The Law of Assisted Reproductive Technologies: Imposing Heteronormative Family Structures onto Queer Families

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* © 2022 Georgetown University Law Center, J.D. 2022. Many thanks to Professor Susan L. Crockin and Professor Naomi Mezey for their guidance in writing this Article, and to the editors of the *Tulane Journal of Law and Sexuality* for their editorial insights. Thank you to my late grandmother, Janet Sutter Vacanti, and my mother, Lynn Vacanti, for teaching me to write. Thank you to my father, John Gilroy, for imparting your passion for social justice, and thank you to my grandfather, Michael Vacanti, for invarabily encouraging me to pursue my interests. Thank you to Pooja Patel for, well, everything. After graduation I will practice as a fertility and matrimonial law associate in New York City.

I. INTRODUCTION

What do Raff and Mica, Gena and Jordana, Tara and Mandi, Krystian and Caitlyn, and Abby and Julia have in common? They are same-sex couples and influencers—on Instagram, YouTube, TikTok, etc.—who grew their families using assisted reproductive technologies (ART or ARTs). These social media influencers have more in common than their sexualities and ART-conceived children, however; in fact, their most obvious commonality may be their *conventionality*. The couples are married and seemingly monogamous, they live in bright suburban homes, and in between posts of their young children sporting coordinated outfits, they advertise everything from Tide Pods to Disneyland. They are post-*Obergefell* couples raising children in a time so much more accepting to LGBTQ+ families than previous eras that their livelihoods come from followers *liking* snapshots of their family life.

As encouraging as cultural acceptance of LGBTQ+ families is, analyzing the families that have gained acceptance—such as the influencer families—illuminates that this societal acceptance may be an illusion hiding the reality that queer families unable to mold themselves into preexisting nuclear family structures still face marginalization, culturally and legally. In fact, families who do not fit traditional family structures are arguably even less legible now than before the cultural embrace of LGBTQ+ families willing and able to conventionalize.

For many LGBTQ+ families, ARTs are required in order to build a family where the parents have genetic ties to the resulting child.[1] Even though the laws regulating ARTs often do not accommodate or protect LGBTQ+ families, LGBTQ+ prospective parents constitute a large percentage of the individuals and families partaking in ART and will likely continue to do so at even greater rates in the future. The Society for Assisted Reproductive Technology reports that in 2019, 77,256 children were born using ARTs in the United States.[2] Approximately one-third of donor-sperm users and five to ten percent of fertility clinic patients self-identify as members of the LGBTQ+ community.[3] In addition, as of 2016,

1. This Article recognizes that some queer families are able to reproduce without ART, such as, but in no means limited to, when two queer individuals are in a different-sex relationship with each other, or when couples use donor insemination at home with no medical intervention.

2. *More than 77 Thousand Babies Born from ART*, SOC'Y FOR ASSISTED REPRODUCTIVE TECH., (last visited Apr. 28, 2021), https://www.sart.org/news-and-publications/news-and-research/press-releases-and-bulletins/more-than-77-thousand-babies-born-from-ART/.

3. Clara Moskowitz, *An L.G.B.T.Q. Pregnancy, from D.I.Y. to I.V.F.*, N.Y. TIMES (Apr. 15, 2021), https://www.nytimes.com/2020/04/15/parenting/fertility/lgbtq-pregnancy-ivf.html.

ten to twenty percent of donor eggs went to gay men having children through surrogacy.[4] A recent survey by the Family Equality Council found that forty percent of LGBTQ+ individuals are considering building a family using ART.[5] That's a *lot* of people when you consider that a recent study showed that one in six Gen Z adults identifies as LGBTQ+—up from nine percent of millennials and three percent of Gen X.[6]

This Article argues that ARTs are a net benefit to the LGBTQ+ community since they offer a path to biological parentage nearly unimaginable to LGBTQ+ individuals until the end of the twentieth century. While this Article by no means suggests that other paths to parenthood for the LGBTQ+ community, such as adoption, are inferior, it recognizes ARTs as groundbreaking and as enabling many LGBTQ+ individuals to create the families they desire. However, the law has not caught up to the reality of LGBTQ+ families using ARTs. Preexisting laws do not adequately protect LGBTQ+ families, so new legislation that recognizes intent-based parentage is necessary.

The policies in place to protect LGBTQ+ families using ART are neither simple nor nationally uniform, and often incentivize conformity to traditional family norms. While opinions on LGBTQ+ rights are undoubtably trending toward acceptance,[7] Professor Ulrika Dahl writes, "[A]ccess to a specific and highly regulated range of reproductive options and to legal recognition of relationships and parents, also forces people increasingly into conventional relationships, and thus that for non-heterosexual families failure also comes at a much higher cost in a heteronormative world that already does not understand your family."[8] Essentially, by creating paths to conventionality for LGBTQ+ families, the law further *others* families that do not conform, which illustrates the problem with molding queer families into preexisting nuclear family

4. Xavier Symons, *More Gay Couples Using Surrogates in US*, BIOEDGE (Nov. 26, 2016), https://www.bioedge.org/bioethics/more-gay-couples-using-surrogates-in-us/12106.

5. Julie Compton, *More LGBTQ Millennials Plan to Have Kids Regardless of Income, Survey Finds*, NBC NEWS (Dec. 27, 2019), https://www.nbcnews.com/feature/nbc-out/more-lgbtq-millennials-plan-have-kids-regardless-income-survey-finds-n1107461.

6. Jeffery M. Jones, *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, GALLUP (Feb. 24, 2021), https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx.

7. Maya Salam, *Americans' Shifting Attitude on Gay Rights*, N.Y. TIMES (June 18, 2019), https://www.nytimes.com/2019/06/18/us/americans-lgbt-opinions.html.

8. Ulrika Dahl, *Not Gay as in Happy, but Queer as in Fuck You: Notes on Love and Failure in Queer(ing) Kinship*, 3-4 LAMBDA NORDICA 143, 164 (2015).

structures: instead of furthering equality, those who still fail to conventionalize are pushed even further to the margins.

