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No. 14-5297

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**United States Court of Appeals  
for the Sixth Circuit**

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VALERIA TANCO; SOPHY JESTY; IJPE DEKOE; THOMAS  
KOSTURA; JOHNNO ESPEJO; AND MATTHEW MANSELL,

*Plaintiffs-Appellees,*

v.

WILLIAM EDWARD “BILL” HASLAM, as Governor of the State of  
Tennessee, in his official capacity; LARRY MARTIN, as Commissioner  
of the Department of Finance Administration, in his official capacity;  
and ROBERT COOPER, as Attorney General & Reporter of the State of  
Tennessee, in his official capacity,

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Middle District of Tennessee  
Case No. 3:13-CV-01159

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

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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 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 non-governmental organizations on data collection issues regarding LGBT populations. In *DeBoer v. Snyder*, he provided “highly credible” expert testimony relied upon by the court in holding unconstitutional Michigan’s prohibition on marriage for same-sex couples. 973 F. Supp. 2d 757, 763-64 (E.D. Mich. 2014).

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 United States. Gates believes that this expertise and perspective as an academic scholar may help the Court more fully appreciate the impact of Tennessee's prohibition on recognition of the marriages of same-sex couples.

This brief is filed with consent of all parties and no motion for leave to file is required. Fed. R. App. P. 29(a). 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. Fed. R. App. P. 29(c)(5).



## I. Introduction

This brief presents and analyzes available demographic and economic data regarding same-sex couples and their children in the United States and in Tennessee 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 Tennessee laws that preclude the state from recognizing same-sex marriages.<sup>1</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 1990, 2000, and 2010 censuses.<sup>2</sup>
- **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.<sup>3</sup>
- **General Social Survey (“GSS”):** The GSS is a biannual survey of the National Opinion Research Center (“NORC”) at

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<sup>1</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>2</sup> *Decennial Census Data on Same Sex Couples*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/decennial.html> (last visited June 16, 2014).

<sup>3</sup> *American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/acs/> (last visited June 16, 2014).

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>4</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 United States from June through September 2012, plus 85,000 more respondents from October through December 2012.<sup>5</sup> These data constitute the largest population-based survey of LGBT persons in U.S. history.<sup>6</sup>

Based primarily on these sources, this brief describes demographic data about four groups of people in the United States and Tennessee: (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>4</sup> *About GSS*, GSS GENERAL SOCIAL SURVEY, <http://www3.norc.org/GSS+Website/About+GSS/> (last visited June 16, 2014).

<sup>5</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 June 16, 2014); 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 June 16, 2014).

<sup>6</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 5.

**(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. The Census identified same-sex couples in all 50 states and in 93% of counties in the United States. In Tennessee, according to the 2010 Census, there are nearly 21,800 adults in 10,898 same-sex couples, and these couples were identified in all but one of Tennessee's counties. The racial and ethnic distributions of individuals in same-sex and different-sex married 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 United States and in Tennessee are raising children under age 18. In other words, nationally, more than 125,000 same-sex-couple households collectively include nearly 220,000 children in their homes. In Tennessee, nearly 1,950 same-sex-couple households in the state are raising nearly 3,940 children under age 18. Same-sex couples raising children live throughout the United States and Tennessee.

Most children being raised by same-sex parents in the United States and in Tennessee are biologically related to one of their parents. Nationally, same-sex couples are more likely than their different-sex married counterparts to be raising an adopted child or foster child. In Tennessee, same-sex and different-sex married couples are as likely to be raising an adopted child.

Parenting among same-sex couples is more prevalent among couples who are female, younger, and racial and ethnic minorities. Nationally, the 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. In Tennessee, the median annual household income of same-sex couples with children under age 18 in the home is less than half of the median annual household income for comparable different-sex married couples.

**(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 United States, and more than 108,000 same-sex couples were in civil unions or registered domestic partnerships. 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 married couples. Furthermore, there is no reason to believe that legalizing same-sex marriage will cause either a decline in the marriage rates of different-sex couples or an increase in non-marital births among different-sex couples.

