

**In The
Supreme Court of the United States**

DENNIS HOLLINGSWORTH, et al.,

Petitioners,

v.

KRISTIN M. PERRY, et al.,

Respondents.

UNITED STATES,

Petitioner,

v.

EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS
EXECUTOR OF THE ESTATE OF THEA CLARA SPYER,
and BIPARTISAN LEGAL ADVISORY GROUP OF THE
UNITED STATES HOUSE OF REPRESENTATIVES,

Respondents.

**On Writs Of Certiorari To The United States Court
Of Appeals For The Ninth And Second Circuits**

**BRIEF OF AMICI CURIAE FAMILY EQUALITY
COUNCIL; COLAGE; OUR FAMILY COALITION;
GAY, LESBIAN, AND STRAIGHT EDUCATION
NETWORK; THE CENTER ON CHILDREN AND
FAMILIES; THE CHILD RIGHTS PROJECT; AND
SARAH GOGIN IN SUPPORT OF RESPONDENTS
PERRY, STIER, KATAMI, ZARRILLO, CITY
AND COUNTY OF SAN FRANCISCO, AND
EDITH SCHLAIN WINDSOR, IN HER CAPACITY
AS EXECUTOR OF THE ESTATE OF
THEA CLARA SPYER, ADDRESSING THE MERITS
AND SUPPORTING AFFIRMANCE**

WILLIAM J. HIBSHER

K. LEE MARSHALL

DAVID GREENE

KATHERINE KEATING

Counsel of Record

Counsel for Amici Curiae

BRYAN CAVE LLP

560 Mission Street, 25th Floor

San Francisco, CA 94105-2994

(415) 268-2000

katherine.keating@bryancave.com

[Additional Counsel Listed On Inside Cover]

Additional Counsel

EMILY HECHT-MCGOWAN
FAMILY EQUALITY COUNCIL
1050 17th Street, NW
Suite 600
Washington, DC 20036
(202) 496-1285
ehecht@familyequality.org
Counsel for Amicus Curiae Family Equality Council

BARBARA BENNETT WOODHOUSE.
CHILD RIGHTS PROJECT
EMORY UNIVERSITY SCHOOL OF LAW
1301 Clifton Road
Atlanta, GA 30322
(404) 727-4934
Barbara.Woodhouse@Emory.edu
Counsel for Amicus Curiae Child Rights Project
Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
INTRODUCTION	1
INTEREST OF AMICI CURIAE.....	5
SUMMARY OF ARGUMENT	7
ARGUMENT	10
I. SAME-SEX-PARENTED FAMILIES ARE SUCCESSFULLY AND “RESPONSIBLY CREATING AND NURTURING THE NEXT GENERATION”	10
II. BOTH PROPOSITION 8 AND DOMA STIGMATIZE AND DE-LEGITIMIZE SAME-SEX-PARENTED FAMILIES IN THE EYES OF THE LAW AND SOCIETY	23
III. PROPOSITION 8 AND DOMA ALSO HARM LGBT YOUTH BY INFORMING THEM THAT THEIR GOVERNMENT CONSIDERS THEM, AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS, TO BE INHERENTLY INFERIOR TO THOSE OF THEIR HETEROSEXUAL PEERS.....	32
CONCLUSION.....	36

TABLE OF AUTHORITIES

Page

OTHER AUTHORITIES

<i>An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary</i> (Apr. 22, 2009) (statement of Gabriella do Amaral)	34
<i>An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary</i> (Apr. 22, 2009) (statement of Samuel Putnam-Ripley), available at http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related	2, 26
<i>An Act to Protect Religious Freedom and Promote Equality in Civil Marriage: Hearing on S. 115 Before the Vt. Sen. Judiciary Comm., section on Children and Families</i> (Mar. 19, 2009) (statement of Gabrielle Benham)	16
<i>All Children Matter: How Legal and Social Inequalities Hurt LGBT Families</i> , Family Equality Council, Movement Advancement Project, Center for American Progress (Oct. 2011) at 51-60, 62-72, available at http://www.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/all_children_matter.pdf	31

TABLE OF AUTHORITIES – Continued

	Page
American Academy of Child and Adolescent Psychiatry, <i>Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement</i> (revised and approved 2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Feb. 22, 2013).....	22
American Academy of Pediatrics, <i>Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples</i> , PEDIATRICS, 109(2): 339-340 (2002), reaffirmed May 2009	22
American Psychiatric Association, <i>Position Statement on Adoption and Co-parenting of Children by Same-sex Couples</i> (2002), http://www.psychiatry.org/advocacy--newsroom/position-statements (last visited Feb. 22, 2013)	22
American Psychological Association, <i>Sexual Orientation, Parents, & Children</i> (2004), http://www.apa.org/about/policy/parenting.aspx (last visited Feb. 22, 2013).....	22
Brian Arsenault, Op-Ed, <i>Maine Voices: Young man’s wish for his moms on Mothers Day: the right to marry. Families come in different shapes and sizes, but what matters is the love they show each other</i> , 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	11, 12, 19