Why do the laws regulating ARTs impose heteronormative family structures on LGBTQ+ families at a time of heightened acceptance of queer individuals? Queer families are not necessarily legible within the nuclear family paradigm, illustrating their radical potential to prove it uncessary. Undoubtably, the state has an incentive to ensure that LGBTQ+ families do not erode traditional family structures. As Professor Martha Fineman explains, "the family operates as a complementary institution to the state on an ideological and functional level. In our individualistic society, the state relies on the family—allocating to it the care and protection of society's weaker members and the production and education of its future citizens."[9] If the state better recognized and protected non-traditional family structures, such as umarried queer families with ART conceived children, these new family formations could prove traditional family structures unnecessary—and may even force the state to reconsider its reliance on the family to provide unpaid care.

Since most queer families cannot procreate through sexual intercourse and are not immediately legible within the nuclear family paradigm, the state creates legal processess to conventionalize LGBTQ+ families—thus minimizing their radical potential and threat to convention. This Article argues that the laws regulating assisted reproductive technologies impose heteronormative family structures onto LGBTQ+ families by tying parental recognition and rights to marriage, and forcing queer families to conform to nuclear family legal models through ill-fitting practices that further marginalize those unable or unwilling to conform. This Article uses marriage incentives and second-parent adoptions as case studies that exemplify the ways in which the law imposes heterosexual norms through inadequate regulations and laws—many of which not only lead to the de-queering of LGBTQ+ families, but are also cumbersome, if not discriminatory for queer families.[10] Finally, this Article suggests legal reforms to better protect LGBTQ+ families with ART-conceived children, including an intent-based model of parentage, a new linguistics of

9. MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES 226 (1995).

10. By *de-queering*, this Article means the process by which LGBTQ+ families are incentivized, or forced, to conform to nuclear family frameworks, rather than the chosen family model which will be explored in Part I.

parentage, and a reframing of parent-child relationships.[11] With LGBTQ+ families using ARTs at higher rates than ever before, now is an opportune time to instate creative legal frameworks to holistically protect and uplift queer families.

II. THE IMPACTS OF MARRIAGE REQUIREMENTS AND MARITAL PRESUMPTIONS ON QUEER FAMILIES

In the wake of *Obergefell v. Hodges*, the Supreme Court ruling that legalized same-sex marriage in all fifty states, a movement arose to use marriage to confer legal parentage rights to same-sex parents that are biologically unrelated to their ART-born children. This method serves the state because it streamlines the process of conferring parentage rights by using a preexisting legal model, and it incentivizes queer families to conform to nuclear family structures. The following sections of this Article explain that tying parentage rights and access to ART to marriage strips LGBTQ+ families of their queerness. The sections on surrogacy, insurance coverage, and marital presumptions argue that the marital parentage scheme fails both married and non-marital families using ART, illustrating that marriage is not the answer to regulating ART for queer families.

A. Queer and Chosen Families

Long before ART, members of the LGBTQ+ community created alternative, alebit legally vulnerable, families—families *not* defined by shared genetics.[12] Many LGBTQ+ individuals are forced to break ties with the families that raised them due to homophobia, biphobia, transphobia, and other forms of bias. Out of this exclusion comes the inherently queer idea of "chosen families"—a keystone of the LGBTQ+ community past and present. Professor Kath Weston writes, "Gay or chosen families might incorporate friends, lovers, or children, in any combination[,]" and explains that queer families are often "[o]rganized through ideologies of love, choice, and creation[.]"[13] Queer families are often more expansive than straight families, and traditionally employ a community-based

11. This Article critiques the impact that the laws regulating ART have on queer families, but it is by no means a critique of queer families using ART. Rather, this Article recognizes that ARTs are the present and future of reproduction for the LGBTQ+ community and suggests legal reforms that uplift, rather than erase, queer family structures.

12. *See* KATH WESTON, FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP 27 (1991).

13. *Id.*

method of childrearing.[14] ART offers new potential for queer family building, but the heteronormative legal frameworks regulating ARTs do not adequately protect queer families, and often take the queerness out of LGBTQ+ families.

Some scholars argue ART is an inherently un-queer practice, since queer or chosen families are traditionally based on choice rather than biology.[15] However, this Article suggests that the use of ART could be seen as an inherently queer practice because multiple individuals contribute, anonymously or knowingly, genetically or relationally, to the conception of an ART-created child. However, barring rare instances of recognition for poly families, legally recognized families only consist of two parents and their children, and the other individuals who contributed are legally erased from the equation. Professor Darren Rosenblum suggests that more expansive family structures would make it less expensive for queer families to conceive and care for children.[16] Rosenblum suggests potential queer families centered around an ART-convinced child, such as, "a lesbian couple that finds a sperm donor who will share in some childcare, or a gay couple who shares parenting with the woman who carries the child. It could also be any other formation of friends and lovers who choose to share the responsibilities of childcare."[17] Understandably, the LGBTQ+ movement is focused on ensuring parentage rights for the most legible families first—those with two parents.[18] However, as Rosenblum points out, many queer families would prefer, and benefit, if the law were to accept the inherent queerness of the relationships that can stem from ART-conceived children.

Queer and chosen families are an integral aspect of the LGBTQ+ experience for many individuals, and the law partakes in a form of cultural erasure when it works to eliminate such care and community structures. The law should reinforce alternative family structures and confer legal

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14. *See id.* at 175 (describing how gay families are fluid, with no fixed number of parents).

15. Amanda Roth, (*Queer) Family Values and "Reciprocal IVF": What Difference Does Sexual Identity Make?*, 27 KENNEDY INST. ETHICS J. 443, 457 (2017).

16. Darren Rosenblum, *Unsex Mothering: Toward a New Culture of Parenting*, 35 HARV. J. L. & GENDER 57, 86 (2012).

17. *Id.* at 86.

18. This Article recognizes that under the United States' current legal model, Professor Rosenblum's suggested family structures could actually make LGBTQ+ families even more legally vulnerable. For example, sperm donors could be elevated to legal parents—an outcome for the LGBTQ+ community that attorneys have fought tirelessly to avoid. However, this Article also sees that if creative legal reforms were instituted, Rosenblum's ideas could help retain the radical potential of queer families using ARTs.

parentage rights to families living outside of nuclear family models. If the law does not begin to accept queer families using ART, the families who do not assimilate will be further penalized for their queerness.

B. The Limits of Marriage Equality

Marriage is itself an institution that exists to *other* those who do not partake. By tying both access to ART and legal parentage from ART to marriage, the law marginalizes non-marital queer families.[19] Professor Dean Spade writes, "'Marriage Equality' itself is an ironic term, given that the legal designation of marital status serves to differentiate between and to privilege select family structures and sexual choices . . . marriage itself institutes and distributes inequalities."[20] This Article does not in any way argue against same-sex marriage, but it recommends that marriage be disentangled from parental rights. When rights are tied to marriage, queer families that feel marriage is incompatible with their lifestyle or ideologies, may struggle to access the benefits and protections afforded to their married counterparts.

