

Case Nos. 14-1167 (L), 14-1169, 14-1173

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TIMOTHY B. BOSTIC, et al., *Plaintiffs-Appellees*,
CHRISTY BERGHOFF, et al., on behalf of themselves and all others
similarly situated, *Intervenors-Plaintiffs-Appellees*,

v.

GEORGE E. SCHAEFER, III, in his official capacity as the Clerk of the Court for
Norfolk Circuit Court, *Defendant-Appellant*,

JANET M. RAINEY, in her official capacity as State Registrar of Vital Records,
Defendant-Appellant

MICHÈLE B. McQUIGG, in her official capacity as the Clerk of the Prince
William County Circuit Court, *Intervenor-Defendant-Appellant*

On Appeal from the United States District Court for the Eastern
District of Virginia, Case No. 2:13-CV-00395-AWA-LRL,
The Hon. Arenda L. Wright Allen, District Judge.

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

In Support of Plaintiffs-Appellees and Affirmance of the District Court Order

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

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

STATEMENT OF CONSENT TO FILE

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

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STATEMENT PURSUANT TO F.R.A.P. RULE 29(c)(5)

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

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

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

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

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

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

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

INTRODUCTION

I don't understand why people think the children will be harmed by my moms getting married. I am an honors student at a performing arts school and my moms have always supported me in achieving my goals and love me unconditionally. ... Most of my friends think my moms are cool and totally normal because they are! They work and volunteer and do housework just like everyone else's parents.²

Z.R.C.,³ a 16-year old being raised by her two moms in Virginia.

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 who oppose marriage for same-sex couples frequently make assumptions about the quality of these children’s lives, yet the children themselves are rarely asked to explain what they actually experience.

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

² Statement from Z.R.C. to Family Equality (April 13, 2014) (on file with Family Equality).

³ The individuals whose stories appear in this brief do not seek anonymity, but pursuant to F.R.A.P. (25)(a)(5) and 4th Cir. L.R. 25(c)(3)(C), minors are identified by initials only.

their parents' inability to marry. The Eastern District of Virginia recognized this in the proceedings below:

Of course the welfare of our children is a legitimate state interest. However, limiting marriage to opposite-sex couples fails to further this interest. Instead, needlessly stigmatizing and humiliating children who are being raised by the loving couples targeted by Virginia's Marriage Laws betrays that interest. E.S.T., like the thousands of children being raised by same-sex couples, is needlessly deprived of the protection, stability, the recognition and the legitimacy that marriage conveys.

Bostic v. Rainey, --- F. Supp. 2d ---, 2014 WL 561978,*18 (E.D. Va. 2014).

The voices of lesbian, gay, bisexual, and transgender (LGBT) youth are also too frequently disregarded in these debates. The laws banning marriage for same-sex couples inform these young people that Virginia deems the intimate relationships they may form as unworthy of the "dignity and status" that come with the right to marry. *U.S. v. Windsor*, 133 S.Ct. 2675, 2692 (2013). Any state-sanctioned stigmatization has a profoundly negative impact on these young people's self-esteem, sense of purpose, and well-being that threatens to burden them for the rest of their lives.

This brief presents the voices of these children.

SUMMARY OF ARGUMENT

The proponents of the limitations at issue in the three cases before the Court assert a governmental interest relating to children. Acknowledging that “[m]arriage laws have been, and continue to be, about the pragmatic business of serving society’s child-centered purposes,” Appellant Prince William County Circuit Court Clerk purports to advocate what “will best serve the well-being of the Commonwealth’s children.”⁴ Yet, far from serving the interest of children, the Virginia Marriage Laws⁵ “needlessly stigmatiz[e] and humiliat[e] children who are being raised by the loving couples targeted by Virginia’s Marriage Laws....” *Bostic*, 2014 WL 561978 at *18.

