

No. 12-307

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

EDITH SCHLAIN WINDSOR

AND

BIPARTISAN LEGAL ADVISORY GROUP OF THE
UNITED STATES HOUSE OF REPRESENTATIVES,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**BRIEF OF GARY J. GATES AS
AMICUS CURIAE ON THE MERITS
IN SUPPORT OF RESPONDENT WINDSOR**

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TABLE OF CONTENTS

	Page
BRIEF FOR <i>AMICUS CURIAE</i>	1
STATEMENT OF INTEREST	1
SUMMARY OF ARGUMENT	2
ARGUMENT	5
A. Over 8 Million American Adults Identify as LGBT.....	7
1. LGBT Americans Live Throughout the United States.	8
2. LGBT Americans Are Diverse in Terms of Sex, Age, Race, and Ethnicity.	9
3. LGBT Americans Are Socio-Economically Diverse.	11
4. Thirty-Seven Percent of LGBT Adults in the United States Have Had a Child.....	14
B. Nearly 1.3 Million Adults in the United States Are Members of Same-Sex Couples.	15
1. Same-Sex Couples Live Throughout the United States.	16

TABLE OF CONTENTS

(continued)

	Page
2. Same-Sex Couples Are Diverse in Terms of Sex, Age, Race and Ethnicity.....	16
3. Members of Same-Sex Couples Actively Participate in the U.S. Economy and Serve in the U.S. Armed Forces.....	20
4. Members of Same-Sex Couples Are Socio-Economically Diverse.	22
C. Approximately 114,000 Same-Sex Couples in the United States Are Married, and Over 108,000 Are in Civil Unions or Registered Domestic Partnerships.....	25
1. Same-Sex Couples Are More Likely to Marry Than to Enter into a Civil Union or a Domestic Partnership.	27

TABLE OF CONTENTS

(continued)

	Page
2. Same-Sex Couples Who Marry or Enter into Other Legally Recognized Relationships Are More Likely To Be Women and Are Younger Than Different-Sex Couples.....	30
3. Dissolution Rates Are Similar for Same-Sex and Different-Sex Couples.....	31
D. Almost One in Five Same-Sex Couples in the United States Are Raising Children.	31
1. Nearly a Third of Same-sex Couples Who Consider Themselves To Be Spouses Have Children.....	33
2. Same-Sex Couples with Children Live Throughout the United States.....	34
3. Members of Same-Sex Couples with Children Are Diverse in Terms of Race, Ethnicity, and Income.	35

TABLE OF CONTENTS

(continued)

	Page
4. Children of Same-Sex Couples Are Racially and Ethnically Diverse and More Likely To Be Adopted and Fostered.	37
CONCLUSION	40

TABLE OF AUTHORITIES

	Page(s)
Statutes & Regulations	
1 U.S.C. § 7.....	4
Cal. Const., art. I, § 8.5.....	4
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<i>About GSS,</i> GSS GENERAL SOCIAL SURVEY, http://www3.norc.org/GSS+Website/About+GSS/ (last visited Feb. 25, 2013).....	6
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**BRIEF FOR *AMICUS CURIAE*
GARY J. GATES**

STATEMENT OF INTEREST¹

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

¹ No counsel for a party authored this brief in whole or in part, and no person other than Amicus Curiae and his counsel made a monetary contribution to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

substantial interest in the issues before this Court.² 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 the federal government's non-recognition of the marriages of same-sex couples and the exclusion of same-sex couples and their families from marriage by many states, including California.

SUMMARY OF ARGUMENT

This brief presents and analyzes demographic and economic data available regarding LGBT adults and same-sex couples and their children in the United States.³ This brief analyzes data from the 2010 United States Census, the Census Bureau's American Community Survey, the General Social Survey, and data from the Gallup Daily Tracking Survey.

(A) More than 8 million adults in the United States identify as LGBT.⁴ LGBT adults live throughout the country and are racially and ethnically diverse in percentages similar to the non-LGBT population. LGBT American adults are

² Amicus is filing identically worded briefs in both *United States v. Windsor*, No. 12-307 and *Hollingsworth v. Perry*, No. 12-144.

³ 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.

⁴ See *infra* Section A.

diverse with respect to levels of educational achievement and socio-economic status. An estimated 37% of LGBT-identifying adults have had a child.

(B) There are nearly 1.3 million adults who are members of 646,464 same-sex couples identified in the 2010 Census.⁵ Same-sex couples were identified in all 50 states and in 93% of counties in the United States. The racial and ethnic distributions of individuals in same-sex and different-sex couples are very similar. In part because they are younger, individuals in same-sex couples in the United States are more likely than their different-sex counterparts to be in the labor force, but members of both sets of couples who are in the labor force have similar employment patterns. Women in same-sex couples are four times more likely to be veterans than women in different-sex couples (5% versus 1%, respectively). Nearly one in ten men in same-sex couples (9%) has served in the armed forces, compared to about one in five men in different-sex couples (21%). Median annual household incomes of same-sex and different-sex couples in the United States are similar, but same-sex couples have less access to health insurance than do different-sex couples.

(C) More than 114,000 same-sex couples are married in the United States, and more than 108,000 same-sex couples are in civil unions or registered domestic partnerships.⁶ When offered the choice, same-sex couples are much more likely to marry than

⁵ See *infra* Section B.

