

Case Nos. 12-17668, 12-16995, and 12-16998

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY SEVCIK, *et al.*, *Plaintiffs-Appellants*,

v.

BRIAN SANDOVAL, *et al.*, *Defendants-Appellees*, and
COALITION FOR THE PROTECTION OF MARRIAGE, *Intervenor-Defendant-Appellee*.

On Appeal from the United States District Court for the District of Nevada
Case No. 2:12-CV-00578-RCJ-PAL, The Hon. Robert C. Jones, District Judge.

NATASHA N. JACKSON, *et al.*, *Plaintiffs-Appellants*,

v.

NEIL S. ABERCROMBIE, Governor, State of Hawai'i, *Defendant-Appellant*,
LORETTA J. FUDDY, Director, Department of Health, State of Hawai'i,
Defendant-Appellee, and
HAWAII FAMILY FORUM, *Intervenor-Defendant-Appellee*.

On Appeal from the United States District Court for the District of Hawaii
Case No. 1:11-cv-00734-ACK-KSC, The Hon. Alan C. Kay, Sr., District Judge.

**AMICUS CURIAE BRIEF OF FAMILY EQUALITY COUNCIL,
EQUALITY HAWAII FOUNDATION, WE ARE FAMILY, AND COLAGE**

In Support of Plaintiffs and Reversal of the District Court Orders

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**CORPORATE DISCLOSURE STATEMENT
F.R.A.P. 26.1**

None of the amici is a corporation that issues stock or has a parent corporation that issues stock.

STATEMENT OF CONSENT TO FILE

All parties to this appeal have consented to the filing of this brief pursuant to Federal Rule of Appellate Procedure 29(a).

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STATEMENT PURSUANT TO FRAP RULE 29(c)(5)

No counsel for a party authored this brief, in whole or in part, and no party, party's counsel, or person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are organizations dedicated to promoting equality among our country's diverse families (with a special focus on working with the children of lesbian, gay, bisexual, and transgender parents) and organizations advocating for the interests of LGBT youth. Each of the amici has heard from its constituents that, despite myths to the contrary, their families are typical American families, with the same joys and challenges as other American families. Yet these families must also overcome official governmental opprobrium in the form of laws that stigmatize and de-legitimize their family relationships on a legal, social, and psychological level. Amici curiae share these stories in this brief.¹

Family Equality Council (Family Equality) is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing lesbian, gay, bisexual, and transgender parents and their children. Family Equality works extensively with the children of

¹ Many of the statements included in this brief were made as testimony before various public bodies or in published literature. Others are drawn from the personal knowledge of the amici and their constituents.

LGBT parents, including through its Outspoken Generation program, which empowers young adults with LGBT parents to speak out about their families, share their own stories and become advocates for family equality. Family Equality submits this brief on behalf of all of the young people and their parents with whom it has worked.

Equality Hawaii Foundation (Equality Hawaii) is an organization dedicated to securing equality for Hawaii's lesbian, gay, bisexual & transgender community. Equality Hawaii nurtures opportunities for education and discussion on issues facing the LGBT community and empowers LGBT people and their allies, including working to establish inclusive gay/straight alliances in Hawaii's schools, educating community service providers on how to expand their capacity to better serve LGBT youth, and sharing the stories of families with same-sex parents in the Aloha State through its Hawaii Family Portraits Project. Through the Hawaii Family Portraits Project, Equality Hawaii shows that every 'ohana (family) shares the same joys, tears, love, and commitment.

We Are Family is an organization dedicated to supporting lesbian, gay, bisexual and transgender parents and their children in Southern Nevada. We Are Family provides a social network for LGBT families and offers educational workshops for LGBT parents about financial planning, positive parenting skills, and preparation for sending children to school.

COLAGE is the only national youth-driven network of people with a lesbian, gay, bisexual, transgender, or queer parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats these families differently can be isolating and challenging for children. COLAGE, which was founded in 1990, has 15 active chapters and provides networks, programs, and support to thousands nationwide. Based on its direct experience in working with thousands of youth being raised in lesbian, gay, bisexual, gay, transgender, and queer families over the past 20 years, COLAGE can attest to the critical importance for children of having their parents' relationships recognized and respected on every level—socially, institutionally, politically, and legally.

INTRODUCTION

“[The Defense of Marriage Act] humiliates tens of thousands of children now being raised by same-sex couples. [It] makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.”

