LERNER & ALTHEA K. NAGAI, NO BASIS: WHAT THE STUDIES DON'T TELL US ABOUT SAME-SEX PARENTING (2001). In addition, Judith Stacey and Timothy Biblarz, while generally supportive of same-sex parenting, acknowledge important methodological limitations in existing research. For example, the authors acknowledge that “there are no studies of child development based on random, representative samples of [same-sex couple headed] families.” Judith Stacey & Timothy Biblarz, *(How) Does The Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 166 (2001).

72. Nock Aff. ¶ 3, *Halpern v. Attorney General of Canada*, No. 684/00 (Ont. Sup. Ct. of Justice).

73. Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31(1) DEVELOPMENTAL PSYCHOLOGY 130 (1995).

74. *Id.*

75. *Id.*

and empirical grounds.”<sup>76</sup> Another review, prepared by Robert Lerner and Althea Nagai in 2001, looked at forty-nine separate parenting studies before concluding that “the methods used in these studies are so flawed that the studies prove nothing.”<sup>77</sup>

What are some of the design flaws pointed out in these reviews? For example:

- a. No nationally representative sample: Even scholars enthusiastic about unisex parenting, such as Stacey and Biblarz, acknowledge that “there are no studies of child development based on random, representative samples of [same-sex couple headed] families.”<sup>78</sup>
- b. Limited access to children: Because children of lesbian parents are a small demographic group, access to these children is often filtered through groups with an ideological interest in the outcome of the research.<sup>79</sup>
- c. Limited outcome measures: Many of the outcomes measured by the research are unrelated to standard measures of child well-being used by family sociologists (perhaps because most of the researchers are developmental psychologists, not sociologists).<sup>80</sup>

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76. *Id.* at 133-134.

77. ROBERT LERNER & ALTHEA K. NAGAI, NO BASIS: WHAT THE STUDIES DON'T TELL US ABOUT SAME-SEX PARENTING 6 (2001).

78. Judith Stacey and Timothy Biblarz, (*How*) *Does The Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 166 (2001); *see also*, Nock Aff. ¶ 116, *Halpern v. Attorney General of Canada*, No. 684/00 (Ont. Sup. Ct. of Justice) (“Not one study relied on probability samples of homosexuals and heterosexuals.”).

79. *See, e.g.*, Nock Aff. ¶ 116, *Halpern v. Attorney General of Canada*, No. 684/00 (Ont. Sup. Ct. of Justice) (“In most cases, all data were collected by a single researcher. This makes it impossible to assess the extent of subjective bias that may have been introduced. . . . When subjects are allowed to select themselves into a study without any scientific sampling used, the researcher cannot know how his or her subjects compare to those who did not select themselves into the study. This unknown bias makes it impossible to generalize the findings from any such study.”); Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31(1) DEVELOPMENTAL PSYCHOL. 130 (1995) (“Research findings to date are not definitive, however, because most of the studies are based on small samples of convenience, retrospective data, or self-report instruments subject to social desirability biases.”).

80. Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31(1) DEVELOPMENTAL PSYCHOL. 130 (1995) (“Also few, if any, of the studies have explored theoretically relevant hypotheses concerning adolescent outcomes or used intensive observational and interview methods most likely to reveal possible problems such as identity diffusion or parent-child enmeshment.”); ROBERT LERNER & ALTHEA K. NAGAI, NO

d. No long-term studies: All of the studies conducted to date focus on static or short-term measures of child development. None follow children of unisex parents to adulthood.<sup>81</sup>

The most serious methodological critique of these studies, at least with reference to the family structure debate, is that the vast majority of these studies compare single lesbian mothers to single heterosexual mothers. As Charlotte Patterson, a leading researcher on gay and lesbian parenting, recently summed up, “[M]ost studies have compared children in divorced lesbian mother-headed families with children in divorced heterosexual mother-headed families.”<sup>82</sup> In comparing children in families headed by a lesbian mother with children in families headed by a divorced heterosexual mother, these studies compare children in some fatherless families to children in other fatherless family forms. While the findings of these studies may be relevant for some legal policy debates (such as custody disputes), they do not shed light on family structure per se. The question is significant, and credible new research needs to be done comparing outcomes of children of same-sex couples and children of married

