

No. 15-1022

**In The United States Court of Appeals
for the Eighth Circuit**

RITA JERNIGAN, ET AL.,
Plaintiffs and Appellees,

v.

LARRY CRANE, IN HIS OFFICIAL CAPACITY AS CLERK,
Defendant,

DUSTIN MCDANIEL,
IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL, ET AL.,
Defendants and Appellants.

On Appeal from the United States District Court
Eastern District of Arkansas No. 4:13-cv-00410-KGB
The Honorable Kristine G. Baker

**AMICUS CURIAE BRIEF OF GARY J. GATES
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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OTHER AUTHORITIES

Badgett, M.V. Lee, <i>Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?</i> 1 Sexuality Res. & Soc. Pol’y 1 (2004)	18
Badgett, M.V. Lee & Christy Mallory, The Williams Institute, UCLA School of Law, <i>Patterns of Relationship Recognition for Same-Sex Couples: Divorce and Terminations</i> (2014).....	17, 18
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U.S. Bur. of Labor Statistics Report: <i>Highlights of Women’s Earnings in 2013</i> , Report 1051 (2014)	20, 21
U.S. Census Bureau, American FactFinder, 2013 American Community Survey 1-year Estimates: Age and Sex, No. S0101 (2013).....	15
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I. INTEREST OF AMICUS CURIAE¹

Gary J. Gates is the Blachford-Cooper Distinguished Scholar and Research Director at the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law. He is the Director of the UCLA Census Regional Data Center, and a member of the Scientific Advisory Committee of the U.S. Census Bureau and the Data Users Advisory Committee of the Bureau of Labor Statistics.

Gates coauthored *The Gay and Lesbian Atlas* and is a recognized expert on the geography and demography of the lesbian, gay, bisexual, and transgender (“LGBT”) population. He conducted the first significant research study using U.S. Census data to explore characteristics of same-sex couples. He publishes extensively on the demographic and economic characteristics of the LGBT population. Many national and international media outlets routinely feature his work. In addition, Gates regularly consults with federal and state governments and nongovernmental organizations on data collection issues regarding the LGBT population.

As a scholar of sexual orientation and gender identity law and public policy, Gates has a substantial interest in the issues before this

¹ No counsel for any party authored this brief in whole or in part. No person or entity, other than amicus and his counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The parties have provided written consent to the filing of this amicus brief.

Court. Gates has conducted extensive research and authored numerous studies regarding the geographic, demographic, and economic characteristics of same-sex couples and their families in the United States.

Several courts have relied on Gates' expertise and research in invalidating state prohibitions on same-sex marriage. *See, e.g., DeBoer v. Snyder*, 973 F. Supp. 2d 757, 763-64, 771 (E.D. Mich.) (relying on Gates' "highly credible" expert testimony in holding Michigan's prohibition on same-sex marriage unconstitutional), *rev'd*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 135 S. Ct. 1039, 1040, 1041 (2015); *Baskin v. Bogan*, 766 F.3d 648, 663, 668–69 (7th Cir.) (relying on Gates' research in holding Indiana's and Wisconsin's same-sex marriage prohibitions unconstitutional), *cert. denied*, 135 S. Ct. 316 (2014); *Bostic v. Schaefer*, 760 F.3d 352, 382 (4th Cir.) (relying on Gates' research in holding Virginia's same-sex marriage prohibition unconstitutional), *cert. denied*, 135 S. Ct. 286, 308, 314 (2014).

Gates believes that his expertise and perspective as a scholar may likewise help this Court more fully appreciate the impact that laws limiting the ability of same-sex couples to marry and raise families have on the LGBT population.

II. SUMMARY OF ARGUMENT

This brief presents and analyzes available demographic data regarding married and unmarried same-sex couples² and their children in the United States in general, and in the states within the Eighth Circuit that continue to prohibit marriage between same-sex couples (Arkansas, Missouri, Nebraska, North Dakota, and South Dakota) in particular, in order to assist the Court in understanding the impact that its decision may have on same-sex couples and their children. It relies primarily on data from five sources:

- **2010 U.S. Census:** The U.S. Census Bureau has been collecting data on same-sex couples for more than two decades, including as part of the 1990, 2000, and 2010 censuses.
- **2013 American Community Survey (“ACS”):** The ACS is an annual survey conducted by the U.S. Census Bureau that provides demographic information about the U.S. population.
- **2013 National Health Interview Survey (“NHIS”):** The NHIS is an annual survey conducted by the U.S. Census Bureau for the National Center for Health Statistics of the Centers for Disease Control and Prevention. The NHIS is one of our nation’s primary sources for health information on the U.S. population.

