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No. 12-17668

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United States Court of Appeals  
for the Ninth Circuit

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BEVERLY SEVCIK, *ET AL.*,

*Plaintiffs-Appellants,*

v.

BRIAN SANDOVAL, *ET AL.*,

*Defendants-Appellees, and*

COALITION FOR THE PROTECTION OF MARRIAGE, *ET AL.*,

*Intervenor-Defendant-Appellee*

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**On Appeal from the United States District  
Court for the District of Nevada  
Case No. 2:12-cv-00578-RCJ-PAL  
The Hon. Robert C. Jones, District Judge**

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**BRIEF OF *AMICUS CURIAE*  
GARY J. GATES IN SUPPORT OF  
PLAINTIFFS-APPELLANTS AND  
REVERSAL OF THE JUDGMENT BELOW**

*(Pursuant to FRAP 29(a), all parties have consented to the filing of  
Amici Curiae Briefs)*

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## **STATEMENT OF INTEREST**

*Amicus Curiae* Gary J. Gates is the Williams Distinguished Scholar at the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at the UCLA School of Law. He is also 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 co-authored *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 non-governmental organizations on data collection issues regarding LGBT populations.

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



Court. Gates has conducted extensive research and authored numerous studies regarding the geographic, demographic, and economic characteristics of same-sex couples in the U.S. Gates believes that this expertise and perspective as an academic scholar may help the Court more fully appreciate the impact of Nevada's non-recognition of the marriages of same-sex couples and the exclusion of same-sex couples and their families from marriage. All parties have consented to the filing of any *amicus curiae* brief relating to this case, in support of any party or of no party, provided that the *amicus curiae* brief otherwise complies with the rules of this Court.<sup>1</sup>

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<sup>1</sup> Notice of All Parties' Consent to *Amicus Curiae* Briefs, D.I. 19 (Oct. 15, 2013).

**RULE 29(C)(5) STATEMENT**

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than the *amicus curiae* or his counsel contributed money that was intended to fund preparing or submitting this brief.

## I. Introduction

This brief presents and analyzes demographic and economic data available regarding same-sex couples and their children in the U.S and in Nevada and regarding LGBT adults, regardless of their relationship status, in order to assist the Court in understanding the possible effects of rulings in this case regarding the validity of Section 21 of Article 1 of the Nevada Constitution, Nevada Revised Statutes section 122.020, and all other sources of state law that preclude marriage for same-sex couples or prevent recognition of same-sex marriages.<sup>2</sup>

This brief uses data primarily from four sources.

- 2010 U.S. Census: The U.S. Census Bureau has been collecting data regarding same-sex couples for more than two decades, including as part of the 2000 and 2010 censuses.<sup>3</sup>
- American Community Survey (“ACS”): The ACS is an annual survey conducted by the U.S. Census Bureau that

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<sup>2</sup> Throughout this brief, the acronym “LGBT” refers collectively to lesbian, gay, bisexual, and transgender persons, and the acronym “LGB” refers collectively to lesbian, gay, and bisexual persons.

<sup>3</sup> *Decennial Census Data on Same Sex Couples*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/decennial.html> (last visited Oct. 24, 2013).

provides demographic information about the U.S. population.<sup>4</sup>

- General Social Survey (“GSS”): The GSS is a biannual survey of the National Opinion Research Center (“NORC”) at the University of Chicago. The GSS, initiated in 1972, is the largest project funded by the National Science Foundation’s Sociology Program and is the most frequently used source of information in the social sciences other than the U.S. Census.<sup>5</sup>
- Gallup: The Gallup Daily Tracking Survey asks respondents whether they identify as lesbian, gay, bisexual, or transgender. Data in this brief draw upon responses from more than 121,000 adults in the U.S. from June through September 2012, plus 85,000 more respondents from October

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<sup>4</sup> *American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/acs/> (last visited Oct. 24, 2013).

<sup>5</sup> *About GSS*, GSS GENERAL SOCIAL SURVEY, <http://www3.norc.org/GSS+Website/About+GSS/> (last visited Oct. 24, 2013).

through December 2012.<sup>6</sup> These data constitute the largest survey of LGBT persons in U.S. history.<sup>7</sup>

Based primarily on these sources, this brief describes demographic data about four groups of people in the U.S. and Nevada:<sup>8</sup> (A) same-sex couples; (B) same-sex couples with children; (C) same-sex couples in marriages, civil unions, or registered domestic partnerships; and (D) LGBT adults. The data show:

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<sup>6</sup> Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, GALLUP (Oct. 18, 2012), <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx> (last visited Oct. 24, 2013); Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP (Feb. 15, 2013), <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx> (last visited Oct. 24, 2013).

