

Constitutional Issues in Family Law: An Annotated Bibliography (Part 2 of 2)

by
Allen Rostron*

Significant constitutional questions often arise in the family law context. This is the second of two bibliographies, in this volume of the *Journal of the American Academy of Matrimonial Lawyers*, about constitutional issues in family law. It focuses on issues discussed in the articles in this issue of the journal.

Assisted Reproductive Technology	774
Cloning	774
Ectogenesis	775
Genetic Selection & Modification.....	775
Reproductive Rights	776
Federalism	779
Full Faith & Credit.....	781
Homeschooling	782
Arguments for Allowing States to Regulate and Restrict Homeschooling	782
Arguments for Constitutional Protection of Homeschooling	785
Child Abuse Investigations	787
Data-Based Assessment of Homeschooling	788
Disabilities	788
Gender & Race.....	789
International Perspectives.....	790
Judicial Bypass Mechanisms for Children Objecting to Homeschooling	792
Military Families	792
Parental Disagreement About Homeschooling.....	793

* Associate Dean for Students and the William R. Jacques Constitutional Law Scholar and Professor of Law, University of Missouri-Kansas City School of Law.

Participation in Sports, Classes, and Other Public	
School Activities	794
Religion	795
State Specific Analysis	796
Marriage Equality's Impact on Family Law	798
Adult Adoptions	798
Children and Parentage	799
Diversity and Cultural Competence	800
Domestic Partnerships	800
Family Law	801
Financial Issues	802
Marriage	803
Right to Counsel	805
Unwed Parents	807
Abortion	807
Nonmarital Families	807
Nonmarital Fathers	808
Reproduction	810

Assisted Reproductive Technology

– CLONING

Francis Beckwith, *Cloning and Reproductive Technology*, 3 *NEV. L.J.* 61 (2002) (predicting that the Supreme Court is likely to reject arguments for a constitutional right to clone humans).

Elizabeth Price Foley, *Human Cloning and the Right to Reproduce*, 65 *ALB. L. REV.* 625 (2002) (examining the circumstances under which the constitutional right to reproduce would apply to a person's decision to produce a child using cloning technology).

Jessica Lin Lewis, *Predicting the Judicial Response to an Asserted Right to Reproductive Cloning*, 29 *J. LEG. MED.* 523 (2008) (assessing arguments for and against recognition of a right to use somatic cell nuclear transfer technology to create a child with genetic material from a single contributor).

Maureen McBrien, *Human Cloning: Beyond the Realm of the Constitutional Right to Procreative Liberty*, 21 *BUFF. PUB. INT. L.J.* 107 (2002-2003) (analyzing the constitutional issues that

would arise from development of human cloning as a reproductive option).

John A. Robertson, *Liberty, Identity, and Human Cloning*, 76 TEX. L. REV. 1371 (1998) (discussing the development of cloning technology, as well as other technologies for genetic enhancement and alteration, and how the development of this technology would affect family and procreative liberty).

Charles Thomas, Note, *Novel Assisted Reproductive Technologies and Procreative Liberty: Examining In Vitro Gametogenesis Relative to Currently Practiced Assisted Reproductive Procedures and Reproductive Cloning*, 26 S. CAL. INTERDISC. L.J. 623 (2017) (asserting that the Fourteenth Amendment fully protects current assisted reproductive technologies but reproductive cloning probably would not receive constitutional protection).

– ECTOGENESIS

Brit Janeway Benjamin, *Ectogenesis: Is There a Constitutional Right to Substrate-Independent Wombs?*, 20 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 167 (2020) (arguing that the constitutional protection of procreative liberty should extend to the use of ectogenic technology enabling the gestation of a fetus outside of a person's body).

Brit Janeway Benjamin, *Equal Protection and Ectogenesis*, 23 VAND. J. ENT. & TECH. L. 779 (2021) (arguing that access to ectogenic technology should be constitutionally protected even under a deferential rational basis scrutiny standard).

– GENETIC SELECTION & MODIFICATION

Andrew B. Coan, *Is There a Constitutional Right to Select the Genes of One's Offspring?*, 63 HASTINGS L.J. 233 (2011) (examining whether the constitutional right to make decisions about whether to have a child should include a right to select a child's genes and whether courts are the institution best equipped to resolve issues about assisted reproductive technologies).

Hannah Lou, Note, *Eugenics Then and Now: Constitutional Limits on the Use of Reproductive Screening Technologies*, 42 HASTINGS CONST. L.Q. 393 (2015) (tracing the historical rise and fall of the eugenics movement and examining whether legal limits on

reproductive screening technologies can be imposed to prevent these technologies from enabling a modern form of eugenics).

Tandice Ossareh, Note, *Would You Like Blue Eyes with That? A Fundamental Right to Genetic Modification of Embryos*, 117 COLUM. L. REV. 729 (2017) (contending that genetic modification technology should be protected by the constitutional right to make decisions about the creation of families).

Kelly M. Plummer, Comment, *Ending Parents' Unlimited Power to Choose: Legislation Is Necessary to Prohibit Parents' Selection of Their Children's Sex and Characteristics*, 47 ST. LOUIS U. L.J. 517 (2003) (arguing that it would be constitutional to enact legislation prohibiting parents from selecting their child's gender or other traits prior to conception).

Sonia M. Suter, *A Brave New World of Designer Babies?*, 22 BERKELEY TECH. L.J. 897 (2007) (examining the history of the eugenics movement and considering concerns about the development of new genetic technologies with applications to reproduction).

– REPRODUCTIVE RIGHTS

Scott A. Allen, Note, *Patents Fettering Reproductive Rights*, 87 IND. L.J. 445 (2012) (considering how intellectual property law could be used by opponents of new reproductive technologies to hinder the development or use of the technologies).

Michael Boucai, *Is Assisted Reproduction an LGBT Right?*, 2016 WIS. L. REV. 1065 (critiquing the rights-based claims about equality and reproductive freedom that underlie LGBT arguments about assisted reproduction).

Kristen Bradley, Note, *Assisted Reproductive Technology After Roe v. Wade: Does Surrogacy Create Insurmountable Constitutional Conflicts?*, 2016 U. ILL. L. REV. 1871 (arguing that where a surrogate mother has no genetic relation to the child, the intended parents of the child maintain the fundamental right to privacy throughout the pregnancy and the law should favor their interests in conflicts between surrogacy and parental rights).

Mary Patricia Byrn & Jenni Vainik Ives, *Which Came First the Parent or the Child?*, 62 RUTGERS L. REV. 305 (2010) (examining the key decisions about the constitutional rights of children and

the constitutional right to raise one's child and arguing that the intended parents should be regarded as parents of a child from the moment of birth in situations involving conception through assisted reproductive technology).

Courtney Megan Cahill, *Reproduction Reconceived*, 101 MINN. L. REV. 617 (2016) (challenging the assumption that sexual reproduction and assisted or alternative reproduction are essentially different and deserve different treatment in constitutional law).

Andrew B. Coan, *Assisted Reproductive Equality: An Institutional Analysis*, 60 CASE W. RES. L. REV. 1143 (2010) (questioning whether courts and political institutions will be able to adequately protect reproductive equality).

I. Glenn Cohen, *The Constitution and the Rights Not to Procreate*, 60 STAN. L. REV. 1135 (2008) (examining how assisted reproductive technology can raise questions about whether there is a right not to be a genetic parent, a legal parent, or a gestational parent).

Maggie Davis, *Maryland "Embryo Adoption": Religious Entanglement in the Maryland Stem Cell Research Act of 2006*, 17 U. PA. J.L. & SOC. CHANGE 291 (2014) (arguing that "embryo adoption" is a religiously motivated term and that legislation using that term endorses religious views and violates the Establishment Clause).

Lainie M. C. Dillon, Comment, *Conundrums with Penumbra: The Right to Privacy Encompasses Non-Gamete Providers Who Create Preembryos with the Intent to Become Parents*, 78 WASH. L. REV. 625 (2003) (arguing that the constitutional right to privacy should extend to a gamete provider's decision to create preembryos).

Sarah L. Dunn, Note, *The "ART" of Procreation: Why Assisted Reproduction Technology Allows for the Preservation of Female Prisoners' Right to Procreate*, 70 FORDHAM L. REV. 2561 (2002) (arguing that prisoners should have a constitutional right to procreate using assisted reproductive technologies).

Deborah L. Forman, *When "Bad" Mothers Make Worse Law: A Critique of Legislative Limits on Embryo Transfer*, 14 U. PA. J.L.

& SOC. CHANGE 273 (2011) (considering the public reaction to news about a person who gave birth to octuplets and became known as the “Octomom,” analyzing subsequent legislative proposals for regulating embryo transfers, and discussing constitutional concerns about such legislation).

