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# RESPONSE

## BEYOND BIOLOGY: REPRODUCTIVE JUSTICE, LAW, AND THE POLITICS OF REGULATING SPERM<sup>†</sup>

KIMBERLY MUTCHERSON\*

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<sup>†</sup> An invited Response to Courtney G. Joslin, *Sperm Rules*, 105 B.U. L. REV. 2221 (2025).

\* Professor of Law and Dean Emeritus at Rutgers Law School in Camden. I am grateful to Professor Courtney Joslin for her steadfast commitment to writing impactful scholarship about the need to legally protect LGBTQ+ people and the families we create. My thanks to the editors of *Boston University Law Review* for their work on this piece.

## INTRODUCTION

Courtney Joslin's *Sperm Rules*<sup>1</sup> examines growing calls for regulating the gamete market—such as family limits, donor anonymity bans, and medical record access—and warns these efforts may undermine constitutional rights to procreate, parent, and marry.<sup>2</sup> While acknowledging and respecting that some donor-conceived people advocate strongly for changes to sperm rules based on their personal experiences, Joslin considers the broader implications for LGBTQ+ family formation, specifically how rules about sperm can undermine those families.<sup>3</sup> First, she describes the sperm market and how, over time, it has become a market in which women are the vast majority of purchasers.<sup>4</sup> After describing the legal landscape for gamete regulation—which has largely focused on safety concerns for purchasers, publication of success rates, parentage rules, insurance mandates, and consequences for fertility fraud perpetrated by physicians<sup>5</sup>—Joslin describes new legislative changes being proposed by advocates, including donor-conceived people themselves.<sup>6</sup> Those changes include calls for more medical transparency from donors, including sharing medical records with agencies,<sup>7</sup> an end of anonymity in gamete sales,<sup>8</sup> and limits on the number of families that can be formed with a single donor's sperm.<sup>9</sup> Joslin then lays out the stakes involved in changing the regulatory landscape including the disparate impact new rules might have on the ability of LGBTQ+ people to

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<sup>1</sup> Courtney G. Joslin, *Sperm Rules*, 105 B.U. L. REV. 2221 (2025).

<sup>2</sup> *Id.* at 2224-25.

<sup>3</sup> *Id.* at 2224-26.

<sup>4</sup> *Id.* at 2227 (noting “approximately 75% of all users of donor gametes are LGBTQ people and unpartnered women”).

<sup>5</sup> *See id.* at 2238-41. Using fertility fraud as a gateway to more regulation of gamete markets weakens claims about the need for regulation targeted at the industry as a whole, not at individual bad actors. These bills have become a very pernicious public platform for larger critiques of gamete sales and the creation of families through sperm donation. *See id.* at 2253. The insult of comparing someone selling or purchasing sperm in a considered plan to create a child to a healthcare provider, who so fundamentally disrespects his most basic ethical obligations to his patients, is so patently obvious as to not need further elaboration. Fertility fraud legislation rests on condemnation of unequivocally bad actors, thus the proper response is to target those bad actors but, as Joslin reveals, the actions taken by state legislators and advocated by some slice of donor conceived people go far beyond what would be necessary to punish and deter future fertility fraudsters. *See id.* For an example of such efforts, see Emma Waters, *The Fraught World of Fertility Clinic Fraud*, HERITAGE FOUND. (Feb 3., 2023), <https://www.heritage.org/crime-and-justice/commentary/the-fraught-world-fertility-clinic-fraud> [<https://perma.cc/66EY-HLVJ>] (describing Congressional hearings on federal bill concerning fertility fraud as “a chance to consider deeper moral issues linked with anonymous sperm or egg donations”).

<sup>6</sup> Joslin, *supra* note 1, Section II.B.

<sup>7</sup> *Id.* at 2243-44.

<sup>8</sup> *Id.* at 2245-46.

<sup>9</sup> *Id.* at 2246-47.

create families with children,<sup>10</sup> as well as the possibility that such regulations may undermine existing constitutional rights for queer people including, potentially, the right to marry.<sup>11</sup> Ultimately, Joslin urges “more thoughtful and just policy-making by revealing the scope of critical liberty and equality concerns implicated by gamete rules.”<sup>12</sup>

This Response builds on Joslin’s excellent critique by exploring three themes: (1) The mother blaming and reproductive justice implications inherent in creating rules that disproportionately impact families created and headed by women; (2) concerns about how specious justifications for restricting the right to procreate using assisted reproduction undermine the existence of this right for people who choose to or must reproduce non-coitally; and (3) how new forms of legislation, intentionally or not, feed into a conservative<sup>13</sup> agenda that reifies biology and sees genetics as the primary, and perhaps only, form of kinship worthy of legal protection.

### I. FATHERLESS FAMILIES AND MOTHER BLAMING

Public discourse on gamete markets disproportionately targets sperm donation, framing fatherless families as harmful—a narrative Joslin rightly critiques.<sup>14</sup> In this discourse, sperm selling and sperm sellers tend to raise concerns about the children born from purchased gametes (such as access to information of medical/genetic conditions, access to names, loss of identity for future children, the emotional strain of too many half siblings, etc.).<sup>15</sup> This is the conversation into which Joslin intervenes with her piece; it is a much-needed intervention, as people with good and bad intentions advance a restrictive legislative agenda.<sup>16</sup> By contrast, egg selling often provokes concerns about the sellers themselves, such as the medical and psychological risks of procurement,

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<sup>10</sup> *Id.* at 2253-54.

<sup>11</sup> *Id.* at Section III.C.2.

<sup>12</sup> *Id.* at 2279.

<sup>13</sup> As used here, conservative refers both to a political ideology and to a social ethos of maintaining status quo rather than exploring new possibilities in family formation.

<sup>14</sup> *See id.* at 2227-28.

<sup>15</sup> *See, e.g.,* Jon Henley, ‘Medical Calamity’: Dozens of Dutch Sperm Donors Fathered At Least 25 Children, *GUARDIAN* (Apr. 14, 2025, at 11:34 ET), <https://www.theguardian.com/world/2025/apr/14/medical-calamity-dozens-of-dutch-sperm-donors-fathered-at-least-25-children> [<https://perma.cc/9A9Y-X677>]; Deborah Goldman, *The Long-Term Harms of Anonymous Sperm Donation*, *PUB. DISCOURSE* (Jan. 30, 2023), <https://www.thepublicdiscourse.com/2023/01/86859> [<https://perma.cc/8GTH-VN2Q>]; Angela Townsend, *Sperm Banks at Center of Discussion About Emotional Effects in Children*, *CLEVELAND.COM* (June 29, 2010, at 11:00 ET), [https://www.cleveland.com/healthfit/2010/06/taking\\_account\\_of\\_sperm\\_banks.html](https://www.cleveland.com/healthfit/2010/06/taking_account_of_sperm_banks.html) [<https://perma.cc/5K6B-A43L>].

