

RICH DAD, GAY DAD: THE WEALTH TRAPS OF GAY FATHERHOOD*

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While legal and societal progress has enabled gay fathers to form families, there remains a critical blind spot in our understanding of their financial well-being. Specifically, there are indications that a wealth gap may exist among gay father households. This Article introduces a novel taxonomy of the mechanisms that likely contribute to a wealth gap for these households, including surrogacy and adoption costs, legal recognition expenses, parental leave policies, discrimination in housing and borrowing, and limited support from families of origin. These obstacles reflect the structural features and prejudices that disproportionately affect households led by non-heterosexual fathers. This Article highlights the harm created by the wealth gap, conceptualizing it alongside the racial and gender wealth gaps. It argues that policies that create wealth barriers cannot be justified merely by biology. This Article suggests possible interventions to reduce this harm, while emphasizing that policies aimed at reducing the wealth gap will also challenge the status quo of gendered division of unpaid care work. Overall, this Article fills a gap in our understanding of wealth disparities among gay father households and challenges the notion of gay fathers as a uniform and privileged group. It highlights the need for more research and attention to the distinct wealth barriers faced by different types of families.

INTRODUCTION.....	1382
I. THE ECONOMICS OF GAY FATHERHOOD: A CLOSER LOOK AT THE WEALTH GAP.....	1387
A. <i>Understanding Gay Fatherhood: A Sociodemographic Analysis</i>	1387
B. <i>The Significance of Studying Wealth Holding in Households Led by Gay Dads</i>	1392
C. <i>Exploring Wealth Holding of Families Headed by Gay Dads</i> .	1394

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II.	UNPACKING THE FACTORS CONTRIBUTING TO A WEALTH GAP	1396
	1396
A.	<i>The Cost of Building a Gay Parent-Headed Family</i>	1396
	1. Gestational Surrogacy.....	1397
	2. Adoption.....	1403
B.	<i>The Cost of Parentage Recognition</i>	1405
C.	<i>Parental Leave Policies</i>	1407
D.	<i>Barriers to Home Ownership</i>	1411
E.	<i>Support from Family of Origin, Intergenerational Transfer of Wealth</i>	1412
III.	ELUCIDATING HARMS AND INTERVENTIONS.....	1415
A.	<i>The Harms of a Potential Wealth Gap</i>	1415
B.	<i>It's All Biology, Stupid</i>	1418
C.	<i>Contours of a Policy Response</i>	1424
	CONCLUSION	1425

INTRODUCTION

When Secretary of Transportation Pete Buttigieg announced that he and his husband had adopted twins, he primarily faced two types of critical responses. One set of critiques focused on Buttigieg’s privilege in relation to his choice of family formation and, generally, his socioeconomic position.¹ Assuming that he had relied on surrogacy, some commentators—both progressives and conservatives—condemned “the wealthy Buttigiegs [who] ‘build their family’ by design, through modern technology,” highlighting the commodification and exploitation of women’s bodies.² Another set of critics sought to uphold the conventional division of care work, which places the responsibility primarily on women, thus critiquing Buttigieg for taking such leave and seeking rights and benefits traditionally associated with mothers. Famously, former Fox News host Tucker Carlson attempted to mock the idea of paternity leave in general, stating, “Paternity leave, they call it, trying to figure out how to breastfeed.”³

1. Simcha Fisher, *The Debate over Pete Buttigieg’s Paternity Leave Is Missing One Thing: The Birth Mother*, AM. MAG. (Oct. 19, 2021), <https://www.americamagazine.org/faith/2021/10/19/pete-buttigieg-twin-adoption-mother-241675> [<https://perma.cc/MQ8L-YM7J>] (“[E]specially since Mr. Buttigieg is undeniably part of privileged sliver of society with the money and access to choose when and how to start a family.”).

2. Jennifer Lahl, *The Rarity of Twin Adoption Versus the Reality of Surrogacy*, EPOCH TIMES, https://www.theepochtimes.com/the-rarity-of-twin-adoption-vs-the-reality-of-surrogacy_3988450.html [<https://perma.cc/QT5S-BX6B> (staff-uploaded archive)] (last updated Sept. 9, 2021).

3. Myah Ward, *Buttigieg Brushes Back Carlson Comments on Maternity Leave*, POLITICO, <https://www.politico.com/news/2021/10/15/buttigieg-tucker-carlson-paternity-leave-516111> [<https://perma.cc/336Y-98A8>] (last updated Oct. 15, 2021, 7:16 PM).

These critiques leveled at Buttigieg exemplify two emerging narratives and images that shape the public discourse surrounding gay dads.⁴ In one image, gay fathers are commonly perceived as an elite group, politically and financially, that has detached from the larger LGBTQ+ movement's previous commitment to radical politics.⁵ Indeed, even before he adopted children, Buttigieg was the epitome of "elite 'Obergefell gay'"—prominent gay White men who advance politics of respectability, seeking to assimilate into heteronormative norms.⁶ This portrayal of gay fathers as privileged is entangled with the belief that male same-sex couples have closed the wage gap with their different-sex counterparts and are generally better off financially than their other sexual-minority peers. For example, a *Washington Post* headline reads, "Same-Gender Female Couples Make \$30,000 Less a Year Than Their Male Counterparts."⁷ In contrast, the other primary image of gay dads is as disruptors of binary parental roles. As such, they can be perceived as individuals with the potential to challenge entrenched gender roles, which are a significant cause of inequality.⁸ However, they may also face disapproval and discrimination when seeking benefits that have traditionally been reserved to mothers. Buttigieg, then, is ascribed both aspects of the category "gay dad."

This is not the first time that the image of the "wealthy homo" has surfaced. During the 1990s, the myth of gays constituting an elite

4. By "gay dads" or "gay fathers," I mean all those who do not identify as heterosexual. I use these terms for clarity in writing while aiming to be inclusive of all non-heterosexual fathers. Using the terms "gay dads" or "gay fathers" instead of the gender-neutral term "parents" is a deliberate choice that emphasizes the unique experiences and challenges faced by non-heterosexual fathers in both family formation and raising families. While all parents share many commonalities in terms of the love and care they provide for their children, and while gay dads perform much "motherly" work, there are also important differences that can arise based on a family's composition and gender dynamics.

5. For a rich and fascinating account of queer politics concerning sex, gender, sexuality, and family values during the late 1960s and the 1970s in the United States, see Michael Boucai, *Glorious Precedents: When Gay Marriage Was Radical*, 27 *YALE J.L. & HUMAN.* 1, 10–17 (2015).

6. Along these lines, in the midst of debate about regulating surrogacy in New York, conversations among progressives have depicted gay parents as a powerful interest group. See, e.g., Vivian Wang, *Surrogate Pregnancy Battle Pits Progressives Against Feminists*, *N.Y. TIMES* (June 12, 2019), <https://www.nytimes.com/2019/06/12/nyregion/surrogate-pregnancy-law-ny.html> [<https://perma.cc/5L4R-CG48> (staff-uploaded, dark archive)]; Russell K. Robinson, *Mayor Pete, Obergefell Gays, and White Male Privilege*, 69 *BUFF. L. REV.* 295, 303 (2021).

7. Anne Branigin, *Same-Gender Female Couples Make \$30,000 Less a Year Than Their Male Counterparts*, *WASH. POST* (Feb. 1, 2022, 2:25 PM), <https://www.washingtonpost.com/lifestyle/2022/02/01/same-sex-income-gap-research/> [<https://perma.cc/G4WH-C9KD> (dark archive)]; Brian Glassman, *Same-Sex Married Couples Have Higher Income Than Opposite-Sex Married Couples*, *U.S. CENSUS BUREAU* (Sept. 17, 2020), <https://www.census.gov/library/stories/2020/09/same-sex-married-couples-have-higher-income-than-opposite-sex-married-couples.html> [<https://perma.cc/4DQZ-94QF>].

8. See, e.g., Tracy Morison, *What Gay Fathers Can Teach Us About Feminism and Parenthood*, *CONVERSATION* (Sept. 21, 2015, 11:54 PM), <https://theconversation.com/what-gay-fathers-can-teach-us-about-feminism-and-parenthood-47489> [<https://perma.cc/Q8QJ-KU8A>].

group, politically influential and affluent, flourished.⁹ Not only was this myth debunked by careful academic work, but the myth's prevalence also opened up an entire scholarly agenda that shed light on the actual economic realities faced by LGBTQ+ people. Despite this, the "wealthy homo" myth has resurfaced, this time with a focus on gay fathers. Here, I aim to explore this phenomenon and spark a much-needed conversation about the economic realities faced by this particular group.

This Article contends that the image of the rich gay dad is misleading, as it homogenizes the experiences of a very heterogeneous group of individuals. Specifically, it shows how that image, intertwined with assumptions about income, overlooks a critical measure of privilege that is particularly salient for gay fathers: wealth. It examines what we know about the wealth situation of gay dads, what their unique barriers for wealth accumulation are, what the consequences of a possible wealth gap are, and what policies the state should adopt to support gay fathers. The Article proposes that, taken together, various factors contribute to the unique wealth challenges faced by gay dads.

Both the image of gay parents as predominantly affluent White men and the focus on surrogacy as the primary route for building family overshadow the diverse experiences of this community. Gay fathers are a multifaceted group who encompass a range of backgrounds and identities. They come from different races, ethnicities, socioeconomic backgrounds, and immigration histories. Their paths to parenthood are also different: some come out after becoming parents, others adopt or foster, and yet others coparent with a different-sex person or rely on surrogacy. It is this diversity that makes generalizations about gay fathers difficult and underscores the need to avoid perpetuating narrow stereotypes.

Not only is the portrayal of gay fathers as a wealthy, elite group overinclusive, but there is also a significant lack of data about the sociodemographic and economic characteristics of this diverse group. Perhaps the relative dearth of data stems from the group's small size. In fact, we do not even know the number of gay fathers in the United States, only the number of male same-sex *couples* raising children, which hovers around 65,000 households.¹⁰ What is more, the rapidly evolving legal landscape and changing

9. M.V. LEE BADGETT, *MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN* 2–3 (2001) (spelling out the types of prevalent myths about the privileges of LGB people).

10. According to the 2019 American Community Survey, there were about 980,000 same-sex households in the United States. See Press Release, U.S. Census Bureau, 2019 American Community Survey Statistics for Income, Poverty and Health Insurance Available for States and Local Areas (Sept. 17, 2020) (on file with the North Carolina Law Review). Out of those, 22.5% of female same-sex-couple households had children under eighteen present, compared with 6.6% of male same-sex-couple households. See Danielle Taylor, *Fifteen Percent of Same-Sex Couples Have Children in Their Household*,

societal attitudes toward LGBTQ+ rights mean that studies can quickly become outdated.¹¹ And much of the existing data reflect times when many gay men became parents from previous relationships with a different-sex partner, which may not reflect the current experiences of gay fathers who are building families through means of planned parenthood.¹²

One crucial element is noticeably missing: data about wealth creation and retention among households led by gay fathers. Data about wealth is significant because it is the most accurate way to assess the financial stability of a group. As well, wealth inequality is more persistent than income inequality, and wealth is imperative for equal opportunities, particularly in the United States with its thin social safety net.¹³ However, after reviewing and analyzing the existing data, this Article contends that we have insufficient information about wealth holding and it is imperative that we gather this data.¹⁴ Existing data either track income, lump couples with parents, or do not distinguish between male and female same-sex parents.¹⁵

After linking and analyzing the available data, this Article argues that there is one more thing in common among many families headed by gay dads: a hidden barrier to creation and preservation of wealth. Although the available data are limited, this Article highlights several areas in which wealth barriers may arise for families headed by gay dads. These include challenges related to the high cost of family formation, the expenses associated with obtaining legal recognition of parentage, unequal access to parental leave policies, obstacles to homeownership and lending, and challenges related to intergenerational wealth transfer. By taxonomizing these challenges, we can identify some of the

U.S. CENSUS BUREAU (Sept. 17, 2020), <https://www.census.gov/library/stories/2020/09/fifteen-percent-of-same-sex-couples-have-children-in-their-household.html> [https://perma.cc/7TVC-LSMR]. Accordingly, approximately 64,680 same-sex male couples had a child under eighteen at home. This is more than double the number that the Williams Institute estimated based on the 2016 ACS. See SHOSHANA K. GOLDBERG & KERITH J. CONRON, THE WILLIAMS INST., HOW MANY SAME-SEX COUPLES IN THE U.S. ARE RAISING CHILDREN? 1 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Same-Sex-Parents-Jul-2018.pdf> [https://perma.cc/WSZ3-255V] (“[T]here were an estimated 114,000 same-sex couples raising children in 2016, including 28,000 male same-sex couples and 86,000 female same-sex couples.”).

11. As examples of major changes in laws concerning family formation for LGBTQ+ parents, see *Obergefell v. Hodges*, 576 U.S. 644, 678–81 (2015), in which the Supreme Court held that the Constitution requires a state to license a marriage between two people of the same sex. Consequently, the final legal adoption bans were removed. Today, adoption and foster care are available for same-sex couples in every jurisdiction. See David M. Smolin, *Kids Are Not Cakes: A Children’s Rights Perspective on Fulton v. City of Philadelphia*, 52 CUMB. L. REV. 79, 124 (2022) (“So far as can be determined, all jurisdictions in the United States are officially open to LGBTQ+ persons and married couples adopting or becoming foster parents.”).

12. See *infra* Part III (discussing data about gay parenting).

13. See *infra* Section II.B (discussing wealth versus income).

14. See *infra* Part II (discussing what we know about couples’ wealth situation, and why it is important).

15. See *infra* notes 27–38 (discussing existing studies).

underlying structural features and biases that contribute to the creation of wealth barriers.

What is the harm in a systemic wealth barrier for families of gay fathers? It is difficult to answer this question, not only because of the missing data but also because gay dads are from all types of socioeconomic positions and, hence, the harms could be different based on their position. For those who have little, zero, or negative wealth, a wealth barrier can exacerbate an already-existing wealth gap. This is especially true for gay dads who are also racial minorities and are subject to systemic wealth disparities. On the other hand, for those from more established wealth quintiles, being a parent may create a new wealth gap. The nature of the harm inflicted by these different types of barriers is also distinct.¹⁶ For the first group, a wealth barrier could lead to or increase poverty and undermine family relationships. For the second group, the harm could result in substandard caregiving choices in the first years of a child's life, suboptimal division of gender roles among the dads, and reduced opportunities for upward economic mobility.¹⁷ In both cases, wealth barriers can perpetuate inequality, reinforce stigma and discrimination, and establish different classes of gay-headed families based on their ability to create a family.

Indeed, a robust analysis of wealth barriers faced by families led by gay dads must conceptualize them in relation to other wealth gaps. A gay dad wealth gap, if it exists, is one of several other wealth gaps and tracks with others, sometimes intensifying other wealth gaps, such as the racial wealth gap. Wealth gaps are significant because they serve as indicators of various forms of inequality and are often rooted in historical oppression or biased wealth laws and workplace policies. Notably, wealth barriers for gay dads share some similarities with the gender wealth gap. While they are not intergenerational like the racial wealth gap, they do have several gender-based components, including workplace discrimination and limited infrastructure for primary caregivers to participate in certain markets.

The gendered element of gay fathers' wealth barrier is responsible for the second representation of gay dads discussed above—that is, as disruptors of the deep-rooted norm of unequal division of caregiver roles. However, families headed by gay fathers also face a double bind: rejection by other LGBTQ+ networks who view them as seeking heteronormative privileges or as adopting a heteronormative lifestyle, and workplace policies that do not treat them the same as other full-time caregivers. Despite this, gay dads are often perceived as a privileged group. This Article proposes that, by understanding the nuances of these competing perceptions, policymakers can better design policies that are more supportive of families headed by gay fathers.

16. See *infra* Section III.A (considering the possible harms of a wealth gap).

17. See *id.*

This Article is structured as follows. Part I canvases what is currently known, and unknown, about the wealth situation of families headed by gay fathers, emphasizing the importance of assessing their economic position through a focus on wealth. Part II taxonomizes the various factors that may contribute to a potential wealth barrier for gay fathers. Part III underscores the effects that a potential wealth gap has on families headed by gay men. It also refutes the notion that states' differential treatment of gay fathers is solely attributable to biological differences and outlines some principles for interventions and their benefits.