**(D) LGBT Adults:** More than 8 million adults in the United States and 126,100 adults in Tennessee identify as LGBT. An estimated 37% of LGBT-identifying adults in the United States 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 21,800 Adults in Tennessee 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>7</sup> In the 2010 Census,

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<sup>7</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, The Williams Institute, UCLA School of Law, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why*, at 3 (Aug. 2010), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Who-Gets-Counted-Aug-2010.pdf> (last visited June 16, 2014). A post-Census follow-up survey of same-sex couples suggests that approximately one in seven same-sex couples who live in the United States (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 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.*

646,464 same-sex couples identified as such, meaning that nearly 1.3 million Americans were members of a same-sex couple.<sup>8</sup> In the 2010 Census, 10,898 same-sex couples identified as such in Tennessee, meaning that nearly 21,800 individuals in Tennessee are members of a same-sex couple.<sup>9</sup>

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

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 United States.<sup>10</sup> In the 2010 Census, same-sex couples were identified in all but one of Tennessee's counties.<sup>11</sup>

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<sup>8</sup> Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *United States Census Snapshot: 2010* (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf> (last visited June 16, 2014).

<sup>9</sup> Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *Tennessee Census Snapshot: 2010* (2011), available at [http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot\\_Tennessee\\_v2.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Tennessee_v2.pdf) (last visited June 16, 2014).

<sup>10</sup> Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 8, at 1 & 5.

<sup>11</sup> Gates & Cooke, *Tennessee Census Snapshot: 2010*, *supra* note 9, at 5.

## 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 ("ACS") show that same-sex couples are often demographically diverse.<sup>12</sup> The majority of same-sex couples are female (51%), and members of same-sex couples span all age groups.<sup>13</sup> The average age of individuals in same-sex couples in the United States is more than six years younger than that of individuals in different-sex married couples—44.4 and 50.8 years old, respectively.<sup>14</sup> This pattern is similar in Tennessee, where the average age of individuals in same-sex couples is more than seven years younger than that of different-sex married

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<sup>12</sup> Compare Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011* (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf> (last visited June 16, 2014) (providing demographic data on same-sex couples) with Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 5 (providing demographic data on LGBT individuals).

<sup>13</sup> Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 12, at 2. The versions of this brief filed in *United States v. Windsor*, No. 12-307 (U.S. Mar. 1, 2013), and *Sevcik v. Sandoval*, No. 12-17668 (9th Cir. Oct. 25, 2013), reported ACS data for different-sex couples, married and unmarried. Aside from the LGBT parenting report cited at *infra* note 20, this brief reports ACS data for only different-sex married couples and compares them to same-sex couples, married and unmarried. This is a more precise comparison in light of the issues presently before this Court.

<sup>14</sup> *Id.*

couples—43.4 and 50.8 years old, respectively.<sup>15</sup> Table 1 shows the percentages of adults in same-sex couples by age group. In both the United States and Tennessee, the lowest percentage of same-sex couples is in the 65-and-over group.

**Table 1. Adults in same-sex couples, by age<sup>16</sup>**

	<b>Percentage of Adults in Same-Sex Couples</b>	
<b>Age</b>	<b>U.S.</b>	<b>Tennessee</b>
<30	15%	19%
30-49	50%	49%
50-64	28%	22%
65+	6%	10%

In the United States, the racial and ethnic distributions of individuals in same-sex and different-sex married couples are similar. In total, 24% of individuals in same-sex couples are members of racial or ethnic minorities, compared to 26% of individuals in different-sex married couples. The portion of African-Americans is the same in each group (7%). Latinos and Latinas comprise 11% of those in same-sex couples and 12% of those in different-sex married couples. Asians,