Greer Gaddie, Note, *The Personhood Movement’s Effect on Assisted Reproductive Technology: Balancing Interests Under a Presumption of Embryonic Personhood*, 96 TEX. L. REV. 1293 (2018) (discussing how personhood laws, which classify a fetus as a person with legal rights, would affect assisted reproductive technology).

Michael Higdon, *Constitutional Parenthood*, 103 IOWA L. REV. 1483 (2016) (contending that the Supreme Court should provide more guidance on defining constitutional parenthood in order to clarify how states can approach issues like assisted reproduction).

Sandra T. Jimenez, Note, “*My Body, My Right*”: *A Look into IVF Regulation Through the Abortion Legal Framework*, 33 WOMEN’S RTS. L. REP. 375 (2012) (using the constitutional doctrine surrounding abortion to analyze the extent to which states should be able to regulate in vitro fertilization).

Rachel Michael Kirkley, Comment, *Prisoners and Procreation: What Happened Between Goodwin and Gerber?*, 30 PEPP. L. REV. 95 (2002) (examining whether the Supreme Court should find that there is a constitutional right to procreate through the use of assisted reproduction technology while in prison).

Kimberly M. Mutcherson, *Procreative Pluralism*, 30 BERKELEY J. GENDER L. & JUST. 22 (2015) (arguing that the fundamental constitutional right to procreate includes a right to use assisted reproduction).

Radhika Rao, *Equal Liberty: Assisted Reproductive Technology and Reproductive Equality*, 76 GEO. WASH. L. REV. 1457 (2008) (arguing that there is no general right to reproductive autonomy and no absolute right to use assisted reproductive technology, but there is a right to equality that prevents the government from discriminatorily allowing the use of technology in some contexts but prohibiting it in others).

Radhika Rao, *Reconceiving Privacy: Relationships and Reproductive Technology*, 45 *UCLA L. REV.* 1077 (1998) (examining how the constitutional right to privacy should apply to new reproductive technologies and arguing that privacy rights should be regarded as relational rather than individual rights).

Sonia M. Suter, *Advanced Reproductive Technologies Seen Through the “Repugnance” Lens of Carhart v. Gonzales and Other Theories of Reproductive Rights*, 76 *GEO. WASH. L. REV.* 1514 (2008) (describing the major constitutional theories of reproductive rights and considering whether a state’s interest in the moral sensibilities of the community can justify limiting reproductive technology options).

Christine E. White, *Let IVF Take Its Course: Reconceiving Procreative Liberty for the Twenty-First Century*, 35 *WOMEN’S RTS. L. REP.* 1 (2013) (comparing the regulatory frameworks and views on procreative liberty in the United States and Australia).

Federalism

Libby S. Adler, *Federalism and Family*, 8 *COLUM. J. GENDER & L.* 197 (1999) (disputing the idea that family law is a subject that should be controlled exclusively by state law and challenging how each instance of federal involvement in family law is rationalized as an exceptional departure from the normal order).

Brian H. Bix, *State Interests in Marriage, Interstate Recognition, and Choice of Law*, 38 *CREIGHTON L. REV.* 337 (2005) (examining how federalism concerns have shaped the regulation of marriage and families and considering the impact of letting individuals choose what laws for marriage and divorce will apply to them).

William Buss & Emily Buss, *Escaping the American Blot? A Comparative Look at Federalism in Australia and the United States Through the Lens of Family Law*, 48 *CORNELL INT’L L.J.* 105 (2015) (comparing how the Australian and American approaches to federalism have impacted divorce and same-sex marriage issues).

Naomi R. Cahn, *Family Law, Federalism, and the Federal Courts*, 79 *IOWA L. REV.* 1073 (1994) (arguing that the unwillingness to

allow family law cases to be adjudicated in federal courts under diversity jurisdiction reflects bias against women and families).

June Carbone, *Marriage as a State of Mind: Federalism, Contract, and the Expressive Interest in Family Law*, 2011 MICH. ST. L. REV. 49 (examining the concept of e-marriage and how it could serve the interests of same-sex couples while enabling state and local governments to maintain control over their public expression of values concerning families and marriage).

Kristin A. Collins, *Federalism's Fallacy: The Early Tradition of Federal Family Law and the Invention of States' Rights*, 26 CARDOZO L. REV. 1761 (2005) (challenging the standard assumption that there is a longstanding tradition against federal involvement in family law, exploring the federal government's role in regulating family matters in the era before the Civil War, and questioning whether state sovereignty over domestic relations is vital for American federalism).

Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787 (1995) (defending state sovereignty over family law and warning that national control over family law poses a threat of governmental tyranny imposing a uniform view of good family life).

Ann Laquer Estin, *Family Law Federalism: Divorce and the Constitution*, 16 WM. & MARY BILL RTS. J. 381 (2007) (examining how the Supreme Court transformed the intersection between federalism and divorce law in the 1940s and 1950s and gave individuals the ability to choose which state's laws would govern their marital status).

Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J.L. & PUB. POL'Y 267 (2009) (discussing several varieties of federalism in family law and suggesting factors that Congress should consider before enacting legislation affecting family law matters).

Jill Elaine Hasday, *Federalism and the Family Reconstructed*, 45 UCLA L. REV. 1297 (1998) (finding that the historical record does not support claims that family law should be made exclusively at the state and local level without federal involvement).

Courtney G. Joslin, *Federalism and Family Status*, 90 IND. L.J. 787 (2015) (showing that federal law often defines family status, rather than merely deferring to state family law, and considering the circumstances in which family law should be national rather than local).

Sylvia Law, *Families and Federalism*, 4 WASH. U. J.L. & PUB. POL'Y 175 (2000) (examining the role of federal authority in family law and considering when family law issues should be resolved at the federal level).

Dana E. Prescott, *The Supreme Court in United States v. Windsor: Why the "Death" of Fungible Federalism After a Century of Convenience?*, 26 J. AM. ACAD. MATRIM. LAW. 51 (2013) (arguing that the Supreme Court has embraced fungible federalism, which limits federalism to economic or property interests and does not extend it to personal liberties).

Melissa Rothstein, *The Defense of Marriage Act and Federalism: A States' Rights Argument in Defense of Same-Sex Marriages*, 31 FAM. L.Q. 571 (1997) (asserting that federal laws purporting to defend the traditional definition of marriage violated constitutional principles of federalism).

Full Faith & Credit

Lisa S. Chen, Comment, *Second-Parent Adoptions: Are They Entitled to Full Faith and Credit?*, 46 SANTA CLARA L. REV. 171 (2005) (analyzing an Oklahoma statute that denies recognition for adoptions issued by other states to same-sex couples, reviewing the history of the Full Faith and Credit Clause and how it has been applied by courts, and arguing that the Oklahoma statute is unconstitutional).

Barbara J. Cox, *Adoptions by Lesbian and Gay Parents Must Be Recognized by Sister States Under the Full Faith and Credit Clause Despite Anti-Marriage Statutes that Discriminate Against Same-Sex Couples*, 31 CAP. U. L. REV. 751 (2003) (discussing interstate recognition of marriages and adoptions).

Anna Maria D'Ginto, Comment, *The Birth Certificate Solution: Ensuring the Interstate Recognition of Same-Sex Parentage*, 167 U. PA. L. REV. 975 (2019) (arguing that the parentage of same-sex couples reflected on a child's birth certificate should be

treated as a record entitled to interstate recognition under the Full Faith and Credit Clause).

Joseph A. Fraioli, Note, *Having Faith in Full Faith & Credit: Finstuen, Adar, and the Quest for Interstate Same-Sex Parental Recognition*, 98 IOWA L. REV. 365 (2012) (arguing that full faith and credit should be given to adoption decrees even in states that do not recognize the validity of the adopting parents' marriage).

Catherine F. Klein, *Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994*, 29 FAM. L.Q. 253 (1995) (explaining how federal legislation requires states to recognize and enforce domestic violence protection orders from other states, discussing existing state procedures for interstate enforcement of these orders, and proposing a model approach to enforcement).

Homeschooling

– ARGUMENTS FOR ALLOWING STATES TO REGULATE AND RESTRICT HOMESCHOOLING

Elizabeth Bartholet, *Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection*, 62 ARIZ. L. REV. 1 (2020) (describing how homeschooling activists have succeeded in lobbying for deregulation of homeschooling, discussing how homeschooling can have negative effects such as isolating children from exposure to views not embraced by their parents, and recommending that there should be a presumptive ban on homeschooling that can be overcome only if parents satisfy the burden of showing that they will provide an adequate education and do not present a risk of abuse or neglect).

Mary Anne Case, *Feminist Fundamentalism on the Frontier Between Government and Family Responsibility for Children*, 11 J.L. & FAM. STUD. 333 (2009) (arguing that gender equality is a fundamental constitutional commitment and therefore governments must ensure equal opportunities for boys and girls in private schools and home schooling).

