

Case Nos. 14-2386, 14-2387, 14-2388, 14-2526

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MARILYN RAE BASKIN, ET AL.,
Plaintiffs-Appellees,

v.

PENNY BOGAN, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of Indiana
The Honorable Richard L. Young
District Court Case No. 1:14-cv-00355-RLY-TAB
District Court Case No. 1:14-cv-00404-RLY-TAB
District Court Case No. 1:14-cv-00406-RLY-TAB

VIRGINIA WOLF, ET AL.,
Plaintiffs-Appellees,

v.

SCOTT WALKER, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court for the Western District of
Wisconsin
The Honorable Barbara B. Crabb
District Court Case No. 3:14-cv-00064-bbc

**AMICI CURIAE BRIEF OF
FAMILY EQUALITY COUNCIL, COLAGE, CENTER FOR FAMILIES,
INDIANA YOUTH GROUP, THE JAMES B. MORAN CENTER FOR YOUTH
ADVOCACY, and MARION COUNTY COMMISSION ON YOUTH
In Support of Plaintiffs-Appellees and To Affirm the District Court Orders**

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**CORPORATE DISCLOSURE STATEMENT
FED. R. APP. P. 26.1**

None of the amici are corporations that issue stock or have parent corporations that issue 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).

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 curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	6
SUMMARY OF ARGUMENT	8
ARGUMENT	11
I. SAME-SEX PARENTS ARE SUCCESSFULLY RAISING THE NEXT GENERATION.....	11
II. THE MARRIAGE LAWS LEGALLY AND SOCIALLY DE- LEGITIMIZE FAMILIES HEADED BY SAME-SEX PARENTS AND DO NOTHING TO BENEFIT THEIR CHILDREN	18
A. Marriage Discrimination Laws Can Cause Children Of Same- Sex Families To Be Humiliated, Insecure, And Fearful.....	19
B. Marriage Discrimination Laws Cause Insecurity In Children Of Same-Sex Parents By Depriving Them Of Important Benefits Available To Married Different-Sex Parents	23
III. LAWS BANNING SAME-SEX COUPLES FROM MARRIAGE ALSO HARM LGBT YOUTH IN INDIANA AND WISCONSIN BY INFORMING THEM THAT THEY AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS ARE INHERENTLY INFERIOR	27
CONCLUSION	30

TABLE OF AUTHORITIES

CASES

Baskin, et al. v. Bogan, et al.,
 No. 14-cv-00355 (S.D. Ind. June 25, 2014).....6, 8

Baskin, et al. v. Bogan, et. al.,
 Nos. 14-2386, 14-2387, and 14-2388 (7th Cir. July 15, 2014).....8, 30

U.S. v. Windsor,
 570 U.S. ___, 133 S. Ct. 2675 (2013)..... passim

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 Case No. 14-2526 (7th Cir. July 23, 2014).....8

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2006 Wisconsin Referendum 18

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Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children’s Adjustment, JOURNAL OF FAMILY PSYCHOLOGY, 12:402–419 (1998)17

Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement (revised and approved 2009).....18

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Is Marriage Equality Inevitable, HUFFPOST GAY VOICES, Sept. 13, 201210

LGBT Parenting in the United States, Williams Institute (2013).....9, 10

LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT30

Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections (May 9, 2013).....28

Mothers, Fathers, Families, and Circumstances: Factors Affecting Children’s Adjustment, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, (2012)17

Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples, PEDIATRICS, 109(2):339–340 (2002)18

Position Statement on Adoption and Co-parenting of Children by Same-sex Couples (2002).....18

Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults, (last visited Feb. 22, 2013)18

Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents, CHILD DEVELOPMENT, 75:1886-1898 (2004).....17

Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000 Williams Institute, UCLA School of Law (2005)9

Sexual Orientation, Parents, & Children (2004).....18

SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 146–150, 2003–2006.....18

Statement from Austin Horton to Family Equality (February 3, 2014)14

Statement from Beth Sherman to Family Equality (May 10, 2014).....25

Statement from Bobby McMillan to Family Equality (February 12, 2014).....28

Statement from Brian Johnston to Family Equality (March 14, 2014)14

Statement from Christina Bowers to Family Equality (May 4, 2014).....26

Statement from Christopher Lindsay-Pittman to Family Equality (March
17, 2014) 25, 29

