

Case Nos. 14-5003, 14-5006

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MARY BISHOP, *et al.*, *Plaintiffs-Appellees*,
and
SUSAN G. BARTON, *et al.*, *Plaintiffs-Appellees/Cross-Appellants*,
v.
SALLY HOWE SMITH, in her official capacity as Court Clerk for Tulsa County,
State of Oklahoma, *Defendant-Appellant/Cross-Appellee*,
and
THE UNITED STATES OF AMERICA, ex rel. ERIC H. HOLDER, JR., in
his official capacity as Attorney General of the United States of America,
Defendant.

On Appeal from the United States District Court for the
Northern District of Oklahoma
The Honorable Terence C. Kern presiding, Case No. 04-CV-848-TCK-TLW

AMICI CURIAE BRIEF OF FAMILY EQUALITY COUNCIL, *et al.*
In Support of Plaintiffs and To Affirm the District Court Order

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CORPORATE DISCLOSURE STATEMENT
Fed. R. App. 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 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.

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

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.

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.

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, transgender, and queer families over the past 20 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.

Camp Fire Green Country, Inc. (“Camp Fire”) is an all-inclusive, coeducational organization serving children, youth, and adults through intentional outcome-based youth development activities that build caring, confident youth and future leaders. Camp Fire is dedicated to inclusivity and works to realize the dignity and worth of each individual and to eliminate human barriers based on all assumptions which prejudice individuals. Camp Fire’s programs are designed and

implemented to reduce sexual, racial, and cultural stereotypes and to foster positive intercultural relationships. Camp Fire understands that marriage inequality impedes its goals to eliminate stereotypes and foster positive intercultural relationships among Oklahoma's families and youth.

Emergency Infant Services is a non-profit organization meeting the basic needs of infants and children whose families are in crisis or emergency situations. Emergency Infant Services' staff and volunteers work together to make sure that infants and toddlers have the essentials they need, which includes, but is not limited to, food, clothing, health care. Emergency Infant Services is most interested in looking out for the welfare of Oklahoma's children and therefore understands that marriage equality is essential to ensure all of Oklahoma's children have access to the important benefits and rights they deserve.

INTRODUCTION

My [mother and her partner Elaine] were simple people and we had a simple homelife. We never had anything fancy but we worked hard for the things we did have. My parents instilled this in my brother and me. They raised us to show respect and kindness. We were raised with a faithful foundation in God. By society's standards, my brother and I are successful members of society.²

Jamie Doepel, who was raised in Oklahoma by her two moms, along with other children of same-sex couples in Oklahoma, exemplify the ignorance of the State's³ position in this case. While the State seeks to uphold the ban on same-sex marriage in Oklahoma because, in its view, allowing only different-sex marriage is in the best interest of children,⁴ this justification lacks any support from the people whom the State seeks to protect – the children themselves. This brief, therefore, is offered to the Court to allow the children themselves, whose welfare is directly affected by these marriage limitations, to tell their stories.

Children being raised by same-sex parents are among those persons most powerfully impacted by their parents' inability to marry. They are uniquely

² Statement from Jamie Doepel to Family Equality (February 4, 2014) (on file with Family Equality).

³ The party seeking to maintain marriage limitations in this case – Sally Howe Smith, in her official capacity as Court Clerk for Tulsa County, State of Oklahoma – is referred to herein as the “State.”

⁴ *Bishop et. al. v. U.S., et. al.*, No. 14-5003, Appellant Sally Howe Smith's Principal Brief (“State PB”), February 24, 2014, at 1 (stating that marriage exists “to channel the presumptive procreative potential of man-woman relationships into committed unions for the benefit of children and society”).

qualified to describe how their families look, feel, and function and how the availability – or unavailability – of marriage for their parents colors their daily lives. Similarly, LGBT youth who grew up in Oklahoma can best describe how withholding marriage from same-sex couples informs them that they, and any future relationship they intend to form, are unworthy of recognition by their government and unworthy of the status and dignity that accompanies the right to marry. These children’s stories best show how this type of state-sanctioned disapproval profoundly affects them.

If the State is truly interested in protecting Oklahoma’s children, this Court must hear directly from the children of same-sex parents and LGBT youth in Oklahoma. By considering their stories, this Court can ensure that it is truly focused on what is in the best interest of Oklahoma’s children.