⁶ See *infra* Section C.

to pursue a civil union or a registered domestic partnership. Female same-sex couples are more likely to marry or to enter 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.

(D) U.S. Census Bureau data suggest that almost one-fifth (19%) of same-sex couples in the United States are raising children.⁷ In other words, more than 125,000 same-sex couple households collectively include nearly 220,000 children under age 18 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 United States, but childrearing among same-sex couples is most common in the South, Upper Midwest, and Mountain regions of the country. 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. 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.

⁷ See *infra* Section D.

ARGUMENT

To assist the Court in understanding the possible effects of rulings in these cases regarding the validity of Section 3 of the federal Defense of Marriage Act, 1 U.S.C. § 7, and California's Proposition 8, Cal. Const., art. I, § 8.5, this brief analyzes demographic and economic data regarding same-sex couples and LGBT persons in the United States.

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.⁸
- 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.⁹
- General Social Survey (GSS): The GSS is a biannual survey of the National Opinion Research Center ("NORC") at the University of Chicago. The GSS, begun 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

⁸ *Decennial Census Data on Same Sex Couples*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/decennial.html> (last visited Feb. 26, 2013).

⁹ *American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/acs/> (last visited Feb. 26, 2013).

the social sciences other than the U.S. Census.¹⁰

- 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 2012.¹¹ These data constitute the largest survey of LGBT persons in the history of the United States.¹²

Based primarily on these sources, this brief provides demographic data about four groups of people in the United States: (A) more than 8 million adults who identify as LGBT;¹³ (B) nearly 1.3 million adults who are members of more than 646,000 same-sex couples identified in the 2010 Census;¹⁴ (C) more than 113,000 same-sex couples who are married and

¹⁰ *About GSS*, GSS GENERAL SOCIAL SURVEY, <http://www3.norc.org/GSS+Website/About+GSS/> (last visited Feb. 25, 2013).

¹¹ 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>; 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>.

¹² Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 10.

¹³ *See infra* Section A.

¹⁴ *See infra* Section B.

more than 108,000 same-sex couples in civil unions or registered domestic partnerships;¹⁵ and (D) more than 125,000 same-sex couples whose households collectively include nearly 220,000 children under age 18.¹⁶

A. *Over 8 Million American Adults Identify as LGBT.*

In a recent survey of adults aged 18 and older in the United States, 3.5% identified themselves as LGBT.¹⁷ Extrapolating that percentage to 2010 U.S. Census data suggests that, out of nearly 235 million adults in the United States,¹⁸ more than 8 million adults are LGBT. The actual number of LGBT

¹⁵ See *infra* Section C.

¹⁶ See *infra* Section D.

¹⁷ Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 10 (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 do not allow for separate estimates or analyses of the lesbian, gay, and bisexual population from the transgender population. *Id.* *Amicus Curiae* Gates’ analysis of multiple studies estimating the LGBT population in the United States 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>.

¹⁸ 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>.

American adults is likely higher because evidence suggests that some adults who have a same-sex sexual orientation are reluctant to identify as LGBT, due in part to social stigma associated with LGBT identity.¹⁹

1. LGBT Americans Live Throughout the United States.

Two analyses of the largest population-based survey to have ever included a question asking if respondents identified as LGBT show substantial geographic, demographic and socio-economic variation among LGBT adults.²⁰

LGBT adults are present in every state in the country, ranging from more than 5% of the adult population in Hawaii to just under 2% in North Dakota.²¹ In all states, the LGBT population is

¹⁹ 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 previous year, but did 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). About 1.3% of adults in the U.S. (more than 3 million) reported having a same-sex sexual partner within the previous five years, but did not identify as lesbian, gay, or bisexual. *Id.*

²⁰ The analyses were of survey data based on Gallup Daily Tracking Survey 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. Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 10; Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 10.

²¹ Gates & Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, *supra* note 10.

within two percentage points of the national average of 3.5%.²² The portion of adults identifying as LGBT is 3.7% in the East, 3.2% in the South, 3.4% in the Midwest, and 3.6% in the West.²³ Applied to Census 2010 tabulations, these percentages imply that an estimated 1.6 million LGBT adults live in the East, 2.8 million live in the South, 1.7 million live in the Midwest, and more than 1.9 million live in the West.²⁴

2. LGBT Americans Are Diverse in Terms of Sex, Age, Race, and Ethnicity.

In the United States, women are slightly more likely than men to identify as LGBT, with 3.6% of women and 3.3% of men so identifying in the Gallup

²² In contrast, 10% of adults self-identified as LGBT in the District of Columbia. *Id.*

²³ Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 10. The East includes Maine, Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, and Pennsylvania. *See* U.S. CENSUS BUREAU, *Census Regions and Divisions of the United States*, available at https://www.census.gov/geo/www/us_regdiv.pdf. The South includes Delaware, the District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma, and Texas. *Id.* The Midwest includes Indiana, Illinois, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. *Id.* The West includes Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming, Alaska, California, Hawaii, Oregon, and Washington. *Id.*

²⁴ Howden & Meyer, *supra* note 17.

survey.²⁵ Approximately 53% of LGBT adults in the United States are female, and approximately 47% are male.²⁶

As shown in Table 1, while Americans of all ages identify as LGBT, younger Americans are more likely to identify as LGBT than older Americans. Adults aged 18 to 29 are more than three times as likely as seniors aged 65 and older to identify as LGBT.²⁷

Table 1: Percentages of U.S. Adults Identifying as LGBT by Age²⁸

Age	Percentage Identifying as LGBT
18-29	6.4%
30-49	3.2%
50-64	2.6%
65+	1.9%

LGBT adults are racially and ethnically diverse in percentages similar to the non-LGBT population. A third of LGBT adults in the United States (33%) are members of racial or ethnic minorities, compared to 27% of the non-LGBT population. The percentage of adults who identify as LGBT is higher among adults who are members of racial and ethnic

²⁵ Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, *supra* note 10.

