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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF ARIZONA**

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| Joseph Connolly, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>Chad Roche, in His Official Capacity as Clerk of the Superior Court of Pinal County, Arizona, et al.,<br><br>Defendants. | Case No: 2:14-cv-00024-JWS<br><br>**DEFENDANTS' CONTROVERTING STATEMENT OF FACTS IN RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** |

Defendants submit this Controverting Statement of Facts in Response to Plaintiffs' Motion for Summary Judgment. The positions that Defendants adopt below are for purposes of summary judgment only.

Any matters disputed herein involve legislative facts—that is, facts that "have relevance to legal reasoning and the lawmaking process." Fed. R. Evid. 201, Advisory Committee Note to Subdivision (a); *see also Marshall v. Sawyer*, 365 F.2d 105, 111 (9th Cir. 1966) (legislative facts are "general facts which help the tribunal decide questions of law, policy, and discretion" (internal quotation marks omitted)); *United States v. $124,570 U.S. Currency*, 873 F.2d 1240, 1244 (9th Cir. 1989) (Kozinski, J.) (legislative facts are "those applicable to [an] entire class of cases"); *Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co.*, 916 F.2d 1174, 1182 (7th Cir. 1990) (Posner, J.) (legislative facts are "facts relevant to shaping a general rule"). Disputed questions of legislative fact do not preclude summary judgment because legislative facts are best introduced through documents rather than through trial evidence. *See* Fed. R. Evid. 201, Advisory Committee Note to Subdivision (a) (many legislative facts are "outside the domain of the clearly indisputable"); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 112 (1st Cir. 1999) (Boudin, J.) (legislative facts "usually are not proved through trial evidence but rather by material set forth in the briefs"); *Ind. Harbor Belt R.R. Co.*, 916 F.2d at 1182 (legislative facts "are facts reported in books and other documents," and trials are not best suited "to determine . . . legislative facts").

Defendants respond to Plaintiffs' Statement of Facts as follows:

1. Defendants do not dispute Plaintiffs' assertions in Paragraph 1.

2. Defendants do not dispute Plaintiffs' assertions in Paragraph 2.

3. To the extent that Paragraph 3 refers to requests by Plaintiff couples to obtain marriage licenses as same-sex couples, Defendants do not dispute Plaintiffs' assertions in that paragraph.

4. To the extent that Paragraph 4 refers to requests by Plaintiff couples to obtain marriage licenses as same-sex couples, Defendants do not dispute Plaintiffs'

assertions in that paragraph. Defendants add that they do not issue marriage licenses to anyone who has entered into a marriage in a different jurisdiction, regardless of whether the person is involved in a same-sex relationship, a man-woman relationship, or a polyamorous relationship.

5. Defendants dispute Plaintiffs' assertions in Paragraph 5. In addition to the statutes listed in that paragraph, Plaintiffs' Amended Complaint challenges the constitutionality of Arizona Revised Statute Section 25-112. *See* Am. Compl. ¶ 119 (Doc. No. 15). But Plaintiffs' Motion for Summary Judgment does not seek a ruling invalidating that provision.

6. Defendants dispute Plaintiffs' assertions in Paragraph 6. Same-sex couples in Arizona may privately contract for many of the rights, responsibilities, benefits, and protections available to married man-woman couples. Plaintiffs admit that they may enter into contracts to protect many of these rights. *See* Hite Decl. ¶ 38 (Pls. Ex. 7); Devine Decl. ¶ 30 (Pls. Ex. 8); M. Metz Decl. ¶ 15 (Pls. Ex. 9); N. Metz Decl. ¶ 14 (Pls. Ex. 10); Kaminski Decl. ¶ 14 (Pls. Ex. 11); Reece Decl. ¶ 16 (Pls. Ex. 12); Ferst Decl. ¶ 11 (Pls. Ex. 13).

7. Defendants do not dispute Plaintiffs' assertions in Paragraph 7.

8. Defendants do not dispute Plaintiffs' assertions in Paragraph 8.

9. Defendants dispute Plaintiffs' assertions in Paragraph 9. The Supreme Court did not indicate that it found the Government Accountability Office's report instructive in its decision to strike down a provision of the Defense of Marriage Act. *See United States v. Windsor*, 133 S. Ct. 2675, 2683 (2013).