Statement from Erin Kirby to Family Equality (March 17, 2014) 14, 22

Statement from Jamie Doepel to Family Equality (February 4, 2014)24

Statement from K. KJ. to Family Equality (July 4, 2014)..... 13, 14, 20

Statement from L.C. to Family Equality (July 4, 2014) 15, 22

Statement from M.P. and C.P. to Family Equality (March 17, 2014).....22

Statement from Ricky Hill to Family Equality (February 10, 2014).....29

Statement from S. FS. to Family Equality (July 17, 2014).....15

Statement from S. KJ. to Family Equality (July 4, 2014).....25

Statement from Samantha Jones to Family Equality (June 4, 2014).....13

*Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review
Comm’n at 38 (April 16, 2008).....21*

*United States Census Snapshot: 2010, Williams Institute, UCLA School of
Law (Sept. 2011).....9*

*Victimization, Social Support, and Psychological Functioning Among
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DEVELOPMENTAL PSYCHOLOGY, 1:127–134 (2008)17*

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Fed. R. App. P. 2513

Fed. R. Civ. P. 5.213

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 ("LGBT") 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 LGBT parents and their children. Family Equality works extensively with the children of 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 and grandparents with whom it has worked.

¹ Some 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 the amici and their constituents.

COLAGE is the only national organization led for and by 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 our families differently can be isolating and challenging, particularly for children. COLAGE, which was founded in 1990, has active chapters across the United States 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, transgender, and queer families for nearly 25 years, COLAGE can attest to the critical importance to children of having their parents' relationships recognized and respected on every level—socially, institutionally, politically, and legally.

Center For Families, as an organization, believes that a family is defined by its members. Its mission is to partner with parents to nurture, protect and teach their children. It does this by providing a number of services that support and are consistent with this mission. Access to private, social support is not enough to help parents raise healthy, strong children. For parents to be successful, it is essential to also have access to an infrastructure of public policies and laws that support the functioning of all families. Center For Families believes that marriage discrimination is a road block for many families, inhibiting their ability to give their children equal access to what children need to be competent and contributing

adults. It undermines a parent's personal efficacy—belief in their strengths as parents; and undercuts their children's secure place in the world. It is critical for all children to know that their parents' relationships are respected and recognized socially and legally for their own self-worth and confidence to flourish.

Indiana Youth Group (“YIG”) provides safe places and confidential environments where self-identified lesbian, gay, bisexual, transgender, and questioning youth are empowered through programs, support services, social and leadership opportunities and community service. YIG advocates on their behalf in schools, in the community and through family support services.

Based in Evanston, Illinois, **The James B. Moran Center for Youth Advocacy** (the “Moran Center”) provides low income Evanston youth and their families with integrated legal and social work services to improve their quality of life at home, at school, and within the Evanston community. The Moran Center's goal is to provide Evanston youth and their families with the tools to refrain from self-destructive behavior, the support to successfully emerge from a challenging legal situation, and the ability to thrive in the local community as productive citizens. To that end, the Moran Center's programmatic approach focuses on direct advocacy and representation, juvenile delinquency prevention, and client and community restoration.

Marion County Commission on Youth (“MCCOY”) is a non-partisan and independent non-profit organization that champions the positive development of youth through leadership on key issues and support of the youth worker community. MCCOY works toward the goal of ensuring that every young person in central Indiana has opportunities to thrive, learn, engage, and contribute. MCCOY serves as an advocate on behalf of youth, a capacity builder that prepares youth-serving organizations to support youth, a convener that brings the community together to address youth issues, and a resource that provides tools and information to young people. MCCOY promotes positive practices and effective policies by educating leaders and community members about key youth development issues, supporting formal and informal policies that provide young people with the opportunities they need to succeed, and consulting and empowering young people to be advocates for their own community goals. MCCOY believes that bans on same-sex marriage have potential detrimental effects on children, including those who live in same-sex parent households, those who live in unmarried heterosexual parent households, and youth who identify as lesbian, gay, bisexual, or transgender. Banning same-sex marriages institutionalizes the discrimination and stigma faced by LGBT families and their children. The mental and physical stigma-related prejudice and discrimination experienced by individuals who identify as LGBT can lead to victimization

through bullying and hate crimes and have been linked to higher rates of post-traumatic stress disorder, depression, anxiety, substance abuse and suicide. MCCOY believes that all youth should have the opportunity to thrive in secure and loving families, free from societal discrimination of any kind.