Robert C. Cloud, *Balancing Parental Rights and State Interests in Home Schooling*, 235 WEST'S EDUC. L. REP. 697 (2008) (reviewing how courts attempt to balance parental interests and state interests in the education of children).

Haley J. Conard, Note, *The Constitutionality of Teacher Certification Requirements for Home-Schooling Parents: Why the Original Rachel L. Decision Was Valid*, 2 DREXEL L. REV. 206 (2009) (asserting that state laws requiring homeschooling parents to be certified teachers are a legitimate regulation of education, arguing that these laws should be upheld under rational basis scrutiny, and concluding that these laws should be upheld against religious freedom challenges absent rare circumstances in which homeschooling is central to a family's mode of life).

Martha Albertson Fineman & George Shepherd, *Homeschooling: Choosing Parental Rights over Children's Interests*, 46 U. BALT. L. REV. 57 (2016) (applying vulnerability theory to homeschooling and concluding that homeschooling should be prohibited because it undermines the role of education in a democratic society and poses risks of harm to children).

Lawson B. Hamilton, *Parent, Child, and State: Regulation in a New Era of Homeschooling*, 51 J.L. & EDUC. 45 (2022) (suggesting that courts should balance parental rights and state rights by establishing a presumption that homeschooling is legitimate and parents are complying with state educational laws, but also increasing the accountability of parents by having mandatory reporting requirements, punishing failure to educate as a form of child neglect, and letting children petition a court for permission to attend public school).

Vivian E. Hamilton, *Home, Schooling, and State: Education in, and for, a Diverse Democracy*, 98 N.C. L. REV. 1347 (2020) (reviewing the trend toward deregulation of homeschooling, asserting that homeschooling should be regulated more strictly, and proposing a regulatory compromise that would protect parents' rights while also protecting the states' interests in ensuring that children become citizens capable of engaging effectively in democratic governance in a diverse society).

Stefan McDaniel, Note, *Child's Play: A Simple Constitutional Route to Regulation of Home Schools*, 9 N.Y.U. J.L. & LIBERTY 580 (2015) (recommending that proponents of stricter regulation of homeschooling should avoid arguments based on the notion that states have an obligation to override parental decisions in some circumstances, and instead focus on arguments about how

states have compelling interests in gathering information about homeschooling, ensuring that all children attain an adequate level of education so they can read and understand American history and politics, and ensuring that all children develop the basic civic skills needed to interact with others in a diverse society).

Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S.C. L. REV. 75 (2002) (discussing the benefits and risks of homeschooling and proposing that states should require registration of homeschooled students, periodic testing on math and reading, and the establishment of independent agencies, unaffiliated with schools or school districts, to regulate homeschooling compliance).

Courtenay E. Moran, Note, *How to Regulate Homeschooling: Why History Supports the Theory of Parental Choice*, 2011 U. ILL. L. REV. 1061 (contending that state regulation of homeschooling should be limited to the objective of assessing the adequacy of the child's education, but that states should not be able to infringe on parent's interests by asserting control over the nature or methodology of the education).

Sonia M. Muscatine, *Homeschooling and the Right to Education: Are States Fulfilling Their Constitutional Obligations to Homeschooled Students?*, 49 J.L. & EDUC. 67 (2020) (reviewing the extent to which education is a right protected under federal and state law, assessing data on the impact of homeschooling, and arguing that states have an obligation to ensure that homeschool students are adequately educated but can achieve that objective without excessive regulation that might infringe parents' rights or stifle otherwise beneficial educational approaches).

Rebecca M. Stahl, *Religious Issues in Child Welfare Cases*, FAM. ADVOC., Fall 2019, at 11 (addressing issues arising at the intersection of the constitutional right to religion and the constitutional right to parent, including situations in which parents choose homeschooling for religious reasons but the government contends that homeschooling is used as an opportunity to hide children and abuse them).

Timothy Brandon Waddell, Note, *Bringing It All Back Home: Establishing a Coherent Constitutional Framework for the Re-*

Regulation of Homeschooling, 63 VAND. L. REV. 541 (2010) (proposing that states can protect parents' substantive due process rights and religious rights, while also safeguarding the interests of children and the public, by holding that parents have a right to homeschool and decide what subjects to teach but the state can impose requirements and obligations that do not infringe on those core decisions of parents).

Robin West, *A Tale of Two Rights*, 94 BOSTON U. L. REV. 893 (2014) (discussing homeschooling as an example of a newly emerging conception of constitutional rights which involve the freedom to opt out of a significant public or civic project such as education).

– ARGUMENTS FOR CONSTITUTIONAL PROTECTION OF HOMESCHOOLING

Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75 (2021) (developing a new model of parental rights, which emphasizes children's independent interests and agency and does not assume that parent's interests match those of children), and applying this new model to issues including homeschooling).

Michael P. Donnelly, *Homeschooling Response: Questioning Presumptions of the Primordial State*, 50 J.L. & EDUC. 66 (2021) (discussing how distaste for religious parents can affect analysis of homeschooling issues and arguing that legislatures do not violate any constitutional norms if they choose not to restrict or regulate homeschooling).

Jennifer Karinen, Note, *Finding a Free Speech Right to Homeschool: An Emersonian Approach*, 105 GEO. L.J. 191 (2016) (arguing that a constitutional right to homeschooling should be based on freedom of speech rather than substantive due process, contending that this position draws strong support from Thomas Emerson's influential writing on freedom of speech, and asserting that this approach will reduce the unfairness in privileging homeschooling done for religious purposes over homeschooling done for secular purposes).

Christina Sim Keddie, Note, *Homeschoolers and Public School Facilities: Proposals for Providing Fairer Access*, 10 N.Y.U. J.

LEGIS. & PUB. POL'Y 603 (2006-2007) (considering whether homeschooling families have a constitutional right to participate in public school programs and access public school facilities, reviewing arguments for such a right that have been rejected by courts, and suggesting new constitutional arguments that might be more successful).

Ronald Kreager Jr., Note & Comments, *Homeschooling: The Future of Education's Most Basic Institution*, 42 U. TOL. L. REV. 227 (2010) (describing threats to homeschooling, including increases in regulation and potential bans based on the United Nations' Convention on the Rights of the Child, and urging parents and activists to fight for parents' rights to control the education of their children through homeschooling).

Jon S. Lerner, Comment, *Protecting Home Schooling Through the Casey Undue Burden Standard*, 62 U. CHI. L. REV. 363 (1995) (arguing that the undue burden standard from abortion rights cases should be applied to determine the constitutionality of homeschooling regulations).

Steven J. Macias, *The Huck Finn Syndrome in History and Theory: The Origins of Family Privacy*, 12 J.L. & FAM. STUD. 87 (2010) (providing a detailed analysis of the historical and theoretical origins of the constitutional interests in family privacy and parents' rights to make decisions about the education of their children).

Louis P. Nappen, *The Privacy Advantages of Homeschooling*, 9 CHAPMAN L. REV. 73 (2005) (asserting that privacy is an overlooked benefit of homeschooling, because the collection and use of information about public school students and their families has expanded dramatically).

Chad Olsen, *Constitutionality of Home Education: How the Supreme Court and American History Endorse Parental Choice*, 2009 BYU EDUC. & L.J. 399 (arguing that Supreme Court precedent establishes a fundamental right for parents to direct the education of their children, home education has an important place in history and tradition, and home education and public education should be able to peacefully co-exist as educational options).

Billy Gage Raley, *Safe at Home: Establishing a Fundamental Right to Homeschooling*, 2017 B.Y.U. EDUC. & L.J. 59 (arguing that homeschooling should be recognized as a right under substantive due process because it is a right deeply rooted in American history and tradition and it is a fundamental aspect of the right of parents to direct the education of their children).

David M. Wagner, *Homeschooling as a Constitutional Right: A Close Look at Meyer and Pierce and the Lochner-Based Assumptions They Made About State Regulatory Power*, 39 OKLA. CITY U. L. REV. 385 (2014) (analyzing whether there is a constitutional right to homeschooling and finding that the Supreme Court's precedents support the view that homeschooling should receive substantive due process protection).

S. Ernie Walton, *The Fundamental Right to Homeschool: A Historical Response to Professor Bartholet*, 25 TEX. REV. L. & POL. 377 (2021) (arguing that the fundamental right of parents to homeschool their children deserves strict judicial scrutiny because it is deeply rooted in American history and tradition).

Linda Wang, Note, *Who Knows Best? The Appropriate Level of Judicial Scrutiny on Compulsory Education Laws Regarding Home Schooling*, 25 J. CIV. RTS. & ECON. DEV. 413 (2011) (contending that intermediate scrutiny generally should apply to homeschooling regulations that infringe on parental liberty interests, while strict scrutiny should apply to hybrid claims that also involve free exercise of religion).