SUMMARY OF ARGUMENT

The children of same-sex parents feel their families are no different from any other family they know. Their parents go to work, pay the bills, read bedtime stories, play hide-and-seek, go to church, and volunteer. They do all the little daily things every other family does to run a household. And they love their children unconditionally – willing to do anything and everything to protect and help their children thrive. But by precluding marriage for same-sex couples, the Oklahoma Amendment⁵ treats children in Oklahoma who are being raised by same-sex parents as invisible and undeserving of recognition. It tells them they are inferior to and less worthy of protection than children in other families, and subjects them to second class status.

The State acknowledges that “marriage has been, and continues to be, about the business of serving child-centered purposes,”⁶ but argues that only “the man-woman institution”⁷ of marriage “will best serve the well-being of the State’s children”⁸ by “avoiding the negative outcomes often associated with children raised outside a stable family led by both their mother and father.”⁹ Yet, far from

⁵ The laws at issue here are two subsections of an amendment to the Oklahoma Constitution, which are set forth in article 2, section 35(A)-(B) (the “Oklahoma Amendment”).

⁶ State PB at 3.

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.* at 3.

serving the interest of children being raised by same-sex parents in Oklahoma, the Oklahoma Amendment stigmatizes and de-legitimizes their families, withholding from them the recognition, encouragement and support the State confers 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. They are no less deserving of the respect, dignity, and legal marital protections afforded to families headed by different-sex couples, and the issues before the Court cannot be properly understood without considering their first-hand accounts. Indeed, the U.S. Supreme Court in *U.S. v. Windsor*, 133 S.Ct. 2675 (2013) recognized that laws like the Oklahoma Amendment “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.” *Id.* at 2694.

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 Oklahoma Amendment has on Oklahoma’s children.

¹⁰ 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.

ARGUMENT

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

When amici speak to children who grew up or are growing up in same-sex households in Oklahoma and elsewhere, they hear stories of love, happiness, and support. These children's stories show that these families are no different than any other family, and that same-sex parents similarly strive to provide for, protect and love their children.

Families headed by same-sex couples are successfully raising our next generation. The children tell, through their testimonials, that 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.”¹¹ Indeed, same-sex parents 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

¹¹ 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.

futures for their children.¹²

Audrey Linholm, who grew up in Oklahoma, credits her two dads for teaching her to be the loving, empathetic, confident person she is. She tells amici: “I’ve learned so much about love, empathy and happiness by watching my parents build their lives together. Having gay parents has taught me to be proud of who I am and to live out my dreams, whether they [are] popular with others or not.”¹³

Similarly, Jamie Doepel, who was also raised in Oklahoma, tells amici that when she, her younger brother, mom and her mom’s partner moved in together when Jamie was just six years old, “[f]or the first time in my short life I felt like I had a home.”¹⁴ Jamie’s household was like any other household:

Elaine was very sweet and traditional. Where my mom was authoritative and silly. Elaine was always trying to dress me[sic]in

¹² Families in which LGBT parents are raising children are neither an oddity nor a rarity. Six million Americans have at least one parent who has identified as lesbian, gay, or bisexual. 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>. And because nearly 20 percent of the 650,000 same-sex couples living in the U.S. are currently raising children, 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>, there are approximately a quarter of a million children who are being raised in same-sex-parented families. In Oklahoma alone, studies show that there are 6,134 same-sex couples who are raising children. http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Oklahoma_v2.pdf.

¹³ Statement from Audrey Linholm to Family Equality (March 16, 2014) (on file with Family Equality).

¹⁴ Statement from Jamie Doepel, *supra* note 2.