INTRODUCTION

In time, Americans will look at the marriage of [same-sex] couples such as Plaintiffs, and refer to it simply as a marriage – not a same-sex marriage. These couples, when gender and sexual orientation are taken away, are in all respects like the family down the street. The Constitution demands that we treat them as such.

Judge Richard Young, *Baskin, et al. v. Bogan, et al.*²

Too often missing from discussions about the importance and meaning of marriage are the voices of children raised by same-sex parents, those who live every day within the family structure at the heart of these lawsuits. Opponents of marriage for same-sex couples frequently make assumptions about the quality of these children's family lives, yet the children themselves are rarely asked to describe their experiences. The absence of their voices is unfortunate because these children are uniquely qualified to speak about how their families look feel, and function and how the availability—or unavailability—of marriage for their parents colors their daily lives. These children are also among those persons most directly affected by their parents' inability to marry.

LGBT youth are also too frequently unheard in these debates. They are the ones who can best explain how withholding marriage from same-sex couples informs them that they, and any future relationship they intend to form, are

² Entry on Cross-Motions for Summary Judgment at 31, No. 14-cv-00355 (S.D. Ind. June 25, 2014) (Dkt. 90) (“*Baskin*”).

unworthy of recognition by their government and unworthy of the status and dignity that accompanies the right to marry.

This brief presents the voices of these children and youth.

SUMMARY OF ARGUMENT

The proponents of the laws excluding same-sex couples from marriage in Indiana and Wisconsin³ assert an interest in protecting the welfare of children. They argue that “[g]overnment has a compelling interest in making sure children are properly cared for” and that the civil institution of marriage is the mechanism by which the state encourages and assists parents in caring for their children.⁴ In this brief, the children of same-sex parents explain why the institution should be available for their parents and its protections available to them. And LGBT youth describe what it means for the government to tell them that the institution is closed to them and that the children they may one day raise will be ineligible for its protections.

The children of same-sex parents understand that “when [the] gender and sexual orientation [of their parents is] taken away,” their families “are in all respects like the family down the street.”⁵ These children see their parents go to

³ The laws at issue here are set forth in Indiana Code § 31-11-1-1, in Wisconsin Statutes § 765.001 and § 765.001(2), and in the 2006 Wisconsin Referendum 1, a voter-approved amendment to Article XIII, Section 13 of the Wisconsin Constitution (collectively the “Marriage Laws”).

⁴ Brief and Required Short Appendix of Appellants at 14-15, *Baskin, et al. v. Bogan, et al.*, Nos. 14-2386, 14-2387, and 14-2388 (7th Cir. July 15, 2014) (Dkt. 34) (“Baskin AOB”); Wisconsin State Defendants-Appellants’ Brief and Short Appendix at 44-45, *Wolf, et al. v. Walker, et al.*, Case No. 14-2526 (7th Cir. July 23, 2014) (Dkt. 50-1) (“adopt[ing] by reference and join[ing] § I.A of” Baskin AOB).

⁵ *Baskin*, at 31.

work, pay the bills, read bedtime stories, play hide-and-seek, go to church, volunteer, and do all the other things that make up typical family life. But by preventing their parents from marrying—or from having their out-of-state marriages recognized back home—the laws at issue tell these children that they are second-class citizens, less worthy of protection than children in other Indiana and Wisconsin families.

Six million Americans have at least one parent who has identified as lesbian, gay, or bisexual.⁶ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,⁷ there are approximately a quarter of a million children who are currently being raised in same-sex-parented families. Same-sex-parented families live in every state and in 93% of all U.S. counties.⁸ The Midwest, including the states of this Circuit, is one of the regions in which it is most common for same-sex couples to raise children.⁹ Amici curiae represent

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

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

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

⁹ Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute, UCLA School of Law, at 1 (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

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.