Daniel E. Witte, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. REV. 183 (arguing that the Ninth Amendment protects a fundamental right of parents to direct the upbringing of their children and infringements on that right should receive strict scrutiny).

– CHILD ABUSE INVESTIGATIONS

Summer A. Duke, Comment, *Standard Bearers of the Fourth Amendment: The Curious Involvement of Home School Advocates in Constitutional Challenges to Child Abuse Investigations*, 73 UMKC L. REV. 137 (2004) (discussing constitutional issues raised by investigations of suspected child abuse by homeschool-

ing families, including potential claims about viewpoint discrimination, family privacy, equal protection, and unreasonable searches and seizures).

– DATA-BASED ASSESSMENT OF HOMESCHOOLING

Tanya K. Dumas et al., *Evidence for Homeschooling: Constitutional Analysis in Light of Social Science Research*, 16 WIDENER L. REV. 63 (2010) (arguing that homeschooling is subject to reasonable regulations, data about homeschooling should be used to assess whether homeschooling regulations actually serve government interests, and evidence does not support laws that require homeschooling parents to have teacher credentials).

Mary Rice Hasson, *The Changing Conversation Around Homeschooling: An Argument for More Data and Less Ideology*, 7 U. ST. THOMAS J.L. & PUB. POL'Y 1 (2012) (discussing how conflicts over homeschooling reflect different ideological values and worldviews, rather than different beliefs about educational pedagogy, and calling for more of an emphasis on empirical measures when evaluating the merits of homeschooling).

Bruce D. Page, Jr., Comment, *Changing Our Perspective: How Presumptive Invalidity of Home School Regulations Will Further the State's Interest in an Educated Citizenry*, 14 REGENT U. L. REV. 181 (2001-2002) (arguing that empirical data on homeschooled students performance in academic and social settings justifies the creation of a legal presumption that regulations of homeschooling are invalid).

George Shepherd, *Homeschooling's Harms: Lessons from Economics*, 49 AKRON L. REV. 339 (2016) (using economic theory and empirical evidence to argue that homeschooling harms children, public schools, the marketplace of ideas, and democracy).

– DISABILITIES

Lisa R. Knickerbocker, Note, *The Education of All Children with Disabilities: Integrating Home-Schooled Children into the Individuals with Disabilities Education Act*, 62 OHIO ST. L.J. 1515 (2001) (proposing that Congress should include homeschooled children within the federal disabilities education scheme so that parents of children with disabilities can exercise their right to determine their children's means of education).

Samuel Ashby Lambert, Note, *Finding the Way Back Home: Funding for Home School Children Under the Individuals with Disabilities Education Act*, 101 COLUM. L. REV. 1709 (2001) (arguing that homeschooling should be treated like private schools for purposes of funding education for children with disabilities).

– GENDER & RACE

Dick M. Carpenter II, *Mom Likes You Best: Do Homeschool Parents Discriminate Against Their Daughters?*, 70 U. ST. THOMAS J.L. & PUB. POL'Y 24 (2012) (responding to claims about discrimination against daughters in religious homeschooling, analyzing data from a national longitudinal study of students, finding there are no significant differences in educational indicators for homeschooled students based on gender, and finding some significant gender-based differences in perceptions of student performance in math).

Consuelo Valenzuela Lickstein, Note, *Race and Education at a Crossroads: How Parents Involved in Community Schools v. Seattle School District No. 1 and Wisconsin v. Yoder Shed Light on the Potential Conflict Between the Black Homeschooling Movement and K-12 Affirmative Action Programs*, 13 J. GENDER RACE & JUST. 835 (2010) (predicting that the Supreme Court would allow a school district to prohibit homeschooling if that was necessary to prevent students of color from withdrawing from the schools and making it impossible to have adequate diversity in the schools).

Najarian R. Peters, *The Right to Be and Become: Black Home-Educators as Child Privacy Protectors*, 25 MICH. J. RACE & L. 21 (2019) (discussing how an increasing number of Black parents are educating their children at home based on privacy interests in being and becoming oneself without being exposed to the harm of racial discrimination in the educational system).

Madalyn Doucet Vicry, Note, *That Kind of Girl: Effects of Homeschooling on the Sexual Health of Women and Girls*, 18 GEO. J. GENDER & L. 103 (2017) (contending that the sexual health of homeschooled women and girls can be jeopardized by the home school movement's focus on censorship, purity, and patriarchy and the lack of exposure to competing ideas about sex and relationships).

Kimberly A. Yuracko, *Education off the Grid: Constitutional Constraints on Homeschooling*, 96 CALIF. L. REV. 123 (2008) (arguing that state constitution clauses about education require states to regulate homeschooling in ways that guarantee children receive a basic minimum level of education, while the federal Constitution's Equal Protection Clause imposes limits on the extent to which states can permit homeschooling parents to engage in sex discrimination by providing far more extensive education for boys than for girls).

– INTERNATIONAL PERSPECTIVES

Michael P. Donnelly, *A Global Perspective on Freedom of Education Through the Eyes of the Homeschool Movement*, 7 U. ST. THOMAS J.L. & PUB. POL'Y 51 (2012) (examining the increasing amount of controversy surrounding homeschooling in countries including Germany, Brazil, Sweden, Canada, the United Kingdom, South Africa, and the United States).

Maxim Doroshenko, Note, *You Can't Spell Persecution Without Prosecution: Analyzing Romeike v. Holder to Determine if Laws of "General Applicability" May Ever Rise to the Level of Persecution*, 28 GEO. IMMIGR. L.J. 681 (2014) (arguing that Germany's ban on homeschooling should be considered a form of persecution under American immigration law because it violates international and fundamental human rights).

Luke Julian, Comment, *Parents Versus Parens Patriae: The Troubling Legality of Germany's Homeschool Ban and a Textual Basis for Its Removal*, 36 EMORY INT'L L. REV. 201 (2022) (discussing the European Court of Human Rights refusal to recognize homeschooling rights, asserting that this refusal contradicts the European Convention on Human Rights, and advancing textual and policy arguments for eliminating Germany's ban on homeschooling).

Benjamin G. Kemble, *My Parents, My Sensei: Compulsory Education and a Homeschooling Alternative in Japan*, 40 TEX. INT'L L.J. 335 (2005) (examining the history of homeschooling in Japan and whether a right to homeschooling now exists there).

Alicia Kreh, Note, *Where Do We Belong?: A Call for Consistency in Homeschooling Regulation*, 36 U. LA VERNE L. REV. 237

(2015) (comparing the regulation of homeschooling in Germany, Australia, Denmark, and the United States and arguing that states should regulate homeschooling by requiring an application process, approval of curricula, and testing of homeschooled children).

Katherine Lindsay, *The Law of Home Schooling in Australia*, 2003 B.Y.U. EDUC. & L.J. 83 (discussing how Australia balances parents' interests with children's human rights to an appropriate education).

Aaron T. Martin, Note, *Homeschooling in Germany and the United States*, 27 ARIZ. J. INT'L & COMP. L. 225 (discussing recent controversies over homeschooling in Germany, comparing Germany's approach to that of the United States, and arguing that undue restrictions on homeschooling infringe parental rights and undermine the goals of a liberal democracy).

Miki Kawashima Matrician, Note, *German Homeschoolers as "Particular Social Group": Evaluation Under the Current U.S. Asylum Jurisprudence*, 34 B.C. INT'L & COMP. L. REV. 439 (2011) (discussing whether a German family prevented from homeschooling their children could qualify for asylum in the United States by claiming to be part of a particular social group facing persecution).

Nathaniel L. Miller, Note, *Keeping Home in Homeschooling: Examining Illinois's Loose Homeschooling Laws in Light of Heavier International and Domestic Regulation*, 27 REGENT U. L. REV. 409 (2014-2015) (comparing the legal treatment of homeschool in the United States and other countries, with a focus on the relatively loose regulation of homeschooling in Illinois, and arguing that regulation of homeschooling should not be increased).

Jonathan Tavares, Note, *Why Homeschooling Shouldn't Be Banned: The Resurgence of Home Education in the 21st Century*, 56 NEW ENG. L. REV. F. 11 (2022) (arguing that parents have a fundamental right to direct the education of their children and comparing how other countries have approached the issue of homeschooling).

Erin Welch, Casenote, *Disguised Persecution in Germany: The Romeike Asylum Case*, 83 U. CIN. L. REV. 1029 (2015) (discussing a Sixth Circuit decision rejecting asylum claims by a Christian homeschooling family who claimed they were subject to persecution in Germany for violating laws requiring children to attend school).

