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# Abortion, Eugenics, and a Threat to Diversity

## **Keywords**

Abortion, Eugenics, Down syndrome, Buck v. Bell

# ABORTION, EUGENICS, AND A THREAT TO DIVERSITY

By Chris McChesney\*

After nearly three months of pregnancy, Mary sits in her doctor's office anxiously awaiting to hear the results. Though still in her first trimester, Mary's doctor explained to her that it is becoming more common, and even more accurate, to have certain screening tests done early.<sup>1</sup> Today Mary will learn if the child growing inside of her will be born with Down syndrome, an abnormality in the 21st chromosome that usually leads to mental retardation.<sup>2</sup> If the test results show that her child will have Down syndrome, Mary will be forced to make a host of difficult decisions, the hardest being whether or not to carry the fetus to term. The majority of parents-to-be in Mary's position, whose fetus tests positive for Down syndrome, choose to have an abortion rather than bringing the fetus to term and raising the child or allowing the child to be adopted.<sup>3</sup> Many doctors counsel their patients in such circumstances to undergo abortions and doctors who treat patients with Down syndrome report seeing fewer and fewer patients.<sup>4</sup> While not government mandated, such abortions are government sanctioned even when the pregnancy is at a later stage and when other selective abortions are not permitted.<sup>5</sup>

The reduction of people born with a disorder that can cripple families both emotionally and financially may be seen as an accomplishment of modern science and medicine. Alternatively, given our country's history, the drop in the number of Down syndrome babies can be viewed as the eradication of a distinct class of people. Eugenics is believed to be non-existent in the United States today, but the systematic selective breeding of humans remains a current part of society.<sup>6</sup> The selective abortion of fetuses with Down syndrome is not referred to as eugenics, but the parallel is easy to make. The future consequences of enhanced understanding of our genetic makeup and advances in prenatal screening foreshadow a society that justifies eugenics as a means to creating the perfect child.

This article first discusses the history of eugenics in the U.S. and compares it with today's treatment of prenatal detection of Down syndrome. Drawing on this comparison, the article will discuss potential advances in genetic screening and how such advances may be used for eugenic purposes. Specifically, the article will focus on the potential threat genetic advances and selective abortion pose to diversity, in particular, homosexuality, via a eugenics-like desire for the perfect child. This article will also discuss the genetic component of eugenics and the biological roots of homosexuality, arguing that homosexuality is not a choice, but a predetermined trait. After discussing several scientific studies and drawing the conclusion from them that there is a genetic link to homosexuality, the article will pose a hypothetical

in which parents have the option to abort a fetus solely for the reason that the child would more likely than not be homosexual. Finally, this article will argue that while it may be a form of eugenics and threat to diversity to abort a fetus based on Down syndrome or the hypothetical detection of homosexuality, the woman's right to choose must not be infringed upon, whatever the reason for her choice.

## AMERICA'S EUGENICS PAST

The eugenics movement was most prominent in the United States from the early twentieth century through World War II.<sup>7</sup> Eugenics, first developed by Francis Galton, stemmed from early knowledge of genetics and a desire among intellectuals to improve society.<sup>8</sup> Society's ills were blamed on groups of people who had traits that scientists believed to be inherited, including: disabilities, drug or alcohol addiction, homelessness, and "feeble-mindedness."<sup>9</sup> Backed by scientists, intellectuals, and politicians of the time, many states, beginning with Indiana in 1907, passed laws based on the principles of eugenics.<sup>10</sup> By the

1920s, twenty-seven states had codified such laws, most of which called for the mandatory sterilization of certain groups of people.<sup>11</sup>