The arguments of those supporting Virginia’s marriage restrictions treat the children of same-sex parents as invisible and undeserving of recognition. Indeed, as Virginia’s State Registrar of Vital Records has pointed out, “the responsible-procreation/optimal-child-rearing rationale is outright demeaning to both same-sex

⁴ *Bostic et al. v. Schaefer, et al.*, Case Nos. 14-1167 (L), 14-1169, 14-1173, Appellant Michèle B. McQuigg’s Opening Brief (Doc. 75) (“McQuigg OB”) at 3.

⁵ “Virginia’s Marriage Laws” refers to Article 1, Section 15-A of the Virginia Constitution, the statutory provisions cited in the opinion of the Eastern District Court of Virginia, and any other law relating to marriage within the Commonwealth of Virginia.

and opposite-sex couples.”⁶ Six million Americans have at least one parent who has identified as lesbian, gay, or bisexual.⁷ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,⁸ there are approximately a quarter of a million children who are currently being raised in same-sex-parented families. Same-sex-parented families live in every state and in 93% of all U.S. counties.⁹ More than 4,500 children in Virginia are being raised by same-sex parents.¹⁰ Amici curiae represent these children of same-sex-parented families and believe that the issues before the Court cannot be properly understood without considering their first-hand accounts.

⁶ *Bostic et al. v. Schaefer, et al.*, Case Nos. 14-1167 (L), 14-1169, 14-1173, Appellant Janet Rainey Opening Brief (Doc. 127) (“Rainey OB”) at 45.

⁷ Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (last visited April 16, 2014).

⁸ Gary J. Gates and Abigail M. Cooke, *United States Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 3 (Sept. 2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf> (last visited April 14, 2014).

⁹ R. Bradley Sears, Gary J. Gates and William B. Rubenstein, *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000*, Williams Institute, UCLA School of Law (2005).

¹⁰ Gary J. Gates and Abigail M. Cooke, *Virginia Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 3 (Sept. 2011), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Virginia_v2.pdf (last visited April 14, 2014) (2,279 same-sex couples in Virginia raising approximately 4,558 children).

As these children attest, their family relationships are no different than anybody else's and no less deserving of the marital protections afforded to families headed by different-sex couples. Indeed, the proponents' efforts to deny marital protections to same-sex couples foster the exact opposite of their professed goal. The laws struck down by the trial court stigmatize and de-legitimize thousands of families, withholding from them the recognition, encouragement, and support the proponents insist promote "more stable and enduring" relationships to benefit children.¹¹

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

¹¹ McQuigg OB at 43.

¹² *Id.* at 35 (internal quotations omitted).

¹³ Anthony Michael Kreis, *Is Marriage Equality Inevitable*, HUFFPOST GAY VOICES, Sept. 13, 2012, 6:22PM, at 1, http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html (last visited April 14, 2014).

ARGUMENT

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

I am a sixteen year old Junior at Oakton High School. I sing in the OHS chorus and my church choir at Foundry United Methodist Church. I do volunteer work for the Appalachia Service Project every summer in the remote regions of Virginia and West Virginia.

I do not understand how my State (the Commonwealth of Virginia) does not recognize my two dads as being married. My dads have been together for 18 years. ... And We are a Family. My dads have taught me [about] the importance of marriage and they always talked to me and my brother how important it is to be married. I saw that myself when they had the opportunity to become “legally married” in California in 2008. They had only a few weeks to do so and we all flew back to California and were joined by our friends to become legally married. That was a special time for my family.

I knew that my dads fought very hard for the chance to be married in California. When the Supreme Court was debating the question of gay marriage, we all went to the Supreme Court to see what it was all about. That was history!! ...

Growing up, I have experienced so many good things. We travel together - I have been with my dads to fourteen different countries. My family has taught me to be accepting of everyone, and I simply do not think in terms of black or white, gay or straight.

C.G.-A., a 16 year-old being raised by his two dads in Virginia.¹⁴

Amici, and the children of LGBT parents whom amici represent, dispute the notion that a family is worthy of protection only if it has one male and one female

¹⁴ Statement from C.G.-A. to Family Equality (April 16, 2014) (on file with Family Equality).