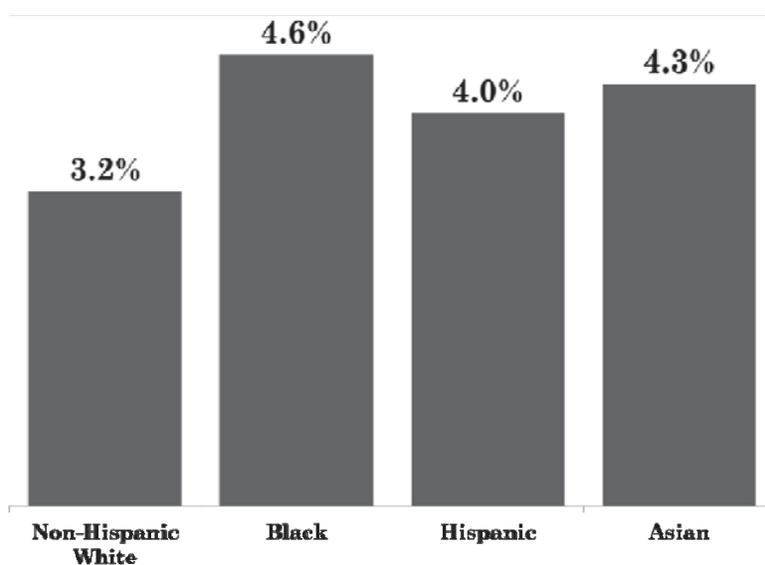
²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

minorities than among white adults: 4.6% of Black adults, 4.0% of Hispanic adults, and 4.3% of Asian adults identify as LGBT, compared to 3.2% of white adults who are non-Hispanic, as shown in Figure A below.²⁹

Figure A. Percentages of LGBT adults in certain racial or ethnic groups³⁰



3. LGBT Americans Are Socio-Economically Diverse.

LGBT American adults are diverse with respect to levels of educational achievement. LGBT identification is higher among American adults with lower levels of education than among those with

²⁹ *Id.* The racial and ethnic identifications used here (Non-Hispanic White, Black, Hispanic, Asian) are those used in the Gallup report. *Id.*

³⁰ *Id.*

higher levels of education, as shown in Table 2, below. Approximately 3.5% of adults with a high school education or less in the United States identify as LGBT, along with 4.0% of those with some college education. The figures for college graduates and those with post-graduate education are lower at 2.8% and 3.2%, respectively, as shown in Table 2.³¹

Table 2: Percentages of U.S. Adults Identifying as LGBT by Education Level³²

Education Level	Percentage Identifying as LGBT
High school or less	3.5%
Some college education	4.0%
College graduate	2.8%
Post-graduate education	3.2%

LGBT adults show substantial socio-economic diversity, and the percentage of LGBT adults declines as household income rises. The percentage of LGBT adults in households with annual incomes lower than

³¹ *Id.*

³² *Id.*

\$24,000 was 5.1% compared to just 2.8% in households with annual incomes above \$90,000, as shown in Table 3.³³

Table 3: Percentages of U.S. LGBT Adults by Household Income

Household Income	Percentage Identifying as LGBT
Under \$24,000	5.1%
\$24,000 to <\$60,000	3.6%
\$60,000 to <\$90,000	2.8%
\$90,000+	2.8%

More than a third (35%) of LGBT adults report living in households with median annual incomes below \$24,000 per year, compared to less than a quarter of non-LGBT individuals. Conversely, LGBT individuals are less likely than non-LGBT identifying individuals to live in households with high annual incomes above \$90,000. Just 16% of LGBT adults live in these high income households compared to more than one in five adults (21%) who do not identify as LGBT.³⁴

³³ *Id.*

³⁴ *Id.*

4. **Thirty-Seven Percent of LGBT Adults in the United States Have Had a Child.**

An estimated 37% of LGBT adults have had a child³⁵ (including children who have now reached adulthood). This implies that more than 3 million LGBT Americans have had a child.³⁶ 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.³⁷

³⁵ 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. Gary J. Gates, *LGBT Parenting in the United States*, THE WILLIAMS INST. 2 n.1 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

The General Social Survey (GSS) is a now biannual survey of NORC at the University of Chicago. *About GSS*, *supra* note 9.

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.

³⁶ Gates, *LGBT Parenting in the United States*, *supra* note 34, at 1.

³⁷ *Id.* at 2.