U.S. v. Windsor, 133 S.Ct. 2675, 2694 (2013).

Too often missing from discussions of “traditional” families or “family values” are the voices of children raised by same-sex parents—those who live every day within the family structure at the heart of these lawsuits. Those who oppose marriage for same-sex couples frequently make assumptions about the quality of these children’s family lives, yet the children themselves are rarely asked to explain what they actually experience.

The absence of their voices is unfortunate because these children are uniquely qualified to speak about how their families look, feel, and function and how the availability—or unavailability—of marriage for their parents colors their daily lives. These children are also among those persons most directly affected by their parents’ inability to marry.

The voices of lesbian, gay, bisexual, and transgender (LGBT) youth are also too frequently disregarded in these debates. The laws banning marriage for same-sex couples inform these young people that Hawaii and Nevada deem the intimate relationships they may form as unworthy of the “dignity and status” that come with

the right to marry. *Windsor*, 133 S.Ct. at 2692. This state-sanctioned stigmatization has a profoundly negative impact on these young people's self-esteem, sense of purpose, and well-being that threatens to burden them for the rest of their lives.

This brief presents the voices of these children.

SUMMARY OF ARGUMENT

The Proponents² of the limitations at issue in the two cases before the Court assert a governmental interest relating to children. The Proponents assert that marriage licenses can be denied to same-sex couples because “[w]hen procreation and childrearing take place outside stable family units, children suffer.”³ They argue that “the man-woman marriage institution is essentially child-centered” while marriage between same-sex couples is not.⁴ And that “it is in the best interest of the children to be raised by the biological parent of each sex within the traditional institution of marriage.”⁵

These arguments treat the children of same-sex parents as, at best, invisible, and, at worst, unworthy of protection. But six million Americans have at least one

² The parties seeking to maintain marriage limitations in these cases—Governor Sandoval, Alan Glover, and Coalition for the Protection of Marriage in *Sevcik v. Sandoval*, and Loretta Fuddy and Hawaii Family Forum in *Jackson v. Abercrombie*—are referred to collectively herein as the “Proponents.”

³ *Jackson v. Abercrombie*, Fuddy Mem. Supp. Mot. Summ. J. (“Fuddy MSJ”), June 15, 2012, Dkt. No. 63, at 30.

⁴ *Sevcik v. Sandoval*, Coalition for Prot. of Marriage Mem. Supp. Mot. Summ. J. (“CPM MSJ”), Sept. 10, 2012, Dkt. No. 72, at 13–14.

⁵ *Sevcik v. Sandoval*, Glover Mem. P. & A. Mot. Summ. J., Sept. 10, 2012, Dkt. No. 74, at 22.

parent who has identified as lesbian, gay, or bisexual.⁶ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,⁷ there are approximately a quarter of a million children who are being raised in same-sex-parented families. Same-sex-parented families live in every state and in 93% of all U.S. counties.⁸ More than 1,000 children in Hawaii and more than 2,000 in Nevada are being raised by same-sex parents.⁹ Amici curiae represent these children of same-sex-parented families and believe that the issues before the Court cannot be properly understood without considering their first-hand accounts.

⁶ Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>

⁷ Gary J. Gates and Abigail M. Cooke, *United States Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 3 (Sept. 2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>.

⁸ R. Bradley Sears, Gary J. Gates and William B. Rubenstein, *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000*, Williams Institute, UCLA School of Law (2005).

⁹ Gary J. Gates and Abigail M. Cooke, *Hawaii Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 3 (Sept. 2011), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Hawaii_v2.pdf (same-sex couples in Hawaii raising approximately 1,026 children); Gary J. Gates and Abigail M. Cooke, *Nevada Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 3 (Sept. 2011), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Nevada_v2.pdf (same-sex couples in Nevada raising approximately 2,434 children).

As these children attest, their family relationships are no different than anybody else's and no less deserving of the marital protections afforded to families headed by different-sex couples. Indeed, Proponents' efforts to deny marital protections to same-sex couples foster the exact opposite of their professed goal. Hawaii's and Nevada's laws stigmatize and de-legitimize thousands of families, withholding from them the recognition, encouragement, and support the Proponents insist promote "more stability and permanence,"¹⁰ helping ensure that children are "well reared and cared for."¹¹

The harms inflicted by these laws also extend to LGBT youth. By denying same-sex couples the right to marry, these laws undermine the proffered governmental interest in "educating, socializing, and preparing ... future citizens to become productive participants in civil society."¹² The denial of marriage rights forces LGBT youth to "tragically question their own self-worth and their rightful place in a society that fails to recognize their basic human dignity."¹³

¹⁰ Fuddy MSJ at 33.