<sup>16</sup> *See* Joslin, *supra* note 1, at 2249-50 (arguing disparate impact of gamete regulation on LGBTQ+ people “is a feature, not a bug of gamete reform”).

including future impacts on fertility<sup>17</sup> as well as inappropriate caps on compensation.<sup>18</sup>

No doubt, some of the difference in discourse arises from the burdens of collecting ova in contrast to the very light lift required to collect sperm. Masturbation, the preferred form for sperm collection, does not involve invasive procedures, medications, anesthesia, visits to a healthcare provider, or monitoring for adverse reactions.<sup>19</sup> Plus, sperm are extremely abundant, especially for the relatively young men who are recruited to sell.<sup>20</sup> Ova, by contrast, can only be extracted through a medical procedure, performed by a licensed healthcare provider, that involves medication to stimulate the ovaries to produce more eggs than what typically occurs in a natural cycle.<sup>21</sup> And because sperm is so easy to extract and can potentially be used with dozens of patients, the ability for sperm donors to father copious numbers of children, sometimes into the hundreds, makes the problem of selling sperm feel much more extensive and acute than the sale of ova.<sup>22</sup> Additionally, though time will tell, fertility fraud cases involving female doctors using their own ova to create children do not yet appear to be an issue. In stark contrast, high-profile and deeply disturbing cases about fertility fraud committed by male medical

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<sup>17</sup> Unlike sperm selling, women who sell their eggs must take medications to stimulate their ovaries to produce more ova than normal during a given cycle and must submit to an invasive procedure to remove those ova from their bodies when ready. See Jayne Leonard, *How Does the Egg Donation Process Work?*, MED. NEWS TODAY (Mar. 22, 2019), <https://www.medicalnewstoday.com/articles/314750> [<https://perma.cc/T93Y-J4NJ>]. Short-term risks of the procedures necessary for egg donation include “ovarian hyper-stimulation syndrome . . . , intra-abdominal bleeding, infection, ovarian torsion, and short-term subfertility . . . .” See Molly Woodruff, Mark V. Saur & Robert Klitzman, *Advocating for Longitudinal Follow-up of the Health and Welfare of Egg*, 102 FERTIL. & STERIL. 662, 662 (2014) (citations omitted). However, more long-term studies about physical and potentially psychological impacts are needed. See *id.*

<sup>18</sup> See Robert L. Klitzman & Mark V. Saur, *Kamakahi vs ASRM and the Future of Compensation for Human Eggs*, 213 AM. J. OBSTET. & GYNECOL. 186, 186 (2015).

<sup>19</sup> See *Collection of Semen*, SOC’Y FOR ASSISTED REPRODUCT. TECH., <https://www.sart.org/patients/a-patients-guide-to-assisted-reproductive-technology/general-information/collection-of-semen> [<https://perma.cc/2CYV-YLKV>] (last visited Dec. 20, 2025) (“Masturbation is the most frequent method used to produce a sperm sample for IUI and IVF.”).

<sup>20</sup> The American Society for Reproductive Medicine guidance on sperm donors suggests that these donors should be “legal adult age in their state, ideally 21 years or older, and should ideally be young enough that the risks to offspring associated with increased paternal age, such as autism, are minimized.” *Gamete and Embryo Donation Guide*, 122 AM. SOC’Y REPRODUCT. MED. 799, 800 (2024). If a donor is under the age of 21, there should be “a psychological evaluation by a qualified mental health professional, and the decision to proceed with a donor aged <21 years should be made on an individualized basis with help from a qualified mental health professional.” *Id.*

<sup>21</sup> See *Ovarian Stimulation and Egg Retrieval*, STANFORD MED., <https://stanfordhealthcare.org/medical-treatments/a/assisted-reproductive-technologies/procedures/ovarian-stimulation-egg-retrieval.html> [<https://perma.cc/Z24N-BN5A>] (last visited Dec. 20, 2025).

<sup>22</sup> See, e.g., Henley, *supra* note 15.

providers have revealed the depths of depravity to which some providers will sink.<sup>23</sup> All of these things can be true. Yet there still seems to be more that underlies the difference between the commentary on sperm and egg selling that goes beyond the physical.

This Response posits that one of the reasons why sperm selling has been such a locus of concern is that the idea of families without fathers is one that has long excited conversations about the best family forms for raising healthy and well-adjusted children. As Joslin notes, a popular claim made by conservative detractors of the sale of sperm is that the deliberate creation of fatherless families has a deleterious impact on children brought into these families.<sup>24</sup> Even more, the absence of a man as the head of household, to conservative critics, is an affront to the very notion of what it means to be a family and contributes to a downward spiral within society.<sup>25</sup> One would imagine there would, or at least should, be similar outcry about children brought into “motherless” families such as when single men or male same-sex couples purchase ova and find gestational carriers to help them build families with children. Rather, in the context of gamete selling, it is women purchasing sperm to bring children into families headed by women that causes enormous amounts of consternation and campaigns for law reform.<sup>26</sup> Joslin’s focus on LGBTQ+ families reveals how the conversations about rules for sperm fit within the broad continuum of ways in which women who parent without men are regularly shamed for their parenting “choices”<sup>27</sup> and for causing perceived harm to their children by virtue of those choices.

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<sup>23</sup> See, e.g., Jacqueline Mroz, *When an Ancestry Search Reveals Fertility Fraud*, N.Y. TIMES (Feb. 28, 2022), <https://www.nytimes.com/2022/02/28/health/fertility-doctors-fraud-rochester.html>; Mary Whitfill Roeloffs, *Doctors Impregnating Patients: Major Cases in 2023 Allege ‘Fertility Fraud’ Lead to ‘Secret Children,’* FORBES (Dec. 15, 2023, at 11:50 ET), <https://www.forbes.com/sites/maryroeloffs/2023/12/15/doctors-impregnating-patients-major-cases-in-2023-allege-fertility-fraud-lead-to-secret-children/>.

<sup>24</sup> See Joslin, *supra* note 1, at 2227-28. “By iterating the view that children need to be raised by their biological mothers and fathers, these arguments reproduce deeply rooted gender scripts associated with ‘traditional’ marriage and the family.” See *id.* at 2227-28, 2257 (recounting states opposing same-sex marriage argued “gender-differentiated parenting is important for human development” (footnote omitted)). The posited concerns are not only gender-based—they are also gender-specific resting on particular fears about “fatherless” children. See *id.*

<sup>25</sup> See Jack Brewer, *Issue Brief: Fatherlessness and Its Effect on American Society*, AM. FIRST POL’Y INST. (May 15, 2023), <https://www.americafirstpolicy.com/issues/issue-brief-fatherlessness-and-its-effects-on-american-society>.

<sup>26</sup> See Joslin, *supra* note 1, at 2259-61.

<sup>27</sup> I use the word “choices” with care as there are multiple ways that a woman can become a single mother that do not involve active choices on her part. Some women leave relationships where they experience intimate partner violence. Some women never find a male partner with whom they want to raise children even though they want to become parents. Some women have male partners who die or who abandon them. Some women become pregnant as a result of a sexual assault or incest and the idea of a relationship with their child’s other parent is abhorrent. Thus, while there are women who proudly call themselves “Single

Given the present demographics of people who purchase sperm—mostly single women and same-sex female couples<sup>28</sup>—to decry the harms caused to children deliberately brought into fatherless families sounds like yet another form of mother blaming—a phenomenon for which there is a rich scholarly literature.<sup>29</sup> Mothers have long borne the brunt of critique for whatever harms reveal themselves in the children they raise, and that blaming is even more intense for single mothers.<sup>30</sup> Thus, the veritable obsession with missing fathers in discussions of reform of sperm rules feeds into a longstanding narrative of pathologizing families headed by women. And that criticism has not been doled out with an even hand across the spectrum of families headed by women.