² When this brief speaks about “same-sex couples,” we mean couples (both married and unmarried) who are living together in the same household. Of course there are also many same-sex couples who are not living together, as well as many LGBT individuals who are currently not coupled but who will be in the future.

- **2013 Pew Research Center LGBT Survey:** This survey of LGBT adults in the United States asked questions about attitudes regarding the purpose of and desire for marriage.
- **2015 Gallup Daily Tracking Survey:** This survey asked respondents whether they identify as lesbian, gay, bisexual, or transgender, and whether they are married to or cohabiting with a same-sex spouse or partner.

The data show that:

1. **Same-Sex Couples Are Common Throughout The United States And The Eighth Circuit And Many Same-Sex Couples Are Raising Children, Including A Disproportionate Number Of Adopted And Foster Children.**

In the United States, there are approximately 690,000 same-sex couples (married and unmarried). They live in all 50 states and in 93% of U.S. counties. In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota combined, there are approximately 19,652 same-sex couples residing in 77% of these states' counties.

Almost one-fifth of same-sex couples (married and unmarried) in the United States are raising children under age 18. In other words, nationally, more than 122,000 same-sex-couple households are raising approximately 210,000 children under age 18. In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, same-sex-couple households are raising nearly 9,100 children under age 18.

Same-sex couples, particularly married same-sex couples, are more likely to be raising adopted and foster children than their

different-sex counterparts. Nationally, same-sex couples (married and unmarried) are approximately three times more likely than their married different-sex counterparts to be raising an adopted or foster child. Married same-sex couples are more than five times more likely to be raising these children when compared to their different-sex counterparts. Nearly 27,000 same-sex couples are raising an estimated 58,000 adopted and foster children in the United States. More than 26,000 of those children (46%) are being raised by married same-sex parents. An estimated 740 adopted and foster children are being raised by same-sex couples (married and unmarried) in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota.

2. Many LGBT Adults Want To Marry; They Have Attitudes Toward Marriage, And Divorce Rates, Similar To The General Population; And Allowing Same-Sex Couples To Marry Does Not Alter The Behavior Of Different-Sex Couples.

Married same-sex couples are present in all parts of the country, although (not surprisingly) the portion of same-sex couples who are married is much higher in regions of the country where marriage for same-sex couples has been available for a longer period of time. In 2013, an estimated 12% of same-sex couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota reported that they were married. Unmarried gay men and lesbians are more likely than the general population of unmarried adults to say that they want to be married.

Just like the general population, LGBT adults report that love, companionship, and making a lifelong commitment are the three most important reasons why a couple would marry. Several studies suggest that same-sex couple relationships are as stable and durable as different-sex relationships. Data also suggest that same-sex couples have divorce and dissolution rates similar to different-sex married couples.

Allowing same-sex couples to marry has no impact on marriage rates or non-marital birth rates in the general population. Studies conducted in places where same-sex marriage is legal find no evidence that allowing same-sex couples to marry reduces the rate of different-sex marriages or increases the rate of non-marital births.

3. Same-Sex Couples With Children Experience Economic Vulnerability.

Many same-sex couples raising children are economically vulnerable, and same-sex couples raising children are more economically vulnerable than their different-sex counterparts. Nationally, the median annual household income of same-sex couples (married and unmarried) with children under age 18 in the home is more than 10% lower than the median annual household income of comparable married different-sex couples. In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, the median annual household income of same-sex couples with children under age 18 in the

home is 12% less than the median annual household income of comparable married different-sex couples.

4. Married Same-Sex Couples Evidence Economic Advantages Commonly Associated With Marriage.

Substantial research argues that marriage reduces economic vulnerability in couples and families. That economic stability can contribute to better outcomes for children raised by married parents. Even though the availability of marriage for same-sex couples is relatively recent for most couples in the United States, the economic benefits related to marriage are evident among same-sex couples in ways that are similar to their different-sex counterparts. Like their different-sex counterparts, married same-sex couples have higher median household incomes and home ownership rates when compared to unmarried same-sex couples. Among same-sex couples raising children under age 18, the median household income of married couples is 43% higher than that of unmarried couples.

