

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

FEB 15 2012

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

KELLY D. GLOSSIP,)
)
 Plaintiff,)
)
 v.)
)
 MISSOURI DEPARTMENT OF)
 TRANSPORTATION AND HIGHWAY)
 PATROL EMPLOYEES' RETIREMENT)
 SYSTEM,)
)
 Defendant.)

Case No. 10-CC00434

**PLAINTIFF KELLY GLOSSIP'S REPLY IN SUPPORT
OF HIS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Missouri Rule of Civil Procedure 74.04(c)(3), Plaintiff Kelly D. Glossip submits the following reply in further support of Plaintiff's Motion for Summary Judgment.

ARGUMENT

The detailed factual submissions presented by Mr. Glossip demonstrate that the statutory scheme's categorical exclusion of same-sex couples from survivor benefits has no conceivable rational connection to any legitimate state interest and, under any standard of review, violates Plaintiff's rights under Article I, Sections 2 and 10 and Article III of the Missouri Constitution. Because the Attorney General has presented no evidence showing that these facts are in genuine dispute, Mr. Glossip is entitled to judgment as a matter of law, and the motion for summary judgment must be granted. *See ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 381-82 (Mo. banc 1993) ("[O]nce a movant has met the burden imposed by Rule 74.04(c) by establishing a right to judgment as a matter of law, the non-movant's *only* recourse is to show – by affidavit, depositions, answers to interrogatories, or admission on file – that one or more of the material facts shown by the movant to be above any genuine dispute is, in

fact, genuinely disputed. . . . [I]t is not the ‘truth’ of the facts upon which the court focuses, but whether those facts are disputed.”) (emphasis in original).¹

I. The Categorical Exclusion Of Same-Sex Couples Must Be Subjected To Heightened Scrutiny.

By expressly limiting marriage to a man and woman and then limiting survivor benefits only to committed couples who marry, the statutory scheme must be analyzed as a classification based on sex and sexual orientation. “Because employees involved in same-sex partnerships do not have the same right to marry as their heterosexual counterparts, [the statutory scheme] has

¹ Consequently, even where the Attorney General denied or failed to admit Plaintiff’s uncontroverted facts, his failure to offer evidence to dispute those facts means they are admitted. *ITT Commercial Fin. Corp.*, 854 S.W.2d at 382. The Attorney General’s objections to Mr. Glossip’s evidence lack any merit. His argument that Fact ¶22 is based on hearsay and inadmissible under the statute abrogating the deadman’s statute, R.S.Mo. § 491.010, fails to take account of the fact that Mr. Engelhard’s out-of-court statement is not offered for the truth of the matter asserted and is subject to the state-of-mind exception to the hearsay rule. *See Coon v. American Compressed Steel, Inc.*, 207 S.W.3d 629, 636 (Mo. App. W.D. 2006) (“Because [decedant’s] out-of-court statements were admissible under the state of mind exception to the hearsay rule, the Dead Man Statute was not applicable in this proceeding.”). With regard to Facts ¶¶60, 62, 63, 64, and 66, the Attorney General objects that the facts are based on “opinions,” “conclusions,” and “beliefs,” even though expert testimony in the form of opinion or inference can be admitted, even if the testimony “embraces an ultimate issue to be decided by the trier of fact.” R.S.Mo. § 490.065.2. The Attorney General’s challenges to the evidentiary support for Ms. Badgett’s opinions set out in Facts ¶¶60, 63, and 64 should be rejected since the facts or data upon which she relied – the sources cited in the footnotes of her affidavit and her experience in the field of expertise regarding the economics of sexual orientation – are the type of facts that are reasonably relied upon by an expert in her field, *see* Ex. 10, Badgett Aff. ¶5, and support the factual statements for which they are offered. The Attorney General asserts that he was unable to access two of the reports cited by Ms. Badgett, Resp. to Facts ¶¶62, 64-66, but he never requested those reports from Plaintiff’s counsel. The web addresses where those reports can be found apparently changed after the time Ms. Badgett prepared her affidavit. *See* Adam Romero, Clifford J. Rosky, M. V. Lee Badgett, and Gary J. Gates, *Census Snapshot: Missouri, January 2008*, Williams Institute, UCLA School of Law, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/MissouriCensusSnapshot.pdf>, accessed 2/14/12; Gary J. Gates, “Same-Sex Spouses and Unmarried Partners in the American Community Survey, 2008,” Williams Institute, UCLA School of Law, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-ACS2008FullReport-Sept-2009.pdf>, accessed 2/14/12. Copies of these reports have been attached as exhibits to this reply brief.

the effect of completely barring lesbians and gays from receiving family benefits.” *Collins v. Brewer*, 727 F. Supp. 2d 797, 803 (D. Ariz. 2010); accord *Dragovich v. U.S. Dep’t of the Treasury*, No. C 10–01564 CW, 2012 WL 253325, at *7 (N.D. Cal. Jan. 26, 2012) (“[L]aws limiting same-sex couples to registered domestic partnerships, while precluding them from marriage, turn on sexual orientation.”); *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 788 (Alaska 2005) (“Same-sex unmarried couples . . . have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying.”).²

Missouri courts follow the federal standard when determining whether a classification is subjected to heightened scrutiny. See *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103 (Mo. 1997); *Harrell v. Total Health Care, Inc.*, 781 S.W.2d 58, 63 n.4 (Mo. banc. 1989). As discussed in Plaintiff’s opening memorandum of law, heightened scrutiny applies in this case because the statutory scheme explicitly classifies based on sex. See *Baehr v. Lewin*, 852 P.2d 44, 60 (Hawaii 1993); *Brause v. Bureau of Vital Statistics*, No. 3AN-95-6562 CI, 1998 WL 88743, at *4 (Alaska Super. Feb 27, 1998) (same). Heightened scrutiny also applies because the statutory scheme classifies on the basis of sexual orientation. See *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 426-62 (Conn. 2008) (analyzing federal precedent when interpreting state constitution); *Varnum v. Brien*, 763 N.W.2d 862, 885-96 (Iowa 2009) (same); Eric Holder, DOJ Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act, Feb. 23, 2011 (“DOJ Memo”), available online at <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>. Although the Attorney General

² The Attorney General asserts that “the more stringent equal protection clause of the Alaska constitution . . . is inapposite,” AG SJ Op. Mem. at pp. 48-49, but Plaintiff cites *Alaska Civil Liberties Union* to show that a marriage classification is facially discriminatory on the basis of sexual orientation, a question that is unrelated to the level of scrutiny applicable to the classification.

asserts that sexual orientation is not a suspect classification, he does not even address these precedents or attempt to apply the traditional four-factor test for identifying suspect classifications under the federal and state constitutions.³

In addition, heightened scrutiny applies because the discriminatory statutory scheme impermissibly burdens same-sex couples' fundamental rights to intimate association and family integrity. Troopers who form intimate committed heterosexual relationships are able to marry under Missouri law and receive valuable survivor benefits, but troopers who form intimate committed relationships with a same-sex partner are penalized and categorically denied the survivor benefits they would have otherwise received. *Cf. Ark. Dep't of Human Servs. v. Cole*, 2011 Ark. 145, --- S.W.3d ----, 2011 WL 1319217 (Ark. 2011).

There is no support for the Attorney General's assertion that such "economic burdens" on fundamental rights do not trigger strict scrutiny. In fact, the cases say exactly the opposite. *See Speiser v. Randall*, 357 U.S. 513, 518 (1958) (denial of tax exemption burdened fundamental right to free speech because "[t]o deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech"); *Weinschenk v. State*, 203 S.W.3d 201, 214 (Mo. banc. 2006) (The exercise of fundamental rights cannot be conditioned upon financial expense."). Ignoring these cases, the Attorney General's faulty argument about economic burdens is drawn entirely from its distorted interpretation of *In re Marriage of Kohring*, 999

³ The Attorney General asserts that the Missouri Constitution does not recognize "quasi-suspect" classifications. AG MTD Reply at 8. That is incorrect. Although the Missouri Supreme Court noted in *Harrell* that it had not definitively decided whether the notion of a "quasi-suspect class" is a viable concept, *see Harrell*, 781 S.W.2d at 63 (reserving this question), it subsequently used the "quasi-suspect" terminology without any reservations in *Berdella v. Pender*, 821 S.W.2d 846, 851 (Mo. banc 1991). Even more importantly, regardless of the terminology it has used, the Missouri Supreme Court has repeatedly affirmed that "intermediate scrutiny" is a viable concept that applies to gender classifications. *See, e.g., State v. Stokely*, 842 S.W.2d 77, 79 (Mo. banc 1992) ("Discrimination based on sex is a constitutionally suspect classification subject to intermediate scrutiny.").

S.W.2d 228 (Mo. banc 1999). In *Kohring*, the court held that a father’s financial interest in refusing to provide financial support to his daughter was not itself a fundamental right. *Id.* at 232-33. That case has nothing to do with whether financial burdens may be used to burden a right that is fundamental. Under *Speiser* and *Weinschenk* when the government places an economic burden on the exercise of a fundamental right, that burden must be judged under heightened scrutiny.⁴

If heightened scrutiny applies, then the Attorney General bears the burden of coming forward with evidence to show that the statutory scheme is narrowly tailored to serve a compelling governmental interest. Because the Attorney General has presented no evidence whatsoever for how the statutory scheme actually serves any state interest – must less, a compelling one – the statutory scheme necessarily fails heightened scrutiny and summary judgment must be entered in favor of Mr. Glossip.

II. The Statutory Scheme Fails Rational Basis Review.

Even if heightened scrutiny did not apply, the discriminatory exclusion of same-sex couples from survivor benefits would still fail even the most deferential standard of rational basis review. “A statute that creates arbitrary classifications that are irrelevant to the achievement of the statute’s purpose may be struck down because the arbitrary classifications violate equal protection.” *Kilmer v. Mun*, 17 S.W.3d 545, 552 n.21 (Mo. banc 2000). “The rational basis test requires the [law] have a legitimate governmental interest as its purpose and employ a rational or

⁴ The Attorney General is also incorrect in arguing that a burden on the fundamental right of intimate association and family integrity does not trigger strict scrutiny unless it actually prevents a couple from intimately associating and forming a family with each other. The plaintiffs in *Speiser* did not have to show that the denial of a tax exemption actually prevented them from exercising their free speech rights, and the plaintiffs in *Weinschenk* did not have to prove that the financial burdens physically prevented them from voting. See *Weinschenk*, 203 S.W.3d at 214 (noting that plaintiffs were required to pay only \$11, \$12, or \$20 for voter identification cards or birth certificates).

reasonable means of accomplishing its objective.” *State ex rel. Classics Tavern Co., Inc. v. McMahon*, 783 S.W.2d 463, 465 (Mo. App. E.D. 1990).

Several courts have examined similar statutory schemes and held that categorically barring same-sex couples from being eligible for spousal benefits based on their legal inability to marry is not rationally related to any legitimate governmental interest. *See Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011) (affirming *Collins v. Brewer*, 727 F. Supp. 2d 797 (D. Ariz. 2010)) ((invalidating similar exclusion of same-sex couples under rational-basis review); *see also Dragovich*, 2012 WL 253325, at *9 - *11; *Alaska Civil Liberties Union*, 122 P.3d at 790-91. Although the state is not required to make classifications with mathematical precision, the connection in this case is so attenuated as to be irrational. The uncontested evidence presented by Mr. Glossip “negative[s] any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 382 (2001). Indeed, the justifications hypothesized by the Attorney General are so ill-served by the statutory scheme that they “could not reasonably be conceived to be true” by the legislature that created the statutes. *Vance v. Bradley*, 440 U.S. 93, 111 (1979).

The Ninth Circuit’s recent decision in *Diaz* is particularly instructive because the Attorney General concedes that if discrimination cannot survive rational basis review under the federal Constitution, then it violates the Missouri Constitution as well. *See AG MTD Reply Mem.* at pp. 6-7 (stating that “the equal protection clause of the Missouri and federal constitutions are ‘co-extensive’”). *Diaz* held that an Arizona statute limiting employee health benefits to spouses of state employees while denying the same benefits same-sex domestic partners (who are legally precluded from marrying in Arizona) failed the rational basis test under the federal Constitution. The State of Arizona attempted to defend the exclusion of same-sex

couples as being rationally related to the state's interests in "administrative efficiency" and "controlling costs." But the Ninth Circuit affirmed the district court's determination that any purported benefits from administrative efficiency or cost control "depend[ed] upon distinguishing between homosexual and heterosexual employees, [who were] similarly situated, and such a distinction cannot survive rational basis review." *Diaz*, 656 F.3d at 1014.

