

No. 14-50196

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**CLEOPATRA DE LEON, NICOLE DIMETMAN, VICTOR HOLMES,
and MARK PHARISS,**

Plaintiffs-Appellees,

v.

**RICK PERRY, in his official capacity as Governor of the State of Texas;
GREG ABBOTT, in his official capacity as Texas Attorney General; and
DAVID LAKEY, in his official capacity as Commissioner of the Texas
Department of State Health Services,**

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF TEXAS, SAN ANTONIO DIVISION, No. 5:13-CV-00982

**AMICI CURIAE BRIEF OF FAMILY EQUALITY COUNCIL
AND COLAGE**

IN SUPPORT OF PLAINTIFFS AND AFFIRMANCE OF THE DISTRICT COURT ORDER

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed.R.App.P. 26.1, none of the amici filing this brief is a corporation that issues stock or has a parent corporation that issues stock.

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STATEMENT OF CONSENT TO FILE

All parties to this appeal have consented to the filing of this brief pursuant to Fed.R.App.P. 29(a).

STATEMENT PURSUANT TO FED.R.APP.P. 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, 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 promote equality among all American families, including those led by same-sex parents. Amici believe that families led by same-sex parents are typical American families, with the same joys and challenges as families led by heterosexual parents. Amici present stories of children raised in same-sex-parented families. These stories demonstrate that the laws Appellants seek to uphold stigmatize and de-legitimize same-sex-parented families on a legal, social, and psychological level.¹

Family Equality Council (“Family Equality”) supports LGBT parents and their children through a nationwide community of parents, children, grandparents, and grandchildren. Family Equality empowers children of LGBT parents through

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

programs like Outspoken Generation, in which young adults with LGBT parents 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 and grandparents with whom it has worked.

COLAGE is the only national organization for and by people who have an LGBT 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. Founded in 1990, COLAGE has worked with generations of children in LGBT families. COLAGE provides a national support network, resources, direct programs, youth-led publications and leadership training on the myriad issues important to youth in LGBT families. Based on its 25-year experience working directly with thousands of people nationwide with LGBT parents, COLAGE can attest to the critical importance for children of having their parents' relationships recognized and respected on every social, institutional, political and legal level.

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 this lawsuit. Those opposing 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 describe their experiences.

The children of same-sex parents 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. As the District Court recognized, Texas’ laws restricting marriage to different-sex couples “cause[] needless stigmatization and humiliation for children being raised by the loving same-sex couples being targeted” by those laws. *De Leon v. Perry*, 975 F.Supp.2d 632, 653 (W.D. Tex. 2014) (citation

omitted). As a result, those laws “den[y] children of same-sex parents the protections and stability they would enjoy if their parents could marry.” *Id.* at 653.

The voices of LGBT youth are also too frequently disregarded in these debates. Texas’ laws restricting same-sex marriage deems committed relationships these youth may form as unworthy of the “dignity and status” that come with the right to marry. *Windsor*, 133 S.Ct. at 2692; *see also De Leon*, 975 F.Supp.2d at 639. This state-sanctioned stigmatization negatively and profoundly impacts the self-esteem, sense of purpose and well-being of these young people.

This brief presents the voices of these children.

SUMMARY OF ARGUMENT

Proponents² of the marriage limitations at issue assert a governmental interest relating to children. Proponents assert that marriage licenses and out-of-state marriage recognition should be denied to same-sex couples, arguing that “same-sex marriage is a contradiction in terms ... because marriage by its very nature requires the presence of a man and a woman, the inherently complementary and necessary building blocks of human life.”³ They claim that “[r]egulation and promotion of opposite-sex marriage increases the likelihood that children will be born into stable environments where they are raised by their mother and father,” and assert that “same-sex marriage does not further this goal to the same extent.”⁴

Extensive evidence, however, demonstrates that same-sex-parented families provide stable and loving environments for children throughout the country. Six million Americans have at least one parent who identifies as lesbian, gay or

² The parties seeking to maintain marriage limitations in this case—Rick Perry, in his official capacity as Governor of the State of Texas, Greg Abbott, in his official capacity as Texas Attorney General, and David Lakey, in his official capacity as Commissioner of the Department of State Health Services—are referred to collectively herein as “Proponents.”

