

Nos. 14-14061-AA, 14-14066-AA

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

JAMES BRENNER, *et al.*

Appellees,

v.

SEC'Y, FLA. DEP'T OF HEALTH,
et al.

Appellants.

SLOAN GRIMSLEY, *et al.*

Appellees,

v.

SEC'Y, FLA. DEP'T OF HEALTH,
and SEC'Y, FLA. DEP'T OF
MGMT. SERVS.,

Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

**AMICI CURIAE BRIEF OF
FAMILY EQUALITY COUNCIL AND COLAGE
IN SUPPORT OF PLAINTIFFS-APPELLEES AND
IN SUPPORT OF AFFIRMANCE**

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CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed.R.App.P. 26.1 and 11th Cir. R. 26.1-1, none of the amici filing this brief is a corporation that issues stock or has a parent corporation that issues stock. In addition to the interested parties identified by Appellants, Appellees, and other amici, amici filing this brief identify the following attorneys and entities as having an interest in the outcome of this case and/or appeal:

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STATEMENT OF CONSENT TO FILE

All parties to this appeal 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 THE ISSUES

Amici adopt the Statement of the Issues as set forth in the Response Briefs of Plaintiffs-Appellees.

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 different-sex 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

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.

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 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

My name is J.A.B.-M.... I am 11 years old [and from] Fort Lauderdale....My [two dads] were married in Toronto, Canada in June 2003....They were living in Florida, but unfortunately they could not get married here because of the laws.

If my parents could have their marriage recognized, then they would be able to have the same rights to health insurance for our whole family, as well as over 1,000 rights and responsibilities that depend on your marriage being recognized. It would also be great just to be accepted as an equal family!²

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.

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 impacts them. These children are among those persons most directly affected by their parents’ inability to marry. As the Supreme Court recognized, laws like Florida’s that restrict marriage to different-sex couples “[make] it even more difficult for the children [being raised by same-sex couples]

² Statement from J.A.B.-M. to Family Equality Council (“Family Equality”) (Sept. 7, 2014). Each of the statements cited in this brief are on file with Family Equality.

to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.”³ This perspective has been repeatedly and justly recognized by a number of appellate courts across the country.⁴

The voices of LGBT youth are also too frequently disregarded in these debates. Florida’s 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.⁵ 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.

³ *U.S. v. Windsor*, 133 S.Ct. 2675, 2694 (2013).

⁴ *See, e.g., Kitchen v. Herbert*, 755 F.3d 1193, 1215 (10th Cir. 2014) (“These laws deny to the children of same-sex couples the recognition essential to stability, predictability, and dignity...[and] discourage those children from being recognized as members of a family by their peers.”); *Baskin v. Bogan*, No. 14-2386, 2014 U.S.App.LEXIS 17294, at *30 (7th Cir., Sept. 4, 2014); *Bostic v. Schaefer*, 760 F.3d 352, 383-84 (4th Cir. 2014).

⁵ *Windsor*, 133 S.Ct. at 2692.

SUMMARY OF ARGUMENT

Proponents⁶ of Florida’s marriage laws assert a governmental interest relating to children. In the District Court, Proponents asserted that those laws should stand based on a historical “clear and essential connection between marriage and responsible procreation and childrearing.”⁷ Arguing that different-sex marriage alone satisfies Florida’s interest in “promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society,” Proponents claimed that banning same-sex marriage finds a rational basis in “increasing the likelihood that children will be born and raised by the mothers and fathers who produced them in stable and enduring family units.”⁸

Extensive evidence, however, demonstrates that same-sex-parented families provide stable and loving environments for children throughout the country. For

⁶ The parties seeking to maintain marriage limitations—the Secretaries of the Florida Departments of Health and Management Services and the Clerk of the Court for Washington County—are referenced collectively as “Proponents.”

