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Case No. S147999

IN THE SUPREME COURT OF CALIFORNIA

In re MARRIAGE CASES

Judicial Council Coordination Proceeding No. 4365

After a Decision of the Court of Appeal
First Appellate District, Division Three

Nos. A110449, A110450, A110451, A110463, A110651, A110652

San Francisco Superior Court
Nos. JCCP4365, 429539, 429548, 504038
Los Angeles Superior Court No. BC088506

Honorable Richard A. Kramer, Judge

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
AND BRIEF OF AMICI CURIAE M.V. LEE BADGETT AND
GARY J. GATES IN SUPPORT OF THE PARTIES CHALLENGING
THE MARRIAGE EXCLUSION**

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
AND STATEMENT OF INTEREST OF AMICI CURIAE**

Pursuant to California Rule of Court, Rule 8.520, amici curiae hereby respectfully apply for leave to file an amicus curiae brief in support of the City and County of San Francisco and the individuals and organizations challenging the marriage exclusion (hereinafter respondents).

Amicus M.V. Lee Badgett is the Research Director and a Visiting Professor at the Williams Institute on Sexual Orientation Law & Public Policy at the UCLA School of Law, and an associate professor in the Department of Economics at the University of Massachusetts, Amherst, where she is the Director of the Center for Public Policy and Administration. Her book, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* (University of Chicago Press 2003), presents her research on sexual orientation and family policy in the United States. Badgett holds a Ph.D. in Economics from the University of California at Berkeley.

Amicus Gary J. Gates is a Senior Research Fellow at the Williams Institute on Sexual Orientation Law & Public Policy at the UCLA School of Law. He recently co-authored *The Gay and Lesbian Atlas* (Urban Institute Press 2004), which summarizes the available demographic data on the gay and lesbian population in the United States. Gates' doctoral dissertation included the first significant research study of the demography of the gay and lesbian population using U.S. Census data. His work on that subject has been featured in many national and international media outlets. Gates holds a Ph.D. in Public Policy from the Heinz School of Public Policy and Management at Carnegie Mellon University.

As scholars of sexual orientation law and public policy, amici Badgett and Gates have a substantial interest in the issue before this Court, the constitutionality of California's exclusion of same-sex couples from

marriage. Amici have conducted extensive research and authored numerous studies regarding the geographic, demographic and economic characteristics of same-sex couples in California and the United States. Amici believe that the expertise and perspective that they offer as independent researchers can help the Court more fully appreciate the impact of California's marriage exclusion on same-sex couples and children raised by same-sex couples in the State.

INTRODUCTION

In these consolidated cases, respondents challenge the constitutionality of the denial of marriage to same-sex couples. As the Court considers whether California's restriction against same-sex marriage is constitutional, it is important to understand the California families who are directly impacted. To provide a picture of such families, this brief analyzes demographic and economic data from Census 2000 on same-sex couples and same-sex couples raising children in California.¹

These data show that California's exclusion of same-sex couples from marriage impacts more than 90,000 couples and 70,000 children who are being raised by same-sex couples. By comparing characteristics of same-sex couples and married different-sex couples, we have determined that same-sex couples are similarly situated to married couples in geographic, demographic and economic terms.²

¹ The data in this brief were collected before California began providing substantial domestic partnership benefits to same-sex couples. *See* California Domestic Partner Rights and Responsibilities Act of 2003, (Assem. Bill No. 205 (2003-2004 Reg. Sess.)), *codified at* Cal. Fam. Code § 297-297.5 (West 2007).

² Unless otherwise noted, the data in this brief were generated by comparing economic and household variables for married couples and same-sex "unmarried partners." The Census Bureau defines an "unmarried partner" as an individual who is not related to the householder, who shares living quarters with the householder, and who has a close personal relationship with the householder. *See* U.S. Census Bureau, *Household Type and Relationship*, Using the Data: Subject Definitions, *available at* http://www.census.gov/acs/www/UseData/Def/Hhld_rel.htm. Unless otherwise noted, this brief relies upon data from the 5% Public Use Micro Samples (PUMS) provided by the U.S. Census Bureau. *See* U.S. Census Bureau, 5-Percent Public Use Microdata Sample (PUMS) Files, *available at* <http://www.census.gov/Press-Release/www/2003/PUMS5.html>. The Census Bureau provides household weights and person weights that allow us to make projections from the samples to create estimates for the whole population of couples in California.