<sup>7</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 6.

<sup>8</sup> Analyses include both information about individuals who are part of a married or unmarried cohabiting same-sex couples and information about adult LGBT-identified individuals. National data that allow for identification of same-sex couples and their families are derived from the 2011 American Community Survey. In order to provide more detailed information about same-sex couples and their families in Nevada, American Community Survey data from four years, 2008-2011, are combined. Gallup data collected from June through December 2012 are used to provide information about LGBT-identified individuals. While the Gallup national sample of more than 6,000 individuals provides estimates of the size of the LGBT population in all states, there are not enough observations from Nevada to provide detailed analyses of LGBT individuals in the state.

(A) Same-Sex Couples: There are nearly 1.3 million adults who were members of 646,464 same-sex couples identified in the 2010 Census.<sup>9</sup> The Census identified same-sex couples in all 50 states and in 93% of counties in the U.S. The racial and ethnic distributions of individuals in same-sex and different-sex couples are similar.

(B) Same-Sex Couples with Children: U.S. Census Bureau data suggest that almost one-fifth of same-sex couples in the U.S. (19%) are raising children under age 18.<sup>10</sup> In other words, more than 125,000 same-sex couple households collectively include nearly 220,000 children in their homes. Although most such children are biologically related to one of their parents (59%), same-sex couples are more than four times as likely as their different-sex counterparts to be raising an adopted child and six times as likely to be raising foster children. Same-sex couples raising children live throughout the U.S., but childrearing among same-sex couples is most common in the South, the Upper Midwest, and the Mountain region (which includes Nevada). Parenting among same-sex couples is more prevalent among couples who are female, younger, and racial and ethnic minorities. Nationally, the

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<sup>9</sup> See *infra* Section II.A.

<sup>10</sup> See *infra* Section II.B.

median annual household income of same-sex couples with children under 18 in the home is more than 16% lower than for comparable different-sex couples. The median age of the 220,000 children being raised by same-sex couples is 9 years old, and half of these children are members of racial or ethnic minorities.

(C) Same-Sex Couples in Marriages, Civil Unions, or Registered Domestic Partnerships: As of 2010, approximately 114,300 same-sex couples were legally married in the U.S., and more than 108,000 same-sex couples were in civil unions or registered domestic partnerships.<sup>11</sup> When offered the choice, same-sex couples are much more likely to marry than to pursue a civil union or a registered domestic partnership. Female same-sex couples are more likely to marry or to enter into a civil union or registered domestic partnership than are male same-sex couples. In states with available data, dissolution rates for same-sex couples are slightly lower on average than divorce rates for different-sex couples.

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<sup>11</sup> See *infra* Section II.C.

(D) LGBT Adults: More than 8 million adults in the U.S. and 85,500 adults in Nevada identify as LGBT.<sup>12</sup> An estimated 37% of LGBT-identifying adults in the U.S. have had a child at some point during their lifetimes.

## II. Argument

### A. Same-Sex Couples: Nearly 1.3 Million Adults in the U.S. and 14,300 Adults in Nevada Are Members of Same-Sex Couples.

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.<sup>13</sup> In the 2010

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<sup>12</sup> See *infra* Section II.D.

<sup>13</sup> 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, *Same-Sex Couples in US Census Bureau Data: Who Gets Counted and Why*, THE WILLIAMS INST. 3 (Aug. 2010), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Who-Gets-Counted-Aug-2010.pdf> (last visited Oct. 24, 2013). A post-Census follow-up survey of same-sex couples suggests that approximately one in seven same-sex couples who live in the U.S. (14.4%) did not identify themselves in the 2010 Census. *Id.* Approximately 9.7% identified themselves as “roommates” or “non-relatives”; for many, this was because they were concerned about confidentiality, because they understood that the Census was a federal survey and that the federal government did not recognize their relationships and/or did not have a question about sexual orientation, or because they understood their relationship in a way other than the responses provided on the Census forms. *Id.* The remaining 4.7% were couples in which neither partner



Census, 646,464 same-sex couples identified as such, meaning that nearly 1.3 million Americans were members of a same-sex couple.<sup>14</sup> In the 2010 Census, 7,140 same-sex couples identified as such in Nevada, meaning that nearly 14,300 Nevadans are members of a same-sex couple.<sup>15</sup>

**1. Same-Sex Couples Live Throughout the U.S. and Throughout Nevada.**

Same-sex couples live in all parts of the country. In the 2010 Census, same-sex couples were identified in all 50 states and in 93% of counties in the U.S.<sup>16</sup> Same-sex couples live in all parts of Nevada. In

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was “Person 1” (the householder) on the Census form—for example, if a same-sex couple lived in the home of another person who was designated as householder. *Id.*

<sup>14</sup> Gary J. Gates & Abigail M. Cooke, *United States Census Snapshot: 2010*, THE WILLIAMS INST. 1, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf> (last visited Oct. 24, 2013).