ARGUMENT

I. Same-Sex Couples Are Common Throughout The United States And The Eighth Circuit And Are Raising Many Children, Including An Outsized Share Of Adopted And Foster Children

A. Same-Sex Couples, Married And Unmarried, Are Common Throughout The United States And Reflect The Diversity Of Our Country

Analyses from the 2013 NHIS indicate that, in the United States, there are approximately 690,000 same-sex couples (married and unmarried), meaning that nearly 1.4 million Americans are members of a same-sex couple.³ This is an increase over the 2010 Census, in which 646,464 same-sex couples in the United States identified as such.⁴

As of 2013, in Arkansas, Missouri, Nebraska, North Dakota, and South

³ Gary J. Gates, The Williams Institute, UCLA School of Law, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey 1* (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf>.

⁴ Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *United States Census Snapshot: 2010* at 1 (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>. Since 1990, it has been possible to identify same-sex couples using U.S. Census data by combining responses to Census questions regarding sex and relationship to the householder. Same-sex couples are defined as such when a householder (Person 1 on the survey form) identifies another individual aged 16 or older as being of the same sex and as his or her “husband/wife” or “unmarried partner.” Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why* 3 (2010), available at <http://williamsinstitute.law.ucla>.

Dakota, there were more than 39,300 individuals in 19,652 same-sex couples.⁵ Table 1 provides state-specific information:

Table 1. Estimated number of same-sex couples, by jurisdiction

United States	690,000
Eighth Circuit States	19,652
Arkansas	4,511
Missouri	11,268
Nebraska	2,515
North Dakota	597
South Dakota	762

Same-sex couples live in all parts of the country. In the 2010 Census, same-sex couples were identified in all 50 states, in 93% of counties in the United States,⁶ and in 77% of counties in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota.⁷

Same-sex couples also reflect the demographic diversity of our country. Nationally, a small majority of same-sex couples (married and

⁵ Gary J. Gates, The Williams Institute, UCLA School of Law, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota: Analyses of the 2013 American Community Survey 3* (2015), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-AR-MO-NE-ND-SD-ACS2013-March-2015.pdf>.

⁶ Gates & Cooke, *supra*, at 1.

⁷ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, at 3.

unmarried) are female (51%). A higher proportion of married same-sex couples are female (53%).⁸ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, 69% of same-sex couples are female.⁹ In the United States, the racial and ethnic distributions of individuals in same-sex couples and different-sex married couples are similar. In total, 23% of individuals in same-sex couples (married and unmarried) are members of racial or ethnic minorities, compared to 26% of individuals in different-sex married couples. The racial and ethnic composition of individuals in married same-sex couples is nearly the same as that of all same-sex couples: 23% are members of a racial or ethnic minority. The proportions of same-sex couples (married and unmarried) within specific racial and ethnic groups are very similar to those among married different-sex couples.¹⁰

⁸ Gary J. Gates, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey 4* (2015) (hereinafter *ACS 2013 report*), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf>.

⁹ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 3.

¹⁰ Gates, *ACS 2013 report*, *supra*, at 4.

B. Same-Sex Couples, And Particularly Married Same-Sex Couples, Are Raising Large Numbers Of Children And An Outsized Share Of Adopted And Foster Children

Almost one in five same-sex couples (married and unmarried) in the United States (18%) are raising children under age 18. Same-sex couples raising children have, on average, 1.7 children in the home. In other words, nationally, nearly 122,000 same-sex-couple households include almost 210,000 children under age 18 in their homes.¹¹

Married same-sex couples are more likely to have children than same-sex couples in general. More than a quarter (27%) of married same-sex couples have children under age 18. As of 2013, one third of children being raised by same-sex couples (34%), approximately 71,000, were being raised by married parents. In states where same-sex couples could legally marry in 2013, more than half of the children being raised by same-sex couples (51%) had married parents.¹²

The portion of same-sex couples raising children under age 18 is consistent (18%) in the Northeast, the Midwest, and the South. In the

¹¹ Gates, *ACS 2013 report, supra*, at 5.

¹² Gates, *ACS 2013 report, supra*, at 5. States where same-sex couples could legally marry in 2013 include Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Washington. Hawaii allowed same-sex couples to marry beginning in December 2013, but Hawaii is not included because marriage for same-sex couples was available only for a short period of time in that year.