The marriage prohibitions of Indiana and Wisconsin stigmatize and de-legitimize children being raised by same-sex parents, withholding from them the recognition, encouragement and support conferred on families headed by different-sex parents. And, as the stories relayed to amici confirm, this stigmatization and de-legitimization is profoundly felt by the children. Indeed, the United States Supreme Court in *U.S. v. Windsor* recognized that laws like the Marriage Laws “humiliate tens of thousands of children now being raised by same-sex couples. [It] makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” 570 U.S. ___, 133 S. Ct. 2675, 2694 (2013).

The harms inflicted by these laws also extend to LGBT youth. The denial of marriage rights for same-sex couples 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.”¹⁰ Their stories, too, must be heard to understand the impact the Marriage Laws have on the children and youth living within the boundaries of this Circuit.

¹⁰ Anthony Michael Kreis, *Is Marriage Equality Inevitable*, HUFFPOST GAY VOICES, Sept. 13, 2012, 6:22PM, at 1, available at http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html.

ARGUMENT

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

When amici speak to children raised by same-sex parents in Indiana and Wisconsin, and elsewhere across the country, 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.

Anna Frackman, born and raised by two moms in Wisconsin, explains:

*We are a family just like any other family. My moms work and I go to school, and at the end of the day, the things we talk about are the same: How did that exam go this morning? Whose turn is it to do the dishes? Who's going to take out the garbage? Unfortunately, unlike in other families, only one of my moms is legally my parent. Because Wisconsin does not allow second parent adoptions by unmarried couples, I have no legal relationship with my non-biological mom.*¹¹

Zach Wahls, an engineering student who was raised by two moms in Iowa, believes his family “really isn’t so different from any other Iowa family. . . [W]e go to church together, we eat dinner, we go on vacations. But, you know, we have

¹¹ Statement from Anna Frackman to Family Equality (July 23, 2014) (on file with Family Equality).

our hard times too, we get in fights.”¹² He struggles to understand why his family should be treated differently:

[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.”*¹³

Anna Frackman credits her moms with teaching her to “set goals, focus and work hard to achieve [her] dreams.” She stresses that it was “[b]ecause of [her mothers’] influence, not despite it,” that she graduated from Oberlin College with high honors in neuroscience, was elected to Phi Beta Kappa, and last fall enrolled at Harvard Medical School.¹⁴ Anna bristles, though, at the idea that her achievements are necessary to justify her parents’ right to marry:

¹² *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.

¹³ *Id.*

¹⁴ Anna Frackman, Op-Ed, *Anna Frackman: Wisconsin should treat all families equally*, WISCONSIN STATE JOURNAL (Feb. 23, 2014), available at http://host.madison.com/news/opinion/column/guest/anna-frackman-wisconsin-should-treat-all-families-equally/article_3e43db10-ffeb-5a46-8090-f3ce708d4aad.html#ixzz396S6OVcO.

*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 . . . Our families should be recognized simply because we are humans with the same rights as everyone else.*¹⁵

To many children of same-sex parents, the notion that their parents' relationships differ in any meaningful way from those of different-sex couples or that only families headed by both a male and female parent deserve the law's protection defies both justice and common sense. One fifteen-year-old from Indiana expressed dismay that her mothers "are considered two single people even though they have been in a committed relationship for over 26 years."¹⁶ Samantha Jones, a 21-year-old student at the University of Wisconsin-Madison and daughter of a same-sex couple in Michigan, pointed out that:

*The best family structures come from parents who are supportive, loving, and truly take an interest in their child(ren) – this is not something that comes exclusively from heterosexual families.*¹⁷

A 17-year-old from Indiana put it this way:

*When I see straight couples that are married, I'm happy for them because they are in love. My 2 moms are in love too, they have been together for 25 years, and they deserve the right to be married.*¹⁸

¹⁵ Frackman, *supra* n. 11.

¹⁶ Statement from K. KJ. to Family Equality (July 4, 2014) (on file with Family Equality). The individuals whose stories appear in this brief do not seek anonymity, but pursuant to Fed. R. App. P. 25 and Fed. R. Civ. P. 5.2, minors are identified by initials only.

¹⁷ Statement from Samantha Jones to Family Equality (June 4, 2014) (on file with Family Equality).