<sup>15</sup> Gary J. Gates and Abigail M. Cooke. The Williams Institute, UCLA School of Law. *Nevada, Census Snapshot 2010* (2011), available at [http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot\\_Nevada\\_v2.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Nevada_v2.pdf) (last visited Oct. 24, 2013). As noted above, similarly detailed demographic data are not available at the state level.

<sup>16</sup> Gates and Cooke, *supra* note 14.

the 2010 Census, same-sex couples were identified in all but one of Nevada's counties.<sup>17</sup>

## **2. Same-Sex Couples Are Diverse in Terms of Sex, Age, Race, and Ethnicity.**

Analyses from the U.S. Census Bureau's American Community Survey show that same-sex couples are often demographically diverse.<sup>18</sup> The majority of same-sex couples are female (51%),<sup>19</sup> and members of same-sex couples span all age groups.

The average age of individuals in same-sex couples in the U.S. is 5 years younger than that of individuals in different-sex couples—44.4 and 49.5 years old, respectively.<sup>20</sup> This pattern is also true in Nevada, where the average age of individuals in same-sex couples is more than four years younger than that of different-sex couples—43.8 and 48.2 years old, respectively. Table 1 shows the percentages of adults in

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<sup>17</sup> Gates and Cooke, *supra* note 15.

<sup>18</sup> Compare Gary J. Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, THE WILLIAMS INST. (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf> (last visited Oct. 24, 2013) (providing demographic data on same-sex couples) with Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 6 (providing demographic data on LGBT individuals).

<sup>19</sup> Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 18, at 2.

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

same-sex couples by age group. In both the U.S. and Nevada, the lowest percentage of same-sex couples is in the 65 and over group.<sup>21</sup>

**Table 1. Adults in same-sex couples, by age (2011 American Community Survey)<sup>22</sup>**

Age	Percentage of Adults in Same-Sex Couples	
	U.S.	Nevada
<30	15%	14%
30-49	50%	55%
50-64	28%	23%
65+	6%	7%

In the U.S., the racial and ethnic distributions of individuals in same-sex and different-sex couples are similar. In total, 24% of individuals in same-sex couples are members of racial or ethnic minorities, compared to 27% of individuals in different-sex couples. The portion of African-Americans is the same in each group (7%), while Latinos and Latinas comprise 11% of those in same-sex couples and 13% of those in different-sex couples. Asians, Native Hawaiians, and

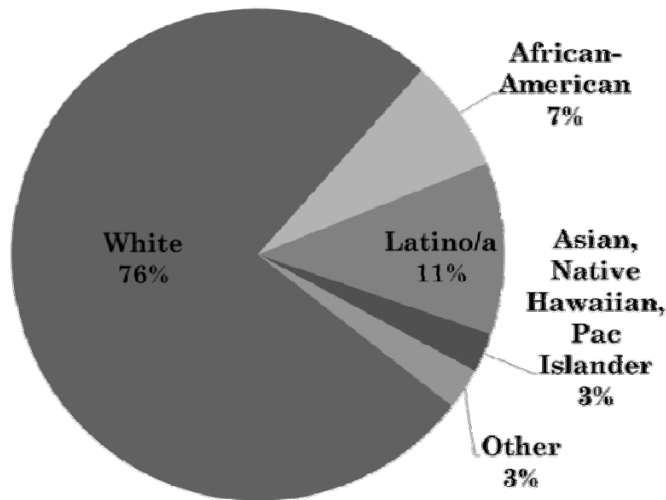
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<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.*; Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-Sex Couples in Nevada: A Demographic Summary* (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/NV-same-sex-couples-demo-oct-2013.pdf>

Pacific Islanders comprise 3% of individuals in same-sex couples and 5% of those in different-sex couples.<sup>23</sup>

**Figure A. Race/ethnicity of adults in same-sex couples in the U.S.<sup>24</sup>**



In Nevada, nearly a third of individuals in same-sex couples are members of racial or ethnic minorities. In total, 31% of individuals in same-sex couples are members of racial or ethnic minorities compared to 37% of individuals in different-sex couples. Latinos and Latinas comprise 20% of individuals in same-sex couples and 21% of those in different-sex couples. The portion of African-Americans is 3% among

