

CV-14-427

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, ET AL.

PLAINTIFF-APPELLEES

VS.

NO. CV-14-427

NATHANIEL SMITH, M.D., ET AL.

DEFENDANTS-APPELLANTS

**ON APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY, SECOND DIVISION
THE HONORABLE CHRIS PIAZZA, CIRCUIT JUDGE**

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

As a scholar of sexual orientation and gender identity law and public policy, Gates has a substantial interest in the issues before this Court. Gates has conducted extensive research and authored numerous studies regarding the geographic, demographic, and economic characteristics of same-sex couples in the United States. Gates believes that this expertise and perspective as an academic scholar

may help the Court more fully appreciate the impact of Arkansas’s same-sex-marriage prohibitions.

In *DeBoer v. Snyder*, Gates provided “highly credible” expert testimony relied upon by the court in holding unconstitutional Michigan’s prohibition on same-sex marriage. 973 F. Supp. 2d 757, 763-64 (E.D. Mich. 2014). The Fourth Circuit’s and the Seventh Circuit’s recent decisions invalidating Virginia’s, Indiana’s, and Wisconsin’s same-sex-marriage prohibitions relied on Gates’s work. *See Baskin v. Bogan*, Nos. 14-2386, 14-2387, 14-2388, 14-2526, __ F.3d __, at *10-11, *17 (7th Cir. Sept. 4, 2014); *Bostic v. Schaeffer*, Nos. 14-1167, 14-1173, 760 F.3d 352, at *14 (4th Cir. July 28, 2014).

ARGUMENT

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 Arkansas 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 Arkansas’s prohibitions on same-sex marriages.¹

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.²
- **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.³

¹ 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.

² *Decennial Census Data on Same Sex Couples*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/decennial.html>.

- **General Social Survey (“GSS”)**: The GSS is a biannual survey of the National Opinion Research Center (“NORC”) at the University of Chicago. The GSS, initiated in 1972, is the largest project funded by the National Science Foundation’s Sociology Program and is the most frequently used source of information in the social sciences other than the U.S. Census.⁴
- **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 2012.⁵ These data

³ *American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/acs/>.

⁴ *About GSS*, GSS GENERAL SOCIAL SURVEY, <http://www3.norc.org/GSS+Website/About+GSS/>.

⁵ 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),

constitute the largest population-based survey of LGBT persons in U.S. history.⁶

Based primarily on these sources, this brief describes demographic data about four groups of people in the United States and Arkansas: (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:

(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 Arkansas, according to the 2010 Census, there are nearly 8,500 adults in 4,226 same-sex couples, and these couples were identified in all but four of Arkansas's counties. The racial and ethnic distributions of individuals in same-sex and different-sex married couples are similar.

<http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

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

(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 nearly one-third of same-sex couples in Arkansas, 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 Arkansas, nearly 1,300 same-sex-couple households in the state are raising more than 3,300 children under age 18. Same-sex couples raising children live throughout the United States and Arkansas.

Most children being raised by same-sex parents in the United States and in Arkansas 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 Arkansas, same-sex couples are more likely than their different-sex married counterparts 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 Arkansas, the median annual household income of same-sex couples with children under age 18 in the home is 33% lower than 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 nearly 77,200 adults in Arkansas 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. Discussion

A. Same-Sex Couples: Nearly 1.3 Million Adults in the U.S. and 8,500 Adults in Arkansas 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.⁷ In the 2010 Census, 646,464 same-sex couples identified as such, meaning that nearly 1.3 million Americans were members of a

⁷ 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>. 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.*

same-sex couple.⁸ In the 2010 Census, 4,226 same-sex couples identified as such in Arkansas, meaning that nearly 8,500 individuals in Arkansas are members of a same-sex couple.⁹

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

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.¹⁰ In the 2010 Census, same-sex couples were identified in all but four of Arkansas's counties.¹¹

⁸ 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>.