*cute little dresses and Mary Janes. . . . Together they covered the spectrum of parental guidance.*¹⁵

Jamie lived with her two moms until she graduated high school. Since then she has graduated from SWOSU, moved to Oklahoma City in 2005 and bought a home with her now husband. As Jamie explained to amici, her mothers raised her and her brother to “show respect and kindness,” and “with a faithful foundation in God,”¹⁶ and because of this, Jamie and her brother have found success:

*By society’s standards, my brother and I are successful members of society. My brother is a decorated retired combat Marine. He is currently serving in the US Army training to be a Green Beret. I work for a hospital, and have been married to my husband for five years. We have a 2 ½ year old daughter together.*¹⁷

Jamie’s and her brother’s positive upbringing, as with other children growing up in Oklahoma with same-sex parents, directly refutes the State’s suggestion that we should avoid supporting families that don’t conform to what the State points to as a theoretically optimal model.¹⁸

As Brian Arsenault writes, “families come in many different shapes and sizes.”¹⁹ Families differ in the number of children, the ages of both children and parents, religion, and the activities they enjoy doing together. Some children, regardless of their parents’ sexual orientation, come from divorced or blended

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Cf.* State PB at 50.

¹⁹ Brian Arsenault, Op-Ed, *supra* note 11.

families, or are being raised by single parents. And some children have 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 has Oklahoma denied the right to marry. To children of same-sex parents, this is a legal distinction that defies common sense:

*As a young kid, I didn't understand that some folks might think of my family as something different or out of the ordinary. I never kept my family a secret. To me, families come in many different shapes and sizes. And mine, different by some standards but similar in most ways, was just another one of those. My parents – my two moms – go to work every day, like other parents. They cook dinner and mow the yard. They take care of the house. Volunteer in the community. Pay their bills. Do the thousands of little things that keep a household running. And they love me, unconditionally. But it didn't take me long to realize that my mom and her partner didn't have the same rights as other people. They are treated differently by the law and can't do many of the things that other families take for granted.*²⁰

Zach Wahls, a University of Iowa engineering student who was raised by two moms, also believes his family “really isn't so different from any other Iowa family.”²¹ He struggles to understand why his family should be treated differently:

²⁰ Brian Arsenault, Op-Ed, *supra* note 11.

²¹ *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”).

[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

Importantly, LGBT parents model positive and committed relationships—not just positive same-sex relationships. As Brian Johnston of Oklahoma explained to amici, his two dads are “two 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.”²³ Similarly, Austin Horton, who was raised by his two dads in Oklahoma, 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.”²⁴ And as Brian Arsenault wrote in his editorial to the *Portland Press Herald*:

My moms have been together for a long time, through thick and thin, and they’ve made it through the good times and the bad times together, as a team. They have shown me and the world what a

²² *Id.*

²³ Statement from Brian Johnston to Family Equality (March 14, 2014) (on file with Family Equality).

²⁴ Statement from Austin Horton to Family Equality (February 3, 2014) (on file with Family Equality).

*lasting, loving relationship can look like. And when I think of my own wedding someday, should I be lucky enough to find a girl I want to spend the rest of my life with, I can't imagine two better role models to base a family around than my moms.*²⁵

Erin Kirby, who was born and raised in Oklahoma, similarly credits her gay dad 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.*²⁶

The State makes clear that one of its fundamental interests in marriage lies in protecting the interest of Oklahoma's children.²⁷ If this is true, then the families of Jamie, Brian, Austin, Audrey, Zach, and Erin advance that public interest as fully as families of different-sex parents. These children 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 Oklahoma.

²⁵ Brian Arsenault, Op-Ed, *supra* note 11.

²⁶ Statement from Erin Kirby to Family Equality (March 17, 2014) (on file with Family Equality).

²⁷ State PB at 4.

II. THE OKLAHOMA AMENDMENT LEGALLY AND SOCIALLY DE-LEGITIMIZES FAMILIES HEADED BY SAME-SEX PARENTS AND DOES NOTHING TO BENEFIT THEIR CHILDREN

Rather than protecting and affirming Oklahoma's children, the Oklahoma Amendment tells children of same-sex parents that they and their families are not good enough in the eyes of society and the law. As recognized by Judge Stern, the Oklahoma Amendment prevents existing and future children of same-sex couples in Oklahoma from "understand[ing] the integrity and closeness of their own family and its concord with other families in their community."²⁸ Amici have heard from their constituents that this is precisely the effect the Oklahoma Amendment has on same-sex families in Oklahoma. It de-legitimizes loving and stable homes, is an expression of inferiority of children raised by same-sex couples, and precludes 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

When I was in junior high, I was bullied. I was made fun of, tormented, teased, all because my dad is gay. And of course, since my dad is gay, I must be gay, too, right? I was called so many mean names. . . . I feel like if the marriage of same sex couples is recognized, kids wouldn't be as mean. They'd see gay couples as any other couple. I can't say that that's what will happen, but I do feel like it could help. The fact that the government doesn't recognize them just

²⁸ *Bishop v. United States ex rel. Holder*, No. 04-CV-848-TCK-TLW, 2014 U.S. Dist. LEXIS 4374, at *113 (N.D. Okla. Jan. 14, 2014) quoting *Windsor*, 133 S. Ct. at 2694.