Justice Kennedy's *Obergefell* majority opinion is supportive of same-sex couples having children, yet it does not embrace traditionally queer family structures.[21] Instead, the opinion suggests that after centuries of exclusion—which at least in part led to the creation of queer and chosen families—LGBTQ+ individuals are expected to organize their families around marriage.[22] Kennedy blatantly acknowledges the material difficulties the law imposes on families who live outside of marriage, writing that children of unmarried parents "suffer the significant material costs of being raised by unmarried parents, relegated through no fault of

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19. Professor Melissa Murray writes about the Supreme Court's "jurisprudence of non-marriage" in the years leading up to *Obergefell v. Hodges*, explaining that *Lawrence v. Texas* could have been "read radically as a catalyst for greater constitutional protection for nonmarriage. On this interpretation, *Lawrence* need not serve only as a way station on the road to same-sex marriage but as the impetus for a more pluralistic regime of relationship recognition in which marriage exists alongside a range of nonmarital alternatives." Murray goes on to explain that "*Obergefell* with its pro-marriage rhetoric, preempts the possibility of relationship and family pluralism in favor of a constitutional landscape in which marriage exists alone as the constitutionally protected option for family and relationship formation." If the Court's jurisprudence had not swung so heavily towards marriage after *Lawrence*, queer families might have had a far easier, and more *queer*, path to legal parentage. Melissa Murray, Obergefell v. Hodges *and Nonmarriage Inequality*, 104 CALIF. L. REV. 1207, 1211 (2016).

20. Dean Spade and Craig Willse, *Freedom in a Regulatory State?: Lawrence, Marriage and Biopolitics*, 11 WIDENER L. REV. 309, 318 (2005).

21. *See* Obergefell v. Hodges, 576 U.S. 644, 670 (2015).

22. *See id.*

their own to a more difficult and uncertain family life."[23] This explicit acceptance of discrimination against non-marital LGBTQ+ families, coupled with the fact that *Obergefell* did little to create legal certainty for queer families, marital or otherwise, should not go ignored. Kennedy also makes a value judgement that works to reinforce the supposed importance of marriage on children, writing, "Without the recognition, stability, and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser."[24] Even the United States' highest legal institution accepts and promotes the legal and cultural ostracization of non-marital queer families.

Professor Jack Halberstam writes that, "Marriage flattens out the varied terrain of queer social life and reduces the differences that make queers, well, queer, to legal distinctions that can be ironed out by the strong hand of the law. Why not work on other forms of legal recognition than marriage, forms that allow for conventional and unusual household arrangements?"[25] The type of recognition Halberstam envisions does not exist, even though ARTs offer new opportunities to expand queer families. Instead, in many states, in order to best protect their families, queer couples using ARTs must seize the marital right given to them in *Obergefell*, the right to participate in an institution that existed in opposition to many LGBTQ+ Americans until 2015.

C. Surrogacy and Marriage

While Louisiana is the only state that statutorily bans LGBTQ+ couples from partaking in surrogacy, Utah only allows married couples—gay or straight—to create their families through surrogacy, and Florida, among other states, complicates the process for unmarried parents.[26] In addition, courts in West Virginia and Wisconsin are more favorable to

23. *Id*. at 668.

24. *Id.*

25. JACK HALBERSTAM, GAGA FEMINISM: SEX, GENDER, AND THE END OF NORMAL 114 (2012).

26. *See Gestational Surrogacy in Louisiana*, CREATIVE FAMILY CONNECTIONS (last visited Oct. 21, 2021), https://www.creativefamilyconnections.com/us-surrogacy-law-map/louisiana; *Gestational Surrogacy in Utah*, CREATIVE FAMILY CONNECTIONS (last visited Oct. 21, 2021), https://www.creativefamilyconnections.com/us-surrogacy-law-map/utah; *Gestational Surrogacy in Florida*, CREATIVE FAMILY CONNECTIONS (last visited Oct. 21, 2021), https://www.creativefamilyconnections.com/us-surrogacy-law-map/florida.

married couples partaking in surrogacy.[27] While marriage requirements for surrogacy are not widespread, they illustrate differential treatment of unmarried families under the law in the United States.

Surrogacy is arguably the most threatening ART practice for the nuclear family. Surrogacy ruptures the assumption that the person who gestates a child will also *mother* the child after birth. With gay men comprising an increasingly substantial percentage of families using gestational surrogacy in the United States, the nuclear family model is in peril—there is no clear mother to provide monetarily free care-giving services to the child.[28] Therefore, it is unsurprising that some states restrict surrogacy to married couples to make these families slightly more legible.

Marriage is not, and has never been, a requirement for heterosexual procreation outside of ART. For cisgender gay men, surrogacy is the only way to have a child with a biological connection. Therefore, marriage requirements force unmarried gay male couples to choose between remaining in their chosen relationship status and having biological children. Partially due to the compulsory link between marriage and ART for gay men in some jurisdictions, scholars have argued that reproductive justice must include unhindered access to surrogacy for gay men.[29]

D. Insurance Coverage

Seventeen states mandate that private insurance plans provide some fertility coverage.[30] Although not all seventeen of those states require private insurers to cover IVF, of the states that do, Hawaii[31] and Texas stipulate that the woman be inseminated with her husband's sperm.[32] In some jurisdictions, marriage requirements even work to exclude *married* LGBTQ+ couples from accessing ARTs, since most LGBTQ+ couples are biologically unable to comply with this stipulation. Until recently, similar statutes existed in three other states, including in Maryland which just

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27. *See Gestational Surrogacy in West Virginia*, CREATIVE FAMILY CONNECTIONS (last visited Oct. 21, 2021), https://www.creativefamilyconnections.com/us-surrogacy-law-map/west-virginia; *Gestational Surrogacy in Wisconsin,* CREATIVE FAMILY CONNECTIONS (last visited Oct. 21, 2021), https://www.creativefamilyconnections.com/us-surrogacy-law-map/wisconsin.

28. Symons, *supra* note 4.

29. Camisha Russell, *Rights-holders or Refugees? Do Gay Men Need Reproductive Justice?*, 7 REPROD. BIOMEDICINE & SOC'Y ONLINE 131 (2018).