Among those under the age of 50 who are single and living alone or living with a spouse or partner, nearly half (48%) of LGBT women are raising a child, as are one in five (20%) LGBT men.³⁸

B. *Nearly 1.3 Million Adults in the United States Are Members of Same-Sex Couples.*

Since 1990, same-sex couples have been identified in the U.S. Census by combining responses to Census questions regarding sex and relationship to the householder.³⁹ In the 2010 Census, 646,464

³⁸ Gallup data on LGBT individuals only provide information about the presence of children under 18 in the home, instead of actual parenting status. *Id.* To assess the likelihood of parenting among LGBT and non-LGBT individuals, comparisons are made among those who are most likely to be functioning as parents to any children under age 18 in the home: those under age 50 who are living alone or those with a spouse or partner where only two adults are present in the home. *Id.*

³⁹ 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>. 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

same-sex couples identified as such, meaning that nearly 1.3 million Americans are members of a same-sex couple.⁴⁰ Of this group, nearly 132,000 couples identified as spouses while nearly 515,000 identified as unmarried partners.⁴¹

1. Same-Sex Couples Live Throughout the United States.

Like LGBT people in general, 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.⁴² See Appendix 1.

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

Analyses from the U.S. Census Bureau's 2011 American Community Survey show that same-sex couples are demographically similar to the broader LGBT community.⁴³ For example, the majority of

form—for example, if a same-sex couple lived in the home of another person who was designated as householder. *Id.*

⁴⁰ 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 Feb. 25, 2013).

⁴¹ *Id.*

⁴² *Id.*

⁴³ 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> (providing demographic data on same-sex couples)

same-sex couples are female (51%),⁴⁴ just as the majority of LGBT adults are female (53%).⁴⁵

While members of same-sex couples span all age groups, the average age of individuals in same-sex couples in the United States is 44.4, nearly 5 years younger than the average age of those in different-sex couples, 49.5 years old.⁴⁶ As shown in Table 4, over 6% of members of same-sex couples are over the age 65.⁴⁷

Table 4. Adults in same-sex couples, by age (2011 American Community Survey)⁴⁸

Age	Percentage of Adults in same-sex couples
<30	15%
30-49	50%
50-64	28%
65+	6%

with Gates & Newport, Special Report: 3.4% of U.S. Adults Identify as LGBT, supra note 10 (providing demographic data on LGBT individuals).

⁴⁴ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011, supra note 42, at 3.*

⁴⁵ Gates & Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT, supra note 10.*

⁴⁶ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011, supra note 42, at 3.*

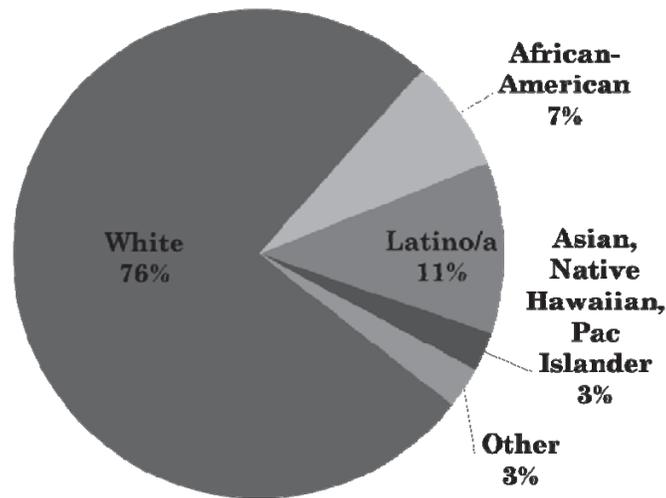
⁴⁷ *Id.*

⁴⁸ *Id.* at 9.

In the United States, the racial and ethnic distributions of individuals in same-sex and different-sex couples are very 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 Pacific Islanders comprise 3% of individuals in same-sex couples and 5% of those in different-sex couples.⁴⁹

⁴⁹ *Id.* 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.*

Figure B. Race/ethnicity of adults in same-sex couples.⁵⁰



Same-sex couples are about as likely as their different-sex counterparts to be binational, with just one spouse or partner a U.S. citizen. An estimated 5.0% of same-sex couples indicated that they are binational, compared to 5.5% of different-sex couples.⁵¹ There are more than 32,000 same-sex couples who are binational in the United States.⁵² Without legal recognition of their marriages, non-citizens within same-sex couples cannot seek legal

⁵⁰ *Id.*

⁵¹ *Id.* at 8.

⁵² This estimate was reached by applying the percentage of binational same sex couples (5%) from Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 8, to the number of same-sex couples in the United States (646,464) from Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 39, at 1.

residency or a work permit by virtue of their marriage or partnership.⁵³

Same-sex couples in the United States are much less likely to include two non-citizens than are different-sex couples. In 2011, the figure was just above 5% for different-sex couples, but was less than 2% for same-sex couples.⁵⁴

Same-sex couples are about as likely as different-sex couples to include a spouse or partner who is disabled. An estimated 18% of same-sex couples in the United States include at least one spouse or partner who is disabled compared to 19% of different-sex couples.⁵⁵

3. Members of Same-Sex Couples Actively Participate in the U.S. Economy and Serve in the U.S. Armed Forces.

In part because they are younger, individuals in same-sex couples in the United States are more likely than their different-sex counterparts to be in the labor force (82% versus 69%, respectively).⁵⁶ Among those in the labor force, more than 90% of individuals in both same-sex and different-sex couples are

⁵³ *E.g.*, Julia Preston, *With No Shortcut to a Green Card, Gay Couples Leave U.S.*, N.Y. Times, Feb. 17, 2013, <http://www.nytimes.com/2013/02/18/us/with-no-shortcut-to-a-green-card-gay-couples-leave-us.html?pagewanted=all&r=1&>.

⁵⁴ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 8.