TABLE OF AUTHORITIES – Continued

	Page
Statement from McKinley Quinn BarbouRoske to Family Equality Council (Feb. 1, 2013) (on file with Family Equality Council).....	13, 18
Henny M.W. Bos, Frank van Balen and Dymph van den Boom, <i>Child Adjustment and Parenting in Planned Lesbian-Parent Families</i> , AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 77:38-48 (2007).....	21
Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBTQ Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT (on file with amicus Child Rights Project) (compiled Jan. 29, 2013) (“Child Rights Project Survey”).....	32, 35, 36
Patricia Leigh Brown, <i>For Children of Gays, Marriage Brings Joy</i> , N.Y. TIMES (Mar. 19, 2004), at A1	31
Richard W. Chan, <i>et al.</i> , <i>Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children’s Adjustment</i> , JOURNAL OF FAMILY PSYCHOLOGY, 12:402-419 (1998).....	21
Child Welfare League of America, <i>Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults</i> , http://www.cwla.org/programs/culture/glbtposition.htm (last visited Feb. 22, 2013).....	22
Statement from Austin Covey to Our Family Coalition (Feb. 6, 2013) (on file with Our Family Coalition)	13

TABLE OF AUTHORITIES – Continued

Page

Stephen Erich, Patrick Leung and Peter Kin- dle, <i>A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children</i> , JOURNAL OF GLBT FAMILY STUDIES, 1:43-60 (2005).....	21
Statement from Kira Findling to Family Equal- ity Council (Jan. 29, 2013) (on file with Fam- ily Equality Council).....	26
Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013) (on file with Our Family Coalition).....	27
Gary J. Gates, <i>et al.</i> , <i>Adoption and Foster Care by Gay and Lesbian Parents in the United States</i> , Williams Institute and Urban Insti- tute (2007), available at http://williams institute.law.ucla.edu/wp-content/uploads/ Gates-Badgett-Macomber-Chambers-Final- Adoption-Report-Mar-2007.pdf	8
Gary J. Gates, <i>LGBT Parenting in the United States</i> , Williams Institute (2013), available at http://williamsinstitute.law.ucla.edu/wp- content/uploads/LGBT-Parenting.pdf	8
Gary J. Gates and Abigail M. Cooke, <i>United States Census Snapshot: 2010</i> , Williams In- stitute, UCLA School of Law, at 3 (Sept. 2011), available at http://williamsinstitute. law.ucla.edu/wp-content/uploads/Census2010 Snapshot-US-v2.pdf	8

TABLE OF AUTHORITIES – Continued

	Page
<i>Hearing on H 5015 Sub. A Before the R.I. House Jud. Comm.</i> (Jan. 15, 2013) (statement of Matthew Lannon), available at http://www.youtube.com/watch?v=Y9Fmm9z5o9g	17
<i>Hearing on HJR 6 Before the Iowa House of Representatives</i> (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	15, 17
<i>Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage</i> , Center for the Prevention of Hate Violence (Apr. 2009) (“ <i>Honoring All Maine Families</i> ”) at 4, available at http://www.preventinghate.org/wp-content/uploads/2011/03/Honoring-All-Maine-Families-2009.pdf	23, 26
IN MY SHOES: STORIES OF YOUTH WITH LGBT PARENTS (Jen Gilomen & COLAGE 2005) (“IN MY SHOES”)	1, 4, 14, 15, 16
<i>Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in our Nation’s K-12 Schools</i> , Gay, Lesbian and Straight Education Network (2008) (“ <i>Involved, Invisible, Ignored</i> ”) at 25, available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1104-1.pdf	20