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.”¹⁵ 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.

A.G.-A. shared similar views as his brother, C.G.-A., regarding being raised by their two dads in Virginia:

I am a fourteen year old eight[h]-grader at Luther Jackson Middle School and will begin High School at Oakton High School next fall. I play football and lacrosse and both of my teams won the Fairfax County championships last year.

I was really happy when my dads got married because I could tell that they were happy. I did not understand what was going on at the time because I had never known my dads to be anything but as married. I just knew that it was important to them and that it was so important that we all flew to California as a family so they could get married.

I don't understand why anyone would not think that my dads should be married. If marriage is a good thing, why would anyone oppose anyone else getting married and sharing their life together. To me it seems stupid that some people can get married and others cannot. I

¹⁵ Brian Arsenault, Op-Ed, *Maine Voices: Young man's wish for his moms on Mother's Day: the right to marry. Families come in different shapes and sizes, but what matters is the love they show each other*, PORTLAND PRESS HERALD, May 11, 2012, available at http://www.pressherald.com/opinion/young-mans-wish-for-his-moms-on-mothers-day-the-right-to-marry_2012-05-11.html (last visited April 14, 2014).

*am African-American, and I have learned in history that only fifty years ago, I could never have married a girl who is white here in Virginia. That seems odd and hateful to me.*¹⁶

Families differ in the number of children, the age ranges of the children and the parents, the families' religion, and the activities they enjoy doing together. Some children, regardless of their parents' sexual orientation, come from divorced or blended families. And some children have LGBT parents living in committed and loving same-sex relationships. In both same-sex and different-sex-parented families, the parents may have married, joined through civil unions or commitment ceremonies, or chosen not to seek any governmental or ceremonial recognition of their relationship. However, only for same-sex-parented families did Virginia deny the parents the right to marry.

Brian Arsenault, a college student, explained in an article in the *Portland Press Herald* how his same-sex-parented family shares similar experiences to many different types of families:

As a young kid, I didn't understand that some folks might think of my family as something different or out of the ordinary. I never kept my family a secret. To me, families come in many different shapes and sizes. And mine, different by some standards but similar in most ways, was just another one of those. My parents – my two moms – go to work every day, like other parents. They cook dinner and mow the yard. They take care of the house. Volunteer in the community. Pay their bills. Do the thousands of little things that keep a household

¹⁶ Statement from A.G.-A. to Family Equality (April 16, 2014) (on file with Family Equality).

*running. And they love me, unconditionally. But it didn't take me long to realize that my mom and her partner didn't have the same rights as other people. They are treated differently by the law and can't do many of the things that other families take for granted.*¹⁷

Families in which LGBT parents are raising children are neither an oddity nor a rarity. As explained above, approximately a quarter of a million children—thousands of them in Virginia—are currently being raised by same-sex parents. When amici talk to these children, they hear the same theme over and over again: their families are typical American families. Their moms and dads are raising their children to love their country, stand up for their friends, treat others the way they would like to be treated, and tell the truth. They care about the same things all parents do—hugs and homework, bedtime and bath time. They want bright, secure, and hopeful futures for their children.

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

Sarah Gogin describes growing up with her two dads:

I was the multiracial daughter being raised by two Catholic Jesuit psychologists. This was a therapy session waiting to happen. But

¹⁷ Brian Arsenault, Op-Ed, *supra* note 15.

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

ultimately, my childhood was like any other. Plaid skirts and Peter Pan collars itched from K through 8 at St. Gabriel's school, where I participated in the Academic Decathlon, winter and spring performances, and athletic teams including soccer, volleyball, basketball, and baseball. Kevin, aka Pop (Papa, Pa, Poppy, Popsicle), became the first male president of the Mother's Board and Dan, aka Dad (just Dad), became assistant soccer coach and one of the key members of the Athletic Board.