Importantly, LGBT parents model positive and committed relationships, generally—not limited to just positive same-sex relationships. As Brian Johnston explained to amici, his two dads are “responsible, loving, nurturing, hard-working, talented, tax-paying, model citizens,” and he is “immensely happy” that his parents “both found the person they are deeply in love with.”¹⁹ Similarly, Austin Horton, who was raised by two dads, told amici: “I’ve had nothing but positive influence thanks to them. They’ve been together for 30 years and their dream is to one day be legally married . . . That dream has rubbed off on me and I’d love nothing more than to be the best man at their wedding.”²⁰

Erin Kirby similarly credits her father and stepfather with teaching her about love and stability:

*I learned the true meaning of love and marriage from my father. He provided me with an image of what and how a couple should be, and I hope to one day achieve that harmony. I am now 27 years old and married. Having had my dads to provide a wonderful example, I am capable of maintaining a healthy relationship with my husband.*²¹

Even young children are able to and do recognize the love and commitment their same-sex parents enjoy. They, too, share their parents’ dream of marriage.

¹⁸ K. K.J., *supra* n. 16.

¹⁹ Statement from Brian Johnston to Family Equality (March 14, 2014) (on file with Family Equality).

²⁰ Statement from Austin Horton to Family Equality (February 3, 2014) (on file with Family Equality).

²¹ Statement from Erin Kirby to Family Equality (March 17, 2014) (on file with Family Equality).

One 11-year-old middle school Honor Roll student, the child of two women recently married out-of-state and living in Indiana, proudly described his mothers as “not afraid to show the World who they really are.”²² As he told amici:

*I'm happy that my parents got married because, at the time they had been wanting to share the love that other families felt for a very, very long time.*²³

And a six-year-old from Indiana said, “I wish my parents could get married because they want to. It would be great if my mommies could get married. Then we could all have a wedding.”²⁴

The experiences of these young people are consistent with social science findings: children of same-sex parents fare just as well academically, psychologically, and socially as the children of different-sex parents. Research has shown that LGBT parents of young children are active and involved in their children’s education, a factor which results in better academic achievement for children.²⁵ A study by the Gay, Lesbian and Straight Education Network revealed that LGBT parents were more likely to attend their children’s parent-teacher

²² Statement from L.C. to Family Equality (July 4, 2014) (on file with Family Equality.)

²³ *Id.*

²⁴ Statement from S. FS. to Family Equality (July 17, 2014) (on file with Family Equality).

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

conferences and volunteer in the schools than a national sample of parents.²⁶ 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.²⁷ LGBT parents also reported a higher level of communication with their children's school than the national sample regarding their child's future education, their child's school program, information on doing schoolwork at home, their child's positive or negative behavior at school, and about doing volunteer work at school.²⁸

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.²⁹ Several

²⁶ *Id.* at 27.

²⁷ *Id.* at 27–28.

²⁸ *Id.* at 28–32.

²⁹ 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

studies have even suggested that children raised by same-sex parents are better adjusted psychologically than their peers.³⁰

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,

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).

³⁰ Henny M.W. Bos, Frank van Balen and Dymph van den Boom, *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 77:38–48 (2007); Richard W. Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children’s Adjustment*, JOURNAL OF FAMILY PSYCHOLOGY, 12:402–419 (1998).

and bisexual people make excellent parents who raise developmentally healthy children.³¹

This is consistent with the accounts of children of same-sex parents who live in the Seventh Circuit and who are being raised in families that cultivate and 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 Indiana and Wisconsin.

II. THE MARRIAGE LAWS LEGALLY AND SOCIALLY DELEGITIMIZE FAMILIES HEADED BY SAME-SEX PARENTS AND DO NOTHING TO BENEFIT THEIR CHILDREN

Rather than protecting and affirming children, the Indiana and Wisconsin laws at issue in these cases inform children of same-sex parents that they and their

³¹ American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised and approved 2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Feb. 22, 2013); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples*, PEDIATRICS, 109(2):339–340 (2002), reaffirmed May 2009; American Psychiatric Association, *Position Statement on Adoption and Co-parenting of Children by Same-sex Couples* (2002), <http://www.psychiatry.org/advocacy--newsroom/position-statements> (last visited Feb. 22, 2013); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited Feb. 22, 2013); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/programs/culture/glbtposition.htm> (last visited Feb. 22, 2013); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003–2006, 146–150, available at <http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf>.

families are not good enough in the eyes of society and the law. Amici have heard from their constituents that such laws have the effect of de-legitimizing loving and stable homes, telling the children raised by same-sex couples that they are inferior, and precluding families from enjoying the benefits and rights associated with marriage that different-sex couples enjoy.