*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.*²⁹

M.P.'s story and sentiments are unfortunately not unique to children of same-sex parents growing up in Oklahoma. Most often, the biggest challenge same-sex parented families face is the societal and governmental disapproval that the Oklahoma Amendment represents.

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."³⁰ 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."³¹ They do not understand the distinction that the Oklahoma Amendment makes between their families and other families headed by different-sex couples, leaving them feeling vulnerable and confused.

M.P. told amici that "[t]he fact that our government doesn't honor [my dads'] marriage is hurtful. It makes me feel less valued as a family and like our

²⁹ Statement from M.P. and C.P. to Family Equality (March 17, 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. 5.2 and 10th Cir. L.R. 25, minors are identified by initials only.

³⁰ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm'n* at 38 (April 16, 2008) (statement of Meredith Fenton), *available at* [http://www.nj.gov/oag/dcr/downloads/Transcript %20CURC-and-Public-Hearing-04162008.pdf](http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf).

³¹ *Id.* at 76:4–5.

family doesn't really count." M.P. and her sister C.P. further explained their frustration with the Oklahoma Amendment:

*I wish my dads could be married because they love each other. That's marriage. Love, trust, and acceptance. That's family. I feel nothing but that in our family. The fact that my parents can't get married makes me—again—angry. They have lasted longer, with so many more challenges than so many straight couples. Why is it such a big deal that they're gay? LOVE. They love each other. That's what matters. When I look at other married parents, I feel very frustrated and wonder why my dads can't be.*³²

Erin Kirby has similar feelings about the Oklahoma Amendment: "When I think about [my parents] not having the right to have a legally recognized union, it devastates me because I could not imagine if that were me."³³ Audrey Linholm further explains to amici that:

*I struggle every day to understand why my parent's marriage is not recognized in Oklahoma. To me, it is simple: why is their love any different or any less than anyone else's? I believe marriage should be between people who love each other deeply and unconditionally. It breaks my heart that other people don't believe in this way. I hate seeing my parents treated differently just because they've chosen to lead their lives in the way that makes them happy.*³⁴

In *U.S. v. Windsor*, the U.S. Supreme Court explicitly recognized the harmful effect such state sanctioned stigmatization can have on children, in holding that the Defense of Marriage Act ("DOMA") humiliates children and causes them to question their own family. 133 S.Ct. at 2694. This stigma is no

³² Statement from M.P. and C.P., *supra* note 29.

³³ Statement from Erin Kirby, *supra* note 26.

³⁴ Statement from Audrey Linholm, *supra* note 13.

different from that felt as a result of racial segregation. In *Brown v. Board of Education*, 346 U.S. 483, 494 (1954), the U.S. Supreme Court unanimously announced that “[t]o separate [kids] from other[s] of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Id.* (quoting lower court). Like the victims of racial segregation, children of same-sex parents experience feelings of inferiority, insecurity, and condemnation because their parents are not afforded equal treatment under the law. These feelings are a common theme heard by the amici who work every day with children being raised by same-sex parents.

Oklahoma’s attempts to preclude same-sex parented families from equal treatment tells children of same-sex parents that the most important relationships in their lives are inferior, unworthy of state validation and protection, and subjects them to second class status. The children with whom amici work feel the moral disapproval reflected in the State’s Principle Brief;³⁵ they understand that marriage inequality is an expression of moral condemnation of their families. To these children, marriage inequality is “hurtful,”³⁶ and it makes them feel “angry,”³⁷ and

³⁵ *Cf.* State PB, at 68 (citing research regarding delinquency of boys with absent fathers, statistics related to unwed young mothers who grew up outside of intact marriages).