⁵⁵ *Id.* at 7.

⁵⁶ *Id.* at 1.

employed.⁵⁷ In addition, members of both sets of couples have similar employment patterns. Approximately 74% of individuals in same-sex couples work in the private sector compared to 71% of those in different-sex couples. For public sector employment, the comparison is 15% and 17%, respectively, and for self-employment, the figures are 11% and 12%, respectively.⁵⁸

Many individuals in same-sex couples in the United States, particularly women, have served their country in the armed forces. In total, more than 84,000 same-sex couples (13%) include at least one veteran,⁵⁹ and nearly 6,200 same-sex couples (1%) include a spouse or partner who was on active duty in the military within the past year.⁶⁰

Women in same-sex couples are four times more likely to be veterans than women in different-sex

⁵⁷ *Id.* at 9, 11.

⁵⁸ *Id.*

⁵⁹ This estimate was reached by applying percentage of same-sex couples that include at least one veteran (13%) from Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 8, to the number of same-sex couples in the United States (646,464) from Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 39, at 1.

⁶⁰ This estimate was reached by applying the percentage of same-sex couples that include one member who was on active duty within the past year (0.7%) from Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 8, to the number of same-sex couples in the United States (646,464) from Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 39, at 1.

couples (5% versus 1%, respectively).⁶¹ Nearly one in ten men in same-sex couples (9%) has served in the armed forces, compared to about one in five men in different-sex couples (21%).⁶²

Evidence from analyses of Census 2000 data suggests that men and women in same-sex couples have served in U.S. combat operations for many decades. For example, among those eligible to have served in World War II, an estimated half of men in same-sex couples and 16% of women in same-sex couples served in World War II.⁶³

4. Members of Same-Sex Couples Are Socio-Economically Diverse.

Median annual household incomes of same-sex and different-sex couples in the United States are very similar. Among couples in which neither partner or spouse is in the labor force, both same-sex and different-sex couples have median household incomes of approximately \$42,000. If only one spouse or partner is in the labor force, the figure is approximately \$60,000 for both same-sex and different-sex couples. Among couples in which both spouses or partners are in the labor force, same-sex

⁶¹ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 1.

⁶² *Id.*

⁶³ Gary J. Gates, *Lesbians and Gay Men in the U.S. Military: Estimates from Census 2000*, THE WILLIAMS INST. 22 (Oct. 2005), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-GL-Military-Census2000Estimates-Oct-2005.pdf>.

couples report household incomes that are about 9% higher than their different-sex counterparts (\$94,000 versus \$86,000, respectively).⁶⁴

In terms of individual incomes, among those in the labor force, men in same-sex couples report slightly lower median personal income than men in different-sex couples (\$47,000 per year versus \$48,000, respectively).⁶⁵ Among those not in the labor force, men in same-sex couples evidence substantial economic disadvantage relative to their counterparts in different-sex couples. Among men who are not in the labor force, men in same-sex couples report median annual personal incomes that are \$9,000 lower than those of men in different-sex couples (\$13,000 versus \$22,600, respectively).⁶⁶

Conversely, women in same-sex couples who are in the labor force report higher personal income than women in different-sex couples (\$38,000 per year versus \$30,000, respectively).⁶⁷ Similarly, for those not in the labor force, women in same-sex couples report higher annual personal income compared to their counterparts in different-sex couples (\$11,400 versus \$5,100, respectively).⁶⁸

A study using data from Census 2000 found that same-sex female couples had a poverty rate of 6.9%

⁶⁴ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 6.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 9, 11.

⁶⁷ *Id.* at 5.

⁶⁸ *Id.* at 9, 11.

compared to 4.0% for gay male couples and 5.4% for different-sex married couples.⁶⁹

Same-sex couples appear to have less access to health insurance than do different-sex couples. In almost one out of four same-sex couples (24%), either both members of the couple lack health insurance or one member lacks health insurance. This is only true for 16% of different-sex couples.⁷⁰

This difference in health insurance access may be due in large part to the fact that many employers do not offer health insurance to same-sex partners.⁷¹ Even if employers do offer same-sex partner health coverage, that benefit is taxable as income and thus may not be affordable to some couples. Because same-sex partner health coverage is taxable as income, such coverage costs same-sex couples, on average, \$1,000 more per year than comparable different-sex married spouse coverage.⁷²

⁶⁹ Randy Albelda et al., *Poverty in the Lesbian, Gay, and Bisexual Community*, THE WILLIAMS INST. ii (March 2009), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf>.

⁷⁰ Gates, *Same-sex and Different-sex Couples in the American Community Survey: 2005-2011*, *supra* note 42, at 1.

⁷¹ The Henry J. Kaiser Family Found. & Health Research & Educ. Trust, *Employer Health Benefits: 2009 Annual Survey* 43 (2009), available at <http://ehbs.kff.org/pdf/2009/7936.pdf>.

⁷² M.V. Lee Badgett, *Unequal Taxes on Equal Benefits, The Taxation of Domestic Partner Benefits*, THE WILLIAMS INST. 1 (Dec. 2007), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-UnequalTaxesOnEqualBenefits-Dec-2007.pdf>.

C. *Approximately 114,000 Same-Sex Couples in the United States Are Married, and Over 108,000 Are 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.⁷³

Couples who identified as spouses live throughout the United States. In every state in the United States, at least 10% of reported same-sex couples designate one partner as a spouse.⁷⁴ More than 28,000 same-sex couples in California identified as spouses in the 2010 Census.⁷⁵

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 legally married but consider

⁷³ Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 39, at 1.