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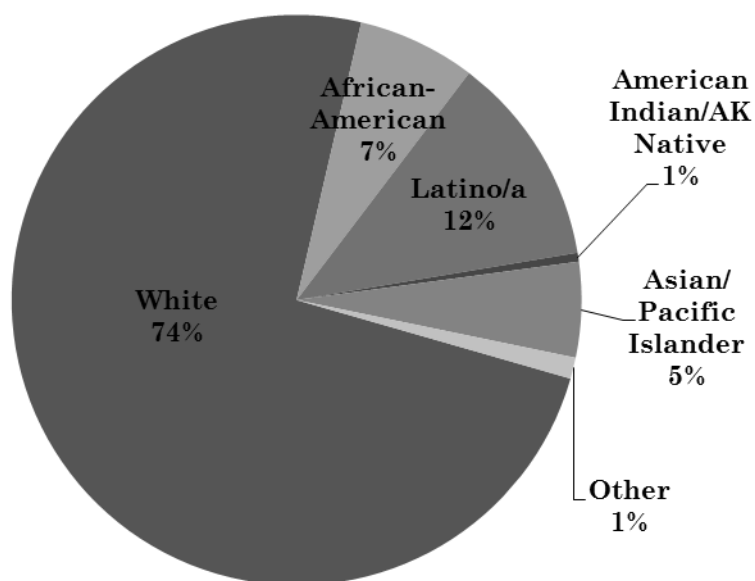
<sup>15</sup> Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex Couples in Tennessee: A Demographic Summary* (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TN-same-sex-couples-demo-june-2014.pdf> (last visited June 16, 2014).

<sup>16</sup> Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 12, at 8; Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.



Native Hawaiians, and Pacific Islanders comprise 3% of individuals in same-sex couples and 5% of those in different-sex married couples.<sup>17</sup>

**Figure A. Race/ethnicity of adults in same-sex couples in the U.S.**<sup>18</sup>



In Tennessee, over 14% of individuals in same-sex couples and in different-sex married couples are members of racial or ethnic minorities. The portion of Latinos and Latinas is the same in each group (3%). The portion of African-Americans is 8% among those in same-sex couples and 9% among those in different-sex married couples.

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<sup>17</sup> Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 12, at 3-4. The racial and ethnic identification terms used here (African-American, Latino/Latina, and Asian, Native Hawaiian, and Pacific Islander) are consistent with the terminology used in the report. *Id.*

<sup>18</sup> *Id.* at 8.

The portion of Asians, Native Hawaiians, and Pacific Islanders is the same in each group (2%). American Indians and Alaskan Natives comprise 1.1% of individuals in same-sex couples and 0.2% of those in different-sex married couples.<sup>19</sup>

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

U.S. Census Bureau data suggest that almost one in five same-sex couples in the United States (19%) are raising children under age 18.<sup>20</sup> In other words, nationally, more than 125,000 same-sex-couple households include nearly 220,000 children under age 18 in their homes.<sup>21</sup>

Similarly, 18% of same-sex couples in Tennessee are raising children under age 18 in their homes.<sup>22</sup> Nearly 1,950 same-sex-couple households in the state include nearly 3,940 children.<sup>23</sup>

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<sup>19</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

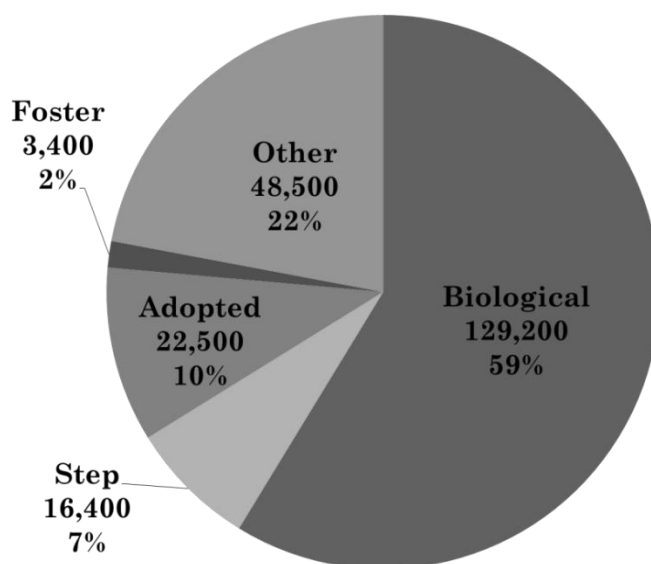
<sup>20</sup> Gary J. Gates, The Williams Institute, UCLA School of Law, *LGBT Parenting in the United States*, at 1 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (last visited June 16, 2014). Among different-sex couples the proportion with children is 43.5%. Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 12, at 5.

<sup>21</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 1.