³ Appellants’ Br. at 11.

⁴ *Id.* at 13.

bisexual.⁵ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,⁶ there are approximately a quarter of a million children being raised in same-sex-parented families. Same-sex-parented families live in every state and in 93% of all U.S. counties.⁷ The Fifth Circuit includes the state with the highest proportion in the country of same-sex couples raising biological, adopted or step-children—Mississippi at 26%.⁸ And, in Texas, approximately 10,864 same-sex couples are raising 18,671 children.⁹ The issues before the Court cannot be properly evaluated without considering the first-hand accounts of these children, represented by Amici.

⁵ Gary J. Gates, *LGBT Parenting in the United States*, The Williams Institute, UCLA School of Law (“Williams Institute”) (Feb. 2013), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

⁶ Gary J. Gates and Abigail M. Cooke, *United States Census Snapshot: 2010*, Williams Institute, at 3 (Sept. 2011), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>.

⁷ 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 (2005).

⁸ Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute, at 1 (2013), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (“States with the highest proportions of same-sex couples raising biological, adopted or step-children include Mississippi (26%), Wyoming (25%), Alaska (23%), Idaho (22%), and Montana (22%).”).

⁹ Gary J. Gates, *Same-sex Couples in Texas: A demographic summary*, Williams Institute, at 1 (Sept. 2014), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TX-same-sex-couples-demo-sept-2014.pdf> (“Texas Demographic Summary”). .

As these children attest, their family relationships are typical and no less deserving of the marital protections afforded to different-sex-parented families. Texas' marriage laws stigmatize and de-legitimize thousands of families, withholding from them the recognition, encouragement, and support Proponents insist promote family stability.¹⁰

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 encouraging stable relationships to reduce societal costs.¹¹ 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.”¹² The stories of LGBT youth, too, must be heard to understand how laws forbidding same-sex marriage negatively affect youth living within the boundaries of this Circuit.

¹⁰ See Appellants' Br. at 11-12.

¹¹ *Id.*

¹² Anthony Michael Kreis, *Is Marriage Equality Inevitable?*, HUFFPOST GAY VOICES (Sept. 13, 2012), http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html (last visited Sept. 14, 2014).

ARGUMENT

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

My name is Will Miller. I am 28 years old, and am a sixth generation Mississippian..... My moms have been together for 23 years and were legally married five years ago. The state of Mississippi does not recognize their marriage, and will not afford them equal protection under the law.

When I was young, my moms made it very clear that I was not to lie or to hide the nature of their relationship, and that it was something to be proud of. This must have been terrifying for them, as knowledge of their relationship could have put their jobs in jeopardy. Their candor with me at such a young age is something I have always been thankful for, and required tremendous courage on their part. As young as I was, though, I didn't really understand what all the fuss was about. They loved me, and that was all that mattered. It's all that should matter. Indeed, my childhood as the son of lesbian parents was extraordinary in that it was simply ordinary. I went to public school, and had lots of friends. I was on the varsity swim team, and rooted for the Ole Miss Rebels.

Many people who would stand in opposition to marriage equality justify their prejudice with claims that gays and lesbians cannot raise children; that having homosexual parents would be detrimental to a child. Not only is this insulting to me and others like me, but it is simply and profoundly false. Throughout grade school, I consistently scored in the top 5% in state standardized tests. My mothers, both biologists, sparked a love of mathematics and science, and encouraged me to always have an open and inquisitive mind. In high school, I was accepted to and attended the Mississippi School for Mathematics and Science, where I excelled. I went to college and graduated with honors. I am now a lead game designer at a video game company in Baltimore, Maryland where I work on the cutting

*edge of computer technology and art. I have lesbian parents, and I turned out just fine.*¹³

The children of same-sex 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.”¹⁴ 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.