<sup>23</sup> Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 18, at 3-4. The racial and ethnic identification terms used here (African-American, Latino/Latino, and Asian, Native Hawaiian, and Pacific Islander) are consistent with the terminology used in the report. *Id.*

<sup>24</sup> *Id.* at 8.

those in same-sex couples and 6% among those in different-sex couples. Asians, Native Hawaiians, and Pacific Islanders comprise 5% of individuals in same-sex couples and 8% of those in different-sex couples.<sup>25</sup>

**B. Same-Sex Couples With Children: Approximately One in Five Same-Sex Couples in the U.S. and Nevada Are Raising Children.**

U.S. Census Bureau data suggest that almost one in five same-sex couples in the U.S. (19%) are raising children.<sup>26</sup> In other words, more than 125,000 same-sex couple households include nearly 220,000 children under age 18 in their homes.<sup>27</sup>

Fully one in five same-sex couples in Nevada (20%) are raising children under age 18 in their homes.<sup>28</sup> More than 1,400 same-sex-couple households in the state include more than 3,000 children.<sup>29</sup>

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<sup>25</sup> Gates, *Same-Sex Couples in Nevada: A Demographic Summary*, *supra* note 22.

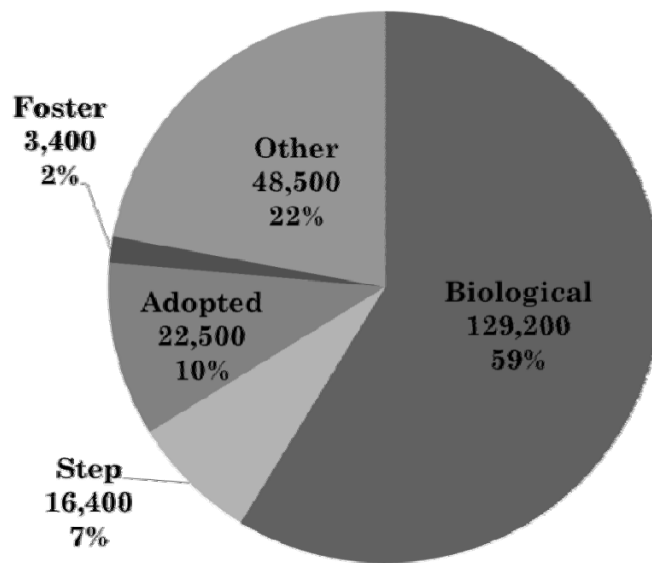
<sup>26</sup> Gary J. Gates, *LGBT Parenting in the United States*, THE WILLIAMS INST. 1 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (last visited Oct. 24, 2013). Among different-sex couples the proportion with children is 43.5%. Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 18, at 5.

<sup>27</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 1.

<sup>28</sup> Gates and Cooke, *Nevada Census Snapshot: 2010*, *supra* note 15.

In the U.S., most children being raised by same-sex couples are biologically related to one of their parents (59%). However, same-sex couples are more likely to adopt or foster children than are different-sex couples.<sup>30</sup>

**Figure B. Relationship of children under age 18 to householder (person 1) in same-sex couple households in the U.S.**



Among the 125,000 same-sex couples raising children in the U.S., more than 111,000 same-sex couples are raising an estimated 129,200 biological children, 16,400 stepchildren, and 22,500 adopted children.<sup>31</sup> Approximately 2,600 same-sex couples are raising 3,400 foster

<sup>29</sup> Gates, *Same-Sex Couples in Nevada: A Demographic Summary*, *supra* note 22.

<sup>30</sup> Gates, *LGBT Parenting in the United States*, *supra* note 26, at 3, Fig. 4.

<sup>31</sup> *Id.* at 3.

children.<sup>32</sup> Finally, more than a quarter of same-sex couples raising children (25.6%) are raising children identified as grandchildren, siblings, or other children.<sup>33</sup> Roughly 32,000 same-sex couples are raising approximately 48,500 such children.<sup>34</sup>

In Nevada, 77% of children being raised by same-sex couples are biological children, 3% are stepchildren, 11% are adopted, and 1.5% are foster children. This implies that the 1,400 same-sex couples raising children include 1,330 same-sex couples who are raising an estimated 2,300 biological children, 90 stepchildren, and 330 adopted children. Nearly 16% of same-sex couples in Nevada raising children are raising children identified as grandchildren, siblings, or other children.