Like the statutory scheme at issue in *Diaz*, this case involves the deliberate decision to amend a benefit program to single out same-sex couples and categorically exclude them from ever being able to obtain valuable survivor benefits that are available to heterosexual couples. Before 1996, there was no Missouri law explicitly limiting marriage to a man and a woman. *See Virginia Young, State Senate Revives, Passes Bill Outlawing Same-Sex Marriages*, The St. Louis Post-Dispatch, May 9, 1996, at A16. Then, in response to the possibility that Hawaii would recognize marriages for same-sex couples, Missouri passed a series of statutes and constitutional amendments to categorically exclude otherwise qualified same-sex couples from the institution of marriage in general and from MPERS pension benefits in particular. *See* 1996 Mo. Legis. Serv. S.B. 768 § A(§ 6) (codified at R.S. Mo. § 451.022); 2001 Mo. Legis. H.B. No. 157 § A (same); 2001 Mo. Legis. Serv. S.B. 371, § 2 (codified at R.S. Mo. § 104.012); S.J. Res. 29, 92nd Gen. Assemb., 2nd Reg. Sess. (MO 2004) (codified at Mo. Const. Art. I, § 33). This is not a case in which the legislature enacted a spousal benefits program decades before contemplating the possibility of similarly situated same-sex couples. *Cf. Rutgers Council of AAUP Chapters v. Rutgers*, 689 A.2d 828, 840 (N.J. Super. Ct. 1997) (Levy, J., concurring). The legislature in this case was keenly aware of the possibility that same-sex couples might attempt to marry and apply for spousal benefits and amended the existing statutory scheme with the specific purpose of barring same-sex couples from receiving the same benefits given to married heterosexual

couples, including the specific benefit at issue in this case. *See* 2001 Mo. Legis. Serv. S.B. 371, § 2 (codified at R.S. Mo. § 104.012).

No legislature in 1996 or after could have conceivably thought that categorically excluding same-sex couples from survivor benefits rationally serves any of the interests identified by the Attorney General. The Attorney General principally argues that the legislature could have rationally concluded that married couples are more likely to be financially interdependent than unmarried ones. But that distinction makes sense only if a couple has the ability to legally marry but declines to do so. Since the Missouri Constitution bars same-sex couples from marrying no matter how committed and financially interdependent they are, it is not rational to use the fact that same-sex couples are unmarried as a basis for assuming they are not financially interdependent. Even under rational basis review, “[t]he classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps.” *Williams v. Vermont*, 472 U.S. 14, 27 (1985).⁵

In any event, even if it were rational to speculate that same-sex couples are less financially interdependent than heterosexual ones, categorically excluding all same-sex couples would not be a rational response to that difference. Even though the unrebutted evidence shows that married heterosexual couples and committed same-sex couples have comparable levels of

⁵ In a similar vein, the Attorney General says the statutory scheme does not violate the equal protection rights of same-sex couples because “all unmarried cohabitants (including heterosexual couples who have not married) may not obtain survivorship benefits on the basis of an intimate relationship.” AG SJ Opp. Mem. at p. 48. But, as the Supreme Court in *Williams v. Vermont* explained, “the fact that all those not benefited by the challenged exemption are treated equally has no bearing on the legitimacy of that classification in the first place. A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated.” *Williams*, 472 U.S. at 27. *See also Dragovich*, 2012 WL 253325, at *9 (explaining that the “omission of distant relatives and other household members from the list of family members eligible for enrollment does not preclude a finding that § 7702B(f) imposes a discriminatory classification” with respect to same-sex couples).

financial interdependence, the Attorney General seizes on the fact that 28.4% of married couples in Missouri include a non-working spouse while only 21.4% of committed same-sex couples include a non-working partner. AG SJ Op. Mem. at pp. 42-43. Based on this difference of seven percentage points, the Attorney General argues that it would have been rational for the legislature to categorically exclude *all* same-sex couples from benefits (including the 21.4% where only one partner is employed) while simultaneously giving survivor benefits to *all* married heterosexual couples (including the 71.6% of married couples where both spouses work). The Supreme Court rejected a similar argument in *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 535-36 (1973), when it held that Congress acted irrationally in denying all food stamp benefits to communal households based on a purported concern that communal households posed a greater risk of fraud than households where the residents were related. The Court explained:

[E]ven if we were to accept as rational the Government's wholly unsubstantiated assumptions concerning the differences between "related" and "unrelated" households we still could not agree with the Government's conclusion that the denial of essential federal food assistance to all otherwise eligible households containing unrelated members constitutes a rational effort to deal with these concerns.

Id. at 535-36; *see also Planned Parenthood of Minn. v. State of Minn.*, 612 F.2d 359, 363 (8th Cir. 1980). The same reasoning applies in this case. Even if it were rational to speculate that married heterosexual couples have slightly greater levels of financial interdependence than unmarried same-sex couples, categorically excluding all same-sex couples from eligibility for survivor benefits would not be "a rational effort to deal with these concerns." *Moreno*, 413 U.S. at 536. *Cf. Classics Tavern*, 783 S.W.2d at 465.

In an effort to bolster its argument about financial interdependence, the Attorney General also notes that married couples have a duty of mutual support, which – according to the Attorney General – distinguishes them from unmarried same-sex domestic partners. AG SJ Opp. Mem. at

p. 43. But under Missouri law, committed same-sex couples also assume a duty of mutual support as a matter of contract law. Before a same-sex couple is eligible to receive spousal benefits, the couple must usually sign an affidavit swearing that they have taken on a duty of mutual support for each other. And even when there is no formal domestic contract or partnership certificate, that duty of mutual support can still be imposed as a part of an implied-in-fact contract. *Hudson v. DeLonjay*, 732 S.W.2d 922, 926 (Mo. App. E.D. 1987) (finding that long-term relationship created an implied-in-fact contract with a duty of mutual support); *accord In re Marriage of Estep*, 978 S.W.2d 817, 819 (Mo. App. S.D. 1998).

In addition to arguing that heterosexual married couples are more likely to be financially interdependent, the Attorney General repeats its discredited speculations that limiting survivor benefits to married couples is a rational means of establishing objective eligibility criteria, preventing the risk of competing claims and avoiding subjective post-hoc assessments of a relationship after one of the partners has died. AG SJ Opp. Mem. at p. 44-46. But the unrebutted evidence shows that the Attorney General's speculations have no footing in the realities of how domestic partnership benefits are routinely administered. Employees and their partners may be required to sign a domestic partnership affidavit in advance based on objective pre-established eligibility criteria – there is never a subjective, post-hoc analysis. *See* Facts at ¶¶40-54. Moreover, there is no risk of competing claims between multiple purported domestic partners because the domestic partnership affidavits requires the couple to swear under oath that neither of them has entered into a marriage or domestic partnership with anyone else. *See* Facts

at ¶¶43, 49-53. It is unsurprising that no governmental entity in Missouri has reported any instance of fraud or duplicative benefit claims. *See* Facts at ¶¶56, 57.⁶

Finally, the sweep of the statutory ban against same-sex couples is so broad that the justifications hypothesized by the Attorney General simply cannot be squared with the statutory scheme that the Missouri legislature has enacted. By explicitly barring all same-sex couples from every being eligible for benefits, even if those couples have entered into a marriage in another jurisdiction and have a marriage certificate to prove it, the statutory scheme itself belies the Attorney General's argument that it could have conceivably been designed simply to promote objective and administratively efficient criteria. Although rational-basis review "does not demand . . . that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification" it "does require that a purpose may conceivably or may reasonably have been the purpose and policy of the relevant governmental decisionmaker." *Nordlinger v. Hahn*, 505 U.S. 1, 16 (1992) (internal quotation marks omitted); *accord Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981) (purported rationales for legislation must be rejected if "an examination of the circumstances forces us to conclude that they could not have been a goal of the legislation" (internal quotation marks omitted)). After examining the statutory scheme, it is impossible to conclude that a legislature interested merely in promoting administrative efficiency by limiting proof to a marriage certificate would specifically banned same-sex couples from ever receiving survivor benefits even if they were validly married in another jurisdiction. *Cf. Mo. Pacific R. Co. v. Kirkpatrick*, 652 S.W.2d 128, 133 (Mo. banc 1983) (concluding under rational-basis review that, in light of

⁶ The Attorney General has never argued that there are conflicting claims to Mr. Engelhard's survivor benefits or challenged Mr. Engelhard's and Mr. Glossip's financial interdependence, much less offered any evidence to support such assertions.

the way the statutory scheme actually operated, the state’s post-hoc “attempt at establishing a legitimate state purpose does not withstand scrutiny”).⁷

Because no legislature could have conceived that the statutory scheme is rationally related to the governmental interests identified by the Attorney General, the only remaining explanation for the statutory exclusion of same-sex couples is that the legislature intended to privilege committed heterosexual couples over same-sex ones. But, as explained in Plaintiff’s opening submission, a simple desire to privilege one similarly situated group over another is not a legitimate state interest. *See Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 882 n.10 (1985); *Ranschburg v. Toan*, 709 F.2d 1207, 1211 (8th Cir. 1983); *cf. Romer v. Evans*, 517 U.S. 620, 634 (1996). In barring same-sex couples from marrying and then using their inability to marry as a basis for denying them the same benefits that similarly situated heterosexual couples receive, the statutory scheme appears designed simply to impose disparate treatment for its own sake. The legislature’s simple desire to treat same-sex couples differently is not a constitutional justification for doing so.

III. The Statutory Scheme Constitutes A Facially Special Law.

The statutory scheme is a facially special law because it classifies on the “immutable” characteristics of sex and sexual orientation. *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, 184 (Mo. banc 2006). Similarly situated couples⁸ cannot enter and leave the class;

⁷ Although Mr. Glossip and Mr. Engelhard chose to wait until marriage was legalized in Missouri instead of marrying in another jurisdiction, that does not affect the constitutional analysis. The fact that the statute bars all same-sex couples from receiving survivor benefits even if the couple has a marriage certificate from another jurisdiction simply demonstrates that the Attorney General’s hypotheses about administrative efficiency could not “reasonably have been the purpose and policy” of the exclusion. *Nordlinger*, 505 U.S. at 16.

⁸ “[C]ousins, parents, siblings, those related too closely by blood to legally marry, and those legally married to another,” AJ SJ Opp. Mem. at 51-52, are not similarly situated to married couples, so their inability to access survivor benefits offers no support for the Attorney General’s

their sexual orientation and their status as same-sex or different-sex couples is “set, solid, and fixed.” *Id.* at 186. The fact that some couples (heterosexual ones) can enter the class by becoming married and leave the class by divorcing does not change the fact that the statutory scheme poses an absolute bar on other couples (same-sex ones) based on immutable characteristics. As the Missouri Supreme Court has explained, the fact that some subjects sharing the immutable characteristic as the favored group may eventually enter the class “does not make it less immutable.” *Tillis v. City of Branson*, 945 S.W.2d 447, 449 (Mo. banc 1997). “[T]he issue is the nature of the factors used in arriving at that class.” *Id.*

Special laws that benefit privileged groups or persons based on immutable characteristics are just as suspect as special laws that benefit privileged municipalities. The Missouri Supreme Court has repeatedly held that under the constitutional prohibition on special laws: “No person or class of persons can be excluded from that privilege while others are permitted to enjoy it, unless some reason exists for the distinction having a just relation to the object to be accomplished.” *Planned Indust. Expansion Auth. of St. Louis v. SW Bell Tel. Co. v. City of St. Louis*, 612 S.W.2d 772, 777 (Mo. banc 1981) (quoting *State v. Currency Services, Inc.*, 358 Mo. 983, 218 S.W.2d 600, 605 (1949)). Missouri courts have thus invalidated special legislation that placed benefits or disadvantages on certain groups of people and not just municipalities. *See State ex rel. Bunker Resource Recycling and Reclamation Inc. v. Mehan*, 782 S.W.2d 381 (Mo. banc 1990); *Pettit v. Field*, 341 S.W. 2d 106 (Mo. 1960). Indeed, in construing a similar constitutional provision, the Supreme Court of Kentucky held that laws singling out same-sex couples for different treatment than their heterosexual counterparts are precisely the form of

argument that Section 104.140.3 is not a special law. *Cf. Dragovich*, 2012 WL 253325, at *9 (explaining that the “omission of distant relatives and other household members from the list of family members eligible for enrollment does not preclude a finding that § 7702B(f) imposes a discriminatory classification” with respect to same-sex couples).

unequal and selective treatment that the constitutional protection against “special laws” is supposed to protect against. *Cf. Commonwealth v. Wasson*, 842 S.W.2d 487, 500-01 (Ky. 1992) (citing state constitution’s prohibition on special laws as a basis for invalidating discriminatory restriction on same-sex intimate conduct that did not apply to similar conduct by heterosexual couples).