⁹ Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *Arkansas Census Snapshot: 2010*, at 1, available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Arkansas_v2.pdf.

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

¹¹ Gates & Cooke, *Arkansas Census Snapshot: 2010*, *supra* note 9, at 4-5.

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 demographically diverse.¹² The majority of same-sex couples are female (51%), and members of same-sex couples span all age groups.¹³ The average age of individuals in same-sex couples in the United

¹² 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> (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).

¹³ Gates, *Same-sex and Different-sex Couples in the American Community*, *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 amicus 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.

States is more than six years younger than that of individuals in different-sex married couples—44.4 and 50.8 years old, respectively.¹⁴ This pattern is similar in Arkansas, where the average age of individuals in same-sex couples is nearly eight years younger than that of different-sex married couples—42.9 and 50.5 years old, respectively.¹⁵ Table 1 shows the percentages of adults in same-sex couples by age group. In both the United States and Arkansas, the lowest percentage of same-sex couples is in the 65-and-over group.

Table 1. Adults in same-sex couples, by age¹⁶

	Percentage of Adults in Same-Sex Couples	
Age	U.S.	Arkansas
<30	15%	18%
30-49	50%	51%
50-64	28%	24%

¹⁴ *Id.*

¹⁵ Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex Couples in Arkansas: A Demographic Summary* (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AR-same-sex-couples-demo-oct2014.pdf>.

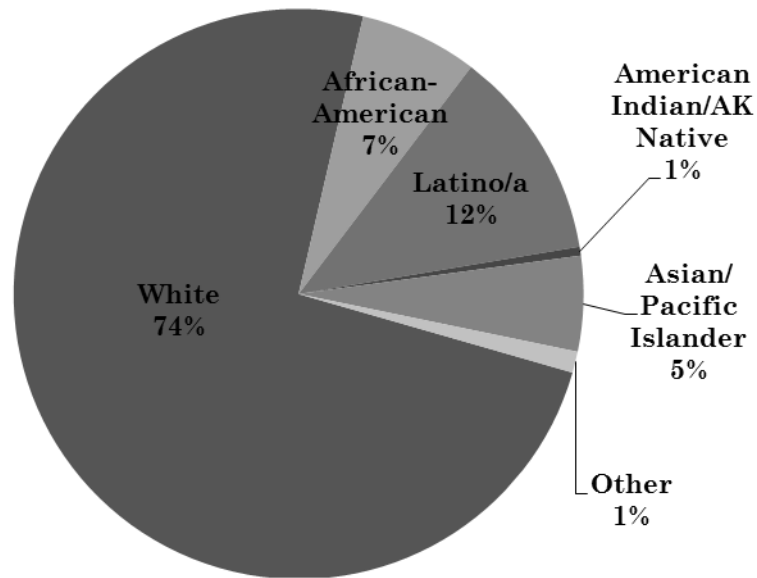
¹⁶ Gates, *Same-sex and Different-sex Couples in the American Community*, *supra* note 12, at 8; Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

65+	6%	8%
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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, Native Hawaiians, and Pacific Islanders comprise 3% of individuals in same-sex couples and 5% of those in different-sex married couples.¹⁷

¹⁷ 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.*

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



In Arkansas, nearly 24% of individuals in same-sex couples and 16% of individuals in different-sex married couples are members of racial or ethnic minorities. The portion of African-Americans is 7% among those in same-sex couples and 8% different-sex married couples. The portion of Latinos/Latinas is 9% among those in same-sex couples and 5% among those in different-sex married couples. The portion of Asian, Native Hawaiians, and Pacific Islanders is 4% among those in same-sex couples and 1% among those in different-sex married

¹⁸ *Id.* at 8.

couples. The portion of American Indian and Alaskan Natives is 2% in same-sex couples and 0.6% in different-sex married couples.¹⁹

B. Same-Sex Couples With Children: Approximately One in Five Same-Sex Couples in the U.S. and One in Three in Arkansas 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 18.²⁰ In other words, nationally, more than 125,000 same-sex-couple households include nearly 220,000 children under age 18 in their homes.²¹