[M]y high school experience was like many other hormonal teen girls' high school experiences. It sucked. Acne, hormones, boys, college, SATs, musicals, proms, sporting tournaments. You name it; I went through it—with my dads' support every step of the way.¹⁹

Zach Wahls, a University of Iowa engineering student who was raised by two moms, described his family to the Iowa House of Representatives in 2011: “I guess the point is our family really isn't so different from any other Iowa family. [W]hen I'm home we go to church together, we eat dinner, we go on vacations. But, you know, we have our hard times too, we get in fights.”²⁰

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

I live in a home with two women who love each other very much. I call them my mothers. There is nothing wrong with the way they live or the way they raise their children. I have proof of this. I've seen it

¹⁹ Statement from Sarah Gogin to Family Equality (Feb. 21, 2013) (on file with Family Equality).

²⁰ *Hearing on HJR 6 Before the 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”) (last visited April 14, 2014).

*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.*²¹

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.*²²

Families with same-sex parents also face the same challenges in their day-to-day lives as different-sex-parented families. J.N., a seventeen year-old boy living in Virginia with his two moms and six year-old brother, has Spina Bifida. His mom Sarah works part-time from home and is able to take J.N. to his many doctor appointments, which allows his mom Dawn to work full-time in cancer research. J.N.'s moms were married in Massachusetts in 2010, but J.N. is "very angry" that their marriage is not recognized in Virginia.²³ "It makes [him] sad that Virginia

²¹ *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).

²² Zach Wahls, *supra* note 20.

²³ Statement from J.N. to Family Equality (April 11, 2014) (on file with Family Equality).

can't accept [them]" because his moms "have been through difficult tasks to get through this situation."²⁴ Although J.N. "feel[s] like [his] community/friends/church/school/family treat[] [him] with respect," he believes that "Virginia needs to move on and pass this act already."²⁵ After all, "[i]t's not rocket science."²⁶

Importantly, LGBT parents model positive and committed relationships—not just positive same-sex relationships. J.N. puts it simply: "They Love each other. They do almost everything together. That shows a lot of love."²⁷ 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).²⁸

²⁴ Statement from J.N., *supra* note 23.

²⁵ Statement from J.N., *supra* note 23.

²⁶ Statement from J.N., *supra* note 23.

²⁷ Statement from J.N., *supra* note 22.

²⁸ Ella Robinson, *How and Why I Am Outspoken*, Family Equality Council Family Room Blog (June 19, 2012), http://www.familyequality.org/family_equality/the_family_room_blog/2012/06/19/1292/how_and_why_i_am_outspoken (last visited April 14, 2014).

And as 13-year old K.F.-L. in Virginia told Family Equality: “The best part about [my moms’] love is that it never ends. That is why this is so important. It is because it is the type of love that ... is endless! I love my family and I want everybody to be as lucky as I am. ... I want people to know that I think treating my family differently is not fair....”²⁹

Indeed, children with same-sex parents enjoy being part of their parents’ celebration of love and commitment. K.F.-L. thought her “moms’ wedding was amazing! They married in New York once it was allowed because that is where one of my Moms was raised and when they passed the law my Grandma said ‘Let’s have a wedding!’ We took almost an hour just to take pictures!”³⁰ Z.R.C., in Virginia, explained that her “grandmother passed away just before Christmas and it made her happy to know that my moms got married [in Maryland] even though it isn’t legal where we live. Someday when their marriage is legal in VA they will have a wedding just like everyone else and I will get to be a bridesmaid but I’m sad that my grandmother won’t be here for that day. She made my moms promise to still have a ceremony even if she couldn’t be here for it.”³¹

²⁹ Statement from K.F.-L. to Family Equality (April 2, 2014) (on file with Family Equality).

³⁰ Statement from K.F.-L., *supra* note 29.

³¹ Statement from Z.R.C., *supra* note 2.