A. Marriage Discrimination Laws Can Cause Children Of Same-Sex Families To Be Humiliated, Insecure, And Fearful

The most significant challenge many families headed by same-sex couples face is the stigma of societal and governmental disapproval that the Indiana and Wisconsin Marriage Laws represent. Placing an official stamp of governmental opprobrium on the relationships of same-sex parents serves to de-legitimize the relationships and, as a result, the children themselves.

One seventeen-year-old in Indiana explained that throughout her life she has not been treated differently because of her two moms. “Most people tell me that they think it is cool or they don’t care because is it no big deal. My generation is pretty accepting. The only way that I have been treated differently is by the government, because I can’t say that my parents are married.”³²

Wisconsinite Anna Frackman explained that she has always tried to resist the idea that being raised by two mothers has had any negative repercussions for her:

³² K. KJ., *supra* n. 16.

Throughout my life, any time anyone has asked me a question about my family that started with “don’t you wish...” I automatically said “No.”

“Don’t you wish you had a dad?”

“No. I have two moms who are daily and endless sources of love and support and inspiration to me and each other, that’s already so much more than so many people can say about their parents”

“Don’t you wish your parents could get married?”

“No. It’s a piece of paper, it’s never stopped us from being a family just like any other family, why should it even matter?”

*But that last one was a lie. It did matter.*³³

In the words of a 15-year-old girl from Indiana: “The fact that my parents can’t get married makes me think our government and society is petty. They go out of their way to make someone’s life miserable.”³⁴

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. The former program director of amicus COLAGE told the New Jersey Civil Union Review Commission that many children with whom she has worked have had their peers “question[] the validity of their families because their parents aren’t able to get married.”³⁵ This, in turn, can lead children to have insecurity

³³ Frackman, *supra* n. 11.

³⁴ K. KJ, *supra* n. 16.

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

about their parents' relationship, including the fear that somebody is going to come and break up their family."³⁶ They do not understand the distinction that the Marriage Laws make between their families and other families headed by different-sex couples, leaving them feeling vulnerable and confused.

The Supreme Court observed in the context of the federal Defense of Marriage Act ("DOMA") that 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.

Anna Frackman describes how the prospect of marriage in her own life reinforces her sense of injustice at her mothers' exclusion from the institution:

*My friends are starting to get engaged and married. We talk about what we want our weddings to be like, and how we want our engagement rings to look. We are in our mid-twenties, but you might think we were about twelve years old if you heard the way that my friends describe having always coveted their mothers' rings or telling stories of their parents' proposals. My moms don't have any rings. There was no proposal, no wedding, no anniversary. These are small things, but they are big reminders of the way that, despite all of the progress that has been made over my lifetime, my parents are still not allowed to be married, and my family is still treated differently by the state that I have always called home.*³⁷

A ten-year-old boy from Indiana told amici that “[t]he fact that the Indiana State Government doesn’t recognize my parents’ legal marriage from our nation’s capital makes me feel very, very sad. I also feel sad about all of the couples in Indiana that got married [out of state] and are in a relationship that isn’t recognized [in this] state.”³⁸

Excluding same-sex couples from marriage tells their children that the most important relationships in their lives are inferior, unworthy of state validation and protection. To children of same-sex parents, marriage inequality is “hurtful,”³⁹ and it makes them feel “angry,”⁴⁰ and “devastated,”⁴¹ and that their family is “less valued.”⁴² Same-sex marriage bans like those in Indiana and Wisconsin tell children that their families are “not legitimate” and “not welcome.”⁴³ They create an insecurity—“a corrosive feeling of doubt”—in the perceived stability of their family.⁴⁴ This differentiation, which makes it “difficult for the children to understand the integrity and closeness of their own family and its concord with

³⁸ L.C., *supra* n. 22.

³⁹ Statement from M.P. and C.P. to Family Equality (March 17, 2014) (on file with Family Equality).

⁴⁰ *Id.*

⁴¹ Kirby, *supra* n. 21.