I. THE ECONOMICS OF GAY FATHERHOOD: A CLOSER LOOK AT THE WEALTH GAP

What do we know about the financial situation of gay fathers in the United States and about wealth holding and processes in its creation and retention in particular? Section I.A synthesizes the existing data about the sociodemographic characteristics of families headed by gay fathers. Since there is relatively little data about these households, this section also extrapolates from studies about income and from studies about same-sex couples (to distinguish from parents). Section I.B briefly delves into the importance of studying wealth specifically. Section I.C analyzes what we know of wealth holdings in households headed by gay fathers.

A. *Understanding Gay Fatherhood: A Sociodemographic Analysis*

There are approximately 1.2 million households composed of same-sex couples in the United States.¹⁸ Almost 15% of these households have at least one child under eighteen.¹⁹ Female same-sex coupled households are far more likely to have children (22.5%) than their male peers (6.6%).²⁰ We do not have recent data about the number of children raised by LGBTQ+ people who do not cohabit with their coparents (whether they are single or in an arrangement in which the parents do not share the same household).²¹ Families headed by same-

18. Zachary Scherer, *Key Demographic and Economic Characteristics of Same-Sex and Opposite-Sex Couples Differed*, U.S. CENSUS BUREAU (Nov. 22, 2022), <https://www.census.gov/library/stories/2022/11/same-sex-couple-households-exceeded-one-million.html> [<https://perma.cc/9SLK-8PAH>].

19. Taylor, *supra* note 10.

20. A different study shows higher rates: twenty-four percent of female-headed same-sex families and eight percent of male-headed same-sex families having children. See GOLDBERG & CONRON, *supra* note 10, at 2.

21. Ellen C. Perrin, Sean M. Hurley, Kathryn Mattern, Lila Flavin & Ellen E. Pingerhughes, *Barriers and Stigma Experienced by Gay Fathers and their Children*, 143 PEDIATRICS 1, 2 (2019) ("An unknown number of gay men who are raising children without a cohabiting partner are not counted in the census.").

sex couples are more likely than their different-sex counterparts (approximately 55% versus 40%) to have only one child.²²

Sexual minorities who are also racial minorities consistently show a higher rate of being parents compared with their White counterparts. Among all same-sex couples, 35% of female couples from racial and ethnic minorities have children in their households, compared with 24% of their White counterparts; and 16% of racial or ethnic minority male couples have children in their households, compared with 6% of their White counterparts.²³ Based on 2010 census data, it is estimated that 34% of Black, 29% of Latinx, and 26% of Asian same-sex couples have children in their households.²⁴

Constructing a systematic and reliable account of the economic situation of families headed by gay fathers is essentially impossible. Much of the existing data are not up to date, especially given the legal changes of recent years in areas of adoption and marriage and changes in norms of family formation. Additionally, the data available primarily focus on *income* and *partners* rather than on parents themselves, creating an incomplete picture.²⁵ Further, other data lump together all same-sex parents, male and female, making it difficult to analyze with nuance.²⁶ In essence, the process of understanding the economic situation of gay father-led families is akin to solving a puzzle with multiple missing pieces.

One area where more data exist is the income gap between same-sex and different-sex couples, as it has become the focus of much scholarly attention in

22. Taylor, *supra* note 10.

23. GARY J. GATES, THE WILLIAMS INST., DEMOGRAPHICS OF MARRIED AND UNMARRIED SAME-SEX COUPLES 2 (2015) [hereinafter GATES, MARRIED AND UNMARRIED SAME-SEX COUPLES], <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Demo-SS-Couples-US-Mar-2015.pdf> [https://perma.cc/PV7P-JRDT].

24. ANGELIKI KASTANIS & GARY GATES, THE WILLIAMS INST., LGBT AFRICAN AMERICANS AND AFRICAN-AMERICAN SAME-SEX COUPLES 1 (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Black-People-Couples-Oct-2013.pdf> [https://perma.cc/378W-TAWH]; ANGELIKI KASTANIS & GARY GATES, THE WILLIAMS INST., LGBT ASIAN AND PACIFIC ISLANDER INDIVIDUALS AND SAME-SEX COUPLES 1 (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-API-People-Couples-Sep-2013.pdf> [https://perma.cc/TW32-ZLR3]; ANGELIKI KASTANIS & GARY GATES, THE WILLIAMS INST., LGBT LATINO/A INDIVIDUALS AND LATINO/A SAME-SEX COUPLES 1 (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Latinx-People-Couples-Oct-2013.pdf> [https://perma.cc/H4AE-NJLA].

25. See *infra* notes 27–36 (discussing data about income among same-sex couples).

26. See, e.g., GARY GATES, THE WILLIAMS INST., LGBT PARENTING IN THE UNITED STATES 1 (2013) [hereinafter GATES, LGBT PARENTING], <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting-Feb-2013.pdf> [https://perma.cc/QG6U-XC3L] (analyzing data showing that the median annual income of households headed by same-sex parents is lower than that of their different-sex counterparts).

recent years.²⁷ An analysis of the 2019 American Community Survey (“ACS”) data completed by the Brookings Institution shows that same-sex married couples (both male and female) have higher average household incomes than do different-sex married couples, with average annual household incomes of \$107,200 and \$97,000, respectively.²⁸ There is an even larger difference amongst unmarried couples, with same-sex couples again having higher average household earnings.²⁹ Same-sex female couples earn a lower average household income than do different-sex couples irrespective of marital status, implying that the wage advantage held by same-sex couples comes mainly from the earnings of same-sex male couples, who benefit doubly from the gender wage gap.³⁰ Married same-sex male couples had an average household income \$18,000 higher than different-sex married couples, and unmarried male same-sex couples had an average household income that is \$33,000 higher than unmarried different-sex couples.³¹ Both of these disparities shrank (to \$11,000 and \$27,000, respectively) when other indicators of income—such as living in a household with children, educational attainment, having two working adults in the household, and living in urban centers—were controlled for.³²

One possible explanation for the higher income observed among same-sex couples, both male and female, is the absence of a primary caregiver in childless households—which constitute the majority of same-sex households.³³ In conventional households with different-sex couples and children, a primary caregiver is often responsible for taking care of the children and running the household, which can result in career sacrifices and reduced earnings. In contrast, same-sex couples are more likely to have two full-time workers,

27. LAQUITTA WALKER & DANIELLE TAYLOR, U.S. CENSUS BUREAU, SAME-SEX COUPLE HOUSEHOLDS: 2019, at 1 (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-005.pdf> [<https://perma.cc/V23H-K5NL>]. The change in the American Community Survey’s question format has allowed researchers to gain access to nationally representative, disaggregated data on the comparative incomes of same-sex coupled households and different-sex coupled households.

28. Lauren Bauer, Veronica Clevenstine & Moriah Macklin, *Examining the Economic Status of Same-Gender Relationship Households*, BROOKINGS INST. (Jan. 20, 2022), <https://www.brookings.edu/blog/up-front/2022/01/20/examining-the-economic-status-of-same-gender-relationship-households/> [<https://perma.cc/T3ZC-VB3X>] [hereinafter Bauer et al., *Same-Gender Relationship Households*].

29. *Id.*

30. *See id.*

31. *Id.*

32. *Id.*

33. *See* Lauren Bauer, Veronica Clevenstine & Moriah Macklin, THE BROOKINGS INST., EXAMINING THE ECONOMIC STATUS OF SAME-GENDER RELATIONSHIP HOUSEHOLDS: TECHNICAL APPENDIX 5 tbl.1 (2022) [hereinafter BAUER ET AL., TECHNICAL APPENDIX], https://www.hamiltonproject.org/assets/files/LGBTQ_Blog_Technical_Appendix_v3.pdf?_ga=2.147811568.692678819.1663267161-439864033.1663267161 [<https://perma.cc/B75R-ZEUL>] (highlighting that only 21% of married male same-sex couples and 8% of unmarried male same-sex couples had children in the household).

resulting in atypical arrangements that contribute to higher incomes.³⁴ However, in households with children, especially young children, at least one partner is likely to reduce their participation in the paid workforce to provide childcare. This often involves reducing work hours or leaving the workplace entirely, resulting in a lower household income. In contrast, in male same-sex couples without children, both partners can work full time and enjoy higher income and employment benefits.³⁵

There are limitations to the data collected through the ACS; most obviously, the survey is only able to report data on same-sex couples rather than LGBTQ+ individuals.³⁶ Research conducted on the income of LGBTQ+ individuals shows that despite the apparent income advantage held by same-sex couples, there is actually a wage gap between LGBTQ+ individuals and their heterosexual and cisgender peers.³⁷ Data from a 2016–2017 report by Prudential Financial indicate that while the average heterosexual man in the United States earns an annual income of \$83,469, the average gay man can only expect to earn an average of \$56,936.³⁸ In theorizing why gay men may face a wage disadvantage, the most commonly accepted hypothesis is that the gap is a manifestation of discrimination and prejudice.³⁹ A 2019 study confirmed the connection between the number of people who held biased views against LGBTQ+ individuals in a given state and the size of the wage penalty faced by gay men.⁴⁰ Hence, though the gender pay gap creates an advantage for households with two male income earners, gay men are not advantaged in terms

34. See Bauer et al., *Same-Gender Relationship Households*, *supra* note 28 (“Same-gender couples are less likely than opposite-gender couples to have a child present, but are more likely to have two earners . . .”).

35. See Naomi G. Goldberg, Alyssa Schneebaum, Laura E. Durso & M.V. Lee Badgett, *LGBTQ-Parent Families in the United States and Economic Well-Being*, in *LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE* 105, 114 (Abbie E. Goldberg & Katherine R. Allen eds., 2d ed. 2020).

36. BAUER ET AL., TECHNICAL APPENDIX, *supra* note 33, at 4 (“Because we are unable to identify the sexual orientation of individuals within a household, we define same-gender households as households where the gender of the spouse or unmarried partner is the same as the gender of the primary respondent.”).

37. *The LGBT Financial Experience: 2016–2017*, PRUDENTIAL FIN., <https://www.prudential.com/wps/wcm/connect/ba145fe5-88cf-48c3-ab67-6ab3cc5dba7a/PrudentialLGBT2016-2017.pdf?MOD=AJPERES&CVID=IYX8NZE&CVID=IYX8NZE> [https://perma.cc/WS2T-FA59].

38. *Id.*

39. CHARLOTTE J. PATTERSON, MARTÍN-JOSÉ SEPÚLVEDA & JORDYN WHITE, UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS 256–58 (2020).

40. Ian Burn, *The Relationship Between Prejudice and Wage Penalties for Gay Men in the United States*, 73 ILR REV. 650, 672–73 (2020). Lesbian women are likely to be no less affected by prejudice than are their male counterparts; however, their increased participation in the labor market compared to heterosexual women has been used to explain their wage advantage. See PATTERSON ET AL., *supra* note 39, at 256.

of individual wages in comparison to their heterosexual counterparts, and, in fact, might face wage disadvantages.

Data about finances of same-sex parents are scarcer. Studies that focus specifically on same-sex parents have shown that same-sex parents are at a wage disadvantage in comparison to different-sex parents.⁴¹ Same-sex couples with children have a lower average household income than different-sex couples with children by over \$10,000.⁴² But these figures do not account for the differences between same-sex male couples' income and that of same-sex female couples, and rely on information from 2012.⁴³

Studies on poverty amongst same-sex couples, especially with reference to the effects of race and ethnicity, complicate the picture further. Based on data from the 2010–2014 ACS, Alyssa Schneebaum and Lee Badgett show that male same-sex couples have the lowest poverty rate of all the considered groups, with 3.9% of them living in poverty.⁴⁴ However, when other factors that influence poverty—including employment status, level of education, age, English fluency, location, number of dependent children, and living with disability—were controlled for, the results changed. In this analysis, same-sex male couples have a slightly higher poverty rate than different-sex married couples, though their rate is still lower than that of unmarried different-sex couples.⁴⁵ Poverty, of course, is not felt equally by all members of the LGBTQ+ community. Black men in same-sex relationships, for example, are more than six times more likely to experience poverty than are White men in same-sex relationships.⁴⁶ And non-White LGBTQ+ *individuals* face far greater poverty rates than do their White peers.⁴⁷

41. Goldberg et al., *supra* note 35, at 110–11.

42. *Id.* at 110 (referring to data by GATES, *LGBT PARENTING*, *supra* note 26).

43. *Id.*

44. Alyssa Schneebaum & M.V. Lee Badgett, *Poverty in US Lesbian and Gay Couple Households*, 25 *FEMINIST ECON.* 1, 10 (2019). This rate was 5.9% for married different-sex couples, 6.6% for female same-sex couples, and 14.6% for unmarried different-sex couples. *Id.*

45. *Id.* at 15.

46. M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, *THE WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY* 3 (2013) [hereinafter *BADGETT ET AL., NEW PATTERNS*], <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Poverty-LGB-Jun-2013.pdf> [<https://perma.cc/HZ6C-RGN5>]. As with income, the data on poverty vary when the lens of analysis shifts from the experience of couples to that of individual LGBTQ+ people. Data from the National Survey of Family Growth show that gay men have higher poverty rates than do heterosexual men, at 20.5% and 15.3%, respectively. *Id.* at 2. Similarly, Gallup data show that sexual minority men who are living alone have higher poverty rates than do heterosexual men living alone. *Id.*

47. M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, *THE WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS* 14 (2019) [hereinafter *BADGETT ET AL., LGBT POVERTY*], <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf> [<https://perma.cc/G6CV-69FL>] (“For nearly all SOGI groups, people of color had significantly higher poverty rates than White people.”).

LGBTQ+ parents face particularly high poverty rates. These rates are highest amongst LGBTQ+ single parents (35.3%) and parents who are non-White.⁴⁸ In general, children being raised by same-sex couples are almost twice as likely to experience poverty than are children being raised by different-sex couples in the United States.⁴⁹ Non-White children in same-sex families tend to fare the worst, with Black children in male same-sex families facing the highest poverty rates of any group of children in the United States, at 52.3%.⁵⁰ Male same-sex parents are at a higher risk of poverty than are female same-sex parents; accordingly, 24.2% of children under five being raised by male same-sex parents are in poverty, compared to 22.6% of children under five being raised by female same-sex parents.⁵¹

In conclusion, data on the financial status of gay fathers are inconclusive and inadequate. Some studies suggest that same-sex male couples have higher incomes even with children in the household, while others indicate that LGBTQ+ parents generally earn less than their different-sex counterparts. In addition, these studies lack nuance in exploring differences among various subgroups of LGBTQ+ parents. Additionally, poverty data, particularly at the intersection of race, demonstrate that gay fathers experience greater financial challenges than other groups. Moreover, there is a lack of information on the financial situation of gay fathers with higher incomes.

B. *The Significance of Studying Wealth Holding in Households Led by Gay Dads*

We need better data on the economic position of gay dads in regard to all factors, but the piece that is missing the most is information about wealth holding. Data about wealth inequality based on race and gender are readily available. Conversely, data about wealth holding by same-sex couples, and same-sex parents in particular, barely exist.

Data about wealth accumulation is vital for evaluating the economic situation of gay dad households. For one, wealth is the best indicator of one's financial situation because it reflects total economic resources.⁵² Moreover, wealth is a better indicator of a person's economic status than income because the two do not necessarily correlate.⁵³ For example, someone who does not work, yet has inherited a vast fortune, would have no income—or only income derived from assets—and high wealth. Therefore, a high income does not always

48. Goldberg et al., *supra* note 35, at 110.

49. *Id.* at 111–12.

50. BADGETT ET AL., *NEW PATTERNS*, *supra* note 46, at 2.

51. Goldberg et al., *supra* note 35, at 114.

52. MARIKO LIN CHANG, *SHORTCHANGED: WHY WOMEN HAVE LESS WEALTH AND WHAT CAN BE DONE ABOUT IT* 4 (2010) (“Wealth is a superior indicator of financial status because it embodies the total economic resources available to its holder . . .”).