– JUDICIAL BYPASS MECHANISMS FOR CHILDREN OBJECTING TO HOMESCHOOLING

Carmen Green, Note, *Educational Empowerment: A Child's Right to Attend Public School*, 103 GEO. L.J. 1089 (2015) (describing how the federal constitutional right of parents to direct the education of their children can clash with the state constitutional right of children to receive an adequate education, when parents want to do homeschooling but a child objects to that, and proposing that states should create a judicial bypass mechanism enabling a court to decide that it is in a child's best interests to attend public school).

Desiree Walden, *The Homeschooled Child's Right to Attend Public School: Is Judicial Bypass a Solution?*, 49 URB. LAW. 175 (2017) (examining the lack of oversight of homeschooling in Missouri, describing the conflict between parental rights and public policy interests in education, and proposing the establishment of a judicial bypass mechanism, like that used for decisionmaking about abortion, for situations where a child objects to being homeschooled).

Military

– MILITARY FAMILIES

Michael D. Carsten, *An Education in Home Schooling*, 177 MIL. L. REV. 162 (2003) (reviewing the homeschooling requirements of states with significant military populations and the development of homeschooling done overseas by military families).

Jeffrey P. Sexton, *Home Schooling Away from Home: Improving Military Policy Toward Home Education*, 182 MIL. L. REV. 50 (2004) (arguing that the U.S. military's policies on homeschooling should be revised to better protect the rights of military parents, clarify the role of the military's family advocacy programs with respect to child neglect and homeschooling issues, and im-

prove the relationship between the military and state or local child protection agencies).

Parental

– PARENTAL DISAGREEMENT ABOUT HOMESCHOOLING

Anthony Brone Kolenc, *Homeschooling and the Perils of Shared Parental Responsibility*, FLA. B. J., Nov. 2016, at 44 (providing advice for attorneys handling situations where the continuation of home education is threatened by the separation or divorce of parents).

Antony Barone Kolenc, *When “I Do” Becomes “You Won’t”—Preserving the Right to Home School After Divorce*, 9 AVE MARIA L. REV. 263 (2011) (discussing parental liberty and free exercise of religion claims arising in situations where divorcing parents disagree about homeschooling, reviewing factors that courts consider in making determinations about the child’s best interests, and discussing strategies for lawyers trying to convince courts to treat homeschooling as a valid educational option).

J. Bart McMahon, Note, *An Examination of the Non-Custodial Parent’s Right to Influence and Direct the Child’s Education: What Happens When the Custodial Parent Wants to Home Educate the Child*, 33 U. LOUISVILLE J. FAM. L. 723 (1995) (surveying the standards that courts use in ruling on disputes between parents about homeschooling and arguing that courts should allow homeschooling if the child will receive an education comparable to that provided by public schools).

Allan G. Osborne, Jr. & Charles J. Russo, *Educational Decision-Making in K-12 Schools When Divorced Parents Disagree: What Is in the Best Interests of the Child?*, WEST’S EDUC. L. REP., Dec. 22, 2011, at 1 (recommending policies that schools should establish for dealing with situations where parents disagree about whether their child should be homeschooled).

Catherine J. Ross, *Fundamental Challenges to Core Democratic Values: Exit and Homeschooling*, 18 WM. & MARY BILL RTS. J. 991 (2010) (arguing that homeschooling creates a risk that children are not exposed to significant constitutional values such as tolerance that are necessary for life in a pluralistic democracy, asserting that homeschooling should be regulated more closely,

and proposing that there should be a presumption against homeschooling in situations where parents have separated or divorced and do not agree about whether the children should be homeschooled).

Jasmine D. Smith, *Clear Agreements as the Best Prevention*, S.C. LAW., July 2022, at 40 (advising attorneys about the importance of being clear and precise in drafting separation agreements and anticipating future issues such as whether a child will be homeschooled).

Participation

– PARTICIPATION IN SPORTS, CLASSES, AND OTHER PUBLIC SCHOOL ACTIVITIES

Michael Atkinson, *Let Them Play: Why Kentucky Should Enact a “Tebow Bill” Allowing Homeschoolers to Participate in Public School Sports*, 43 J.L. & EDUC. 433 (2014) (recommending the passage of state legislation giving homeschooled students the right to participate in public school athletic activities).

Paul J. Batista, *Learn at Home, Play at School: A State-by-State Examination of Legislation, Litigation and Athletic Association Rules Governing Public School Athletic Participation by Homeschool Students*, 15 J. LEGAL ASPECTS SPORT 213 (2005) (reviewing the extent to which states allow or prohibit homeschooled students’ participation in extracurricular activities at public schools).

Kathryn Gardner, *Legal Precedents and Strategies Shaping Home Schooled Students’ Participation in Public School Sports*, 11 J. LEGAL ASPECTS SPORT 25 (2001) (discussing litigation over homeschooled students’ participation in public schools’ extracurricular activities and arguing that this litigation is stressful and wasteful for families and school administrators).

William Grob, Note, *Access Denied: Prohibiting Homeschooled Students from Participating in Public-School Athletics and Activities*, 16 GA. ST. U. L. REV. 823 (2000) (analyzing whether homeschooled students have a constitutional or statutory right, at the federal or state level, to participate in athletics and other extracurricular activities offered at public schools).

Lisa M. Lukasik, Comment, *The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools*, 74 N.C. L. REV. 1913 (1996) (assessing the rights and interests at stake in situations where parents seek to have homeschooled children attend a public school part-time in order to take a course that the parents are not equipped to teach at home).

John T. Plecnik, *Equal Access to Public Education: An Examination of the State Constitutional & Statutory Rights of Nonpublic Students to Participate in Public School Programs on a Part-Time Basis in North Carolina & Across the Nation*, 13 TEX. J. C.L. & C.R. 1 (2007) (arguing that private school and homeschool students in North Carolina have a state constitutional and statutory right to participate in public school programs).

Joshua Roberts, *Dispelling the Rational Basis for Homeschooler Exclusion from High School Interscholastic Athletics*, 38 J.L. & EDUC. 195 (2009) (arguing that homeschooled students have a constitutional right to participate in high school sports because there is no financial, administrative, or other reason that would be a legitimate rational basis for excluding them).

Charles J. Russo & Allan G. Osborne, Jr., *Sports Participation and Home Schooling: A Game Changer?*, WEST'S EDUC. L. REP., Mar. 27, 2014, at 8 (discussing the merits of lawsuits brought by parents seeking to compel school districts and interscholastic athletic associations to allow homeschooled children to participate in sports).

– RELIGION

Laura J. Bach, Note, *For God or Grades? States Imposing Fewer Requirements on Religious Home Schoolers and the Religion Clauses of the First Amendment*, 38 VAL. U. L. REV. 1337 (2004) (describing how state laws on homeschooling may violate the Establishment Clause because they are not neutral toward religion and proposing a model statute that would avoid these First Amendment problems).

Michael E. Chaplin, Comment, *Peterson v. Minidoka County School: Home Education, Free Exercise, and Parental Rights*, 75 NOTRE DAME L. REV. 663 (1999) (discussing a Ninth Circuit ruling in favor of free exercise of religion claims brought by a public

elementary school principal who was reassigned to a teaching position after indicating that he planned to homeschool his children).

Donald D. Dorman, Note, *Michigan's Teacher Certification Requirement as Applied to Religiously Motivated Home Schools*, 23 U. MICH. J.L. REFORM 733 (1990) (contending that Michigan laws requiring homeschooling parents to meet teacher certification requirements are unconstitutional as applied to parents with sincere religious reasons for homeschooling their children).

James G. Dwyer, *Religious Schooling and Homeschooling Before and After Hobby Lobby*, 2016 U. ILL. L. REV. 1393 (arguing that while parents have interests in deregulating religious schools or home schools, children have interests in being protected against educational deprivation and states should not empower parents or private school operators to infringe on the religious liberty of children).

Louis A. Greenfield, Note, *Religious Home-Schools: That's Not a Monkey on Your Back, It's a Compelling State Interest*, 9 RUTGERS J.L. & RELIGION 4 (2007) (proposing that states create monitoring programs for homeschooling, including religious-based homeschooling, which would require children to pass annual standardized achievement tests, require homeschooling teachers to be certified and tested like substitute teachers, and require families to submit portfolios of work done by homeschooled students).

Robert Kunzman, *Homeschooling and Religious Fundamentalism*, 3 INT'L ELEC. J. ELEM. EDUC. 17 (2010) (examining how homeschooling provides a setting that supports fundamentalist religious principles such as resistance to contemporary culture, skepticism of institutions and expertise, and parental control of the family).

– STATE SPECIFIC ANALYSIS

Paul A. Alarcón, Comment, *Recognizing and Regulating Home Schooling in California: Balancing Parental and State Interests in Education*, 13 CHAP. L. REV. 391 (2010) (proposing that California amend its compulsory school attendance statute to create a clear exemption for homeschooling).