Black women headed households, especially when those households are low-income, have been a specific and ongoing target of public shaming and disparagement. From the 1965 Moynihan Report<sup>31</sup> to Ronald Reagan's welfare queen trope<sup>32</sup> and the Clinton Administration's Personal Responsibility and Work Opportunity Reconciliation Act of 1996,<sup>33</sup> U.S. policy has pathologized

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Mothers by Choice," there are many others whose status as single mothers is happenstance. See SINGLE MOTHERS BY CHOICE, <https://www.singlemothersbychoice.org> [<https://perma.cc/6RPD-WRW9>] (last visited Dec. 20, 2025).

<sup>28</sup> See Joslin, *supra* note 1, at 2227.

<sup>29</sup> See, e.g., PAULA J. CAPLAN, THE NEW DON'T BLAME THE MOTHER: MENDING THE MOTHER-DAUGHTER RELATIONSHIP 69 (2000) ("Mother-blaming is interwoven throughout our daily lives. At every level of conversation and discussion, in every conceivable arena, mothers are ignored, demeaned, and scapegoated—in jokes (often unfunny), on bumper stickers, on television and at the movies, in works by popular authors, in our own families, in the research literature, in the courts, and in psychotherapists' offices.").

<sup>30</sup> See LINDA C. FENTIMAN, BLAMING MOTHERS: AMERICAN LAW & RISKS TO CHILDREN'S HEALTH 27 (2017) (arguing mothers, especially single mothers, are prosecuted more harshly for child abuse than fathers).

<sup>31</sup> The 1965 Department of Labor report blamed the crisis in Black communities on the proliferation of female-headed households. See OFF. OF POL'Y PLAN. & RSCH., U.S. DEP'T OF LAB., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965) [hereinafter MOYNIHAN REPORT]. The authors explained:

In essence, the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of American Society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.

*Id.* at 29. Authored by Daniel Moynihan, the report subsequently became known as the "Moynihan Report." See Daniel Geary, BEYOND CIVIL RIGHTS: THE MOYNIHAN REPORT & ITS LEGACY 12 (2015).

<sup>32</sup> Ronald Reagan invoked the welfare queen myth to demonize Black women receiving public assistance during his 1976 presidential campaign. See Anne Kim, *The Tyranny of the Welfare Queen*, WASH. MONTHLY (Oct. 29, 2024), <https://washingtonmonthly.com/2024/10/29/the-tyranny-of-the-welfare-queen/> [<https://perma.cc/LS97-U6VM>].

<sup>33</sup> See The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105. The act ushered in a new era of welfare reform, including work requirements, penalties for women who did not identify fathers of their children for the purpose of the state pursuing reimbursement for public assistance given to certain families, and lifetime caps on benefits. See *The Personal Responsibility and Work Opportunity*

female-headed households—especially among Black women—casting these mothers as societal threats rather than addressing structural poverty. When taken as a whole, U.S. policy has disparaged, discouraged, and described single motherhood, especially within low-income Black communities, as the foundation for a “tangle of pathology.”<sup>34</sup>

Without question, single motherhood creates parenting burdens for many women, and those burdens bring challenges for children raised in these households. According to a 2024 Center for American Progress Report that described the median single mother, “[s]ingle mothers are more likely to be Black than mothers overall,” they do not have a college degree, and they are in their thirties or forties.<sup>35</sup> In contrast to the stereotype of the “welfare mother” living off of government assistance, seventy-five percent of single mothers work, most of them full-time, but have an annual income of only \$40,000.<sup>36</sup> Twenty-eight percent of these women live in poverty.<sup>37</sup> It is no surprise, then, that many of these families struggle not because they lack a father,<sup>38</sup> but because they exist in a country with a weak social safety net—leading to the negative impacts that poverty can have on children living in economically struggling communities.<sup>39</sup> Those negative impacts include lower educational attainment, behavioral and mental health struggles, contact with the police and the juvenile justice systems, and more.<sup>40</sup> Policymakers have argued that marriage is a way to address childhood poverty, but research has shown that it is far from a panacea as—unsurprisingly—marrying another low-income person is not a ticket out of poverty.<sup>41</sup> Similarly, when parents are separated and one pays child support, it is clear that taking more money from low-income fathers is wholly insufficient

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*Reconciliation Act of 1996*, OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION (Aug. 31, 1996), <https://aspe.hhs.gov/reports/personal-responsibility-work-opportunity-reconciliation-act-1996>.

<sup>34</sup> See MOYNIHAN REPORT, *supra* note 31, at 29.

<sup>35</sup> See Isabela Salas-Betsch, *The Economic Status of Single Mothers*, CTR. FOR AM. PROGRESS (Aug. 8, 2024), <https://www.americanprogress.org/article/the-economic-status-of-single-mothers>.

<sup>36</sup> *Id.*

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

<sup>38</sup> Marriage as an anti-poverty strategy has garnered significant and sustained critique, which marriage to a man who is also poor, unstable, or violent is insufficient to lift families headed by single mothers out of poverty or to create stability for children. See Eleanor Brown, June Carbone & Naomi Cahn, *Marriage Is Not as Effective an Anti-Poverty Strategy as You’ve Been Led to Believe*, CONVERSATION (Feb. 21, 2024, at 08:19 ET), <https://theconversation.com/marriage-is-not-as-effective-an-anti-poverty-strategy-as-you-ve-been-led-to-believe-218682> [<https://perma.cc/X5JL-VT2A>].

<sup>39</sup> *Child Well-Being in Single-Parent Families*, ANNIE E. CASEY FOUND. (Apr. 6, 2024), <https://www.aecf.org/blog/child-well-being-in-single-parent-families> [<https://perma.cc/QGL2-ZX3Y>].

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

<sup>41</sup> See Shawn Fremstad, *Partnered but Poor*, CTR. FOR AM. PROGRESS (Mar. 11, 2016), <https://www.americanprogress.org/article/partnered-but-poor/>.

to solve the larger problem of childhood poverty, despite greater efforts over the decades to enforce child support payments.<sup>42</sup> Single motherhood by Black women, then, has not garnered sympathy from conservative policymakers, but recrimination and blame.<sup>43</sup>

This scorn is amplified toward families headed by queer women. Conservatives have long campaigned to establish in the public conscience that it is harmful for children to be raised by women who are not yoked to a man, especially queer women. For example, organizations such as Focus on the Family and The Heritage Foundation used the findings of a 2012 study<sup>44</sup> by Mark Regnerus, a University of Texas sociologist, to buttress their claims that children raised by same-sex couples, most often by two women, have statistically significant negative outcomes compared to children raised in homes with married, opposite-sex partners who are the child's biological parents.<sup>45</sup> According to the Regnerus Study, as reported by Focus on the Family and The Heritage Foundation, children raised in same-sex households are more likely to perform poorly in school; report less happiness, worse mental health and decreased physical well-being as adults, including reporting higher rates of depression and suicidal ideation; receive therapy at higher rates; not marry as adults; experience sexual assault as children; experience a sexually transmitted infection; spend time on public assistance; smoke cigarettes; use marijuana; and

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<sup>42</sup> See ELAINE SORESENSEN, URB. INST., OBLIGATING DADS: HELPING LOW-INCOME NONCUSTODIAL FATHERS DO MORE FOR THEIR CHILDREN 1 (1999), <https://www.urban.org/sites/default/files/publication/69661/309214-Obligating-Dads.PDF>.