10. Defendants do not dispute Plaintiffs' assertions in Paragraph 10.

11. Defendants dispute Plaintiffs' assertions in Paragraph 11. Plaintiffs cite only two websites—an advocacy organization's webpage and a local broadcast-news channel's webpage—speculating about the number of same-sex couples who live in Arizona. Neither webpage provides data or statistics substantiating the provided figures.

12. Defendants do not dispute Plaintiffs' assertions in Paragraph 12.

13. Defendants do not dispute Plaintiffs' assertions in Paragraph 13. But for the sake of complete accuracy, Defendants add that S.B. 1033 not only enacted Arizona Revised Statute Section 25-125, it also amended Sections 25-128 and 25-129.

14. Defendants dispute Plaintiffs' assertions in Paragraph 14 only to the extent that Plaintiffs claim that the version of S.B. 1033 that exited the Senate purported to "define" a valid marriage. None of the cited documents support that claim. Otherwise, Defendants do not dispute Plaintiffs' assertions in that paragraph.

15. Defendants do not dispute Plaintiffs' assertions in Paragraph 15.

16. Defendants do not dispute Plaintiffs' assertions in Paragraph 16. But for the sake of complete accuracy, Defendants add that the Supreme Court of Hawai'i conducted its analysis under the Hawai'i Constitution (not under the United States Constitution).

17. Defendants dispute Plaintiffs' assertions in Paragraph 17. None of the cited materials support Plaintiffs' assertion that State Representatives "launched a campaign to prohibit [same-sex couples] from marrying in Arizona." On the contrary, the facts establish that Arizona has always defined marriage as a man-woman union, *see* DSOF ¶¶ 5-6, and that the Legislature enacted S.B. 1038 for the purpose of ensuring that marriage would not be indirectly redefined within Arizona (without the People's approval) through the recognition of differently defined unions solemnized elsewhere. *See* DSOF ¶ 19.

18. Defendants dispute Plaintiffs' assertions in Paragraph 18. State Representatives did not seek "to pass legislation that would deny same-sex couples the right to marry." On the contrary, the facts establish that Arizona has always defined marriage as a man-woman union, *see* DSOF ¶¶ 5-6, and that the Legislature enacted S.B. 1038 for the purpose of ensuring that marriage would not be indirectly redefined within Arizona (without the People's approval) through the recognition of differently defined unions solemnized elsewhere. *See* DSOF ¶ 19. Moreover, while it is true that the substance of that bill appeared in the Legislature four times that session, it is misleading

to suggest that the bill "failed" on its merits "three" times. The first time that the bill was scheduled to be heard by a House committee, "the meeting was adjourned before the issue was discussed." *House Votes to Prohibit Gay Marriages*, Arizona Capitol Times, Apr. 12, 1996, at 6 (Pls. Ex. 20). The second time that the bill was offered in a House committee, that committee "ruled [it] out of order because it had been given to members after the [committee] had begun debate." *Id.* The third time that the bill was offered in a House committee, "[t]hat attempt was short-circuited" by "a substitute amendment." *Id.* The bill's fourth appearance was the first time that it received a substantive vote, *id.* at 5-6; and the House Judiciary Committee approved it. *See* Transcript of Judiciary Committee Hearing on S.B. 1038 at 57 (Pls. Ex. 19).

19. Defendants dispute Plaintiffs' assertions in Paragraph 19. As explained in Defendants' response to Plaintiffs' Paragraph 18, the substance of the bill appeared in the Legislature four times during that session; the bill's fourth appearance was the first time that it received a substantive vote; and the Legislature enacted the bill. Plaintiffs' claim that two representatives "led" a campaign championing the bill's enactment is unsupported by the cited documents.

20. To the extent that the phrase "officially-stated 'purpose'" in Paragraph 20 refers to the purpose stated in the Arizona Senate's Fact Sheet for S.B. 1038, Defendants do not dispute Plaintiffs' assertions in that paragraph.