53. *Id.* at 3.

reflect the existence of wealth or debt and their sources. Furthermore, wealth has some qualities that income does not. Wealth, unlike employment (a regular source of income), is easily transferrable. One cannot borrow against income with better financial terms but can borrow against assets (including, for instance, retirement accounts or securities-backed lending) and enjoy favorable tax outcomes.⁵⁴ Lastly, income does not serve as a cushion the same way that wealth does.⁵⁵ Importantly, “[m]ore than lack of income, lack of wealth contributes to vulnerability. Wealth means resilience, the ability to weather life’s crises, like job loss, sickness, climate catastrophes, and similar setbacks.”⁵⁶ Savings, in the form of wealth, are especially important in periods of unemployment, retirement, medical emergencies, and care of young children. The high cost of caregiving and healthcare—given the absence of inexpensive universal healthcare, adequately subsidized parental leave, as well as the lack of widespread state-supported childcare—makes wealth particularly important in the United States due to the country’s relatively weak social safety net.⁵⁷ To illustrate, based on the Federal Reserve’s 2011 Survey of Household Economics and Decision-Making, thirty-two percent of Americans reported that they would not be able to cover a \$400 emergency expense using income and would, instead, have to borrow or sell something.⁵⁸ A small amount of wealth could take care of such a situation.

Finally, wealth holding can manifest past discrimination because it often accrues as a result of inheritance and is shaped by inheritance laws and rules.⁵⁹ Even if a group is able to close the income gap, past discrimination against the group resulting in economic loss continues to be inherited by future generations. For instance, a recent study found that the median net worth of Black families in the United States is lower in all income brackets than that of their White counterparts (except for the bottom quintile, in which no one has

54. See LISA A. KEISTER, *WEALTH IN AMERICA: TRENDS IN WEALTH INEQUALITY 6–7* (2000) [hereinafter KEISTER, *WEALTH IN AMERICA*].

55. *Id.* at 7; Erez Aloni, *The Marital Wealth Gap*, 93 WASH. L. REV. 1, 7–9 (2018) [hereinafter Aloni, *Marital*].

56. Carla Spivack, *Broken Links: A Critique of Formal Equality in Inheritance Law*, 2 WISC. L. REV. 191, 194 (2019).

57. See, e.g., Aloni, *Marital*, *supra* note 55, at 13.

58. ALICIA LORO, ELLEN MERRY, KENNETH BREVOORT, KAYLA JONES, JEFF LARRIMORE, JACOB LOCKWOOD, ANNA TRANFAGLIA, ERIN TROLAND, DOUGLAS WEBE & MIKE ZABEK, *BD. OF GOVERNORS OF THE FED. RES. SYS., THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2021*, at 35 (2022), <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf> [https://perma.cc/7CYQ-FLSU].

59. See, e.g., ROBERT B. WILLIAMS, *THE PRIVILEGES OF WEALTH: RISING INEQUALITY AND THE GROWING RACIAL DIVIDE 17* (2017) (“Noting the durability and transferability of wealth across generations, I show how our current distribution of wealth is linked to past policies of racial enslavement, expropriation, and exclusion.”).

any wealth).⁶⁰ Put differently, the average Black family has significantly less wealth than the average non-Black family with the same income. Indeed, wealth is distributed more unequally than income, and wealth inequality is more persistent than income inequality.⁶¹ The point is that discrimination over time compounds intergenerational inequality. Wealth barriers for gay fathers might manifest a different problem of wealth accumulation over a single lifetime (unless the fathers are of another disadvantaged minority group as well). Still, wealth is a marker of privilege and economic advantage, and its absence can be an indicator of discrimination. As such, it is a critical aspect to study in order to accurately assess the economic status of a group.

C. *Exploring Wealth Holding of Families Headed by Gay Dads*

We know very little about the wealth holding of families headed by gay fathers. There is not one sustained study focused on wealth in this context. However, studies about distribution of household wealth can be informed by data on the most common types of assets in the United States: home ownership and saving accounts, the two largest components of wealth among middle-class Americans.⁶²

The only data about home ownership by gay parents do not distinguish between male and female partners; they analyze only parents who are couples (and not single parents), and they rely on the 2010 ACS. This study shows that same-sex parents (58%) were less likely than their married different-sex counterparts (72.9%) to own homes but more likely to do so than unmarried different-sex couples (40.2%).⁶³

Because data about gay parents is dated and not comprehensive, it is useful to explore data about homeownership of LGBTQ+ individuals and couples in general. A recent study published by the Williams Institute showed that same-sex couples (63.8%) are less likely to own a home than are different-sex couples (75.1%).⁶⁴ And those same-sex couples who do own their homes are more likely

60. Kriston McIntosh, Emily Moss, Ryan Nunn & Jay Shambaugh, *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [<https://perma.cc/2P4Y-26AJ>].

61. KEISTER, *WEALTH IN AMERICA*, *supra* note 54, at 3–4.

62. CHANG, *supra* note 52, at 10.

63. Kristy M. Krivickas & Daphne Lofquist, *Demographics of Same-Sex Couple Households with Children* 25 tbl.4 (U.S. Census Bureau, Working Paper No. 2011-11, 2011), <https://www.census.gov/content/dam/Census/library/working-papers/2011/demo/SEHSD-WP2011-11.pdf> [<https://perma.cc/PY8U-DL3H>]. The table distinguishes between married and unmarried “opposite-sex” couples but only includes the category of “same-sex” without distinction as to marital status. *See id.*

64. ADAM P. ROMERO, SHOSHANA K. GOLDBERG & LUIS A. VASQUEZ, *THE WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 12* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf> [<https://perma.cc/CD88-ERB5>].

than are different-sex couples to have a mortgage.⁶⁵ Another study, based on a representative sample, found that male sexual minorities (24%) were less likely than their heterosexual male peers (41%) to own a home.⁶⁶ Based on the data overall we can extrapolate that gay fathers probably lag behind their heterosexual counterparts in terms of homeownership.

When it comes to retirement assets, those data are even more limited than housing data. Retirement wealth is an important wealth escalator, a mechanism that efficiently converts income into wealth.⁶⁷ The only relevant data available is from a survey that captured approximately 1,000 individuals who identify as lesbian, gay, or bisexual.⁶⁸ Accordingly, 36% of LGB respondents stated that they do not have access to company-sponsored retirement plans and 8% answered that they have access but do not contribute.⁶⁹ The survey does not include data on median-value plans or a comparison with the national average regarding access to retirement plans.⁷⁰ The survey also does not parse out generational differences—as people age, their accounts will likely grow—nor racial and ethnic differences. As such, it is fair to say that we lack information about retirement wealth for LGB people and certainly for gay fathers.

We do not have systemic data about wealth holding by gay parents to infer a wealth gap between them and different-sex parents, despite some indications as to their lagging behind the latter on home ownership. Why should we suspect one exists? From what we know about the other wealth gaps, wealth tends to accumulate in the accounts of those with historical privilege (of various kinds), so it is not surprising that adding the vector of gay fathers intensifies preexisting

65. *Id.*

66. The study is based on the National Longitudinal Study of Adolescent to Adult Health and included 6,238 males who identify as heterosexual and 295 respondents who identify as male sexual minorities. Kerith Conron, Shoshana Goldberg & Carolyn Halpern, *Sexual Orientation and Sex Differences in Socioeconomic Status: A Population-Based Investigation in the National Longitudinal Study of Adolescent to Adult Health*, 72 J. EPIDEMIOLOG. HEALTH 1016, 1021 tbl.3 (2018).

67. “Wealth escalator” is a term that represents mechanisms that “allow people to generate wealth at a much faster rate than can be obtained by collecting income alone.” See CHANG, *supra* note 52, at 40. Limited access to such escalators is a primary reason for the gender wealth gap. See *id.*

68. The survey included 2,005 respondents who identify as LGBTQ+; 35% of them identify as transgender and 15% as genderqueer or nonbinary. I focus here on the 49.93% who identify as lesbian, gay, or bisexual, because it is the group closest to the description of the population under analysis in this Article. See Jack Caporal, *LGBTQ+ Finances: A Survey of 2,005 Americans*, MOTLEY FOOL (July 14, 2022, 10:11 AM), <https://www.fool.com/research/lgbtq-money-study/> [<https://perma.cc/C8LN-4TBG>].

69. *Id.*

70. Recent data from the Census found that approximately 35% of Americans have employer-sponsored defined-contribution plans that deliver tax benefits (e.g., 401(k)); 18% have IRA or Keogh accounts; and 13.5%, defined-benefit and cash-balance plans. See Maria G. Hoffman, Mark A. Klee & Briana Sullivan, *Who Has Retirement Accounts?*, U.S. CENSUS BUREAU (Aug. 31, 2022), <https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html> [<https://perma.cc/837L-AFSV>].

wealth gaps and creates one between families headed by gay and non-gay parents.

II. UNPACKING THE FACTORS CONTRIBUTING TO A WEALTH GAP

Although we do not have sufficient data to definitively declare a wealth gap for families headed by gay dads, a few accumulating factors might contribute to such a disparity. This part examines a few of these factors. Section II.A considers the substantial costs of building a family. Section II.B explores the additional costs of legal recognition of parentage. Section II.C elaborates on how parental leave policies negatively affect the finances of gay fathers. Section II.D lays out the ways in which barriers to home ownership might contribute to a wealth obstacle. Finally, Section II.E analyzes the unique case of intergenerational transfer and support provided by families of origin and their possible contribution to a wealth gap.

A. *The Cost of Building a Gay Parent-Headed Family*

Men in “planned gay parenthood”—a term connoting gay men who proactively form a family *not* in the context of previous different-sex relationships—have the following options to create a family⁷¹: coparenting with a nonintimate different-sex partner, adoption, or surrogacy.⁷² Across all options, for gay men, building a family with children is typically an expensive endeavor. An *NBC News* article astutely titled “For Gay Parents, First Comes the Baby—Then Comes the Debt” captures the issue well.⁷³

Coparenting—having a child with a nonintimate partner or partners with birth capacity—is often the least expensive option because it does not necessarily involve in vitro fertilization (“IVF”), only artificial insemination. This method is a considerably less expensive option than IVF, especially if the parents use the sperm of the gay father and do not need to pay for sperm donation. While some people find it beneficial to coparent with nonintimate

71. On “planned gay parenthood” and the various ethical and practical issues that gay fathers consider before choosing surrogacy, see generally Sophia Fantus & Peter A. Newman, *The Procreative Identities of Men in Same-Sex Relationships Choosing Surrogacy: A New Theoretical Understanding*, 14 J. FAM. THEORY & REV. 254 (2022).

72. Current data are lacking, but one study in 2007 suggests that approximately seventy percent of male same-sex parents brought children to their relationship from a previous heterosexual one. See Fiona Tasker & Erin S. Lavender-Stott, *LGBTQ Parenting Post-heterosexual Relationship Dissolution*, in *LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE* 1, 4 (Abbie E. Goldberg & Katherine R. Allen eds., 2d ed. 2020). This number is almost certainly dropping as acceptance of same-sex relationships grows. See *id.*

73. See Julie Compton, *For Gay Parents, First Comes the Baby—Then Comes the Debt*, NBC NEWS, <https://www.nbcnews.com/feature/nbc-out/gay-couples-having-kids-it-s-not-easy-or-hard-n850086> [https://perma.cc/3MQK-MGSP] (last updated Feb. 22, 2018, 12:32 PM).

partners, others may encounter challenges.⁷⁴ Parenting with an intimate partner can already be challenging, and sharing lifelong parenting responsibilities with an acquaintance can present additional obstacles. Despite the drawbacks, coparenting has become an increasingly popular option.⁷⁵ For individuals who want to avoid child-raising with a nonintimate partner, the remaining routes are surrogacy and adoption—both expensive paths, although not to the same degree.

1. Gestational Surrogacy

Gestational surrogacy is an alternative for couples or individuals who desire a genetic connection between one of the partners and their children.⁷⁶ There is currently no accurate data about the number of gay fathers who have relied on surrogacy.⁷⁷ Several academic sources claim that “an increasing number of gay men are creating families through surrogacy,” but the foundation for this assertion is unclear, as is the scale of the practice.⁷⁸ Some commentaries, noting that no data exist about the number of surrogacy arrangements by gay dads, elect to fill in the gap by considering anecdotal information to demonstrate the practice’s prevalence and increased popularity.⁷⁹

74. Most coparents use artificial insemination, which is the least expensive assisted-reproduction method. However, some might need to use IVF due to fertility issues, making the path to parenthood significantly more expensive.

75. See generally Pauline I. Erera & Dorit Segal-Engelchin, *Gay Men Choosing To Co-parent with Heterosexual Women*, 10 J. GLBT FAM. STUD. 449 (2014) (reporting interviews with nine Israeli gay fathers who coparent with a heterosexual female coparent); see also Erez Aloni, *Cloning and the LGBTI Family: Cautious Optimism*, 35 N.Y.U. REV. L. & SOC. CHANGE 1, 17–18 (2011) [hereinafter Aloni, *Cloning*] (discussing the pros and cons of coparenting).

76. There are ways to reduce the price of having a child by surrogacy. One way is the use of traditional surrogacy, a process in which the surrogate is also the egg donor. In such case, IVF is not needed, which can make the process more cost-effective. Some can rely on noncommercial help (altruism) for this process by using egg donation or even gestation by someone they know, like a family member or a friend. The latter option, however, remains expensive. See, e.g., Sanjana Gupta, *Surrogacy Can Cost Upwards of \$150,000—Here Are the Hidden Costs To Save for*, INSIDER (Mar. 26, 2021, 12:11 PM), <https://www.insider.com/guides/parenting/surrogacy-cost> [https://perma.cc/JV6Z-F7MA].

77. JUDITH DAAR, *THE NEW EUGENICS: SELECTIVE BREEDING IN AN ERA OF REPRODUCTIVE TECHNOLOGIES* 61–62 (2017) (stating that there is no official report on the number of children born via surrogacy and that estimates are generally 2,000 a year, not just by same-sex couples).

78. Nicola Carone, Roberto Baiocco, Demetria Manzi, Chiara Antoniucci, Victoria Caricato, Eugenio Pagliarulo & Vittorio Lingiardi, *Surrogacy Families Headed by Gay Men: Relationships with Surrogates and Egg Donors, Fathers’ Decisions Over Disclosure and Children’s Views on their Surrogacy Origins*, 33 HUM. REPROD. 248, 249 (2018).

79. See generally Amy May & Kelly Tenzek, *A Gift We Are Unable To Create Ourselves: Uncertainty Reduction in Online Classified Ads Posted by Gay Men Pursuing Surrogacy*, 12 J. GLBT FAM. STUD. 430, 433 (2016) (relying on examples of gay celebrities who became dads via surrogacy as well as the volume of reproductive organizations that cater to gay men to claim that “[d]espite the inability to quantify the number of babies born via surrogates to gay men, there appears to be a trend toward surrogacy in the gay community”).

Choosing gestational surrogacy as a means to becoming a father as a gay man often comes with a hefty price tag. Some sources have estimated the price as ranging from \$115,000 to \$150,000, while others report costs rising as high as \$200,000.⁸⁰ Why some gay men prefer surrogacy over other options—beyond biogenetics—has been examined elsewhere.⁸¹ For the purpose of this Article, suffice it to say that adoption is not without its own challenges, and studies have documented various considerations that influence gay fathers, ranging from the perceived disadvantages of open adoption to a desire to avoid the process required to accomplish adoption, such as extensive psychological testing.⁸²

There is some evidence that surrogacy is used predominantly by White gay men.⁸³ These implications, while reasonable, rely on anecdotal evidence and studies with small samples that were conducted in times when surrogacy was less accessible with regard to the availability of clinics.⁸⁴ Other indications of the Whiteness of surrogacy for gay dads come from stories of Black gay fathers who share the experience of their surrogacy journey and how it was fraught with

80. See ABBIE E. GOLDBERG, *LESBIAN AND GAY PARENTS AND THEIR CHILDREN: RESEARCH ON THE FAMILY LIFE CYCLE* 56 (2010); DAAR, *supra* note 77, at 62. For the higher estimate, see *Price of US Surrogacy*, FERTILITY CTR. LAS VEGAS (2022), <https://fertilitycenterlv.com/fertility-treatments/price-us-surrogacy/> [https://perma.cc/X33M-EBDG]. For the source citing the \$200,000 price, see Nara Schoenberg, *Gay Men Increasingly Turn to Surrogates To Have Babies*, CHI. TRIB. (Nov. 23, 2016), <https://www.chicagotribune.com/lifestyles/health/sc-gay-men-having-babies-health-1130-20161123-story.html> [https://perma.cc/MJ5U-EU4U].