<sup>43</sup> See, e.g., Amanda Becker, *Wisconsin Republican Eric Hovde Blamed Single Mothers for Societal Problems in His First Senate Bid. Will He Do It Again?*, 19TH (Mar. 20, 2024, at 14:43 ET), <https://19thnews.org/2024/03/eric-hovde-wisconsin-single-mothers> [https://perma.cc/G74H-AQQ9].

<sup>44</sup> See generally Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-sex Relationships? Findings from the New Family Structure Study*, 41 SOC. SCI. RSCH. 752 (2012). The intense debate over the merits, or lack thereof, of the Regnerus Study waged fiercely for a time after its release, especially as the quest for marriage equality moved through state and then federal courts. See Dale Carpenter, *A "Reality Check" for the Regnerus Study on Gay Parenting [UPDATED]*, WASH. POST. (May 10, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/10/new-criticism-of-regnerus-study-on-parenting-study/> (discussing study finding data errors in Regnerus study which if corrected found no difference in outcomes in children raised by same-sex parents); Simon Cheng & Brian Powell, *Measurement, Methods, and Divergent Patterns: Reassessing the Effects of Same-Sex Parents*, 52 SOC. SCI. RSCH. 615, 615-17 (2015) (reporting reexamination of Regnerus Study data found conclusions could not be replicated without Regnerus's methodological assumptions).

<sup>45</sup> See Jennifer Marshall & Jason Richwine, *The Regnerus Study: Social Sciences on New Family Structures Met with Intolerance*, HERITAGE FOUND. (Oct. 2, 2012), <https://www.heritage.org/marriage-and-family/report/the-regnerus-study-social-science-new-family-structures-met-intolerance> [https://perma.cc/GNQ5-EV8N]; Glenn T. Stanton, *Key Findings of Mark Regnerus' New Family Structure Study*, FOCUS ON THE FAM. (July 5, 2024), <https://www.focusonthefamily.com/faith/key-findings-of-mark-regnerus-new-family-structure-study> [https://perma.cc/BS9N-EYAU].

be arrested.<sup>46</sup> In sum, according to Focus on the Family, “[t]his reliable data indicates that same-sex parenting outcomes do not look anything like those from intact, married mother and father families. They look like other family forms that our current family experimentation has created over the last forty years and are shown to markedly hinder child-development.”<sup>47</sup> Those other experimental family forms undoubtedly include single parents and unmarried cohabitants raising children together.<sup>48</sup> Despite being championed by conservative groups, the Regnerus Study has been subjected to significant scholarly critique.<sup>49</sup>

All of this is to say that the critiques of “fatherless” families lodged at people buying sperm has a long history of being deployed in racist, classist, sexist, and heterosexist ways against low-income Black women and other women of color. As already described, United States policy has accused these women of being the architects of whole communities’ downfalls and demonized them as selfish, greedy, bad mothers, and more.<sup>50</sup> Even when women are financially secure, well-educated, have stable careers, and thoughtfully enter into single motherhood, the backlash can be intense—even when the woman in question is a fictional character!<sup>51</sup> Given how well this playbook has worked as a form of political theater, it is no surprise that the same playbook is being deployed against same-sex parents.

In this way, there are strong commonalities between poor single mothers and women who become mothers using purchased sperm either as single women or as members of a same-sex couple. This shared position of being attacked, judged, criticized, and shamed for the family they’ve created is a promising opportunity for the kind of coalition building across communities that can leverage power for societal and potentially legal change. This seemed possible

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<sup>46</sup> See sources cited *supra* note 45.

<sup>47</sup> Stanton, *supra* note 45.

<sup>48</sup> See Glenn T. Stanton, *Mapping Declining US Marriage Rates*, DAILY CITIZEN (Aug. 21, 2024), <https://dailycitizen.focusonthefamily.com/mapping-declining-us-marriage-rates> [<https://perma.cc/N3AJ-KN5D>] (“Marriage is the mortar that holds a healthy, thriving, growing community together. That is a fundamental sociological truth. When marriage declines, family declines. When family declines, children, women, men and society itself suffers.”).

<sup>49</sup> See, e.g., Andrew Perrin, Philip Cohen & Neal Caren, *Are Children of Parents Who Had Same-Sex Relationships Disadvantaged? A Scientific Evaluation of the No-Differences Hypothesis*, 17 J. GAY & LESBIAN MENT. HEALTH 327, 328 (2013) (“We find that the evidence presented does not support rejecting the ‘no-differences’ hypothesis as it actually exists in the substantial literature prior to Regnerus (2012a). Therefore, the study does not constitute evidence for disadvantages suffered by children of same-sex couples.”).

<sup>50</sup> See, e.g., MOYNIHAN REPORT, *supra* note 31, at 29.

<sup>51</sup> See Isabel V. Sawhill, *Twenty Years Later, It Turns Out Dan Quayle Was Right About Murphy Brown and Unmarried Moms*, BROOKINGS INST. (May 25, 2012), <https://www.brookings.edu/articles/twenty-years-later-it-turns-out-dan-quayle-was-right-about-murphy-brown-and-unmarried-moms> [<https://perma.cc/ZAD4-LH6R>] (arguing disapproval voiced in 1990s concerning TV sitcoms depicting single mothers, even women who purposely choose to raise children alone, may have been prescient).

when media began reporting on the rise of single women pursuing parenthood through sperm donation, many of whom were white, educated, and financially stable.<sup>52</sup> Unfortunately, as too often happens, instead of creating a coalition, a split emerged between low-income single mothers (often of color) on one side and self-branded “Single Mothers by Choice” on the other whose chosen moniker undoubtedly revealed a desire to not be lumped in with other single mothers.<sup>53</sup> Given how political actors demonized low-income Black single mothers, the instinct for other single mothers to distance themselves from another group of women with a shared experience is disappointing, but not surprising.

In a time of rising pronatalism with an underlying embrace of eugenics,<sup>54</sup> consistent conservative rhetoric about proper family forms,<sup>55</sup> and a nostalgia for a time when women assumed traditional gender roles,<sup>56</sup> the need to find commonalities and forge coalitions for marginalized and demonized families is increasingly necessary. This includes coalition building by and with women who build their families using artificial insemination (“AI”) and purchased sperm. These women, straight or queer, would do well to embrace commonality rather than finding ways to distinguish their families from other more marginalized households headed by women. In keeping with the idea of movement building, battling the patriarchal attacks on women-headed households could align a wide range of women and others, whose families do not conform to the model of one

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<sup>52</sup> *10 Single Moms by Choice Share Their Experiences*, CUP OF JO (Sep. 12, 2022), <https://cupofjo.com/2022/09/12/single-moms-by-choice/> [<https://perma.cc/8B2X-XSPP>].

<sup>53</sup> See Jane D. Bock, *Doing the Right Thing? Single Mothers by Choice and the Struggle for Legitimacy*, 14 GEND. & SOC’Y 62, 64 (2000) (“By appropriating the term *single mother by choice* (SMC), midlife middle-class single women implicitly claim their entitlement to make this decision. The SMC label serves as a tool to indicate their place at the top of the single-parent hierarchy . . . . Thus, the label itself serves to separate this population from other single mothers, those who allegedly are the ‘real’ problem.”); Julie Kohler, *Yes, I’m a Single Mother. But Please Don’t Call Me That.*, WASH. POST (Oct. 19, 2016), <https://www.washingtonpost.com/news/soloish/wp/2016/10/19/yes-im-a-single-mother-but-please-dont-call-me-that/> (“I reject the single-mother-by-choice label because it doesn’t fully honor my story. But I also reject it because it divides mothers into a hierarchy, a stratification that, as Kimberly Seals Allers notes, ‘glorif[ies] some while demonizing others, mostly across racial and socioeconomic lines.’”).