30. Chanel Dubofsky, *Your Guide to Fertility Insurance Coverage by State*, A MODERN FERTILITY BLOG (Dec. 3, 2019), https://modernfertility.com/blog/your-guide-to-fertility-insurance-coverage-by-state/.

31. HAW. REV. STAT. § 432:1-604 (2013).

32. TEX. INS. CODE. ANN. ART. 1366.005 (West 2005).

overturned its marriage requirement in 2021.[33] In treating marriage as a requirement to access IVF coverage, states showcase their willingness to privilege married families over unmarried families, and exemplify that the laws regulating ART have not caught up to the reality of same-sex marriage. Hopefully, more states will begin to require private insurance plans to cover a wider range of fertility treatments; however, it is important that as states mandate such coverage, they do so in a way that is inclusive to LGBTQ+ families, married or unmarried.[34]

E. The Limits of Marital Presumptions

As marriage is increasingly seen as the best way to confer legal parentage to LGBTQ+ families using ARTs in the wake of *Obergefell*, it has become apparent that the practice does not always protect queer families. Marital presumptions ensure that a child born to a married woman is her husband's legal child, and were originally intended to decrease the number of "illegitimate" children, thus minimizing the need for public assistance. [35] After the advent of ART, marital presumption statutes also proved helpful for heterosexual married couples using donor sperm to conceive, since they ensure legal parentage for fathers biologically unrelated to their children.[36]

In 2017 marital presumptions came before the Supreme Court in *Pavan v. Smith*, after the Arkansas Department of Health refused to list non-biological mothers on the birth certificates of children born to two

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33. *Knowing Your Benefits*, SHADY GROVE FERTILITY (last visited Oct. 22, 2021), https://www.shadygrovefertility.com/accepted-insurances/state-fertility-insurance-laws/ (choose "Maryland" to expand).

34. Although this issue is distinct from marriage requirements for insurance coverage of IVF, it is important to note that often, when states implement insurance mandates covering fertility treatments, LGBTQ+ individuals are unable to benefit because they may not be utilizing the treatments due to diagnosed medical infertility—even though they require some sort of assisted reproductive technology to have children. For this reason, attorneys, activists, and other involved parties suggest that infertility be considered a social condition, rather than just a medical category. *See* Gabriela Weigel et al., *Coverage and Use of Fertility Services in the U.S.*, KAISER FAMILY FOUNDATION (Sept. 15, 2020), https://www.kff.org/womens-health-policy/issue-brief/coverage-and-use-of-fertility-services-in-the-u-s/; *See also* David Kaufman, *The Fight for Fertility Equality*, N.Y. TIMES (July 22, 2020), https://www.nytimes.com/2020/07/22/style/lgbtq-fertility-surrogacy-coverage.html.

35. Paula Roberts, *Truth and Consequences: Part II: Questioning the Paternity of Marital Children*, 37 FAM. L.Q. 55, 55 (2003).

36. Donor insemination statutes also helped heterosexual couples using ART gain legal parentage. Thomas B. James, *Assisted Reproduction: Reforming State Statutes After Obergefell v. Hodges and Pavan v. Smith*, 19 U. MD. L.J. RACE RELIG. GENDER & CLASS 261, 262 (2019).

married women. The Court's *Pavan* opinion held that same-sex couples consisting of two women could not be precluded from the protections of the marital presumption:

> [W]hen an opposite-sex couple conceives a child by way of anonymous sperm donation . . . law requires the placement of the birth mother's husband on the child's birth certificate. And that is so even though (as the State concedes) the husband 'is definitively not the biological father' in those circumstances. Arkansas has thus chosen to make its birth certificates more than a mere marker of biological relationships.[37]

Pavan, just like *Obergefell*, showcased the Court's willingness to privilege marital families, and extended the marital presumption to lesbian couples.

However, there is a glaring issue with marital presumptions: as long as the rights they provide run through the birth mother, and are based on biology rather than marriage, gay men are precluded from taking advantage of the assumed parentage they provide to lesbian women after *Pavan*. As Professor Douglas NeJaime explains, "the collapse of gendered parental statuses has occurred in only one direction: women can be legal 'fathers,' but men cannot be legal 'mothers.'"[38] For that reason, some scholars suggest that marital presumptions should no longer run through mothers, but rather that both spouses should be considered legal parents on account of their marriage to each other.[39] In states that have updated their marital presumption to be based on marriage and not biology, gay fathers have benefited from *Pavan*—if all states were to update their marital presumptions in this way, gay men would have a much easier route to legally recognized parentage. As they stand now, marital presumptions in many states exclude gay men, proving that *Obergefell* did not succeed in extending the "constellation of benefits that the States have linked to marriage" to all LGBTQ+ families, and that attempting to mold existing parentage laws to queer families is not working.[40]

In addition, marital presumptions are generally rebuttable. Considering that queer families often already face legal scrutiny and challenges that heterosexual families are not subjected to, LGBTQ+ parentage would be better protected by intent-based legal schemes, as discussed below. Marriage is incentivized, if not required, in order for

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37. Pavan v. Smith, 137 S. Ct. 2075, 2078 (2017).

38. Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260, 2315-16 (2017).

39. Rachel Wexler, *Artificial Reproductive Technology and Gendered Notions of Parenthood After Obergefell: Analyzing the Legal Assumptions that Shaped the Baby M Case and the Hodge-Podge Nature of Current Surrogacy Law*, 27 TUL. J.L. & SEXUALITY 1, 26-28 (2018).

40. *Obergefell,* 576 U.S. at 670.

LGBTQ+ families using ARTs to access legal protections, and sometimes to access ART services themselves, yet ill-fitting laws, such as marital presumptions, often block LGBTQ+ families from the legal privileges and protections automatically afforded to straight couples.

III. SECOND-PARENT ADOPTIONS

This Article uses second-parent adoptions as a case study that illustrates that the laws regulating ART force queer families to endure ill-fitting legal processes to gain legal legitimization, and suggests that the law forces those who are unable or unwilling to partake in the practice into legal vulnerability. At the end of the twentieth century, before the federal legalization of same-sex marriage, attorneys and advocates seeking to help non-birth mothers in lesbian couples gain legal parentage rights pioneered the second-parent adoption legal strategy. For lesbian couples, and to a lesser extent gay male couples, second-parent adoptions allow a non-birth parent to gain legal parentage rights without relinquishing the parental rights of the birth parent. The strategy was successful, and it enabled queer families to gain previously inaccessible legal protections. However, over three decades later, second-parent adoptions can feel outdated, and place an undeniable burden on queer families. This section will explore the process and current necessity of second-parent adoptions. Part IV addresses legal strategies to alleviate the need for second-parent adoptions, including intent-based parentage.

