

**No. 14-5291**

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

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GREGORY BOURKE, ET AL.,  
*Appellees,*

v.

STEVE BESHEAR, ET AL.,  
*Appellants.*

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On Appeal from the United States District Court  
for the Western District of Kentucky at Louisville  
The Honorable John G. Heyburn, II  
District Court Case No. 3:13-cv-00750

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**AMICI CURIAE BRIEF OF  
FAMILY EQUALITY COUNCIL AND COLAGE  
In Support of Plaintiffs-Appellees 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.

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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.<sup>1</sup>

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

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<sup>1</sup> 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.

## INTRODUCTION

*My upbringing was not much different than my friends who were raised by straight parents. I got in trouble for leaving my dishes in the sink and tracking mud through the house. I had a curfew and was not allowed to have my boyfriend in my bedroom. I spent most afternoons at dance class and came home and had dinner with my family. I really liked having friends over and exposing them to our “different” family. I could see light bulbs turning on in their heads as they realized that we were really just like any other family.<sup>2</sup>*

Lea Mitchell, who was raised in Michigan by her two moms, highlights the ignorance and insensitivity underlying the position taken by Michigan,<sup>3</sup> Kentucky,<sup>4</sup> and Tennessee<sup>5</sup> in the respective cases pending on appeal to this Court.

Michigan claims that the ban on same-sex marriage in that state should be upheld because, in its view, only “men and women [should be allowed] to marry because of [the State’s] interest in procreation and the raising of children.”<sup>6</sup>

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<sup>2</sup> Statement from Lea Mitchell to Family Equality (March 26, 2014) (on file with Family Equality).

<sup>3</sup> The parties seeking to maintain marriage limitations in the Michigan case – Richard Snyder, in his official capacity as Governor of the State of Michigan, and Bill Schuette, in his official capacity as Michigan Attorney General – are referred to herein as “Michigan”.

<sup>4</sup> The party seeking to maintain marriage limitations in the Kentucky case – Steve Beshear, in his official capacity as Governor of the State of Kentucky – is referred to herein as “Kentucky”.

<sup>5</sup> The parties seeking to maintain marriage limitations in the Tennessee case – William Haslam, in his official capacity as Governor of the State of Tennessee, Larry Martin, in his official capacity as Commissioner of the Department of Finance and Administration, and Robert E. Cooper, Jr., in his official capacity as Attorney General of the State of Tennessee – are referred to herein as “Tennessee.”

<sup>6</sup> *DeBoer, et al. v. Snyder, et. al.*, No. 14-1341, Brief for Michigan Defendants-Appellants (“Michigan Brief”), May 7, 2014, at 39.

Kentucky similarly argues that “[o]nly man-woman relationships can naturally procreate, and only those relationships, therefore, are afforded the state sponsored benefit,” discounting the importance of the ability of same-sex couples to “have stable, loving familial relationships, or contribute to society in meaningful ways.”<sup>7</sup> Tennessee entirely ignores the adverse impact of its ban on same-sex marriage, arguing that “[b]iology alone . . . provides a rational explanation for Tennessee’s decision not to extend marriage to same-sex couples.”<sup>8</sup> As every federal district court since the Supreme Court’s decision in *U.S. v. Windsor*, 133 S.Ct. 2675 (2013) has held, this “reasonable procreation” justification for enforcing same-sex marriage bans cannot justify denying marital rights to same-sex couples and their families. See *Henry v. Himes*, No. 1:14-cv-129, 2014 U.S. Dist. LEXIS 51211, at \*54-55 (S.D. Ohio Apr. 14, 2014) (citing cases). These courts have found that “child welfare concerns weigh exclusively in favor of recognizing the marital rights of same-sex couples,” *id.* at \*55, and the stories of the very people these states are trying to protect – the children themselves – prove the invalidity of the States’ argument.

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

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<sup>7</sup> *Bourke v. Beshear et al.*, No. 14-5291, Brief for Kentucky Defendants (“Kentucky Brief”), May 7, 2014, at 15-16.

<sup>8</sup> *Tanco et al. v. Haslam, et al.*, No. 14-5297, Brief for Tennessee Defendants (“Tennessee Brief”), May 7, 2014, at 24-25.

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 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 States of Michigan, Kentucky, and Tennessee (the “States”) are truly interested in protecting their children, this Court must hear directly from the children of same-sex parents and LGBT youth in those States. By considering their stories, this Court can ensure that it is truly focused on what is in the best interest of the 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. But by precluding marriage for same-sex couples, the Michigan Marriage Amendment,<sup>9</sup> Tennessee Marriage Laws,<sup>10</sup> and the Kentucky Marriage Laws<sup>11</sup> treat children in their respective jurisdictions who are being raised by same-sex parents as invisible and undeserving of recognition. The States' marriage limitations tell them they are inferior to, and less worthy of, protection than children in other families, and relegate them to second class status.