21. Defendants do not dispute Plaintiffs' assertions in Paragraph 21.

22. Defendants do not dispute Plaintiffs' assertions in Paragraph 22.

23. Defendants dispute Plaintiffs' assertions in Paragraph 23. Although it is true that Representative Paul Newman stated his view concerning what "the testimony in support of S.B. 1038 demonstrates" about the reasons for the bill, none of the sponsoring legislators' statements during the legislative debates support Representative Newman's unfounded opinion. *See generally* Transcript of Judiciary Committee Hearing on S.B. 1038 (Pls. Ex. 19); Transcript of Committee on the Whole Hearing on S.B. 1038 (Pls. Ex. 24). In fact, the evidence demonstrates that the Legislature enacted S.B. 1038 for the

purpose of ensuring that marriage would not be indirectly redefined within Arizona (without the People's approval) through the recognition of differently defined unions solemnized elsewhere. *See* DSOF ¶ 19. It is also important to note that Representative Newman stated that "a vote in favor of the bill will do no harm to anyone[.]" Transcript of the House Third Read on S.B. 1038 at 5 (Pls. Ex. 25).

24. Defendants do not dispute Plaintiffs' assertions in Paragraph 24.

25. Defendants do not dispute Plaintiffs' assertions in Paragraph 25.

26. Defendants do not dispute Plaintiffs' assertions in Paragraph 26, but clarify that the quoted statutory language is found at Arizona Revised Statute Section 25-101(C) rather than at Section 25-112, as Plaintiffs suggest.

27. Defendants do not dispute Plaintiffs' assertions in Paragraph 27.

28. Defendants do not dispute Plaintiffs' assertions in Paragraph 28.

29. Defendants do not dispute Plaintiffs' assertions in Paragraph 29.

30. Defendants dispute Plaintiffs' assertions in Paragraph 30. The Legislature referred the Marriage Amendment to the People in order to reinforce the State's man-woman definition of marriage. *See* 2008 Ballot Proposition Guide at 1 (Pls. Ex. 58).

31. Defendants dispute Plaintiffs' assertions in Paragraph 31. The Amendment did not have the official title "Marriage Protection Amendment." Indeed, nothing in the cited 2008 Ballot Proposition Guide indicates that "Marriage Protection Amendment" was the Amendment's official title.

32. Defendants do not dispute Plaintiffs' assertions in Paragraph 32.

33. Defendants do not dispute Plaintiffs' assertions in Paragraph 33.

34. Defendants do not dispute that Representative Tom Smith spoke in favor of S.B. 1038 during the legislative debates. But Defendants dispute that Representative Smith made any of the quoted statements during the legislature debate or as part of the legislative record. *See generally* Transcript of Committee on the Whole Hearing on S.B. 1038 (Pls. Ex. 24). Moreover, Plaintiffs have not provided a transcript or verified record substantiating the quotations that they attribute to Representative Smith. Rather,

Plaintiffs cite only an article in the *Tucson Observer*, Tucson's local gay-and-lesbian newspaper, reflecting a journalist's secondhand characterization of statements that Representative Smith allegedly made. *See* Mark R. Kerr, *Same Sex Marriage Ban Revived; Hate Crimes Bill Passes State Senate; Big Gain in House*, Tucson Observer, Apr. 10, 1996, at 1 (Pls. Ex. 31).

35. Defendants do not dispute Plaintiffs' assertions in Paragraph 35.

36. Defendants dispute Plaintiffs' assertions in Paragraph 36. The quotation provided reflects a statement of Pastor Mark Winslow, one member of the public who spoke in support of S.B. 1038. Plaintiffs incorrectly assert that multiple "[s]peakers" expressed the quoted statement. Also, Plaintiffs misleadingly claim that Pastor Winslow was "invited to speak in support of S.B. 1038." The transcript shows that he was one of many members of the public who asked the legislative committee if he could speak regarding the bill. *See* Transcript of Judiciary Committee Hearing on S.B. 1038 at 12 (Pls. Ex. 19) ("We have quite a few people [to speak]. When we started this, we only had one slip for speaking. Now we've got quite a few, and so I'm going to ensure that we limit anybody's presentation of information to five minutes . . . . We've got about an equal number of pro and con on this bill."); Minutes of Judiciary Committee Hearing on S.B. 1038 at 2-5 (Pls. Ex. 60) (identifying the members of the public who asked the judiciary committee if they could speak about the bill).

37. Defendants dispute Plaintiffs' assertions in Paragraph 37. While that paragraph accurately records two sentences from the cited article in the *Arizona Business Gazette*, it is inaccurate to characterize that article as expressing "the support of the business community" for S.B. 1038.