TABLE OF AUTHORITIES – Continued

	Page
<i>Issue Brief: How DOMA Harms Children</i> , Movement Advancement Project, Family Equality Council, and Center for American Progress (Nov. 2011), <i>available at</i> http://action.familyequality.org/site/DocServer/issue-brief-how-doma-harms-children.pdf?docID=2781	31
<i>Jeff, Josh, and Andrew</i> , Family Stories, Family Equality Council, http://www.familyequality.org/get_informed/family_stories/ (last visited Feb. 22, 2013)	27
Anthony Michael Kreis, <i>Is Marriage Equality Inevitable</i> , HUFFPOST GAY VOICES (Sept. 13, 2012), 6:22PM, at 1, <i>available at</i> http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html	10
Michael E. Lamb, <i>Mothers, Fathers, Families, and Circumstances: Factors Affecting Children’s Adjustment</i> , APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012)	21
Isabella Levy, <i>Why marriage matters to the youth</i> , Garden State Equality (Feb. 12, 2012), http://www.gardenstateequality.org/2012/02/why-marriage-matters-to-the-youth/ (last visited Feb. 22, 2013)	34

TABLE OF AUTHORITIES – Continued

	Page
Fiona MacCallum and Susan Golombok, <i>Children Raised in Fatherless Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence</i> , JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY, 8:1407-1419 (2004)	21
Statement from Elizabeth Byrnes-Mandelbaum to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).....	27
Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 6, 2013) (on file with Our Family Coalition).....	29
Ian Rivers, V. Paul Poteat and Nathalie Noret, <i>Victimization, Social Support, and Psychological Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom</i> , DEVELOPMENTAL PSYCHOLOGY, 1:127-134 (2008).....	21
Statement from Ella Robinson to Family Equality Council (Jan. 29, 2013).....	27
Ella Robinson, <i>How and Why I Am Outspoken</i> , Family Equality Council Family Room Blog (June 19, 2012), http://www.familyequality.org/equal_family_blog/2012/06/19/1292/how_and_why_i_am_outspoken (last visited Feb. 22, 2013)	19, 28

TABLE OF AUTHORITIES – Continued

	Page
R. Bradley Sears, Gary J. Gates and William B. Rubenstein, <i>Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000</i> , Williams Institute, UCLA School of Law (2005)	8
Statement from Malina Simard-Halm to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council)	13, 24
SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS (2003-2006), 146-150, <i>available at</i> http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf	22
<i>Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n</i> (Apr. 16, 2008) (statement of Meredith Fenton), <i>available at</i> http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf	25
<i>Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n</i> at 45 (Apr. 16, 2008) (statement of Dr. Judith Glassgold), <i>available at</i> http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf	29

TABLE OF AUTHORITIES – Continued

	Page
<i>Unequal Taxation and Unique Burdens for LGBT Families Report</i> , Movement Advancement Project, Family Equality Council, and Center for American Progress (Apr. 2012) at 5, available at http://www.lgbtmap.org/file/unequal-taxation-undue-burdens-for-lgbt-families.pdf	30
Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, <i>Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents</i> , CHILD DEVELOPMENT, 75:1886-1898 (2004).....	21
Sarah Wildman, <i>Children Speak for Same-Sex Marriage</i> , N.Y. TIMES, Jan. 20, 2010, at E0, available at http://www.nytimes.com/2010/01/21/fashion/21kids.html?pagewanted=all&r=0	28

INTRODUCTION¹

*[T]he whole idea of same-sex marriage in the United States and everywhere, I think it's affected me because my friends are talking about it, too. It's interesting to hear their opinions on it . . . it's interesting hearing what they have to say because some people I thought, you know, they're cool with my family. But then when it comes to same-sex marriage, they have a different opinion. They're like, "I don't think they should get married. I think things are fine the way they are now." But they don't realize that they're talking about **my** family, too.*

Sarah Gogin, then 16, in *In My Shoes: Stories of Youth with LGBT Parents*²

My life is pretty typical for an eighth grader: I play football and baseball for my school, I'm an honor student, I like girls, and I enjoy hanging out with my friends. My mom and

¹ Written consent to the filing of this brief has been granted by all parties and filed with the Clerk of the Court. No counsel for a party authored this brief, in whole or in part, and no person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

² IN MY SHOES: STORIES OF YOUTH WITH LGBT PARENTS (Jen Gilomen & COLAGE 2005) at 3:49-4:25 ("IN MY SHOES"), available at <http://www.colage.org/inmyshoes/>. Many of the materials cited in this brief, including video clips of testimony at legislative hearings, have been compiled on the Family Equality Council web site at <http://www.familyequality.org/scotusbrief>.

her partner, Michelle, have been a family, along with my two brothers and I, for five years. I want to talk today about how kids all over the state are affected by the current limitations on marriage. I want you to understand that denying gays and lesbians their right to marry doesn't just affect adults.