A. "Second-Parents" are Not Stepparents

As Professor Nancy Polikoff, who helped conceive of the second-parent adoption strategy explains, it proved to be an incredibly "powerful legal device" to help queer families gain legal parentage rights.[41] However, Polikoff notes that because second-parent adoptions utilize the preexisting stepparent adoption legal framework, they contain an intrinsic "flaw" for queer families.[42] As Polikoff writes, "A step-family forms after a child already exists . . . A lesbian couple, on the other hand, plans for a child together. From before birth, the child-to-be has two parents."[43] Due to this critical difference between stepparents and non-birth lesbian parents, the

41. Nancy Polikoff, *A Mother Should Not Have to Adopt Her Own Child: Parent Laws for Children of Lesbian Couples in the Twenty-First Century*, 5 STAN. J. CIV. RTS. & CIV. LIBERTIES 201, 205 (2010).

42. *Id.*

43. *Id.* at 206.

second-parent adoption process is inherently incompatible with the families it works to recognize.

The second-parent adoption process also reinforces the incorrect parallel it draws between stepparents and non-birth queer parents because just like stepparent adoptions, second-parent adoptions occur *after* a child is born. The *ex post* rather than *ab initio* nature of the second-parent adoption process creates a legal limbo period during which the non-birth parent is not a legal parent to the child. In the event that something happens to the birth parent during childbirth or at any point before the second-parent adoption is finalized, the non-birth parent can be left without any parental rights to the child. In addition, if something happened to the non-birth parent, the child would be denied benefits such as social security survivor's benefits.[44] Furthermore, if the parents' relationship dissolves before a second-parent adoption is finalized, the non-birth parent can find herself with no rights to stay in the child's life. As this Article explains below, even after *Obergefell* and *Pavan*, marriage does not negate the need for a second-parent adoption.

B. Second-Parent Adoptions and State Surveillance

Second-parent adoptions force queer families into encounters with the legal system that are not imposed onto straight families. Most families are only forced to hire a lawyer when a relationship between two parents dissolves, but for queer families, lawyers are required in order to *create* a legal relationship between a parent and her child. While the second-parent adoption process may feel more absurd than anything for queer parents, the process is undeniably demeaning in that it forces a non-birth parent to assert her rights, whereas for heterosexual married parents using donor sperm the right to legal parentage is assumed.[45]

Each state has its own second-parent adoption requirements, but all of the requirements necessitate some form of state involvement. Depending on the jurisdiction, second-parent adoptions can include home studies (which may include FBI and criminal background checks), adoption hearings, and affidavits from a doctor or cryobank attesting to

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44. *Id*. at 267.

45. Professor Polikoff explains the difference between lesbian couples and heterosexual couples using donor sperm, writing, "A lesbian couple plans for a child together. From before birth, the child-to-be has two parents. The nonbiological mother is not a step-parent. The closest analogy to her situation is that of an infertile husband whose wife, with his consent, conceives using donor semen. *That husband does not have to adopt his child*." *Id.* at 206.

the facts of a child's conception.[46] This scrutiny from courts and government agencies can take a mental toll on queer parents who have an understandably heightened fear of being perceived as deviant due to their sexuality, gender, relationship structure, or other aspects of their identity. The scrutinizing aspects of the second-parent adoption process are additional examples of the way in which the process reinforces preexisting notions about queer families: forcing scrutiny on queer families suggests that they are abnormal and thus need to prove their fitness to parent to the court.

C. The Material Costs of Second-Parent Adoptions

Second-parent adoptions also impose a financial burden on queer families; depending on the state the process can cost up to $3,000.[47] According to a 2019 study, the LGBTQ+ community's poverty rate is 21.6%, as opposed to 15.7% for cisgender straight individuals.[48] Therefore, the cost of second-parent adoptions can prohibit or delay a family from going through the process—especially after enduring the other costs associated with ART. Parents who are unable to afford second-parent adoptions are barred from parental rights that are imbued in most parents after a child's birth.

D. Reciprocal IVF and Second-Parent Adoptions

Reciprocal IVF, the process by which the birth parent carries a child created with her partner's eggs, illustrates that the law's disparate treatment of queer and straight families cannot be explained as a need to recognize parentage based on biology. Due to the Full Faith and Credit Clause, which is discussed below, even in the case of reciprocal IVF, a non-birth parent is advised to adopt her child, even though she is the

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46. Rebecca Levin Nayak, *"Confirmatory" or Second-Parent Adoption: What You Need to Know*, FAMILY EQUALITY COUNCIL, https://www.familyequality.org/resources/confirmatory-adoption/ (last visited Apr. 28, 2021).

47. *Average Adoption Costs in the United States*, FAMILY EQUALITY COUNCIL, https://www.familyequality.org/resources/average-adoption-costs-in-the-united-states/#:~:text=Second%20or%20Step%20Parent%20Adoptions,run%20between%20%24250%2D%243%2C000 (last visited April 28, 2021).

48. M.V. Lee Badgett et al., *LGBT Poverty in the United States: A Study of Differences Between Sexual Orientation and Gender Identity Groups* 7, WILLIAMS INST. (2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf.

biological parent.[49] When a woman in a straight relationship gives birth to a child created with donor sperm, her husband is not forced to adopt the child.[50] Perhaps the law is not merely held back by a dependance on biology, but rather by an inability to conceptualize families outside of the heterosexual paradigm.

E. The Continued Necessity of Second-Parent Adoptions

This Article previously addressed the fact that after *Pavan* second-parents in lesbian relationships are entitled to be listed on their children's birth certificates.[51] However, this does not negate the need for second-parent adoptions: birth certificates do not confer legal parentage rights. For this reason, advocates, lawmakers, and scholars are working to enact intent-based parentage statutes so that non-birth parents are automatically legal parents when their children are born.