Michigan acknowledges that “extending the boundaries of marriage (for example to same-sex couples) might give some children being raised in those arrangements more stability,” but argues “that does not mean it is irrational to accept the generalization that maintaining the definition of marriage will promote

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<sup>9</sup> The Michigan law at issue here is a voter-approved amendment to the Michigan Constitution, which is set forth in Article 1, section 25 (the “Michigan Marriage Amendment”).

<sup>10</sup> The Tennessee law at issue here is a voter-approved amendment to the Tennessee Constitution, which is set forth in Article XI, Section 18, and Tennessee Code Annotated § 36-3-113 (the “Tennessee Marriage Laws”).

<sup>11</sup> The Kentucky law at issue here is a voter-approved amendment to the Kentucky Constitution, which is set forth in Section 233A, and Sections 402.005, 402.020(1)(d), 402.040(2), and 402.045 of the Kentucky Revised Statutes (the “Kentucky Marriage Laws”).

stability for the vast majority of children (that is, children born of opposite-sex couples.)”<sup>12</sup> Michigan’s argument brushes aside the fact that the Michigan Marriage Amendment, Kentucky Marriage Laws, and Tennessee Marriage Laws (collectively, the “Sixth Circuit Marriage Laws”) stigmatize and de-legitimize children being raised by same-sex parents, withholding from them the recognition, encouragement and support the States confer 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 U.S. Supreme Court in *Windsor* recognized that laws like the Sixth Circuit 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.” 133 S. Ct. 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.”<sup>13</sup> Their stories, too, must be heard to understand the impact

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<sup>12</sup> Michigan Brief at 48.

<sup>13</sup> 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](http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html).

the Sixth Circuit Marriage Laws have on the children living within the boundaries of this Circuit.

## 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 Michigan, Tennessee, Kentucky and elsewhere across the country, they hear stories of love, happiness, and support. Though the States attempt to argue that preserving marriage between a man and a woman “encourage[s] a structure” that allows “both moms and dads [to] make important contributions to child raising,” this ignores the fact that same-sex parents are successfully raising children in thousands of homes across the country, including within the Sixth Circuit. Michigan Brief at 41. The stories from children in these families show that same-sex-parented families are no different than any other family, and that same-sex parents similarly contribute and provide for, protect and love their children. As, Samantha Jones, a 21-year-old student at the University of Wisconsin-Madison, and daughter of a gay couple living in Michigan, told amici:

*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.<sup>14</sup>*

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<sup>14</sup> Statement from Samantha Jones to Family Equality (June 4, 2014) (on file with Family Equality).

Through their testimonials, the children tell us that a family is not defined by the genders of those who appear in the family portrait. 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 futures for their children.<sup>15</sup>

Lily Alberts, a 23-year-old Princeton University graduate, was raised in Tennessee by her two moms. She tells amici that she spent her childhood feeling and believing that “same-sex couples and parents were seemingly no different from any other couple or parenting team.”<sup>16</sup>

*Just like any other kid, I had one parent who read me stories and tucked me in, and one who held my hand while we walked the dog. I had one parent who drove me to school, and one who made me brush my teeth. And so, despite their both being women, despite their being*

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<sup>15</sup> 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.

<sup>16</sup> Statement from Lily Alberts to Family Equality (June 10, 2014) (on file with Family Equality).

*unmarried, my classroom, playground, and home life carried on just the same as all my friends.*<sup>17</sup>

Christina Bowers, who was born and raised in Michigan, credits her two moms for being valuable role models to her. She tells amici:

*When I was too young to remember, my mother came out as a lesbian. She was a single parent who struggled the same way many single mothers often do. When I was 14 years old, my other mom came into our lives completing our family. At this critical juncture of my life, I finally had two role models that would support me. Throughout High School, I went to classes, participated in choir and theater, had a curfew and met my high school sweetheart who would become my husband.*<sup>18</sup>

Similarly, Lea Mitchell, who was also raised in Michigan, tells amici that “my life is full of passion, love, and laughter - and I believe much (if not all) of this is the result of me being raised by lesbian mothers.” Lea was raised with strong values:

*My family values honesty, compassion, education, and support for one another. I was always pushed to do my best and empowered to learn and grow to be my own unique self.*<sup>19</sup>

The States suggest that the Sixth Circuit Marriage Laws encourage and support what they argue is an optimal family model, but Lily’s, Lea’s and Christina’s positive upbringing, like that of other children growing up with same-sex parents, directly refutes the States’ contention that their family models are any

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<sup>17</sup> *Id.*

<sup>18</sup> Statement from Christina Bowers to Family Equality (March 5, 2014) (on file with Family Equality).