Because the statutory scheme is a facially special law it must be treated as inherently suspect, and summary judgment should be entered in favor of the Plaintiff.⁹

Respectfully submitted,



Anthony E. Rother, # 44827

Legal Director

Grant R. Doty, # 60788

Staff Attorney

ACLU of Eastern Missouri

454 Whittier Street

St. Louis, MO 63108

(314) 652-3114

(314) 652-3112 - Facsimile

Roger K. Heidenreich, # 40898

SNR Denton US LLP

One Metropolitan Square, #3000

St. Louis, MO 63102

(314) 259-5805

(314) 259-5959 - Facsimile

⁹ The Attorney General’s argument against entry of a permanent injunction is the same one he made in his motion to dismiss. Plaintiff incorporates herein his response to the argument from his Memorandum In Opposition To Defendant’s Motion To Dismiss And In Support Of His Motion For Summary Judgment, at pp. 60-61.

Stephen Douglas Bonney, # 36164
Chief Counsel & Legal Director
ACLU of Kansas & Western Missouri
3601 Main Street
Kansas City, MO 64111
(816) 994-3311
(816) 756-0136 - Facsimile

John Knight
Senior Staff Attorney
LGBT & AIDS Project
ACLU Foundation
180 North Michigan, Suite 2300
Chicago, IL 60601
(312) 201-9740, ext. 335
(312) 288-5225 - Facsimile

Joshua Block
Staff Attorney
LGBT & AIDS Project
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2593
(212) 549-2650 - Facsimile

Attorneys for Plaintiff Kelly D. Glossip

CENSUS SNAPSHOT



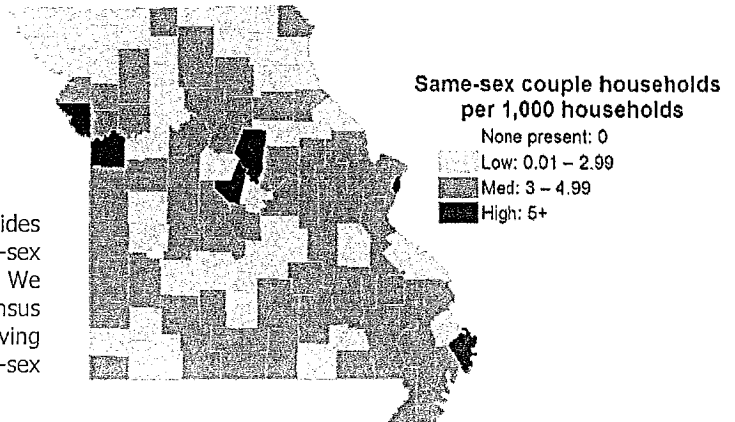
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Williams
INSTITUTE

MISSOURI

JANUARY 2008

Adam P. Romero, *Public Policy Fellow*
Clifford J. Rosky, *Research Fellow*
M.V. Lee Badgett, *Research Director*
Gary J. Gates, *Senior Research Fellow*

Using data from the U.S. Census Bureau, this report provides demographic and economic information about same-sex couples and same-sex couples raising children in Missouri. We compare same-sex "unmarried partners," which the Census Bureau defines as an unmarried couple who "shares living quarters and has a close personal relationship," to different-sex married couples in Missouri.¹



In many ways, the almost 15,000 same-sex couples living in Missouri are similar to married couples. According to Census 2000, they live throughout the State, are racially and ethnically diverse, have partners who depend upon one another financially, and actively participate in Missouri's economy. Census data also show that 20% of same-sex couples in Missouri are raising children. However, same-sex couples, especially those with children, have fewer economic resources to provide for their families than their married counterparts: they have lower household incomes and lower rates of homeownership.

SAME-SEX COUPLES AND THE LGB POPULATION IN MISSOURI

- In 2000, there were 9,428 same-sex couples living in Missouri.²
- By 2005, the number of same-sex couples increased to 14,722.³ This increase likely reflects same-sex couples' growing willingness to disclose their partnerships on government surveys.
- In 2005, there were an estimated 160,912 gay, lesbian, and bisexual people (single and coupled) living in Missouri.⁴

INDIVIDUALS IN SAME-SEX COUPLES ARE DEMOGRAPHICALLY AND GEOGRAPHICALLY DIVERSE

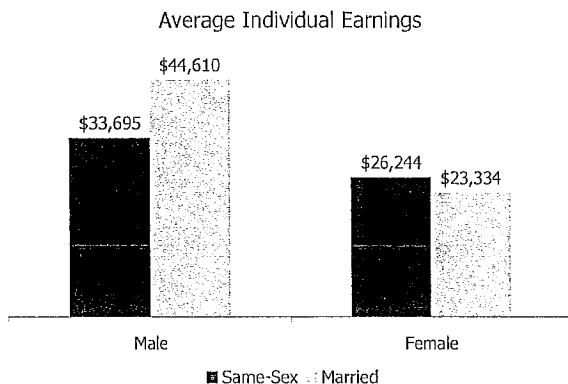
- There are slightly more female same-sex couples (50.3%) than male same-sex couples (49.7%) in Missouri.⁵
- Individuals in same-sex couples are, on average, 39 years old, and significantly younger than individuals in married couples (48 years old) in Missouri.

- Same-sex couples live in every county and independent city in Missouri and constitute 0.8% of coupled households and 0.4% of all households in the state.⁶ Jackson County reported the most same-sex couples with 1,723 couples (0.65% of all households in the county), followed by St. Louis County with 1,463 couples (0.36%), and St. Louis City with 1,297 couples (0.88%). The counties with the highest percentage of same-sex couples are St. Louis City (0.88% of all county households), Jackson County (0.65%), Boone County (0.55%), and Moniteau County (0.53%).⁷
- Missouri's same-sex couples are more racially and ethnically diverse than their married counterparts: 15% of same-sex couples are nonwhite, compared to 9% of married couples.

PEOPLE IN SAME-SEX COUPLES ARE ACTIVELY ENGAGED IN THE STATE ECONOMY

- Individuals in same-sex couples in Missouri are significantly more likely to be employed than are married individuals: 80% of individuals in same-sex couples are employed, compared to 67% of married individuals.

- Contrary to a popular stereotype, the annual earnings of men in same-sex couples are significantly lower than those of married men. On average, men in same-sex couples in Missouri earn \$33,695 each year, significantly less than \$44,610 for married men. The median income of men in same-sex couples in Missouri is \$27,000, or 23% less than that of married men (\$35,000).
- Women in same-sex couples in Missouri earn an average of \$26,244 per year (with a median of \$25,000), more than married women, whose earnings average \$23,334 (with a median of \$20,000). Women in same-sex couples earn less than married men as well as men in same-sex couples.



- Individuals in same-sex couples in Missouri are more likely to work in the private sector: 78% of individuals in same-sex couples work in the private sector, compared to 73% of married individuals; 13% of individuals in same-sex couples work in the public sector, compared to 14% of married individuals; and 8% of individuals in same-sex couples are self-employed, compared to 12% of married individuals.
- Individuals in same-sex couples are significantly more likely to have a college degree: 31% of individuals in same-sex couples, and 24% of married individuals have earned a college degree.
- Despite the military's historic policies of excluding gay men and lesbians from service, individuals in same-sex couples have served in the military: 8% of individuals in same-sex couples are veterans, compared to 18% of married individuals.

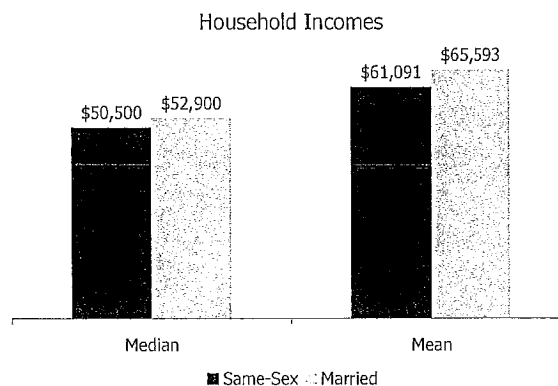
SAME-SEX PARTNERS IN MISSOURI DEPEND UPON ONE ANOTHER IN WAYS THAT ARE SIMILAR TO MARRIED COUPLES

- Couples in which one partner does not work or earns significantly less than the other partner may indicate financial interdependence. 21% of same-sex couples have only one wage earner, compared to 29% of married couples.

- The income gap between same-sex partners is \$18,014, compared to \$25,433 for married spouses.
- 28% of same-sex and married couples have at least one partner who is disabled.
- 7% of same-sex couples have at least one partner who is age 65 or older, compared to 20% of married couples.

SAME-SEX HOUSEHOLDS IN MISSOURI HAVE FEWER ECONOMIC RESOURCES THAN MARRIED HOUSEHOLDS

- The median income of same-sex coupled households in Missouri is \$50,500, less than that of married couples (\$52,900). The average household income of same-sex couples is \$61,091, less than \$65,593 for married couples.



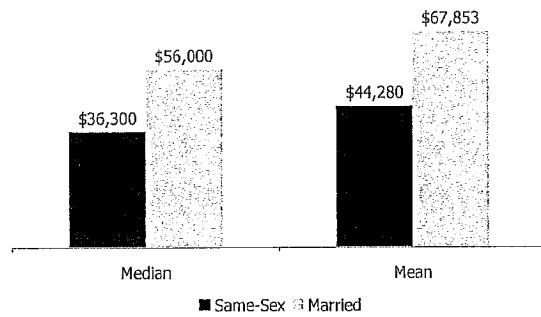
- Same-sex couples are significantly less likely than married couples to own their homes: 59% of same-sex couples in Missouri own their home, compared to 86% of married couples.

SAME-SEX COUPLES ARE RAISING CHILDREN IN MISSOURI, YET WITH FAR FEWER ECONOMIC RESOURCES THAN MARRIED PARENTS

- 20% of same-sex couples in Missouri are raising children under the age of 18.
- As of 2005, an estimated 5,472 of Missouri's children are living in households headed by same-sex couples.⁸
- In Missouri, married and same-sex couples with children under 18 in the home have, on average, 2 children.
- Roughly 1% of Missouri's adopted children (or 161 children) live with a lesbian or gay parent.⁹
- 28% of same-sex couples with children in Missouri have only one wage earner, compared to 31% of married parents.

- Same-sex parents have far fewer financial resources to support their children than married parents in Missouri. The median household income of same-sex couples with children is \$36,300, or 35% lower than that of married parents (\$56,000). The average household income of same-sex couples with children is \$44,280, significantly less than \$67,853 for married parents.
- While 44% of same-sex couples with children own their home, a significantly larger percentage of married parents (82%) own their home.

Household (With Children) Incomes



CONCLUSION

Census data provide valuable information about gay and lesbian couples in Missouri. While in many respects Missouri’s same-sex couples look like married couples, same-sex couples—especially those with children—have fewer economic resources than married couples to provide for their families and lower rates of homeownership.

Table One: Characteristics of individuals in couples

	Same-Sex	Married
Race/Ethnicity ¹⁰		
White	84.7%	90.6%*
Black	10.0%	5.3%*
Hispanic	2.4%	1.6%
Asian	0.9%	1.2%
American Indian/Alaskan Native	0.3%	0.4%
Other	1.7%	1.0%
Average age	38.6	48.1*
Percent with a college degree or better	31.3%	24.1%*
Percent Employed	80.1%	66.7%*
Employment ¹⁰		
Private employer	78.4%	73.1%*
Public employer	13.3%	14.0%
Self-employed	7.7%	12.4%*
Veteran Status	7.9%	17.9%*
Average individual salary		
Men	\$33,695	\$44,610*
Woman	\$26,244	\$23,334*
Median individual salary		
Men	\$27,000	\$35,000
Woman	\$25,000	\$20,000

* Difference significant at the 5% level or better (two-tailed tests).
 ^ Difference significant at the 10% level or better (two-tailed tests).

Table Two: Characteristics of couples

	Same-Sex	Married
At least one partner 65 or older	6.5%	19.7%*
Percent disabled	27.9%	27.8%
Average household income	\$61,091	\$65,593
Median household income	\$50,500	\$52,900
Income gap between partners	\$18,014	\$25,433*
Single wage earner	21.4%	28.9%*
Homeownership	59.4%	85.5%*
Percent with children under 18	20.2%	45.9%*

* Difference significant at the 5% level or better (two-tailed tests).
 ^ Difference significant at the 10% level or better (two-tailed tests).