The 2017 Uniform Parentage Act (UPA) is one such proposed statute, but only California, Vermont, Washington, Conneticut, Maine, and Rhode Island have adopted the model legislation.[52] In addressing parentage for families using ARTs, the UPA alleviates the need for biological and marital connections and states that, "An individual who consents under Section 704 to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child."[53] The consent requirement is easily fulfilled through a "record signed by a woman giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child."[54]

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49. In some states, including Massachusetts, courts have ruled that both mothers are legal parents in the case of reciprocal IVF. However, LGBTQ+ legal advocacy groups still recommend second-parent adoptions for LGBTQ+ parents, regardless of the means of conception. *See* Christine M. Durkin, *Naming Nonmarital Children: Birth Certificates and Name Change Petitions*, in PATERNITY AND THE LAW OF PARENTAGE IN MASSACHUSETTS (Mass. Continuing Legal Educ., Inc., 2018) (discussing Knoll v. Beth Israel Deaconess Medical Center, No. 00W-1343 (Suffolk Probate & Family Ct. June 28, 2000); *Legal Recognition of LGBT Families*, NATIONAL CENTER FOR LESBIAN RIGHTS (2019), https://www.nclrights.org/wp-content/uploads/2013/07/Legal_Recognition_of_LGBT_Families.pdf.

50. This is at least in part because donor insemination statutes protect straight married families, while second-parent adoptions are still necessary for LGBTQ+ families due to the Full Faith and Credit issue. *See* NeJaime, *supra* note 38, at 2292-94, 2367-70.

51. *Pavan*, 137 S. Ct. at 2078.

52. *Parentage Act,* UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f (last visited Feb. 5, 2022).

53. UNIF. PARENTAGE ACT § 703 (UNIF. LAW COMM'N 2017).

54. UNIF. PARENTAGE ACT § 704 (UNIF. LAW COMM'N 2017).

The UPA even protects families who fail to create a written record, stating that the non-biological parent is a legal parent if "the woman and the individual for the first two years of the child's life, including any period of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child[.]"[55] The UPA also formally extends the marital presumption to a partner of any gender married to the woman who gave birth to the child, but Section 704 creates stronger protections for LGBTQ+ families since marital presumptions are rebuttable.[56]

However, as impressive as the UPA is, even in states that have adopted the model legislation, it is highly recommended that parents still go through with a second-parent adoption. Professor Courtney Joslin, who served as the official reporter of the 2017 UPA, explains why statutes do not constitute suitable protection for queer families:

> [T]he Full Faith and Credit Clause of the Constitution only ensures that a person's parental status will be recognized and respected by the courts of other states if that status is established by virtue of a court adjudication. By contrast, if the status is established automatically simply as a matter of state law, other states are not required as a matter of constitutional law to respect that status.[57]

Joslin continues, writing, "The Supreme Court has held that states can refuse to apply the laws of other states when those laws violate the public policy of the forum."[58] As frustrating as it is for legislation to be insufficient protection, until all states adopt the UPA or similar statutes, second-parent adoptions will be one of the most accessible means for queer families to protect parent-child relationships. It is important that families understand the shortcomings of legislation so that they still adjudicate their parental rights. Families who are unable or unwilling to go through the second-parent adoption process may be left legally vulnerable.[59]

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55. *Id.*

56. UNIF. PARENTAGE ACT § 204 (UNIF. LAW COMM'N 2017).

57. Courtney G. Joslin, *Travel Insurance: Protecting Lesbian and Gay Parent Families Across State Lines*, 4 HARV. L. & POL'Y REV. 31, 39 (2010).

58. *Id.* at 40-41.

59. Although this Article focuses on two case studies, marriage and second-parent adoptions, to illustrate the ways in which the laws regulating ARTs impose heterosexual family norms onto queer families, it recognizes that there are other legal methods for establishing parentage—albeit costly methods that still complicate the path to parentage for LGBTQ+ families. One such option, which also fulfills the Full Faith and Credit Clause requirement, is a pre-birth

IV. RECOMMENDATIONS

As the case studies in marriage and second-parent adoptions exemplify, the current laws regulating ART do not adequately accommodate queer families. Next, this Article uses the Michigan Court of Appeals' April 2021 opinion in *LeFever v. Matthews* to exemplify the need for a new statutory scheme to regulate ART for queer families—rather than adaptations of preexisting legal structures.[60] This Article suggests an intent-based definition of parentage (illustrated by an analysis of the Massachusetts' Supreme Court's decision in *Partanen v. Gallagher*, which established intent-based legal parentage for unmarried same-sex couples), a new linguistics of parentage, and recommends a reframing of parent-child relationships.[61]

A. LeFever v. Matthews*: An Example of Why New Legislation is Necessary*

Most states do not have laws that explicitly accommodate queer families using ARTs. Therefore, courts end up manipulating ill-fitting laws to determine parentage for queer families, which often leads to outcomes that illustrate the law's lack of understanding of queer family structures and formation. This is illustrated in the Michigan Court of Appeals' April 2021 opinion vacating a trial court decision in *LeFever v. Matthews*. Kyresha LeFever and Lanesha Matthews were an unmarried lesbian couple who gave birth to twins using reciprocal IVF (Matthews carried the children, and the couple used LeFever's ova).[62] In response to LeFever's complaint for custody after the couple broke up, the trial court declared Matthews a third-party to the children due to her lack of genetic connection, awarded sole legal and sole physical custody to LeFever, and ordered that Matthews' name be removed from the children's birth certificates.[63] The Court of Appeals vacated the trial court's order, finding

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parentage order (PBO). Intended parents may petition courts to grant a PBO, which ensures that both intended parents will be considered legal parents at the time of the child's birth. However, only twelve states statutorily permit PBOs and PBOs are most commonly used for families using surrogacy. Katherine Farese, *The Bun's in the Oven, Now What?: How Pre-Birth Orders Promote Clarity in Surrogacy Law*, 23 UC DAVIS J. JUV. L. & POL'Y 25, 66-67 (2019).

60. LeFever v. Matthews, No. 353106, 2021 WL 1232747 (Mich. Ct. App. 2021).

61. Partenan v. Gallagher, 475 Mass. 632 (2016).

62. *LeFever*, 2021 WL 1232747, at *1.