Eleven-year-old B.C. is being raised by his two moms in Texas:

My parents are not married because we live in Texas, and apparently Texas doesn't allow gay people to get married. I wish my parents could get married because they love each other very much, just like any other couple, except they're not just any other couple because they have me!

The fact that my parents can't get married makes me feel frustrated....When I look at other married parents, I feel like they are happy and wouldn't want it any other way. But, I would like to see

¹³ Statement from Will Miller to Family Equality (Jul. 3, 2014) . Each of the statements cited in this brief are on file with Family Equality.

¹⁴ Brian Arsenault, Op-Ed, *Maine Voices: Young man's wish for his moms on Mother's Day: the right to marry*, 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 (last visited Sept. 14, 2014).

*one change: my parents to be married, so we can be happy like any other family.*¹⁵

Families differ in the number of children, the age ranges of children and parents, 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, 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 does Texas deny these parents the right to marry.

Same-sex-parented families are neither an oddity nor a rarity. As explained above, approximately a quarter of a million children—nearly 20,000 in Texas¹⁶—are currently being raised by same-sex parents. These children express the same theme over and over again to Amici: their families are typical American families. Their moms and dads raise 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. Their moms and dads care about the same things all parents do—hugs and homework,

¹⁵ Statement from B.C. to Family Equality (Jul. 7, 2014).

¹⁶ Texas Demographic Summary, *supra* n.9.

bedtime and bath time. Their parents want bright, secure, and hopeful futures for their children.

As Malina Simard-Halm, a student raised by two gay dads, explained: “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.”¹⁷ 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, they take me to my sports practice, play games, and make the holidays, especially Christmas, awesome.”¹⁸

Zach Wahls, a University of Iowa engineering student 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.”¹⁹

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

¹⁷ Statement from Malina Simard-Halm to Family Equality (Jan. 29, 2013).

¹⁸ Statement from A.C. to Family Equality (Feb. 5, 2013).

¹⁹ *Hearing on HJR 6 Before Iowa House of Representatives* (Jan. 31, 2011) (statement of Zach Wahls), *available at* http://www.familyequality.org/equal_family_blog/2011/02/04/1001/abc_news_son_of_iowa_lesbians_fights_gay_marriage_ban (“Zach Wahls Testimony”).

*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.*²⁰

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.*²¹

Importantly, same-sex parents model positive and committed relationships—not just positive same-sex relationships. Baltazar Martinez recounted the joy his family felt on the day his dads married in California, having traveled from their home in Austin, Texas:

When my parents got married, I felt very happy for them. They had been together for so many years before they even met me and adopted me. Once they got married, they were even happier together. It was a new page in their life, and they were eager to start writing new memories on it. I was happy for them because they got to get married

²⁰ *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).

²¹ Zach Wahls Testimony, *supra* n.19.

*legally. And I got to be their best man at their wedding and that was probably the best moment in my life.*²²

As Ella Robinson said of the relationship between her father, Bishop Gene Robinson, and his partner:

*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).*²³

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.*²⁴

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. Numerous, recent peer-reviewed studies indicate “that despite confronting heterosexism in a

²² Statement from Baltazar Martinez to Family Equality (Jul. 3, 2014).

²³ 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 Sept. 14, 2014).

²⁴ Brian Arsenault, Op-Ed, *supra* n.14.

variety of social contexts ... LGB parents and their children are functioning quite well.”²⁵ For example, a study by the Gay, Lesbian and Straight Education Network revealed that same-sex parents are more likely to take an active role in their children’s education—attending parent-teacher conferences, volunteering in the classroom, and communicating with the school—than a national sample of parents, thus improving the chances of academic success.²⁶

Decades of social science research also confirms that same-sex-parented children have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.²⁷

²⁵ Abbie E. Goldberg, Nanette K. Gartrell, and Gary J. Gates, *Research Report on LGB-Parent Families*, Williams Institute, at 1 (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-parent-families-july-2014.pdf> (last visited Sept. 14, 2014).