### **1. Same-Sex Couples with Children Live Throughout the U.S. and Nevada.**

Same-sex couples raising children live throughout the U.S. Childrearing among same-sex couples in the U.S. is most common in

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1. Note that a same-sex couple household can include more than one of the different types of children discussed here (*e.g.*, biological, step, adopted, foster, grandchildren), so the number of couples raising each particular type of children will not add up to the total number of same-sex couples raising children.

the South, Upper Midwest, and Mountain regions of the country.<sup>35</sup> Same-sex couples raising children also live throughout Nevada. In the 2010 Census, all but two Nevada counties included a same-sex couple with children.<sup>36</sup>

**2. Members of Same-Sex Couples with Children Are Diverse in Terms of Race, Ethnicity, and Income.**

In the U.S., parenting by same-sex couples is more prevalent among racial and ethnic minorities. A third of women who are members of racial or ethnic minorities and are in same-sex couples (33%) are raising a biological, step, or adopted child, compared to 18% of their White counterparts.<sup>37</sup> For men, the same comparison is 16% versus 5%, respectively.<sup>38</sup>

In Nevada, more than four in ten individuals in same-sex couples who are members of racial or ethnic minorities (42%) are raising a child under age 18, compared to 11% of their White counterparts.

Nationally, the median annual household income of same-sex couples with children under age 18 in the home is more than 16% lower

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<sup>35</sup> *Id.*

<sup>36</sup> Gates and Cooke, *Nevada Census Snapshot: 2010*, *supra* note 15.

<sup>37</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 4.

<sup>38</sup> *Id.*



than the median annual household income of comparable different-sex couples (\$63,900 versus \$74,000).<sup>39</sup> In Nevada, the median annual household income of same-sex couples with children under age 18 in the home is 13% lower than the median annual household income of comparable different-sex couples (\$62,700 versus \$72,100).<sup>40</sup>

Several factors likely contribute to the relative economic disadvantage of same-sex couples with children. First, research suggests that LGB parents (including, presumably, LGB individuals in same-sex couples) are, on average, younger than their different-sex counterparts.<sup>41</sup> Second, same-sex couples with children are disproportionately female, and in the U.S., women, on average, have lower incomes than men.<sup>42</sup> Third, same-sex couples raising children are disproportionately members of racial and ethnic minorities. African-Americans and Latino or Latinas comprise 33% of those in same-sex couples with children under age 18 in the home compared to 27% of

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<sup>39</sup> *Id.* at 5.

<sup>40</sup> Gates, *Same-Sex Couples in Nevada: A Demographic Summary*, *supra* note 22.

<sup>41</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 4.

<sup>42</sup> *Id.*; Women in the Labor Force: A Databook, U.S. BUREAU OF LABOR STATISTICS 51-52 (Dec. 2011), <http://www.bls.gov/cps/wlf-databook-2011.pdf> (last visited Oct. 24, 2013).

their counterparts in different-sex couples. In the U.S., African-Americans, Latinos, and Latinas have lower incomes, on average, than White persons.<sup>43</sup>

**3. Same-Sex Couples Are More Likely Than Different-Sex Couples to Be Raising Adopted Children and Foster Children.**

Nationally, same-sex couples raising children are more than four times as likely as their different-sex counterparts to be raising an adopted child.<sup>44</sup> While only 2% of the children of different-sex couples are adopted, approximately 10% of the children of same-sex couples are adopted.

Same-sex couples raising children in Nevada are six times as likely as their different-sex counterparts to be raising an adopted child. Approximately 2% of the children of different-sex couples in Nevada are adopted, compared to 12% of the children of same-sex couples.<sup>45</sup>

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<sup>43</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 4; *Women in the Labor Force*, *supra* note 428, at 51.

<sup>44</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 1.

<sup>45</sup> Gates, *Same-Sex Couples in Nevada: A Demographic Summary*, *supra* note 22.

In the U.S., same-sex couples are six times as likely as their different-sex counterparts to be raising foster children.<sup>46</sup> Among couples with children under age 18, 2% of same-sex couples are raising a foster child, compared to just 0.3% of different-sex couples.<sup>47</sup>

Same-sex couples in Nevada are nine times as likely as their different-sex counterparts to be raising foster children. Among couples with children under age 18, 1.8% of same-sex couples in the state are raising a foster child, compared to just 0.2% of different-sex couples.<sup>48</sup>

**C. Same-Sex Couples in Marriages, Civil Unions, or Registered Domestic Partnerships: As of 2010, Approximately 114,300 Same-Sex Couples in the U.S. Were Legally Married, and Over 108,000 Were in Civil Unions or Registered Domestic Partnerships.**

Of the 646,464 same-sex couples who identified as such in Census 2010, nearly 132,000 couples identified as spouses, while nearly 515,000 identified as unmarried partners.<sup>49</sup>

For all couples, both different-sex and same-sex, Census data are based on how individuals describe their relationship, which is not

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<sup>46</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 1.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> Gates, *Same-Sex Couples in Nevada: A Demographic Summary*, *supra* note 22.