63. *Id.* at *3.

that it incorrectly interpreted Michigan's Child Custody Act (CCA) and should not have applied the state's Surrogate Parenting Act (SPA).[64]

The central issue the court considered in *LeFever* was who qualifies as a "natural parent" because the CCA presumes that it is in the best interests of a child to award custody to the "natural parent(s)."[65] The trial court did not consider that there could be two "natural parents" in the case of a lesbian couple. In determining the meaning of "natural parent" the trial court looked to statutes that were not applicable to this case, including a paternity acknowledgement statute and the state's adoption code before deciding that "natural parent" must mean a blood relation.[66] Since Matthews had no genetic ties to the children, the trial court found she could not be a "natural parent."[67] After chastising the trial court for applying inapplicable statutes, the Court of Appeals determined that the term "natural parent" includes birth mothers (Matthews) *and* genetic mothers (LeFever).[68]

The trial court displayed its ignorance about queer families with ART-conceived children when it invoked Michigan's SPA, and highlighted the need for specific laws tailored to govern queer families using ARTs. Without accurately tailored laws, the trial court conflated reciprocal IVF with surrogacy, even though Matthews in no way agreed to a "voluntary relinquishment of parental rights," but rather intended to, and did, parent the couple's children.[69] It seems unlikely that the trial court would have stripped a birth mother of her parental rights in a heterosexual context, even if she lacked a genetic connection to her children—implying that it is not just IVF that the trial courts are ill-equipped to regulate, but rather queer couples who use ART. Eventually, the Court of Appeals vacated the trial court's preposterous and devastating order, but the family at the center of *LeFever* never should have had to endure the trial court's decision in the first place.

While the Court of Appeals vacated the trial court's *LeFever* opinion on the grounds that the lower court misconstrued and misapplied statutes, the concurrence offers an entirely different legal scheme under which to decide the case. Noting that if the term "natural parent" is based on genetics, Matthews would be excluded from parentage, and that if "natural

64. *Id.* at *4-5, *8.
65. *Id.* at *3.
66. *Id.* at *5.
67. *Id.*
68. *Id.* at *4.
69. *Id.* at *7.

parent" is focused on gestation, LeFever would lose her parentage rights, the concurrence suggests that the Court of Appeals should have used constitutional law, not statutory interpretation, to overturn the trial court's order:

> LeFever and Matthews had a constitutional right to create the twins in the manner they chose, and it follows that both women have constitutionally protected due process rights to parent the twins despite their nonmarital status. That Matthews lacks a genetic relationship to the twins is constitutionally irrelevant to her liberty interest in their custody.[70]

Although it seems unlikely that the concurrence's constitutional law strategy will protect queer families anytime soon, the concurrence is right to point out that focusing on terminology in state statutes such as "natural parent" will likely lead to outcomes that misunderstand queer families. Therefore, the concurrence can be understood as supporting a regulatory scheme for queer families using ART entirely divorced from the current statutes, as well as improved terminology for intended parents.

B. Intent Not Biology

This Article argues that each state should adopt a statute establishing intent-based parentage to protect same-sex families using ART. As *LeFever* shows, a parentage paradigm based on biology can harm queer families, since most LGBTQ+ families include a parent who does not share genetic ties to their children.

Section 703 of the UPA specifies that "An individual who consents under Section 704 to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child."[71] As explained in Part II, a parent can establish intent and consent to assisted reproduction through a written record, or by living with and holding out the child for the first two years after its birth.[72] This provision negates the need for a marital presumption and makes parentage about the intended parent's relationship with the child, not with the birth parent. In fact, Section 202 of the UPA states that, "[a] parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent."[73] In order to simplify the legal parentage process for queer families, and ensure legal protections within or outside

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70. *Id.* at *12 (Gleicher, J., concurring).
71. UNIF. PARENTAGE ACT § 703 (UNIF. LAW COMM'N 2017).
72. *Id.*
73. UNIF. PARENTAGE ACT § 202 (UNIF. LAW COMM'N 2017).

of marriage, all ART parentage should be determined on the basis of intent as established by the UPA.

Voluntary Acknowledgement of Parentage (VAP) procedures should be extended to LGBTQ+ parents as an accessible way to establish the intent necessary under the UPA. An administrative procedure federally mandated in all fifty states and ensured full faith and credit across state lines,[74] VAPs enable unmarried non-birth parents to be listed on a birth certificate and to establish legal parentage.[75] Since VAPs can be filed immediately after birth they eliminate the lag time non-birth parents who have not attained a pre-birth order face before gaining legal parentage rights; however, the caveat is that VAPs require the birth-parent's agreement. VAPs are also free and do not involve lawyers or a hearing in court. If all fifty states adopted the UPA and extended VAPs to queer families, second-parent adoptions would no longer be necessary and married families would not be privileged over non-marital families.[76] However, only ten states currently allow LGBTQ+ parents to use VAPs[77] and only six of those states have adopted the UPA.[78]

Since it is unlikely that state legislatures will agree to universal intent-based parentage, states should at least adopt intent-based parentage for LGBTQ+ families using ARTs as established in the UPA.[79] If Michigan

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74. 42 U.S.C. § 666(a)(5)(C) established VAPs as federally binding, negating the need for adjudication, which is typically necessary to satisfy Full Faith and Credit.

75. Nejaime, *supra* note 38, 2344.

76. While they seem to be the best option available, it should be noted that VAPs do occur after birth, therefore, if a couple breaks up before a child is born, VAPs are not foolproof means of establishing parentage for non-birth parents.

77. By January of 2022, only Nevada, Massachusetts, Vermont, California, Washington, Maryland, Rhode Island, New York, Maine, and Connecticut will have updated their VAP procedures to no longer be based on biology, therefore allowing LGBTQ+ parents to establish parentage using VAPs. Of those states, only Vermont, California, Washington, and Rhode Island have adopted the UPA; therefore, VAPs as an easy means of establishing intent under the UPA are only available to LGBTQ+ parents in four states. *FAQ: Voluntary Acknowledgement of Parentage (VAP), A Simple Way for Your Family to Be Recognized and Respected Through Legal Parentage*, GLAD, https://www.glad.org/voluntary-acknowledgment-of-parentage/ (last visited Nov. 14, 2021).

78. *Parentage Act,* UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f (last visited Feb. 5, 2022).

79. This Article suggests that ideally, parentage of children conceived using ART and through intercourse should be based solely on intent to ensure that the law does not discriminate against queer families that use ART. Some may argue that basing parentage solely on intent will mean that men will no longer be recognized as fathers or pay child support for children they did not intend to parent when they engaged in intercourse. However, the argument can be flipped to

had adopted the UPA, both parties in *LeFever* would have immediately qualified as legal parents, illustrating the need for statutes that specifically address ARTs and are inclusive of queer families.