While early court cases began to limit sterilization laws, the Supreme Court upheld them in a 1927 case, *Buck v. Bell*.<sup>12</sup> The issue in *Buck* stemmed from a Virginia court's decision ordering the sterilization of eighteen-year old Carrie Buck based on her status as

an institutionalized person in the Virginia State Colony for Epileptics and Feeble Minded.<sup>13</sup> Virginia institutionalized Buck because she was a "deviant" who had given birth to an illegitimate child, despite evidence that her pregnancy was the result of a rape.<sup>14</sup> Justice Holmes, writing for the eight-justice majority, described Buck as, "the daughter of a feeble minded mother in the same institution, and the mother of an illegitimate feeble minded child," and determined in an infamous quote that, "[t]hree generations of imbeciles are enough."<sup>15</sup> Ruling in favor of the state, Holmes compared the sterilization to previously upheld mandatory vaccination policies, thus upholding sterilization laws and solidifying eugenics as valid public policy.<sup>16</sup> Ultimately, over 60,000 people in the United States were lawfully sterilized.<sup>17</sup>

Only after the horrors of Nazi Germany and the Nuremberg trials, did the United States begin to view eugenics in a negative light.<sup>18</sup> However, although sterilization laws were not heavily enforced, states were slow to repeal them; between 1970 and 1974, North Carolina sterilized twenty-three persons.<sup>19</sup> The federal government only banned the use of federal funds for sterili-

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zation in 1978 and as of 2004, seven states still had sterilization laws on the books.<sup>20</sup> Additionally, *Buck* has never been overturned, though a law requiring the sterilization of criminals was overturned in 1942 (largely because criminality was not proven inherited trait).<sup>21</sup> The Court has also cited to *Buck* multiple times, referring to it as valid case law, most notably in *Roe v. Wade* to support the proposition that the state can impose some limits on the right to privacy.<sup>22</sup> The Court's use of *Buck* as an example on allowable limits on the right to privacy is far from the historical support of eugenics. Indeed, the Court noted its unfavorable opinion of eugenics when it reviewed *Roe* in *Planned Parenthood of Southern Pennsylvania v. Casey*.<sup>23</sup>

### DOWN SYNDROME

Down syndrome is characterized by multiple physical traits including flat facial features, dysplastic ears, and an enlarged tongue in comparison to the mouth.<sup>24</sup> It is also associated with mild to severe mental retardation.<sup>25</sup> The cause of Down syndrome is the nondisjunction of chromosome 21, resulting in cells carrying three of the twenty-first chromosome instead of the normal pair.<sup>26</sup> This faulty cell division occurs in either the sperm or the egg prior to conception.<sup>27</sup> Prenatal testing can accurately diagnose Down syndrome in fetuses through several procedures: chorionic villus sampling (CVS), amniocentesis, and percutaneous umbilical blood sampling (PUBS).<sup>28</sup> While these tests are typically done during the second trimester, new studies are beginning to show that testing during the first trimester is more effective.<sup>29</sup>

An estimated 80% - 90% of Down syndrome fetuses are aborted, indicating it is a common practice among women who have learned that the fetus they are carrying has Down syndrome.<sup>30</sup> This practice is generally accepted among academics and the general public, with some going as far as saying that, "prospective parents have a moral obligation to undergo prenatal testing and to terminate their pregnancy to avoid bringing forth a child with a disability."<sup>31</sup> Analogizing such a position with the eugenics philosophy of our past is not difficult. After all, people with mental disabilities were one of the groups forcefully sterilized; preventing their very existence is the ultimate form of breeding them out of society.<sup>32</sup>

Recently, the comparison to eugenics has begun to be publicly discussed, generally by those associated with the Pro-Life movement.<sup>33</sup> Proponents of selectively aborting fetuses with Down syndrome avoid the eugenics comparison and point to the emotional and financial burdens a child with Down syndrome imposes on a family, concluding that neither a woman, nor society, should be forced to carry such a burden.<sup>34</sup> The debate reached the Senate with the introduction of the 'Prenatally Diagnosed Condition Awareness Act' by Senator Brownback (R-KS) and co-sponsored by Senator Kennedy (D-MA).<sup>35</sup> The bill

would not limit a woman's right to choose; rather, it would increase available information to women after prenatal tests detect Down syndrome and prior to their decision of whether or not to carry the fetus to term.<sup>36</sup> Principally, the bill would expand available information about Down syndrome, create access to support services, and establish a national registry for those wishing to adopt children with Down syndrome.<sup>37</sup> At the close of the 2005 legislative session, the Senate Committee on Health, Education, Labor, and Pensions was considering the bill.