<sup>49</sup> Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 14, at 1.

always consistent with their legal relationship status. Accordingly, same-sex couples who are legally married, as well as those who are not legally married but identified themselves as spouses, can identify one partner as a “husband or wife.”<sup>50</sup> Based on a 2010 survey of same-sex couples funded by the Census Bureau, an estimated 71% of same-sex couples who identified a partner as “husband” or “wife” in Census 2010 were legally married, 15% were in civil unions or registered domestic partnerships, and 14% were not in a legally recognized relationship.<sup>51</sup> For those who identified as “unmarried partner,” 79% were not in a legally recognized relationship, 17% were in civil unions or registered domestic partnerships, and only 4% were legally married.<sup>52</sup>

Combining these estimates with Census 2010 data suggests that approximately 114,300 same-sex couples in the U.S. were legally married in 2010, having legally married either in the U.S. or in another

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<sup>50</sup> *Id.*

<sup>51</sup> Gates, *Same-sex couples in US Census Bureau Data: Who Gets Counted and Why*, *supra* note 13, at ii.

<sup>52</sup> Put differently, 22% of legally married same-sex couples decided to identify as unmarried partners in Census 2010. *Id.* at 5. When asked why they made this choice, most said this was primarily because they thought it was the “correct” answer since either their state or the federal government did not formally recognize their marriage. *Id.*

country, and over 108,600 were in civil unions or registered domestic partnerships.<sup>53</sup>

**1. When Permitted By Law, Same-Sex Couples Are More Likely to Marry Than to Enter into a Civil Union or a Domestic Partnership.**

Analyses of state-level administrative data provide additional information about approximately 50,000 same-sex couples who had legally married in the U.S. as of 2010 and a similar number who had entered into other forms of legal recognition such as civil unions or registered domestic partnerships by that date.<sup>54</sup>

These administrative data show that when offered the choice, same-sex couples are much more likely to marry than to pursue a civil

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<sup>53</sup> *Amicus Curiae* Gates and Cooke report 131,729 same-sex couples who identified as spouses and 514,735 who identified as unmarried partners. Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 14, at 1. *Amicus Curiae* Gates suggests that 71% of spousal couples are legally married (amounting to approximately 93,700 legally married same-sex couples) along with 4% of unmarried partner couples (approximately 20,600 married couples). See Gates, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why*, *supra* note 13, at 6. Combined, this implies an estimated 114,300 legally married same-sex couples.

<sup>54</sup> M. V. Lee Badgett & Jody L. Herman, *Patterns of Relationship Recognition by Same-Sex Couples in the United States*, THE WILLIAMS INST. 4 (Nov. 2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf> (last visited Oct. 24, 2013).

union or a registered domestic partnership. On average, 30% of same-sex couples married in the first year that their state allowed them to marry,<sup>55</sup> while only 18% entered into civil unions or broad domestic partnerships in the first year states offered those statuses.<sup>56</sup> Furthermore, only 8% entered into legal relationship statuses with more limited rights and obligations,<sup>57</sup> such as reciprocal beneficiary relationships, in the first year that their respective states offered those statuses.<sup>58</sup>

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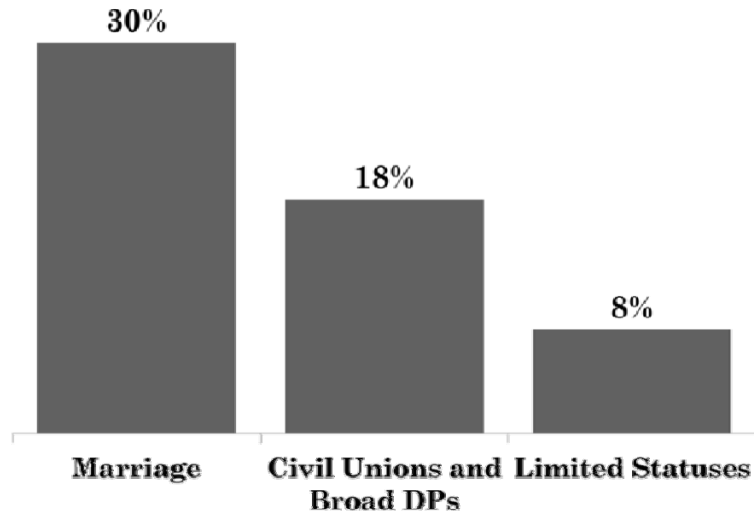
<sup>55</sup> *Id.* at 13 (analyzing data from the following three states that had extended marriage to same-sex couples: Iowa, Massachusetts, Vermont).