³⁶ Statement from M.P. and C.P., *supra* note 29.

³⁷ *Id.*

“devastated,”³⁸ and that their family is “less valued.”³⁹ They “struggle”⁴⁰ to understand the differentiation marriage inequality creates. The Oklahoma Amendment tells them that their families are “not legitimate” and “not welcome.”⁴¹ It creates an insecurity - “a coercive feeling of doubt” - in the perceived stability of their family.⁴² This differentiation, which “makes it . . . 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,” 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

Not only does the Oklahoma Amendment stigmatize families headed by same-sex parents, but it also deprives them of the practical benefits and rights extended to different-sex parents who are able to marry.

Jamie Doepel’s story exemplifies the impact marriage inequality can have on the rights and protections of a family. Her family was shattered because her

³⁸ Statement from Erin Kirby, *supra* note 26.

³⁹ Statement from M.P. and C.P., *supra* note 29.

⁴⁰ Statement from Audrey Linholm, *supra* note 13.

⁴¹ *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>.

⁴² *Id.* at 4.

mothers were unable to marry and enjoy the benefits available to different-sex couples.

Our family's story began in 1988. My mom (Julie) was struggling to make ends meet and raising 2 kids on her own. I was 6 and my younger brother was 3. It was an extremely tough time for our little trio. There were nights we slept in the truck and other nights at the homes of some of my mom's friends. I didn't understand it back then but we weren't staying with family because they had learned that my mom was a lesbian.

My mom worked at a local nursing home and that's where she met Elaine. Elaine took us in. She helped my mom through her first nursing classes. They bought a small fixer upper house and suddenly our trio was a quartet. For the first time in my short life I felt like I had a home. Elaine and my mom stayed together, saw me through high school, and raised me like any other family raised their children.

In the summer of 2005, Elaine's family contacted her for the first time in over 10 years. Her sister, Linda, was in need of medical attention. In hopes of keeping Linda out of the nursing home Elaine agreed to stay with her for a period of time and help with her medical care. This is when our family changed forever.

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

This was a very difficult time for my family. My mom struggled to pay for the house bills by herself and within 6 months lost the house. My mom lost everything. Needless to say we never received any death

*benefits. We never received any support from the state of Oklahoma in any fashion.*⁴³

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

Same-sex parents face huge hurdles in ensuring their children have access to the same benefits and protections other children receive. 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."⁴⁴ Yet even when these couples make every effort possible to protect their children, the fact that their government does not recognize their marriage means that Jamie's experience could easily happen to another family.

Just as DOMA did before it was struck down, the Oklahoma Amendment'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

⁴³ Statement from Jamie Doepel, *supra* note 2.

⁴⁴ Statement from Christopher Lindsay-Pittman to Family Equality (March 17, 2014) (on file with Family Equality).

tax burden than their different-sex counterparts. *See, e.g., id.* at 2694-95 (discussing various federal benefits dependent on marital status).

As the District Court held, “[e]xclusion from marriage does not make it more likely that a same-sex couple desiring children, or already raising children together, will change course and marry an opposite-sex partner (thereby providing the “ideal” child-rearing environment).”⁴⁵ Rather, “it is more likely that any potential or existing child will be raised by the same-sex couple without any state-provided marital benefits.”⁴⁶ This clearly is not in “the best interests of the children,” contrary to what the State asserts.

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 Oklahoma Amendment damages 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*, 131 S. Ct. at 2696. Oklahoma should be

⁴⁵ *Bishop*, 2104 US Dist. LEXIS 4374, at *112.

⁴⁶ *Id.* at *113.

looking out for the best interest of *all* children in Oklahoma, not just those raised by their biological different-sex parents.

III. LAWS BANNING SAME-SEX COUPLES FROM MARRIAGE ALSO HARM LGBT YOUTH IN OKLAHOMA 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.⁴⁷

The Oklahoma Amendment also hurts another group of young people in Oklahoma – 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 Oklahoma.

Bobby McMillan is a young gay man who grew up in rural Oklahoma. Bobby believes that laws like the Oklahoma Amendment affect LGBT youth worst of all:

⁴⁷ 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>. Also available by video at <http://www.youtube.com/watch?v=PmbqWwKzBk>.