⁷⁴ *Supplemental Table: Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children: 2010 Census and 2010 American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/files/supp-table-AFF.xls> (last visited Feb. 25, 2013).

⁷⁵ Gary J. Gates & Abigail M. Cooke, *California Census Snapshot: 2010*, THE WILLIAMS INST. 1, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_California_v2.pdf (last visited Feb. 25, 2013).

themselves to be spouses can identify one partner as a “husband or wife.”⁷⁶ 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 are legally married, 15% are in civil unions or registered domestic partnerships, and 14% are not in a legally recognized relationship.⁷⁷ For those who identified as “unmarried partner,” 79% are not in a legally recognized relationship, 17% are in civil unions or registered domestic partnerships, and only 4% are legally married.⁷⁸

Combining these estimates with Census 2010 data suggests that approximately 114,100 same-sex couples in the United States are legally married, having legally married either in the United States or in another country, and over 108,600 are in civil unions or registered domestic partnerships.⁷⁹

⁷⁶ *Id.*

⁷⁷ Gates, *Same-sex couples in US Census Bureau Data: Who Gets Counted and Why*, *supra* note 38, at ii.

⁷⁸ 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.*

⁷⁹ *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 39, at 1. *Amicus Curiae* Gates suggests that 71% of spousal couples are legally married (amounting to approximately 92,500 legally married same-sex couples) along with 4% of unmarried partner couples (approximately 20,600 married couples). See Gates, *Same-sex*

1. 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.⁸⁰

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,⁸¹ while only 18% entered into civil unions or broad domestic partnerships in the first year states offered those statuses.⁸² Furthermore, only 8% entered into more

Couples in US Census Bureau Data: Who Gets Counted and Why, *supra* note 38, at 6. Combined, this implies an estimated 113,000 legally married same-sex couples.

⁸⁰ 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>.

⁸¹ *Id.* at 13 (analyzing data from the following three states that had extended marriage to same-sex couples: Iowa, Massachusetts, Vermont).

⁸² *Id.* (analyzing data from the following six states that had extended civil union or domestic partnership statuses to same-

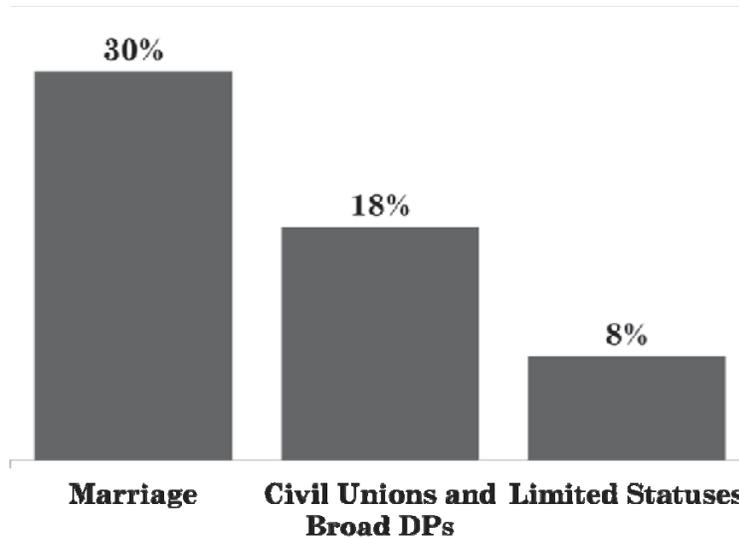
limited statuses, such as reciprocal beneficiary relationships,⁸³ which extend a smaller set of rights and obligations than marriage, in the first year that their respective states offered those statuses.⁸⁴

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).

⁸³ *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, Hawai'i, Maine, New Jersey, and Washington).

⁸⁴ *Id.* at 12.

Figure C. Percentage of same-sex couples who pursued legal relationship recognition in the first year it was offered, by type of recognition.⁸⁵



Looking past the first year that recognition is offered, almost half (47%) of same-sex couples who live in a state that offers some form of legal relationship recognition have entered into such a status.⁸⁶ In Massachusetts, where marriage for same-sex couples has been legal since 2004, this is true of 68% of same-sex couples.⁸⁷

Based on state level administrative data, in California, an estimated 18,000 same-sex couples were married in the state during the period in 2008

⁸⁵ *Id.*

⁸⁶ *Id.* at 6.

⁸⁷ *Id.* at 19.

when marriages were legally performed there.⁸⁸ Nearly 57,000 same-sex couples registered as domestic partners in the state between 2000 and 2010.⁸⁹

2. Same-Sex Couples Who Marry or Enter into Other Legally Recognized Relationships Are More Likely To Be Women and Are Younger Than Different-Sex Couples.

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 domestic partnership data by gender, 62% of same-sex couples who sought legal recognition were female couples.⁹⁰

Same-sex couples who are legally married or have a 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 legally recognized relationships.⁹¹ However, when one compares the age of same-sex and different-sex couples when they actually marry, newly married same-sex couples tend to be older than

⁸⁸ *Id.* at 4.

⁸⁹ *Id.*

⁹⁰ *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).

⁹¹ *Id.* at 8 (analyzing data from Connecticut and Washington).

newly married different-sex couples.⁹² 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.