⁷ State Officials’ Mot. to Dismiss, *Brenner v. Scott* (N.D. Fla Case No. 4:14-cv-107-RH/CAS), D.N. 50 (filed May 12, 2014) at 20 (hereinafter, “State Mot. to Dismiss”).

⁸ *Id.*

six-million Americans, at least one parent identifies as lesbian, gay or bisexual.⁹ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,¹⁰ approximately 250,000 children are being raised in same-sex-parented families. Same-sex-parented families live in every state and in 93% of all U.S. counties.¹¹ Florida is home to approximately 13,000 children of same-sex parents.¹² The issues before the Court cannot be properly evaluated without considering the first-hand accounts of these children, represented by Amici.

As these children attest, their family relationships are typical and no less deserving of the marital protections afforded to different-sex-parented families. Florida's marriage laws stigmatize and de-legitimize thousands of families,

⁹ Gary J. Gates, *LGBT Parenting in the United States*, The Williams Institute, UCLA School of Law ("Williams Institute") (Feb. 2013), at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

¹⁰ Gary J. Gates and Abigail M. Cooke, *United States Census Snapshot: 2010*, Williams Institute, at 3 (Sept. 2011), at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>.

¹¹ R. Bradley Sears, et al., *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000*, Williams Institute (2005).

¹² See Gary J. Gates and Abigail M. Cooke, *Florida Census Snapshot: 2010*, Williams Institute (Sept. 2011), at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Florida_v2.pdf (last visited Dec. 19, 2014); see also Gary J. Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*, Williams Institute (October 2014), at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf> (last visited Dec. 19, 2014).

withholding from them the recognition, encouragement, and support Proponents insist promote family stability.

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.¹³ 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.”¹⁴ The stories of LGBT youth, too, must be heard to understand how laws prohibiting same-sex marriage negatively impacts youth living within this Circuit.

¹³ *Id.*

¹⁴ 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 [C.A.], I'm 17 and live in Orlando, Florida. My relationship with my dad's partner is great. I grew up with him and have known him since I was 6. He has taken a parenting role for me and always guides me in the right path; sometimes better than my mom and dad themselves. Growing up, I knew what was going on but it didn't make any difference to me because my father was happy. In life you need to be happy, and love is love. You can't judge people whether you're straight or not, because you're still a human being. I couldn't be [happier] and thankful to have them in my life, and feel everyone should have the right to marry the person they love.¹⁵

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.”¹⁶ 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 X.R. is being raised by his two moms in Florida:

¹⁵ Statement from C.A. to Family Equality (Sept. 5, 2014).

¹⁶ 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, 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).

*I feel really disappointed that my parents cannot get legally married in the state of Florida where we live because they really love each other and I think they deserve to be able to get married like other people who love each other get to do.*¹⁷

Eight-year-old E.D. in Florida explained:

*It's great that I have two moms. I feel really lucky. It's like double the time and support. I'd like [my parents] to get married so we can have a house, with a tree house, a hammock and a swing set. It would make me really happy if [they] got married. Plus, I'd like to be a ring bearer and the flower girl....There is nothing I'd change about my family. I'm never changing it!*¹⁸

Families differ widely—in the number of children, religion and activities they enjoy together. Some children come from divorced or blended families. And some children have 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. Only for same-sex-parented families, however, does Florida refuse to allow or recognize marriage.

Same-sex-parented families are neither an oddity nor a rarity. As explained above, same-sex parents are currently raising approximately a quarter of a million children. 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

¹⁷ Statement from X.R. to Family Equality (Sept. 9, 2014).

¹⁸ Statement from E.D. to Family Equality (Sept. 8, 2014).

would like to be treated and tell the truth. Their moms and dads care about the same things all parents do—hugs and homework, bedtime and bath time. Their parents want bright, secure and hopeful futures for their children.