ARGUMENT

I. SAME-SEX COUPLES IN CALIFORNIA

Data from Census 2000 shows that California's exclusion of same-sex couples from marriage impacts over 90,000 couples, or 180,000 California residents, who are situated similarly to married couples in geographic, demographic, and economic terms. Same-sex couples live in every county in California, and they represent every racial and ethnic group in the State. They are active contributors to the State's economy, and they have served the State and the country in the armed forces. Like individuals in married couples, individuals in same-sex couples depend on each other for economic support.

A. **There are more than 90,000 same-sex couples living in California.**

According to data provided in Census 2000, there are thousands of families in California that are denied the legal and social recognition provided by marriage. The Census Bureau reports that there are over 92,000 (92,128) same-sex couples living in California.³ Just over half of California's same-sex couples (54%) are made up of two men and 46% are made up of two women.⁴

A recent study by Census Bureau officials reports that Census 2000 likely undercounts the number of same-sex couples in the United States. While the study does not provide specific estimates for California, it does

³ Tavia Simmons & Martin O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, Census 2000 Special Reports (Feb. 2003), at 4 (Table 2), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf>.

⁴ *Id.*

indicate that national counts of same-sex couples may be more than double the officially reported figures.⁵

B. More same-sex couples live in California than in any other state.

Same-sex couples comprise 1.4% of all couples living in California.⁶ California is the state with the highest percentage of same-sex couples, followed by Massachusetts, New York, and Vermont.⁷ While California has 11% of all households in the United States, 16% of same-sex couples in the United States live in California.⁸

The Census Bureau has identified San Francisco, Oakland, Berkeley and Long Beach as being among the top ten cities with populations of 100,000 or more in terms of same-sex couple households as a percentage of all households.⁹

C. Same-sex couples live throughout California.

There are same-sex couples in every county in California. As a percentage of all couples in each county, same-sex couples range from 0.6% in Glenn and Tehama Counties to 6.9% in San Francisco County. In terms of the absolute numbers of couples, same-sex couples range from two couples in Alpine County to more than 25,000 couples in Los Angeles County.

⁵ Martin O'Connell & Gretchen Gooding, *Editing Unmarried Couples in Census Bureau Data*, U.S. Census Bureau Housing and Household Economic Statistics Working Paper (July 2007), available at <http://www.census.gov/population/www/documentation/twps07.html>.

⁶ Simmons & O'Connell, *supra* note 3, at 7.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 8 (Table 3).

Table 1: Same-sex couples by county in California

County	Same-sex couples as a percent of all couples	Same-sex couples	Male partners	Female partners
Alameda	2.1%	5,884	2,604	3,280
Alpine	0.8%	2	2	0
Amador	0.8%	62	25	37
Butte	1.0%	428	151	277
Calaveras	0.8%	85	23	62
Colusa	0.7%	27	15	12
Contra Costa	1.3%	2,722	1,316	1,406
Del Norte	0.8%	42	19	23
El Dorado	0.9%	351	133	218
Fresno	1.1%	1,594	785	809
Glenn	0.6%	33	17	16
Humboldt	1.4%	383	119	264
Imperial	0.8%	205	101	104
Inyo	1.1%	45	24	21
Kern	0.9%	1,144	560	584
Kings	0.9%	200	100	100
Lake	1.5%	196	96	100
Lassen	0.7%	42	20	22
Los Angeles	1.5%	25,173	14,468	10,705
Madera	1.1%	265	134	131
Marin	1.9%	1,052	499	553
Mariposa	1.2%	50	27	23
Mendocino	1.5%	284	123	161
Merced	0.9%	364	173	191
Modoc	0.9%	20	11	9
Mono	0.9%	27	14	13
Monterey	1.2%	911	454	457
Napa	1.2%	315	147	168
Nevada	0.9%	213	93	120
Orange	1.0%	5,524	2,901	2,623
Placer	0.8%	472	194	278
Plumas	0.7%	37	18	19
Riverside	1.3%	4,242	2,599	1,643
Sacramento	1.5%	3,534	1,642	1,892
San Benito	0.9%	100	44	56
San Bernardino	0.9%	2,888	1,305	1,583
San Diego	1.4%	7,645	4,311	3,334
San Francisco	6.9%	8,902	6,549	2,353
San Joaquin	1.0%	1,139	550	589
San Luis Obispo	1.0%	500	207	293
San Mateo	1.4%	2,058	1,047	1,011
Santa Barbara	1.2%	892	444	448
Santa Clara	1.2%	3,932	2,027	1,905