<sup>54</sup> See Allyson Crays, *The Rise of Pronatalism in the U.S.: The Risks to Reproductive and Sexual Health Outcomes*, O’NEILL INST. FOR NAT’L & GLOB. HEALTH L. (Aug. 26, 2025), <https://oneill.law.georgetown.edu/the-rise-of-pronatalism-in-the-u-s-the-risks-to-reproductiv-e-and-sexual-health-outcomes> [<https://perma.cc/7E7C-LW6W>] (“[P]ronatalist policies aimed at increasing birth rates only for middle- or higher-income people suggest that there is a ‘right’ type of person whom the United States government encourages to procreate—dredging up racist and eugenic arguments, whether explicitly or implicitly.”).

<sup>55</sup> See, e.g., Brewer, *supra* note 25.

<sup>56</sup> See Sophie Elmhirst, *The Rise and Fall of the Trad Wife*, NEW YORKER (Mar. 29, 2024), <https://www.newyorker.com/culture/persons-of-interest/the-rise-and-fall-of-the-trad-wife> (discussing trend beginning as chronicling daily life but transformed into effort to “take culture back”).

man and one woman living in a household with their biological children and taking no government support (other than tax breaks).

In such a world, one could imagine reproductive justice organizations, groups that support single parents, and advocates for children and families all coalescing around the idea that the best way to support children is not to shame their parents for how they came into the world, but to create a system that broadly supports families no matter their structure. Thus, instead of attacking low-income single mothers for living in poverty, which twenty-eight percent did in 2022,<sup>57</sup> we could imagine and work toward a country with a much more robust social safety net because as long as single mothers live in poverty they will be raising their children in poverty. Instead of raising concerns that children raised by two mothers will have mental health struggles,<sup>58</sup> we could focus on why so many young people face mental health challenges and create resources for all of those children to access. Instead of declaring that a child cannot be whole if she does not know the identity of her father (which, again, is a reality for thousands of children who are not the product of sperm donation), we can work to help young people shape their identities so that they do not begin from a place of absence.

In such a world, paid parental leave, broad access to education and training for children and adults to help them build economically stable lives, housing assistance, high-quality affordable childcare, free mental health care, and more would be positive policy changes to support children across a spectrum of families. Women who parent without men are best served not by finding ways to distinguish themselves from each other, but by finding strength in their collective power to demand better of the leaders and policymakers who claim to care so deeply about all children. These mothers should focus on challenging a system that paints them all with a broad, and often deeply critical, brush rather than reinforcing harmful public narratives.

## II. BIOLOGY AS DESTINY

Joslin offers a sharp and effective critique of the ways in which some commentators offering ideas for improving the sperm market do so by wrapping very old ideas in shiny new packages. Specifically, she references Reva Siegel's notion of "preservation through transformation"<sup>59</sup> to illustrate how family limits and restrictions on anonymity reinforce bio-normative family structures in which children are raised by the people who share their genetic heritage.<sup>60</sup> In so doing, these advocates potentially, and in some cases unwittingly, denigrate non-traditional families where genetic ties may be replaced by deep ties of love and affection that do not require biology or genetics to be real.

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<sup>57</sup> See Salas-Betsch, *supra* note 35.

<sup>58</sup> See, e.g., Stanton, *supra* note 45.

<sup>59</sup> Joslin, *supra* note 1, at 2228.

<sup>60</sup> See *id.* at 2251-52.

Especially in the context of family creation by LGBTQ+ people, notions of kinship are more expansive than the resort to shared blood or genetics.<sup>61</sup> Anthropologist Kath Weston explains that ideologies of kinship in queer families do not challenge “the concept of procreation that informs kinship in the United States, but the belief that procreation *alone* constitutes kinship, and that ‘nonbiological’ ties must be patterned after a biological model (like adoption) or forfeit any claim to kinship status.”<sup>62</sup> This more expansive view of kinship is in keeping with the general principles of anthropology, which recognize kinship as a “sociocultural construction” that “creates a network of social and biological relationships between individuals. Through kinship systems, humans create meaning by interpreting social and biological relationships.”<sup>63</sup> Kinship is not static and is not consistent across time, place, or cultures. Thus, “[i]t is culture—not biology—that defines for us whom our closest relatives are. Biology relies on genetics, but kinship is determined by culture.”<sup>64</sup> As such, the call to center genetic relationships as *the* foundation of kinship rather than as *a* way that some people define kinship is a cultural claim, not a scientific fact, and should be recognized and evaluated accordingly.

Recognizing kinship as a sociocultural construct complements the concerns Joslin raises about how scholars, like Naomi Cahn and Sonia Suter, as well as conservative activists and politicians, intentionally or incidentally, weaponize kinship against queer families and queer identities.<sup>65</sup> There is something in arguments premised on the power of biology which has a “Make America Great Again” feel in the sense of harkening back to a time that was supposedly simpler and better without offering specific claims for what exactly was simpler and what exactly was better about the past. For instance, what claim of a simpler, better past could be made about enslaved children born from slave owners sexually assaulting enslaved women to create more property for themselves? In this admittedly extreme historic example, law constructed kinship not from a determinative biological or genetic connection between a slave owner and his biracial children; rather, the law only recognized a genetic kinship tie between the enslaved mother and the children she bore who, like her, would be in bondage rather than free like their fathers.<sup>66</sup> In this example, kinship existed as a social construction wielded in the interest of economic gain.<sup>67</sup> I believe it is

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<sup>61</sup> See KATH WESTON, *FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP* 103-05 (1997) (recounting experience building family in LGBTQ+ community from friends, friends of friends, and parents of partners).

<sup>62</sup> *Id.* at 34 (emphasis in original).

<sup>63</sup> JENNIFER HASTY, DAVID G. LEWIS & MARJORIE M. SNIPES, *INTRODUCTION TO ANTHROPOLOGY* 352 (2022).

<sup>64</sup> *Id.*

<sup>65</sup> Joslin, *supra* note 1, Section III.C.

<sup>66</sup> See Jennifer L. Morgan, *Partus Sequitur Ventrem: Law, Race, and Reproduction in Colonial Slavery*, 22 *SMALL AXE* 1, 1 (2018).

<sup>67</sup> See *id.* (“Resituating heritability was key in the practice of an enslavement that systematically alienated the enslaved from their kin and their lineage. Enslaved people had to

worth hesitating about nostalgia for a time when families were supposedly better than they are today. To claim that kinship is a fact and not a culturally constructed fiction wielded in ways that undermine or overemphasize genetics based on convenience and ideology, is to ask that we ignore the growing acceptance for people to define family broadly and organize their lives with children in ways that may defy nature but nevertheless can serve children well.