### GENETICS OF HOMOSEXUALITY

While Down syndrome has a clear genetic link detectable through prenatal screening, allowing for the current eugenics-like treatment of fetuses with Down syndrome, homosexuality is not currently detectable in the womb. The two are not facially comparable; Down syndrome is considered a genetic disorder, while homosexuality is no longer deemed a disease or disorder.<sup>38</sup> For purposes of this article, however, the two will be compared as minority groups, whose members do not choose their status as a minority. Additionally, the classification of selective abortions as eugenics in cases of fetuses with Down syndrome will be used in a hypothetical by replacing the detection of Down syndrome with the theoretical detection of homosexuality in the womb. Prior to the hypothetical, this article will discuss what is currently known about the genetics of homosexuality to give support to the premise that prenatal screening will eventually have the capability to detect homosexuality in fetuses.

Though some argue that homosexuality is a choice of lifestyle,<sup>39</sup> science is providing more and more conclusive evidence that sexuality is a predetermined trait that cannot be changed.<sup>40</sup> These studies continually

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bolster the contention that homosexuality is not a choice.<sup>41</sup> Unlike many predetermined traits that can be linked to one gene or chromosome, sexuality is believed to be determined by both genetics and conditions in the womb.<sup>42</sup> In the early 1990s, a "gay" gene was discovered, but the results were not repeated and the study sample was small.<sup>43</sup> The study's result indicated the locus Xq28 (a point on the X chromosome) had a higher probability of being the same among homosexual brothers, suggesting the gene has a link to the trait of homosexuality.<sup>44</sup> Since then, a host of genetic discoveries have been made along with studies showing anatomical and physiological similarities among gay men and studies of homosexuality in other animals, including sheep, penguins, and fruit flies.<sup>45</sup>

In 2005, two separate groups of scientists published articles detailing their studies, which located a gene in fruit flies that has the ability to change sexual orientation.<sup>46</sup> The gene, which geneticists refer to as the *fruitless (fru)* gene, controls male courtship behavior and orientation, but not sexual anatomy.<sup>47</sup> There are both male specific *fru (fru<sup>M</sup>)* and female specific *fru (fru<sup>F</sup>)*

genes. When geneticists spliced the female version into male flies, the male ceased courtship of females, and when paired with other male flies spliced with the female version, showed male-male courtship behavior.<sup>48</sup> Similar results occurred in females; when the male version was spliced into female flies, they began to actively court other females not spliced with the male gene.<sup>49</sup> While the study does not prove such a gene exists in humans, it does show there is a genetic link to sexual behaviors in fruit flies, which share a majority of genes with humans.<sup>50</sup>

Along with genetics, several anatomical and physiological characteristics have been studied and compared between homosexuals and heterosexuals.<sup>51</sup> Sweat glands produce pheromones as a response to sexual behavior.<sup>52</sup> By monitoring brain activity of sexually dimorphic nuclei, Swedish scientists determined that homosexual men were aroused in a similar manner as women by pheromones produced by men.<sup>53</sup> Several anthropometric (measurement and characteristics of the body) studies have also been conducted, with the most conclusive study relating to finger length.<sup>54</sup> The majority of men have ring fingers that are longer than the index finger and women tend to have approximately equal length ring and index fingers.<sup>55</sup> Lesbians, however, tend to have a ring-index finger ratio similar to men, and while not all gay men share the female ratio, men with the female finger ratio tend to be more sensitive and nurturing.<sup>56</sup> Another common trait among homosexual men and women often appears in the brain. In heterosexual men, the two brain hemispheres are more specialized whereas women have brain hemispheres that are more similar and share functions. Homosexual men's brains show the same relationship among the hemispheres as women's brain.<sup>57</sup>