The experiences of these young people are consistent with social science findings: “Gay and lesbian couples are as capable as other couples of raising well-adjusted children. In the field of developmental psychology, the research supporting this conclusion is accepted beyond serious debate.” *Bostic, supra*, 2014 WL 561978,*18.³² A study by the Gay, Lesbian and Straight Education Network revealed that LGBT parents were more likely to attend their children’s parent-teacher conferences and volunteer in the schools than a national sample of parents.³³ Nearly all of the LGBT parents surveyed (94%) reported attending parent-teacher conferences, as compared to 77% of the national sample of parents.

The same study showed that LGBT parents were also more likely to stay involved in their children’s schooling as the children progressed through the educational system, with 89% of LGBT parents attending a high school parent-teacher conference or back-to-school night as compared to 56% of the parents in the national sample.³⁴ LGBT parents also reported a higher level of communication with their children’s school than the national sample regarding

³² See also *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in our Nation’s K-12 Schools*, Gay, Lesbian and Straight Education Network (2008) at 25, available at <http://glsen.org/sites/default/files/Involved,%20Invisible,%20Ignored%20Full%20Report.pdf> (last visited April 14, 2014).

³³ *Involved, Invisible, Ignored, supra* note 32, at 27.

³⁴ *Involved, Invisible, Ignored, supra* note 32, at 27–28.

their child's future education, their child's school program, information on doing schoolwork at home, their child's positive or negative behavior at school, and about doing volunteer work at school.³⁵

Decades of social science research confirms that children of same-sex parents have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.³⁶ Several studies have even suggested that children raised by same-sex parents are better adjusted psychologically than their peers.³⁷

³⁵ *Involved, Invisible, Ignored*, *supra* note 32, at 28–32.

³⁶ Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012) (“[N]umerous studies of children and adolescents raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that they are as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents.”); *see also* Ian Rivers, V. Paul Poteat and Nathalie Noret, *Victimization, Social Support, and Psychological Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, DEVELOPMENTAL PSYCHOLOGY, 1:127–134 (2008); Stephen Erich, Patrick Leung and Peter Kindle, *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, JOURNAL OF GLBT FAMILY STUDIES, 1:43-60 (2005); Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, CHILD DEVELOPMENT, 75:1886-1898 (2004); Fiona MacCallum and Susan Golombok, *Children Raised in Fatherless Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence*, JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY, 8:1407–1419 (2004); Decl. of Michael Lamb, ER 498–638.

³⁷ Henny M.W. Bos, Frank van Balen and Dymph van den Boom, *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, AMERICAN

All of the leading national child welfare and social service organizations agree that children raised by lesbian, gay, and bisexual parents are just as happy, healthy, and well-adjusted as children raised by different-sex parents. The American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, Child Welfare League of America, and National Association of Social Workers all have published organizational statements confirming that lesbian, gay, and bisexual people make excellent parents who raise developmentally healthy children.³⁸

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).

³⁸ American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised and approved 2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited April 14, 2014); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples*, PEDIATRICS, 109(2):339–340 (2002), reaffirmed May 2009; American Psychiatric Association, *Position Statement on Adoption and Co-parenting of Children by Same-sex Couples* (2002), <http://www.psychiatry.org/advocacy--newsroom/position-statements> (last visited April 14, 2014); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited April 14, 2014); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/programs/culture/glbtposition.htm> (last visited April 14, 2014); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003–2006, 146–150, *available at*

The proponents make clear that one of their fundamental interests in marriage lies in protecting the interest of Virginia's children.³⁹ If this is true, then the families of these children and many thousands of other children embody this purpose as fully as any family of different-sex parents. "The state's compelling interests in protecting and supporting our children are not furthered by a prohibition against same-sex marriage." *Bostic, supra*, 2014 WL 561978 at *20.

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

The fact that my parents can't get married makes me feel mad and sad. When I look at other married parents, I feel that my parents are just the same. I wish my parents could get married because they deserve to be treated equally.