3. Dissolution Rates Are Similar for Same-Sex and 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.⁹³ The percentage of those in same-sex couples who have ended legal relationships ranges from 0% to 1.8% annually. By comparison, 2% of married different sex couples divorce annually.⁹⁴

D. *Almost One in Five Same-Sex Couples in the United States Are Raising Children.*

U.S. Census Bureau data suggest that almost one in five (19%) same-sex couples in the United States are raising children.⁹⁵ In other words, more than

⁹² *Id.* at 9 (analyzing data from Connecticut).

⁹³ *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).

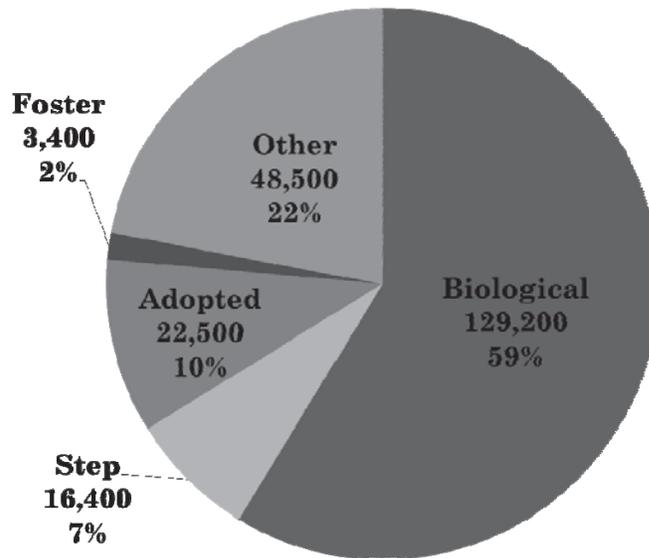
⁹⁴ *Id.* at 19.

⁹⁵ Gates, *LGBT Parenting in the United States*, *supra* note 34, at 1. 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 42, at 6.

125,000 same-sex couple households include nearly 220,000 children under age 18 in their homes.⁹⁶

Although most such children are biologically related to one of their parents (59%), same-sex couples are more likely to adopt or foster children than different-sex couples.

Figure D. Relationship of children under age 18 to householder (person 1) in same-sex couple households.



Among the 125,000 same-sex couples raising children, more than 111,000 same-sex couples are raising an estimated 129,200 biological children, 16,400 step children, and 22,500 adopted children.⁹⁷

⁹⁶ Gates, *LGBT Parenting in the United States*, *supra* note 34, at 1.

⁹⁷ *Id.* at 3.

Approximately 2,600 same-sex couples are raising 3,800 foster children.⁹⁸ Finally, more than a quarter of same-sex couples raising children (25.6%) are raising children identified as grandchildren, siblings, or other children who are related in some other way or unrelated to one of the same-sex spouses or partners.⁹⁹ Approximately 32,000 same-sex couples are raising 48,500 such children.¹⁰⁰

1. Nearly a Third of Same-sex Couples Who Consider Themselves To Be Spouses Have Children.

Census 2010 figures show that same-sex couples who consider themselves to be spouses are more than twice as likely to be raising a biological, step, or adopted child as are same-sex couples who say that they are unmarried partners. Among same-sex couples who consider themselves to be spouses, 31% (41,194) are raising a biological, step, or adopted child under age 18.¹⁰¹ Among those who consider themselves to be unmarried partners, 14% (69,839) are raising biological, adopted, or step children.¹⁰²

⁹⁸ *Id*

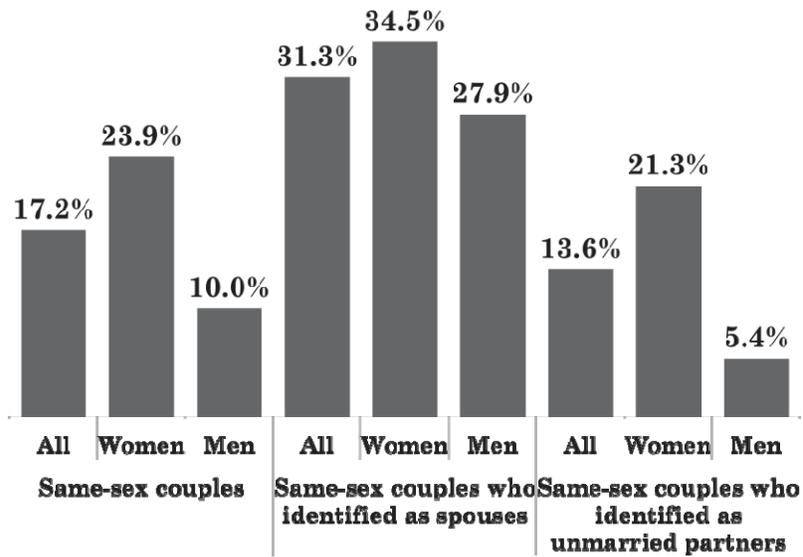
⁹⁹ *Id.*

¹⁰⁰ *Id.* at 1. Note that a same-sex couple household can include any or all 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.

¹⁰¹ *Id.* at 1.

¹⁰² *Id.*

Figure E. Percentage of same-sex couples with biological, adopted, or stepchildren under age 18 in the home, by relationship status and sex.