Similarly, 30% of same-sex couples in Arkansas are raising children under age 18 in their homes.²² Nearly 1,300 same-sex-couple households in the state include more than 3,300 children.²³

¹⁹ Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

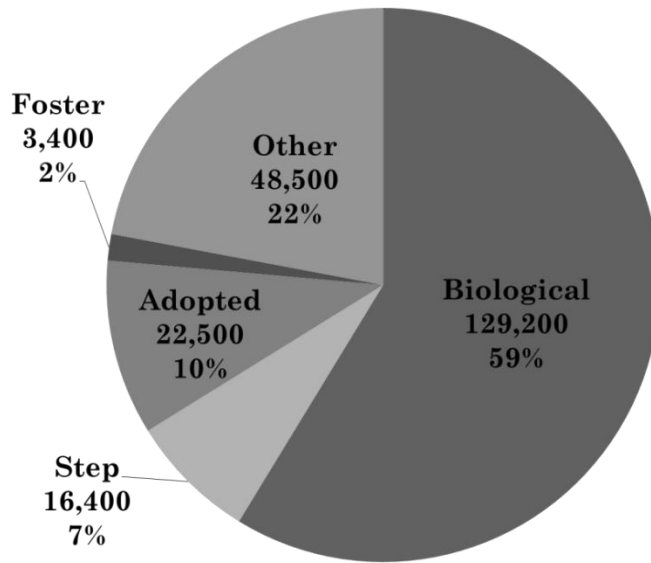
²⁰ Gary J. Gates, The Williams Institute, UCLA School of Law, *LGBT Parenting in the United States*, at 1 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>. Among different-sex couples the proportion with children is 43.5%. Gates, *Same-sex and Different-sex Couples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

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

²² Gates, *Same-sex Couples in Arkansas*, *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.²⁴

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.²⁵ Approximately 2,600

²³ *Id.*

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

²⁵ *Id.*

same-sex couples are raising 3,400 foster children.²⁶ Finally, more than a quarter of same-sex couples raising children (25.6%) are raising children identified as grandchildren, siblings, or other children.²⁷ Roughly 32,000 same-sex couples are raising approximately 48,500 such children.²⁸

In Arkansas, 71% of children being raised by same-sex couples are biological children, 4% are adopted, and 3% are stepchildren. This implies that the same-sex couples are raising an estimated 2,354 biological children, 132 adopted children, and 88 stepchildren. Twenty-three percent of children being raised by same-sex couples in Arkansas, or an estimated 741 children, are grandchildren, siblings, or other children.²⁹

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *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.

²⁹ Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

1. Same-Sex Couples with Children Live Throughout the U.S. and Arkansas

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.³⁰ Same-sex couples raising children also live throughout Arkansas. In the 2010 Census, the vast majority of Arkansas's counties included same-sex couples with children.³¹

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.³² For men, the same comparison is 20% versus 8%, respectively.³³

³⁰ *Id.*

³¹ Gates & Cooke, *Arkansas Census Snapshot: 2010*, *supra* note 9, at 4-5.

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

³³ *Id.*

In Arkansas, more than half (56%) of individuals in same-sex couples who are members of racial or ethnic minorities are raising a child under age 18, compared to 21% of their White counterparts.³⁴

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).³⁵ In Arkansas, the median annual household income of same-sex couples with children under age 18 in the home is 33% lower than the median annual household income of comparable different-sex married couples (\$42,429 versus \$63,744).³⁶

Several factors likely contribute to the relative economic disadvantage of same-sex couples with children in the United States. *First*, research suggests that LGB parents (including, presumably, LGB individuals in same-sex couples) are, on average, younger than their different-sex counterparts.³⁷ *Second*, same-sex couples with children are disproportionately female, and in the United States,

³⁴ Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

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

³⁶ Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

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

women, on average, have lower incomes than men.³⁸ *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.³⁹ In the United States, African-Americans, Latinos, and Latinas have lower incomes, on average, than White persons.⁴⁰

3. Nationally and in Arkansas, Same-Sex Couples Are More Likely Than Different-Sex Couples to Be Raising Adopted 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

³⁸ *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>.