Santa Cruz	1.9%	979	352	627
Shasta	0.7%	279	127	152
Sierra	0.9%	8	4	4
Siskiyou	0.9%	93	41	52
Solano	1.1%	917	426	491
Sonoma	2.1%	2,125	886	1,239
Stanislaus	0.9%	849	399	450
Sutter	0.7%	126	54	72
Tehama	0.6%	74	39	35
Trinity	0.8%	24	14	10
Tulare	1.0%	696	325	371
Tuolumne	0.8%	104	42	62
Ventura	0.9%	1,382	637	745
Yolo	1.2%	396	137	259
Yuba	0.8%	102	40	62

D. Same-sex couples reflect the racial and ethnic diversity of California.

Same-sex couples include individuals from every racial and ethnic group in California.¹⁰ In terms of ethnicity, 25% of individuals in same-sex couples in California are of Hispanic origin and 21% are Spanish speakers. In terms of race, 5% of individuals in same-sex couples in California identify themselves as Black, 6% as Asian-American, 71% as White, and 18% as members of other races.¹¹ These percentages are substantially similar to the racial and ethnic breakdown of married couples in California.¹²

Same-sex couples in California are more likely to be interracial than are married couples. While 15% of married couples in California have partners of different races or origins, 24% of same-sex couples in California have partners with different races or origins.¹³

¹⁰ In 2000, the U.S. Census began to treat race and Hispanic origin as two separate concepts. As a result, individuals who identify as Hispanic may identify as White, Black or African-American, or any other race or races. See U.S. Census Bureau, *U.S. Census Bureau Guidance on the Presentation and Comparison of Race and Hispanic Origin Data* (June 12, 2003), available at <http://www.census.gov/population/www/socdemo/compraceho.html>.

¹¹ While 71% of individuals in same-sex couples identified themselves as White, only 61% identified themselves as non-Hispanic White.

¹² In terms of ethnicity, 26% of individuals in married couples in California are of Hispanic origin and 23% are Spanish speakers. In terms of race, 4% of married couples in California identify themselves as Black, 12% as Asian-American, 66% as White, and 18% as members of other races.

¹³ Simmons & O'Connell, *supra* note 3, at 12 (Table 5). The seven race groups used for this analysis were White, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or other Pacific Islander, some other race alone, or two or more races. If either spouse or partner was not in the same single-race group as the other spouse or partner, or if at least one partner was in a multiple-race group, then the couple was classified as an interracial couple. *Id.* at 11 n.19.

Members of same-sex couples in California are slightly more likely to be U.S. citizens than members of married couples. Eighty-five percent of individuals in same-sex couples are citizens, while 82% of individuals in married couples are citizens.

Married and same-sex couples in California include approximately the same percentage of people with disabilities. While 21% of individuals in same-sex couples are disabled, 20% of individuals in married couples are disabled.¹⁴

Table 2: Diversity of all same-sex couples in California compared to all married couples in California

Characteristic	Same-sex couples	Married couples
White ¹⁵	71%	66%
Black ¹⁶	5%	4%
Asian/Native Hawaiian/Pacific Islander	6%	12%
Other/Mixed	18%	18%
Interracial Couples (household data)	24%	15%
Percent speaking Spanish in household	21%	23%
Hispanic	25%	26%
Citizens	85%	82%
People with disabilities	21%	20%

Note: Interracial couples and the percent speaking Spanish are based on household data as opposed to individual data. The rest of the data is based on individual data.

¹⁴ For Census 2000, disability is defined by reporting a “long-lasting condition” such as blindness or deafness, or a condition that limits physical or life activities. Individuals were classified as having a disability if any of the following three conditions was true: (1) They were at least five years old and reported a long-lasting sensory, physical, mental or self-care disability; (2) they were at least 16 years old and reported difficulty going outside the home because of a physical, mental, or emotional condition lasting six months or more; or (3) they were between 16 and 64 years old and reported difficulty working at a job or business because of a physical, mental, or emotional condition lasting six months or more. U.S. Census Bureau, *Persons with a Disability*, State & County Quick Facts, available at http://quickfacts.census.gov/qfd/meta/long_101608.htm.