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BASIS: WHAT THE STUDIES DON’T TELL US ABOUT SAME-SEX PARENTING 62-63 (2001) (“The key to accurate measurement is a scientific consensus that a measure works. This means that it has been subject to repeated use, and that the use has confirmed or revised the measure in such a way that it can be relied upon with confidence. . . . Self-constructed measures are generally a bad idea. At the very least, they offer no reason to trust that anything has yet been accurately and truly measured. . . . Looking at the 49 studies, we find that 23 studies appear to have created some of the measures used in their studies.”); but see, Nock Aff. ¶ 116, Halpern v. Attorney General of Canada, No. 684/00 (Ont. Sup. Ct. of Justice) (“Researchers often relied on well-known and established measures, but rarely reported their reliability for the samples studied.”).

81. Nock Aff. ¶¶ 42, 116, Halpern v. Attorney General of Canada, No. 684/00 (Ont. Sup. Ct. of Justice) (“[W]hen the goal is to produce evidence about a cause, as in the present case, cross-sectional studies are considered especially weak. Longitudinal studies are always preferred when the issue is one of cause-effect.” “The studies reviewed exhibit the critical defects explained earlier, in the following ways: . . . Only one study relied on a longitudinal design.”); Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31(1) DEVELOPMENTAL PSYCHOLOGY 130 (1995) (“In summary, it is premature to predict adolescent and adult outcomes associated with being reared in any one of the variety of lesbian or gay family arrangements.”); see also Judith Stacey and Timothy Biblarz, (*How*) *Does The Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 172 (2001) (“Thus far, no work has compared children’s *long-term* achievements in education, occupation, income, and other domains of life.”).

82. Charlotte J. Patterson et al., *Children of Lesbian and Gay Parents: Research, Law and Policy*, in CHILDREN AND THE LAW: SOCIAL SCIENCE AND POLICY 10-11 (Bette L. Bottoms et al., eds. 2000) (available from lead author at cjp@virginia.edu); see also Charlotte J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. MARRIAGE & FAM. 1052-1069 (2000).

mothers and fathers. Studies comparing children of single lesbian mothers with children of single heterosexual mothers cannot credibly be used to contradict the weight of social science evidence in general on the benefits of the married, intact biological family over alternative family forms.<sup>83</sup>

#### V. CONCLUSION

As the law has become more committed to “the best interests of the child” standard to guide family law, it has become increasingly common for judges and legal scholars to use evidence provided by studies conducted in the social science field as support for legal judgments and standards in family law. An accurate assessment of social science evidence is therefore critical. A substantial body of evidence suggests that family structure matters and that children do better, on average, when they are raised by the household of their own married mother and father. Considerable damage can be done to children by making legal policy based on preliminary and inadequate social science research. Legal scholars should proceed with caution before advocating changes in family law based on the assumption that family structure does not matter to a child’s well-being.

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83. The Florida Court of Appeals in a 1993 decision rejected social science arguments in a case seeking to invalidate Florida’s ban on homosexual adoptions. *State, Dept. of Health and Rehabilitative Services v. Cox*, 627 So. 2d 1210 (Fla. Dist. Ct. App., 1993) (*approved in part, quashed in part*, *Cox v. Florida Dept. of Health and Rehabilitative Services*, 656 So. 2d 902 (Fla. 1995)). Ignoring a number of reports and articles submitted by the plaintiffs, the court explained, “In truth, there is virtually *no* evidence in the record. The parties merely submitted copies of law review articles and other reports in magazines and journals.” *Id.* at 1213. In commenting on a study by Charlotte Patterson, one of only two major studies entered into evidence, the court wrote, “The record contains no information concerning Ms. Patterson’s credentials. The review focuses not on adopted children, but on the natural children of homosexuals. It discusses the need for future research and does not render any scientific or legal opinion concerning the best interests of children in need of adoption.” *Id.* The court then proceeded to dismiss the other study as well, finding that the plaintiffs had failed to establish its scientific credibility. *Id.*