Recently scientists have begun studying the brains of homosexual male sheep (rams).<sup>58</sup> Among domesticated rams, approximately 6% - 8% only court and mate with other rams.<sup>59</sup> Wild rams also have shown homosexual courtship behavior, as do over 450 other animal species, including penguins, ostriches, and chimpanzees.<sup>60</sup> Scientists in Oregon have begun investigating why some rams are homosexual and have discovered differences in the brains of heterosexual rams and homosexual rams.<sup>61</sup> The sexually dimorphic nucleus is typically larger in males than it is in females, but gay rams have a sexually dimorphic nucleus that resembles the smaller nuclei found in ewes as opposed to other rams.<sup>62</sup> A 1991 study showed similar results among the sexually dimorphic nucleus of humans.<sup>63</sup>

While these studies do not show a direct link between genetics and homosexuality, they do support that homosexuality is not a choice.<sup>64</sup> Genes merely code proteins, and there are several steps between genes and behavior.<sup>65</sup> Most scientists, however, will acknowledge that homosexuality is genetic, although environmental factors, such as testosterone levels in the womb, likely play a role.<sup>66</sup> Given this, it is not hard to hypothesize that scientists will find a direct link to homosexuality. However, as geneticist Dean Hamer, a leading researcher noted, many heterosexual scientists do not research the so-called "gay gene" be-

cause they do not want to offend anyone.<sup>67</sup> After all, "if scientists identify a 'gay gene,' will expectant parents use it for selective abortion?"<sup>68</sup>

### HOMOSEXUAL HYPOTHETICAL: DIVERSITY VERSUS CHOICE

The potential detection of homosexuality is far different from the prenatal detection of Down syndrome.<sup>69</sup> As scientists learn more about the roots of homosexuality and its genetic links, it may become possible to determine that a child will likely be born gay. This determination, like all prenatal testing, may not be 100% accurate, but a doctor may be able to tell parents that their child has a certain percent chance of being gay.<sup>70</sup> If this percentage provides a more likely than not chance that the child will be gay, parents will face a difficult question -- should they have a child knowing that he or she will be born gay?

Often, some of the biggest fears expressed by parents when their child comes out as being gay are based on their child's safety and future happiness.<sup>71</sup> Being gay in a heteronormative<sup>72</sup> society can mean facing discrimination, misunderstanding, and even danger.<sup>73</sup> Hate crimes against gays remain a problem and acceptance, or even tolerance, is never assured.<sup>74</sup> In light of these concerns, would a parent-to-be knowingly bring a child into the world who could be hated solely for something they cannot control?<sup>75</sup> Would a parent-to-be whose religious convictions tell them homosexuality is sin and unacceptable bring a child into the world if they believed they could never accept for who the child truly would be? Would parents view their child's homosexuality as an imperfection like many view Down Syndrome?

A child should be loved for who they are when they are born, whether gay or straight, disabled or not. However, as has been the case with Down syndrome, parents often want the perfect child and some choose to abort what is perceived to be an imperfect fetus. A controversy erupted in Britain when a parent was allowed to abort a child past the point of viability because it was determined that the child would have a cleft palate.<sup>76</sup> Given this controversy, along with current homophobic attitudes, it is not outlandish to imagine a parent aborting a fetus because the child will be born gay. If that were to become the norm, abortion could begin to pose an even bigger threat to diversity than it presently does.

Considering this country's history, it is not unreasonable to believe U.S. citizens would attempt to selectively remove a group of people from the population by practicing eugenics; in fact, it is not outrageous to assert that eugenics is alive and well as demonstrated by the abortion of the vast majority of fetuses with Down syndrome.<sup>77</sup> As genetics and prenatal testing become more advanced, abortion may become a legitimate means to lowering diversity and reigniting eugenics as parents strive to have "perfect" heterosexual children. This would truly be a travesty, not only to the minority communities affected, but to the nation as whole. Diversity plays a vital role in this country

and should be protected, but should it be protected to the detriment of woman's right to choose?