¹⁵ Like all racial categories on Census 2000, “White” included individuals who identified themselves as Hispanic. *See supra* note 9.

¹⁶ Like all racial categories on Census 2000, “Black” includes individuals who identified themselves as Hispanic. *See supra* note 9.

E. Individuals in same-sex couples actively contribute to the California economy and serve in the armed forces.

Factors identified by Census 2000 also indicate that members of same-sex couples actively contribute to the California economy. Individuals in married couples and same-sex couples are similar in age, with average and median ages in the 40s.

In terms of employment, 71% of individuals in same-sex couples are employed, compared with 62% of members of married couples. Although members of same-sex couples are more likely to be employed, members of both sets of couples have similar employment patterns. Roughly the same percentage of individuals in both groups work for the government, the private for-profit sector, the non-profit sector, or are self-employed.

Given the military's official policy of excluding gay men and lesbians from service, individuals in married couples and same-sex couples are surprisingly similar in terms of their veteran status. While 14% of individuals in married couples in California are veterans, 11% of individuals in same-sex couples are veterans.

Table 3: Economic characteristics of individuals in same-sex couples in California compared with individuals in married couples in California

Characteristic	Same-sex couples	Married couples
Average age	43	47
Median age	40	44
Percent employed	71%	62%
Type of employment for those employed		
• Private-for profit sector	63%	64%
• Non-profit sector	8%	6%
• Public sector (federal, state, local government)	16%	16%
• Self-employed	13%	14%
Veteran status	11%	14%

F. Individuals in same-sex couples depend on each other for economic support.

Data from Census 2000 shows that individuals in many same-sex

couples depend upon each other economically, demonstrating the type of interdependence that marriage encourages and protects. For example, many same-sex couples care for each other when one partner is sick or disabled. In 9.5% of same-sex couples, one or both partners are at least 65 years old. In 21.7% of same-sex couples (compared with 19.5% of married couples), one partner has a disability while the other does not. In these couples, one partner may be taking on responsibility to provide for or contribute to the care of a senior or disabled partner.

In addition, in 29% of same-sex couples in California, one person is employed while the other is either unemployed or out of the labor force. By comparison, 34% of married couples have only one person employed, and 24% of different-sex unmarried couples have just one wage-earner. This disparity in employment status suggests that in many same-sex couples one partner is relying upon the other's income and the couple is functioning as a cohesive economic unit. For example, one partner may be working while the other is taking on full-time child care responsibilities or pursuing a college or advanced degree.

The financial interdependence of individuals in same-sex couples in California is also shown by the disparities between individual incomes. For individuals in same-sex couples, the average difference in individual incomes was \$37,034 in 1999, compared to \$42,497 for married couples and \$24,502 for different-sex unmarried couples. (To put that figure in perspective, the average total household income for same-sex couples was \$89,366.) Some of the factors that result in these income disparities may reflect decisions that couples are likely to make together. For example, the couple may decide that one partner works more hours while the other devotes more time to maintaining the home or caring for children or elders, or that one partner works in a higher wage occupation so that the other can pursue a career in the public or non-profit sector.

Table 4: Indicators of interdependence among couples in California, by type of couple

Indicator of interdependence	Different-sex unmarried couples	Same-sex couples	Married couples
Only one partner employed	24%	29%	34%
Average difference in individual income between partners	\$24,502	\$37,034	\$42,497
Only one partner has a college degree or higher	18%	24%	21%
Only one partner disabled	19%	21%	19%
Only one partner a U.S. citizen	11%	11%	11%

These data suggest that many same-sex couples in California have formed partnerships that closely resemble marriages, insofar as the partners depend on each other for economic support. To the extent that same-sex couples and married couples are different in this respect, such differences are likely to be explained by California’s exclusion of same-sex couples from marriage.

II. SAME-SEX COUPLES RAISING CHILDREN IN CALIFORNIA

Data from Census 2000 show that California’s exclusion of same-sex couples from marriage impacts more than 70,000 children with parents in same-sex couples. Like their parents, these children represent the full geographic, ethnic, and racial diversity of California. However, the children of parents in same-sex couples are more likely to be younger than five years old, adopted and disabled than the children of parents in married couples.