Noah Aleshire, *Defining the New “Species”: Recommendations for California Homeschool Legislation After Jonathan L. v. Superior Court*, 246 EDUC. LAW REP. 607 (2009) (analyzing California court decisions about whether there is a constitutional or statutory right to homeschooling and proposing a model statute that would impose requirements for homeschool teachers, create a means of assessing the learning of home schooled students, and prevent homeschooling in abusive circumstances).

Jessica Archer, *Leandro’s Limit: Do North Carolina’s Homeschoolers Have a Right to a Sound Basic Education Protected by the State?*, 36 CAMPBELL L. REV. 253 (2014) (contending that North Carolina’s homeschooling laws have failed to ensure that homeschooled children receive the sound basic education guaranteed by the state’s constitution).

Tyler Barnett, Comment, *Pulling Back the Curtains: Undetected Child Abuse and the Need for Increased Regulation of Home Schools in Missouri*, 2013 B.Y.U. EDUC. & L.J. 341 (urging Missouri legislators not to cut back on regulation of homeschooling and instead pass laws that will further protect children from abusive situations while respecting the Due Process and Free Exercise Clause rights of parents).

David B. Dibble, *Parental Rights Movement on Utah’s Capitol Hill Should Not Make Gains at the Expense of the State’s Children*, 2005 B.Y.U. EDUC. & L.J. 1 (urging Utah legislators not to overreact in response to pressure from homeschooling advocates and other parental rights activists).

Gerald B. Lotzer, Comment, *Texas Homeschooling: An Unresolved Conflict Between Parents and Educators*, 39 BAYLOR L. REV. 469 (1987) (examining the debate over homeschooling and parents’ rights and discussing possible legislative changes that would clarify the regulatory approach to homeschooling in Texas).

Nicholas Maddox, Comment, *Some Children Left Behind: The Need for State Regulation in Texas Home Education*, 55 S. TEX. L. REV. 409 (2013) (arguing that the Texas constitution provides a right to education that is being violated by the Texas Education Agency’s inadequate regulation of homeschooling).

Chaz Morgan, *Topsy-Turvy: The Taylor Opportunity Program for Students' Homeschool Discrimination Contradiction*, 82 LA. L. REV. 1319 (2022) (arguing that Louisiana unconstitutionally discriminates against homeschooled students by subjecting them to tougher eligibility requirements for publicly funded state scholarships).

Elizabeth Richardson, *Homeschooling Laws (or Lack Thereof) in New Jersey—Are Children Slipping Through the Cracks?*, 42 J.L. & EDUC. 173 (2013) (explaining that New Jersey's homeschool requirements are among the weakest in the United States, arguing that stricter regulations would ensure that homeschooled children receive adequate education, and asserting that this would not violate parents' constitutional rights).

Stephanie M. Tabone, Note, *Home-Schooling in Pennsylvania: A Prayer for Parental Autonomy in Education*, 21 ST. JOHN'S J. LEGAL COMMENT. 371 (2006) (analyzing litigation about the application of Pennsylvania's Religious Freedom Act to homeschooling).

Raymond J. Tittmann, *Homeschooling Battle in California*, 9 ENGAGE: J. FEDERALIST SOC'Y PRAC. GROUPS 145 (2008) (criticizing a California court's decision that homeschooling is not a constitutionally protected right).

Marriage Equality's Impact on Family Law

– ADULT ADOPTIONS

Robert Keefe, Note, *Sweet Child O'Mine: Adult Adoption & Same-Sex Marriage in the Post-Obergefell Era*, 69 FLA. L. REV. 1477 (2017) (proposing the enactment of "conversion statutes" that would enable same-sex couples to dissolve adult adoptions that were done as a way to create legal relationships and ensure inheritance and property rights in the era before same-sex marriages were permitted).

Sarah A. Quarles, Note, *Vacating Adopt Adoptions Post-Obergefell*, 106 KY. L.J. 837 (2017-2018) (describing how some same-sex couples used adult adoptions to establish legally recognized relationships in the era before same-sex marriage was permitted, discussing the problems they now face if unable to marry because they have a parent/child relationship through adoption,

and urging states to allow these adult adoptions to be vacated in order to avoid infringing the couples' right to marry).

– CHILDREN AND PARENTAGE

June Carbone & Naomi Cahn, *Marriage and the Marital Presumption Post-Obergefell*, 84 UMKC L. REV. 663 (2016) (assessing how the marital presumption will be applied to same-sex couples and arguing that it should at least establish a presumption that both spouses will have joint responsibility for any child born in the marriage).

Thomas B. James, *Assisted Reproduction: Reforming State Statutes After Obergefell v. Hodges and Pavan v. Smith*, 19 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 261 (2019) (discussing how state laws concerning assisted reproduction need to be revised to comply with constitutional requirements after the Supreme Court's decisions on marriage equality).

Meg Nemeth Ledebuhr, *Parentage and the Modern Family*, FAM. ADVOC., Spring 2018, at 12 (considering whether the Supreme Court's recognition of same-sex marriage rights will have the limited effect of requiring states to allow same-sex marriages or lead to broader changes on topics like parentage, assisted reproductive technology, and gender neutrality in family law).

Charmaine Mech, Note, *Same-Sex Marriage and the Baby Carriage: A Post-Obergefell Analysis of ART Funding for Same-Sex Couples in the United States*, 45 GA. J. INT'L & COMP. L. 343 (2017) (examining the United Kingdom's experience, predicting that the right to same-sex marriage in the United States will bring about an expansion of same-sex couples' need for infertility treatments and assisted reproductive technology, and proposing that states should revise their statutes on insurance coverage to ensure the laws are clear and non-discriminatory).

Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185 (2016) (analyzing the role that marriage played in early litigation about LGBT parenting, as well as the impact that the establishment of marriage equality may have on issues concerning nonbiological parents and nonmarital families).

Raymond C. O'Brien, *Obergefell's Impact on Functional Families*, 66 CATH. U. L. REV. 363 (2016) (considering whether the

availability of same-sex marriage and the presumption of parentage that comes with marriage will reduce the importance of equitable remedies such as de facto parenthood, psychological parents, and co-parenting agreements).

Catherine Sakimura, *The Impact of Marriage Equality on LGBT Parents*, FAM. ADVOC., Spring 2016, at 24 (analyzing family law issues generated by the right to same-sex marriage, including issues about parentage, assisted reproduction, and adoption).

Laura Tracy, Comment, *Presumption Junction, What's That Function: Louisiana Marriage and Parenthood Laws Post-Obergefell*, 81 LA. L. REV. 1523 (2021) (proposing that Louisiana amend its laws relating to the establishment of paternal filiation to ensure equal treatment of same-sex and opposite-sex couples).

Eric I. Wrubel & Linda Genero Sklaren, *The "Parent" Paradox in a Post-Obergefell World*, FAM. ADVOC., Spring 2016, at 32 (arguing that issues about what constitutes a family and who can be a parent should be resolved in ways that reflect modern values, serve the best interests of children, and advance the intent of the Supreme Court's decision on marriage equality).

– DIVERSITY AND CULTURAL COMPETENCE

Elvia Rosales Arriola, *Queer, Undocumented, and Sitting in an Immigration Detention Center: A Post-Obergefell Reflection*, 84 UMKC L. REV. 617 (2016) (offering thoughts, based on personal experiences and narratives from undocumented gay migrants, about how the protection of constitutional interests in dignity and freedom will be difficult for some people because of their race, class, and citizenship status).

Takeia R. Johnson, *Cultural Competence to Represent LGBTQ Clients Post-Obergefell*, GPSOLO, Jan./Feb. 2017, at 44 (arguing that the recognition of same-sex marriage rights increases the need for training attorneys to be culturally competent in representing clients).

– DOMESTIC PARTNERSHIPS

Heidi L. Brady & Robin Fretwell Wilson, *The Precarious Status of Domestic Partnerships for the Elderly in a Post-Obergefell World*, 24 ELDER L.J. 49 (2016) (discussing how some states pro-

vided for the creation of domestic partnerships not only for the sake of same-sex couples who would not legally marry, but also for the benefit of elderly people in opposite-sex relationships who faced a risk of losing benefits such as alimony or Social Security spousal benefits if they remarried, and arguing that legislators should consider whether continuing to recognize domestic partnerships for opposite-sex couples merely creates opportunities for gamesmanship by wealthy individuals who have expert assistance navigating the legal complexities of using domestic partnerships to gain the benefits of a new marriage without fear of losing the benefits of a previous marriage).

Jessica R. Feinberg, *The Survival of Nonmarital Relationship Statutes in the Same-Sex Marriage Era: A Proposal*, 87 *TEMPLE L. REV.* 47 (2014) (arguing that the recognition of a right to same-sex marriage may leave unmarried couples without a way to have their nonmarital relationships legally recognized and proposing the creation of a nonmarital relationship status as an alternative to marriage).