²⁶ Joseph G. Kosciw, Ph.D. and Elizabeth M. Diaz, *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 25-32, available at <http://glsen.customer.def6.com/sites/default/files/Involved%2C%20Invisible%2C%20Ignored%20Full%20Report.pdf>.

²⁷ 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, 44(1), 127–134 (2008); Stephen Erich, Patrick Leung and Peter

Several studies have even suggested that children raised by same-sex parents are better adjusted psychologically than their peers.²⁸

All of the leading national child welfare and social service organizations agree that children raised by same-sex parents are just as happy, healthy, and well-adjusted as children raised by different-sex parents. Many of these organizations, including the American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, and American Psychiatric Association, have published organizational statements confirming that LGBT people make excellent parents who raise developmentally healthy children.²⁹

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) available at <http://people.virginia.edu/~cjp/articles/wrp04.pdf>; 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).

²⁸ 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., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment*, JOURNAL OF FAMILY PSYCHOLOGY, 12:402–419 (1998).

²⁹ American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Sept. 14, 2014); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex*

Texas’ interest in furthering “stable, lasting relationships” in which children are supported and reared by two parents applies to all families raising children—not just those headed by different-sex couples.³⁰ The accounts of children of same-sex parents living in the Fifth Circuit and elsewhere confirm these families encourage love, stability, acceptance, empathy, confidence, and a strong work ethic. Their stories help us understand what the issues before the Court mean for real families in Texas and beyond.

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

The fact that my parents aren’t legally married in Texas, but they are in California, makes me feel mad.... When I look at other married parents, I feel like they have it better in life because they don’t have to worry about people discriminating against them being together because they are the “right” couple. I believe that two people of the same sex should be able to get married without having to worry about

Couples, PEDIATRICS, 109(2):339–340 (2002) (reaffirmed 2009); American Psychiatric Association, *Adoption and Co-parenting of Children by Same-sex Couples* (2002), <http://www.aglp.org/pages/position.html#Anchor-Adoption-49575> (last visited Sept. 15, 2014); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited Sept. 15, 2014); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/position-statement-on-parenting-of-children-by-lesbian-gay-and-bisexual-adults/> (last visited Sept. 15, 2014); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003–2006, 146–150 (2003), *available at* <http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf>.

³⁰ See Appellants’ Br. at 3.

discrimination towards them. If they are happy together, then by all means, let them marry and be together.

Baltazar Martinez, 18, of Austin, Texas.³¹

Though I know very well that a marriage certificate was not what gave my dads' relationship strength, it was an opportunity for my family to participate in the rights that we have been denied for so long As amazing as the wedding was, it was still bittersweet. We were hesitant to celebrate too much because we knew that the marriage would not be recognized in our home state of Idaho. It is just baffling to me that people fight so hard to deny something that brought our family so much joy.

...

It has come to my attention that those who are arguing against the right for my parents' marriage to be recognized are claiming that being raised by LGBT parents is harmful to the child. To this I would say that the only difficult part about my father's relationship is the fact that I, as his child, have to watch as society continually tries to deny our family the right to be recognized as one. By denying marriage equality..., society is sending a message to the children of LGBT parents that their family is not "normal", when we feel no different. The only harm received by the child is knowing that their family is not allowed the same rights as everyone else.