81. Aloni, *Cloning*, *supra* note 75, at 9–13; see also Marcin Smietana, *Procreative Consciousness in a Global Market: Gay Men's Paths to Surrogacy in the US*, 7 REPROD. BIOMED. & SOC'Y ONLINE 101, 102 (2018) [hereinafter Smietana, *Procreative*] (reporting interviews with thirty-seven gay men from Europe and the United States and their diverse motivations and narratives about choosing surrogacy); Michael Boucai, *Is Assisted Procreation an LGBT Right?*, 2016 WISC. L. REV. 1065, 1087–88 [hereinafter Boucai, *Assisted Procreation*] (surveying some common reasons Americans express about the disadvantages of adoption).

82. Marcin Smietana, Charis Thompson & France Widdance Twine, *Making and Breaking Families—Reading Queer Reproductions, Stratified Reproduction and Reproductive Justice Together*, 7 REPROD. BIOMED. & SOC'Y 112, 114 (2018) (“In addition to any benefits of genetic relatedness to children gay men would share with heterosexual and lesbian parents, genetic relatedness offered gay men a bulwark against gender discrimination in adoption and custody in many legal systems.”); see also Aloni, *Cloning*, *supra* note 75, at 9–13; Marcin Smietana, *Affective De-commodifying, Economic De-kinning: Surrogates' and Gay Fathers' Narratives in U.S. Surrogacy*, 22 SOCIO. RSCH. para 6.9 (2017).

83. Dana Berkowitz, *Gay Men and Surrogacy*, in *LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE* 143, 148 (Abbie E. Goldberg & K.R. Allen eds., 2d ed. 2020).

84. See *id.*

issues related to race.⁸⁵ As one example, some report that finding an egg donor who is not White turned out to be difficult.⁸⁶

Some prospective gay fathers might find that surrogacy poses two particular financial barriers: geography and insurance. Geographically, prospective gay fathers might live in states where providers of reproductive services are less common or nonexistent, and laws regulating surrogacy and parentage are less friendly to their endeavors. In the United States, a majority of essential-service providers such as reproductive clinics and surrogacy agencies that offer services for gay parents are clustered in states on the West Coast and in the Northeast.⁸⁷ Perhaps counterintuitively, same-sex households with children are most prevalent in the South, Mountain West, and Midwest areas of the United States.⁸⁸ Many of the states located in these areas are those in which laws that regulate surrogacy are less permissive, unclear, or even prohibited.⁸⁹ One study surveyed 732 gay dads and found that they were more likely to have children formed within heterosexual relationships in states with fewer legal protections; comparatively, gay dads living in states that are ranked higher in terms of legal protections to families were more likely to rely on services of a surrogate.⁹⁰ One acceptable rationale is that intended gay fathers who live in unfriendly states and without providers would have to spend considerable time and money on traveling. Although intended parents can perform some meetings online (such as with the reproductive center), the surrogacy process requires, at the least, a physical exam and giving sperm, perhaps meeting the surrogate (and visits during the pregnancy), attending the birth, staying in the birthplace for a period of time, and then returning to the place of residency upon birth.

85. See, e.g., Yan Dekel, *Tackling Racial Issues in Surrogacy*, DADDY SQUARED (Mar. 20, 2020), <https://daddysqr.com/tackling-racial-issues-in-surrogacy-for-gay-men/> [https://perma.cc/RX3L-PEUY].

86. See Avichai Scher, *Gay Fathers, Going It Alone*, N.Y. TIMES (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/nyregion/single-gay-fathers-through-surrogacy.html> [https://perma.cc/VP6C-CZAV (dark archive)].

87. Harold Y. Wu, Ophelia Yin, Brent Monseur, Jessica Selter, Lillian J. Collins, Brandyn D. Lau & Mindy S. Christianson, *Lesbian, Gay, Bisexual, Transgender Content on Reproductive Endocrinology and Infertility Clinic Websites*, 108 FERTILITY & STERILITY 183, 185 (2017); Heather Jacobson, *A Limited Market: The Recruitment of Gay Men as Surrogacy Clients by the Infertility Industry in the USA*, 7 REPROD. BIOMED. & SOC'Y 14, 18 (2018).

88. GATES, LGBT PARENTING, *supra* note 26, at 4.

89. Unsurprisingly, clinics that provide reproductive services to LGBTQ+ people are located in places with friendly policies. See *The United States Surrogacy Law Map*, CREATIVE FAM. CONNECTIONS (2020), <https://www.creativefamilyconnections.com/us-surrogacy-law-map/> [https://perma.cc/Z7LY-TV4B] (dividing states into five categories based on approach toward surrogacy). There are nine states that allow surrogacy and will include both partners on the birth certificate. Seema Mohapatra, *Assisted Reproduction Inequality and Marriage Equality*, 92 CHI.-KENT L. REV. 87, 98–99 (2017) (identifying the states that are surrogacy friendly for same-sex couples, those that are unclear, and those that are hostile).

90. Perrin et al., *supra* note 21, at 4.

With regard to insurance, while an increasing number of private employers offer medical coverage that includes some financial assistance for treatments such as IVF in the case of infertility, these benefits may not cover gay parents due to narrow definitions of “infertility” that exclude the inability to conceive based on the anatomy of the prospective parents.⁹¹ There is no overarching federal law regulating insurance coverage for fertility treatments; rather, state legislatures govern such laws.⁹² Nineteen states have passed some form of legislation that either mandates that group insurance policies cover, or give the employer the option to cover, treatments for infertility.⁹³ There are many aspects of these laws that may limit their applicability to gay dads. Firstly, if infertility is defined as the result of a diagnosable medical condition, as it is in the statutes of Arkansas, Delaware, New Hampshire, and Ohio, then gay men who are infertile only because of their sexual orientation and not an underlying condition will be excluded from coverage.⁹⁴ Secondly, if infertility is defined as the inability to achieve a successful pregnancy through intercourse after a set period of time, usually six months to five years, gay fathers will likewise be excluded.⁹⁵ Finally, where the definition itself of infertility does not prohibit a same-sex couple’s ability to access treatment, the actual treatment covered under an insurance policy may exclude them. For example, in Arkansas, Texas, and Hawaii, the existing laws on insurance coverage require that insurers cover (or offer to cover, in the case of Texas) fertility treatments where one spouse’s eggs are fertilized with the other spouse’s sperm.⁹⁶ Clearly this requirement excludes treatments that are relevant to same-sex couples. Therefore, in comparison even to different-sex couples accessing the same treatments, same-sex couples may be paying more out of pocket.

91. See Ed Harris & Amanda Winn, *Building LGBTQ+ Families: The Prices of Parenthood*, FAM. EQUAL. (2019), <https://www.familyequality.org/resources/building-lgbtq-families-price-parenthood/> [<https://perma.cc/U8GF-Q9Z7>].

92. Jenna Casolo, Campbell Curry-Ledbetter, Meagan Edmonds, Gabrielle Field, Kathleen O’Neill & Marisa Poncia, *Assisted Reproductive Technologies*, 20 GEO. J. GENDER & L. 313, 341 (2019).

93. These states are Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Texas, Utah, and West Virginia. See *Insurance Coverage by State*, RESOLVE (June 2022), <https://resolve.org/learn/financial-resources-for-family-building/insurance-coverage/insurance-coverage-by-state/> [<https://perma.cc/SKM6-KYKN>].

94. See *id.*; ARK. CODE ANN. § 23-86-118(a) (LEXIS through all emergency legislation effective through Mar. 7, 2023; and also includes all laws regardless of effective date through Act 160 of the 2023 Reg. Sess.); OHIO REV. CODE ANN. § 1751.01 (LEXIS through File 1 of the 135th Gen. Assemb. (2023-2024)); DEL. CODE ANN. tit. 18, § 3342 (LEXIS through 84 Del. Laws, c. 5).

95. The laws in Arkansas, Connecticut, Hawaii, Massachusetts, and Rhode Island are all structured in this way. *Insurance Coverage by State*, *supra* note 93; see, e.g., ARK. CODE ANN. § 23-86-118(a) (LEXIS).

96. *Insurance Coverage by State*, *supra* note 93; see also TEX. INS. CODE ANN. § 1366.003(a) (Westlaw through the 2022 Reg. Sess.); ARK. CODE ANN. § 23-86-118(a) (LEXIS); HAW. REV. STAT. § 431:10A-116.5(a) (2022).

Surrogacy remains outside the ambit of most health insurance plans in the United States, leaving the extraordinary costs of the procedure entirely up to the parent or parents. Surveying American insurers in 2020, Willis Towers Watson estimated that surrogacy is reimbursed under just 9% of corporate plans and anticipated that three percent more would add such a benefit in 2021.⁹⁷ Limits under these plans are restrictive, with a \$20,000 lifetime cap on reimbursement in 70% of such plans.⁹⁸

Likewise, the opportunity to deduct the costs and fees related to IVF and egg retrieval, and therefore to reduce tax liability, is denied when surrogacy is involved.⁹⁹ This exclusion is applicable also to different-sex couples who use surrogacy but is allowed to different-sex couples and female same-sex couples who use IVF without a surrogate.¹⁰⁰

Intuitively and rationally, we might believe that mostly economically well-off gay men rely on surrogacy.¹⁰¹ Put differently, we can assume a connection between financial position (including employment status and insurance coverage) and the choice of surrogacy over other means of forming a family. One study affirms this assumption, concluding that “the pathways used by each respondent were closely associated with their income.”¹⁰² Among households headed by gay men reporting annual income less than \$100,000, almost 80% of children were conceived in the context of heterosexual relationships, and almost 19% were fostered.¹⁰³ Among households with income higher than \$100,000, 26% reported the use of surrogacy.¹⁰⁴ Yet, although the study surveyed 732 gay fathers, it should be taken with a grain of salt, as it used an anonymous online survey and lacked sufficient ethnic or racial diversity.¹⁰⁵ Another study, conducted by Family Equality, a nonprofit organization working to advance

97. *Employers Prioritize Family-Friendly Benefits*, WILLIS TOWERS WATSON (June 3, 2020), <https://www.wtwco.com/en-US/Insights/2020/05/employers-prioritize-family-friendly-benefits> [<https://perma.cc/JV7F-MLUQ>].

98. *Id.*

99. Brinton T. Warren, *IRS Memo 202114001*, INTERNAL REVENUE SERV. 4 (Jan. 12, 2021), <https://www.irs.gov/pub/irs-wd/202114001.pdf> [<https://perma.cc/T7QF-UGDP>].

100. *See Publication 502 (2022), Medical and Dental Expenses*, INTERNAL REVENUE SERV. (Feb. 6, 2023), https://www.irs.gov/publications/p502#en_US_2020_publink1000178933 [<https://perma.cc/62NE-UJPB>] (“You can include in medical expenses the cost of the following procedures performed on yourself, your spouse, or your dependent to overcome an inability to have children. Procedures such as in vitro fertilization . . .”).

101. *See Mohapatra, supra* note 89, at 99 (“Surrogacy is really only available to those gay and lesbian couples who are upper class. This means that poorer and middle-class gay and lesbian couples will either have to seek the uncertain and inconvenient prospect of international surrogacy, or not be a parent to a biological child at all.”).

102. Perrin et al., *supra* note 21, at 4.

103. *Id.*

104. *Id.*

105. *Id.* at 3, 7 (“The recruitment of the sample through informal distribution networks, and its limited ethnic and/or racial diversity limit its generalizability.”).

rights for LGBTQ+ families, also concluded that financial situation is related to the choice of childbearing method, where people with incomes of over \$100,000 annually consider the full spectrum of reproductive options, while those earning less than \$25,000 consider the less-expensive options.¹⁰⁶ The study surveyed over 500 LGBTQ+ people, but only 237 identified as LGBTQ+ males.¹⁰⁷ The interesting finding, though, is that when it comes to surrogacy, the differences are marginal between household income brackets. Approximately 7–8% of low-income respondent households considered surrogacy, whereas 11% of those with higher incomes considered it—a small variance.¹⁰⁸ However, one limitation of this data is that an intended parent may “consider” surrogacy as an option and then quickly decide that they cannot afford it.

Indeed, there are indications that even intended parents with limited means will work hard to secure the funds required for surrogacy, by, for example, dipping into savings, asking for help from friends and family, using credit lines, or even relying on crowdfunding.¹⁰⁹ As a group of reproductive justice scholars remind us, “[e]ven among those gay men who do access commercial surrogacy, an assumption of wealth and privilege masks the ways in which many far-from-affluent would-be parents, including gay fathers, mortgage other aspects of their lives and lean on family and friends to make ART [Assisted Reproductive Technology] affordable.”¹¹⁰

How, then, do intended gay parents pay for surrogacy? Large-scale data on financing are scarce, but interview-based studies yield some sense of the transformative effect that surrogacy has on a couple’s finances. Typically relying on a mixture of savings and loans from family and financial institutions, intended parents are almost invariably incurring debt to pursue having a child.¹¹¹ For some, this means remortgaging and severely restricting mobility for the foreseeable future.¹¹² A proliferation of online resources offers education¹¹³ and,

106. Harris & Winn, *supra* note 91. The report is confusing as the text discusses “households making less than \$25,000 annually,” but the chart indicates “less than 35,000.” For our purpose, the discrepancy does not matter. *Id.*

107. *Id.*

108. *Id.* fig.4.

109. See Jeremy D. Lai, Richard J. Fantus, Andrew J. Cohen, Vivian Wan, Matthew T. Hudnall, Minh Pham, Robert E. Brannigan & Joshua A. Halpern, *Unmet Financial Burden of Infertility Care and the Impact of State Insurance Mandates in the United States: Analysis from a Popular Crowdfunding Platform*, 116 FERTILITY & STERILITY 1119, 1120 (2021).

110. Smietana et al., *supra* note 82, at 119–20.

111. Smietana, *Procreative*, *supra* note 81, at 105.

112. Michael Nebeling Petersen, *Becoming Gay Fathers Through Transnational Commercial Surrogacy*, 39 J. FAM. ISSUES 693, 699 (2018).

113. See, e.g., *Resources for Prospective Parents*, FAM. EQUAL. (2022), <https://live-fec.pantheonsite.io/family-building/path2parenthood/> [<https://perma.cc/GTN8-KNKD>].

crucially, paths to financial assistance for couples contemplating surrogacy.¹¹⁴ Organizations like Men Having Babies offer out-and-out grants to qualifying couples, as well as subsidized healthcare options along the way.¹¹⁵ Importantly, in June 2022 the Equal Access to Reproductive Care Act was introduced in Congress, aiming to assist couples with navigating the IRS, thus opening access to tax deductions for same-sex couples who pursue surrogacy.¹¹⁶ However, that bill remains in the committee stage at present. Such measures are a small step toward affordability, but the onus for the time being remains squarely on couples to finance surrogacy.