Table Three: Characteristics of couples with children

	Same-Sex parents	Married parents
Average number of children under 18 in the household	1.8	1.9
Single wage earner (parents)	27.7%	31.2%
Average household income (parents)	\$44,280	\$67,853*
Median household income (parents)	\$36,300	\$56,000
Homeownership	44.1%	82.2%*

* Difference significant at the 5% level or better (two-tailed tests).
 ^ Difference significant at the 10% level or better (two-tailed tests).

Appendix A: Counts and percent of same-sex couples by county/independent city¹¹

County/City	Number of same-sex couples	Percent of same-sex couples out of all households
Adair	25	0.26%
Andrew	18	0.29%
Atchison	5	0.18%
Audrain	26	0.26%
Barry	35	0.26%
Barton	17	0.35%
Bates	20	0.31%
Benton	26	0.35%
Bollinger	22	0.48%
Boone	294	0.55%
Buchanan	135	0.40%
Butler	78	0.47%
Caldwell	12	0.34%
Callaway	49	0.34%
Camden	64	0.41%
Cape Girardeau	101	0.37%
Carroll	10	0.24%
Carter	5	0.21%
Cass	103	0.34%
Cedar	23	0.40%
Chariton	16	0.46%
Christian	64	0.31%
Clark	13	0.44%
Clay	309	0.43%
Clinton	22	0.31%
Cole	75	0.28%
Cooper	14	0.24%
Crawford	40	0.45%
Dade	12	0.37%
Dallas	17	0.28%
Daviess	11	0.35%
DeKalb	5	0.14%
Dent	23	0.38%
Douglas	19	0.37%
Dunklin	55	0.41%
Franklin	120	0.34%
Gasconade	20	0.32%
Gentry	2	0.07%
Greene	444	0.45%
Grundy	12	0.27%
Harrison	6	0.16%
Henry	24	0.26%
Hickory	16	0.41%
Holt	6	0.27%
Howard	16	0.42%
Howell	57	0.39%
Iron	20	0.48%
Jackson	1723	0.65%

County/City	Number of same-sex couples	Percent of same-sex couples out of all households
Jasper	138	0.33%
Jefferson	242	0.34%
Johnson	64	0.37%
Knox	4	0.22%
Laclede	36	0.28%
Lafayette	37	0.29%
Lawrence	28	0.21%
Lewis	10	0.25%
Lincoln	59	0.43%
Linn	21	0.37%
Livingston	17	0.30%
Macon	24	0.37%
Madison	17	0.36%
Maries	6	0.17%
Marion	26	0.23%
McDonald	32	0.39%
Mercer	5	0.31%
Miller	33	0.36%
Mississippi	28	0.52%
Moniteau	28	0.53%
Monroe	11	0.30%
Montgomery	16	0.34%
Morgan	33	0.42%
New Madrid	29	0.37%
Newton	55	0.27%
Nodaway	16	0.20%
Oregon	12	0.28%
Osage	23	0.47%
Ozark	18	0.46%
Pemiscot	35	0.45%
Perry	12	0.17%
Pettis	57	0.37%
Phelps	46	0.29%
Pike	18	0.28%
Platte	150	0.51%
Polk	29	0.29%
Pulaski	36	0.27%
Putnam	3	0.13%
Ralls	13	0.35%
Randolph	42	0.46%
Ray	28	0.32%
Reynolds	11	0.40%
Ripley	18	0.33%
Saline	35	0.39%
Schuyler	1	0.06%
Scotland	3	0.16%
Scott	43	0.28%
Shannon	11	0.33%

Appendix A: Counts and percent of same-sex couples by county (continued from previous page)⁴¹

County/City	Number of same-sex couples	Percent of same-sex couples out of all households
Shelby	3	0.11%
St. Charles	325	0.32%
St. Clair	10	0.25%
St. Francois	85	0.41%
St. Louis County	1463	0.36%
St. Louis City	1297	0.88%
Ste. Genevieve	17	0.26%
Stoddard	37	0.31%
Stone	31	0.26%
Sullivan	9	0.31%
Taney	74	0.46%
Texas	34	0.36%
Vernon	25	0.31%
Warren	34	0.37%
Washington	19	0.23%
Wayne	22	0.40%
Webster	35	0.32%
Worth	1	0.10%
Wright	19	0.27%

About the Authors

Adam P. Romero is Public Policy Fellow at the Williams Institute, UCLA School of Law. J.D. Yale Law School; A.B., *summa cum laude*, Cornell University. His current research examines the significance of family in society and law, especially as relevant to disabled adults without family.

Clifford J. Rosky is Research Fellow at the Williams Institute, UCLA School of Law. J.D. Yale Law School; B.A., *summa cum laude*, Amherst College. His current research examines the significance of gender in family law cases involving lesbian and gay parents.

M.V. Lee Badgett is Research Director at the Williams Institute, UCLA School of Law, and Director of the Center for Public Policy and Administration at the University of Massachusetts Amherst, where she is also on the faculty of the Department of Economics. She studies family policy and employment discrimination related to sexual orientation.

Gary J. Gates is Senior Research Fellow at the Williams Institute, UCLA School of Law. He studies the demographic and economic characteristics of the lesbian and gay population.

¹ Unless otherwise noted, we calculate the demographic characteristics from the Census 2000 Public Use Microdata Sample (5% file) available from the U.S. Census Bureau. For a detailed discussion of the Census 2000 methodology used in this report, see *Census Snapshot: Methods Note*, available at <http://www.law.ucla.edu/williamsinstitute/publications/MethodologicalDetailsForCensusSnapshots.pdf>. In estimating numbers of same-sex couples and children raised by same-sex couples, however, we use the total number of same-sex couples from 2005 and the proportion of couples with children from 2000 in order to provide a more up-to-date estimate.

² Tavia Simmons & Martin O'Connell, U.S. Department of Commerce, U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households*, Census 2000 Special Reports, CENSR-5, p. 4, tab. 2 (Feb. 2003).

³ Gary J. Gates, The Williams Institute, *Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey*, p. 11, apx. 1, available at <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf>. Sample sizes for individual states in 2005 are not sufficiently large for the analyses presented in this report, we therefore use data from Census 2000 where samples are on average five times larger than 2005.

⁴ *Id.*

⁵ Simmons & O'Connell, *supra* note 2.

⁶ In Missouri, St. Louis City is an incorporated place that is independent of St. Louis County and all other county organizations, and thus constitutes a primary division of the state. St. Louis City is known as an "independent city" and is treated as equivalent to counties for census purposes. See U.S. Census Bureau, 2000 County & County Equivalent Areas, available at http://www.census.gov/geo/www/cob/co_metadata.html.

⁷ U.S. Census Bureau, *Unmarried Partner Households by Sex of Partners*, PCT14. Percentages of total households computed by dividing data in PCT14 by data in P15 (total households). (The distinction between St. Louis County and St. Louis City is explained in footnote 10.)

⁸ Computed by multiplying the number of same-sex couples times the percent of same-sex couples with children times the average number of children under 18 in the household.

⁹ Gary J. Gates, M.V. Lee Badgett, Kate Chambers, Jennifer Macomber, The Williams Institute & The Urban Institute, *Adoption and Foster Care by Gay and Lesbian Parents in the United States* (2007), available at <http://www.law.ucla.edu/Williamsinstitute/publications/Policy-Adoption-index.html>.

¹⁰ Due to rounding, percent may not add to 100.

¹¹ See *supra* note 6.

For more information, contact:

The Williams Institute

UCLA School of Law

Box 951476

Los Angeles, CA 90095-1476

T (310)267-4382

F (310)825-7270



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SAME-SEX SPOUSES AND UNMARRIED PARTNERS IN THE AMERICAN COMMUNITY SURVEY, 2008

Gary J. Gates

The Williams Institute, UCLA

October 2009

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About the Author

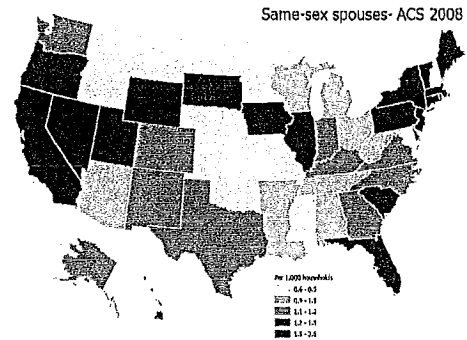
Gary J. Gates is the Williams Distinguished Scholar at the Williams Institute, UCLA School of Law. He studies the demographic and economic characteristics of the lesbian and gay population.



SAME-SEX SPOUSES AND UNMARRIED PARTNERS IN THE AMERICAN COMMUNITY SURVEY, 2008

Executive Summary

The US Census Bureau release of data from the 2008 American Community Survey (ACS) included the first official estimates for the number of same-sex couples who called one partner a “husband” or “wife”. This report compares these same-sex spousal couples to those who designated a partner as an “unmarried partner”. Comparisons are also made with comparable different-sex couples. Key findings include:



- The 2008 estimate of nearly 565,000 same-sex couples marked a decline from the peak estimate of 780,000 couples in 2006. This is likely a result of improvements made to the 2008 ACS survey instrument and in data processing procedures.
 - The entire decline was in the number of reported same-sex spousal couples.
 - The number of same-sex couples reporting themselves as unmarried couples has steadily increased from 2000 to 2008.
- More than 1 in 4 (nearly 150,000) same-sex couples designated themselves as spouses.
 - Many same-sex couples considered themselves to be spouses even though they may not be legally married or in a legally recognized partnership. By the end of 2008, approximately 32,000 same-sex couples had been married in the US and more than 80,000 same-sex couples registered as reciprocal beneficiaries or domestic partners or were united in civil unions. These numbers fall below the estimated 150,000 same-sex spousal couples.
- Same-sex spouses were identified in every state. However, they were more common in states that permit marriage for same-sex couples or offer other forms of partnership recognition.
 - Same-sex couples were more likely to call themselves spouses in states that recognize marriages of same-sex couples – 31% of same-sex couples in states with marriage recognition identified themselves as spouses. In states with no form of recognition, only 26% identified as spouses.
 - Massachusetts, the first state to permit marriage for same-sex couples in 2004, had an estimated 3.63 same-sex spousal couples per 1,000 households in 2008, ranking first among all states. Vermont, which has offered civil unions since 2000, ranked second at 2.71. The remaining top five states ranked by same-sex spouse prevalence were Hawaii (2.43), Utah (2.32), and Wyoming (2.28).
 - The District of Columbia had the highest prevalence of same-sex unmarried partners per 1,000 households (13.22), followed by Maine (6.81), Washington (5.84), Oregon (5.73), and New York (5.15).
- Same-sex couples, both married and unmarried, were more prevalent in states that had some form of legal recognition for same-sex couples than in states that had no recognition.
- Same-sex couples who identified themselves as spouses differed from same-sex couples who identified themselves as unmarried partners.
 - Same-sex spouses were more likely to be female; 56% of same-sex spouses were female while unmarried same-sex partners were evenly split between the sexes. This characteristic mirrors the higher rate of actual marriages by female couples in states that have extended marriage to same-sex couples.
 - Same-sex spouses were twice as likely to be raising children—more than 31% of spouses are raising children as opposed to 17% of unmarried partners.