2. Same-Sex Couples with Children Live Throughout the United States.

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 the country.¹⁰³

¹⁰³ *Id.*

States with the highest percentages of same-sex couples raising biological, adopted or step children include Mississippi (26%), Wyoming (25%), Alaska (23%), Idaho (22%), Montana (22%), Kansas (22%), North Dakota (22%), Arkansas (21%), South Dakota (21%), and Oklahoma (21%).¹⁰⁴

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

Parenting is more prevalent among racial and ethnic minorities who are members of a same-sex couple. A third (33%) 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 18% of their white counterparts.¹⁰⁵ For men, the same comparison is 16% versus 5%, respectively.¹⁰⁶ Overall, 14% of individuals in same-sex couples who have children under age 18 in their homes are African-American compared with 8% of individuals in different sex couples raising children (see Figure F below).¹⁰⁷ Among individuals in couples with children, approximately one in five in both types of couples (19%) are Latino/as.¹⁰⁸

¹⁰⁴ *Id.* at 4.

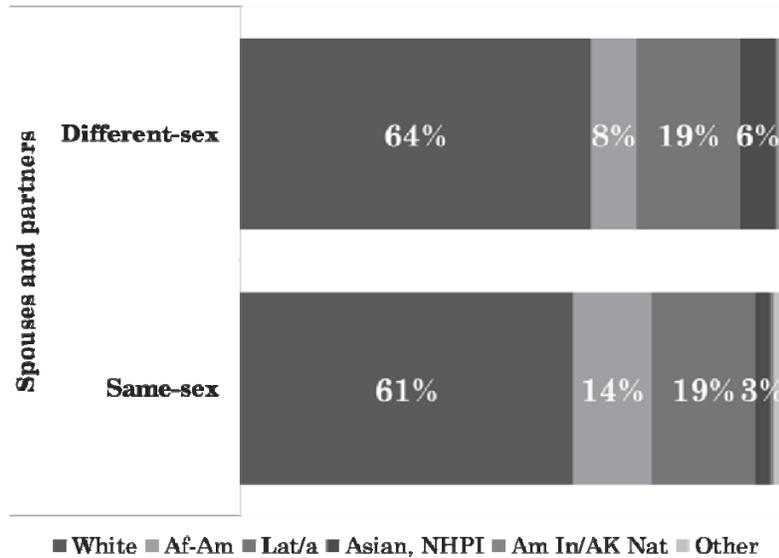
¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Figure F. Race/ethnicity of same-sex and different-sex spouses/partners with children under age 18.¹⁰⁹



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 couples (\$63,900 versus \$74,000).¹¹⁰

Married or partnered LGBT adults living in two-adult households with children are twice as likely as comparable non-LGBT adults to report household incomes near the poverty threshold (less than \$24,000 per year).¹¹¹

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 5.

¹¹¹ *Id.*

Several factors likely contribute to the relative economic disadvantage of same-sex couples with children. First, LGB parents are, on average, younger than their different-sex counterparts.¹¹² Second, LGB parents are disproportionately female, and in the United States women, on average, have lower incomes than men.¹¹³ In addition, 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 their counterparts in different-sex couples. In the United States, African-Americans, Latinos, and Latinas have lower incomes than white persons.¹¹⁴

4. Children of Same-Sex Couples Are Racially and Ethnically Diverse and More Likely To Be Adopted and Fostered.

The median age of the 220,000 children under age 18 being raised by same-sex couples is 9 years old, compared to 8 for those being raised by different sex-couples.¹¹⁵ However, adopted children being raised by same-sex couples are younger, with a

¹¹² *Id.* at 4.

¹¹³ *Id.*; *Women in the Labor Force*, U.S. BUREAU OF LABOR STATISTICS 51-52 (Dec. 2011), <http://www.bls.gov/cps/wlf-databook-2011.pdf>.

¹¹⁴ Gates, *LGBT Parenting in the United States*, *supra* note 34, at 4; *Women in the Labor Force*, *supra* note 112, at 51.

¹¹⁵ Gates, *LGBT Parenting in the United States*, *supra* note 34, at 4.

median age of 6 compared to a median age of 10 among adopted children being raised by different-sex couples.

Among children under age 18 living with same-sex couples, half (50%) are members of racial or ethnic minorities compared to 41% of children living with different-sex couples. Children of same-sex couples are twice as likely to be African-American as children of different-sex couples (16% versus 8%). Approximately one in four children of both types of couples (25% versus 23%) are Latino/as. See Figure G below.

Figure G. Race/ethnicity of children under 18 living in the homes of same-sex and different-sex couples.¹¹⁶



¹¹⁶ *Id.* at 4.

Same-sex couples raising children are more than four times as likely as their different-sex counterparts to be raising an adopted child.¹¹⁷ While only 2% of the children of different-sex couples are adopted, approximately 10% of the children of same-sex couples are adopted.

Similarly, same-sex couples are six times more likely than their different-sex counterparts to be raising foster children.¹¹⁸ 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.¹¹⁹

¹¹⁷ *Id.* at 1.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 3.

CONCLUSION

In light of the foregoing and for the reasons set forth by the parties challenging the constitutionality of the federal DOMA and California's Proposition 8 in the *Windsor* and *Hollingsworth* cases, respectively, this Court should affirm the respective Court of Appeals judgments in those two cases.

Respectfully submitted,

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APPENDIX

APPENDIX I: Same-sex couples per 1,000 households, Census 2010