Nineteen-year-old Payton McGriff.³²

When children like me volunteer or are asked to speak out on this issue, the premise tends to be that we are there to "prove" that our parents can be good parents and can raise well-adjusted, successful children. I have both worked very hard and been very lucky to achieve what I have in my life, and I am grateful most of all to my parents for this, but my success is not a reason why my parents or any other gay couple should be able to have their families recognized by the law. They would be no less deserving if I had dropped out of high school or fallen victim to substance abuse or found myself in

³¹ Baltazar Martinez Statement, *supra* n.22.

³² Statement from Payton McGriff of Idaho to Family Equality (Jul. 21, 2014).

otherwise less than ideal circumstances. Our families should be recognized simply because we are humans with the same rights as everyone else. We are families, and treatment of us as anything else is discrimination.

Twenty-four-year-old Harvard Medical School Student, Anna Frackman.³³

Although Proponents claim an interest in stabilizing the American family structure, the unavailability of marriage for Texas' same-sex couples has the opposite effect. Placing an official stamp of governmental opprobrium on the relationships of same-sex parents stigmatizes and de-legitimizes the relationships and, as a result, the children themselves. The major challenge most same-sex-parented families must surmount is nothing inherent in their family structure, but rather the societal and governmental disapproval that Texas' laws represent and perpetuate.

The Seventh Circuit recently affirmed a district court decision striking down similar bans on same-sex marriage in Wisconsin and Indiana, focusing on the impact on same-sex-parented children. The Court discussed the negative consequences of such laws on both those children and their families:

³³ Statement from Anna Frackman of Wisconsin to Family Equality (Jul. 23, 2014); *see also* Anna Frackman, Op-Ed, *Anna Frackman: Wisconsin should treat all families equally*, WISCONSIN STATE JOURNAL, Feb. 23, 2014, http://host.madison.com/news/opinion/column/guest/anna-frackman-wisconsin-should-treat-all-families-equally/article_3e43db10-ffeb-5a46-8090-f3ce708d4aad.html .

The harm to homosexuals (and, as we'll emphasize, to their adopted children) of being denied the right to marry is considerable. Marriage confers respectability on a sexual relationship; to exclude a couple from marriage is thus to deny it a coveted status. Because homosexuality is not a voluntary condition and homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the world, the disparagement of their sexual orientation, implicit in the denial of marriage rights to same-sex couples, is a source of continuing pain to the homosexual community. Not that allowing same-sex marriage will change in the short run the negative views that many Americans hold of same-sex marriage. But it will enhance the status of these marriages in the eyes of other Americans, and in the long run may convert some of the opponents of such marriage by demonstrating that homosexual married couples are in essential respects, notably in the care of their adopted children, like other married couples.

Baskin v. Bogan, No. 14-2386, 2014 U.S.App.LEXIS 17294, at *30 (7th Cir., Sept. 4, 2014). The Supreme Court similarly observed in the context of the federal Defense of Marriage Act ("DOMA") that the differential treatment resulting from the denial of same-sex marriage "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 in their daily lives." *Windsor*, 133 S.Ct. at 2694.

Proponents disclaim 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, demeaned and stigmatized by Texas' categorical exclusion of their families from the protections of marriage. Payton

McGriff put it succinctly: “[B]eing ostracized from society is what harms children, not our parents’ sexual orientation. If you are truly acting on the part of children, I hope you listen to the voice that is so often ignored.”³⁴

These feelings of stigmatization, inferiority, and de-legitimization are common themes heard by Amici who work every day with children raised by same-sex parents. As the former program director of amicus COLAGE testified in New Jersey, 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.”³⁵ This, in turn, can lead to children’s insecurity about their parents’ relationship, including the fear that “somebody is going to come and break up their family.”³⁶

To the children with whom Amici work, marriage inequality is an insult; it makes them feel as if the government deems their parents’ relationship, their entire family, and the children themselves as inferior, as “lesser citizens.”³⁷ It sends the

³⁴ Payton McGriff Statement, *supra* n.32.

³⁵ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 38 (April 16, 2008) (statement of Meredith Fenton), *available at* <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf> (“*NJ Hearing Transcript*”).