2. Adoption

Adoption has been a popular option among sexual minorities for decades, and, historically, they have been more likely to adopt than their heterosexual and different-sex counterparts.¹¹⁷ Analysis by the Census Bureau based on the Current Population Survey (“CPS”) in 2019 found that same-sex couples are four times more likely to have adopted than their different-sex counterparts.¹¹⁸ Separating this data is necessary to clarify the popularity and character of the practice because same-sex couples often adopt the biological child of their partner (second-parent adoption), while other times they adopt, as individuals or couples, a child with no biogenetic connection to either (joint adoption). Dissecting the data into second-parent adoption versus joint adoption can inform how many adopt without any biogenetic ties.¹¹⁹ Because this Article is focused on the cost of building a family, joint adoption is of interest.¹²⁰ Based on the CPS, almost 13% of male and female same-sex households are composed of two adoptive parents or two stepparents, indicating that they became parents via joint adoption.¹²¹ A report derived from the ACS reveals that male same-sex couple households were more likely to have adopted children than their female same-sex counterparts, but this analysis does not distinguish between second-parent adoption and joint adoption.¹²² A 2018 report by the Williams Institute affirms the predominance of male same-sex couples in adoption, finding that

114. See, e.g., Jeanne Sager, *Where Can I Find Help Paying for My Fertility Treatments?*, COFERTILITY, <https://www.cofertility.com/family-learn/ivf-grants> [<https://perma.cc/SDY6-72AR>] (discussing financial assistance opportunities for fertility treatments).

115. *The Gay Parenting Assistance Program (GPAP) of Men Having Babies*, MEN HAVING BABIES (2022), <https://menhavingbabies.org/assistance/> [<https://perma.cc/VZG5-8GTH>].

116. Equal Access to Reproductive Care Act of 2022, H.R. 8190, 117th Cong. (2022).

117. See Boucai, *Assisted Procreation*, *supra* note 81, at 1105–06 (“Lesbians, gay men, and bisexuals are also more likely than non-LGB people to adopt [and] more likely to contemplate adopting . . .”).

118. Taylor, *supra* note 10.

119. Second-parent adoption can be a standalone process and can be a sequel to joint adoption—if only one parent was recognized as the parent.

120. For a discussion of second-parent adoption, see *infra* Section III.B.

121. Taylor, *supra* note 10, fig.1.

122. *Id.*

married male same-sex couples are more likely than different-sex and female same-sex couples to raise adopted and foster children.¹²³

It is difficult to gather recent data on whether adoption is more common among racial or ethnic minorities than among others in the LGBTQ+ community. Based on the 2000 Census, a report by the William Institute found that 60% of same-sex male adoptive parents are White, and Black and Hispanic/Latino fathers each constitute 15% of adoptive same-sex parents.¹²⁴ Although a more recent study, also based on ACS, confirms that same-sex parents who are racial and ethnic minorities are more likely to be parents, the study does not consider the path they have taken (e.g., adoption or surrogacy) or the gender of same-sex partners.¹²⁵

Adoption can also be an expensive option. According to Family Equality, international adoption is the most expensive route, costing between \$25,000 and \$70,000; domestic adoption costs between \$20,000 and \$45,000; and adopting out of the foster care system can cost anywhere from nothing to \$2,600.¹²⁶

Intended parents consider various factors in choosing among these options, including cost, the choice of open or closed adoption, their values (e.g., a desire to help a child in need), bureaucratic hurdles, and wait times.¹²⁷ International adoption is the least likely alternative given that most countries

123. GOLDBERG & CONRON, *supra* note 10, at 3.

124. GARY J. GATES, M.V. LEE BADGETT, JENNIFER EHRLE MACOMBER & KATE CHAMBERS, *ADOPTION AND FOSTER CARE BY GAY AND LESBIAN PARENTS IN THE UNITED STATES* 11 (2007), <https://escholarship.org/uc/item/2v4528cx> [<https://perma.cc/4MVV-MCUX>]; *see also* Brief of Amici Curiae Scholars Who Study the LGB Population in Support of Respondents at 7, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (No. 19-123) (relying on the same 2013 data in arguing that “it is more common for parents in same-sex relationships to be racial and ethnic minorities than parents in different-sex relationships”).

125. *See* GATES, *MARRIED AND UNMARRIED SAME-SEX COUPLES*, *supra* note 23, at 2. A brief submitted to the Supreme Court in *Fulton* argues that

LGBT couples are also seven times more likely (21.4% of households) to be raising adopted children than different-sex couples (3.0%). Such trends are even more pronounced for LGBT couples of color. Same-sex couples of color, for example, are more likely to be raising children than White same-sex couples, and same-sex couples who become foster parents are more likely to be people of color than different-sex foster parents.

Brief of the Leadership Conference on Civil and Human Rights et al. as Amici Curiae in Support of Respondents at 29–30, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (No. 19-123) (footnotes omitted). Note that there is no argument or indication that same-sex parents who are racial minorities adopt or foster more frequently than their White counterparts. *See generally id.* (discussing adoption rates between same-sex couples and non-LGBT couples).

126. Harris & Winn, *supra* note 91; *see also* Cynthia Godsoe, *Adopting the Gay Family*, 90 TUL. L. REV. 311, 347 (2015) (using older data and defining costs as “up to \$50,000 for international adoption; \$20,000 to \$30,000 to adopt in the private domestic system; and \$300 to \$500 to adopt out of the foster care system, though that cost is usually reimbursed”).

127. *See generally* Jordan Downing, Hanna Richardson, Lori Kinkler & Abbie Goldberg, *Making the Decision: Factors Influencing Gay Men’s Choice of an Adoption Path*, 12 ADOPTION Q. 247 (2009) (discussing factors impacting gay men’s decision to adopt).

that are sources for international adoptions prohibit same-sex couples, or even individuals who are openly gay, from adopting.¹²⁸ Foster care is a popular and inexpensive option but has its share of its own unique challenges.¹²⁹ The most common route, then, is private domestic adoption with the attendant cost of up to \$45,000.

One mitigating factor in the cost of adoption is the availability of a tax credit. The IRS instituted a tax credit that allows eligible adoptive parents to claim up to \$14,890 in adoption costs against their 2022 tax return.¹³⁰ Eligible costs include adoption fees, legal fees, travel expenses, and other expenses “directly related” to the adoption process.¹³¹ Domestic and international adoptions, as well as foster care arrangements, qualify under the credit.¹³² However, the adoption of a spouse’s child by another spouse does not.¹³³ The credit applies for those taxpayers with a modified adjusted gross income of less than \$223,410.¹³⁴

B. *The Cost of Parentage Recognition*

In all likelihood, same-sex couples will follow up with a legal process of second-parent adoption if they have relied on surrogacy or on adoption by one partner only. Even in the unlikely case that the couple will be listed on the birth certificate as coparents from birth, based on the marital presumption (being married to the legal parent), it is highly advised that they initiate a parentage action (a claim for parentage judgment). A name listed on a birth certificate creates only a rebuttable presumption at law.¹³⁵ For this reason, virtually all lawyers and equality-advancing organizations advise that same-sex couples

128. See *Adoption Options Overview*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/adoption-options-overview> [https://perma.cc/63KQ-LBLW] (“Many of the countries that have children for adoption are extremely prejudiced against LGBTQ+ people, and either have explicit laws or policies or implicit cultural or societal ‘codes’ that are against LGBTQ+ adoption.”).

129. Parents who hope to foster first, as a step toward adoption, will likely fear that the adoption will not materialize or would want to avoid the risk of spending several months with a child who then might be returned to their parents. See Downing et al., *supra* note 127, at 257. In addition, fostering is more easily available in the case of children who are “hard to place” (e.g., older). See *id.* at 258. Finally, parents who would prefer a child who is not a racial or ethnic minority might also avoid the foster system. See *id.* at 249–50.

130. *Topic No. 607 Adoption Credit and Adoption Assistance Programs*, INTERNAL REVENUE SERV. (Jan. 4, 2023), <https://www.irs.gov/taxtopics/tc607> [https://perma.cc/EQ36-P3W9].

131. *Id.*

132. See *id.*

133. See *id.*

134. *Id.* Individuals with gross income between \$223,410 and \$263,410 will see a gradual reduction (phaseout) of the credit. *Id.*

135. See, e.g., Jessica Feinberg, *Restructuring Rebuttal of the Marital Presumption for the Modern Era*, 104 MINN. L. REV. 243, 260–72 (2019) (considering what will be the modern grounds for rebutting the presumption in case of same-sex couples).

seek a parentage claim.¹³⁶ This will provide security against any future claims, perhaps even from the biological parent.¹³⁷ It is also useful if one moves to a different country that has different rules about parentage.¹³⁸

A recent case is illustrative of the harm of failing to adopt. A female same-sex couple in Oklahoma used a known donor to conceive a child.¹³⁹ They got married after the contract with the donor was signed but before the child was born.¹⁴⁰ They did not pursue a second-parent adoption, but both mothers were listed on the birth certificate.¹⁴¹ The moms have separated and the genetic mom along with the sperm donor sought a parentage claim.¹⁴² The court ruled in the plaintiffs' favor, shockingly removing the nongenetic mom from the birth certificate and stripping her of her parental rights.¹⁴³

The reason that some couples do not go through adoption is the onerousness of the process. The process of filing a parentage claim, and its degree of intrusiveness and hassle, varies widely across different state jurisdictions.¹⁴⁴ Often, the case requires a home study by a social worker, which is both invasive and expensive.¹⁴⁵ Fingerprints are often required.¹⁴⁶ In all cases, a court filing fee is necessary, and many couples will hire a lawyer to file.¹⁴⁷ The Human Rights Campaign estimates that the process can cost between \$1,000 and \$3,000, but a proper tally of the costs involved suggests that it is more likely to land at \$3,000 or more.¹⁴⁸ Another source estimates the cost at approximately \$5,000 for a single child.¹⁴⁹ A closer look at fees reveals that, on the U.S. East

136. NAT'L CTR. FOR LESBIAN RTS., *LEGAL RECOGNITION OF LGBT FAMILIES* 4 (2019), https://www.nclrights.org/wp-content/uploads/2013/07/Legal_Recognition_of_LGBT_Families.pdf [<https://perma.cc/9E36-Y2P2>].

137. *See id.* at 1.

138. *See id.* at 4 ("It is extremely important for non-biological parents to get a parentage judgment or adoption as soon as possible to ensure that their parental rights will be fully respected in any state if you move or travel.").

139. Letter Ruling at 1, *Wilson v. Williams*, No. FD-2021-3681; *Vaughn v. Wilson*, No. FP-22-44 (Okla. Dist. Ct. 7th Jud. Dist. Feb. 13, 2023).

140. *Id.* at 2.

141. *Id.*

142. *Id.* at 2–3.

143. *Id.* at 5–6.

144. *See* Mikhal Weiner, *Why Are Queer Parents Still Paying for Second-Parent Adoption?*, PARENTS (June 24, 2021), <https://www.parents.com/parenting/adoption/why-are-queer-parents-still-paying-for-second-parent-adoption/> [<https://perma.cc/6CQ8-GMK8>] (discussing differences between states in cost and requirements for second parent adoption).

145. *See id.* (discussing home study requirements in New York, New Jersey, Connecticut, the southern United States, and on the West Coast).

146. *See id.* (discussing New York and New Jersey's fingerprinting requirements).

147. *See id.* (listing filing fees for all states considered).

148. For a breakdown of costs based on geographical areas, *see id.*

149. Katherine Denning, *Second Parent Adoption for Same-Sex Couples*, LITOWICH L. (Oct. 6, 2021), <https://www.litowichlaw.com/second-parent-adoption-for-same-sex-couples> [<https://perma.cc/7DES-K67M>].

Coast, attorneys' fees alone typically reach \$2,500–3,000.¹⁵⁰ The addition of filing fees and home study fees surely take the total to at least \$4,000.¹⁵¹

For unmarried same-sex couples, second-parent adoption might be impossible, depending on the state they live in.¹⁵² Thirty states have rules that provide uncertain and limited protections for the nongenetic parent when the partners are unmarried.¹⁵³ Securing these protections might involve “litigation [that] can take years and impose significant financial and emotional costs.”¹⁵⁴

Additionally, if the partners use surrogacy outside the United States, they will save money on family formation but will have to pay for the additional process of transmitting citizenship.¹⁵⁵ Even those who forgo an immigration lawyer and complete the process themselves will require a Consular Report of Birth Abroad and passport for their newborn, a process that can take anywhere from two to three weeks to a matter of months to complete.¹⁵⁶ DNA testing is not a requirement in all cases but may be requested if supporting documentation provided by a birth hospital is deemed insufficient by consular staff.¹⁵⁷ These steps, even if taken without legal advice, will add hundreds of dollars more to a couple's costs—which could balloon if the process drags on and requires a lengthy stay in the birth state.

C. Parental Leave Policies

Parental leave policies play a complex role when considering wealth creation among gay fathers. On the one hand, long unpaid parental leaves constitute one of the main reasons for the gender wealth gap.¹⁵⁸ Every period without income and without contribution to retirement savings has an effect on

150. Weiner, *supra* note 144.

151. *See id.*

152. *See* Susan Hazeldean, *Illegitimate Parents*, 55 U.C. DAVIS L. REV. 1583, 1589 (2022) (surveying the law of all fifty states in the United States and finding that nine states provide no protection at all to the nonbiological parent in unmarried same-sex relationships, and thirty provide limited and inadequate protections).

153. *Id.* at 1586.

154. *Id.* at 1624 (footnote omitted).

155. The cost of surrogacy outside the United States can be significantly cheaper, but in some countries, surrogacy is only available to different-sex couples. *See* Mohapatra, *supra* note 89, at 99–100 (“Gay married couples in the United States often prefer entering into a surrogacy arrangement within the United States because many foreign countries still prohibit same-sex marriage. Therefore, same-sex couples must pay a higher price for the same arrangement that would cost less than half of the price abroad.” (footnotes omitted)).

156. Daisy Deomampo, *Defining Parents, Making Citizens: Nationality and Citizenship in Transnational Surrogacy*, in *POLITICS AND KINSHIP: A READER* 266, 271 (Erdmute Alber & Tatjana Thelen eds., 2021).

157. *See Assisted Reproductive Technology (ART) and Surrogacy Abroad*, U.S. DEP'T ST., <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Assisted-Reproductive-Technology-ART-Surrogacy-Abroad.html> [<https://perma.cc/GX2Q-SK8L>].

158. *See* CHANG, *supra* note 52, at 59–65.

wealth holding.¹⁵⁹ The same effect can hold true for gay dads if they are excluded from schemes for subsidized parental leave. On the other hand, if parental policies and other informal factors like work stigma prevent gay fathers from taking a long leave, then—depending on the cost of substitute childcare—they might be able to avoid some of the wealth loss. Obviously, the consequences of not taking parental leave far exceed the wealth aspect and include the shortage of time to bond with the child and experience a successful transition into parenthood. This has far-reaching consequences for the family and society at large. But for the purposes of this section, the discussion is limited to the wealth dimension.

Paid parental leave is not guaranteed on a national level in the United States; rather, it is mandated in eight states and the District of Columbia, and five additional states have passed legislation that will create paid leave programs over the next two years.¹⁶⁰ Where paid leave is offered, it is distributed equally and individually to both parents irrespective of sex; meaning that, in theory, same-sex parents could receive identical leave benefits as different-sex parents.¹⁶¹ However, since some birth parents receive an average of an additional six weeks of paid leave under pregnancy disability leave, gay (male) parents receive less paid leave time than do different-sex couples or same-sex female couples.¹⁶²

Furthermore, an increasing number of private employers choose to include paid parental leave in the benefit packages that they offer their employees.¹⁶³ To give an example, one study found that seventy-two percent of Fortune 500 companies offered some form of paid parental leave to their employees.¹⁶⁴ However, most of these policies offer substantially more leave time to mothers than to fathers.¹⁶⁵ Almost half of Fortune 500 companies offer mothers at least double the amount of paid leave offered to fathers, and in ten percent of these

159. *Id.* at 66–67 (“Lost earnings are just the tip of the iceberg: the most powerful and possibly longest lasting financial impact of motherhood comes from losing the opportunity to save for retirement.”).

160. *State Paid Family Leave Laws Across the U.S.*, BIPARTISAN POL’Y CTR. (Dec. 5, 2022), <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/> [https://perma.cc/8T9Q-754J].

161. Deborah A. Widiss, *The Hidden Gender of Gender-Neutral Paid Parental Leave: Examining Recently-Enacted Laws in the United States and Australia*, 41 COMPAR. LAB. L. & POL’Y J. 723, 729 (2021) [hereinafter Widiss, *Hidden Gender*].