Samuel Putnam-Ripley, then 14, testifying before Maine Joint Committee on Judiciary³

The voices of children raised by same-sex parents – those who live every day within the family structure at the heart of these lawsuits – are too often unheard in the debates about same-sex couples and marriage. Their stories are too often missing from discussions of “traditional” families or “family values,” and their personal experiences too often discounted as irrelevant. Although those who oppose marriage for same-sex couples frequently make assumptions about the quality of the children’s family lives, the children themselves are rarely asked to explain what they actually experience.

This habitual omission is unfortunate because these children are uniquely qualified to speak about how their families look, feel, and function and how the availability – or unavailability – of marriage as

³ *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (Apr. 22, 2009) (statement of Samuel Putnam-Ripley), available at <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

an option for their parents colors their daily lives. These children are also among those persons most directly affected by both the Defense of Marriage Act (DOMA) and Proposition 8.

The voices of lesbian, gay, bisexual, and transgender (LGBT) youth are also too frequently disregarded in these debates. The laws banning marriage for same-sex couples or limiting federal recognition of such marriages leave these young people to question their own dignity and self-worth. This stigmatization has a profoundly negative impact on their self-esteem, sense of purpose, and well-being that threatens to burden them for the rest of their lives.

This brief presents the voices of these children.



INTEREST OF AMICI CURIAE

Amici curiae are organizations dedicated to promoting equality among our country's diverse families (with a special focus on working with the children of lesbian, gay, bisexual, and transgender parents), organizations advocating for the interests of LGBT youth, and a young woman who was herself raised by two fathers. Each of the organizational 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.⁴

Sarah Gogin was raised in California by her two fathers, who adopted her when she was a baby and who continue to play a critical role in her life. Sarah graduated from Loyola Marymount University, *cum laude*, with a B.A. in Communications Studies and has a master's degree from the University of San Francisco in organizational development. Now 24, Sarah works on the administrative staff of a Bay Area hospital's cardiovascular surgery department. Sarah's fathers, who have been in a committed relationship for over forty years, were married in 2008, before the passage of Proposition 8. Sarah's story appears in the documentary project *In My Shoes: Stories of Youth with LGBT Parents*, which can be seen at www.colage.org/inmyshoes.

Family Equality Council (Family Equality) is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing LGBT parents and their children. Family Equality works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers young adults with LGBT

⁴ Many of the statements included in this brief were made as testimony before various public bodies or in published literature. Others are drawn from the personal knowledge of the amici and their constituents.

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 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 10 active chapters and nearly 20,000 supporters nationwide. Based on its direct experience in working with thousands of lesbian, gay, bisexual, transgender, and queer parents over the past 20 years, COLAGE can attest to the critical importance for children of having their parents' relationships recognized and respected on every level – socially, institutionally, politically, and legally.

Our Family Coalition (OFC) is at the forefront of work with LGBT-headed families in California. OFC promotes the equality and well-being of LGBT families with children, and fosters community leadership in advocacy efforts that promote social justice. OFC is the nation's largest regional organization for families with LGBT parents, directly serving more than 3,500 people each year. At the core of OFC's work is supporting children to feel safe and affirmed in their families. Given its extensive first-hand knowledge of the experiences of children of same-sex parents, OFC offers a unique window into the impact

of marriage equality on the healthy development of children and families.

The **Gay, Lesbian & Straight Education Network (GLSEN)** strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression. GLSEN educates teachers, students and the public at large about the damaging effects of homophobia and heterosexism with the goal of developing school climates where difference is valued for the positive contribution it makes in creating a more vibrant and diverse community. GLSEN recognizes that children of LGBT parents are vulnerable to bullying and harassment based on their family structure and that any threats to that family structure make the ability to attain an education even more of a challenge for those children.

The mission of the **Center on Children and Families (CCF)** at the University of Florida Fredric G. Levin College of Law in Gainesville, Florida is to promote the highest quality teaching, research and advocacy for children and their families. CCF has appeared as *amicus* in this Court and other courts in numerous cases of interest to lesbian, gay, bisexual, transgender, and questioning children and families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry.

The Child Rights Project (CRP) is a project of Emory Law School engaging faculty and students in researching and writing friend of the court briefs in cases of importance to children and youth. CRP's mission is to advocate for marginalized children whose voices might otherwise not be heard. They include lesbian, gay, bisexual, transgender, and questioning youth, children in foster care, homeless youth, minority youth, and children with disabilities. Its aim is to highlight for the judiciary and the public the often unanticipated impact of court decisions on children and youth.