38. Defendants dispute Plaintiffs' assertions in Paragraph 38. Only Pastor Mark Winslow, one member of the public who spoke in support of S.B. 1038, expressed the views contained in that paragraph. Plaintiffs incorrectly claim that multiple "[p]roponents of the bill" expressed those views. In addition, the selected quotes contained in that paragraph do not fairly reflect Pastor Winslow's statements. Indeed,

portions of the quoted language reflect Representative Elaine Richardson's (a legislator who opposed S.B. 1038) cramped and selective characterization of Pastor Winslow's statements. *See* Transcript of Committee on the Whole Hearing on S.B. 1038 at 10 (Pls. Ex. 24).

39. Defendants dispute Plaintiffs' assertions in Paragraph 39. The letter referenced in that paragraph was submitted by Dave Killebrew, a member of the public who supported S.B. 1038. Plaintiffs state that portions of the letter were "quoted by legislators," misleadingly suggesting that supportive legislators relied on or otherwise expressed agreement with the contents of that letter. This is incorrect. In fact, portions of that letter were read only by Representative Paul Newman, *see* Transcript of Judiciary Committee Hearing on S.B. 1038 at 25-26 (Pls. Ex. 19), Minutes of Judiciary Committee Hearing on S.B. 1038 at 3 (Pls. Ex. 60), a legislator who personally opposed S.B. 1038. *See* Transcript of the House Third Read on S.B. 1038 at 4-6 (Pls. Ex. 25). Representative Newman did not express agreement with the letter; rather, he read the letter for the purpose of providing a member of the public who opposed S.B. 1038 an opportunity to express his disagreement with it. *See* Transcript of Judiciary Committee Hearing on S.B. 1038 at 25-29 (Pls. Ex. 19).

40. Defendants do not dispute Plaintiffs' assertions in Paragraph 40. But for the sake of complete accuracy, Defendants add that Paragraph 40 references a response of Pastor Mark Winslow, the only person who expressed these ideas during the legislative debates, to a hostile question from Representative Elaine Richardson, one of the legislators who opposed S.B. 1038.

41. Defendants do not dispute Plaintiffs' assertions in Paragraph 41.

42. Defendants do not dispute Plaintiffs' assertions in Paragraph 42.

43. Defendants dispute Plaintiffs' assertions in Paragraph 43. In speculating about the ramifications of eradicating the man-woman definition of marriage, the referenced document states as follows: "Once marriage loses the meaning it has held for thousands of years, where does it end? Should society give its stamp of approval to

virtually any meaningful relationship, as gays and lesbians have argued? The redefinition of 'marriage' promoted by gay rights advocates includes not only same sex marriage, but also eliminating the requirement that marriage involve only two persons! Why can't three or more homosexuals marry each other? Laws against polygamy would be eliminated as violating the civil rights of those who want to enter into such relationships. Should you be able to marry an animal? What would be the legal and financial consequences of all these changes to the definition of 'marriage'?" *Family Issue Fact Pack*, Center for Arizona Policy, Mar. 1996, at 2 (Pls. Ex. 61). Moreover, the referenced document's mention of the average homosexual's number of sex partners was based on statistics derived from a well-respected study. *See* Alan P. Bell & Marten S. Weinberg, *Homosexualities: A Study of Diversity Among Men & Women* 308 (1978) (Dfs. Ex. 63).

44. Defendants dispute Plaintiffs' assertions in Paragraph 44. Although the cited article in the *Weekly Observer*, Tucson's local gay-and-lesbian newspaper, indicates that *some* "speakers who wanted to argue against the bill could not get the floor," Mark R. Kerr, *State House in Uproar Over Domestic Partner Legislation*, Weekly Observer, Feb. 10, 1999, at 1 (Pls. Ex. 34), that article does not state that the Legislature denied *all* opponents of the legislation "the chance to be heard." In fact, the legislative record confirms that the Legislature permitted multiple opponents of the bill, including Eleanor Eisenberg, Executive Director of the Arizona Civil Liberties Union, to speak against it. *See* Minutes of the Committee on Government Reform, Arizona House of Representatives, Forty-Fourth Legislature, First Regular Session, Feb. 3, 1999, at 4, *available at* http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/44leg/1R/comm_min/House/0203.GVR.htm&Session_ID=60 (Dfs. Ex. 21).