⁴² M.P and C.P., *supra* n. 39.

⁴³ *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, available at <http://www.preventinghate.org/wp-content/uploads/2011/03/Honoring-All-Maine-Families-2009.pdf>.

⁴⁴ *Id.* at 4.

other families in their community and in their daily lives,” should not be permitted.

Windsor, 133 S. Ct. at 2694.

B. Marriage Discrimination Laws Cause Insecurity In Children Of Same-Sex Parents By Depriving Them Of Important Benefits Available To Married Different-Sex Parents

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. By withholding the possibility of marriage from their parents, the Marriage Laws 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. 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.

The story of Oklahoman Jamie Doepel exemplifies the impact marriage inequality can have on the rights and protections of a family. Jamie describes how her mother and her mother’s partner, Elaine, “saw [Jamie] through high school and raised [her] like any other family raised their children.”⁴⁵ But after moving in temporarily with an ailing family member to provide in-home nursing care, Elaine died suddenly. Jamie’s mother was not notified. Instead, she learned of Elaine’s

⁴⁵ Statement from Jamie Doepel to Family Equality (February 4, 2014) (on file with Family Equality).

death when she went to inquire about the electricity in their house having been turned off and learned that the account had been closed because Elaine was dead. “While standing at the [electric company] payment window, my mom found out that her life partner, other mother to her children, had died.”⁴⁶ The emotional devastation was exacerbated by financial stress. “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.”⁴⁷

Same-sex parents face huge hurdles in ensuring that their children have access to the same benefits and protections other children receive. Anna Frackman says that her “family lacked the advantages and protections that marriage affords,” explaining that “[a]mong other things, my parents had to pay significantly more in taxes and for insurance premiums on separate plans. If one of us needed to be in the hospital, we were not even guaranteed the right to be with our loved ones while they were scared and in pain.”⁴⁸ One Indiana teenager recounts anxiety about the implications her mothers’ inability to marry may have on the way financial aid is calculated: “As I get older and think more about my future and college, I am

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Frackman, *supra* n. 14.

unsure how the government will recognize my parents legally and this has an impact on college finances.”⁴⁹

In addition, same-sex parents spend “thousands on attorney and court fees” to make sure their families are “protected in the ways every straight couple [can be protected] with a simple marriage certificate.”⁵⁰ But even such costly and laborious measures may not be enough to safeguard families.

Beth Sherman from Michigan worries about this possibility every day. She is the only legal parent to B. the son she raises with her partner. She explains, “I worry that if anything ever happened to me, [my partner’s relationship with B.] would not be legally protected. [B.] does not have the security of two legal parents even though he obviously does have two parents who love and care for him.”⁵¹

Christina Bowers, also from Michigan, similarly worries about the fate of her adopted brothers, since only one of her moms was legally allowed to adopt them.

Christina explains:

If something were to ever happen to [my mother] Diane, my mother Dana would not have any right to [my adopted brothers]. Their lives would come to a halt as they [would] lose both parents—one to heaven and the other to the legal system. At that point they could possibly end up back in foster care. Even though they still had a

⁴⁹ Statement from S. KJ. to Family Equality (July 4, 2014) (on file with Family Equality).

⁵⁰ Statement from Christopher Lindsay-Pittman to Family Equality (March 17, 2014) (on file with Family Equality).

⁵¹ Statement from Beth Sherman to Family Equality (May 10, 2014) (on file with Family Equality).

*living parent, another mother to take care of them and love them as she had their whole lives, to the government these children would be orphaned.*⁵²

She notes that that these “simple rights that different-sex parents take for granted are reminders of how the government does not see my parents as equals.”⁵³

Just as DOMA did before it was struck down, the implications of Indiana’s and Wisconsin’s marriage prohibitions “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. *See, e.g., id.* at 2694–95 (discussing various federal benefits dependent on marital status). As Anna of Wisconsin tells amici:

It mattered in small ways, like when I was young and didn’t understand why only one of my moms could sign my permission slips for school even though my teacher told the class it didn’t matter which parent signed. It also mattered in big ways, like when I found out that if something had happened to my mom Janis, my mom Susan and I

⁵² Statement from Christina Bowers to Family Equality (May 4, 2014) (on file with Family Equality).