As stated to Family Equality by A.S., a 13-year old living in Virginia with her two moms.⁴⁰

*The fact that the government doesn't recognize [gay couples] just helps prove to the kids who are mean to me that they are right because even the state doesn't approve. It's so wrong.*⁴¹

<http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf> (last visited April 14, 2014).

³⁹ McQuigg OB at 53-60.

⁴⁰ See Statement from A.S. to Family Equality (April 11, 2014) (on file with Family Equality).

⁴¹ Statement from M.P. and C.P. to Family Equality (March 17, 2014) (on file with Family Equality).

Although proponents of Virginia's Marriage Laws claim an interest in stabilizing the American family structure, the unavailability of marriage for same-sex couples in Virginia has the exact opposite effect. Placing an official stamp of governmental opprobrium on the relationships of same-sex parents instead serves to stigmatize and de-legitimize the relationships and, as a result, the children themselves. Indeed, the major challenge most same-sex-parented families must surmount is nothing inherent in their family structure, but rather the societal and governmental disapproval that Virginia's laws represent and perpetuate.

The proponents disclaim any intent to stigmatize or demean same-sex-parented families, but that is the plain effect of the marriage limitations they support. The children of same-sex parents are, in fact, very much demeaned and stigmatized by the states' categorical exclusion of their families from the protections of marriage. As the Supreme Court observed in the context of the federal Defense of Marriage Act ("DOMA"), this kind of differential treatment "humiliates tens of thousands of children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and their daily lives." *Windsor*, 133 S.Ct. at 2694; *see also Bostic, supra*, 2014 WL 561978 at *18 (recognizing that Virginia's marriage bans

“needlessly stigmatiz[e] and humiliat[e] children who are being raised by loving [same-sex] couples”).⁴²

These feelings of stigmatization, inferiority, and de-legitimization are common themes heard by the amici who work every day with children raised by same-sex parents. As the former program director of amicus COLAGE told the New Jersey Civil Union Review Commission, many children with whom she has worked have had their peers “question[] the validity of their families because their parents aren’t able to get married.”⁴³ This in turn can lead children to have insecurity about their parents’ relationship, including the fear that “somebody is going to come and break up their family.”⁴⁴

To the children with whom the amici work, marriage inequality is an insult; but even more, it makes them feel as if the government deems their parents’ relationship, their entire family, and the children themselves as inferior, as “lesser citizens.”⁴⁵ It sends the message that their families are “not legitimate” and “not

⁴² See also Rainey OB at 45.

⁴³ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 38 (April 16, 2008) (statement of Meredith Fenton) (“Fenton Testimony”), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf> (last visited April 14, 2014).

⁴⁴ Fenton Testimony, *supra* note 43, at 76:4–5.

⁴⁵ “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

welcome.”⁴⁶ It creates an insecurity—a “corrosive feeling of doubt”—in their perceived stability of their family.⁴⁷ It creates fear that even if a child is not treated differently now, she could be “once people find out [she] has two moms.”⁴⁸ It fosters confusion because “my family doesn’t mean to other people what it means to me.”⁴⁹ 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

K.F. to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).

⁴⁶ *Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage*, Center for Prevention of Hate Violence (Apr. 2009) (“*Honoring All Maine Families*”) at 5, available at <http://www.preventinghate.org/wp-content/uploads/2011/03/Honoring-All-Maine-Families-2009.pdf> (last visited April 14, 2014).

⁴⁷ *Honoring All Maine Families*, *supra* note 46, at 4.

⁴⁸ Statement from A.S., *supra* note 40.