45. Defendants dispute Plaintiffs' assertions in Paragraph 45. The cited article indicates that two Representatives introduced a budget measure that would have "cut[] off all state funding to unmarried foster parents who are cohabitating with another unmarried adult." Mark R. Kerr, *Legislature Attacks Gay and Lesbian Foster Parents*, Weekly Observer, Mar. 3, 1999, at 1 (Pls. Ex. 35). That article did not state that the

Legislature "attempted to prevent homosexuals from adopting any of the children in Arizona's foster care system." In any event, the proposed budget measure was "taken off the budget before the final vote," *id.*; and the final budget did not include any such provision.

46. Defendants dispute Plaintiffs' assertions in Paragraph 46. The bill referenced in that paragraph, as the cited legislative history states, was a religious-freedom measure that would have "revise[d] the definition of *exercise of religion* and *person* and extend[ed] the prohibition on substantially burdening a person's exercise of religion to applications of the law by nongovernmental persons." Legislative Summary of S.B. 1062/H.B. 2153 at 1 (Pls. Ex. 36). Plaintiffs' characterization of that bill as one intended to allow "private discrimination against homosexuals" is inaccurate.

47. Defendants dispute Plaintiffs' assertions in Paragraph 47. Defendants acknowledge that some gays and lesbians have been discriminated against throughout the history of the United States, but Defendants deny that past discrimination against gays and lesbians rises to a level that is constitutionally cognizable. Defendants also assert, as Plaintiffs effectively admit, that any discrimination that gays and lesbians experience has significantly diminished over the years. *See* PSOF ¶ 53; *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1007 (D. Nev. 2012) ("[I]t is indisputable that public acceptance . . . has increased enormously for homosexuals . . . ."). In addition, an expert report filed in another case does not constitute expert testimony in this case; the Court may consider it only to the extent that it cites independent sources to support legislative facts that are relevant here. The submitted Expert Report of George Chauncey, however, cites almost no sources and thus does not support the facts that Plaintiffs have stated.

48. Defendants dispute Plaintiffs' assertions in Paragraph 48. For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 47. Also, Plaintiffs Cummins and Mitchell both admit that they "could not prove" that the alleged discrimination that they experienced "was because of [their] relationship." Cummins Decl. ¶ 6 (Pls. Ex. 3); Mitchell Decl. ¶ 10 (Pls. Ex. 4).

49. Defendants dispute Plaintiffs' assertions in Paragraph 49. For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 47. In addition, Plaintiffs' discussion of the DSM's evolution from 1973 until 1994 does not support their allegations of past discrimination against gays and lesbians. Instead, that discussion simply recognizes the medical community's longstanding acknowledgment that some individuals "wish to change their sexual orientation."

50. Defendants dispute Plaintiffs' assertions in Paragraph 50 (except for the assertions that Plaintiffs' own declarations support). For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 47.

51. Defendants dispute Plaintiffs' assertions in Paragraph 51 (except for the fact that "the Stonewall riot of 1969 . . . took place in New York City"). For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 47.

52. Defendants dispute Plaintiffs' assertions in Paragraph 52. For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 47. In addition, the cited pages from the referenced law-review article do not support the facts asserted.

53. Defendants do not dispute Plaintiffs' assertion in Paragraph 53 that "much of the United States has come a long way" in its treatment and perception of gays and lesbians. But Defendants dispute Plaintiffs' assertion that Arizona's enactment of S.B. 1038 was out of step with the vast majority of other States. Plaintiffs' own documents show that within two months after Arizona enacted S.B. 1038, at least eleven other States had enacted similar provisions. *See* David Foster, *Divorced from Debate over Gay Marriages, Couples Live Details as Politicians Ponder Questions*, Arizona Republic, Jun. 2, 1996, at A12 (Pls. Ex. 32). Moreover, many other States enacted similar laws throughout the next decade. *See, e.g.*, Fla. Stat. § 741.212 (enacted in 1997); Va. Code Ann. § 20-45.2 (enacted in 1997); Ky. Rev. Stat. Ann. § 402.020(1)(d) (enacted in 1998); Miss. Const. art. XIV, § 263A (enacted in 2004); Colo. Const. art. II, § 31 (enacted in 2006).