³⁶ *Id.* at 76.

³⁷ “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 (Jan. 29, 2013).

message that their families are “not legitimate” and “not welcome.”³⁸ It creates an insecurity—a “corrosive feeling of doubt”—in their perceived stability of their family.³⁹ It fosters confusion because “my family doesn’t mean to other people what it means to me.”⁴⁰ In one example relayed to 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.”⁴¹

Moreover, these children feel “cheated” by marriage inequality.⁴² 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

³⁸ *Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage*, Center for Prevention of Hate Violence (Apr. 2009) at 5.

³⁹ *Id.* at 4.

⁴⁰ “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. 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 Samuel Putnam-Ripley), available at <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

⁴¹ “Jeff, Josh, and Andrew,” Family Stories, Family Equality Council, http://www.familyequality.org/get_informed/family_stories/ (last visited Sept. 14, 2014).

⁴² Statement from Ella Robinson to Family Equality (Jan. 29, 2013).

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.”⁴³

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 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.”⁴⁴

To these children, the distinctions these laws make simply are nonsensical in relation to what they have experienced, exacerbating the stigmatization they experience. 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?”⁴⁵

To one young woman, whose mothers have been together for almost thirty years, the repeated governmental efforts to place an official stamp of “different-

⁴³ Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013).

⁴⁴ 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 (last visited Sept. 14, 2014).

⁴⁵ Ella Robinson Statement, *supra* n.42.

ness” on same-sex marriage sparked strong feelings of injustice and betrayal. She described to Amici 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 to limit full recognition of marriage to different-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.*⁴⁶

Social science research confirms that the experience of these children is typical of what many children of same-sex-parents feel. As Dr. Judith Glassgold, a licensed psychologist, testified in New Jersey, 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.⁴⁷

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,

⁴⁶ Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013).

⁴⁷ *NJ Hearing Transcript, supra* n.35 (statement of Judith Glassgold).

Texas' marriage limitations "touch[] many aspects of...family life, from the mundane to the profound." *Windsor*, 133 S.Ct. at 2694.

While children of same-sex parents flourish generally in society as a result of parental support in academics and otherwise, they often suffer indignities not faced by children of different-sex parents. The story of Jamie Doepel, raised by same-sex parents in Oklahoma, exemplifies the impact of marriage inequality:

My mom worked at a local nursing home and that's where she met Elaine. Elaine took us in and for the first time in my short life I felt like I had a home. Elaine and my mom stayed together, saw me through high school, and raised me like any other family raised their children.

In the summer of 2005, Elaine's family contacted her for the first time in over ten years. ...This is when our family changed forever.

Elaine passed away January 2, 2006 while at her sister's house. We were not notified. Elaine was buried January 5, 2006. We were not notified. During this time my mom was in Oklahoma City visiting me. My mom returned to their house January 6th to find that the electricity had been turned off. While inquiring with the local PSO office my mom found out that the account had been closed due to Elaine's death. [While standing at the PSO payment window,] my mom found out that her life partner, other mother to her children, had died.

This was a very difficult time for my family. My mom struggled to pay for the house bills by herself and within 6 months lost the house. My mom lost everything. Needless to say we never received any death benefits. We never received any support from the state of Oklahoma in any fashion.⁴⁸

⁴⁸ Statement from Jamie Doepel to Family Equality (Feb. 4, 2014).

No child should have to endure this experience, and it all could have been prevented if Jamie's parents were able to enjoy the same benefits available to different-sex couples.

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 dependent care credits. Same-sex couples therefore carry a heavier tax burden than their different-sex counterparts. Texas' refusal to allow marriage for same-sex couples deprives families led by same-sex couples 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.