## CONCLUSION

The choice of whether or not to have a child is a personal one. Thus, a woman's right to choose should not be infringed upon, no matter her reasoning. Despite the importance of diversity and the importance of protecting the rights of minorities, including homosexuals and those with disabilities, placing restrictions on the allowed reasons for having an abortion pre-viability would arguably violate the standard of an "undue burden" set out in *Casey*, which was recently reaffirmed in *Ayotte v. Planned Parenthood of Northern New England*.<sup>78</sup> A state may offer alternatives, educate those wishing to obtain an abortion, and develop other such regulations with regard to the right to choose; a state regulation, however, may not impose an undue burden on a woman's right to choose.<sup>79</sup> Telling a woman what reasons are valid to have an abortion and that she is not allowed to have an abortion if she has different reasons would certainly be an undue burden to place on a woman's right to choose.

Abortion and advancements in genetics have the potential to become, and within some communities have already become, another form of eugenics. Even so, regulating the reasons for a woman's choice is not the solution, nor is halting advancements in genetic technology; rather, the solution lies in education. The

current tragedy of aborting fetuses with Down syndrome can and should be curbed with legislation similar to the bill introduced by Senator Brownback and Senator Kennedy. Knowing that people with Down syndrome lead happy, healthy lives, and that there are parents who want to adopt unwanted Down syndrome babies may change some decisions to abort, without placing an undue burden on their right to do so. Similarly, as scientists learn more about the roots of homosexuality, people may begin to accept that sexuality is not a choice. As acceptance and rights increase for the LGBT community, parents will not fear as much for the safety of their gay children, and they themselves may become more accepting of having a gay child.

Diversity and protecting individual rights are a vital part of this country. However, in this case, the legal system can only protect diversity so much before it may interfere with individual rights, such as placing an undue burden on a woman's right to choose. When this happens, it becomes the task of the individual to advocate and protect diversity. Twenty years from now, Mary's daughter may have to decide whether to abort her own fetus, which she has just learned will be gay. If she decides to abort her child and further the practice of eugenics, it will be because our country failed to educate, promote, and accept all forms of diversity — including homosexuality — not the failure to restrict a woman's right to choose.

## ENDNOTES

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<sup>1</sup> Stephen Dowshen, *First-Trimester Testing Proves More Effective for Down Syndrome Screening* (Dec. 2005), [http://kidshealth.org/PageManager.jsp?dn=bmsch&article\\_set=46486&lic=3&cat\\_id=5](http://kidshealth.org/PageManager.jsp?dn=bmsch&article_set=46486&lic=3&cat_id=5).

<sup>2</sup> *Medical Encyclopedia: Down Syndrome*, MedLine Plus (Apr. 20, 2005), <http://www.nlm.nih.gov/medlineplus/ency/article/000997.htm>.

<sup>3</sup> George F. Will, *Eugenics By Abortion: Is Perfection an Entitlement?*, WASH. POST, Apr. 14, 2005, at A27.

<sup>4</sup> Patricia E. Bauer, *The Abortion Debate No One Wants to Have; Prenatal testing is making your right to abort a disabled child more like "your duty" to abort a disabled child*, WASH. POST, Oct. 18, 2005, at A25.

<sup>5</sup> See Martha A. Field, *Killing "The Handicapped" – Before and After Birth*, 16 HARV. WOMEN'S L.J. 79, 110-13 (1993) (explaining that many abortion statutes that restrict abortion past the point of viability allow an exception for fetuses determined to have disabilities).

<sup>6</sup> See Michael J. Malinowski, *Choosing the Genetic Makeup of Children: Our Eugenics Past-Present, and Future?*, 36 CONN. L. REV. 125 (2003).

<sup>7</sup> See *id.*; see also Michael G. Silver, Comment, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862 (2004).

<sup>8</sup> See *id.* at 864-65.

<sup>9</sup> See *id.* at 865.

<sup>10</sup> Malinowski, *supra* note 6, at 139.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 140-41.

<sup>13</sup> *Buck v. Bell*, 274 U.S. 200, 205.