⁴⁹ “I consider my mom’s partner my stepmom. But society does not. My school doesn’t. My doctor doesn’t. Sometimes my friends’ parents don’t either. So that leaves me in a strange position. My family doesn’t mean to other people what it means to me. I am stuck saying ‘my mom’s partner’ or ‘my mom’s girlfriend,’ when, really, I should have the right to call her ‘my stepmom.’” *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (April 22, 2009) (statement of Samuel Putnam-Ripley), available at <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

because they were “not family.”⁵⁰ K.F.-L. in Virginia worries that “if [her] mom were to pass away we wouldn’t have the same support other kids would have if one of their parents dies. We would probably have to move because we wouldn’t be able to pay for the home we currently live in.”⁵¹

Moreover, these children feel “cheated” by marriage inequality.⁵² In the words of then-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.”⁵³

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.”⁵⁴

⁵⁰ “Jeff, Josh, and Andrew,” Family Stories, Family Equality, http://www.familyequality.org/get_informed/family_stories/ (last visited April 10, 2014).

⁵¹ Statement of K.F.-L., *supra* note 29.

⁵² Ella Robinson, *supra* note 28.

⁵³ Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013) (on file with Family Equality).

⁵⁴ S.W., *Children Speak for Same-Sex Marriage*, N.Y. TIMES, Jan. 20, 2010, at E0, *available at*

This stigmatization is exacerbated by the fact that to these children the distinctions these laws make simply are nonsensical in relation to what the children have themselves experienced. As Ella Robinson said in the context of DOMA, “How can they tell me that my family doesn’t count? That the relationship between my two dads that I have not only learned from and cherished, but also reaped the benefits of, isn’t acknowledged on the federal level? That the love they share isn’t deserving of the same protection and laws that a man and a woman receive?”⁵⁵

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

How could the free society that raised me and taught me everything that I know, now deny me my other foundation, a family that is recognized and protected as such? It felt like a slap in the face from

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

⁵⁵ Ella Robinson, *supra* note 28.

*my country. I had never asked for validation, but blatant exclusion hurts.*⁵⁶

As Z.R.C. in Virginia explained to Family Equality, it makes children question what is “fair and equal” in our society: “I feel like it is wrong that [my moms] are treated differently because our country is supposed to be fair and equal but I guess that is only true if you have a mom and a dad.”⁵⁷

Social science research confirms that what these individual children are experiencing is typical of what many children of same-sex-parents feel. As Dr. Judith Glassgold, a licensed psychologist, testified before the New Jersey Civil Union Review Commission, the feeling that their parents’ relationship is deemed “inherently different and potentially inferior to heterosexual relationships,” and that their parents are “inherently less deserving than heterosexual couples of society’s full recognition,” psychologically burdens the children of same-sex parents.⁵⁸

The stigma and feelings of illegitimacy, anger, and unfairness that these children perceive are well-founded, particularly when the practical effects of

⁵⁶ Statement from T.P. to Our Family Coalition (Feb. 5, 2013) (on file with Family Equality).

⁵⁷ Statement of Z.R.C., *supra* note 2.

⁵⁸ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 45 (April 16, 2008) (statement of Dr. Judith Glassgold), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf> (last visited April 14, 2014).

marriage denial are considered. Just as DOMA did before it was struck down, Virginia's marriage limitations "touch[] many aspects of ... family life, from the mundane to the profound." *Windsor*, 133 S.Ct. at 2694. For same-sex couples, being barred from marriage means being denied federal tax incentives available to different-sex couples living next door. It means not being allowed to file joint federal tax returns or maximize dependency exemptions, education deductions, child tax credits, and children and dependent care credits and therefore carrying a heavier tax burden than their different-sex counterparts. The refusal of Virginia to allow marriage for same-sex couples deprives their families of all federal benefits to which they would be entitled if state law considered them married. *See, e.g., Windsor*, 133 S.Ct. at 2694–95 (discussing various federal benefits dependent on marital status); *see also* Rainey OB at 48 (discussing "the legal and economic benefits that are locked away from same-sex couples").

"[S]ame-sex couples, like other parenting structures, can make quality and successful efforts in raising children. That is not in question." *Bostic, supra*, 2014 WL 561978 at *19. But by withholding the possibility of marriage from their parents, the Virginia marriage bans damage the youth whom amici represent, depriving them of tangible governmental protections, alienating them from their communities, and creating an insecurity among them about their families. These laws "instruct[] all [state] officials, and indeed all persons with whom same-sex

couples interact, including their own children, that their [relationship] is less worthy than the [relationships] of others.” *Windsor*, 133 S.Ct. at 2696.