SAME-SEX SPOUSES AND UNMARRIED PARTNERS: EXECUTIVE SUMMARY

- Same-sex spouses were older than unmarried partners by an average of 8.5 years.
- Same-sex spouses had lower education levels, employment rates, and incomes than same-sex unmarried partners.
- Despite their lower incomes, same-sex spouses were more likely to own their own homes than same-sex unmarried partners.
- Same-sex and different-sex spouses share many characteristics. These include:
 - Age: the average age for same-sex spouses was 52 compared to 50 for different-sex spouses.
 - Education: 22% of same-sex spouses both have a college degree compared to 21% of different-sex spouses.
 - Income: same-sex spousal couples had an average household income of \$91,558 vs. \$95,075 for their different-sex counterparts.
 - Home ownership: 77% of same-sex spouses own their home compared to 83% of different-sex spouses.
 - Interracial: 7% of same-sex spousal couples are interracial compared to 6% of their different-sex counterparts
- Same-sex spouses differ from different-sex spouses in child-rearing and employment rates.
 - 31% of same-sex spouses are raising children vs. 43% of different-sex spouses.
 - 46% of same-sex spousal couples have both spouses employed compared to 52% of different-sex spouses.
- Same-sex unmarried partners do differ in many ways from their different-sex counterparts. They are:
 - Older: same-sex unmarried partners have an average age of 44 compared to 37 among different-sex unmarried partners.
 - More educated: same-sex unmarried partner couples are 3 times more likely to have both partners with a college education (34% vs. 10%).
 - Wealthier: average household incomes of same-sex unmarried partner couples are 72% higher (\$112,960 vs. \$65,685) than different-sex unmarried partners.
 - More likely to own a home: 71% of same-sex unmarried partners own their home vs. only 45% of different-sex unmarried partners.
 - More likely to have both partners employed: that figure is 70% for same-sex unmarried partners vs. 62% for their different-sex counterparts.
 - Less likely to be raising children: 17% of same-sex unmarried partners are raising children compared to 43% of different-sex unmarried partners.
- One characteristic same-sex unmarried partners share with their different-sex counterparts is similar rates of being interracial—13% of same-sex unmarried partners are interracial compared to 12% of different-sex unmarried partners.
- Same-sex male and female couples were demographically similar with these notable exceptions:
 - More than a third (34%) of male spousal couples reported raising children compared to only 7% of male unmarried partners. Child-rearing did not vary much by spousal status for women with 28% of spouses raising children compared to 26% of unmarried partners.
 - While female spouses were, on average, more than four years older than male spouses; female unmarried partners were, on average, 1.4 years younger than their male counterparts.
 - Female spouses were less likely to be both employed (41% compared to 51% for male spouses), though employment rates were nearly the same among unmarried partners.
 - Female spouses and unmarried partners had lower average household income than their male counterparts.
 - Female couples, both spouses and unmarried partners, were less likely to be interracial.

SAME-SEX SPOUSES AND UNMARRIED PARTNERS IN THE AMERICAN COMMUNITY SURVEY, 2008

Introduction

The US Census Bureau release of data from the 2008 American Community Survey (ACS) provided the first official estimates for the number of same-sex couples who called one partner a “husband” or “wife”. Perhaps one of the most intriguing findings is that the estimated number of same-sex couples has declined by nearly 25% from 2007 to 2008.

The 2008 ACS included several important changes that likely explain much of this decline (US Census Bureau, 2009). Both the format of the survey and various post-data processing procedures appear to have reduced respondent errors that in the past may have artificially increased the number of same-sex couples. Specifically, different-sex couples who mistakenly designated an incorrect sex for one of the partners (meaning that they appeared to be same-sex spouses) had been counted as same-sex couples.

Analyses of data from Census 2000 and ACS data from 2005 to 2007 (Black et al., 2007; Gates and Steinberger, 2009) suggest that as many as three-quarters of same-sex couples who used the term “husband/wife” may have actually been miscoded different-sex married couples. Findings described in this report provide evidence that improvements in survey design and processing may have substantially reduced this problem.

It is important to note that this does not mean that prior Williams Institute demographic studies using these data, particularly the “Census Snapshot” series, are inherently flawed (e.g., Romero et al., 2007; Gates and Ramos, 2008). While estimates of the number of same-sex couples from prior studies may be now viewed as too high, analyses of demographic characteristics in all Williams Institute studies adjusted data so as to effectively remove same-sex spouses (thus removing any miscoded different-sex spouses). Analyses in these prior studies include only those couples who used the

term “unmarried partner” to describe one of the partners.

Readers seeking to compare demographic traits from past Williams Institute studies with those in these analyses should compare traits of only those couples who used the “unmarried partner” designation.

This report includes analyses that offer evidence that improved procedures used in the 2008 ACS have minimized the possibility that a large portion of same-sex spouses are actually miscoded different-sex married couples. While these data offer the best opportunity to date to consider differences between same-sex spousal couples and those who consider themselves to be unmarried partners, it is still possible that some miscoded different-sex couples may be included among the same-sex spouses analyzed in this report.

The report begins by showing how estimates for the number of same-sex spouses and unmarried partners have changed over time and considers how improvements in the 2008 ACS may help to explain these changes. That is followed by an analysis of the geographic distribution of same-sex spouses and unmarried partners, including consideration of how state laws regarding relationship recognition might affect the presence of same-sex couples. Demographic analyses follow and consider differences among same-sex and different-sex spousal couples and unmarried partners and differences between male and female same-sex couples.

By the numbers

Changes over time

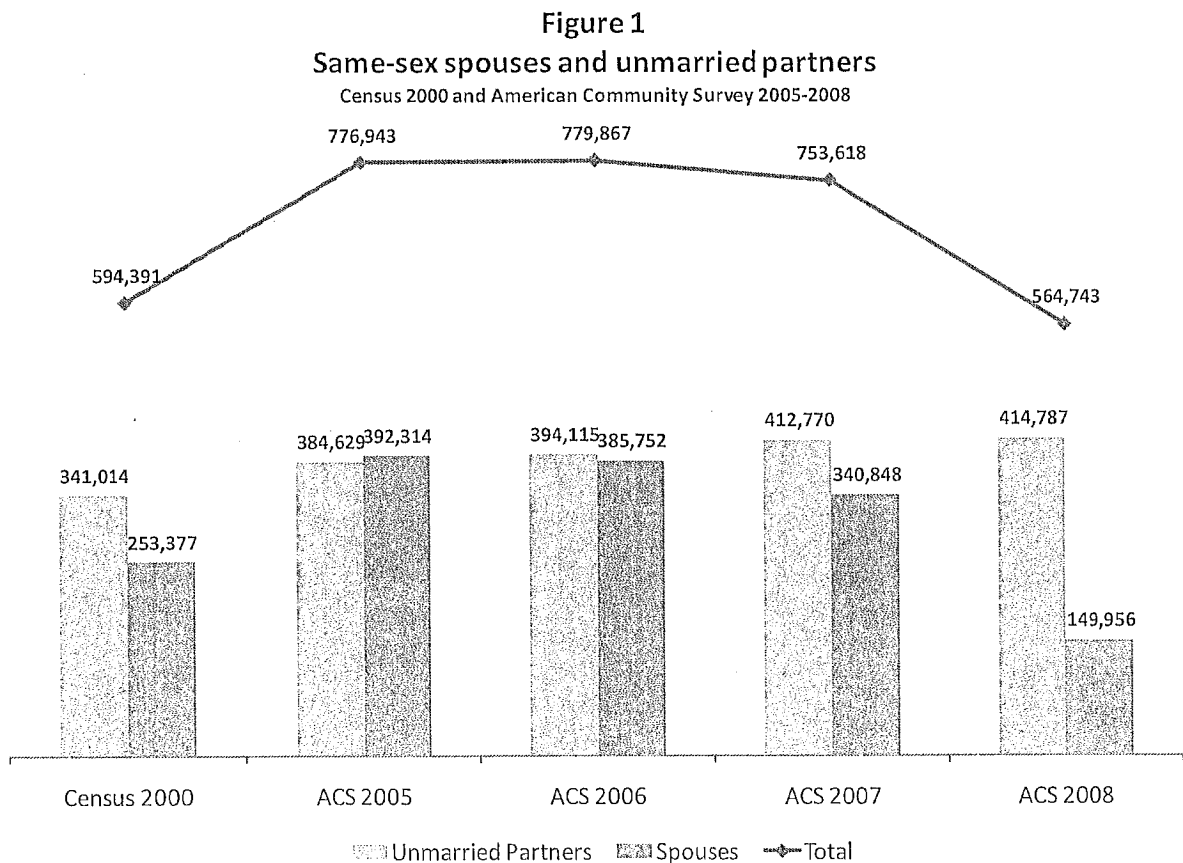
The 2008 American Community Survey identified an estimated 564,743 same-sex couples in the United States, including 149,956 couples who designated themselves as spouses and 414,787 who used the term unmarried partner (see Figure 1).ⁱ A detailed explanation of the data used in this report, including how same-sex couples are identified, is included in the Appendix.

The total number of same-sex couples has declined from 2005-2007 ACS estimates that have exceeded 750,000. This is likely a result of changes in the format and processing of the 2008 ACS that reduced the probability of respondents making errors.ⁱⁱ

Gates and Steinberger (2009) analyzed recent ACS data and demonstrated that a very large fraction of same-sex couples who likely referred to themselves as spouses were not actually same-sex. Instead, they were different-sex

married couples who made a mistake and checked an incorrect sex box for one of the spouses (which resulted in being mistakenly counted among same-sex couples). The presence of miscoded different-sex married couples artificially inflated the number of same-sex couples.

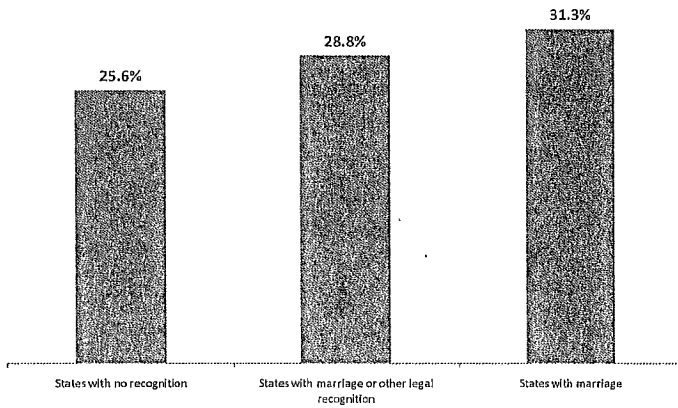
The 2008 ACS included a major and improved redesign of both the survey and post-data collection editing techniques that will conform to standards that also will be used in the upcoming Census 2010 (US Census Bureau, 2009). These changes likely reduced the rate of sex miscoding among different-sex spouses. The entire reduction in the estimated number of same-sex couples was a result of large declines among same-sex spouses, presumably because they are comprised of fewer different-sex married couples who miscoded the sex of one spouse.



Same-sex spouses and legal recognition of same-sex couples

The estimate of 150,000 same-sex spousal couples far exceeds the number of legally married same-sex couples in the United States, which is approximately 32,000 (see Appendix Table 2)ⁱⁱⁱ. The figure also exceeds the number of same-sex couples who are in other forms of legal recognition like civil unions and registered domestic partnership (see the Appendix for detailed information about legal recognition for same-sex couples).

Figure 2
Same-sex couples designating one partner as a husband/wife by state legal recognition for same-sex couples



Clearly the designation of a spouse within a same-sex couple is not necessarily an indication that the couple has been legally married. It may be that some same-sex couples have been united in religious ceremonies or commitment ceremonies and consider themselves to be married, regardless of legal status. It may also be that some same-sex couples simply believe that terms like husband and wife provide the best description of their relationship regardless of any form of legal recognition.

Nevertheless, evidence exists to show that same-sex couples who live in states that provide marriage equality or other forms of legal recognition are more likely to use spousal terms to describe themselves. The proportion of same-sex couples who designate one partner as a spouse is highest (31.3%) in states that offer legal marriage to those couples (see Figure 2). In states with any form of legal recognition (marriage, civil union, registered domestic

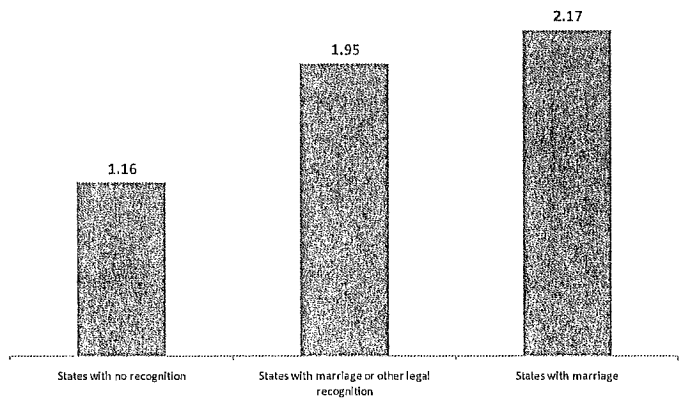
partnership, or reciprocal beneficiary), 28.8% of same-sex couples included a spouse and in states with no recognition the figure was only 25.6%.

Somewhat more striking is that the prevalence of same-sex spousal couples per 1,000 households (see Figure 3) in states with marriage equality (2.17) and those with some form of legal recognition (1.95) is nearly twice as large as the prevalence in states with no legal recognition (1.16).

The sex composition of same-sex spouses also offers evidence that the 2008 figures captured a larger portion of couples who are in legally recognized relationships. Women comprise nearly two-thirds of same-sex couples who seek legal relationship recognition in the US (Gates et al., 2008). Prior to the 2008 ACS, Census and ACS data have shown that same-sex unmarried partners were generally split evenly between male and female couples while spouses tended to be majority male (see Figure 4). In the 2005 through 2007 ACS estimates, women comprised between 44 and 45% of same-sex spouses.