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

⁴⁰ *Women in the Labor Force*, *supra* note 38, at 51.

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.⁴¹

Similarly, in Arkansas, same-sex couples raising children are nearly three times more likely than their different-sex married counterparts to be raising an adopted child. An estimated 11% of same-sex couples with children in Arkansas include an adopted child, compared to 4% of different-sex married couples with children. Further, 4% of the children of same-sex couples in Arkansas are adopted, compared to 3% of the children of different-sex married couples.⁴²

In the United States, same-sex couples are six times more likely than their different-sex counterparts to be raising foster children.⁴³ 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.⁴⁴ While the most recent Census Bureau data

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

⁴² Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

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

⁴⁴ *Id.*

do not identify any same-sex couples fostering children in Arkansas, only 0.5% of different-sex couples with children include a foster child in the state.⁴⁵

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.⁴⁶ In Arkansas, 1,040 same-sex couples identified as spouses, while n identified as unmarried partners.⁴⁷

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 identified themselves as spouses, can identify one partner as a “husband or wife.”⁴⁸ Based on a 2010 survey of same-sex couples funded by the Census Bureau, an estimated 71% of same-sex

⁴⁵ Gates, *Same-sex Couples in Arkansas*, *supra* note 15.

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

⁴⁷ Gates & Cooke, *Arkansas Census Snapshot: 2010*, *supra* note 9, at 1.

⁴⁸ Gates & Cooke, *United States Census Snapshot: 2010*, *supra* note 8, at 4.

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.⁴⁹ 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.⁵⁰

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.⁵¹

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

⁵⁰ *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.*

⁵¹ 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*

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.⁵²

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

Census Snapshot: 2010, *supra* note 8, at 1. Gates suggests that 71% of spousal couples are legally married (amounting to approximately 93,700 legally married same-sex couples) along with 4% of unmarried partner couples (approximately 20,600 married couples). *See* Gates, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why*, *supra* note 7, at 6. Combined, this implies an estimated 114,300 legally married same-sex couples.

⁵² 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>.

domestic partnership. On average, 30% of same-sex couples married in the first year that their state allowed them to marry,⁵³ while only 18% entered into civil unions or broad domestic partnerships in the first year states offered those statuses.⁵⁴ Furthermore, only 8% entered into legal relationship statuses with more limited rights and obligations,⁵⁵ such as reciprocal beneficiary relationships, in the first year that their respective states offered those statuses.⁵⁶

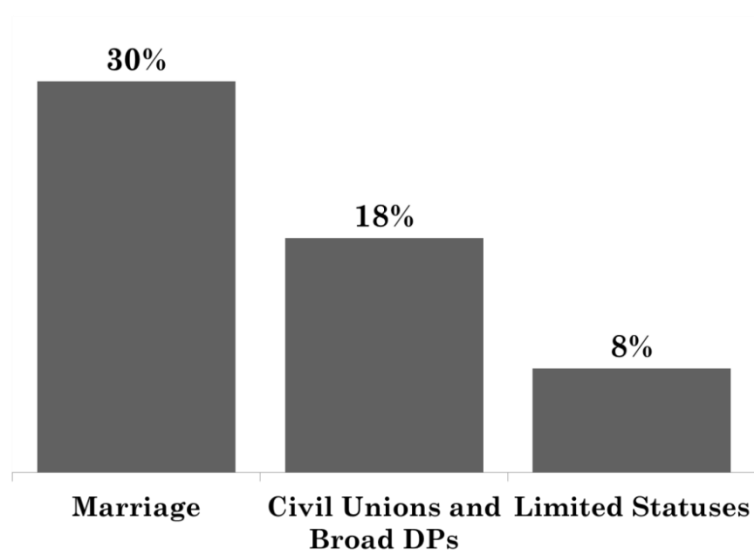
⁵³ *Id.* at 12-13 (analyzing data from the following three states that had extended marriage to same-sex couples: Iowa, Massachusetts, and Vermont).