¹¹ CPM MSJ at 3.

¹² *Jackson v. Abercrombie*, Haw. Family Forum Mem. Supp. Mot. Summ. J. ("HFF MSJ"), June 15, 2012, Dkt. No. 67, at 29 (citation omitted).

¹³ Anthony Michael Kreis, *Is Marriage Equality Inevitable*, HUFFPOST GAY VOICES, Sept. 13, 2012, 6:22PM, at 1, http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html (last visited Feb. 26, 2013).

ARGUMENT

I. SAME-SEX PARENTS ARE SUCCESSFULLY “RAISING THE NEXT GENERATION.”¹⁴

Our parents...work hard, pay taxes, vote, take us to piano lessons, make us do chores, go grocery shopping, and tuck us in every night. The list that makes them like any other parents is longer than we have time to share.

Testimony of 11-year-old before the Nevada Assembly Committee on Legislative Operations and Elections¹⁵

As a young kid, I didn't understand that some folks might think of my family as something different or out of the ordinary. I never kept my family a secret. To me, families come in many different shapes and sizes. And mine, different by some standards but similar in most ways, was just another one of those. My parents – my two moms – go to work every day, like other parents. They cook dinner and mow the yard. They take care of the house. Volunteer in the community. Pay their bills. Do the thousands of little things that keep a household running. And they love me, unconditionally. But it didn't take me long to realize that my mom and her partner didn't have the same rights as other people. They are treated differently by the law and can't do many of the things that other families take for granted.

Brian Arsenault, college student, writing in *Portland Press Herald*¹⁶

¹⁴ HFF MSJ at 21.

¹⁵ Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections (May 9, 2013), Hearing on Senate Joint Resolution 13 (1st Reprint) (“S.J.R. 13 Hearing”), available at www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/LOE/Final/1120.pdf (statement of D. Z. and K. Z.).

¹⁶ Brian Arsenault, Op-Ed, *Maine Voices: Young man's wish for his moms on Mother's Day: the right to marry. Families come in different shapes and sizes, but what matters is the love they show each other*, PORTLAND PRESS HERALD, May 11, 2012, available at http://www.pressherald.com/opinion/young-mans-wish-for-his-moms-on-mothers-day-the-right-to-marry_2012-05-11.html.

As Brian Arsenault writes, “families come in many different shapes and sizes.” Families differ in the number of children, the age ranges of the children and the parents, the families’ religion, and the activities they enjoy doing together. Some children, regardless of their parents’ sexual orientation, come from divorced or blended families. And some children have LGBT parents living in committed and loving same-sex relationships. In both same-sex and different-sex-parented families, the parents may have married, joined through civil unions or commitment ceremonies, or chosen not to seek any governmental or ceremonial recognition of their relationship. However, only for same-sex-parented families have Hawaii and Nevada denied the parents the right to marry.

Amici, and the children of LGBT parents whom amici represent, dispute the notion that a family is worthy of protection only if it has one male and one female parent. A family is not defined by the genders of those who appear in the family portrait. It is defined by its everyday experiences, the “thousands of little things that keep a household running.”¹⁷ In this essential way, families with same-sex parents are as “traditional” as any others, sharing the joys, values, and concerns that countless families experience. The testimonials from the children raised in such families are offered in this brief to prove that very point.

¹⁷ Brian Arsenault, Op-Ed, *supra* note 16.

Indeed, families in which LGBT parents are raising children are neither an oddity nor a rarity. As explained above, approximately a quarter of a million children—thousands of them in Hawaii and Nevada—are currently being raised by same-sex parents.

When amici talk to these children, they hear the same theme over and over again: their families are typical American families. Their moms and dads are raising their children to love their country, stand up for their friends, treat others the way they would like to be treated, and tell the truth. They care about the same things all parents do—hugs and homework, bedtime and bath time. They want bright, secure, and hopeful futures for their children.