Eleven-year-old J.A.B.-M.from Fort Lauderdale describes her family as no different from different-sex-parented families:

*My family is like any other family. We play games, we take care of each other, we talk, and we enjoy our rescue puppy, Tippy. In the morning, my dads wake me up and make me a school lunch. At night, my dads tuck me in. In between, they help me study, they do my laundry, they work to support me, and they show me unconditional love (and, as Mr. Peabody might say, “I have a deep regard for them, too”).*¹⁹

Nine-year-old A.C. agrees: “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.”²⁰

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

¹⁹ J.A.B.-M. Statement, *supra* n.2.

²⁰ Statement from A.C. to Family Equality (Feb. 5, 2013).

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

Gabrielle Benham, then a high school student, 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

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

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 Testimony, *supra* n.21.

Importantly, same-sex parents model positive and committed relationships—not just positive same-sex relationships. J.S., an 8-year-old being raised by his two moms in Florida, dreams of the day when his family can celebrate marriage:

*I wish my parents could get married because they love each other very much, and they are happy together. I love them both very much. I want to be in their wedding. It makes me very happy that my mom and I have found someone who is very nice to us and who is very kind and loving.*²⁴

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).*²⁵

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

²⁴ Statement from J.S. to Family Equality (Sept. 8, 2014).

²⁵ Ella Robinson, *How and Why I Am Outspoken*, Family Equality 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).

*spend the rest of my life with, I can't imagine two better role models to base a family around than my moms.*²⁶

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 variety of social contexts...LGB parents and their children are functioning quite well.”²⁷ 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.²⁸

Decades of social science research also confirms that same-sex-parented children have similar levels of psychological adjustment and are no more likely

²⁶ Brian Arsenault, Op-Ed, *supra* n.16.

²⁷ Abbie E. Goldberg, et al., *Research Report on LGB-Parent Families*, Williams Institute, at 1 (2014), at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-parent-families-july-2014.pdf> (last visited Sept. 14, 2014).

²⁸ 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, at <http://glsen.customer.def6.com/sites/default/files/Involved%2C%20Invisible%2C%20Ignored%20Full%20Report.pdf>.

than their peers raised by different-sex parents to report behavioral issues.²⁹

Several studies even suggest that same-sex-parented children are better adjusted psychologically than their peers.³⁰

All leading national child welfare and social service organizations agree that same-sex-parented children 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

²⁹ Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012) (numerous studies of same-sex parented children “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, et al., *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, et al., *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, et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, CHILD DEVELOPMENT, 75:1886-1898 (2004) 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).

³⁰ Henny Bos, et al., *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).

statements confirming that LGBT people make excellent parents who raise developmentally healthy children.³¹

Florida’s interest in furthering “stable and enduring family units” in which children are supported and reared by two parents applies to all families raising children—not just those headed by different-sex couples.³² Accounts of same-sex-parented children living in the Florida 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 Florida and beyond.

³¹ 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 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), *at* <http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf>.

³² See State Mot. to Dismiss (*supra* n.7) at 21.

II. FLORIDA'S LAWS DE-LEGITIMIZE SAME-SEX-PARENTED FAMILIES IN THE EYES OF THE LAW AND SOCIETY.

When I was little and there was a referendum to make it unconstitutional for gay parents to get married, it sounded like they were forcing my parents to get a divorce. I was very upset and confused. Why can't people just allow others to get married, regardless of their sex? Why can't same-sex couples get married, when it's ok for different sex couples to get married? It's not fair.

J.A.B-M., 11, of Fort Lauderdale, Florida.³³

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.

...

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.³⁴

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

³³ J.A.B.-M. Statement, *supra* n.2.

³⁴ Statement from Payton McGriff of Idaho to Family Equality (Jul. 21, 2014).

school or fallen victim to substance abuse or found myself in 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.³⁵

Although Proponents claim an interest in stabilizing the American family structure, the unavailability of marriage for Florida's 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 their relationships and, as a result, the children themselves. The challenges presented are not inherent in the same-sex-parented family structure, but instead arise from societal and governmental disapproval that Florida's laws 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 children and their families:

³⁵ 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 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.