<sup>22</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

In the United States, 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>24</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 United States, more than 111,000 same-sex couples are raising an estimated 129,200 biological children, 16,400 stepchildren, and 22,500 adopted children.<sup>25</sup> Approximately 2,600 same-sex couples are raising

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<sup>23</sup> *Id.*

<sup>24</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 3, Fig. 4.

<sup>25</sup> *Id.*

3,400 foster children.<sup>26</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>27</sup> Roughly 32,000 same-sex couples are raising approximately 48,500 such children.<sup>28</sup>

In Tennessee, nearly 80% of children being raised by same-sex couples are biological children and nearly 2% are adopted. This implies that the same-sex couples are raising an estimated 3,140 biological children and 72 adopted children. More than 18% of children being raised by same-sex couples in Tennessee, or 725 children, are grandchildren, other relatives, or other children.<sup>29</sup>

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

Same-sex couples raising children live throughout the United States. Childrearing among same-sex couples in the United States is most common in the South, Upper Midwest, and Mountain regions of

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* 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.

<sup>29</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

the country.<sup>30</sup> Same-sex couples raising children also live throughout Tennessee. In the 2010 Census, the vast majority of Tennessee's counties included a same-sex couple with children.<sup>31</sup>

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

In the United States, parenting by same-sex couples is more prevalent among racial and ethnic minorities. Forty-one percent of women who are members of racial or ethnic minorities and are in same-sex couples are raising a biological, step, or adopted child, compared to 23% of their White counterparts.<sup>32</sup> For men, the same comparison is 20% versus 8%, respectively.<sup>33</sup>

In Tennessee, 38% of individuals in same-sex couples who are members of racial or ethnic minorities are raising a child under age 18, compared to 14% of their White counterparts.<sup>34</sup>

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

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<sup>30</sup> *Id.*

<sup>31</sup> Gates & Cooke, *Tennessee Census Snapshot: 2010*, *supra* note 9, at 4-5.

<sup>32</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 4.

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

<sup>34</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

couples (\$63,900 versus \$74,000).<sup>35</sup> In Tennessee, the median annual household income of same-sex couples with children under age 18 in the home is less than half of the median annual household income of comparable different-sex married couples (\$32,584 versus \$69,704).<sup>36</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>37</sup> *Second*, same-sex couples with children are disproportionately female, and in the United States, women, on average, have lower incomes than men.<sup>38</sup> *Third*, same-sex couples raising children are disproportionately members of racial and ethnic minorities. African-Americans and Latinos or Latinas comprise 33% of those in same-sex couples with children under age 18 in the home compared to 27% of their counterparts in different-sex couples.<sup>39</sup> In the

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<sup>35</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 5.

<sup>36</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

<sup>37</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 4.

<sup>38</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 June 16, 2014).

<sup>39</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 4, Fig. 5.

United States, African-Americans, Latinos, and Latinas have lower incomes, on average, than White persons.<sup>40</sup>

**3. Nationally, 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. Among couples with children under age 18 in the home, 13% of same-sex couples have an adopted child compared to just 3% of different-sex couples. More than 16,000 same-sex couples are raising an estimated 22,000 adopted children in the United States. Further, while only 2% of the children of different-sex couples are adopted, approximately 10% of the children of same-sex couples are adopted.<sup>41</sup>

In Tennessee, same-sex couples raising children are about as likely as their different-sex married counterparts to be raising an adopted child. Approximately 4% of different-sex and same-sex married couples with children in Tennessee include an adopted child.<sup>42</sup>

In the United States, same-sex couples are six times as likely as their different-sex counterparts to be raising foster children.<sup>43</sup> Among

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<sup>40</sup> *Women in the Labor Force*, *supra* note 38, at 51.

<sup>41</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 3.

<sup>42</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

<sup>43</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 3.

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>44</sup> In Tennessee, while the most recent Census Bureau data do not identify any same-sex couples fostering children, only 0.3% of different-sex couples are doing so in the state.<sup>45</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>46</sup> In Tennessee, nearly 2,000 same-sex couples identified as spouses, while more than 8,900 identified as unmarried partners.<sup>47</sup>

For all couples, both different-sex and same-sex, Census data are based on how individuals describe their relationship, which is not always consistent with their legal relationship status. Accordingly, same-sex couples who are legally married, as well as those who are not

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

<sup>45</sup> Gates, *Same-sex Couples in Tennessee: A Demographic Summary*, *supra* note 15.