West, the figure is 17%.¹³ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, 23% of same-sex couples are raising children under age 18 in their homes. An estimated 4,500 same-sex-couple households in these states include nearly 9,100 children.¹⁴

Even though same-sex couples (married and unmarried) are less likely to be raising children than married different-sex couples,¹⁵ they are much more likely to have adopted or foster children. Nationally, same-sex couples are approximately three times more likely than their married different-sex counterparts to be raising an adopted or foster child. Approximately 4% of same-sex couples have an adopted or foster child under age 18. Among married same-sex couples, 8% have an adopted or foster child under age 18 compared to 1.5% of married different-sex couples, making married same-sex couples more than five times more likely to have these children than their married different-sex counterparts.¹⁶ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, perhaps due to more restrictive policies governing adoption by same-sex couples, the differences are somewhat less stark but, even in those states, same-sex couples are more likely than married

¹³ Gates, *ACS 2013 report, supra*, at 5.

¹⁴ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, supra*, at 4.

¹⁵ Gates, *ACS 2013 report, supra*, at 5.

¹⁶ Gates, *ACS 2013 report, supra*, at 7–8.

different-sex couples to have an adopted or foster child (2.2% versus 1.7%, respectively).¹⁷

The differences in adoption and fostering among same-sex couples and married different-sex couples are even greater when considering only couples with children under age 18. Nationally, among couples with children under age 18 in the home, 22% of same-sex couples have an adopted or foster child compared to just 3% of married different-sex couples. Nearly three in ten married same-sex couples with children (28%) have an adopted or foster child.¹⁸ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, 9.5% of same-sex couples with children have an adopted or foster child, compared to 4% of married different-sex couples.¹⁹

Nearly 27,000 same-sex couples are raising an estimated 58,000 adopted and foster children in the United States. More than 26,000 of those children (46%) are being raised by married same-sex parents.²⁰ An estimated 740 adopted and foster children are being raised by same-

¹⁷ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 5.

¹⁸ Gates, *ACS 2013 report*, *supra*, at 8.

¹⁹ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 5.

²⁰ Gates, *ACS 2013 report*, *supra*, at 8.

sex couples (married and unmarried) in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota.²¹

In the United States, most children being raised by same-sex couples (married and unmarried) are biologically related to one of their parents. More than half (51%) of the children of same-sex couples were identified as a biological child of one spouse or partner in the same-sex couple. In addition, 10% were identified as the step-child of one parent, which likely also indicates a biological relationship to at least one partner. Nearly one in five children being raised by same-sex couples are adopted or fostered (19%) or are grandchildren, siblings, or other children (20%).²²

In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, an estimated 65% of children being raised by same-sex couples are biological (48%) or step-children (17%), and 7% of children being raised by same-sex couples are adopted (6%) or fostered (1%), and 29% are grandchildren, siblings and other children.²³

²¹ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 5.

²² Gates, *ACS 2013 report*, *supra*, at 8.

²³ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 5.

II. LGBT Adults Want To Marry; They Have Attitudes Toward Marriage, And Divorce Rates, Similar To The General Population; And Allowing Same-Sex Couples To Marry Does Not Alter The Behavior Of Different-Sex Couples

As of February 2015, preliminary estimates indicate that more than 700,000 adults in the United States report being married to a same-sex spouse. This suggests that there are about 350,000 married same-sex couples.²⁴ Comparing these figures to the estimated 130,000 married same-sex couples in 2013, the number of married same-sex couples has more than doubled in the last year.²⁵

Married same-sex couples are present in all parts of the country. Not surprisingly, the portion of same-sex couples who are married is

²⁴ Gallup reports that 0.3% of adults are married to a same-sex spouse. See Frank Newport, *Alabama Verdict on Same-Sex Marriage Highlights Pending U.S. Supreme Court Ruling*, Gallup.com (Mar. 5, 2015), <http://www.gallup.com/opinion/polling-matters/181823/alabama-verdict-sex-marriage-highlights-pending-supreme-court-ruling.aspx>. Findings from the 2013 American Community Survey suggest that 76.7% of the population of the United States, approximately 316,000,000, are age 18 or older. See U.S. Census Bureau, American FactFinder, 2013 American Community Survey 1-year Estimates: Age and Sex, No. S0101 (2013), available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_S0101&prodType=tabl (choose “download” action). That means that there are approximately 242,000,000 adults in the country. If 0.3% of these adults have a same-sex spouse, then approximately 700,000 adults in the United States are married to a same-sex spouse. This implies that approximately 350,000 same-sex married couples exist, i.e., the number of married couples is, by definition, half of the number of married individuals.