As Malina Simard-Halm, a student raised by two gay dads, explained to amicus Family Equality: “The truth is my family really is not that different than everyone else’s. We watch movies together, play board games, my dad cooks for me, and my other dad drops us off at school.”¹⁸ Or in the words of one nine-year-old boy: “Marriage is about family, and my dads take the best care of me and my brother. My family is no different than any other family. We go to the movies,

¹⁸ Statement from Malina Simard-Halm to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).

they take me to my sports practice, play games, and make the holidays, especially Christmas, awesome.”¹⁹

Sarah Gogin, now 24, describes growing up with her two dads:

I was the multiracial daughter being raised by two Catholic Jesuit psychologists. This was a therapy session waiting to happen. But ultimately, my childhood was like any other. Plaid skirts and Peter Pan collars itched from K through 8 at St. Gabriel’s school, where I participated in the Academic Decathlon, winter and spring performances, and athletic teams including soccer, volleyball, basketball, and baseball. Kevin, aka Pop (Papa, Pa, Poppy, Popsicle), became the first male president of the Mother’s Board and Dan, aka Dad (just Dad), became assistant soccer coach and one of the key members of the Athletic Board.

[M]y high school experience was like many other hormonal teen girls’ high school experiences. It sucked. Acne, hormones, boys, college, SATs, musicals, proms, sporting tournaments. You name it; I went through it—with my dads’ support every step of the way.²⁰

Zach Wahls, a University of Iowa engineering student who was raised by two moms, described his family to the Iowa House of Representatives in 2011: “I guess the point is our family really isn’t so different from any other Iowa family. [W]hen I’m home we go to church together, we eat dinner, we go on vacations. But, you know, we have our hard times too, we get in fights.”²¹

¹⁹ Statement from A.C. to Family Equality Council (Feb. 5, 2013) (on file with Family Equality Council).

²⁰ Statement from Sarah Gogin to Family Equality Council (Feb. 21, 2013) (on file with Family Equality Council).

²¹ *Hearing on HJR 6 Before the Iowa House of Representatives* (Jan. 31, 2011) (statement of Zach Wahls), *available at*

Gabrielle Benham, then a high school student, similarly described her home life to the Vermont Senate Judiciary Committee:

I live in a home with two women who love each other very much. I call them my mothers. There is nothing wrong with the way they live or the way they raise their children. I have proof of this. I've seen it in the morning when my mothers are trying to get the three of us out the door for school. I've also seen it when they work together at our bakery and café as a family.²²

And as Zach Wahls told the Iowa House of Representatives:

[T]he topic of same-sex marriage comes up quite frequently in classroom discussions. The question always comes down to, well, "Can gays even raise kids?" The conversation gets quiet for a moment because most people don't really have any answer.

And then I raise my hand and say, "Actually, I was raised by a gay couple, and I'm doing pretty well." I scored in the 99th percentile on the ACT. I'm actually an Eagle Scout. I own and operate my own small business. If I was your son, Mr. Chairman, I believe I'd make you very proud. I'm not really so different from any of your children. My family really isn't so different from yours.²³

Importantly, LGBT parents model positive and committed relationships—not just positive same-sex relationships. As Ella Robinson said of the relationship between her father, Bishop Gene Robinson, and his partner:

http://www.familyequality.org/equal_family_blog/2011/02/04/1001/abc_news_son_of_iowa_lesbians_fights_gay_marriage_ban ("Zach Wahls").

²² *An Act to Protect Religious Freedom and Promote Equality in Civil Marriage: Hearing on S. 115 Before the Vt. Sen. Judiciary Comm., section on Children and Families* (March 19, 2009) (statement of Gabrielle Benham).

²³ Zach Wahls, *supra* note 21.

Their relationship, which started when I was 7 years old, was such an important example of what a loving, committed relationship should look like that I never thought to question it. I never knew to be embarrassed if someone looked at our family differently, or to worry if my friend coming to my Dad's with me for the weekend would be uncomfortable. I just knew we'd have fun, watch the Golden Girls and play some board games (competitively).²⁴

And as Brian Arsenault wrote in his editorial to the *Portland Press Herald*:

My moms have been together for a long time, through thick and thin, and they've made it through the good times and the bad times together, as a team. They have shown me and the world what a lasting, loving relationship can look like. And when I think of my own wedding someday, should I be lucky enough to find a girl I want to spend the rest of my life with, I can't imagine two better role models to base a family around than my moms.²⁵

If the Proponents are correct in asserting that the “central – indeed animating – purpose of marriage” is “the creation, nurture, and socialization of the next generation,”²⁶ then the families of Brian, Malina, Austin, Sarah, Zach, Gabrielle, and many thousands of other children embody this purpose as fully as any family of different-sex parents.