The children of same-sex parents are demeaned and stigmatized by Florida's categorical exclusion of their families from the protections of marriage. J.B., a fourteen-year-old living with her two moms in Davenport, expressed “[t]he fact that [her] parents can't get married makes [her] feel that everyone isn't equal. Like

[her] moms are not as good as other people's parents."³⁶ Eight-year-old J.S. of Sanford, Florida expresses similar feelings:

*When I look at other married parents I feel happy for their children. Their children get to experience a legal mom or dad or gay parent... Being married also give the parents, like my moms, a legal relationship to each other. This is important so people know how much they love each other.*³⁷

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.”³⁸

These feelings of stigmatization, inferiority, and de-legitimization are common themes heard by Amici who work every day with same-sex-parented children. The former program director of amicus COLAGE testified in New Jersey that the peers of many children with whom she works “question[] the validity of their families because their parents aren’t able to get married.”³⁹ This, in turn, can

³⁶ Statement from J.B. to Family Equality (Sept. 7, 2014).

³⁷ J.S. Statement, *supra* n.24.

³⁸ Payton McGriff Statement, *supra* n.34.

³⁹ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 38 (Apr. 16, 2008) (statement of Meredith Fenton), at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf> (“NJ Hearing Transcript”).

lead to children's insecurity about their parents' relationship, including the fear that "somebody is going to come and break up their family."⁴⁰

J.S. of Sanford explained:

*Getting married would make my new mom my legal mom. She wants to adopt me, and after that we are going to celebrate with a bunch of people. It's going to be very, very fun. I'm okay with that because I love her very, very much.... She can legally say that she's my mom and she's my mom's wife. She can protect me because she's legally my mom, so I would have two legal moms. I worried this year about kids bullying me because my parents are gay, but if they are legally married no one can say they can't be together.*⁴¹

J.A.B.-M. of Fort Lauderdale, describes feelings of isolation:

Sometimes in school, teachers or kids say, "Go ask your mother this..." or "where is your mother..." I am made to feel different and left out. If more people knew that two men (or two women) can get married and have children, then maybe children like me would not feel so left out. Changing the law will help everyone to be aware of children with same-sex parents.

*If the courts do recognize my dads' marriage, then it not only affects me and my family, but also many families for generations to come. There would be less discrimination and more respect.*⁴²

⁴⁰ *Id.* at 76.

⁴¹ J.S. Statement, *supra* n.24.

⁴² J.A.B.-M. Statement, *supra* n.2.

And, nine-year-old S.S. from Florida, feels disrespected:

*I wish my parents could get married because then I can feel like I have a real family. The fact that my parents can't get married makes me feel not respected. When I look at other married parents I feel we are not a real family....It makes me mad that we have to ask the court for true love. I feel like my parents are not respected. I hope the [Court] understands why gay marriage is important to kids like me.*⁴³

To the children with whom Amici work, marriage inequality is an insult; it makes them feel as if the government deems their parents' relationships, their families, and the children themselves inferior, as "lesser citizens."⁴⁴ It sends the message that same-sex-parented families are "not legitimate" and "not welcome."⁴⁵ It creates insecurity—a "corrosive feeling of doubt"—in their perception of family stability.⁴⁶ It fosters confusion because "my family doesn't mean to other people what it means to me."⁴⁷ As just one example, the young son of two gay men was

⁴³ Statement from S.S. to Family Equality (Sept. 11, 2014).

⁴⁴ "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).

⁴⁵ *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.

⁴⁶ *Id.* at 4.