If we are open to new kinship norms, as we should be, then we would do well to consider how new forms of kinship not premised on an outdated resort to biology as destiny may benefit children or, at minimum, do not cause them lasting harm. Despite the concern that children born through reproductive donation risk psychological difficulties at adolescence, findings in the present phase of a longitudinal study of families formed through egg donation, donor insemination, and surrogacy show that “these families did not differ from natural conception families when the children reached age 14.”<sup>68</sup> The researchers speculate that one explanation for why the families with donor-conceived children did not experience more disruption is “the mothers’ high motivation to have children.”<sup>69</sup> These researchers speculate that “[c]hildren born through reproductive donation are, by necessity, planned and there is evidence to show that planned pregnancies are associated with more positive psychological outcomes for mothers and children.”<sup>70</sup> Other studies have shown similar results for families with donor-conceived children concerning the health of families and relationships between parents and children.<sup>71</sup>

No doubt, the task of parsing research about donor-conceived people and their reactions to their mode of conception is not always easy. For instance, while the vast majority of sperm purchases are now made by female same-sex couples and single women,<sup>72</sup> that was not always the case. Unlike in opposite-sex couples, where there is a long history of seeking to conceal a child’s origins by not revealing the use of a donor,<sup>73</sup> deception is not an option for same-sex couples. This raises the specter of how a donor-conceived person’s reaction to their

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be understood as dispossessed, outside of the normal networks of family and community, to justify the practice of mass enslavement.”).

<sup>68</sup> See Susan Golombok, Elena Ilioi, Lucy Blake, Gabriela Roman & Vasanti Jadv, *A Longitudinal Study of Families Formed Through Reproductive Donation: Parent Adolescent Relationships and Adolescent Adjustment at Age 14*, 53 DEV. PSYCH. 1966, 1974-75 (2017).

<sup>69</sup> *Id.* at 1975.

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

<sup>71</sup> Charlotte Talbot, Nathan Hodson, Joanne Rose & Susan Bewley, *Comparing the Psychological Outcomes of Donor and Non-Donor Conceived People: A Systemic Review*, 131 BRIT. J. OBSTET. & GYNAECOL. 1747, 1754 (2024) (“Most studies found equivalent or better outcomes in DC people, including higher well-being scores, self-esteem and relationship warmth. A significant minority found that DC people had more mental health problems and identity difficulties.”).

<sup>72</sup> See Joslin, *supra* note 1, at 2227.

<sup>73</sup> See Peter McGovern & William Schlaff, *Sperm Donor Anonymity: A Concept Rendered Obsolete by Modern Technology*, 109 FERTIL. & STERIL. 230, 230 (2018) (“The use of donor sperm began as a medical practice with a level of secrecy bordering on shame.”).

conception story might be different if that story had been part of their identity formation from a very young age rather than information they learned later in life. One imagines that the disruption of discovering donor conception at twelve or twenty-two or thirty-two might be very different than a child who is raised knowing their origin story.<sup>74</sup> It seems likely that a child who is not deceived, who is encouraged to ask questions, who is allowed to have and voice feelings about how they came to be, and who is given copious amounts of familial and other support will have a different relationship to their conception than someone whose understanding of their origin story is colored by deception. Unsurprisingly, research has shown that donor-conceived people who feel deceived by the people who raised them experience that discovery in a very negative way.<sup>75</sup> And one imagines that the sense of betrayal is even greater if the donor-conceived person finds out from a home DNA test and not from their parents.<sup>76</sup> While donor-conceived people may have very different reactions to the idea of anonymity in the sale of sperm, a dying practice even if the industry wanted to sustain it,<sup>77</sup> research makes clear that children do not like to be lied to by their parents.<sup>78</sup> One answer to the perceived global harm of anonymity might be to eliminate that option in the world of selling sperm. However, another option could be to educate would-be parents about the risks to their relationship with their children and to their child's well-being created by concealing information about how and with whose gametes a child was conceived.

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<sup>74</sup> One survey indicates that of those surveyed, only 21% knew they were donor conceived since they were children. 2020 *We Are Donor Conceived Survey Report*, WE ARE DONOR CONCEIVED (Sep. 17, 2020) [hereinafter *Survey Report*], <https://www.wedonorconceived.com/2020-survey-top/2020-we-are-donor-conceived-survey> [https://perma.cc/7CA3-U6EZ]. Another 34% discovered their origins through a commercial DNA test and of those whose parents shared their information 34% were told as a teenager or adult. *Id.* It is also telling that 78% of respondents were raised by “heterosexual” parents and only 6% by same-sex parents. *Id.*

<sup>75</sup> One researcher explains that donor conceived people who do not come to find out about their conception origin stories until later in their lives:

[O]ften in negative circumstances, . . . report feeling frustrated by the lack of information about their donor and feeling negatively toward their family and/or DI providers. These reports concur with studies of DI adults and of DI youths and adults. The question remains, however, whether these negative feelings will generalize to and be felt as strongly by individuals who are told of their origins earlier and/or who have an open-identity donor.

Joanna E. Scheib, Morey Riordan & Susan Rubin, *Adolescents with Open-Identity Sperm Donors: Reports from 12-17 Olds*, 20 HUM. REPROD. 239, 240 (2004) (citations omitted).

<sup>76</sup> See *Survey Report*, *supra* note 74 (finding among survey sample one-third of donor-conceived people discover donor conception by commercial DNA test).

<sup>77</sup> See, e.g., Joslin, *supra* note 1, at 2241-42 (discussing efforts to end anonymous gamete donation).

<sup>78</sup> See Scheib et al., *supra* note 75, at 240.

Joslin's expressivist concern for targeting families headed by LGBTQ+ parents is equally important,<sup>79</sup> and that concern has yet another dimension: its relationship to pre-pregnancy choices made by would-be parents. Again, this criticism of pre-pregnancy choices reflects a tacit judgment about the parenting abilities of queer parents (and single mothers) as well as intimating that the lack of genetic tie encourages deceptive parenting practices. Parents make a wide swath of decisions about the circumstances of their children's births before those children are conceived. Those decisions extend from who to have a child with, the geographical location where the child will be raised, the prenatal care the pregnant person will receive, the manner of delivery, the faith in which the child will be raised (if any), how the child will be educated, who will form the child's circle of support and so on. There are literally hundreds if not thousands of such decisions that would-be parents make on behalf of a child before conception, any number of which could be found wanting by some other set of parents. The question becomes, then, how does the law pick and choose which pre-conception choices are permissible and which are so egregious that they should be made legally unavailable? Arguably, while the choice to use donor sperm at all and the choice to specifically use donor sperm from an anonymous source might be problematic in various ways, it is not much more problematic than a host of other pre-conception decisions that future parents make.

In his book *Conceiving People*, philosopher Daniel Groll makes a strong case for why parents who purchase gametes should do so in a way that allows future children to know their genetic progenitor(s) if the children desire to do so.<sup>80</sup> Groll, however, specifically does not argue that law should enforce this pre-parenting decision.<sup>81</sup> Groll begins with the premise that all parents fail to be their best selves at various points—we are, after all, just fallible humans.<sup>82</sup> Using an anonymous donor is not a “trivial parental failure” according to Groll because donor-conceived children are “likely to have a significant interest in obtaining genetic knowledge, an interest that is often bound up with identity determination. Intentionally putting them in a position where that interest is likely to be frustrated is a significant parental failure.”<sup>83</sup>

This is not, however, the end of Groll's argument about choosing anonymous donors. He goes on to argue that the non-trivial parental failure of choosing an anonymous donor is “not *severe* if that term is reserved for parental failures that seriously threaten the safety and well-being of the child. Indeed, it is of a piece with all kinds of other parental failures that are not sanctioned by the law.”<sup>84</sup>

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<sup>79</sup> See Joslin, *supra* note 1, Section III.C.