– FAMILY LAW

David D. Meyer, *Family Law Equality at a Crossroads*, 2013 *MICH. ST. L. REV.* 1231 (reviewing the significant progress toward equality in family law in recent decades and predicting that future battles over equality will involve reconciling competing interests and carefully determining the specific facts of individual situations, rather than the establishment of sweeping new principles).

Douglas NeJaime, *The Family's Constitution*, 32 *CONST. COMMENT.* 413 (2017) (challenging conventional views about the relationship between family law and constitutional law, describing the interactive and dialogic relationship between the two areas, and exploring these issues in the context of LGBT family recognition).

Deborah H. Wald, *Practicing LGBT Family Law in a Post-Obergefell World*, *FAM. ADVOC.*, Spring 2016, at 19 (discussing practical issues facing family attorneys in the aftermath of the Supreme Court's decision establishing a constitutional right to same-sex marriage, including questions that can arise about

whether a couple had a common-law marriage before same-sex marriage became officially allowed in their state, situations where a couple was married but unable to obtain a dissolution of the marriage because courts in their home state would not recognize the existence of the marriage, and struggles over the application of the Full Faith and Credit Clause to adoptions by same-sex couples).

Lynn D. Wardle, *Reflections on Equality in Family Law*, 2013 MICH. ST. L. REV. 1385 (reflecting on the complex role of equality in family law, considering the impact the movement toward constitutional protection of marriage equality will have for family law, and arguing that equality is important but not enough to ensure that family law protects the well-being of families, adults, and children).

– FINANCIAL ISSUES

Kaitlin E.L. Gates, Comment, *Catching the Gold at the End of the Rainbow: The Impacts of Retroactive Recognition of Same-Sex Marriage on Community Property Division*, 9 EST. PLAN. & COMMUNITY PROP. L.J. 263 (2017) (considering how Texas law on community property should resolve issues involving same-sex marriage, such as when would the accumulation of community property be deemed to begin if a same-sex couple living in Texas was legally married in another state before same-sex marriage became legal in Texas, and when would the accumulation of community property be deemed to begin if a same-sex couple in Texas met the requirements for a valid common-law marriage prior to the time when same-sex marriages became legal in Texas).

Paula A. Monopoli, *Inheritance Law and the Marital Presumption After Obergefell*, 8 EST. PLAN. & COMMUNITY PROP. L.J. 437 (2016) (examining how a constitutional right to same-sex marriage will affect inheritance law, discussing the marital presumption doctrine which provides that a child born during a marriage is presumed to be the child of the husband, and arguing that a conclusive presumption of parentage should be extended to all non-birth, non-genetic spouses for purposes of inheritance law).

– MARRIAGE

Kerry Abrams, *The Rights of Marriage: Obergefell, Din, and the Future of Constitutional Family Law*, 103 CORNELL L. REV. 501 (2018) (arguing that the rights of unmarried couples will be expanded to some extent by the Supreme Court's decisions on same-sex marriage and considering whether courts will recognize a constitutional right to marital unification in the context of immigration).

Curtis Cook, Note, *Same-Sex Common Law Marriage: An Examination of the Constitutionality of State Processes in Determining a Valid Common Law Marriage Post Obergefell v. Hodges*, 55 CREIGHTON L. REV. 561 (2022) (examining the challenges that same-sex couples may have in satisfying the required elements for recognition of a common law marriage and proposing the adoption of a factor-based test to better protect same-sex couples' constitutional interests).

Courtney G. Joslin, *Discrimination in and out of Marriage*, 98 B.U. L. REV. 1 (2018) (examining the history of marital status advocacy and considering whether the Supreme Court's decisions in favor of same-sex marriage will derail efforts to eliminate legal privileges for marriage over nonmarriage).

Courtney G. Joslin, *Marriage Equality and Its Relationship to Family Law*, 129 HARV. L. REV. F. 197 (2016) (arguing that the constitutional principle of marriage equality might move family law closer to equalizing the treatment of marital and non-marital adult relationships).

Suzanne A. Kim, *Skeptical Marriage Equality*, 34 HARV. J.L. & GENDER 37 (2011) (examining how one might support same-sex marriage while having serious criticisms and doubts about the institution of marriage in general, and arguing that victories for marriage equality ultimately may help pave the way for a less hierarchical and more pluralistic approach to state recognition of family connections).

Melissa Murray, *Obergefell v. Hodges and Nonmarriage Inequality*, 104 CALIF. L. REV. 1207 (2016) (contending that the Supreme Court has prioritized marriage and demeaned nonmarriage).

Eric Novak, *More than Marriage: Supreme Court Clarifies Post-Obergefell Marital Benefits in Pavan v. Smith*, 27 TUL. J.L. & SEXUALITY 145 (2018) (analyzing a Supreme Court decision confirming that same-sex couples who marry are entitled to all the benefits that state law offers to opposite-sex married couples).

Michelle Piscopo, *FAQs Regarding Same-Sex Relationships*, FAM. ADVOC., Summer 2019, at 37 (answering questions about marriages, civil unions, and parentage raised by the Supreme Court's decision on same-sex marriage rights).

Richard A. Roane, *No More "Same-Sex Marriage," Marriage Is Marriage, Period*, FAM. ADVOC., Spring 2016, at 12 (listing many changes to federal and state laws likely to occur after the Supreme Court's decision on marriage equality, such as giving same-sex married couples the same tax treatment as opposite-sex married couples and allowing same-sex marriages to be dissolved through divorce, but also listing questions that may not have clear and definite answers, such as how the duration of marriages will be determined for relationships that predated the Supreme Court's decision but were not legally recognized until that decision).

Lee-ford Tritt, *The Stranger-to-the-Marriage Doctrine: Judicial Construction Issues Post-Obergefell*, 2019 WIS. L. REV. 373 (contending that the expanded meaning of marriage will raise issues about the meaning of terms like "spouse," "husband," and "wife" and that courts should interpret these words in ways that account for evolving understandings of marriage, just like the interpretation of terms like "children" and "descendants" evolved to account for the legalization and growing popularity of adoption).

Thomas J. Walsh, *Religion and Marriage*, FAM. ADVOC., Fall 2019, at 6 (noting how the debate over same-sex marriage brought new attention to the institution of marriage, examining the historical relationship between marriage and religious values, and arguing that states should establish basic principles about marriages that apply across different legal contexts).

Robin Fretwell Wilson, *"Getting the Government Out of Marriage" Post-Obergefell: The Ill-Considered Consequences of Transforming the State's Relationship to Marriage*, 2016 U. ILL. L.

REV. 1445 (critiquing proposals to avoid controversies over marriage by reducing or eliminating government involvement with marriage, arguing that these proposals would sacrifice vital benefits of legal recognition of marriages, and suggesting that disputes over marriage can be adequately resolved through reasonable accommodation of those with religious objections to same-sex marriage).

McLaurine H. Zentner, Comment, *Keeping “I Do” Between Two: A Post-Obergefell Analysis of Bigamous Marriage and Its Implications for Louisiana’s Matrimonial Regime*, 78 LA. L. REV. 335 (2017) (arguing that Louisiana’s laws prohibiting bigamous marriage violate the constitutional right to marry recognized in cases about same-sex marriage).

Right to Counsel

Laura K. Abel, *Keeping Families Together, Saving Money, and Other Motivations Behind New Civil Right to Counsel Laws*, 42 LOY. L.A. L. REV. 1087 (2009) (examining the motives of legislatures that have expanded the right to counsel in civil cases, including the desire to reduce government costs, address the flaws of child welfare bureaucracies, and provide a minimum level of fairness for litigants).

Sarah Dina Moore Alba, *Searching for the “Civil Gideon”*: *Procedural Due Process and the Juvenile Right to Counsel in Termination Proceedings*, 13 U. PA. J. CONST. L. 1079 (2011) (urging the Supreme Court to take the first step toward guaranteeing a right to counsel in civil cases by holding that juveniles have a right to counsel in proceedings about termination of parental rights).

Renee Brunett, Comment, *When Loss of Legal Custody Is Like an Indeterminate Prison Sentence: Ohio’s Elimination of Indigent Parents’ Right to Court Appointed Counsel in Civil Custody Suits*, 83 U. CIN. L. REV. 1423 (2015) (asserting that Ohio’s removal of an indigent parent’s statutory right to counsel in child custody actions threatens due process and fundamental fairness).

Jess H. Dickinson, *A Look at Civil Gideon: Is There a Constitutional Right to Counsel in Certain Civil Cases?*, 37 U. ARK. LIT-

TLE ROCK L. REV. 543 (2015) (arguing that equal access to justice requires recognition of a right to counsel in civil cases).