That pattern changed in 2008 ACS estimates. While unmarried partners were still split evenly between men and women, women comprised 56% of same-sex spouses. This puts these estimates more in line with the sex composition of same-sex married couples and those who have sought other forms of legal recognition.

Figure 3
Same-sex spouses per 1,000 households by state legal recognition for same-sex couples

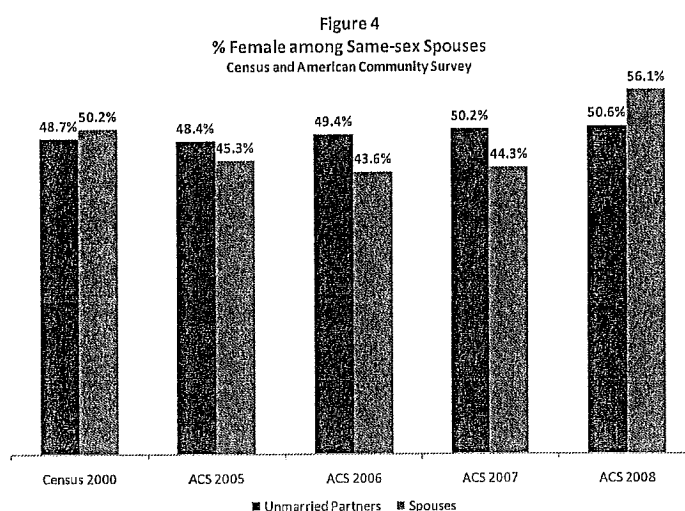


Geographic distribution

State rankings

Further evidence of a link between legal recognition and spousal designation can be seen in state rankings by prevalence of same-sex spousal couples per 1,000 households. All three states offering marriage to same-sex couples and three other states with non-marital legal recognition ranked in the top ten. Not surprisingly, Massachusetts, which has permitted same-sex couples to marry since 2004, ranked first with 3.63 same-sex spousal couples per 1,000 households. California and Connecticut, the two other states offering legal marriage to same-sex couples in 2008, were ranked 6th and 8th, respectively. Vermont, which has permitted civil unions since 2000, ranked 2nd and Hawaii and New Jersey, which also provide legal recognition through reciprocal beneficiary status and civil unions, respectively, also ranked in the top ten at 3rd and 9th, respectively. Four states with no legal recognition—Utah, Wyoming, Nevada, and Rhode Island—also ranked in the top ten.

Among same-sex couples who used the unmarried partner designation, California was the only state offering marriage that ranked among the top ten (ranking 6th) in prevalence per 1,000 households. The top five states—DC, Maine, Washington, Oregon, and New York—all offered some form of legal recognition for same-sex couples.



When same-sex spouses and unmarried partners are combined and ranked by prevalence per 1,000 households, eight of the top ten states had some form of legal relationship recognition for same-sex couples in 2008. Of the two states that did not have recognition, Colorado enacted “designated beneficiary” legislation in 2009 providing some legal protections for same-sex couples.

Table 1. Same-sex couples per 1,000 households, by spouses and unmarried partner designation

Rank	Same-sex spouses per 1,000 households		Same-sex unmarried partners per 1,000 households		Same-sex couples (spouses and unmarried partners) per 1,000 households	
	State	Rate	State	Rate	State	Rate
1	<i>Massachusetts</i>	3.63	District of Columbia	13.22	District of Columbia	14.12
2	Vermont	2.71	Maine	6.81	Maine	8.23
3	Hawaii	2.43	Washington	5.84	<i>Massachusetts</i>	7.92
4	Utah	2.32	Oregon	5.73	Oregon	7.26
5	Wyoming	2.28	<i>New York</i>	5.15	Washington	6.97
6	<i>California</i>	1.92	<i>California</i>	5.01	<i>California</i>	6.93
7	Nevada	1.85	Colorado	4.92	<i>New York</i>	6.41
8	<i>Connecticut</i>	1.79	Arizona	4.65	Colorado	6.13
9	<i>New Jersey</i>	1.70	Delaware	4.59	Vermont	6.10
10	Rhode Island	1.64	Rhode Island	4.41	Delaware	6.09

State offered marriage to same-sex couples in 2008

State offered non-marital relationship recognition for same-sex couples in 2008

State recognized same-sex marriages in 2008 but they could not be performed there

Figure 5

Same-sex spouses- ACS 2008

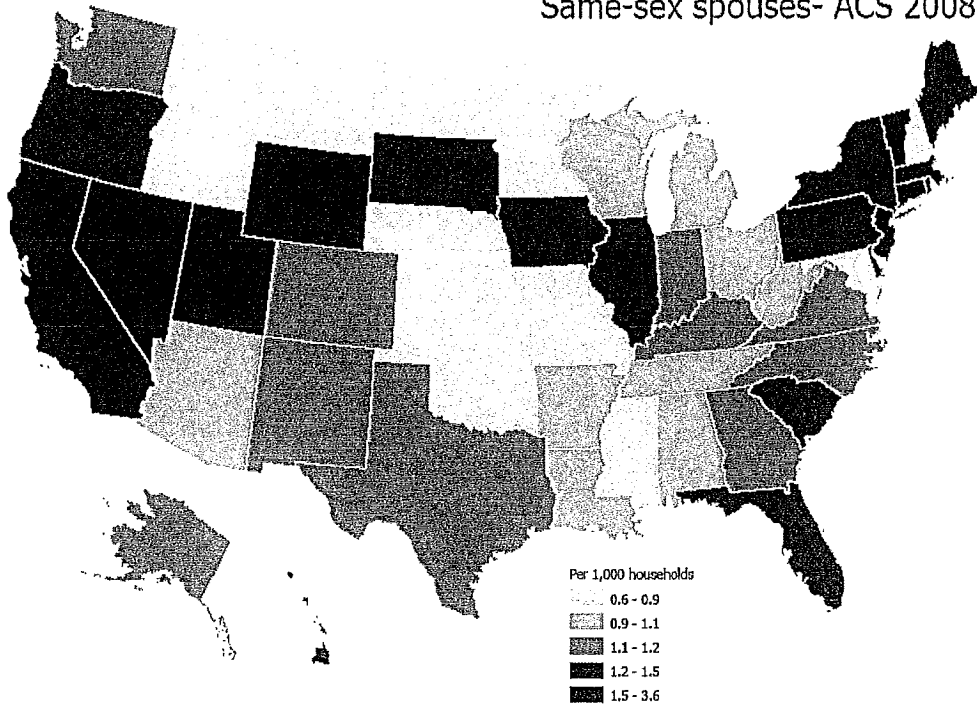
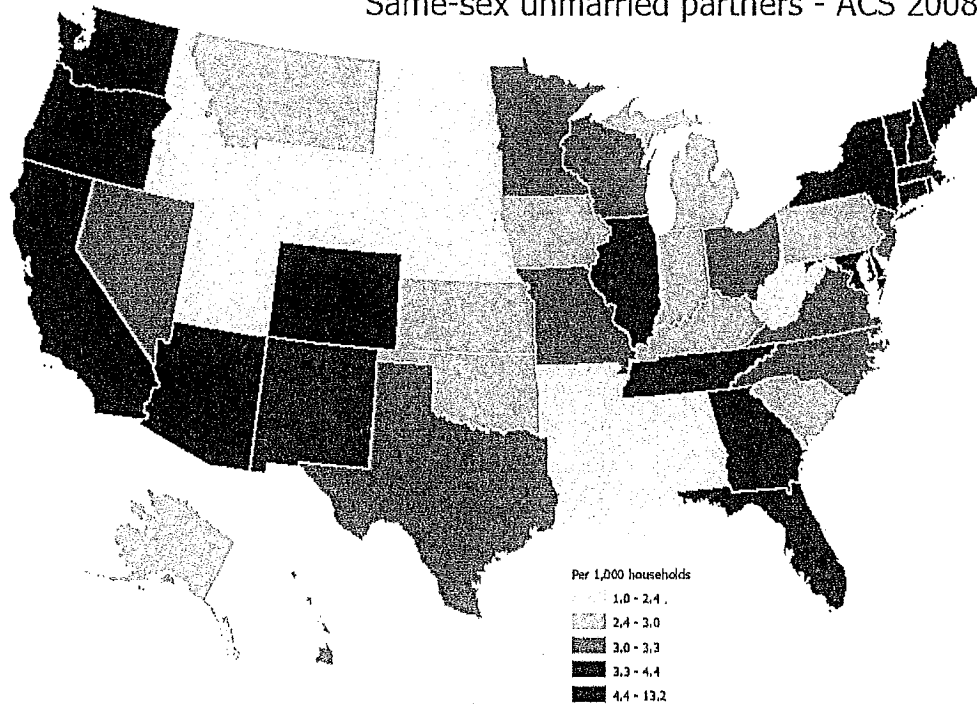


Figure 6

Same-sex unmarried partners - ACS 2008



National distribution of same-sex spouses and unmarried partners

Same-sex spouses were identified in every state. However, the proportion of same-sex spouses among all households varied considerably across states (see Figure 5). Same-sex spouses were most prevalent in the Northeast, especially New England, and the West and Mountain states. Same-sex spouses were generally least prevalent in Midwest and upper Mountain states.

Similar to their spousal counterparts, same-sex unmarried partners were most prevalent in the Northeast and along the West coast (see Figure 6). They were least prevalent in the upper Mountain and Midwest states and in the Deep South. Prevalence figures for all states are shown Appendix Table 2.

Demographic characteristics

Differences by spouse/unmarried partner status and sex composition

For many demographic characteristics, the patterns observed in differences between spousal couples and unmarried partners were similar for both different-sex and same-sex couples. Compared to unmarried partners, those in spousal couples (both same-sex and different-sex) were older, less likely to be interracial, less likely to be both employed, and more likely to own their homes.

There were some characteristics where the patterns differed by the sex composition of the couples. For example, child-rearing did not differ between different-sex spousal couples and unmarried partners. However, same-sex spousal couples were more likely to be raising children than same-sex unmarried partners. Different-sex spousal couples had higher levels of education than their unmarried partner counterparts. The reverse was true for same-sex couples where spouses had lower education levels than unmarried partners. Consistent with this finding, different-sex spouses had higher incomes than different-sex unmarried partners while same-sex spouses had lower incomes than their unmarried partner counterparts.

In some cases, there were differences between same-sex and different-sex couples, regardless of spousal status. Same-sex couples had higher education levels and were less likely to be raising children than were different-sex couples.

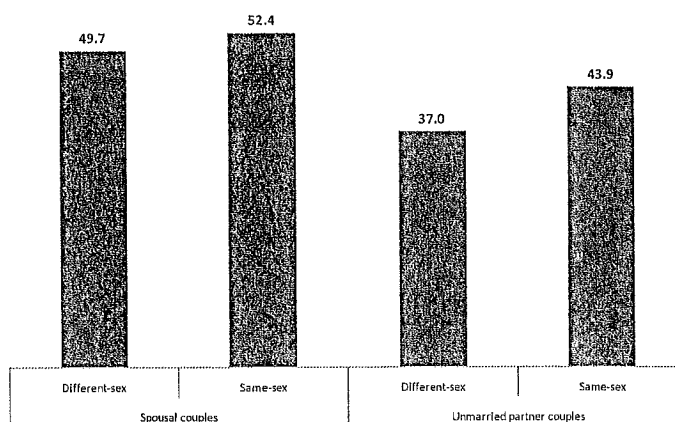
Appendix Table 1 includes all demographic data analyzed in this report.

Age

When compared to their different-sex counterparts, same-sex spouses and unmarried partners were, on average, older. It should be noted that it is not true that those in same-sex couples in general are older than those in different-sex couples. When same-sex couples are combined to include same-sex spouses and partners, they are generally younger than different-sex spouses and older than different-sex unmarried partners because most same-sex couples report themselves as partners.

Age differences between same-sex and different-sex couples were particularly large when comparing unmarried partner couples (see Figure 7). Among unmarried partners, those in same-sex couples were, on average, nearly seven years older than different-sex householders and partners. Among spousal couples, those in same-sex couples were, on average, nearly three years older than their different-sex counterparts.