The experiences of these young people are consistent with social science findings: children of same-sex parents fare just as well academically, psychologically, and socially as the children of different-sex parents. Research has

²⁴ Ella Robinson, *How and Why I Am Outspoken*, Family Equality Council Family Room Blog (June 19, 2012), http://www.familyequality.org/equal_family_blog/2012/06/19/1292/how_and_why_i_am_outspoken (last visited Feb. 22, 2013).

²⁵ Brian Arsenault, Op-Ed, *supra* note 16.

²⁶ HFF MSJ at 21 (citation omitted).

shown that LGBT parents of young children are active and involved in their children's education, a factor which results in better academic achievement for children.²⁷ A study by the Gay, Lesbian and Straight Education Network revealed that LGBT parents were more likely to attend their children's parent-teacher conferences and volunteer in the schools than a national sample of parents.²⁸ Nearly all of the LGBT parents surveyed (94%) reported attending parent-teacher conferences, as compared to 77% of the national sample of parents.

The same study showed that LGBT parents were also more likely to stay involved in their children's schooling as the children progressed through the educational system, with 89% of LGBT parents attending a high school parent-teacher conference or back-to-school night as compared to 56% of the parents in the national sample.²⁹ LGBT parents also reported a higher level of communication with their children's school than the national sample regarding their child's future education, their child's school program, information on doing

²⁷ *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in our Nation's K-12 Schools*, Gay, Lesbian and Straight Education Network (2008) at 25, available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1104-1.pdf.

²⁸ *Involved, Invisible, Ignored*, *supra* note 27, at 27.

²⁹ *Involved, Invisible, Ignored*, *supra* note 27, at 27–28.

schoolwork at home, their child's positive or negative behavior at school, and about doing volunteer work at school.³⁰

Decades of social science research confirms that children of same-sex parents have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.³¹ Several studies have even suggested that children raised by same-sex parents are better adjusted psychologically than their peers.³²

³⁰ *Involved, Invisible, Ignored*, *supra* note 27, at 28–32.

³¹ Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012) (“[N]umerous studies of children and adolescents raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that they are as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents.”); *see also* Ian Rivers, V. Paul Poteat and Nathalie Noret, *Victimization, Social Support, and Psychological Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, DEVELOPMENTAL PSYCHOLOGY, 1:127–134 (2008); Stephen Erich, Patrick Leung and Peter Kindle, *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, JOURNAL OF GLBT FAMILY STUDIES, 1:43-60 (2005); Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, CHILD DEVELOPMENT, 75:1886-1898 (2004); Fiona MacCallum and Susan Golombok, *Children Raised in Fatherless Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence*, JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY, 8:1407–1419 (2004); Decl. of Michael Lamb, ER 498–638.

³² Henny M.W. Bos, Frank van Balen and Dymph van den Boom, *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 77:38–48 (2007); Richard W. Chan et al.,

All of the leading national child welfare and social service organizations agree that children raised by lesbian, gay, and bisexual parents are just as happy, healthy, and well-adjusted as children raised by different-sex parents. The American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, Child Welfare League of America, and National Association of Social Workers all have published organizational statements confirming that lesbian, gay, and bisexual people make excellent parents who raise developmentally healthy children.³³

Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment, JOURNAL OF FAMILY PSYCHOLOGY, 12:402–419 (1998).

³³ American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised and approved 2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Feb. 22, 2013); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples*, PEDIATRICS, 109(2):339–340 (2002), reaffirmed May 2009; American Psychiatric Association, *Position Statement on Adoption and Co-parenting of Children by Same-sex Couples* (2002), <http://www.psychiatry.org/advocacy--newsroom/position-statements> (last visited Feb. 22, 2013); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited Feb. 22, 2013); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/programs/culture/glbtposition.htm> (last visited Feb. 22, 2013); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003–2006, 146–150, available at <http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf>.

Hawaii's and Nevada's interest in promoting "stable, enduring family unions for the sake of producing and raising the next generation,"³⁴ applies to all families raising children and not just those headed by different-sex couples.

II. THE LAWS OF HAWAII AND NEVADA DE-LEGITIMIZE SAME-SEX-PARENTED FAMILIES IN THE EYES OF THE LAW AND SOCIETY.

My brother and I deserve to feel safe and secure that [both of our moms] can pick us up from school, take us to the doctor, or make decisions about our well-being, without facing unnecessary obstacles. Just like all my friends' parents.