<sup>19</sup> Statement from Lea Mitchell *supra* note 2.

less “optimal” for the raising of children.<sup>20</sup> As Lea stated, “I don’t look back and wish I was raised in a household with straight parents - I wish my Mom and Stepmom could finally have validation of their love.”<sup>21</sup>

As Brian Arsenault writes, “families come in many different shapes and sizes.”<sup>22</sup> Some children, regardless of their parents’ sexual orientation, come from divorced or blended 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 have the States 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*

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<sup>20</sup> See e.g. Michigan Brief at 40-51.

<sup>21</sup> Statement from Lea Mitchell, *supra* note 2.

<sup>22</sup> 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](http://www.pressherald.com/opinion/young-mans-wish-for-his-moms-on-mothers-day-the-right-to-marry_2012-05-11.html).

*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.*<sup>23</sup>

Zach Wahls, an engineering student who was raised by two moms, also believes his family “really isn't so different from any other Iowa family.”<sup>24</sup> 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.*<sup>25</sup>

Importantly, LGBT parents model positive and committed relationships—not 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

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<sup>23</sup> *Id.*

<sup>24</sup> *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](http://www.familyequality.org/equal_family_blog/2011/02/04/1001/abc_news_son_of_iowa_lesbians_fights_gay_marriage_ban) (“Zach Wahls”).

<sup>25</sup> *Id.*

person they are deeply in love with.”<sup>26</sup> 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.”<sup>27</sup>

Erin Kirby 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.*<sup>28</sup>

Even young children recognize the love and commitment their same-sex parents enjoy and share their dream of marriage. Eleven year-old R.G. and his seven year-old sister are the adopted children of two gay men who met in Tennessee nearly 25 years ago, and are now being raised in Ohio.<sup>29</sup> As 11 year-old R.G. tells amici, “My only dream is for my parents to get married some day

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<sup>26</sup> Statement from Brian Johnston to Family Equality (March 14, 2014) (on file with Family Equality).

<sup>27</sup> Statement from Austin Horton to Family Equality (February 3, 2014) (on file with Family Equality).

<sup>28</sup> Statement from Erin Kirby to Family Equality (March 17, 2014) (on file with Family Equality).

<sup>29</sup> Statement from R.G. to Family Equality (May 6, 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 6th Cir. Guide to Electronic Filing Rule 12, minors are identified by initials only.

and I pray for that every night.”<sup>30</sup> And 12 year-old C.G. of Tennessee, whose moms were married in Illinois, tells amici, “I’m happy that my parents got married because they were meant for each other and they love each other. That completes our family and there’s nothing better.”<sup>31</sup>

The States argue that the Sixth Circuit Marriage Laws are in the best interest of the children because they promote the optimal family model. However, as recognized by Judge Friedman of the Eastern District of Michigan:

*Prohibiting gays and lesbians from marrying does not stop them from forming families and raising children. Nor does prohibiting same-sex marriage increase the number of heterosexual marriages or the number of children raised by heterosexual parents. There is, in short, no logical connection between banning same-sex marriage and providing children with an “optimal environment” or achieving “optimal outcomes.”*<sup>32</sup>

This is confirmed by the testimony of children of same-sex parents, including Lily, Samantha, Christina, Lea, C.G. and R.G. who live in the Sixth 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 Michigan, Tennessee and Kentucky.

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<sup>30</sup> *Id.*

<sup>31</sup> Statement from C.G. to Family Equality (June 13, 2014) (on file with Family Equality).

<sup>32</sup> *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 771 (E.D. Mich. 2014).

## II. THE SIXTH CIRCUIT MARRIAGE LAWS LEGALLY AND SOCIALLY DE-LEGITIMIZE FAMILIES HEADED BY SAME-SEX PARENTS AND DO NOTHING TO BENEFIT THEIR CHILDREN

Rather than protecting and affirming children, the Sixth Circuit Marriage Laws tell 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 Friedman of the Eastern District of Michigan, same-sex marriage bans prevent existing and future children of same-sex couples from “understand[ing] the integrity and closeness of their own family and its concord with other families in their community.”<sup>33</sup> Amici have heard from their constituents that this is precisely the effect the Sixth Circuit Marriage Laws have on same-sex families in Michigan, Tennessee, and Kentucky. They de-legitimize loving and stable homes, tell the children raised by same-sex couples that they are inferior, and preclude 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

M.P., a child from Oklahoma, a state that has similarly banned same-sex marriage, told Family Equality that:

*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*

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<sup>33</sup> *Id.*, quoting *Windsor*, 133 S. Ct. at 2694.