Figure 7
Average age
by sex composition and spousal status of couples



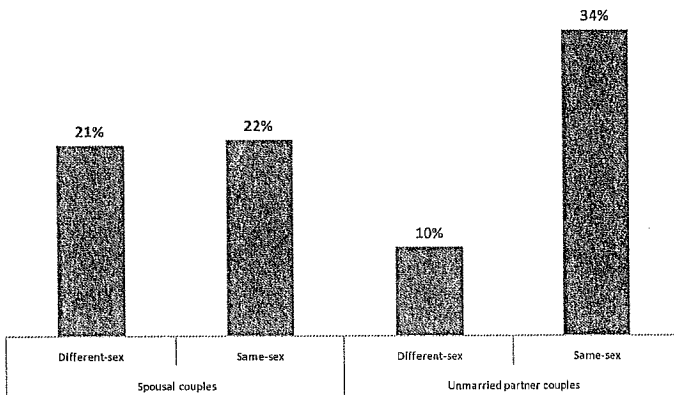
SAME-SEX SPOUSES AND UNMARRIED PARTNERS

Like different-sex couples, those who identified as spouses in same-sex couples were also older than those who identified as unmarried partners. However, the difference in average age between same-sex spouses and unmarried partners (8.5 years) was not as large as the difference between different-sex spouses and unmarried partners (12.7 years).

Education, Employment and Income

Compared to different-sex spouses, same-sex spouses were only slightly more likely to both have a college degree, 21% vs. 22%, respectively (see Figure 8). However, same-sex unmarried partners were substantially more likely to both have a college degree than their different-sex counterparts, 34% vs. 10%, respectively.

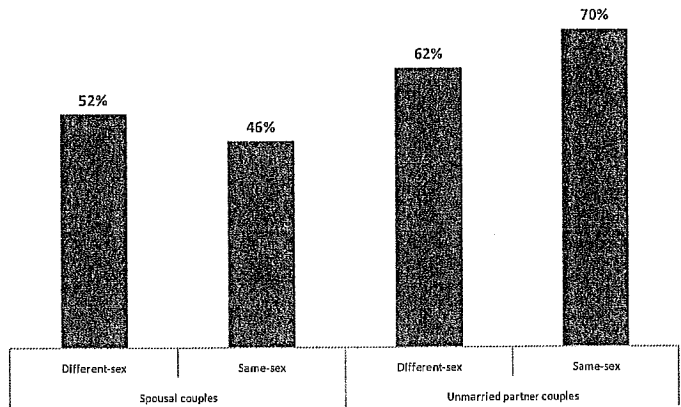
Figure 8
% Both partners have at least a college degree
by sex composition and spousal status of couples



Employment patterns differed between spousal and unmarried partner couples. Among spousal couples, different-sex couples were more likely to be both currently employed than their same-sex counterparts, 52% vs. 46%, respectively (see Figure 9). The reverse was true for unmarried partner couples where same-sex couples were more likely than different-sex couples to be both employed, 70% vs. 62%, respectively.

The patterns observed regarding age, education, and employment all help to explain differences in household income levels (see Figure 10). Same-sex spouses were close in both age and education to their different sex counterparts, though they were somewhat less likely to be employed. This lower level of employment may in part explain why their average household

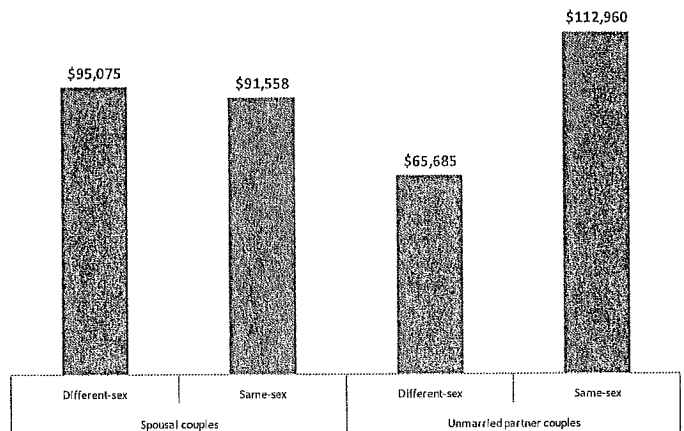
Figure 9
% Both partners are employed
by sex composition and spousal status of couples



income was approximately \$3,500 lower than that of different-sex spouses. It may also be related to the fact that women comprise 56% of the same-sex spouses. Female same-sex spousal couples had an average annual household income of only \$86,000 while their male counterparts had an average household income of nearly \$99,000 (see Appendix Table 2).

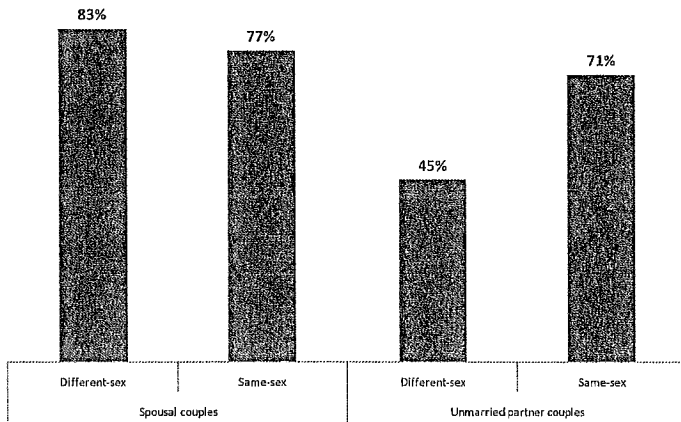
Among unmarried partner couples, those in same-sex couples were older, substantially more educated, and had higher levels of employment than their different-sex counterparts. These factors likely all contributed to a sizable difference in average household income. Same-sex unmarried partner couples reported average annual household income of nearly \$112,960 compared to only \$65,685 among different-sex unmarried partner couples.

Figure 10
Average household income
by sex composition and spousal status of couples



SAME-SEX SPOUSES AND UNMARRIED PARTNERS

Figure 11
% Own their home
by sex composition and spousal status of couples



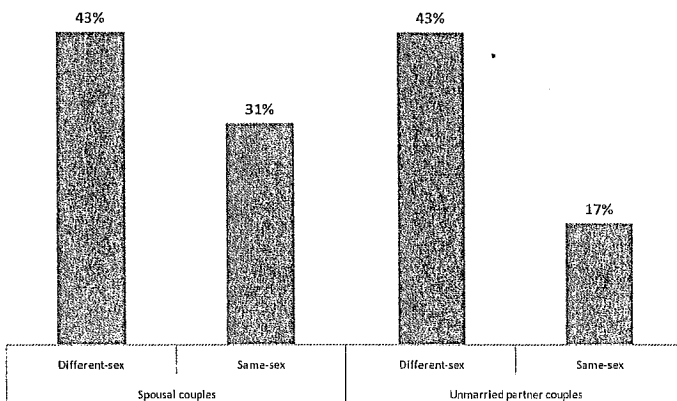
Home ownership

Consistent with the pattern observed with differences in household incomes, same-sex spouses were slightly less likely than different-sex spouses to own their homes, 83% vs. 77%, respectively (see Figure 11). Also consistent with income patterns, same-sex unmarried partners were substantially more likely to own their homes than their different-sex counterparts, 71% vs. 45%, respectively.

Racial composition

Same-sex spouses and unmarried partners were more likely to be interracial than their different sex counterparts (see Figure 12). Among spousal couples, 7% of same-sex couples were interracial compared to less than 6% of different-sex couples. Among unmarried partners, 12.7% of same-sex couples were

Figure 13
% Raising children
by sex composition and spousal status of couples

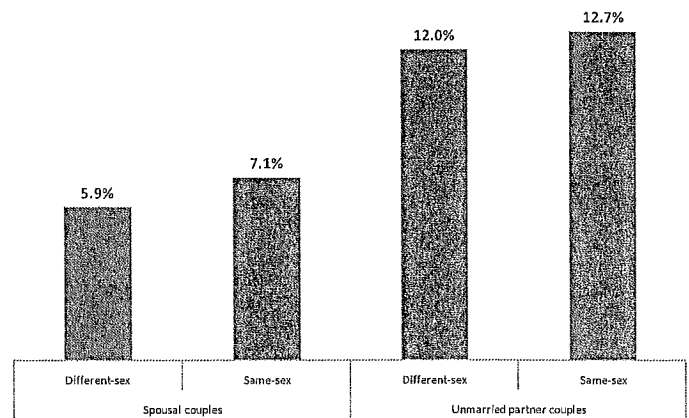


interracial compared to 12% of different-sex couples.

Child-rearing

Same-sex couples were less likely to be raising children than their different-sex counterparts (see Figure 13). However, same-sex spouses were more likely to be raising children than same-sex unmarried partner couples. While 43% of different-sex couples (spousal and unmarried partner) were raising children, 31% of same-sex spouses and 17% of same-sex unmarried partners were doing the same.

Figure 12
% Interracial
by sex composition and spousal status of couples



Differences between male and female same-sex couples

Across most demographic characteristics, patterns observed between spouses and unmarried partners were relatively similar for male and female couples. For both male and female couples, spouses were older, were less likely to be interracial, had lower levels of education, were less likely to be employed, were more likely to own their home, had lower household incomes, and were more likely to have children than their unmarried partner counterparts (see Figure 14).

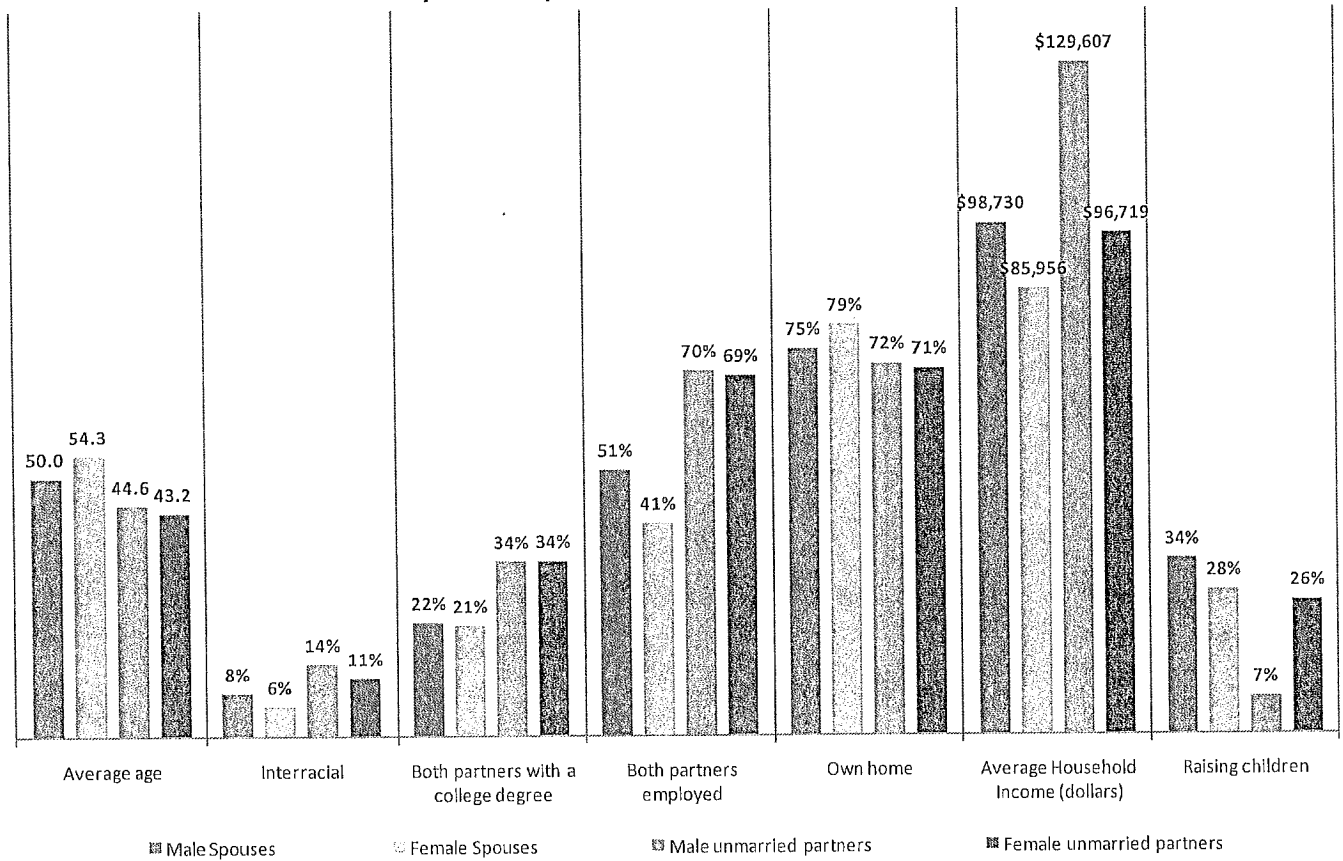
There were a few notable differences between same-sex male and female couples. While female spouses were, on average, more than four years older than male spouses, female unmarried partners were, on average, 1.4 years younger than their male counterparts. Female couples, both spouses and unmarried partners, were less likely to be interracial. Female

spouses were less likely to be both employed (41% compared to 51% for male spouses) though employment rates were nearly the same among unmarried partners.