A. Same-sex couples are raising more than 70,000 children in California.

Many same-sex couples are raising children in California. In 2000, 28.4% of all householders with a same-sex partner in California reported that they were raising their “own” children (i.e., biologically related, stepchildren, or adopted), and 33% percent of female same-sex couples reported having their own children.¹⁷ In comparison, 51% of married couples in California are raising their own children.¹⁸ In short, Census 2000 reveals that more than 52,000 partnered gay men and lesbians in California are parents. These figures do not include gay men and lesbians who are single parents.

Also, 32.3% of same-sex couple households in California include children under 18. Unlike “own” children, this figure includes children unrelated to the householder but who are also living in the house. The reason why these children might not be the householder’s “own” children could be due to legal obstacles that same-sex parents face in obtaining legal recognition of their parental status.¹⁹

In short, same-sex couples in California are raising 70,500 children in their households, and 58,600 of these are their own children. Both figures suggest a high degree of responsibility for children among same-sex couples in California.

¹⁷ Simmons & O’Connell, *supra* note 3, at 9 (Table 4). The Census category of “own” children includes all children who are the biologically related, adopted, or stepchildren of the householder, and excludes children in foster care. *Id.* at n.16.

¹⁸ *Id.*

¹⁹ This data was collected before California courts were applying the Uniform Parentage Act equally to children of opposite-sex and same-sex parents. See *Elisa B. v. Superior Court*, 37 Cal. 4th 108 (2005).

California includes 11 of the top 50 counties in the country in terms of the number of same-sex couples who are raising children, including Los Angeles County, which is ranked number one.²⁰

Table 5: Counties in California with the most same-sex couples raising children²¹

County	Rank nationally	Number of same-sex couples raising children
Los Angeles County	1	8,015
Orange County	8	1,930
San Diego County	10	1,900
Alameda County	12	1,410
San Bernardino County	14	1,315
Riverside County	17	1,260
Santa Clara County	19	1,210
Sacramento County	26	960
Contra Costa County	30	755
Fresno County	34	715
San Francisco County	39	655

B. The children being raised by same-sex couples are racially and ethnically diverse.

The children being raised by same-sex parents are members of every race and ethnicity in California.²² In terms of the race of the householder’s “own” children, there are approximately 4,400 Asian-American children being raised by same-sex couples in California, 3,600 African-American children, 4,500 children of mixed race, 17,600 children of other race, and

²⁰ Lisa Bennett & Gary J. Gates, *The Cost of Marriage Inequality to Children and Their Same-Sex Parents*, Human Rights Campaign Foundation Report (Apr. 13, 2004), at 14.

²¹ *Id.*

²² *See supra* note 9.

27,600 White children. In terms of the ethnicity of the householder's "own" children, there are approximately 31,000 Hispanic children being raised by same-sex couples in California and 27,000 non-Hispanic children.

Chart 1: Race of Own Children Raised by Same-sex Couples in California

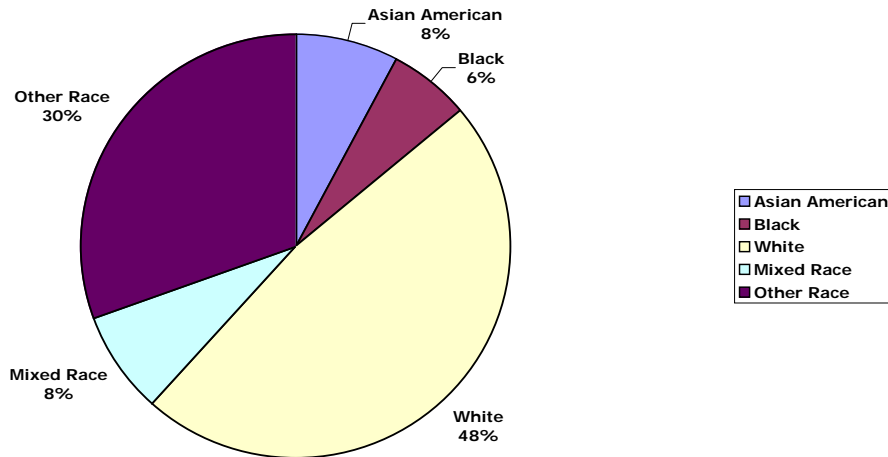
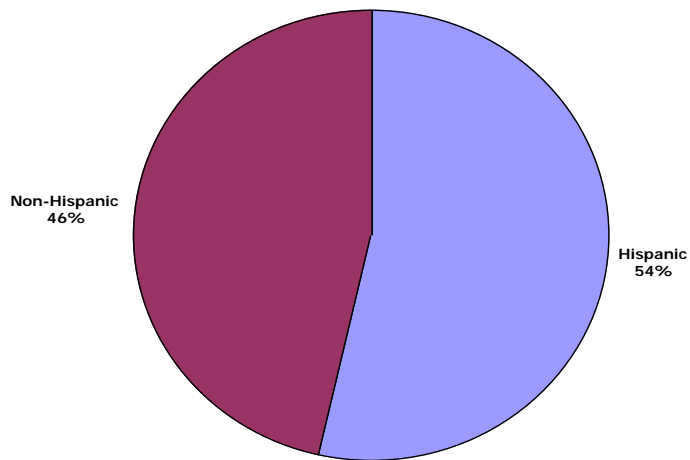