Testimony of 11-year-old before the Nevada Assembly Committee on Legislative Operations and Elections.³⁵

It really hurts me that my family isn't recognized by the government, it makes me feel like we aren't seen as a family, which makes me feel insecure. It's not fair to my parents, who love each other just as much as straight couples.

Elizabeth Byrnes-Mandelbaum, as told to Family Equality Council (Jan. 29, 2013).

Although the Proponents claim an interest in stabilizing the American family structure, the unavailability of marriage for same-sex couples in Hawaii and Nevada has the exact opposite effect. Placing an official stamp of governmental opprobrium on the relationships of same-sex parents instead serves to stigmatize and de-legitimize the relationships and, as a result, the children themselves. Indeed, the major challenge most same-sex-parented families must surmount is

³⁴ HFF MSJ at 21.

³⁵ S.J.R. 13 Hearing, *supra* note 15.

nothing inherent in their family structure, but rather the societal and governmental disapproval that both Hawaii's and Nevada's laws represent and perpetuate.

The Proponents disclaim any intent to stigmatize or demean same-sex-parented families, but that is the plain effect of the marriage limitations they support. The children of same-sex parents are, in fact, very much demeaned and stigmatized by the states' categorical exclusion of their families from the protections of marriage. As the Supreme Court observed in the context of the federal Defense of Marriage Act ("DOMA"), this kind of differential treatment "humiliates tens of thousands of children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and their daily lives." *Windsor*, 133 S.Ct. at 2694.

These feelings of stigmatization, inferiority, and de-legitimization are common themes heard by the amici who work every day with children raised by same-sex parents. As the former program director of amicus COLAGE told the New Jersey Civil Union Review Commission, many children with whom she has worked have had their peers "question[] the validity of their families because their parents aren't able to get married."³⁶ This in turn can lead children to have

³⁶ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm'n* at 38 (April 16, 2008) (statement of Meredith Fenton) ("Fenton

insecurity about their parents' relationship, including the fear that "somebody is going to come and break up their family."³⁷

To the children with whom the amici work, marriage inequality is an insult; but even more, it makes them feel as if the government deems their parents' relationship, their entire family, and the children themselves as inferior, as "lesser citizens."³⁸ It sends the message that their families are "not legitimate" and "not welcome."³⁹ It creates an insecurity—a "corrosive feeling of doubt"—in their perceived stability of their family.⁴⁰ It fosters confusion because "my family doesn't mean to other people what it means to me."⁴¹ In one example relayed to

Testimony"), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf>.

³⁷ Fenton Testimony, *supra* note 36, at 76:4–5.

³⁸ "I feel like a lesser citizen because my parents' love and commitment to each other isn't considered 'legal' by the United States government." Statement from Kira Findling to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).

³⁹ *Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage*, Center for Prevention of Hate Violence (Apr. 2009) ("*Honoring All Maine Families*") at 5, available at <http://www.preventinghate.org/wp-content/uploads/2011/03/Honoring-All-Maine-Families-2009.pdf>

⁴⁰ *Honoring All Maine Families*, *supra* note 39, at 4.

⁴¹ "I consider my mom's partner my stepmom. But society does not. My school doesn't. My doctor doesn't. Sometimes my friends' parents don't either. So that leaves me in a strange position. My family doesn't mean to other people what it means to me. I am stuck saying 'my mom's partner' or 'my mom's girlfriend,' when, really, I should have the right to call her 'my stepmom.'" *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (April 22, 2009) (statement of

Family Equality, the young son of two gay men was compelled to ask, “Dad, are we a family?” after overhearing hospital staff say that one of his fathers was not able to sign the other’s medical paperwork because they were “not family.”⁴²

Moreover, these children feel “cheated” by marriage inequality.⁴³ In the words of 18-year-old Maggie Franks, “My moms have been together for 22 years, and I could not have asked for better, more supportive parents. [The inability to legally marry] essentially sentence[s] my parents’ relationship to second class status, not only making our family feel less worthy than others, but denying us rights that are enjoyed by other families headed by straight parents.”⁴⁴

A ten-year-old told New Jersey legislators that the absence of marriage as an option for his parents led him to question the legitimacy of his family: “It doesn’t

Samuel Putnam-Ripley), *available at* <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

⁴² “Jeff, Josh, and Andrew,” Family Stories, Family Equality Council, http://www.familyequality.org/get_informed/family_stories/ (last visited Feb. 22, 2013).