<sup>80</sup> See DANIEL GROLL, *CONCEIVING PEOPLE: GENETIC KNOWLEDGE & THE ETHICS OF SPERM & EGG DONATION* 6 (2021).

<sup>81</sup> See *id.* at 23.

<sup>82</sup> See *id.* at 190 (indicating using anonymous gamete donor is “(usually) morally wrong” but is “on a par with other permissible parental failures”).

<sup>83</sup> *Id.* at 197.

<sup>84</sup> *Id.* (emphasis in original).

Law does not require perfection in parenting. In fact, United States law begins with a foundational premise that parents have a fundamental right to the care, custody and control of their minor children that extends to a wide swath of parental decisions that other parents would decry as unacceptable, worrisome, and maybe even abusive.<sup>85</sup> Returning to Groll, there should be parity when it comes to determining which parental failures warrant legal intervention. He explains, “[t]o put it bluntly, parents have wide latitude to mess up their kids. The decision to use an anonymous donor is, at worst, just another instance of parental failure of this kind.”<sup>86</sup> Thus, “[p]resumptively, then, it should be treated the same way: if the other examples of parental failure are not subject to legal sanction, then neither should *this* particular parental failure.”<sup>87</sup>

Nothing in this Response should be read to deny that there are many donor-conceived people who want knowledge of their genetic progenitors.<sup>88</sup> Nor does this Response deny that there are children and adults who either will benefit from genetic knowledge, be harmed by a lack of such knowledge, or both, but we could say this about a number of choices about information sharing or hoarding that parents engage in. Yet, we do not seek legislation to control how other parents decide to become parents because of concerns about their chosen (or necessary) method of doing so. As the next Part explains, in singling out a small subset of parental choices as worthy of legislative and policy concerns, we destabilize certain families by treating some who procreate with medical assistance as suspect pre-parents in a way that the law does not target people who procreate without assistance.

It is also clear that for at least some donor-conceived people, the goal is not just knowledge of medical information. Imagine a world in which there is genetic testing of everyone selling sperm. Agencies confirm all medical histories of donors through careful review of medical records. Donor names are made available to donor-conceived children at any point that they desire that information, not just when they reach the age of eighteen. None of this knowledge sharing would require what appears to be the real goal, of at least some number, of donor-conceived people who are intent on law reform.<sup>89</sup> This is because the desire for knowledge is coupled with, or is perhaps even less salient than, a desire for connection and relationship.<sup>90</sup> While there are moral claims to be made about what a genetic parent may owe to a child, it is simply not the case that the law demands relationships between parents and children. Like a genetic parent who eschews the parental role, a donor could ignore all

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<sup>85</sup> See, e.g., *Pierce v. Soc’y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 530, 534-35 (1925) (striking down state statute prohibiting children from attending private school).

<sup>86</sup> See GROLL, *supra* note 80, at 197-98.

<sup>87</sup> *Id.* at 198 (emphasis in original).

<sup>88</sup> See Joslin, *supra* note 1, at 2244-45.

<sup>89</sup> See *id.* at 2244 (discussing reform efforts aimed at disclosing relevant medical history).

<sup>90</sup> See *id.* at 2244-45 (acknowledging some donor-conceived individuals seek information about donors for identity formation purposes).

contact from genetic offspring or could specifically inform offspring that he does not wish to have any contact with them. A donor could pick and choose among offspring and decide that some are more interesting to him than others. A donor could express regret to offspring that he played any role in their origin story. In all of these cases, as is true with any genetic parent, the law could not and would not be used to force unwanted connection.<sup>91</sup>

Finally, in the debate about reforming the rules of sperm selling, perhaps there is room for considering possible consequences of a more tightly regulated market. In a footnote, Joslin references another option that would-be mothers might use if the regulated sperm market ceases to be available or attractive: seeking sperm from individual men on the internet.<sup>92</sup> Unlike purchasing sperm through the current legal market, which offers some assurance that, at a bare minimum, the sperm will be free of sexually transmitted infections,<sup>93</sup> purchasing from a random man on the internet offers no assurances about health, genetics, number of children created, or willingness to be known and available for an introduction to any children created from the sperm.

This unregulated and under-the-table private market is extensive and, unsurprisingly, has garnered media attention. One prolific donor, Jonathan Meijer, was the subject of a Netflix documentary titled, *The Man with 1000 Kids*.<sup>94</sup> Meijer was a legitimate donor at eleven cryobanks in the Netherlands but also met many people seeking sperm donors on private sperm donation websites.<sup>95</sup> He is thought to have fathered hundreds of children around the globe, perhaps as many as a thousand in part by deceiving would-be mothers about how many other children he fathered.<sup>96</sup> If this is the case in the present unregulated market, then driving up prices, potentially reducing supply, and taking away choices may lead even more people to eschew the relative safety of a regulated market and opt instead to brave the internet. It is hard to imagine that the ends

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<sup>91</sup> Even when it comes to legal parents, forcing relationship is not a role played by the law. Legal parents can place children for adoption, they can voluntarily terminate their parental rights, they can transfer custody to another parent or family member. *See* Wendee V. Hilderbrand, Note, *When One Parent Goes and the Other Parent Stays: The Inconsistency and Inequity of Guaranteeing Absent Parents Inconsistency and Inequity of Guaranteeing Absent Parents Permanent Parental Rights Permanent Parental Rights*, 56 VAND. L. REV. 1907, 1907-11 (2003). Even when legal parents are required to pay child support, making those payments does not require parents to engage with their children. *See id.* Visitation is a right that a parent can choose not to exercise. *See id.* Perhaps it would be a better world if the law required engagement, but that is not the world that we currently reside in.

<sup>92</sup> *See* Joslin, *supra* note 1, at 2229 n.41.

<sup>93</sup> *See* Joslin, *supra* note 1, at 2239.

<sup>94</sup> THE MAN WITH 1000 KIDS (Netflix, accessed Nov. 22, 2025).

<sup>95</sup> *See* Roxanne Fequiere, *Who is Jonathan Meijer? The Man with 1000 Kids Explores the Shocking Story*, TADUM (July 17, 2025), <https://www.netflix.com/tudum/articles/man-with-1000-kids-jonathan-meijer> [<https://perma.cc/48KU-PVNU>].

<sup>96</sup> *See* Brian Lowry, *'The Man with 1000 Kids' Adds Up to Be Netflix's Latest Docuseries Nightmare*, CNN (July 3, 2025, at 10:00 ET), <https://www.cnn.com/2024/07/03/entertainment/the-man-with-1000-kids-netflix-review> [<https://perma.cc/3GSN-6XY5>].

sought by proponents of increasing regulation of the commercial gamete market will be met by driving more women underground to find sources of sperm.