162. *Id.* at 730.

163. See generally Gayle Kaufman & Richard J. Petts, *Gendered Parental Leave Policies Among Fortune 500 Companies*, 25 CMTY. WORK & FAM. 603 (2020) (analyzing and comparing paid parental leave policies among Fortune 500 companies).

164. *Id.* at 612.

165. See *id.* at 612–13.

companies the period of leave given to mothers is over two months greater than what they grant to fathers.¹⁶⁶

Additionally, same-sex couples face more hurdles in accessing paid parental leave than do different-sex couples. When a child is born to a non-married, different-sex couple, the male partner assists in the process of Voluntary Acknowledgement of Paternity (“VAP”) to gain a legal connection to the child—qualifying them to receive parental leave coverage.¹⁶⁷ VAPs are a low-cost, easily accessible means for different-sex couples to guarantee that both partners have documentation of their connection to a child, but they are only available to same-sex couples in ten states.¹⁶⁸ Since state parental leave policies require some form of documented legal connection between the parent applying for parental leave and the child they are bonding with, an individual in a same-sex relationship who is not biologically related to their partner’s child may need to undergo the process of second-parent adoption should they live in a state that does not allow same-sex couples to use a VAP.¹⁶⁹

Finally, even if eligible for parental leave benefits, social and practical reasons might lead gay dads not to take them. A recent study found that only a small percentage of fathers take parental leave, and fewer than 5% take over two weeks.¹⁷⁰ Further, over half of the fathers who go on leave take only a week—or less.¹⁷¹ This low rate can be attributed to the shortage of funded leave programs.¹⁷² Another reason for low rates is stigma about men who take parental leave. In a 2016 survey of parents with access to paid leave, a third of the male participants said that their position could be in jeopardy if they take leave, and over 50% of all respondents (male and female) said that their colleagues would judge a man more negatively than a woman for taking the same amount of parental leave.¹⁷³

166. *See id.* at 608–12.

167. *See* Julie Shapiro, *The Law Governing LGBTQ-Parent Families in the United States*, in *LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE* 365, 379 (Abbie E. Goldberg & Katherine R. Allen eds., 2d ed. 2020).

168. Dana B. Rudolph, *Maine Becomes 10th State To Allow LGBTQ Parents To Establish Legal Parentage with Simple Form*, MOMBIA (June 14, 2021), <https://mombian.com/2021/06/14/maine-becomes-10th-state-to-allow-lgbtq-parents-to-establish-legal-parentage-with-simple-form/> [<https://perma.cc/BAU3-U7Z2>].

169. *See* Deborah A. Widiss, *Equalizing Parental Leave*, 105 MINN. L. REV. 2175, 2254–57 (2021) [hereinafter Widiss, *Equalizing*].

170. Richard J. Petts, Chris Knoester & Qi Li, *Paid Paternity Leave-Taking in the United States*, 23 CMTY. WORK & FAM., 162, 173 (2020).

171. *Id.*

172. *See* Widiss, *Hidden Gender*, *supra* note 161, at 743 (“In the states in the U.S. where paid leave laws have been implemented, the proportion of parental bonding benefits claimed by men has generally increased over time.”).

173. DELOITTE, PARENTAL LEAVE SURVEY (2016), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-about-deloitte->

Stigma attached to heterosexual fathers who take paternity leave might be extended to gay dads, as was evident when Transportation Secretary Pete Buttigieg took a short parental leave (around four to six weeks, during which he seems to have worked on important issues) to take care of his newborn twins.¹⁷⁴ Notoriously, Tucker Carlson, formerly of Fox News responded, “Paternity leave, they call it, trying to figure out how to breastfeed. No word on how that went.”¹⁷⁵ The backlash Buttigieg faced for taking paternity leave reflects dated gendered-entrenched norms that link child delivery with caregiving, relegating mothers to home and men to workplaces. These views also ignore the body of science—many countries around the world have adopted its rationale—that demonstrates how caregiving by fathers after birth contributes to a stronger bond later.¹⁷⁶ Gay men can either absorb these gendered views or challenge them. Some studies about men who relied on surrogacy report that they have adopted work habits and behavior recognized as “motherly,” such as limiting work hours or switching to more flexible jobs.¹⁷⁷ One meta-analysis on surrogacy by gay men concludes: “By decreasing their ties to paid labor, increasing their presence in the home, and dividing unpaid family labor more evenly, these men challenge socially constructed cultural narratives that assume men are incompetent nurturers and that gay men are antifamily and irresponsible.”¹⁷⁸

In the absence of generous government-sponsored leave benefits, gay fathers might take unpaid leave, therefore increasing the wealth gap. Otherwise, if the household consists of a couple, one partner—likely the one with the lower earnings—will assume most of the care work and will be in a similar situation to that of the classic mother in a different-sex couple. Alternatively, in the absence of unpaid help (from family or friends), the parent or parents will have to spend a vast amount of money on paid care. While, under this scenario, they will gain from the regular income stream and continued saving for retirement, these benefits will be offset by the high cost of privatized caregiving.

paternal-leave-survey.pdf [https://perma.cc/4CDR-CPWT]; see also Beth Humberd, Jamie J. Ladge & Brad Harrington, *The “New” Dad: Navigating Fathering Identity Within Organizational Contexts*, 30 J. BUS. & PSYCH., 249, 264 (2015) (describing how fathers are taking on more responsibility in caregiving but the workplace is not responding adequately).

174. See Alex Thompson & Tina Sfondeles, *Can Pete Buttigieg Have It All?*, POLITICO (Oct. 14, 2021, 3:31 PM), <https://www.politico.com/newsletters/west-wing-playbook/2021/10/14/can-pete-buttigieg-have-it-all-494710> [https://perma.cc/XP4V-YPV2 (dark archive)].

175. Katie Rogers, *Pete Buttigieg Joins the Parental Leave Debate: ‘This is Work.’*, N.Y. TIMES, <https://www.nytimes.com/2021/10/15/us/politics/pete-buttigieg-parental-leave.html> [https://perma.cc/UNA3-VB6S (dark archive)] (last updated Nov. 10, 2021).

176. See, e.g., MAXINE EICHNER, *THE FREE-MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED)* 201 (2020) [hereinafter EICHNER, *FREE-MARKET FAMILY*] (discussing research about fathers’ involvement in children’s lives after taking a leave).

177. See Berkowitz, *supra* note 83, at 155.

178. *Id.*

D. *Barriers to Home Ownership*

Gay fathers can encounter particular difficulties in owning a home that make it harder for them to create and retain wealth. These obstacles include mortgage-approval discrimination and fears of discrimination in the real estate market that might prevent them from buying or from seeking to buy.

LGBTQ+ people believe that they face discrimination in the real estate market. In a study based on a representative sample, 15% of LGB people—compared with 6% of heterosexuals—reported that they were prevented from moving into or buying a property as a result of discrimination.¹⁷⁹ In a survey of LGB realtors, fear of discrimination on the part of clients was cited as leading to continued renting (31%), as was clients' concern about rejection of offers because of their sexual orientation (22%) and rejection of mortgages for the same reason (20%).¹⁸⁰

Prospective buyers' fears about mortgage discrimination are not unfounded. Using data released from the Home Mortgage Disclosure Act, a study found that same-sex couples, irrespective of gender, are 73% more likely to be denied a mortgage than comparable different-sex couples.¹⁸¹ This study also showed that where a same-sex couple's mortgage application was approved, it was given at an interest rate that was, on average, 0.02% to 0.2% higher than the mortgages received by comparable different-sex couples, even though the researchers found that same-sex couples were, on average, lower-risk borrowers.¹⁸² Another study distinguished between female and male sexual minorities and analyzed the impact of race on these findings as well.¹⁸³ The study's main conclusions were that male same-sex couples were the most likely couple type to be denied a loan, irrespective of race; and that Black male couples and White-Black couples were both less likely to receive a loan than were couples where both men were White.¹⁸⁴ In contrast, same-sex female couples had similar, or even greater, probabilities of getting their loan approved compared to different-sex couples, depending on race and which partner was the main applicant versus the co-applicant.¹⁸⁵

179. Ilan H. Meyer, *Experiences of Discrimination Among Lesbian, Gay, and Bisexual People in the US*, WILLIAMS INST. (Apr. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgb-discrimination-experiences/> [https://perma.cc/8PQW-HNVR].

180. NAT'L ASS'N OF GAY & LESBIAN REAL EST. PROS., *LGBT REAL ESTATE REPORT 2019–20*, at 8 (2019), <https://naglrep.com/wp-content/uploads/2019/03/2019-naglrep-lgbt-real-estate-report.pdf> [https://perma.cc/Q7E4-VYAA].

181. Hua Sun & Lei Gao, *Lending Practices to Same-Sex Borrowers*, 116 *PROCS. NAT'L ACAD. SCIS.* 9293, 9293 (2019).

182. *Id.* at 9294.

183. See J. Shahar Dillbary & Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 *U. CHI. L. REV.* 1, 51–53 (2019).

184. *Id.* at 53.

185. *Id.*

While these data are silent on parents versus couples, it is notable that in many of the states with the highest proportions of same-sex parents, there are no credit and lending antidiscrimination laws, making the parents more vulnerable to discriminatory practices. For instance, the three states with the highest percentages of LGBTQ+ individuals with children—Idaho, Utah, and Oklahoma—do not provide such protection.¹⁸⁶

Finally, LGBTQ+ people might face the problem of not having sufficient money for a down payment. Data released by Zillow show that buying a house in the United States is becoming increasingly difficult, with the average number of offers one must make increasing, the number of first-time buyers decreasing, and more and more applicants being denied mortgages.¹⁸⁷ The average LGBTQ+ homebuyer is younger than the average homebuyer in the United States, is less likely to already own a property that can be sold to generate equity with which to purchase a new property, and is more likely to desire a home located in an urban center.¹⁸⁸ Being a young buyer might serve as an advantage, because one's property appreciates more the longer one owns it. The other demographic factors, however, are likely to increase the difficulty faced by LGBTQ+ people trying to buy a home.

E. *Support from Family of Origin, Intergenerational Transfer of Wealth*

The most important area for evaluating the wealth position of gay parents—intergenerational transfers (*inter vivos* and testamentary)—is also the area that we know the least about. Studies in the United States indicate that intergenerational transfers account for between fifty and eighty percent of the net worth of families.¹⁸⁹ Beyond inheritance—a pure form of wealth transfer that creates wealth—*inter vivos* transfers (during a person's lifetime) have an enormously important impact on building wealth. Transfers that enable someone to receive a higher education or to gain homeownership can be of

186. See *LGBT Data & Demographics*, WILLIAMS INST. (2022), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=10#economic> [<https://perma.cc/KYJ9-XWF5>] (discussing percentage of families raising children); *Nondiscrimination Laws: Credit*, MOVEMENT ADVANCEMENT PROJECT (Jan. 5, 2022), https://www.lgbtmap.org/equality-maps/non_discrimination_laws/credit [<https://perma.cc/U2BK-HSHC>] (listing applicable antidiscrimination law).

187. Edward Berchick, *Buyers: Results from the Zillow Consumer Housing Trends Report 2021*, ZILLOW (Sept. 1, 2021), <https://zillow.com/research/buyers-consumer-housing-trends-report-2021-30039/> [<https://perma.cc/9VNG-7X5C>].

188. See Jesse Pound, *'I Can't Win in This Market': Why LGBTQ Homebuyers Say Mortgage Rates Are Hitting Them Especially Hard*, CNBC (June 19, 2022, 8:53 AM), <https://www.cnbc.com/2022/06/19/why-lgbtq-homebuyers-say-rising-mortgage-rates-are-hitting-the-m-hard.html> [<https://perma.cc/RQ7N-RRPT> (dark archive)].

189. See Lisa A. Keister & Stephanie Moller, *Wealth Inequality in the United States*, 26 ANN. REV. SOCIO. 63, 75–76 (2000); JACQUELINE L. ANGEL, INHERITANCE IN CONTEMPORARY AMERICA: THE SOCIAL DIMENSIONS OF GIVING ACROSS GENERATIONS 4 (2008).

particular significance.¹⁹⁰ Even a small transfer, such as for the down payment of a first home, typically the first investment that Americans make, “can create a stable base for saving throughout the life course.”¹⁹¹ Similarly, education has a distinct correlation with wealth as it enhances professional opportunities and facilitates the development of social networks that can potentially offer individuals business prospects or even financial assistance.¹⁹² Support with tuition payment is expected to exert a substantial impact on wealth accumulation.¹⁹³

Because some LGBTQ+ people experience rejection by, estrangement from, or simply distant relationships with their family of origin, they might be at a disadvantage in terms of wealth transfer compared with their heterosexual and cisgender counterparts. Gay parents could even be disowned by their parents. Indeed, notwithstanding the general reduction of stigma in this society about sexual identity, parents of LGB children can still be estranged from or live in a “conflict-solidarity-ambivalence” with their children.¹⁹⁴ Data from the Pew Research Center show that 39% of the LGBTQ+ individuals surveyed had faced some form of rejection from a close friend or family member because of their sexual orientation or gender identity.¹⁹⁵ The same study also found that the vast majority (92%) of LGBTQ+ people felt that there had been a general improvement in public acceptance of LGBTQ+ identities over the past ten years, and that further progress would be made in the next decade.¹⁹⁶ Despite feeling that attitudes had generally improved, a not-insignificant portion of those surveyed also indicated that they had faced discrimination from their own family on the basis of their sexual identity, with 12% of gay men stating that they felt that coming out to their parents had weakened their relationship with both parents.¹⁹⁷

There is only one study on intergenerational transfers between parents and their LGBTQ+ children. Counterintuitively, based on Australian data, the study concluded that grown-up children who identified as sexual minorities received parental transfers more often than their heterosexual counterparts.¹⁹⁸

190. See LISA A. KEISTER, *GETTING RICH: AMERICA'S NEW RICH AND HOW THEY GOT THAT WAY* 102 (2005) [hereinafter KEISTER, *GETTING RICH*].

191. *Id.*

192. See *id.* at 102–03.

193. See Aloni, *Marital*, *supra* note 55, at 13.

194. Emma Bosley-Smith & Rin Reczek, *Why LGBTQ Adults Keep Ambivalent Ties with Parents: Theorizing “Solidarity Rationales,”* 2022 SOC. PROBS. 1, 2 (2022).

195. PEW RSCH. CTR., *A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES 1* (2013), <https://www.pewresearch.org/social-trends/2013/06/13/a-survey-of-lgbt-americans/> [<https://perma.cc/Q3C5-UHEC>] (click “Complete Report PDF”).

196. *Id.* at 1.

197. *Id.* at 53 fig.44c.

198. See Perales Francisco & Huang Yangtao, *Parental Financial Transfers: Do They Vary by Children's Sexual Orientation?*, 98 SOC. FORCES 1465, 1465 (2020).

But not only are these Australian data—and therefore not necessarily generalizable to the United States—the small sample did not distinguish between male and female sexual minorities.¹⁹⁹ Further, the study does not indicate how relationships may have changed when parents of a gay child became grandparents—and whether that had any effect on financial support.²⁰⁰

A strand of studies about the transition to parenting by LGBTQ+ people, and in particular their interaction with their own parents (now grandparents), also provides a complex and incomplete picture of financial support between gay parents and their parents. A few studies have indicated that relationships between parents and grandparents often improve when the gay child becomes a parent, even if the grandparents initially did not support the idea of their gay child having offspring.²⁰¹ For instance, recent studies compare the involvement of grandparents whose children were in same-sex female couplings versus in different-sex couplings and found that there was no significant difference in how much contact each set of grandparents had with their grandchildren.²⁰² A meta-analysis of studies concluded, “[g]enerally, relationships of LGB parents with their families of origin seem to be enhanced upon parenthood.”²⁰³ A caveat to this conclusion is that, “[a]s parents, women showed higher levels of perceived social support than men, regardless of their sexual orientation.”²⁰⁴ Older studies however found that LGB parents perceive less support from family of origin than their heterosexual counterparts.²⁰⁵ It is almost certain that intersectionality plays a role here, and we need more data on “how interlocking systems of oppression and privilege differentially shape the transition to parenthood and the parenting experiences of gay fathers who use surrogacy.”²⁰⁶

Finally, it is also possible that gay parents become parents *later* in life than their straight counterparts, and that, by the time that happens, inheritance would have been divided among siblings according to how many children each one has. We simply do not have data about this, so all we can do is raise this possibly.