*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.*⁴⁸

During his time in Oklahoma, Bobby was keenly aware of his “second class status as an LGBTQ person.”⁴⁹ Bobby believes that marriage equality in Oklahoma 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] Oklahomans are not as marginalized and led to believe that they are inferior.”⁵⁰

Similarly, Ricky Hill lived in Oklahoma until he was eighteen years old, but left the state in part because of the stigma he endured as an LGBT youth:

*I knew in middle school that I was gay, but I didn’t dare tell anyone, because I heard terms like ‘fag’ and ‘dyke’ thrown around on a daily basis. I never heard anything positive or affirming about my identity, instead I was told that gay people were immoral, unnatural, and evil. I carried around fear, guilt, and shame because of this for years, and ultimately left Oklahoma because I just couldn’t see how I would be able to stay in my home state and live an honest and authentic life.*⁵¹

⁴⁸ Statement from Bobby McMillin to Family Equality (February 12, 2014) (on file with Family Equality).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Statement from Ricky Hill to Family Equality (February 10, 2014) (on file with Family Equality).

As an LGBT youth, Ricky felt jealous that different-sex couples were able to marry and he was “frustrated that even though so many straight marriages end in divorce, my community is told that we aren’t capable of lasting, loving relationships.” Ricky believes that marriage equality would not only validate LGBT relationships, but also encourage and nurture them.

Chris Lindsay-Pittman grew up in a conservative town in Oklahoma and was “teased, called names, ridiculed just because . . . I was different.”⁵² With this pressure to conform, he ended up marrying a girl he met in high school, but he eventually came out, met and married his husband, and found “true happiness.” After “coming out,” Chris has “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.”⁵³ Because of his experience growing up as a gay teen in Oklahoma, 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.⁵⁴

Chris, Ricky and Bobby are not alone in their quest for equality and inclusiveness. As another 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

⁵² Statement from Christopher Lindsay-Pittman, *supra* note 44.

⁵³ *Id.*

⁵⁴ *Id.*

*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.*⁵⁵

These comments illustrate how LGBT youth's perceptions of their futures are powerfully influenced by what the government tells them about the validity of the committed relationships they hope to form as adults. Officially sanctioning their exclusion from marriage exacerbates feelings of hopelessness about the future and perpetual "different-ness" that many LGBT youth already feel, and in some cases, causes LGBT youth to leave their state in search of one whose laws protect rather than demean and stigmatize people based on sexual orientation.

The stories and experiences of Oklahoma's LGBT youth further illustrate that the State's attempt to justify the Oklahoma Amendment as something that will "benefit children and society" is both irrational and inconsistent with reality. Barring millions of young people from full participation in the institution of marriage and informing them that they are "second-class citizens" through state-sanctioned exclusion of marriage cannot be reconciled with the State's argument that the Oklahoma Amendment is important for and beneficial to the next generation of children of Oklahoma.

⁵⁵ Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT, *available at* http://www.law.emory.edu/fileadmin/NEWEBSITE/Centers_Clinics/Barton/Emory-DOMA-study.pdf (compiled Jan. 29, 2013).

CONCLUSION

While the State alleges that the Oklahoma Amendment's ban on marriage for same-sex couples benefits children and society, children raised by same-sex parents and their families are directly undermined by it. The children being raised by same-sex couples in Oklahoma are here to say that their families are just as deserving of recognition, respect, and protection as those of children with different-sex parents. And, far from promoting social order, these laws engender and perpetuate harms, as the LGBT youth who have personally experienced the effects of such laws attest.

Based on the foregoing, amici urge this Court to affirm the Oklahoma District Court Order.

Respectfully submitted this 24th day of March, 2014.

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)
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Typeface Requirements, and Type Style Requirements

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,357 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 word processing software in 14-point regular Times New Roman type style.

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

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s/Kathryn R. DeBord

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2014, I electronically filed the foregoing **AMICI CURIAE BRIEF OF FAMILY EQUALITY COUNCIL, COLAGE, CAMP FIRE GREEN COUNTRY, AND EMERGENCY INFANT SERVICES** using the Court's CM/ECF system which will send notification of such filing to the following:

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