<sup>14</sup> Silver, *supra* note 7, at n.33 (citing Paul A. Lombardo, *Three Generations, No Imbeciles: New Light on Buck v. Bell*, 60 N.Y.U. L. REV. 30, 54 (1985)).

<sup>15</sup> *Buck*, 274 U.S. at 205-207.

<sup>16</sup> *Id.*

<sup>17</sup> Silver, *supra* note 7, at 863.

<sup>18</sup> See Malinowski, *supra* note 6, at 159.

<sup>19</sup> See Silver, *supra* note 7, at 871-72.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 868-70 (discussing *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)).

<sup>22</sup> See *Roe v. Wade*, 410 U.S. 113, 154 (1973); see also *Board of Trustees of the University of Alabama v. Garret*, 531 U.S. 356 (2001).

<sup>23</sup> See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 859 (1992).

<sup>24</sup> *How is Down Syndrome Diagnosed in a New Born?*, National Down Syndrome Society, <http://www.ndss.org/content.cfm?fuseaction=InfoRes.Generalarticle&article=22> (last visited Feb. 16, 2006).

<sup>25</sup> *Questions and Answers About Down Syndrome* [hereinafter *Down Syndrome*], National Down Syndrome Society, <http://www.ndss.org/content.cfm?fuseaction=InfoRes.Generalarticle&article=194> (last visited Feb. 16, 2006).

<sup>26</sup> *What Causes Down Syndrome*, National Down Syndrome Society, <http://www.ndss.org/content.cfm?fuseaction=InfoRes.Generalarticle&article=20> (last visited Feb. 16, 2006).

<sup>27</sup> *Id.*

<sup>28</sup> *Are there any prenatal tests available to detect Down syndrome?*, National Down Syndrome Society, <http://www.ndss.org/content.cfm?fuseaction=InfoRes.Generalarticle&article=30> (last visited Feb. 16, 2006).

<sup>29</sup> Dowshen, *supra* note 1.

<sup>30</sup> See Will, *supra* note 3; see also Bauer, *supra* note 5 (stating that studies vary, but most estimate that around 80% - 90% of fetuses determined to have Down syndrome are now aborted).

<sup>31</sup> Bauer, *supra* note 4.

<sup>32</sup> Silver, *supra* note 7, at 865.

<sup>33</sup> See Will, *supra* note 3; Bauer, *supra* note 4.

<sup>34</sup> *Disability, Abortion and the Nature of a Tough Decision*, WASH. POST, Oct. 22, 2005, at A19.

<sup>35</sup> S. 609, 109th Cong. (2005).

<sup>36</sup> *Id.* at §3.

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

<sup>38</sup> HUMAN RIGHTS CAMPAIGN, RESOURCE GUIDE TO COMING OUT FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER AMERICANS 11, (2004), available at [http://www.hrc.org/Template.cfm?Section=About\\_HRC&Template=/ContentManagement/ContentDisplay.cfm&ContentID=22631](http://www.hrc.org/Template.cfm?Section=About_HRC&Template=/ContentManagement/ContentDisplay.cfm&ContentID=22631) [hereinafter HRC] (discussing the history of the American Psychological Association's and the American Psychiatric Association's declassification of homosexuality as a men-

## ENDNOTES CONTINUED

tal disorder and the American Medical Association's statement that any mental problems associated with GLBT persons is because of social alienation, not sexual orientation) (last visited Feb. 4, 2006).

<sup>39</sup> HRC, *supra* note 38, at 12.

<sup>40</sup> See Anjana Ahuja, *Genetic plays in being gay, says author*, THE AUSTRALIAN, Sept. 17, 2005, at 27 (book review).

<sup>41</sup> GLEN WILSON & QAZI RAHMAN, BORN GAY? THE PSYCHOBIOLOGY OF SEXUAL ORIENTATION (Peter Owen Publishers 2005).

<sup>42</sup> *Id.*

<sup>43</sup> See Mary-Claire King, *Sexual Orientation and the X*, NATURE, July 22, 1993, at 288.