<sup>46</sup> Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 8, at 1.

<sup>47</sup> Gates & Cooke, *Tennessee Census Snapshot: 2010*, *supra* note 9, at 5.



legally married but identified themselves as spouses, can identify one partner as a “husband or wife.”<sup>48</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>49</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>50</sup>

Combining these estimates with Census 2010 data suggests that approximately 114,300 same-sex couples in the United States were legally married in 2010, having legally married either in the United States or in another country, and over 108,600 were in civil unions or registered domestic partnerships.<sup>51</sup>

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<sup>48</sup> *Id.* at 4.

<sup>49</sup> Gates, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why*, *supra* note 7, at i-ii.

<sup>50</sup> *Id.* at 6. 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.*

<sup>51</sup> 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 8, at 1. Gates

**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 United States 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>52</sup>

These administrative data show that when offered the choice, same-sex couples are much more likely to marry than to pursue a civil 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>53</sup> while only 18% entered into civil unions or broad domestic

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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 7, at 6. Combined, this implies an estimated 114,300 legally married same-sex couples.

<sup>52</sup> 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* (Nov. 2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf> (last visited June 16, 2014).

<sup>53</sup> *Id.* at 12-13 (analyzing data from the following three states that had extended marriage to same-sex couples: Iowa, Massachusetts, and Vermont).

partnerships in the first year states offered those statuses.<sup>54</sup> Furthermore, only 8% entered into legal relationship statuses with more limited rights and obligations,<sup>55</sup> such as reciprocal beneficiary relationships, in the first year that their respective states offered those statuses.<sup>56</sup>

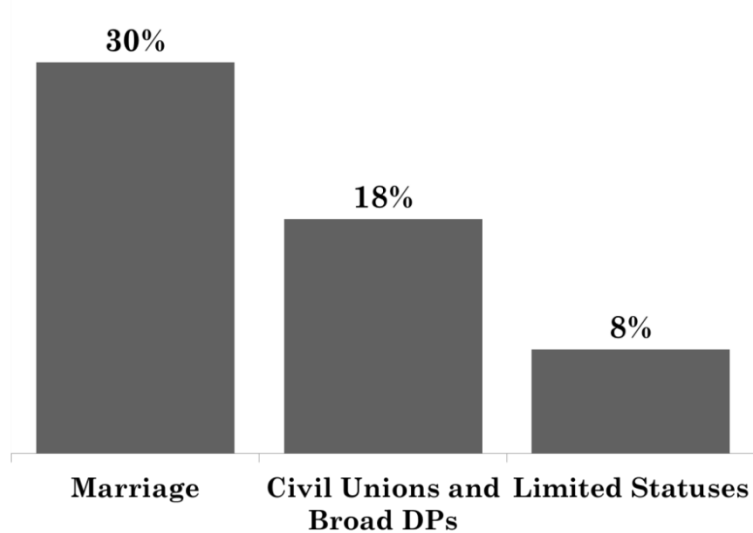
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<sup>54</sup> *Id.* (analyzing data from the following six states that had extended civil union or domestic partnership statuses to same-sex couples offering all or almost all of the rights and obligations of marriage: Connecticut, Nevada, New Hampshire, New Jersey, Oregon, and Vermont).

<sup>55</sup> *Id.* at 12.

<sup>56</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, 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>57</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>58</sup> In Massachusetts, where marriage for same-sex couples has been legal since 2004, this is true of 68% of same-sex couples.<sup>59</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>57</sup> *Id.*

<sup>58</sup> *Id.* at 6.

<sup>59</sup> *Id.* at 19.

domestic partnership data by gender, 62% of same-sex couples who sought legal recognition were female couples.<sup>60</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>61</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>62</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 couples.<sup>63</sup> The percentage of those in same-sex couples who have ended

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<sup>60</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>61</sup> *Id.* at 8 (analyzing data from Connecticut and Washington).

<sup>62</sup> *Id.* at 9 (analyzing data from Connecticut).