⁴³ Statement from Ella Robinson to Family Equality Council (Jan. 29, 2013) (“Ella Robinson Statement”).

⁴⁴ Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013) (on file with Family Equality Council).

bother me to tell kids my parents are gay. It *does* bother me to say they aren't married. It makes me feel that our family is less than a family.”⁴⁵

This stigmatization is exacerbated by the fact that to these children the distinctions these laws make simply are nonsensical in relation to what the children have themselves experienced. As Ella Robinson said in the context of DOMA, “How can they tell me that my family doesn't count? That the relationship between my two dads that I have not only learned from and cherished, but also reaped the benefits of, isn't acknowledged on the federal level? That the love they share isn't deserving of the same protection and laws that a man and a woman receive?”⁴⁶

To one young woman, whose mothers have been together for almost thirty years, the repeated governmental efforts to place an official stamp of “different-ness” on same-sex marriage sparked strong feelings of injustice and betrayal. She described to Family Equality how formerly she “never cared about the issue of marriage” because she “couldn't have asked for a happier, healthier, more loving family and there was nothing that anyone could do to change that.” But the efforts

⁴⁵ Sarah Wildman, *Children Speak for Same-Sex Marriage*, N.Y. TIMES, Jan. 20, 2010, at E0, available at http://www.nytimes.com/2010/01/21/fashion/21kids.html?pagewanted=all&_r=0.

⁴⁶ Ella Robinson Statement, *supra* note 43.

to limit full recognition of marriage to opposite-sex couples “felt like a slap in the face”:

How could the free society that raised me and taught me everything that I know, now deny me my other foundation, a family that is recognized and protected as such? It felt like a slap in the face from my country. I had never asked for validation, but blatant exclusion hurts.⁴⁷

Social science research confirms that what these individual children are experiencing is typical of what many children of same-sex-parents feel. As Dr. Judith Glassgold, a licensed psychologist, testified before the New Jersey Civil Union Review Commission, the feeling that their parents’ relationship is deemed “inherently different and potentially inferior to heterosexual relationships,” and that their parents are “inherently less deserving than heterosexual couples of society’s full recognition,” psychologically burdens the children of same-sex parents.⁴⁸

The stigma and feelings of illegitimacy, anger, and unfairness that these children perceive are well-founded, particularly when the practical effects of marriage denial are considered. Just as DOMA did before it was struck down, the

⁴⁷ Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013) (on file with Family Equality Council).

⁴⁸ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 45 (April 16, 2008) (statement of Dr. Judith Glassgold), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf>.

states' marriage limitations "touch[] many aspects of ... family life, from the mundane to the profound." *Windsor*, 133 S.Ct. at 2694. For same-sex couples, being barred from marriage means being denied federal tax incentives available to different-sex couples living next door. It means not being allowed to file joint federal tax returns or maximize dependency exemptions, education deductions, child tax credits, and children and dependent care credits and therefore carrying a heavier tax burden than their different-sex counterparts. The refusal of Hawaii and Nevada to allow marriage for same-sex couples deprives their families of all federal benefits to which they would be entitled if state law considered them married. *See, e.g., Windsor*, 133 S.Ct. at 2694–95 (discussing various federal benefits dependent on marital status).

Thus, by withholding the possibility of marriage from their parents, the Hawaii and Nevada marriage bans damage the youth whom amici represent, depriving them of tangible governmental protections, alienating them from their communities, and creating an insecurity among them about their families. These laws "instruct[] all [state] officials, and indeed all persons with whom same-sex couples interact, including their own children, that their [relationship] is less worthy than the [relationships] of others." *Id.* at 2696.

III. LAWS BANNING MARRIAGE FOR SAME-SEX COUPLES ALSO HARM LGBT YOUTH IN NEVADA AND HAWAII BY INFORMING THEM THAT THEIR GOVERNMENT CONSIDERS THEM, AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS, TO BE INHERENTLY INFERIOR TO THOSE OF THEIR HETEROSEXUAL PEERS.

My coming out and finding acceptance and tolerance has been easy compared with what others have gone through... [I] am not defined by my sexuality. I am so much more than that. I am Winterfest Queen, I am a soccer team captain, I am a daughter, and I am a student... Unfortunately, in this state and in our society, I am defined by my homosexuality... I step out into reality and I am a second-class citizen because I cannot marry the person I love.