²⁵ See Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*, *supra*, at 1.

much higher in regions of this country where marriage for same-sex couples has been available for a longer period of time. As of 2013, when an estimated 21% of same-sex couples in the country were married, 34% of same-sex couples in the Northeast were married, as were 23% in the West, 16% in the Midwest, and 15% in the South.²⁶ In 2013, an estimated 12% of same-sex couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota reported that they were married.²⁷

A survey conducted by the Pew Research Center shows that, among unmarried gay men and lesbians, 56% of men and 58% of women say that they would like to be married someday.²⁸ This compares to 46% of the general population of unmarried adults.²⁹ The survey also revealed that LGBT adults (like the general population) believe that love, companionship, and making a lifelong commitment are the three most important reasons why a couple would marry. LGBT individuals did give greater importance than the general population to legal rights

²⁶ Gates, *ACS 2013 report*, *supra*, at 3, 4.

²⁷ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 3.

²⁸ Pew Research Center, *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times* 71 (2013), available at http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf.

²⁹ Pew Research Center, *The Decline of Marriage and Rise of New Families* 23 (2014), available at <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>.

and benefits.³⁰ This may not be surprising given that, for most LGBT individuals in the United States, the legal rights and benefits associated with marriage have only recently become available or remain unavailable.

Several studies suggest that same-sex-couple relationships are as stable and durable as different-sex relationships.³¹ An analysis of four years of data from New Hampshire and Vermont shows that an average of 1.1% of married same-sex couples divorce per year compared to an average of 2% of married different-sex couples. The average dissolution rate among couples in civil unions or registered domestic partnerships

³⁰ Pew Research Center, *Survey of LGBT Americans*, *supra*, at 68–69, 131 & n.47.

³¹ M.V. Lee Badgett & Christy Mallory, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition for Same-Sex Couples: Divorce and Terminations* (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Mallory-Divorce-Terminations-Dec-2014.pdf> (analyzing data from California, New Hampshire, New Jersey, Vermont, Washington, Washington, D.C., and Wisconsin); *see also* M.V. Lee Badgett & Jody L. Herman, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition by Same-Sex Couples in the United States* 18–19 (2011) (analyzing data from California, Colorado, Connecticut, Hawaii, Maine, Nevada, New Hampshire, New Jersey, Vermont, Washington, and Washington, D.C.), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf>; Michael Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, 76 J. Marriage & Fam. 905, 916 (2014).

in five states (California, New Hampshire, New Jersey, Washington, and Wisconsin) and the District of Columbia was 1.7%.³²

The evidence suggests no reason to believe that legalizing marriage for same-sex couples will cause either a decline in the marriage rates of different-sex couples or an increase in non-marital births among different-sex couples. Studies using data from places where same-sex couples can legally marry find no evidence that allowing same-sex couples to marry reduces the rate of different-sex marriages or increases the rate of non-marital births.³³

In 2013, the portion of all children under age 18 being raised by married different-sex parents in the United States was slightly higher in states where same-sex couples could legally marry (65%) than in those where marriage was restricted to different-sex couples (64%). The average number of children under age 18 that married different-sex couples are raising is the same (1.9), regardless of the availability of marriage for same-sex couples.³⁴

³² Badgett & Mallory, *supra*, at 1.

³³ See Marcus Dillender, *The Death of Marriage? The Effects of New Forms of Legal Recognition on Marriage Rates in the United States*, 51 *Demography* 563, 582 (2014); Mircea Trandafir, *The Effect of Same-Sex Marriage Laws on Different-Sex Marriage: Evidence from the Netherlands*, 51 *Demography* 317, 337-38 (2014); M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 *Sexuality Res. & Soc. Pol'y* 1, 8 (2004).

³⁴ Gates, *ACS 2013 report, supra*, at 5.

III. Same-Sex Couples Raising Children Are Economically Vulnerable

Nationally, the median annual household income of same-sex couples with children under age 18 in the home is more than 10% lower than the median annual household income of married different-sex couples with children (\$75,000 versus \$83,550).³⁵ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, the median annual household income of same-sex couples with children under age 18 in the home is 12% less than the median annual household income of comparable married different-sex couples (\$66,000 versus \$75,000, respectively).³⁶

Poverty rates among children under age 18 being raised by same-sex couples also evidence economic disadvantage. In 2013, nearly one in five children being raised by same-sex couples (24%) were living in poverty compared to 11% of children being raised by married different-sex couples.³⁷ The difference in poverty rates between children being raised by same-sex couples versus married different-sex couples is even larger in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota (32% versus 15%, respectively).³⁸

³⁵ Gates, *ACS 2013 report, supra*, at 7.