<sup>56</sup> *Id.* (analyzing data from the following six states that had extended civil union or domestic partnership statuses to same-sex couples offering all or almost all of the rights and obligations to marriage to same-sex couples: Connecticut, Nevada, New Hampshire, New Jersey, Oregon, and Vermont).

<sup>57</sup> *Id.* at 12.

<sup>58</sup> *Id.* at 11-12 (analyzing data from the following five states and the District of Columbia that had extended a more limited set of rights to same-sex couples through limited domestic partnerships or reciprocal or designated beneficiary statuses: California, the District of Columbia, Hawaii, Maine, New Jersey, and Washington).

**Figure C. Percentage of same-sex couples who pursued legal relationship recognition in the first year it was offered, by type of recognition.<sup>59</sup>**



Looking past the first year that recognition was offered, almost half of same-sex couples (47%) who live in a state that offers some form of legal relationship recognition have entered into such a status.<sup>60</sup> In Massachusetts, where marriage for same-sex couples has been legal since 2004, this is true of 68% of same-sex couples.<sup>61</sup>

Female same-sex couples are more likely to marry or to formalize their relationships by entering into another legal status such as a civil union or registered domestic partnership than are male same-sex couples. In eight states that release marriage, civil union, or registered

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 6.

<sup>61</sup> *Id.* at 19.

domestic partnership data by gender, 62% of same-sex couples who sought legal recognition were female couples.<sup>62</sup>

Same-sex couples who are legally married or have another legally recognized relationship are younger than the general population of married different-sex couples in states where same-sex couples can marry or enter into other legally recognized relationships.<sup>63</sup> However, comparing the ages of same-sex and different-sex couples at the time of marriage, newly married same-sex couples tend to be older than newly married different-sex couples.<sup>64</sup> This is most likely due to the fact that when states first offer marriage to same-sex couples, many couples have been waiting years or decades to marry.

## **2. Dissolution Rates Are Slightly Lower for Same-Sex Couples Than for Different-Sex Couples.**

In states with available data, dissolution rates for same-sex couples are slightly lower on average than divorce rates for different-sex

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<sup>62</sup> *Id.* at 7-8 (analyzing data from the following seven states and the District of Columbia: Connecticut, Iowa, Maine, New Hampshire, New Jersey, Oregon, and Washington).

<sup>63</sup> *Id.* at 8 (analyzing data from Connecticut and Washington).

<sup>64</sup> *Id.* at 9 (analyzing data from Connecticut).



couples.<sup>65</sup> The percentage of those in same-sex couples who have ended legal relationships ranges from 0% to 1.8% annually in those states. Nevada has an annual dissolution rate of 1.2% for those in registered domestic partnerships.<sup>66</sup> By comparison, 2% of married different-sex couples divorce annually.<sup>67</sup>

**D. LGBT Adults: Over 8 Million American Adults and 85,500 Adults in Nevada Identify as LGBT.**

Marriage and relationship recognition laws affect not only same-sex couples, but also LGBT individuals who are not members of same-sex couples. Many such LGBT individuals may want to marry a same-sex partner at some time in their lives. In a recent Gallup survey of adults aged 18 and older in the U.S., 3.5% identified themselves as LGBT.<sup>68</sup> Extrapolating that percentage to 2010 U.S. Census data

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<sup>65</sup> *Id.* at 18-19 (analyzing data from the following ten states and the District of Columbia: California, Colorado, Connecticut, Hawai'i, Maine, Nevada, New Hampshire, New Jersey, Vermont, and Washington).

<sup>66</sup> *Id.* at 18.

<sup>67</sup> *Id.* at 19.

<sup>68</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 6 (noting that “[t]hese results are based on responses to the question, ‘Do you, personally, identify as lesbian, gay, bisexual, or transgender?’ included in 206,186 Gallup Daily tracking interviews conducted between June 1 and Dec. 30, 2012”). The Gallup data did not allow for separate estimates or analyses of the lesbian, gay,

suggests that, out of nearly 235 million adults then in the U.S.,<sup>69</sup> more than 8 million adults were LGBT.