Chart 2: Ethnicity of Own Children Raised by Same-sex Couples in California



C. The children of same sex-couples are more likely to be under five years old, disabled and adopted.

Married couples and same-sex couples living with their own children in California have, on average, two children. In addition, married couples living with children are similar to same-sex parents in terms of average and median age: both groups are in their late 30s.

Children of same-sex couples are slightly younger than children of married couples, more likely to be disabled, and more than twice as likely to be adopted. Nearly 30% of the children being raised by same-sex couples are younger than five years old, compared with 27% of the children of married couples. Six percent of the children being raised by same-sex couples have disabilities,²³ compared with 5% of the children of married couples. While 2% of the children of married couples are adopted, close to 5% of the children of same-sex couples are adopted. Approximately 25% of all adopted children living with same-sex couples in the United States live in California.²⁴

Table 6: Characteristics of same-sex couples with children in California compared to married couples with children

Household characteristic	Same-sex couples with children	Married couples with children
Average number of children	2	2
Average age of parents	37	39
Median age of parents	37	38
Percentage of children under 5 years old	29%	27%
Percentage of children with disabilities	6%	5%
Percentage of children who are adopted	5%	2%

²³ This percentage does not include children under five because the Census Bureau does not classify them as having disabilities or not.

²⁴ Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber & Kate Chambers, *Adoption and Foster Care by Gay and Lesbian Parents in the United States* (March 2007), at 26-27.

D. Same-sex couples who are raising children in California are racially and ethnically diverse.

Like all same-sex couples in California, same-sex couples who are raising children reflect the racial and ethnic diversity of California.²⁵ In terms of ethnicity, 46% of individuals in same-sex couples raising children in California are of Hispanic origin and 41% are Spanish speakers. In terms of race, 6% of same-sex couples in California identify themselves as Black, 8% as Asian-American, 53% as White, and 33% as members of other races.

These percentages indicate that same-sex couples raising children in California are more racially and ethnically diverse than married couples raising children in California. While parents in same-sex couples are 46% Hispanic and 41% Spanish speakers, parents in married couples are only 36% Hispanic and 32% Spanish speakers. While 39% of parents in same-sex couples in California identify themselves as Black, of mixed race, or of another race, only 28% of parents in married couples identify themselves in these racial categories. Fifty-three percent of parents in same-sex couples identify themselves as White compared with 58% of parents in married couples.

Table 7: Diversity of same-sex couples with children in California compared to diversity of married couples with children

Characteristic	Same-sex couples with children	Married couples with children
White	53%	58%
Black	6%	4%
Asian/Native Hawaiian/Pacific Islander	8%	14%
Mixed	6%	4%
Other	27%	20%
Percent speaking Spanish in household	41%	32%
Hispanic	46%	36%

Note: All of the information in this table is based on individual data.

²⁵ See *supra* note 9.

III. CONCLUSION

Contrary to popular stereotypes, data from Census 2000 demonstrate that same-sex couples are geographically, demographically and economically similar to married couples in California. Because same-sex couples and married couples are similarly situated, the right to marry is equally important and valuable to both groups.

Dated: September 26, 2007 Respectfully submitted,

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**CERTIFICATE OF WORD COUNT
PURSUANT TO RULE 8.520(c)(1)**

Pursuant to California Rule of Court 8.520(c)(1), counsel for Amici Curiae hereby certifies that the number of words contained in this Opening Brief, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, is **4,068** words as calculated using the word count feature of the computer program used to prepare the brief.

Dated: September 26, 2007 Respectfully submitted,

By: _____
Clifford J. Rosky