³⁶ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, supra*, at 4.

³⁷ Gates, *ACS 2013 report, supra*, at 7.

³⁸ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, supra*, at 5.

Several factors likely contribute to the relative economic disadvantage of same-sex couples with children. *First*, research suggests that lesbian, gay, and bisexual parents (including, presumably, some who are in same-sex couples) are, on average, younger than their different-sex counterparts.³⁹ In fact, individuals in same-sex couples raising children are, on average, nearly three years younger than their different-sex counterparts.⁴⁰ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, the average age of same-sex parents is 6.2 years younger than the average age of married different-sex parents.⁴¹

Second, same-sex couples with children are disproportionately female, and in the United States, women, on average, have lower incomes than men.⁴² More than three-quarters of same-sex couples raising children under age 18 are female (77%).⁴³ In Arkansas,

³⁹ Gary J. Gates, The Williams Institute, UCLA School of Law, *LGBT Parenting in the United States* 4 (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

⁴⁰ Gates, *ACS 2013 report, supra*, at 6.

⁴¹ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, supra*, at 4.

⁴² Gates, *ACS 2013 report, supra*, at 7; U.S. Bur. of Labor Statistics, *Highlights of Women's Earnings in 2013*, Report 1051, at 2–3 & chart 2 (2014), available at <http://www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf>.

⁴³ Gates, *ACS 2013 report, supra*, at 7.

Missouri, Nebraska, North Dakota, and South Dakota, 91% of same-sex couples with children are female.⁴⁴

Third, same-sex couples raising children are disproportionately members of racial and ethnic minorities (predominantly African-American and Latino/as), compared to married different-sex couples. Among racial and ethnic minorities in the United States, African-Americans and Latino/as have lower incomes, on average, than White persons.⁴⁵ African-Americans and Latino/as comprise 27% of those in same-sex couples with children under age 18 in the home, compared to 25% of their counterparts in married different-sex couples.⁴⁶ In Arkansas, Missouri, Nebraska, North Dakota, and South Dakota, 22% of individuals in same-sex couples with children are African-American or Latino/a compared to just 11% of their different-sex married counterparts.⁴⁷

⁴⁴ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 4.

⁴⁵ See U.S. Bur. of Labor Statistics, *Highlights of Women's Earnings in 2013*, *supra*, at 2–3 & chart 2 (2014).

⁴⁶ Gates, *ACS 2013 report*, *supra*, at 7.

⁴⁷ Gates, *Demographics of Same-sex Couples in Arkansas, Missouri, Nebraska, North Dakota, and South Dakota*, *supra*, at 4.

IV. Married Same-Sex Couples Evidence Some Of The Economic Advantages That Have Been Associated With Marriage

Substantial research suggests that marriage reduces economic vulnerability in couples and in families.⁴⁸ Even though the availability of marriage for same-sex couples is relatively recent for most couples in the United States, findings from the 2013 American Community Survey suggest that the economic advantages associated with marriage are evident among same-sex couples in ways that are similar to their different-sex counterparts.

Married same-sex couples have a median household income that is approximately 27% higher than the median income of unmarried same-sex couples. Among same-sex couples raising children under age 18, the median household income of married couples is 43% higher than that of unmarried couples (\$97,000 versus \$67,900, respectively).⁴⁹ Only 9% of children being raised by married same-sex couples live in poverty compared to 32% of children being raised by unmarried same-sex

⁴⁸ *E.g.*, Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (Broadway Books 2001); Gary Becker, *A Treatise on the Family: Enlarged Edition* (1993); Robert I. Lerman, Urban Inst. & American Univ., *Marriage and the Economic Well-Being of Families with Children: A Review of the Literature* (2002), available at http://www.urban.org/UploadedPDF/410541_LitReview.pdf.

⁴⁹ Gates, *ACS 2013 report, supra*, at 7.

couples.⁵⁰ Home ownership is also higher among married same-sex couples. More than 71% of married same-sex couples own their home compared to 65% of unmarried same-sex couples.⁵¹

CONCLUSION

In light of the foregoing, and for the reasons set forth by appellees, this Court should affirm.

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⁵⁰ Gates, *ACS 2013 report, supra*, at 7.

⁵¹ Gates, *ACS 2013 report, supra*, at 5.

CERTIFICATE OF COMPLIANCE

This amicus brief complies with this Court's length limitation because it contains **4,713** words, excluding exempted parts of the brief. This brief also complies with this Court's typeface and typestyle requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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