<sup>44</sup> *Id.*

<sup>45</sup> See Dr. William Schamadan, *Further studies of homosexuality offer evidence it is not a choice*, MANSFIELD NEWS JOURNAL, Dec. 26, 2005, at 1B; see also Faye Flam, *In 'Brokeback,' men might not be the only gay characters*, PHILA. INQUIRER, Jan. 2, 2006, available at <http://www.philly.com/mld/philly/living/health/13531397.htm>; Dinitia Smith, *Central Park Zoo's gay penguins ignite debate*, S. F. CHRON., Feb. 7, 2004, available at <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/02/07/MNG3N4RAV41.DTL>; *Sexual Attraction: finding the right switch*, NATURE, July 2005, at 517.

<sup>46</sup> See Ebru Demir and Barry J. Dickson, *Fruitless Splicing Specifies Male Courtship Behavior in Drosophila*, CELL Vol. 121, at 785-94 (June 2005); Petra Stockinger, et al., *Neural Circuitry that Governs Drosophila Male Courtship Behavior*, CELL Vol. 121, at 795-07 (June 2005).

<sup>47</sup> Demir, *supra* note 46, at 785-87.

<sup>48</sup> *Id.* at 787-88.

<sup>49</sup> *Id.* at 789-90.

<sup>50</sup> Stanley Robert, *Fruit Fly Fandango*, HOBART MERCURY, Nov. 19, 2005, at B04.

<sup>51</sup> Schamadan, *supra* note 45.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Dr. William Schamadan, *Gay by choice or chance?*, MANSFIELD NEWS JOURNAL, Jan. 2, 2006, at 1B.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Schamadan, *supra* note 45.

<sup>58</sup> Flam, *supra* note 45.

<sup>59</sup> Schamadan, *supra* note 45.

<sup>60</sup> Flam, *supra* note 45; see Anne Strehlow, *Tweaking a Gene Twirls Sexual Compass in Fruit Flies*, THE OREGONIAN, June 22, 2005, at A16.

<sup>61</sup> Flam, *supra* note 45.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> WILSON, *supra* note 39.

<sup>65</sup> *Talk of the Nation/Science Friday: Gene Robinson discusses two new studies that show how genetics might regulate behavior in animals* (Nat. Pub. Radio June 10, 2005).

<sup>66</sup> See Faye Flam, *Tracking a Genetic Link to Sexuality*, PHILA. INQUIRER, Dec. 29, 2005; Ahuja, *supra* note 45.

<sup>67</sup> Flam, *supra* note 70.

<sup>68</sup> *Id.*

<sup>69</sup> *What Causes Down Syndrome?*, *supra* note 26.

<sup>70</sup> See Flam, *supra* note 70.

<sup>71</sup> PFLAG, <http://pflag.org/index.php?id=90> (providing multiple accounts of the fears and emotions felt by parents when their child came out to them).

<sup>72</sup> The term "heteronormative" refers to the current social reality and is used as a critique of social norms that assume strict gender roles and heterosexual relationships to the only normal relationships. See Labor Law Talk Encyclopedia, at <http://encyclopedia.laborlawtalk.com/Heteronormativity> (last visited Feb. 17, 2006).

<sup>73</sup> Hate Crimes, HRC, [http://www.hrc.org/Template.cfm?Section=Hate\\_Crimes1](http://www.hrc.org/Template.cfm?Section=Hate_Crimes1) (last visited Feb. 4, 2006).

<sup>74</sup> *Id.*

<sup>75</sup> Arguably, many minorities who have children bring them into the world knowing that the child may be hated for something they cannot control. However, parents of gay children may not themselves be a minority and do not currently know their child will be gay before it is born.

<sup>76</sup> Will, *supra* note 3.

<sup>77</sup> *Id.*

<sup>78</sup> *Ayotte v. Planned Parenthood of Northern New England*, 126 S. Ct 961 (2006) (holding a New Hampshire statute may have some unconstitutional applications, but the statute *in toto* was not unconstitutional).

<sup>79</sup> Casey, 505 U.S. 833, 874 (1992).



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