The Gallup survey also showed that 4.2% of adults in Nevada identified as LGBT.<sup>70</sup> Extrapolating that percentage to Nevada data from the 2010 U.S. Census suggests that, out of more than 2 million adults then in Nevada,<sup>71</sup> nearly 85,500 self-identified as LGBT. The actual number of LGBT adults is likely higher because evidence suggests that many adults who have a same-sex sexual orientation are

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and bisexual population from the transgender population. *Id.* *Amicus Curiae* Gates' analysis of multiple studies estimating the LGBT population in the U.S. suggests that approximately 0.3% of adults in the U.S. identify as transgender and 3.5% as lesbian, gay, or bisexual. Gary J. Gates, *How Many People Are Lesbian, Gay, Bisexual, and Transgender?*, THE WILLIAMS INST. 1 (Apr. 2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf> (last visited Oct. 24, 2013).

<sup>69</sup> Lindsay M. Howden & Julie A. Meyer, U.S. CENSUS BUREAU, *Age and Sex Composition: 2010 Census Briefs* 2 (May 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> (last visited Oct. 24, 2013).

<sup>70</sup> Gates and Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, supra note 6. While the Gallup data used to describe LGBT individuals allowed for estimates of the size of the LGBT-identified population in Nevada, sample sizes did not permit detailed analyses of LGBT demographic characteristics within the state.

<sup>71</sup> Howden and Meyer, *Age and Sex Composition: 2010 Census Briefs*, supra note 695.

reluctant to self-identify as LGBT, perhaps due in part to social stigma associated with LGBT identity.<sup>72</sup>

An estimated 37% of LGBT adults in the U.S. have had at least one child over the course of their lives<sup>73</sup> (including children who have now reached adulthood). This implies that more than 3 million LGBT

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<sup>72</sup> Analyses of the 2008 General Social Survey suggest that about 1% of adults in the U.S. (approximately 2.3 million) reported having a same-sex sexual partner within the last year, but do not identify as lesbian, gay or bisexual. About 1.3% of adults in the U.S. (more than 3 million) report having a same-sex sexual partner within the last five years, but do not identify as lesbian, gay, or bisexual. Gary J. Gates, *LGBT Identity: A Demographer's Perspective*, 45 Loy. L.A. L. Rev. 693 (2012). available at <http://digitalcommons.lmu.edu/llr/vol45/iss3/2> (last visited Oct. 24, 2013).

<sup>73</sup> The exact nature of parentage is not available as this figure is based on data from two different surveys, and neither has great specificity about the nature of parentage. The General Social Survey asked respondents, "How many children have you ever had?" while the National Transgender Discrimination Survey asked a variety of questions that indicated whether a respondent ever had children or parented any children. Gates, *LGBT Parenting in the United States*, *supra* note 30, at 2 n.1.

The General Social Survey (GSS) is a now biannual survey of NORC at the University of Chicago. *About GSS*, *supra* note 5.

The National Transgender Discrimination Survey was conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality and was a web-based survey of more than 6,000 transgender individuals in the U.S. Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 12 (2011), available at [http://www.thetaskforce.org/reports\\_and\\_research/ntds](http://www.thetaskforce.org/reports_and_research/ntds) (last visited Oct. 24, 2013).

Americans have had at least one child at some point during their lifetimes.<sup>74</sup> On average, LGBT individuals who have had children report having 2 children, implying that there may be as many as 6 million American children and adults who have an LGBT parent.<sup>75</sup>

### III. Conclusion

In light of the foregoing and for the reasons set forth by the parties challenging the constitutionality of Section 21 of Article 1 of the Nevada Constitution, Nevada Revised Statutes section 122.020, and all other sources of state law that preclude marriage for same-sex couples or prevent recognition of same-sex marriages, this Court should reverse the district court judgment in this case.

DATED: October 25, 2013

Respectfully submitted,  
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<sup>74</sup> Gates, *LGBT Parenting in the United States*, *supra* note 30, at 1. State-specific demographic data is not available on this point.

<sup>75</sup> *Id.* at 2.

**CERTIFICATE OF COMPLIANCE**

I certify that pursuant to Fed. R. App. P. 29(c)(7), Fed. R. App. P. 32(a)(7)(C), and Ninth Circuit Rule 32-1, the attached brief is proportionately spaced, has a typeface of 14 points or more, and contains 4,967 words.

DATED: October 25, 2013

Respectfully submitted,  
KIRKLAND & ELLIS LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2013, an electronic PDF of foregoing Brief Of Amicus Curiae Gary J. Gates In Support Of Plaintiffs-Appellants and Reversal Of The Judgment Below was uploaded to the 9th Circuit Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

*/s/ Elizabeth L. Deeley*  
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