*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 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.*<sup>34</sup>

M.P.'s story and sentiments are, unfortunately, not unique to children of same-sex parents growing up in Oklahoma. Rather, in same-sex parented families across the country, the biggest challenge they most often face is the stigma of societal and governmental disapproval that the Sixth Circuit Marriage Laws represent.

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.”<sup>35</sup> 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.”<sup>36</sup> They do not understand the distinction that the Sixth Circuit Marriage Laws make between their families and other families headed by different-sex couples, leaving them feeling vulnerable and confused.

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<sup>34</sup> Statement from M.P. and C.P. to Family Equality (March 17, 2014) (on file with Family Equality).

<sup>35</sup> *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).

<sup>36</sup> *Id.* at 76:4–5.

O.D. and B.D., children of same-sex parents in Ohio, are directly impacted by the insecurity perpetuated by the Sixth Circuit Marriage Laws:

*We wish our moms could get married because then everybody would know we're a real family. When we see married parents, we feel kind of weird, like our moms aren't ok.*<sup>37</sup>

J.K, a seven-year-old being raised by two fathers in Tennessee told amici that it makes him “sad” that his parents aren’t able to get married.<sup>38</sup> His thirteen-year-old older brother, J.K., similarly tells amici that he “feels that same-sex couples should be allowed to get married” in Tennessee. He just wishes that “people would respect the way people are made.”<sup>39</sup>

M.P. and her sister C.P. explained their frustration with state refusal to recognize their family:

*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.*<sup>40</sup>

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<sup>37</sup> Statement from O.D. and B.D. to Family Equality (June 7, 2014) (on file with Family Equality).

<sup>38</sup> Statement from J.K. and J.K. to Family Equality (June 9, 2014) (on file with Family Equality).

<sup>39</sup> *Id.*

<sup>40</sup> Statement from M.P. and C.P., *supra* note 34.

Erin Kirby has similar feelings about the government's refusal to legitimize her parents' relationship: "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."<sup>41</sup>

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 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.

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<sup>41</sup> Statement from Erin Kirby, *supra* note 28.

Michigan, Kentucky and Tennessee’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. To children of same-sex parents, marriage inequality is “hurtful,”<sup>42</sup> and it makes them feel “angry,”<sup>43</sup> and “devastated,”<sup>44</sup> and that their family is “less valued.”<sup>45</sup> Same-sex marriage bans like the Sixth Circuit Marriage Laws tell children that their families are “not legitimate” and “not welcome.”<sup>46</sup> It creates an insecurity - “a coercive feeling of doubt” - in the perceived stability of their family.<sup>47</sup> 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.

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<sup>42</sup> Statement from M.P. and C.P., *supra* note 34.

<sup>43</sup> *Id.*

<sup>44</sup> Statement from Erin Kirby, *supra* note 28.

<sup>45</sup> Statement from M.P. and C.P., *supra* note 34.

<sup>46</sup> *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>.

<sup>47</sup> *Id.* at 4.

**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 do the Sixth Circuit Marriage Laws stigmatize families headed by same-sex parents, but they also deprive them of the practical benefits and rights extended to different-sex parents who are able to marry.

Jamie Doepel, a woman raised by same-sex parents in Oklahoma, tells a story that exemplifies the impact marriage inequality can have on the rights and protections of a family. Her family was shattered because her 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. 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 and for the first time in my short life I felt like I had a home. Elaine and my mom stayed together, saw me through high school, and raised me like any other family raised their children.*

*In the summer of 2005, Elaine's family contacted her for the first time in over 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.<sup>48</sup>*

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."<sup>49</sup> 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.

Beth Sherman from Michigan worries about this possibility every day. She is the only legal parent to her and her partner's youngest son Ben. She explains, "I

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<sup>48</sup> Statement from Jamie Doepel to Family Equality (February 4, 2014) (on file with Family Equality).