54. Defendants do not dispute Plaintiffs' assertions in Paragraph 54.

55. Defendants dispute Plaintiffs' assertions in Paragraph 55. To begin with, it is impossible at this point in history, given the limited experience of so few States with genderless marriage, for two state attorneys general to "confirm" that redefining marriage "strengthen[s] the institutions of marriage, family, and parenting." The incomplete and one-sided discussion in the cited op-ed does not even begin to "confirm" that fact. On the contrary, Arizona and its voters may logically project that over time the redefinition of marriage would likely lead to (1) a decrease in marriages among man-woman couples who are having or raising children and (2) an increase in marital instability. *See* Dfs. Mem. of Law at 15-19; Amicus Brief of Professor Robert P. George et al. at 14-24, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 54); Amicus Brief of Professor Alan Hawkins et al. at 16-28, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 55). While the redefinition of marriage is still a recent innovation, available data lends credence to these projections. The most recent year for which national data about marriage rates are available is 2011. At the beginning of 2011, only five States (Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont) had redefined marriage, and every one of those States experienced a decline in its marriage rate from 2010 to 2011. *See* Centers for Disease Control and Prevention, National Vital Statistics System, *Marriage Rates by State: 1990, 1995, and 1999-2011*, *available at* http://www.cdc.gov/nchs/data/dvs/marriage_rates_90_95_99-11.pdf (Dfs. Ex. 56). Also, Massachusetts's divorce rate was 22.7% *higher* in 2011 (the most recent year for which data are available) than it was in 2004 (the year that Massachusetts redefined marriage). *See* Centers for Disease Control and Prevention, National Vital Statistics System, *Divorce Rates by State: 1990, 1995, and 1999-2011*, *available at* http://www.cdc.gov/nchs/data/dvs/divorce_rates_90_95_99-11.pdf (Dfs. Ex. 57). The national divorce rate, in contrast, was 2.7% *lower* when comparing those two years. *See* Centers for Disease Control and Prevention, National Vital Statistics System, *National*

*Marriage and Divorce Rate Trends, available at* http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm (Dfs. Ex. 58).

56. Defendants dispute Plaintiffs' assertions in Paragraph 56. For an explanation of this dispute, see Defendants' response to Plaintiffs' Paragraph 55. In addition, the statistics that the referenced op-ed alludes to are misleading because States with low marriage rates tend to have low divorce rates. Thus, while four of the five States (Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont) that had redefined marriage at the beginning of 2011 had divorce rates at or below the national average, *compare* Centers for Disease Control and Prevention, National Vital Statistics System, *Divorce Rates by State: 1990, 1995, and 1999-2011* (Dfs. Ex. 57), *with* Centers for Disease Control and Prevention, National Vital Statistics System, *National Marriage and Divorce Rate Trends* (Dfs. Ex. 58), the marriage rate in three of those five States also fell below the national average, *compare* Centers for Disease Control and Prevention, National Vital Statistics System, *Marriage Rates by State: 1990, 1995, and 1999-2011* (Dfs. Ex. 56), *with* Centers for Disease Control and Prevention, National Vital Statistics System, *National Marriage and Divorce Rate Trends* (Dfs. Ex. 58). A far better indicator of the strength of the marital institution in a State is the change in the marriage and divorce rates within that State over time. Defendants discuss those statistics in their response to Plaintiffs' Paragraph 55.

57. Defendants dispute Plaintiffs' assertions in Paragraph 57. While Defendants do not dispute that some gays and lesbians successfully raise children, some data indicate that children whose parents are in same-sex relationships generally do not fare as well as children raised by their married biological mother and biological father. *See* Amicus Brief of Professors of Social Science at 12-27, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 22); Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study*, 41 Soc. Sci. Research 752, 752 (2012) (Dfs. Ex. 64) (analyzing a large, randomly selected, nationally representative, diverse sample of 3,000

participants and concluding that there are "numerous, consistent differences . . . between the children of women who have had a lesbian relationship and those with still-married (heterosexual) biological parents" in categories such as receipt of public assistance, employment history, and victimization).