Despite having relatively similar age, education, and employment levels, female unmarried partners had substantially lower average household income than their male counterparts. Female spouses also had lower average household income than their male counterparts. These differences by sex may in part be explained by lower levels of employment among female spouses and by the gender wage gap.

Male spouses actually reported higher levels of child-rearing than their female counterparts. But child-rearing differences between spouses and unmarried partners were much greater for male couples than female couples. More than a third (34%) of male spousal couples reported raising children compared to only 7% of male unmarried partners. Child-rearing did not vary much by spousal status for women with 28% of spouses raising children compared to 26% of unmarried partners.

Figure 14
Selected demographic characteristics
by sex and spousal status of same-sex couples



Appendix

The ACS and enumeration of same-sex couples

This report analyzes US Census Bureau data regarding same-sex spouses and unmarried partners from the 2008 American Community Survey (ACS). This marks the first time that the Census Bureau has included separate estimates of same-sex spouses in their official data releases from either decennial Census data or the ACS.^{iv}

Conducted every ten years, the US Census collects data from all US households. The ACS is an annual survey that bases its population estimates on a sample of approximately two million households. In both the Census and the ACS, same-sex couples are identified in households where the “householder” (the person who rents or owns the home) identifies another adult of the same sex as either a “husband/wife” or an “unmarried partner”.

The “unmarried partner” category was first introduced in the 1990 decennial census (Black et al. 2000). In general, this term was designed to capture couples (both same-sex and different-sex) who are in a “close personal relationship” and are not legally married. This marked the first opportunity to count same-sex cohabiting couples in these close relationships.

Same-sex spouses have been enumerated in different ways since 1990. The Census Bureau routinely edits data to correct obvious errors and create consistency in data reporting. In 1990, the Census Bureau assumed that same-sex spouses were most likely different-sex married couples who made a mistake and incorrectly coded the sex of one of the spouses. So they edited the sex of the same-sex spouse and changed the household to a different-sex married couple. In Census 2000 and in the ACS prior to 2008 the decision was made to no longer change the sex of the spouse but instead designate the same-sex spouse as a same-sex unmarried partner. So counts of same-sex unmarried partners included same-sex couples who designated one partner as either a spouse or an unmarried partner. Unfortunately, this meant that these counts also include different-sex married couples who miscoded the sex of one of the spouses.

There have been a variety of publications using data from Census 2000 and the ACS (e.g., Gates and Ost, 2004; Romero et al. 2007; Gates and Ramos, 2008). In all cases of Williams Institute studies, demographic data were adjusted to try to eliminate miscoded different-sex married couples from the data. As such, the demographic characteristics reported in these past reports are best compared only to the characteristics of same-sex couples who explicitly used the “unmarried partner” designation in this report using the 2008 ACS data.

The 2008 ACS data release included separate estimates for the number of same-sex spouses and unmarried partners along with selected demographic characteristics of these two groups.

Legal recognition of same-sex couples

Hawaii was the first state in the United States to recognize same-sex couples in the form of reciprocal beneficiary relationships in 1997. Since then, 14 other states and the District of Columbia have established same-sex legal relationships in the form of marriage, civil unions, and domestic partnerships.^v

As shown in Appendix Table 2, by the end of 2008, an estimated 31,829 same-sex couples had been legally married and 87,380 same-sex couples had formalized their relationships in another legal fashion in the United States (domestic partnership, civil union, or reciprocal beneficiary).

Some couples who registered as domestic partners may have subsequently obtained married licenses, so it is not possible to add these figures together to determine how many same-sex couples are have a legally recognized relationship. Additionally, in D.C., Hawaii, and Maine, California, New Jersey, and

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Washington, both different-sex and same-sex couples are permitted to register as reciprocal beneficiaries or domestic partners.^{vi}

Appendix Table 1. Demographic characteristics by couple type, 2008 American Community Survey.

	Married Different-sex Couples			Unmarried Different-sex Couples			Same-sex Couples (spouses and unmarried partners)
	Total	55,692,136			5,648,999		
Average Age	49.7			37.0			46.2
Both Partners have at least a college degree	21.1%			9.8%			30.6%
Both Partners are employed	51.6%			61.6%			63.5%
Average Household Income	\$95,075			\$65,685			\$107,277
Own home	82.5%			45.2%			72.8%
Interracial Couple	5.9%			12.0%			11.2%
Raising children	43.2%			43.1%			20.5%
	Same-Sex Spouses			Same-Sex Unmarried Partners			
	All	Male	Female	All	Male	Female	
Total	149,956	65,764	84,192	414,787	204,836	209,951	
Average Age	52.4	50.0	54.3	43.9	44.6	43.2	
Both Partners have at least a college degree	21.7%	22.0%	21.5%	33.8%	33.7%	33.9%	
Both Partners are employed	45.5%	51.3%	41.0%	69.9%	70.4%	69.5%	
Average Household Income	\$91,558	\$98,730	\$85,956	\$112,960	\$129,607	\$96,719	
Own home	77.2%	74.6%	79.2%	71.3%	71.7%	70.8%	
Interracial Couple	7.1%	8.5%	6.0%	12.7%	14.1%	11.4%	
Raising children	30.5%	33.9%	27.9%	16.8%	7.4%	25.9%	

SAME-SEX SPOUSES AND UNMARRIED PARTNERS

Appendix Table2. Same-sex spouses, unmarried partners, and legally recognized marriages and other forms of legal recognition, by state.

	Same-sex couples		Same-sex spouses		Same-sex unmarried partners		Through 2008	
	Total	Per 1,000 households	Total	Per 1,000 households	Total	Per 1,000 households	Legal marriages (same-sex)	Non-marital legal recognition
United States	564,743	4.99	149,956	1.33	414,787	3.67	31,829	87,380
Alabama	4,850	2.67	1,856	1.02	2,994	1.65		
Alaska	854	3.59	277	1.17	577	2.43		
Arizona	12,960	5.70	2,384	1.05	10,576	4.65		
Arkansas	3,176	2.85	1,158	1.04	2,018	1.81		
California	84,397	6.93	23,403	1.92	60,994	5.01	18,000	51,497
Colorado	11,635	6.13	2,304	1.21	9,331	4.92		
Connecticut	6,865	5.16	2,377	1.79	4,488	3.38		
Delaware	2,003	6.09	494	1.50	1,509	4.59		
District of Columbia	3,529	14.12	225	0.90	3,304	13.22		802*
Florida	39,641	5.62	9,149	1.30	30,492	4.32		
Georgia	18,181	5.74	4,218	1.22	13,963	4.02		
Hawaii	2,472	5.66	1,060	2.43	1,412	3.23		1,570
Idaho	1,840	3.25	484	0.86	1,356	2.40		
Illinois	22,141	4.65	6,412	1.35	15,729	3.30		
Indiana	10,058	4.05	2,675	1.08	7,383	2.98		
Iowa	4,817	3.96	1,716	1.41	3,101	2.55		
Kansas	3,348	3.01	645	0.58	2,703	2.43		
Kentucky	6,581	3.90	1,926	1.14	4,655	2.76		
Louisiana	5,143	3.16	1,742	1.07	3,401	2.09		
Maine	4,461	8.23	769	1.42	3,692	6.81		982
Maryland	9,361	4.47	1,788	0.85	7,573	3.62		
Massachusetts	19,550	7.92	8,951	3.63	10,599	4.30		13,285
Michigan	13,774	3.61	4,042	1.06	9,732	2.55		
Minnesota	8,218	3.93	1,731	0.83	6,487	3.10		
Mississippi	2,360	2.16	900	0.82	1,460	1.33		
Missouri	9,384	4.03	1,944	0.83	7,440	3.19		
Montana	1,366	3.64	338	0.90	1,028	2.74		

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Nebaska	2,087	2.96	45	490	0.70	49	1,597	2.27	42
Nevada	4,820	5.06	18	1,760	1.85	7	3,060	3.21	23
New Hampshire	2,192	4.34	24	388	0.77	48	1,804	3.57	16
New Jersey	15,443	4.90	19	5,368	1.70	9	10,075	3.19	24
New Mexico	4,157	5.61	15	911	1.23	21	3,246	4.38	11
New York	45,761	6.41	7	8,981	1.26	20	36,780	5.15	5
North Carolina	15,315	4.26	27	4,155	1.16	26	11,160	3.10	30
North Dakota	649	2.36	50	178	0.65	50	471	1.71	46
Ohio	18,854	4.18	29	4,512	1.00	38	14,342	3.18	27
Oklahoma	5,189	3.69	37	1,264	0.90	42	3,925	2.79	33
Oregon	10,704	7.26	4	2,256	1.53	11	8,448	5.73	4
Pennsylvania	20,656	4.21	28	6,487	1.32	18	14,169	2.89	32
Rhode Island	2,414	6.05	11	655	1.64	10	1,759	4.41	10
South Carolina	7,050	4.14	30	2,579	1.52	12	4,471	2.63	36
South Dakota	777	2.43	49	448	1.40	16	329	1.03	51
Tennessee	10,546	4.33	25	2,478	1.02	37	8,068	3.31	19
Texas	37,557	4.46	23	10,065	1.20	24	27,492	3.26	21
Utah	3,861	4.52	21	1,984	2.32	4	1,877	2.20	43
Vermont	1,524	6.10	9	678	2.71	2	846	3.38	17
Virginia	12,639	4.27	26	3,184	1.08	30	9,455	3.19	25
Washington	17,756	6.97	5	2,873	1.13	28	14,883	5.84	3
West Virginia	1,902	2.54	48	764	1.02	36	1,138	1.52	48
Wisconsin	9,166	4.07	31	2,053	0.91	39	7,113	3.16	28
Wyoming	759	3.64	38	476	2.28	5	283	1.36	49

*data only through April 2008

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¹ Separate figures for same-sex unmarried partners and spouses in Census 2000 and the ACS 2005-2007 were reported in O'Connell and Ludquist (2009). The remainder of the data for this report comes from this table:
<http://www.census.gov/population/www/socdemo/files/ssex-tables-2008.xls>.

ⁱⁱ For additional information about changes in the 2008 American Community Survey, see "Changes to the American Community Survey between 2007 and 2008 and their Potential Effect on the Estimates of Same-Sex Couple Households" (<http://www.census.gov/population/www/socdemo/files/changes-to-ac-2007-to-2008.pdf>).

ⁱⁱⁱ Estimates for the number of legal same-sex marriages are derived from administrative data reported from all states that permit marriage for same-sex couples (through 2008) except California, where marriage license forms did not designate the sex of the spouses. The estimate for the number of same-sex couples married in California is based on Williams Institute analyses of all marriages conducted in similar time periods in 2007 and 2008. Increases in the total number of marriages provide the basis for estimating the number of same-sex couples who married.

^{iv} Estimated counts for the number of same-sex spouses in Census 2000 and in the ACS 2005-2007 were reported in O'Connell and Lofquist (2009). They were not available when those data were originally released.

^v Marriage: Massachusetts (2004), Connecticut (2008), California (June 2008 – November 2008) Iowa (2009), Maine (2009), Vermont (2009), and New Hampshire (2010); Domestic Partnerships (state-wide rights equivalent to marriage): California (1999, expanded 2005), District of Columbia (2005), Oregon (2008), Washington (2007, expanded 2009), and Nevada (2009); Civil Union (state-wide rights equivalent to marriage): New Jersey (2007); Limited recognition: Hawaii (1997), Colorado (2009), and Wisconsin (2009).

^{vi} In personal communication with UCLA professor Susan Cochran, she found that 95% of registrants in California were likely same-sex couples.

For more information, contact:
The Williams Institute
UCLA School of Law
Box 951476
Los Angeles, CA 90095-1476
T (310) 267-4382
F (310) 825-7270
williamsinstitute@law.ucla.edu
www.law.ucla.edu/williamsinstitute

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James R. Ward
Assistant Attorney General
Emily A. Dodge
Assistant Attorney General
P.O.Box 899
Jefferson City, Missouri 65102