<sup>63</sup> *Id.* at 18-19 (analyzing data from the following ten states and the District of Columbia: California, Colorado, Connecticut, Hawaii, Maine, Nevada, New Hampshire, New Jersey, Vermont, and Washington).

legal relationships ranges from 0% to 1.8% annually in those states. By comparison, 2% of married different-sex couples divorce annually.<sup>64</sup>

### **3. Marriage Between Same-Sex Couples Does Not Reduce Different-Sex Marriage Rates or Increase Non-Marital Birth Rates of Different-Sex Couples**

Furthermore, there is no reason to believe that legalizing same-sex marriage will cause either a decline in the marriage rates of different-sex couples or an increase in non-marital births among different-sex couples. Available studies on places where same-sex marriage has been legalized 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.<sup>65</sup>

#### **D. LGBT Adults: Over 8 Million American Adults and 126,100 Adults in Tennessee 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-

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<sup>64</sup> *Id.* at 19.

<sup>65</sup> 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(3) SEXUALITY RESEARCH & SOCIAL POLICY 1 (2004).

sex partner at some time in their lives. In a recent Gallup survey of adults aged 18 and older in the United States, 3.5% identified themselves as LGBT.<sup>66</sup> Extrapolating that percentage to 2010 U.S. Census data suggests that, out of nearly 235 million adults then in the United States,<sup>67</sup> more than 8 million adults were LGBT.

In Tennessee, the Gallup survey also showed that 2.6% of adults identified as LGBT.<sup>68</sup> Extrapolating that percentage to Tennessee data

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<sup>66</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 5 (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, and bisexual population from the transgender population. *Id.* Based on analysis of multiple studies estimating the LGBT population in the United States, Gates suggests that approximately 0.3% of adults in the United States identify as transgender and 3.5% as lesbian, gay, or bisexual. Gary J. Gates, The Williams Institute, UCLA School of Law, *How Many People Are Lesbian, Gay, Bisexual, and Transgender?* at 1 (Apr. 2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf> (last visited June 16, 2014).

<sup>67</sup> Lindsay M. Howden & Julie A. Meyer, U.S. CENSUS BUREAU, *Age and Sex Composition: 2010 Census Briefs* at 2 (May 2011), *available at* <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> (last visited June 16, 2014).

<sup>68</sup> Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 5.

from the 2010 U.S. Census suggests that, out of the 4.85 million adults then in Tennessee,<sup>69</sup> more than 126,100 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 reluctant to self-identify as LGBT, perhaps due in part to social stigma associated with LGBT identity.<sup>70</sup>

An estimated 37% of LGBT adults in the United States have had at least one child over the course of their lives<sup>71</sup> (including children who

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<sup>69</sup> Howden & Meyer, *Age and Sex Composition: 2010 Census Briefs*, *supra* note 67, at 7.

<sup>70</sup> Analyses of the 2008 General Social Survey suggest that about 1% of adults in the United States (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 United States (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, 704 (2012), *available at* <http://digitalcommons.lmu.edu/llr/vol45/iss3/2> (last visited June 16, 2014).

<sup>71</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 (GSS) 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 20, at 2 n.1. For more information on the GSS, see *supra* note 4 and accompanying text. 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



have now reached adulthood). This implies that more than 3 million LGBT Americans have had at least one child at some point during their lifetimes.<sup>72</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>73</sup>

### III. Conclusion

In light of the foregoing and for the reasons set forth by the parties challenging the constitutionality of Tennessee laws preventing recognition of same-sex marriages, this Court should affirm the district court judgment in this case.

Dated: June 16, 2014

Respectfully submitted,  
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Gary J. Gates

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United States. Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* at 12 (2011), available at [http://www.thetaskforce.org/reports\\_and\\_research/ntds](http://www.thetaskforce.org/reports_and_research/ntds) (last visited June 16, 2014).

<sup>72</sup> Gates, *LGBT Parenting in the United States*, *supra* note 20, at 2. State-specific demographic data are not available on this point.

<sup>73</sup> *Id.*

### CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **5,509** words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a 14-point proportionally spaced Century Schoolbook typeface using Microsoft Word 2010.

Dated: June 16, 2014

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Gary J. Gates

### CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 16, 2014

MANATT, PHELPS & PHILLIPS, LLP

By: s/Bess Hubbard