Kenzie Tillitt, then a high school senior, testifying before the Nevada Assembly Committee on Legislative Operations and Elections.⁴⁹

It's terrible to not be able to be recognized with the person that I love and have been in a faithful relationship for many years as legitimate in the government's eyes and therefore, not worthy of the same rights and protections as heterosexual couples.

Stacy Salas, then a student at the University of Hawai'i at Manoa, testifying before the Hawaii Legislature.⁵⁰

Laws banning marriage between same-sex couples also hurt another group of young people in Hawaii and Nevada—LGBT youth. These young people's perceptions of their futures are powerfully influenced by what the government tells them about the validity of the committed relationships they hope to form as adults.

⁴⁹ S.J.R. 13 Hearing, *supra* note 15; also available at <http://www.youtube.com/watch?v=PmbqWwK mzBk>.

⁵⁰ Testimony on S.B. 232 Relating to Civil Unions, Hawaii Senate Judiciary and Labor Committee, January 25, 2011 ("S.B. 232 Testimony"), available at http://www.capitol.hawaii.gov/session2011/Testimony/SB232_TESTIMONY_JDL_01-25-11.pdf.

By officially sanctioning their exclusion from marriage, these measures exacerbate feelings of hopelessness about the future and perpetual “different-ness” that many LGBT youth already feel and discourage them from aspiring to full participation in civic life. Limiting marriage to heterosexual couples—withholding from them the “dignity and status” that comes with the legal right to marry—undermines the self-worth of LGBT youth and impinges their development in relation to their peers. *Windsor*, 131 S. Ct. at 2692. It is an influence that is deeply felt and experienced, but one that has not received the attention it deserves.

As one young man wrote:

Like many other Americans, I dream of finding the love of my life and raising a family with them, passing on many of the values that my parents taught me when I was young. Yet this dream is currently denied to me on many levels, simply because my spouse and I would be the same sex. Despite many claims to the contrary by vocal opponents of marriage equality, I don’t want to destroy or alter American society and values; I want to take part in them, too.⁵¹

Or in the words of a high school student:

I’ve known I was gay since I was in 6th grade but I also knew that if I was gay I wouldn’t be able to get married with that one I truly loved, therefore I wouldn’t be able to share those moments [that] my parents enjoyed[.] I thought that the bond of marriage is what keeps two

⁵¹ Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT, *available at* http://www.law.emory.edu/fileadmin/NEWEBSITE/Centers_Clinics/Barton/Emory-DOMA-study.pdf (compiled Jan. 29, 2013) (“Child Rights Project Survey”).

people together through thick and thin [but] was not for me, and thus my adult life would not be the haven [that I had thought] as a kid.⁵²

Comments from LGBT youth illustrate the powerful effect of state-sanctioned disapproval of the relationships often touted as the cornerstone of responsible adulthood. A college student described the laws at issue in these cases as “saying I am a second-rate citizen. . . . My expectation is that while the rest of my community may disengage me because of my orientation, my government would not.”⁵³

Barring millions of young people from full participation in the institution the Proponents insist is uniquely capable of supporting “stable and enduring family units”⁵⁴ cannot be reconciled with the interest they claim is at the heart of the issues before the Court—that of “educating, socializing, and preparing [our] future citizens to become productive participants in civil society.”⁵⁵

⁵² Child Rights Project Survey, *supra* note 51.

⁵³ Child Rights Project Survey, *supra* note 51.

⁵⁴ S.B. 232 Testimony, *supra* note 50.

⁵⁵ HFF MSJ at 29.

CONCLUSION

While the Proponents will tell you that Hawaii's and Nevada's laws banning marriage for same-sex couples are good for children, children raised by same-sex parents will tell you otherwise. These children will tell you that the laws stigmatize and de-legitimize their families. And they will tell you that their families are just as deserving of recognition, respect, and protection as those of children with different-sex parents. And while the Proponents say these laws promote social order, the LGBT youth whom these laws discourage from fully participating in civic life and who have personally experienced the harm the laws engender and perpetuate cannot agree.

Based on the foregoing, amici urge this Court to reverse the Hawaii and Nevada district court orders.

Date: October 25, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,350 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point regular type.

Date: October 25, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system in Case Nos. 12-17668, 12-16995, and 12-16998 on October 25, 2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: October 25, 2013

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