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

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

Kenzie Tillitt, then a high school senior, testifying before the Nevada Assembly Committee on Legislative Operations and Elections.⁵⁹

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

Stacy Salas, then a student at the University of Hawai'i at Manoa, testifying before the Hawaii Legislature.⁶⁰

Laws banning marriage between same-sex couples also hurt another group of young people in Virginia—LGBT youth. These young people's perceptions of

⁵⁹ Minutes of the meeting of the Assembly Committee on Legislative Operations and Elections (77th Session) (May 9, 2013), Hearing on Senate Joint Resolution 13 (1st Reprint) *available at* <https://nelis.leg.state.nv.us/77th2013/App#/77th2013/Committee/Meetings/Assembly/Legislative%20Operations%20and%20Elections> (last visited April 14, 2014); *also available at* <http://www.youtube.com/watch?v=PmbqWwKzBk>.

⁶⁰ Testimony on S.B. 232 Relating to Civil Unions, Hawaii Senate Judiciary and Labor Committee, January 25, 2011 ("S.B. 232 Testimony"), *available at* http://www.capitol.hawaii.gov/session2011/Testimony/SB232_TESTIMONY_JDL_01-25-11.pdf (last visited April 14, 2014).

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

As one young man wrote:

*Like many other Americans, I dream of finding the love of my life and raising a family with them, passing on many of the values that my parents taught me when I was young. Yet this dream is currently denied to me on many levels, simply because my spouse and I would be the same sex. Despite many claims to the contrary by vocal opponents of marriage equality, I don't want to destroy or alter American society and values; I want to take part in them, too.*⁶¹

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,

⁶¹ K.B., B.W.K., M.R., and N.V., LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT, available at http://www.law.emory.edu/fileadmin/NEWWEBSITE/Centers_Clinics/Barton/Emory-DOMA-study.pdf (compiled Jan. 29, 2013) (“Child Rights Project Survey”) (last visited April 14, 2014).

*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.*⁶²

Comments from LGBT youth illustrate the powerful effect of state-sanctioned disapproval of the relationships often touted as the cornerstone of responsible adulthood. A college student described the laws at issue in these cases as “saying I am a second-rate citizen. . . . My expectation is that while the rest of my community may disengage me because of my orientation, my government would not.”⁶³

Barring millions of young people from full participation in the institution the proponents insist is uniquely capable of supporting “stable and enduring family units”⁶⁴ cannot be reconciled with the interest they claim is at the heart of the issues before the Court—“educating, socializing, and preparing [our] future citizens to become productive participants in civil society.”⁶⁵

CONCLUSION

While the proponents will tell you that Virginia’s laws banning marriage for same-sex couples are good for children, they offer no evidence to suggest that

⁶² Child Rights Project Survey, *supra* note 61.

⁶³ Child Rights Project Survey, *supra* note 61.

⁶⁴ S.B. 232 Testimony, *supra* note 60.

⁶⁵ McQuigg OB at 25 (internal quotations omitted).

Virginia's marriage bans have helped even one child. And children raised by same-sex parents in Virginia will tell you the laws have the exact opposite effect. These children will tell you that the laws stigmatize and de-legitimize their families. And they will tell you that their families are just as deserving of recognition, respect, and protection as those of children with different-sex parents. And while the proponents say these laws promote social order, the LGBT youth whom these laws discourage from fully participating in civic life and who have personally experienced the harm the laws engender and perpetuate cannot agree.

Based on the foregoing, amici urge this Court to affirm the district court order.

Respectfully submitted,

Date: April 18, 2014

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,855 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system in Case Nos. 14-1167(L), 14-1169, 14-1173 on April 18, 2014.

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

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