199. *See id.* at 1472–76.

200. *See id.*

201. Berkowitz, *supra* note 83, at 156.

202. Megan Fulcher, Raymond W. Chan, Barbara Raboy & Charlotte J. Patterson, *Contact with Grandparents Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 2 PARENTING 61, 71 (2002).

203. Daniela Leal, Jorge Gato, Susana Coimbra, Daniela Freitas & Fiona Tasker, *Social Support in the Transition to Parenthood Among Lesbian, Gay, and Bisexual Persons: A Systematic Review*, 18 SEXUALITY RSCH. & SOC. POL'Y 1165, 1175 (2021).

204. *Id.*

205. Berkowitz, *supra* note 83, at 81.

206. *Id.*

Ultimately, we do not have adequate data about the financial support of families of origin for their gay male children or a way to conclude with certainty about the extent it affects wealth patterns among gay dads.

In conclusion, gay fathers constitute a diverse group with varying wealth circumstances. No doubt, more research is needed for refining the existence and effects of potential wealth traps on the overall financial well-being of this group. But it seems that there are a few distinctive wealth traps along their journey toward creation and retention of wealth. Not all of the above-mentioned factors apply to all gay fathers, and wealth transfer from families of origin is particularly underresearched. But there is a high probability that gay dads encounter more than one of these traps.

III. ELUCIDATING HARMS AND INTERVENTIONS

Assuming that there is a wealth gap pertaining to gay fathers, two salient questions emerge. One, what are the consequences or particular harms of a potential wealth gap? Section III.A deals with this question. Two, what is the state's responsibility regarding a potential wealth gap? Is the gap not merely the outcome of gay dads being biologically or socially different from parents with birth capacity? Section III.B scrutinizes the biological question. Finally, Section III.C succinctly sketches the contours of a policy response.

A. *The Harms of a Potential Wealth Gap*

Discussions about wealth gaps in the United States typically focus on large groups such as women or racial and ethnic minorities. The harms in such situations are easier to articulate because the effect of the wealth gap hurts the group's progress toward equality while also impacting society at large. For instance, the effects of gender and race wealth inequality include negative impacts on social cohesion, democracy, health, and economic growth.²⁰⁷ But the harms to a group of only approximately 65,000 households cannot be as intense as those to larger groups.²⁰⁸

However, detrimental effects of a potential gay father wealth gap still exist. First, such wealth barriers might serve as one root cause for poverty among households led by gay dads. As a reminder, nearly a quarter of the children raised by same-sex couples live in poverty, and the rate is particularly high among racial and ethnic minorities.²⁰⁹ Notably, fifty-two percent of Black

207. See Aloni, *Marital*, *supra* note 55, at 11–12 (“The uneven concentration at the top end of wealth distribution has a profoundly adverse effect on society Wealth inequality can aggregate political power in the hands of a few, thus distorting the preference of the majority by influencing elections and other political processes.”).

208. See *supra* note 10 and accompanying text (discussing data about the number of households led by non-heterosexual dads).

209. See Schneebaum & Badgett, *supra* note 44, at 10.

children in households headed by two men live in poverty.²¹⁰ It is difficult to isolate the effects of gay parenting from the effects of race, or pinpoint why parenting serves as an exacerbating factor for racial effects. An explanation that is easy to eliminate is that gay parents who are from racial or ethnic minorities receive less support from their families of origin; this is because, contrary to widely held perceptions, gay parents from racial and ethnic minorities actually report more support from their families of origins than do their White peers.²¹¹

Some factors discussed in Part II can provide a partial explanation of the combined negative effect of race and gay fatherhood on the wealth gap. One contributing factor relates to housing and regards both the difficulty in securing a mortgage and discrimination in the housing market in general. We have noted before that Black (or interracial) male same-sex couples are more likely than different-sex and White same-sex couples to be denied a mortgage or to be qualified to higher interest rates.²¹² Another cause is rooted in being wealth-poor along with bearing the costs of forming a family and of parental recognition. Racial (and some ethnic) minorities in the United States hold significantly less wealth than their White counterparts.²¹³ Therefore, even moderate costs of creating a family, for example by domestic adoption, could serve as a factor that worsens the former's financial situation. What is clear is that we face many gaps in knowledge about the connection between poverty, gay fathers, and the intersection of race.²¹⁴

Second, financial hardship and economic stress in a baby's first year might impact the child's development and the family's well-being. Socioeconomic position is correlated with investment in early childhood, a critical element in a child's healthy development.²¹⁵ Additionally, parental leave is closely correlated with health, economic, and social benefits to the child and the family in general.²¹⁶ The attachment created between the caregiver and child during the early years often predicts the child's trajectory, including their ability to solve

210. BADGETT ET AL., *NEW PATTERNS*, *supra* note 46, at 16.

211. Amy Brainer, Mignon R. Moore & Pallavi Banerjee, *Race and Ethnicity in the Lives of LGBTQ Parents and Their Children: Perspectives from and Beyond North America*, in *LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE* 85, 89 (Abbie E. Goldberg & Katherine R. Allen eds., 2d ed. 2020).

212. *See supra* notes 181–88 (discussing studies on mortgage approval rates for same-sex couples).

213. *See, e.g.*, Angela Hanks, Danyelle Solomon & Christian E. Weller, *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, *CTR. FOR AM. PROGRESS* (Feb. 21, 2018), <https://www.americanprogress.org/article/systematic-inequality/> [<https://perma.cc/CVX6-3G58>].

214. *See* Brainer et al., *supra* note 211, at 89–90, 97–98 (discussing gaps in knowledge about racialized gay parents).

215. Daphna Bassok, Jenna E. Finch, RaeHyuck Lee, Sean F. Reardon & Jane Waldfogel, *Socioeconomic Gaps in Early Childhood Experiences: 1998 to 2010*, 2 *AERA OPEN* 1, 2 (2016).

216. Tara O'Neill Hayes & Margaret Barnhorst, *How Children Benefit from Paid Family Leave Policies*, *AM. ACTION F.* (June 9, 2020), <https://www.americanactionforum.org/research/how-children-benefit-from-paid-family-leave-policies/> [<https://perma.cc/53QY-WGQM>].

problems, to regulate emotions, and their eventual readiness for school.²¹⁷ Having financial means can be relevant to parenting style as it is likely to enrich the quality time parents spend with their children, including reading to them and facilitating other activities beneficial to their development.²¹⁸ For gay fathers, the relative lack of financial support for parental leave, combined with the possible general lack of support from their family of origin and probable stress from paying off loans borrowed to finance the building of the family, might affect their capacity to spend time with the child during the first years of its life.

Additionally, the wealth gap might have other indirect effects on child development and family flourishing. For instance, homeownership can also contribute to a family's well-being, as homeowners tend to stay longer in their homes and are better able to create communities that are helpful to them and their children.²¹⁹ For gay parents who want to live in an area with other families like them, this might pose a particular challenge. The limited data we have about same-sex parents (regardless of gender) and home ownership indicates that they were less likely than their married different-sex couples to have lived in the same place the year before—a sign of residential stability.²²⁰

Third, wealth considerations can guide the choice of how to build a family and can lead to family compositions that increase disputes between the parents. As discussed previously, the cost of creating a family might serve as a primary factor in deciding among surrogacy, adoption, and coparenting—as well as the versions and options that exist in each form of parenting.²²¹ Low wealth-holding might impel some intended parents to select forms of families that are riskier, particularly because of the possibility of increased involvement of third-party donors. While arrangements that include postbirth involvement of third parties—in the forms of open adoption, coparenting with nonintimate parents, using an altruistic egg donor or surrogate—can lead to advantageous opportunities, they also present chances for legal disputes or significant discomforts.²²² Such risks include known donors' claims for parental rights and lawsuits from genetic parents wishing to enforce open-adoption provisions.²²³ Likewise, matching with a nonintimate parent without a proper process—such

217. See, e.g., Corinne Rees, *Childhood Attachment*, 57 BRIT. J. GEN. PRAC. 920, 920 (2007).

218. See, e.g., Clare Huntington, *Early Childhood Development and the Law*, 90 S. CAL. L. REV. 755, 770–71 (2017).

219. Cf. *Housing Instability*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability> [<https://perma.cc/5A5V-C5K8>].

220. Krivickas & Lofquist, *supra* note 63, at 11, 19 tbl.12.

221. See *supra* notes 101–108 and accompanying text.

222. See, e.g., Anita L. Allen, *Open Adoption Is Not for Everyone*, in *ADOPTION MATTERS* 47–49 (Sally Haslanger & Charlotte Witt eds., 2005) (discussing the disadvantages of open adoption).

223. Aloni, *Cloning*, *supra* note 75, at 35.

as discussing expectations and parenting plans, and entering into an agreement—might lead to acrimonious parenting relationships, with lingering adverse effects on the entire family.²²⁴

Fourth, wealth gaps have an effect on economic upward mobility and equal opportunities. In the United States, families are responsible for supporting their children in activities that are wealth-enhancing themselves. In a system in which reliance on private resources is expected for supporting milestones in development—down payment for property, college tuition, medical emergencies, etc.—even a small wealth gap can go a long way in limiting opportunities for the household’s upward mobility and wealth creation. Wealth holding is strongly connected to opportunities for success, greater human capital, educational opportunities, direct economic assistance, and reduction of onerous debt.²²⁵ Hence, a potential wealth gap among gay fathers might mean that their children trail behind in their quest to build wealth. Further, the opportunity to create and retain wealth is essential to equal citizenship.²²⁶ That is, some savings are essential to protect citizens from “market vulnerability”: times of unemployment, retirement, and dependency, to name just a few.²²⁷ Having some cushion during economic hardship is vital to equal participation in society, especially in a highly privatized system with a thin social safety net.

Fifth and finally, the potential wealth inequality that households headed by gay fathers experience can exacerbate their feelings of stigma and of being second-class citizens. Discrimination and barriers such as shorter sponsored parental leave and housing discrimination can reinforce the erroneous and debilitating notion that these families are inferior. While the LGBTQ+ community is accustomed to dealing with stigma, the persistent fight for equality can take a toll on their morale and health, further compounding the effects of wealth inequality.²²⁸

B. *It’s All Biology, Stupid*

Even assuming that we know that a gay dad wealth gap exists, and are clearer about its consequences, a major question is whether the potential wealth gap is a result of both biological and social factors—that is, the mere fact that

224. *Id.* at 17–18.

225. See Fabian T. Pfeffer & Robert F. Schoeni, *How Wealth Inequality Shapes Our Future*, 2 RUSSELL SAGE FOUND. J. SOC. SCIS. 2, 5 (2016).

226. For a discussion on equal citizenship and marriage as a wealth-enhancing mechanism, see Erez Aloni, *A Trinity of Inequality: Wealth, Marriage, and Masculinity*, in CITIZENSHIP ON THE EDGE 41, 61–63 (Nancy J. Hirschmann & Deborah A. Thomas eds., 2022).

227. See STUART WHITE, THE CIVIC MINIMUM: ON THE RIGHTS AND OBLIGATIONS OF ECONOMIC CITIZENSHIP 44 (2003).

228. See, e.g., Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCH. BULL. 674, 682 (2003) (discussing the connection between stigma and internalized homophobia with poor health outcomes).

gay men do not have the reproductive capacity to conceive children with a person of the same sex. Their infertility, then, is “social” or “relational,” stemming from the choice of a partner, and therefore is different from medical infertility.²²⁹ And since this is a matter of “choice” of a partner, the argument continues, then the different treatment of gay men in policies related to child formation and raising is defensible. In other words, a “neutral” state policy—one that supports primarily people with birth capacity—is justified, as the unfairness reflects a biological reality.

The principle problem with this argument is that the application of biology is not consistently applied and without a clear rationale. States’ policies in the area of family formation—building families, parental leave, and recognition of parentage—prefer people with birth capacity and different-sex couples even when their infertility stems from social reasons. For people and couples with assumed reproductive capacity, the state sometimes supports reproductive costs even when the cause is social. As an illustration, consider the funding of infertility treatments for women of advanced age who are attempting to conceive. Women’s reproductive capacity begins declining when they are thirty-five years old; by the time women are forty, they have only a five percent chance of success in each cycle of IVF.²³⁰ Covering fertility expenses for birthing individuals at an older age is an example of social infertility, where women who delay childbearing often do so for a variety of reasons, including prioritizing career advancement. Yet, most states with mandated insurance coverage legislation do not limit coverage by age, or they limit it in terms that reflect acceptance of certain forms of social infertility.²³¹ Furthermore, even in states with an age limit, the maximum age is forty-two or forty-six—ages by which reproductive capacity has already declined.²³² This social infertility does not prevent state support, likely because policymakers recognize the social circumstances that bring women to have a child later in life.

The point is, then, that biology or nature alone cannot fully explain why some groups receive financial assistance in their pursuit of starting a family

229. See DAAR, *supra* note 77, at 104 (defining “social infertility” as “the inability to conceive and maintain a pregnancy within a particular social structure without medical assistance”); Julien S. Murphy, *Should Lesbians Count as Infertile Couples?: Antilebian Discrimination in Assisted Reproduction*, in QUEER FAMILIES, QUEER POLITICS 182–83 (Mary Bernstein & Renate Reimann eds., 2001).

230. AM. SOC’Y FOR REPROD. MED., AGE AND FERTILITY 4 (2012), <https://www.reproductivefacts.org/news-and-publications/patient-fact-sheets-and-booklets/document/s/fact-sheets-and-info-booklets/age-and-fertility/> [<https://perma.cc/GTL9-SKUE>] (click “Download a PDF of this fact sheet”) (“By age 40, a woman’s chance is less than 5% per cycle, so fewer than 5 out of every 100 women are expected to be successful each month.”).

231. Gabriela Weigel, Usha Ranji, Michelle Long & Alina Salganicoff, *Coverage and Use of Fertility Services in the US*, KAISER FAM. FOUND. (Sept. 15, 2020), <https://www.kff.org/womens-health-policy/issue-brief/coverage-and-use-of-fertility-services-in-the-u-s/> [<https://perma.cc/8EA4-LUCT>].

232. See *id.* (mentioning that New Jersey requires a maximum age of forty-six and Rhode Island forty-two).

while others do not.²³³ It is law and policy, not just biology, that create the barriers to wealth accumulation in this case. To be sure, in the United States, there is still much more to be done in supporting women's reproductive needs at the state level. The very few states that subsidize the few fertility treatments for women serve as significant barriers to racial minorities, people with disabilities, and, generally, people with low income.²³⁴ In any event, what I wrote a decade ago has remained relevant: "What society treats as inherent or natural physical or biological differences are in reality the result of social practices that collapse actual variations in favor of binary differences, becoming entrenched over time through medical and legal discourse."²³⁵

When it comes to parental leave, the biological argument for different treatment is stronger. I do not claim that non-birth parents are similarly situated to birth parents. It is undeniable that birth parents need time to recover from the physical aspects of giving birth. In addition, some women breastfeed during maternal leave. However, the biological argument still does not preclude adoption of an "unsexed parental leave"—a policy proposed by Darren Rosenblum.²³⁶ The Swedish model is an example of such policy, under which both parents are entitled to a combined period of 480 days, distributed between the two parents as they choose.²³⁷ However, to encourage both parents to take parental leave, ninety days of the total are designated as nontransferable, which means that if one parent does not use their allotted portion, it cannot be transferred to the other parent. Put differently, parents can either use these extra days or do not get them at all.²³⁸ Under such system, the birth parent (and the other parent) can get three paid months at home after labor, and the remaining period is divided as they choose.²³⁹ This system is more inclusive for adoptive parents and gay parents who do not experience birth, and has the other

233. A different version of this argument might be that gay men, as a class, lack reproductive capacity, whereas women do not; the result would be that mandating coverage to gay men, too, will increase the number of insured. But the number of gays in this population is not as large as the number of women who suffer infertility and require the use of ART.