<sup>49</sup> Statement from Christopher Lindsay-Pittman to Family Equality (March 17, 2014) (on file with Family Equality).

worry that if anything ever happened to me, [the relationship between Ben and my partner Karen] would not be legally protected. Ben does not have the security of two legal parents even though he obviously does have two parents who love and care for him.”<sup>50</sup> Christina Bowers, also from Michigan, similarly worries about the fate of her adopted brothers, whom only one of her moms was legally allowed to adopt. She explains:

*If something were to ever happen to Diane, my mother Dana would not have any right to [C.B. or J.B.]. 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 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.*<sup>51</sup>

Just as DOMA did before it was struck down, the Sixth Circuit Marriage Laws’ marriage limitations “touch[] many aspects of . . . family life, from the mundane to the profound.” *Windsor*, 133 S.Ct. at 2694. For same-sex couples, being barred from marriage means being denied federal tax incentives available to different-sex couples living next door. It means not being allowed to file joint federal tax returns or maximize dependency exemptions, education deductions, child tax credits, and children and dependent care credits and therefore carrying a heavier tax burden than their different-sex counterparts. *See, e.g., id.* at 2694-95

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<sup>50</sup> Statement from Beth Sherman to Family Equality (May 10, 2014) (on file with Family Equality).

<sup>51</sup> Statement from Christina Bowers to Family Equality (May 4, 2014) (on file with Family Equality).

(discussing various federal benefits dependent on marital status). As Christina Bowers of Michigan tells amici, it can also mean that one parent is unable to “sign permission slips [or] school notes, pick [children] up from day care and preschool without permission [...or] act as a guardian during medical situations.” Christina states 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”.<sup>52</sup>

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 Sixth Circuit 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. Michigan, Tennessee, and Kentucky should be looking out for the best interest of *all* children in their respective states, not just those raised by their biological different-sex parents. Each and every one of those children is “worthy of the State’s protection.” *Kitchen*, 961 F. Supp.2d at 1212.

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<sup>52</sup> *Id.*

**III. LAWS BANNING SAME-SEX COUPLES FROM MARRIAGE ALSO HARM LGBT YOUTH IN MICHIGAN, KENTUCKY AND TENNESSEE 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.<sup>53</sup>

As Kenzie’s testimony illustrates, the Sixth Circuit Marriage Laws also hurt another group of young people in Michigan, Tennessee and Kentucky – 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.

Bobby McMillan is a young gay man who grew up in rural Oklahoma. Bobby 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*

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<sup>53</sup> Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections (May 9, 2013), Hearing on Senate Joint Resolution 13 (1<sup>st</sup> 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>.

*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.*<sup>54</sup>

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.”<sup>55</sup>

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.*<sup>56</sup>

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.

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<sup>54</sup> Statement from Bobby McMillan to Family Equality (February 12, 2014) (on file with Family Equality).

<sup>55</sup> *Id.*

<sup>56</sup> Statement from Ricky Hill to Family Equality (February 10, 2014) (on file with Family Equality).

Chris Lindsay-Pittman grew up in a conservative town in Oklahoma and was “teased, called names, ridiculed just because . . . I was different.”<sup>57</sup> 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.”<sup>58</sup> 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.<sup>59</sup>

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 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.*<sup>60</sup>

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<sup>57</sup> Statement from Christopher Lindsay-Pittman, *supra* note 49.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 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](http://www.law.emory.edu/fileadmin/NEWEBSITE/Centers_Clinics/Barton/Emory-DOMA-study.pdf) (compiled Jan. 29, 2013).

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 LGBT youth further illustrate that the States' attempts to justify the Sixth Circuit Marriage Laws 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 States' argument that the Sixth Circuit Marriage Laws are important for and beneficial to the next generation of children and to the States as a whole.

## **CONCLUSION**

While the States allege that the Sixth Circuit Marriage Laws' ban on marriage for same-sex couples benefits children and society, children raised by same-sex parents and their families are directly undermined by these laws. The children being raised by same-sex couples in Michigan, Tennessee, and Kentucky

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 children of same-sex couples and LGBT youth who have personally experienced the effects of such laws attest.

Based on the foregoing, amici urge this Court to affirm the Michigan District Court Order, the Kentucky District Court Order, and the Tennessee District Court Order.

Respectfully submitted this 16th day of June, 2014.

**BRYAN CAVE LLP**

*s/Christy L. Anderson*

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**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)  
Certificate of Compliance With Type-Volume Limitation,  
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 6,952 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.

*s/Christy L. Anderson*

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Christy L. Anderson

***ATTORNEYS FOR AMICI CURIAE***

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I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 6th Cir. Guide to Electronic Filing Rule 12;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Trend Micro OfficeScan Client 10.0 Service Pack 1, 6/16/14, and according to the program are free of viruses.

*s/Christy L. Anderson*

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Christy L. Anderson

***ATTORNEYS FOR AMICI CURIAE***

## 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 Sixth Circuit by using the appellate CM/ECF system on June 16, 2014.

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

*s/Christy L. Anderson*

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Christy L. Anderson

***ATTORNEYS FOR AMICI CURIAE***