⁵⁴ *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).

⁵⁵ *Id.* at 12.

⁵⁶ *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 recognition⁵⁷



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.⁵⁸ In Massachusetts, where marriage for same-sex couples has been legal since 2004, this is true of 68% of same-sex couples.⁵⁹

⁵⁷ *Id.*

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 19.

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.⁶⁰

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.⁶¹ 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.⁶² 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.

⁶⁰ *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).

⁶¹ *Id.* at 8 (analyzing data from Connecticut and Washington).

⁶² *Id.* at 9 (analyzing data from Connecticut).

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.⁶³ The percentage of those in same-sex couples who have ended legal relationships ranges from 0% to 1.8% annually in those states. By comparison, 2% of married different-sex couples divorce annually.⁶⁴

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

⁶³ *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).

⁶⁴ *Id.* at 19.

same-sex couples to marry reduces the rate of different-sex marriages or increases the rate of non-marital births.⁶⁵

D. LGBT Adults: Over 8 Million American Adults and Nearly 77,200 Adults in Arkansas Identify as LGBT

Marriage and relationship recognition laws affect not only same-sex couples, but also LGBT individuals who are not members of same-sex couples. Many such LGBT individuals may want to marry a same-sex partner at some time in their lives. In a recent Gallup survey of adults aged 18 and older in the United States, 3.5% identified themselves as LGBT.⁶⁶ Extrapolating that percentage to 2010 U.S.

⁶⁵ 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).

⁶⁶ 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,

Census data suggests that, out of nearly 235 million adults then in the United States,⁶⁷ more than 8 million adults were LGBT.

In Arkansas, the Gallup survey showed that 3.5% of adults identified as LGBT.⁶⁸ Extrapolating that percentage to Arkansas data from the 2010 U.S.

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, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

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

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

Census suggests that, out of the more than 2.2 million adults then in Arkansas,⁶⁹ nearly 77,200 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.⁷⁰

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

⁷⁰ 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>.

An estimated 37% of LGBT adults in the United States have had at least one child over the course of their lives⁷¹ (including children who 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.⁷² On average, LGBT

⁷¹ 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 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.

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

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.⁷³

III. Conclusion

In light of the foregoing and for the reasons set forth by the parties challenging the constitutionality of Arkansas's prohibitions on same-sex marriages, this Court should affirm the district court judgment.

Respectfully submitted,

October 6, 2014

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Gary J. Gates

October 6, 2014

Respectfully submitted,
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⁷³ *Id.*

CERTIFICATE OF SERVICE

I, **Matthew D. Campbell**, certify that on **October 6, 2014**, I served a true and correct copy of the foregoing document upon the following via electronic mail attachment and by depositing a bound copy in the United States mail, postage prepaid, addressed to the following:

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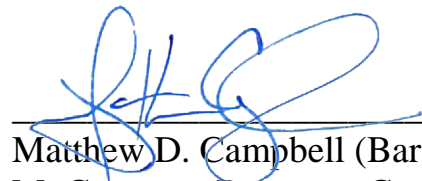
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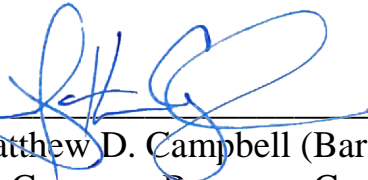


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I, **Matthew D. Campbell**, do hereby certify that I have submitted and served on opposing counsel an unredacted PDF document that complies with the Rules of the Supreme Court and the Court of Appeals of Arkansas. The PDF document is identical to the corresponding parts of the paper document from which it was created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document is free from computer viruses. A copy of this certificate has been submitted with the paper copies filed with the Court and has been served on all parties.



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