58. Defendants dispute Plaintiffs' assertions in Paragraph 58. The claim that there are no differences in outcomes between children raised by their married biological parents and children raised by same-sex parents is currently a subject of scholarly debate. Over the years, the most reliable studies on alternative family structures show that, in general, the optimal childrearing environment is a home headed by a married biological mother and biological father. DSOF ¶ 34. Even Plaintiffs' parenting literature admits this fact. *See* Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 Demography 755, 755 (Aug. 2010) (Pls. Ex. 44) ("Studies of family structure and children's outcomes nearly universally find at least a modest advantage for children raised by their married biological parents."). The same-sex parenting studies that Plaintiffs rely on have not disproven the primacy of the biological mother-father home because those studies exhibit significant flaws and limitations, such as small sample sizes, nonrepresentative samples, and nonrandom convenience samples. *See Lofton v. Sec'y of the Dep't of Children & Family Servs.*, 358 F.3d 804, 825 (11th Cir. 2004) (recognizing the "significant flaws" in these studies); Amicus Brief of Professors of Social Science at 12-20, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 22); Loren D. Marks, *Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting*, 41 Soc. Sci. Res. 735, 735-36 (2012) (Dfs. Ex. 65). The same-sex parenting studies themselves acknowledge their own limitations. *See, e.g.*, Rosenfeld, *supra*, at 757 (Pls. Ex. 44) ("A second critique of the literature—that the sample sizes of the studies are too small to allow for statistically powerful tests—continues to be relevant."). Given that a home headed by a married biological mother and biological father has consistently proven to be the best childrearing environment and given the flaws and limitations in the

same-sex parenting studies, the People of Arizona may justifiably believe that children raised by their married biological mother and biological father will, on average, achieve better outcomes than children raised by same-sex couples.[1]

59. Defendants dispute Plaintiffs' assertions in Paragraph 59. The claim that there are no differences in outcomes between children raised by their married biological parents and children raised by same-sex parents is currently a subject of scholarly debate. For an explanation of this, see Defendants' response to Plaintiffs' Paragraph 58.

60. Defendants dispute Plaintiffs' assertions in Paragraph 60. Retaining the man-woman marriage definition does not harm the institution of marriage. For an explanation of this, see Defendants' response to Plaintiffs' Paragraphs 55 and 56.

61. Defendants dispute Plaintiffs' assertions in Paragraph 61. Whether "the presence of both male and female role models in the home promotes children's adjustment or well-being" is a subject of scholarly debate. *See* Amicus Brief of Professors of Social Science at 4-12, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 22). Many scholars affirm that "[t]he burden of social science evidence supports the idea that gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable." David Popenoe, *Life Without Father* 146 (1996) (Dfs. Ex. 29); *accord* Amicus Brief of Professors of Social Science at 4-12, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Feb. 10, 2014) (Dfs. Ex. 22); W. Bradford Wilcox, *Reconcilable Differences: What Social Sciences Show About the Complementarity of the Sexes & Parenting*, Touchstone, Nov. 2005, at 36 (Dfs. Ex. 32). Even Professor Michael Lamb, the scholar whom Plaintiffs cite to support their purported fact, championed this view before he became a proponent of redefining marriage; he stated in no uncertain terms that "both

[1] An expert report filed in another case does not constitute expert testimony in this case; the Court may consider it only to the extent that it cites independent sources to support legislative facts that are relevant here. Yet the submitted Expert Declarations of David M. Brodzinsky and Charlotte J. Patterson cite almost no sources, and thus they do not support the facts that Plaintiffs have stated.

mothers and fathers play crucial and qualitatively different roles in the socialization of the child[.]" Michael E. Lamb, *Fathers: Forgotten Contributors to Child Development*, 18 Human Dev. 245, 246 (1975) (Dfs. Ex. 66). And even now, he continues to affirm that men and women are not "completely interchangeable with respect to [the] skills and abilities" involved in parenting. Trial Transcript at 1064-65, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (Dfs. Ex. 67) (testimony of Professor Michael Lamb).

62. Defendants dispute Plaintiffs' assertions in Paragraph 62. The cited documents do not support the purported fact asserted. The cited Declarations of Jeanne A. Howard do not even address the purported fact asserted. And the cited article written by Gilbert Gonzales reflects the view of one individual; it does not embody the opinion of "the academic community."

Dated: June 10, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and service of a Notice of Electronic Filing to the following recipients on this 10th day of June, 2014.

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