Susan M. Finegan & Laura W. Gal, *Using Appellate Advocacy to Expand a Civil Right to Counsel in Child Custody Cases*, 39 W. NEW ENG. L. REV. 309 (analyzing the development of the right to counsel in Massachusetts child custody cases).

Robert Hornstein, *The Right to Counsel in Civil Cases Revisited: The Proper Influence of Poverty and the Case for Reversing Lassiter v. Department of Social Services*, 59 CATH. U. L. REV. 1057 (2010) (drawing on the personal papers of Justice Lewis Powell and Justice Harry Blackmun to examine why the Supreme Court declined to extend the constitutional right to counsel to poor litigants in parental termination cases).

Deborah Perluss, *Civil Right to Counsel: In re Marriage of King and the Continuing Journey*, 9 SEATTLE J. FOR SOC. JUST. 13 (2010) (critiquing the Washington Supreme Court for deciding that an indigent parent does not have a right to counsel in civil proceedings affecting the parent-child relationship).

Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 MICH. ST. L. REV. 1359 (relating the story of three clinical law students who unsuccessfully sought to persuade New Jersey courts to establish a right to counsel at hearings for domestic violence final restraining orders).

Jonathan K. Stubbs, *The Ripple Effects of Gideon: Recognizing the Human Right to Legal Counsel in Civil Adversarial Proceedings*, 49 STETSON L. REV. 457 (2020) (arguing that procedural fairness and equal protection require recognition of a right to counsel for indigent individuals in civil cases).

Amie K. Wilcox, *Civil Right to Counsel for Indigent Parents in Contested Adoptions: An Argument for Due Process and Equal Protection When Parental Rights Are Terminated in Private Civil Actions*, ARK. LAW., Summer 2021, at 22 (arguing that Arkansas should establish a constitutional right to counsel for indigent persons whose parental rights are subject to termination in a private adoption).

Bruce J. Winick & Ginger Lerner-Wren, *Do Juveniles Facing Civil Commitment Have a Right to Counsel?: A Therapeutic Jurisprudence Brief*, 71 U. CIN. L. REV. 115 (2002) (reprinting an amicus brief arguing that children in Florida should have a right to a hearing and counsel when the state department of children and family services seeks to commit them to a mental hospital).

Unwed Parents

– ABORTION

Yvonne Lindgren, *Antiabortion Civil Remedies and Unwed Fatherhood as Genetic Entitlement*, 99 WASH. U. L. REV. 2015 (2022) (examining how laws creating civil remedies against abortion providers expand the legal rights of unwed fathers and reflect a shift away from the biology-plus approach and toward treating biology alone as the determinative factor for defining parentage).

Yvonne Lindgren, *The Father's Veto and Fatherhood as Property*, 101 N.C. L. REV. 81 (2022) (considering how civil remedy provisions in antiabortion legislation, which enable fathers to bring wrongful death claims against abortion providers, extend the power of fathers over their offspring and their pregnant sexual partners).

– NONMARITAL FAMILIES

June Carbone & Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55 (2016) (proposing a framework that would provide a coherent legal approach to nonmarriage and reconcile the differences in how state laws treat financial obligations versus custodial issues for unmarried partners).

Joanna L. Grossman, *Constitutional Parentage*, 32 CONST. COMMENT. 307 (2017) (reviewing the development of parental constitutional rights and considering how those rights should apply in situations involving nonmarital childbirth).

Susan Hazeldean, *Illegitimate Parents*, 55 U.C. DAVIS L. REV. 1583 (2022) (surveying the parentage laws of all fifty states and examining whether they allow both members of unmarried same-sex couples to establish secure legal parent-child relationships with their children without getting married).

Courtney G. Joslin, *The Gay Rights Canon and the Right to Non-marriage*, 97 B.U. L. REV. 425 (2017) (arguing that Supreme Court decisions about gay rights have endorsed the supremacy of marriage and marital families but a progressive re-reading of these decisions supports the extension of constitutional protection to people who are not married).

Courtney Joslin, *Marital Status Discrimination 2.0*, 95 B.U. L. REV. 805 (2015) (examining the need for stronger protection against discrimination based on marital status, including discrimination against those living in a nonmarital family).

Serena Mayeri, *Intersectionality and the Constitution of Family Status*, 32 CONST. COMMENT. 377 (2017) (assessing how the development of constitutional law concerning discrimination against nonmarital families did not adequately consider the role of race, class, gender, and regional inequalities).

Serena Mayeri, *Marital Supremacy and the Constitution of the Nonmarital Family*, 103 CALIF. L. REV. 1277 (2015) (examining the legal privilege provided to marriage, with a focus on court decisions about “illegitimacy” in the 1970s, and arguing that these decisions emphasized harm to children with unmarried parents while neglecting to adequately consider how privileging marriage harms adults as well).

Melissa Murray, *Legitimizing Illegitimacy in Constitutional Law*, 99 WASH. U. L. REV. 2063 (2022) (evaluating the extent to which constitutional law textbooks address issues relating to nonmarital birth and suggesting ways to incorporate more discussion of these issues in the constitutional law curriculum).

– NONMARITAL FATHERS

Albertina Antognini, *From Citizenship to Custody: Unwed Fathers Abroad and at Home*, 36 HARV. J.L. & GENDER 405 (2013) (examining the validity of provisions of immigration law that treat unwed American mothers more favorably than unwed American fathers).

Bernardo Cuadra, Note, *Family Law—Maternal and Joint Custody Presumptions for Unmarried Parents: Constitutional and Policy Considerations in Massachusetts and Beyond*, 32 W. NEW ENG. L. REV. 599 (2010) (urging Massachusetts to revise its laws

to end disparate treatment of unmarried fathers in child custody cases).

Nancy E. Dowd, *Fathers and the Supreme Court: Founding Fathers and Nurturing Fathers*, 54 EMORY L.J. 1271 (2005) (asserting that unmarried fathers have been given little respect by the Supreme Court and constitutional norms about fatherhood should be revised to focus on nurturing).

Chris Gottlieb & Martin Guggenheim, *New York's Unconstitutional Treatment of Unwed Fathers of Children in Foster Care*, 46 N.Y.U. REV. L. & SOC. CHANGE 309 (2022) (arguing that New York violates equal protection rights by allowing foster children to be put up for adoption over the objection of their unmarried fathers without a determination of the father's fitness as a parent or relationship with the child).

Emory Larkin, Comment, *Biology Is Not Destiny: Biological Fathers' Rights to Their Newborn Children Born out of Wedlock in Georgia*, 72 MERCER L. REV. 623 (2021) (arguing that Georgia violates the constitutional rights of unmarried biological fathers by denying them the ability to object to the adoption of their children).

Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality*, 125 YALE L.J. 2292 (2016) (tracing the history of nonmarital fathers' claims about constitutional equality, since the 1960s, and exploring the continuing unequal treatment of marital and nonmarital families).

Laura Oren, *The Paradox of Unmarried Fathers and the Constitution: Biology 'Plus' Defines Relationships; Biology Alone Safeguards the Public Fisc*, 11 WM. & MARY J. WOMEN & L. 47 (2004) (pondering the question of what makes someone a father in a constitutional sense and suggesting that biology alone should not be determinative when an unwed father is competing with another man for a chance to protect or establish a relationship with a child).

Laura Oren, *Unmarried Fathers and Adoption: "Perfecting" or "Abandoning" an Opportunity Interest*, 36 CAP. U. L. REV. 253 (2007) (tracing the development of the biology-plus constitutional standard for putative fathers seeking to block adoptions

and contrasting it with the purely biological approach to establishment of paternity for child support).

Dana E. Purvis, *The Constitutionalization of Fatherhood*, 69 CASE W. RES. L. REV. 541 (2019) (considering how the Supreme Court has given little constitutional protection to unwed fathers and proposing arguments based on the Equal Protection Clause for equalizing the treatment of unwed fathers and mothers).

Ivy Waisbord, Note, *Amending State Putative Father Registries: Affording More Rights and Protections to America's Unwed Fathers*, 44 HOFSTRA L. REV. 565 (2015) (arguing that putative father registries do not go far enough to protect the constitutional rights of unwed fathers and proposing reforms to overcome the problem of fathers being unaware of the existence and importance of the registries).

– REPRODUCTION

Michael J. Higdon, *Marginalized Fathers and Demonized Mothers: A Feminist Look at the Reproductive Freedom of Unmarried Men*, 66 ALA. L. REV. 507 (2015) (examining the parental rights of nonmarital fathers and how laws often fail to protect the reproductive autonomy of these fathers).

Alison Jane Walker, Note, *Evaluating the Constitutionality of Marital Status Classifications in the Regulation of Posthumous Reproduction and Postmortem Sperm Retrieval*, 54 CONN. L. REV. 799 (2022) (arguing that it is unconstitutional to discriminate against unmarried partners with respect to reproduction using a deceased partner's gametes).