C. Partenan v. Gallagher*: Intent-Based Parentage in Court*

While intent-based parentage is not statutory law in most states, the Massachusetts' Supreme Court decision in *Partenan v. Gallagher* established intent-based legal parentage for unmarried non-biological parents through adjudication.[80] Karen Partenan and Julie Gallagher were an unmarried lesbian couple and although Gallagher gave birth to two children during their relationship, Partenan never adopted the children before they broke up.[81]

The central issue in the case was whether Partenan could establish a claim for legal parentage under Massachusetts' presumption of paternity statute.[82] The trial court dismissed Partenan's claim for legal parentage due to her lack of biological connection to the children, ruling that biology is central to the paternity statute.[83] However, the Massachusetts Supreme Court ruled that Partenan qualified as a legal parent under the paternity statute because she satisfied the "participation" and "holding out" provisions of the statute.[84] The court held that the children were born with Partenan's "full acknowledgement, participation, and consent" and "with the shared intention that [the defendant and plaintiff] would both be parents to the resulting children."[85] In addition, the court found that under the paternity statute, Partenan and Gallagher "received the child into their home and openly held out the child as their child."[86]

Not only is it notable that the *Partenan* court allowed a non-biological parent in a same-sex unmarried couple to establish legal

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suggest that unless a man intends to be a donor, he has legal obligations to a child he contributes to conceiving. Currently, family courts exist in a large part to force child support payments onto men in precarious financial situations so that the state does not have to financially support the parent serving as a primary caregiver. Therefore, if the state began offering support for families—such as free childcare—fears over child support payments would be moot (and men who are already experiencing financial precarity would not be forced into an even more precarious situation). However, the issue is complicated and this Article does not purport to have a solution to intent-based parentage issues for families not using ARTs.

80. *Partenan*, 475 Mass. 632 (2016).
81. *Id.* at 633.
82. *Id.* at 637.
83. *Id.* at 633.
84. *Id.* at 643-44.
85. *Id.* at 633, 634.
86. *Id.* at 644.

parentage, but it is also crucial that the court acknowledged that even paternity statutes can be read gender-neutrally—although as the next section explains, a gender-neutral statute should be enacted to fully recognize queer families and avoid confusion.[87] *Partenan* exemplifies that open-minded judges are able to extend the law in order to protect queer parents through intent.

D. A New Linguistics of Parentage

Statutory language used to regulate ART and parentage for queer families should be gender neutral to accommodate the diversity within queer families and ensure legal protections. Even the language used in the UPA does not fully embrace queer families. For example, the act refers to the person giving birth exclusively as a "woman." Many people giving birth today are not women and states should acknowledge this when adopting the UPA or similar statutes by using a gender-neutral term.[88] Statutes should not automatically refer to the person giving birth as a "mother," either. While individuals who do not identify as women can certainly be mothers, it should not be assumed that a person who gives birth identifies as a mother. In addition, surrogates should never be referred to as "parents."

Even before the first widely-covered ART case, *In the Matter of Baby M*, courts employed the term "natural mother"—implying that non-biological mothers are unnatural, lesser, or less-entitled to parentage rights.[89] As stated in the discussion of *LeFever*, such terminology is confusing, and demeaning, and should be removed from legislation on parentage.

The language and framework of adoption should also be removed from statutes on ART parentage for LGBTQ+ families. Employing the language of adoption for ART reinforces the idea that non-birth parents have to gain their parental rights, rather than their rights being assumed.

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87. *Id.* at 636-37.

88. Vermont did employ gender-neutral language when it adopted the UPA and its "Parentage by Assisted Reproduction" section reads, "A person who consents under section 704 of this title to assisted reproduction by another person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child." VT. STAT. ANN. Tit. 15C, § 703 (2018). Rhode Island also adopted gender-neutral language when it adopted the UPA in 2021. 15 R.I. GEN. LAWS § 15-8.1-703 (2021).

89. Matter of Baby M, 109 N.J. 396, 410 (1989).

E. Reframing Parentage

Finally, this Article argues that the law should divorce parentage from the relationship between two adults. Fineman describes the traditional heterosexual nuclear family as the "sexual family" and argues that it is "founded on the romantic sexual affiliation between one man and one woman," always a "reproductive, biological pairing."[90] Fineman understands the "sexual family" as a deterrent to family law reform, explaining, "[t]he sexually affiliated family is the imposed ideal and, as such, it escapes sustained, serious consideration and criticism. The nuclear family is 'natural'—it is assumed."[91] Most queer families are unable to conceive children through procreative sex, so the legal scheme that Fineman describes, which centers families on a procreative relationship between two adults, is inapplicable to queer families. Therefore, in order to ensure recognition of queer families using ART, legislation should stop basing parentage off of relationships *between* parents and instead derive parentage from intended relationships between parents and their children. The UPA reflects this process by defining "parentage" as the "legal relationship between a child and a parent of the child."[92] A parentage rights framework based on relationships between children and adults, and considered separately from relationships between adults, would begin to move the law toward recognizing queer families with more than two legal parents.[93] In many poly families, not all adults share romantic relationships, but do act as parents to the same children, which is another reason why parentage should not be defined by the relationship between adults.

V. CONCLUSION

The intent of this Article is to expose the legal vulnerabilities faced by queer parents building their families through ART. Unlike the influencers mentioned in the Introduction, the *LeFever* family was not protected by marriage or a second-parent adoption—and the Michigan Court of Appeals' opinion showcased the detrimental impact of ill-fitting laws on a legally vulnerable family. In response, this Article recommends

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90. Fineman, *supra* note 9, at 145-47.

91. *Id.*

92. UNIF. PARENTAGE ACT § 102(16) (UNIF. LAW COMM'N 2017).

93. Twelve states allow for more than two parents to be recognized as a child's legal parents. Jennifer Peltz, *Courts and "Tri-Parenting": A State-by-State Look*, BOSTON.COM (June 18, 2017), https://www.boston.com/news/national-news/2017/06/18/courts-and-tri-parenting-a-state-by-state-look.

new legal models created specifically to protect queer families using ART. ARTs provide an exciting opportunity for LGBTQ+ individuals to become parents, the law should not force queer families who partake in ARTs into legal vulnerability. New legislation, and the increasing number of queer families partaking in ARTs, may begin to erode the legal prominence of the nuclear family. In its place, queer families will be able to flourish, and be legally protected, without having to conform to heterosexual family norms.