Children of same-sex parents are acutely aware of the insecurity of their family unit caused by the denial of benefits available only to married different-sex couples. Thus, the Texas marriage laws damage same-sex-parented children, depriving them of tangible governmental protections, alienating them from their communities and instilling within them insecurity about their families. Such 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. SAME-SEX MARRIAGE BANS ALSO HARM LGBT YOUTH IN TEXAS BY DEEMING THE COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS AS INHERENTLY INFERIOR TO THOSE OF THEIR HETEROSEXUAL PEERS.

Texas’ laws withholding from same-sex couples the marital status and benefits afforded to different-sex couples hurt another group of young people in Texas—LGBT youth. State-sanctioned disapproval of same-sex relationships treats LGBT youth as second class citizens, not deserving of the “dignity and status” that comes with marriage. *Windsor*, 131 S.Ct. at 2692; *see also De Leon*, 975 F.Supp.2d at 659. This disapproval is deeply felt by the LGBT youth, but it is one that, unfortunately, receives little attention.

Eric Wilson grew up in Texas. From a very early age, Eric describes himself as “harbor[ing] a deep, unspoken fear” that the term “gay” might apply to him. He “came to terms with this reality” at the age of 16, leading “to a nearly four-year process of sharing [his] truth with [his] closest friends, including [his] younger brother, as well as other family members.” Eric recounts being “grateful” for the opportunity to share this truth with his mother before she passed away unexpectedly in October 2004.⁴⁹

The support of Eric’s own family, however, could not counteract his declining sense of self-worth upon the passage of Texas’ constitutional amendment banning same-sex marriage in 2005:

⁴⁹ Statement from Eric Wilson to Family Equality (Jul. 23, 2014).

*I generally try to see the best in people, and while growing up in Conroe, Texas was perhaps not the ideal environment for a gay adolescent such as myself, I still got the impression that my neighbors, classmates and the community at large were generally decent and caring people. But in the wake of this vote I'd be lying if I didn't say that I began to question this assumption. To me it felt like 86% of the voters in the county in which I lived hated me and thought I was disgusting and not worthy of the legal protections afforded to people in opposite-sex relationships. It's not a feeling I'd wish on my worst enemy, and that's certainly not a feeling that any newly out young adult should ever have to feel again going forward.*⁵⁰

Eric is not alone in his feeling of isolation from his community. LGBT youth similarly perceive themselves as being excluded from the protections of marriage available to those in different-sex relationships. 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,

⁵⁰ *Id.*

⁵¹ Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, *LGBTQ Youth and Young Adult Survey*, EMORY CHILD RIGHTS PROJECT, available at http://web.gs.emory.edu/vulnerability/zpdfs/news%20and%20events/Report__LGBTQYOUTH_Finaledit_February%2026%202013.pdf (compiled Jan. 29, 2013).

*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 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

These comments illustrate how LGBT youth'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. Officially sanctioning their exclusion from marriage exacerbates feelings of hopelessness about the future and perpetual "different-ness" that many LGBT youth already feel. A college student described how these types of laws affect him: "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

The experiences of LGBT youth in Texas and elsewhere further illustrate that Texas' attempt to justify its marriage ban is both irrational and inconsistent with reality. Barring millions of young people from participation in the institution of marriage and informing them that they are "second-rate citizen[s]" through state-sanctioned exclusion of marriage cannot be reconciled with Proponents' argument that marriage restrictions encourage stable families. To the contrary, these laws only preclude LGBT youth from participating in the benefits of marriage touted by Proponents.

⁵² *Id.*

⁵³ *Id.*

CONCLUSION

Contrary to Proponents' representations, Texas' marriage restrictions do not promote family stability; they do the opposite. They also inflict needless suffering on children of same-sex-parented families and LGBT youth. Amici urge affirmance of the District Court's order enjoining Texas from enforcing any law prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because this brief contains 6,993 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 Microsoft Word 2010 word processing software in 14-point regular Times New Roman type style.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2014, I electronically filed the foregoing Amici Curiae Brief Of Family Equality Council And COLAGE with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the Court's CM/ECF system.

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