234. Judith Daar argues that modern restrictions on access to ART, which are primarily enacted through financial barriers to ART treatments but may also appear through outright discrimination by medical providers, create a system wherein reproduction is limited to those with "desirable" traits. DAAR, *supra* note 77, at 49–50, 55. In this case, that means that the state is only willing to make reproduction easily available to wealthy, White, heterosexual married couples and is implicitly restricting access to it by individuals who are poorer, racial and ethnic minorities, or in same-sex couples—much like during the American eugenics movement. *Id.*

235. Aloni, *Cloning*, *supra* note 75, at 65.

236. Darren Rosenblum, *Unsex Mothering: Toward a New Culture of Parenting*, HARV. J.L. & GENDER 57, 114 (2012).

237. *Sweden—Parental Benefits and Benefits Related to Childbirth*, EUR. COMM'N, <https://ec.europa.eu/social/main.jsp?catId=1130&intPageId=4808&langId=en> [https://perma.cc/QX3E-NRTE].

238. *Id.*

239. *See id.*

advantages of encouraging both parents to be involved in raising a child from birth.

Furthermore, the United States' limited social safety net means that parental leave is not guaranteed and is often extremely short, if available at all. This underscores the case for equal parental benefits between birth parents and non-birth parents, including gay fathers. Even with a generous employer and living in a state that provides paid parental leave, the U.S. policy is an outlier in the world community. For instance, among Organisation for Economic Co-operation and Development countries, the average maternal leave (available only to the birth parent) is nineteen weeks;²⁴⁰ the average parental leave (sharable by both parents) is over sixty weeks.²⁴¹ In the United States, even in the few states that provide subsidized leave, the term is from four to twelve weeks, with the possibility of four more weeks of paid disability leave.²⁴² While states' benefits are gender-neutral, the disability leave is not, and, as discussed above, the employers' paid leave policies are typically not.²⁴³

Let us assume then, that a birth parent lives in a state that provides two months' paid leave and has an additional two months' paid leave from their employer. In this state, the gay father will have only two months and, if he is coupled, four months. The different-sex parents will have four months total from the state and an additional two months from the employer to the birth mother. The different-sex couple, then, has a total of six months, while the same-sex couple has four.

Although it is reasonable to allow birth parents ample time for postpartum recovery, six months are essential for reasons other than recovery. The first months of an infant's life are when attachment begins to form.²⁴⁴ Parents use this time for recovery and for caring for the child. This is equally true for gay fathers, who require the same duration to foster attachment. Additionally, this period presents more difficulties and expenses in finding paid childcare.²⁴⁵ The burden of finding care for children who are so young is financial and emotional; gay dads are no different than mothers in this aspect. Rosenblum helpfully

240. *Parental Leave Systems*, ORG. FOR ECON. COOP. & DEV. (2022), https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf [<https://perma.cc/6ZKP-LHCS>].

241. Widiss, *Hidden Gender*, *supra* note 161, at 728.

242. Maxine Eichner, *COVID-19 and the Perils of Free-Market Parenting: Why It Is Past Time for the United States To Install Government Supports for Families*, 90 FORDHAM L. REV. 2509, 2516 (2022) ("Recently, a few states have sought to fill this gap by passing their own paid leave laws—an important advance, despite providing far shorter leaves than provided by other wealthy countries.").

243. *See supra* notes 161–62.

244. *See* Monkhtar Malekpour, *Effects of Attachment on Early and Later Development*, 53 BRITISH J. DEVELOPMENTAL DISABILITIES 81, 81–82 (2007).

245. SIMON WORKMAN & STEVEN JESSEN-HOWARD, CTR. FOR AM. PROGRESS, UNDERSTANDING THE TRUE COST OF CHILD CARE FOR INFANTS AND TODDLERS 2–3 (Nov. 15, 2018), <https://www.americanprogress.org/wp-content/uploads/sites/2/2018/11/TrueCostITChildCare-report.pdf> [<https://perma.cc/Z8YT-H2V6>].

explains how much of motherhood is social, not biological: “As people typically understand the term, the ‘mother’ is the person who does the ‘mothering’—diaper-changing and night feedings matter more than gestation, lactation, or the presence of genetic material.”²⁴⁶ The short paid leave is essential for caring for the child, to do the “mothering,” or care work—and gay fathers need the time to perform these tasks, too.

Finally, it is important to note that some policies that discriminate against gay fathers cannot be justified based on biology or any inherent biological differences between gay and non-gay individuals. As previously discussed, certain policies create barriers and increase expenses for same-sex couples seeking to adopt their spouse or partner’s child. Such discriminatory measures go beyond any biological explanation and perpetuate unjust treatment toward gay fathers. Other parts of the world, such as British Columbia in Canada, have rules that enable registration of both parents on the child’s birth certificate, even in a case of surrogacy, by an uncomplicated process that costs around \$100.²⁴⁷ This approach has been implemented without negative consequences to the legal system or society.²⁴⁸ Similarly, the social fertility argument—or for that matter, any other argument about differences between same-sex and different-sex parents—does not explain the state’s failure to try to prevent discrimination against LGBTQ+ people in the area of lending and building equity in homeownership. And while the state cannot confront some grandparents’ antipathy toward their gay children that leads them to not support and even to disinherit their gay children, the state can take this aspect of the wealth gap into consideration as it crafts policies relevant to building wealth among gay parents. Policies that reduce dependency on family wealth for child raising, such as subsidized childcare and education, will be helpful for various people, but in particular for those who might receive fewer supports from their parents.

Aside from relying on biology to justify policies that treat gay fathers differently, it is worth considering whether the goals of queer politics should be expanded beyond legal recognition of parentage. In his article, “Is Assisted Procreation an LGBT Right?,” critical legal scholar Michael Boucai laments the LGBTQ+ movement’s shift from a focus on “social and functionalist” family forms to a focus on “biogeneticism.”²⁴⁹ Boucai questions whether the movement has abandoned its longstanding commitment to families who are not connected by blood but are families of choice.²⁵⁰ He tracks a shift into discourse and

246. Rosenblum, *supra* note 236, at 71.

247. See SURROGACY PROTOCOL, BC WOMEN’S HOSP. & HEALTH CTR. 4 (2019), <http://policyandorders.cw.bc.ca/resource-gallery/Documents/BC%20Women's%20Hospital%20-%20Fetal%20Maternal%20Newborn/C-06-13-60015%20Surrogacy%20Protocol.pdf> [https://perma.cc/K8YM-7JWC] (providing a guide about registering a birth assisted by surrogate).

248. See *id.*

249. Boucai, *Assisted Procreation*, *supra* note 81, at 1070.

250. *Id.*

advocacy that prioritize “biogeneticism preferences and practices.”²⁵¹ Does this Article, aiming to uncover the wealth traps that gay fathers are forced to contend with, align with mainstream gay politics that places “biology, conjugality, and reproduction at the heart of kinship” or does it challenge this view?²⁵²

One of Boucai’s primary arguments is that contemporary politics of the LGBTQ+ movement exposes a double standard when it advocates strongly in favor of access to Assisted Reproductive Technology (“ART”), while its championship in the adoption area is almost entirely absent.²⁵³ At least in this aspect, this Article does not uphold the mainstream politics, as it does not manifest the same double standard. The financial barriers grounded in the adoption process can be significant to a large class of gay dads and should be a priority in efforts to reduce a possible wealth gap, especially to the extent that adoption is more common among people with low incomes and wealth holding.

What about surrogacy? As becomes clear in the next section, this Article espouses modest support for the costs of surrogacy or fertility treatments. Furthermore, in arguing that the state fails to assist families headed by gay men, my stance does not stem from a statutory or constitutional right of gay fathers to have children or equal access to subsidized ART. Rather, my argument is against maintaining a “free-market” approach, as Maxine Eichner calls it, toward gay fathers.²⁵⁴ This essentially neoliberal approach relies on the family to support its members, with minimal state intervention to assure that families are able to face the various challenges surrounding raising children and maintaining a healthy work-life balance.²⁵⁵ In the case of gay fathers, the approach is manifested by the accumulation of most of the factors that contribute to a wealth barrier. In general, the state is indifferent to the wealth traps that families headed by gay dads encounter. As a result, these families are left to navigate the challenges of the market economy on their own, whether it be accessing the fertility industry, the adoption market, the lending market, or all three. Sometimes the state even increases vulnerability in requiring them to take extra steps to solidify their parentage. Hence, this is not an article about why the state should subsidize ART for gay men. Rather, it seeks to shed light on the distinct obstacles faced by these families and the potential implications of a wealth gap for a specific class of families.

251. *Id.* at 1107.

252. *Id.* at 1069.

253. *Id.* at 1114–15.

254. See EICHNER, FREE-MARKET FAMILY, *supra* note 176, at 19–42.

255. See *id.* (providing examples of “free-market family policy”).

C. *Contours of a Policy Response*

It is a precarious endeavor to chart a detailed plan for state intervention without knowing more about the extent of the wealth gap and its causes (i.e., which of the factors I outlined above is most prominent). It is also beyond the scope of a symposium article to get into such details. Hence, this section briefly discusses the contours of state involvement. We can think of responses on a spectrum ranging from policies designed with gay fathers specifically in mind to broad-based policies that would incidentally benefit gay fathers (e.g., government-funded pre-K education).

In terms of policies that would benefit gay fathers in particular, several interventions could make family formation more affordable. Such interventions can include policies that decrease surrogacy transaction costs or subsidies that would make adoption and use of fertility treatments more affordable. For instance, providing a tax credit for the use of IVF—even when individuals rely on a surrogate—would be helpful to all families that, due to infertility, have to choose this path. To assure that it does not privilege those who are already well-off, the tax credit could be capped for families with incomes over a certain level.²⁵⁶ Another way to make ART more affordable, and particularly helpful to gay dads, is to facilitate the expansion of ART clinics into areas with underserved populations.²⁵⁷ Not only would such a step benefit all families who live outside certain urban centers, it would be particularly helpful to gay fathers who live outside big metropolitan areas.

Ending barriers for recognition of families headed by gay men would be similarly directly effective. Designing systems that will facilitate second-parent adoption with ease and with minimal cost would help to save money and time, and could assist with eligibility for parental leave. Creating such pathways would reduce recourse to already overloaded courts, while easing the financial (and emotional) burden on gay parents.

Directly related is the need to invest in research. As stated earlier, most data either focus only on couples rather than parents, or do not distinguish females from males.²⁵⁸ Better data would assist in identifying the degree of the gap and the mechanisms that maintain it, as well as crafting appropriate policies.

Thinking about the proximity of gay fathers' wealth gap to other wealth gaps suggests that dealing with the latter would lessen the harm to gay dads and vice versa. Hence, embracing policies that support gay parenting can also decrease the gender wealth gap and alleviate the cultural expectations that women remain the primary care provider. Rosenblum, for instance, proposes

256. As an example, in 2011, Congress considered a bill to provide tax credit for IVF available to families with annual income lower than \$189,000. See DAAR, *supra* note 77, at 194.

257. *Id.* at 198–200.

258. See *supra* Section II.A.

that the Swedish parental leave policy has been successful in subverting entrenched gender roles about caregiving as well as reducing workplace discrimination.²⁵⁹ Likewise, because of the prevalence of gay fathers who are racial and ethnic minorities, some policies that would assist gay dads could have the effect of confronting the racial wealth gap. For example, a few policy proposals that tackle wealth building for racial minorities are predicted to have a big impact on their wealth holding. Such programs include providing, at birth, savings accounts for education or trusts with a set amount, to children from families with low income.²⁶⁰ Other proposals include specific tax benefits that would help to overcome the home ownership gap.²⁶¹ If gay fatherhood contributes to the exacerbation of poverty among racial and ethnic minorities, then policies aimed at reducing the racial wealth gap may also help address the wealth gap faced by gay fathers.

More broadly, departing from a free-market approach will have particularly positive returns for gay fathers. As stated above, in her book, *The Free Market Family*, Eichner argues that for a half-century the United States has adopted a free-market family policy, in which the government's role in helping families to care for their children, especially in their early years, is minimized.²⁶² Families are sacrificed to the market's mercy left to juggle work and caregiving, in what becomes a mission impossible for all but the ultra-rich.²⁶³ The result is devastating: the well-being of most U.S. families—measured across such standards as happiness, academic achievement, mental health, time to spend with family, and economic mobility—is significantly worse in comparison to that of families in similar countries.²⁶⁴ Departing from this approach would assist many families but particularly families headed by gay fathers, because minimizing the dependency on families of origin to provide basic support would alleviate the burden of those who are estranged from their families. Likewise, the consequences of a wealth gap are less severe in a system that does not heavily rely on private resources for foundational functions like health and education.

CONCLUSION

In 2012, merely a decade ago, Carlos Ball published *The Right To Be Parents: LGBT Families and the Transformation of Parenthood*.²⁶⁵ The book was the

259. Rosenblum, *supra* note 236, at 110–11.

260. See, e.g., Darrick Hamilton & William Darity Jr., *Can 'Baby Bonds' Eliminate the Racial Wealth Gap in Putative Post-racial America?*, 37 REV. BLACK POL. ECON. 207, 215 (2010).

261. Ann F. Thomas, *The Racial Wealth Gap and the Tax Benefits of Homeownership*, 66 N.Y. L. SCH. L. REV. 247, 272–74 (2021).

262. EICHNER, FREE-MARKET FAMILY, *supra* note 176, at 92–118.

263. *Id.*

264. *Id.* at 3–18.

265. CARLOS A. BALL, THE RIGHT TO BE PARENTS, LGBT FAMILIES AND THE TRANSFORMATION OF PARENTHOOD 4–5 (2012).

first full-length manuscript focusing on the legal struggles that LGBTQ+ parents faced in recognition of their parentage.²⁶⁶ A decade later, many of the threats faced by LGBTQ+ families it discussed are no longer in force. Indeed, LGBTQ+ parenting has become more legally established, culturally common, and accepted. This is a cause for celebration.

At the same time, the difficulties faced by gay men in forming and raising families these days are subtler; discrimination is often disguised with gender-neutral language and biologically based justifications. Gay fathers face several significant barriers connected to their economic position—legal and societal, formal and in practice—to forming and raising their families. The effects of the barriers and their degree are ambiguous and should be the subject of further research. But they should not remain hidden.

While gay fathers do benefit from certain advantages stemming from male privilege, it would be a mistake to generalize about the extent of those advantages or the size of the privileged group. Even those who are economically privileged still face a lack of support when it comes to forming families and addressing discrimination in areas like home ownership. The absence of support can widen the gap between gay fathers and others, particularly in a nation that prioritizes free-market policies for families.

Moreover, even from a position of privilege, gay dads might be challengers of the status quo in the area of gendered caregiving. Prior to the legalization of same-sex marriage, some scholars expressed the expectation that the inclusion of same-sex couples would transform the gendered nature of marriage as a cultural institution.²⁶⁷ These scholars envisioned same-sex couples challenging the entrenched script of unequal allocation of unpaid domestic labor.²⁶⁸ While it does not appear that the entrance of same-sex couples into marriage has significantly altered the norm of unequal division of domestic labor, the fact remains that much of the gendered assumptions of marriage are related to social and cultural institutions tied to division of childcare. There is reason to expect, then, that an increased visibility of gay fathers will challenge some of the legal instruments and social conventions that make parenthood stubbornly gendered. In any event, it is time for the state to adopt a more generous policy toward building and raising families, in line with other wealthy democracies. Supporting gay dads is an essential component of such a policy.

266. *See id.*

267. *See, e.g.,* Nan D. Hunter, *Marriage, Law, and Gender: A Feminist Inquiry*, 1 *LAW & SEXUALITY* 9, 12 (1991).

268. *See* Mary Anne Case, *What Feminists Have To Lose in Same-Sex Marriage Litigation*, 57 *UCLA L. REV.* 1199, 1201–03 (2010).