### III. CHILDREN FOR ME, BUT NOT FOR THEE

Joslin expresses concern that regulating gamete markets may impact other constitutional rights related to family planning, explaining “gamete rules—individually and collectively—can directly affect one of the most profound liberty interests—the decision about whether, when, and how to procreate.”<sup>97</sup> In this vein, it is prudent to consider how the regulation of assisted reproduction veers far afield from the kind of regulation that would ever be considered constitutionally sound for coital reproducers. For example, future mothers who do not use donor sperm may decide for a variety of reasons that they do not wish to be truthful about their child’s conception or may simply not be certain who is the genetic father of their child. It is hard to get good estimates of the number of people who are deceived, intentionally or otherwise, about their paternal origins, but it could be a non-negligible number, and it may be more than the number of children born using donor sperm in the United States given that children in this latter category are a small slice of the millions of children born in the United States each year.<sup>98</sup>

If not knowing one’s genetic origins is indeed a deeply life-affecting harm,<sup>99</sup> then arguably *all* children, not just those born from donor sperm, should have the benefit of certainty. From this premise, it follows that creating this certainty would countenance DNA testing at birth for every child, or maybe even paternity testing during pregnancy. If that is not a solution that the advocates of non-anonymity in the sale of sperm would support, why not? Is it because this proposal would be cost-prohibitive given that there are more children born without sperm donors each year than those born via donor sperm?<sup>100</sup> Is it that such testing feels invasive or like a violation of familial privacy? Asking these questions is warranted to the extent that having a child via assisted reproduction too often invites incursions into the family that would not be tolerated for those who procreate coitally, even if the same concerns about negative impacts on children exist.<sup>101</sup> Given this dynamic, it is right to probe both baseline motivations and claimed positive outcomes of targeted forms of regulating

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<sup>97</sup> Joslin, *supra* note 1, at 2229.

<sup>98</sup> In 2021, only 86,146 babies were conceived through all methods of assisted reproduction, comprising only 2.3% infants born in the United States that year. *Id.* at 2236.

<sup>99</sup> See *id.* at 2246 n.166 (discussing controversial phenomenon “genealogical bewilderment” which “describe[s] the harm children are alleged to suffer as a result of not knowing their genetic or genealogical heritage”).

<sup>100</sup> See Joslin, *supra* note 1, at 2236.

<sup>101</sup> Compare *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (extending and justifying constitutional protections for procreation as “most intimate and personal choice[] a person may make in a lifetime, choices central to personal dignity and autonomy” and to “one’s own concept of existence”), with Joslin, *supra* note 1, Part II (outlining proposals to regulate gamete donation).

procreation via assisted reproduction if that same policy is not also recommended for coital reproducers.

The same questioning can be targeted at the question of family limits.<sup>102</sup> Would the people who urge family limits in the context of sperm donors make the same request for men who reproduce coitally? If the answer is no, then why? Would this disparity be justified as preserving an individual man's right to procreate?<sup>103</sup> And, if concerns about infringing on the right to procreate countenance against capping the number of children a person can have coitally, how do we understand limits on procreation for people who do so through non-coital means? Putting aside issues of practicality, which are substantial enough that anyone in their right mind should find such a suggestion appalling, one wonders how this modest proposal would be greeted in the larger world. These questions do not presume that family limits in donor conception are unconstitutional or that they should not be implemented by agencies either voluntarily or pursuant to a legal requirement, but, in regulating non-coital reproduction differently than coital reproduction, one hopes that the justification for doing so is more complex than merely exercising arbitrary power.

Existing and proposed rules around baby-making outside of the bedroom too often shape themselves around limited notions of family formation. When we only speak about absence in "fatherless" families, the story that we tell about those families, whether purposeful or not, is one of secondary and lesser status. When we pity children raised in loving homes that happen to have only a mother or two mothers, we tell them that they are not whole and that their family is less than. Joslin, of course, is correct that the voices of donor-conceived people must be part of the discussion about if and how to regulate the gamete industry,<sup>104</sup> but donor-conceived people do not speak with one voice, nor do they speak for all families.

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<sup>102</sup> See Joslin, *supra* note 1, at 2246-47 (discussing calls to institute limits on number of families formed using gametes from single donor, commonly called family limits).

<sup>103</sup> The issue of controlling reproduction for people deemed to be irresponsible reproducers is one that is well-known to U.S. law. See, e.g., *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 536-37 (1942) (describing Oklahoma law allowing sterilization of "habitual criminals"). Years of eugenic sterilizations targeted at people with disabilities, people with criminal histories, and poor women, especially women of color are one example. See PAUL A. LOMBARDO, *A CENTURY OF EUGENICS IN AMERICA FROM THE INDIANA EXPERIMENT TO THE HUMAN GENOME ERA* 3-5 (2010). Welfare family caps targeted at individuals who have a child while already receiving public benefits is another. See Urvi Patel & Aditi Shrivastava, *Reproductive Justice and TANF: Repealing "Family Cap" Policies Promotes Economic Justice and Family Autonomy*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 19, 2023, at 12:36 ET), <https://www.cbpp.org/blog/reproductive-justice-and-tanf-repealing-family-cap-policies-promotes-economic-justice-and>. And even individual judges have used the threat of prison to discourage certain people from procreating. See, e.g., *State v. Oakley*, 2001 WI App 103, ¶ 1, 245 Wis. 2d 447, 452-53, 629 N.W.2d 200, 201-02.

<sup>104</sup> See Joslin, *supra* note 1, at 2231.

## CONCLUSION

Future regulation of assisted reproduction in general, and gamete markets specifically, must reject nostalgic, biology-centered family norms and instead affirm diverse kinship structures. As Laura Mamo wrote in her seminal book *Queering Reproduction*, “[n]othing within biology demands the nuclear family. It is a cultural and social system enforced by regulations and reinforced by legal discourse . . . . Yet in the United States it is the nuclear family, bound by blood and legal arrangements of marriage and adoption, that represents social order, idealized kinship, and legitimate relations.”<sup>105</sup> Similarly, Stephanie Coontz, a prolific scholar of American families writes, “[t]he historical and cross-cultural record reveals an astonishing variety of family forms and childrearing arrangements. Few societies in the past, it turns out, have shared our insistence on the unique role of the nuclear family, especially the mother, in raising healthy children.”<sup>106</sup>

We live in a world in which making babies is a multi-billion dollar business,<sup>107</sup> and there is no going back to a time when this was not the case. Over time, the industry of selling gametes may fall by the wayside as scientific discoveries—like in vitro gametogenesis, a process by which scientists use adult stem cells to create sperm and eggs—allow intended parents to use gametes made from their own genes to have genetically related children.<sup>108</sup> In this wild, potential future, the gamete market may come to play an even smaller role in the business of making babies, and questions about genetic origins will perhaps cease to be relevant for the vast majority of people conceived through assisted reproduction.

As we await that potential future, the real-life choices of single women and same-sex female couples seeking to bring children into their families are being subjected to a level of intrusion and scrutiny that warrants push back and critique. *Sperm Rules* is a welcome addition to the scholarly literature that seeks to create structures and principles, if not specific proposals, to help guide future regulation premised not on conservative constructions of family and kinship, but forward-looking ideas about what families can be. Supporting families through robust social policy, not restrictive laws, is the path to justice in reproduction.

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<sup>105</sup> LAURA MAMO, *QUEERING REPRODUCTION: ACHIEVING PREGNANCY IN THE AGE OF TECHNOLOGY* 5 (2007).

<sup>106</sup> STEPHANIE COONTZ, *THE WAY WE NEVER WERE* 211 (1992).

<sup>107</sup> See Bridget J. Crawford, *Tax Talk and Reproductive Technology*, 99 B.U. L. REV. 1757, 1764 n.18 (2019).

<sup>108</sup> Rob Stein, *Scientists Create Human Eggs in the Lab, Using Skin Cells*, NPR (Sep. 30, 2025, at 11:01 ET), <https://www.npr.org/2025/09/30/nx-s1-5553322/ivg-human-eggs-cells-fertility> [<https://perma.cc/VLS8-YXAC>].