⁴⁷ "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*

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.”⁴⁸

Moreover, children feel “cheated” by marriage inequality.⁴⁹ 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.”⁵⁰

A ten-year-old told New Jersey legislators that the prohibition on same-sex marriage 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.”⁵¹

on LD 1020 Before Me. Joint Comm. on the Judiciary (April 22, 2009) (statement of Samuel Putnam-Ripley), at <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

⁴⁸ “Jeff, Josh, and Andrew,” Family Stories, Family Equality, http://www.familyequality.org/get_informed/family_stories/ (last visited Sept. 14, 2014).

⁴⁹ Statement from Ella Robinson to Family Equality (Jan. 29, 2013).

⁵⁰ Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013).

⁵¹ Sarah Wildman, *Children Speak for Same-Sex Marriage*, N.Y. TIMES, Jan. 20, 2010, at E0, at

To these children, the distinctions made by marriage laws like Florida's are simply nonsensical in relation to their own experiences, exacerbating the feeling of stigmatization and isolation. 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?"⁵²

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 describes how as a child 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

http://www.nytimes.com/2010/01/21/fashion/21kids.html?pagewanted=all&_r=0
(last visited Sept. 14, 2014).

⁵² Ella Robinson Statement, *supra* n.49.

*my country. I had never asked for validation, but blatant exclusion hurts.*⁵³

Social science research confirms that the experiences of and feelings described by these children are typical for many same-sex-parented children. 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.⁵⁴

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, Florida's 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:

⁵³ Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013).

⁵⁴ *NJ Hearing Transcript*, *supra* n.39 (statement of Judith Glassgold).

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.⁵⁵

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

Florida's marriage laws also deprives same-sex-parented 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. For example, same-sex couples cannot file joint tax returns or maximize dependency exemptions, education

⁵⁵ Statement from Jamie Doepel to Family Equality (Feb. 4, 2014).

deductions, child tax credits, and dependent care credits. Same-sex couples therefore carry a heavier tax burden than their different-sex counterparts.

Children of same-sex parents are acutely aware of the insecurity of their family unit caused by the denial of benefits reserved for married different-sex couples. Florida’s marriage laws deprive same-sex-parented children of tangible governmental protections, alienating them from their communities. 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 FLORIDA BY DEEMING THEIR FUTURE COMMITTED RELATIONSHIPS INHERENTLY INFERIOR.

Florida’s laws withholding from same-sex couples the marital status and benefits afforded to different-sex couples hurt another group of young people in Florida—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. 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 2004.⁵⁶

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:

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.⁵⁷

Eric is not alone in his feeling of isolation from his community. LGBT youth similarly perceive themselves as being excluded from protections of marriage available to those in different-sex relationships. As one young man wrote:

⁵⁶ Statement from Eric Wilson to Family Equality (Jul. 23, 2014).

⁵⁷ *Id.*

*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.*⁵⁸

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 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.*⁵⁹

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

⁵⁸ Kathryn Brightbill, et al., *LGBTQ Youth and Young Adult Survey*, EMORY CHILD RIGHTS PROJECT, at http://web.gs.emory.edu/vulnerability/zpdfs/news%20and%20events/Report__LGBTQYOUTH_Finaledit_February%2026%202013.pdf (compiled Jan. 29, 2013).

⁵⁹ *Id.*

citizen....My expectation is that while the rest of my community may disengage me because of my orientation, my government would not.”⁶⁰

The LGBT youth experience in Florida and elsewhere further demonstrates the irrationality of attempts to justify a marriage ban. Barring millions of young people from the institution of marriage—and informing them that they are “second-rate citizen[s]”—cannot be reconciled with Proponents’ assertion that marriage restrictions encourage stable families. To the contrary, these laws only preclude LGBT youth from participating in the marriage benefits touted by Proponents.

CONCLUSION

Florida’s 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. Accordingly, Amici urge affirmance of the Order enjoining Florida from enforcing its laws prohibiting same-sex marriage.

⁶⁰ *Id.*

Respectfully submitted,

Date: December 22, 2014

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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 6,969 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 December 22, 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 Eleventh 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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