⁵³ *Id.*

*wouldn't have been able to receive any social security benefits because the government didn't think we were really her family.*⁵⁴

Children of same-sex parents are acutely aware of the insecurity of their family unit caused by the denial of benefits available only to married different-sex couples. Thus, by withholding the possibility of marriage from their parents, the Marriage Laws 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. Indiana and Wisconsin should be looking out for the best interest of *all* of the states' children, not just those raised by their biological, different-sex parents.

III. LAWS BANNING SAME-SEX COUPLES FROM MARRIAGE ALSO HARM LGBT YOUTH IN INDIANA AND WISCONSIN BY INFORMING THEM THAT THEY AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS ARE INHERENTLY INFERIOR

[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.⁵⁵

⁵⁴ Frackman *supra* n. 11.

⁵⁵ Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections (May 9, 2013), Hearing on Senate Joint Resolution 13 (1st Reprint), available at <http://www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/LOE/Final/1120.pdf>.

As Kenzie’s testimony illustrates, the Marriage Laws also hurt another group of young people in Indiana and Wisconsin—LGBT youth. State-sanctioned disapproval of same-sex relationships informs LGBT youth that they are 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 LGBT youth in states that ban same-sex marriage, but it is one that, unfortunately, receives little attention.

Bobby McMillan, a young gay man who grew up in rural Oklahoma, believes that same-sex marriage bans affect LGBT youth worst of all:

*These individuals already struggle with self-identity, therefore being led to believe that there is something inherently wrong with them has a profoundly negative effect on their human experience. I should know, I grew up in rural Oklahoma where I never expressed my sexuality openly, thus, I still struggle with loving myself to this very day.*⁵⁶

Bobby believes that marriage equality will be the first step to “help remedy a long tradition of inequality rooted in ignorance and fear” and that it will help ensure “that the next generation of [LGBT youth] are not as marginalized and led to believe that they are inferior.”⁵⁷

Another young man, Ricky Hill, told amici he felt jealous that different-sex couples were able to marry and was “frustrated that even though so many straight

⁵⁶ Statement from Bobby McMillan to Family Equality (February 12, 2014) (on file with Family Equality).

⁵⁷ *Id.*

marriages end in divorce, my community is told that we aren't capable of lasting, loving relationships.”⁵⁸

And even though he knew he was gay, Chris Lindsay-Pittman felt overwhelming pressure to conform and so married a girl he met in high school. Only later did Chris come out, meet and marry his husband, and find “true happiness.” Chris says that after coming out, he “found that not only are those feelings okay but they can be celebrated and through being who I am, [I] can find absolute authenticity in my life.”⁵⁹ Because of his experience growing up as a gay teen in a state that banned same-sex marriage, Chris has “worked in every way [he] know[s] how” to support organizations that allow him to fight for his, and others, rights to marry the person they love.⁶⁰

The state-sanctioned exclusion from the institution so often held out as the cornerstone of adult life is understandably troubling for many LGBT youth. 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

⁵⁸ Statement from Ricky Hill to Family Equality (February 10, 2014) (on file with Family Equality).

⁵⁹ Lindsay-Pittman, *supra* n. 49.

⁶⁰ *Id.*

*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

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. Being deemed officially unworthy of marriage and its "positive social and cultural connotations"⁶² exacerbates feelings of hopelessness about the future and perpetual "differentness" that many LGBT youth already feel, sometimes leading them to leave their home state in search of one whose laws protect rather than demean and stigmatize its citizens based on sexual orientation.

CONCLUSION

Indiana's and Wisconsin's Marriage Laws harm both LGBT youth and the children of same-sex parents. On behalf of the children whom these laws treat as second-class citizens and the LGBT youth whom these laws discourage from aspiring to full participation in civic life, amici urge this Court to affirm the Southern District of Indiana's and Western District of Wisconsin's Court Orders.

Respectfully submitted this 5th day of August, 2014.

BRYAN CAVE LLP

⁶¹ Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT, *available at* http://www.law.emory.edu/fileadmin/NEWWEBSITE/Centers_Clinics/Barton/Emory-DOMA-study.pdf (compiled Jan. 29, 2013).

⁶² Baskin AOB, at 13.

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This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,964 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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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 Seventh Circuit by using the appellate CM/ECF system on August 5, 2014.

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