SUMMARY OF ARGUMENT

The Proponents⁵ of the limitations at issue in the two cases before the Court assert a governmental interest relating to children. In *Hollingsworth*, Proponents assert that marriage licenses can be denied to same-sex couples as a logical consequence of the fact that male-female couples have procreative abilities, while same-sex couples do not have the capacity for “responsible procreation and childrearing in the same way.” *Hollingsworth v. Perry*, Pet’r Br. at 13. In *Windsor*, the Proponents claim that married same-sex couples should be denied legal protections available

⁵ The Petitioners in *Hollingsworth v. Perry* and Respondent Bipartisan Legal Advisory Group of the United States House of Representatives in *United States v. Windsor* are referred to collectively herein as the “Proponents.”

to other married persons because those protections are the way “government offers special encouragement and support for relationships that can result in mothers and fathers jointly raising their biological children.” *Windsor v. United States*, BLAG Br. at 48.

These arguments treat the children of same-sex parents as, at best, invisible, and, at worst, non-existent. In fact, six million Americans have at least one parent who have identified as lesbian, gay, or bisexual.⁶ And because nearly 20% of the 650,000 same-sex couples living in the U.S. are currently raising children,⁷ there are approximately a quarter of a million children who are currently being raised in same-sex-parented families. Same-sex-parented families live in every state and reside in 93% of all U.S. counties.⁸ These numbers are likely to increase: research shows that growing numbers of LGBT people – more than one-third of lesbians and 57% of gay men – aspire to become parents.⁹ *Amici curiae*

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

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

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

⁹ Gary J. Gates, *et al.*, *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, Williams Institute and
(Continued on following page)

represent these children of same-sex-parented families and believe that the issues before the Court cannot be properly understood without considering their first-hand accounts.

As these children attest, their family relationships are “traditional” family relationships, no different than anybody else’s and no less deserving of the marital protections afforded to families headed by opposite-sex couples.

Indeed, the Proponents’ efforts to deny marital protections to same-sex couples foster the exact opposite of the Proponents’ professed goal. Proposition 8 and DOMA serve to stigmatize and delegitimize hundreds of thousands of families, withholding from them the “recognition, encouragement, and support” that Proponents insist promote “stable, enduring relationships” in furtherance of “society’s vital interests in responsible procreation and childrearing.” *Hollingsworth*, Pet’r Br. at 36.

The harms caused by these laws extend also to LGBT youth. By denying same-sex couples the right to marry or the ability to enjoy the full benefits of their legal marriage, Proposition 8 and DOMA undermine the proffered governmental interest in “educating, socializing, and preparing . . . future citizens to become productive participants in civil

Urban Institute (2007), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Badgett-Macomber-Chambers-Final-Adoption-Report-Mar-2007.pdf>.

society.” *Hollingsworth*, Pet’r Br. at 37 (quotation and citation omitted). The denial of marriage rights forces LGBT youth to “tragically question their own self-worth and their rightful place in a society that fails to recognize their basic human dignity,”¹⁰ and Proponents’ actions discourage LGBT youth from aspiring to the “close, interdependent, and permanent relationships” that the Proponents insist benefit “children, as well as society at large.” *Windsor*, BLAG Br. at 45.

◆

ARGUMENT

I. SAME-SEX-PARENTED FAMILIES ARE SUCCESSFULLY AND “RESPONSIBLY CREATING AND NURTURING THE NEXT GENERATION”¹¹

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

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 (last visited Feb. 26, 2013).

¹¹ *Hollingsworth*, Pet’r Br. at 8.

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.

Brian Arsenault, college student, writing in *Portland Press Herald*¹²

As Brian Arsenault writes, “families come in many different shapes and sizes.” Some families are distinguished by the number of children, by the age ranges of the children and the parents, by the family’s religion, or the activities they enjoy doing together. Some children, regardless of their parents’ sexual orientation, come from divorced or blended families. And some children have LGBT parents living in committed and loving same-sex relationships. In both same-sex and opposite-sex-parented families, the parents may have married, joined through civil

¹² Brian Arsenault, Op-Ed, *Maine Voices: Young man’s wish for his moms on Mothers 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.

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 a state constitution been amended to take away the right of two parents to marry. And only for married same-sex couples has the United States Congress deemed the parents unmarried for all purposes under federal law.

Amici, and the children of LGBT parents whom amici represent, dispute the notion that a family can only be “traditional” if it has one male and one female parent. A family is not defined as “traditional” by its family portrait. Rather, it is defined by its everyday experiences, the “thousands of little things that keep a household running.”¹³ In this essential way, families with same-sex parents are as “traditional” as any others, sharing the joys, values, and concerns that countless families experience. The testimonials from the children raised in such families are offered in this brief to prove that very point.

Indeed, families in which LGBT parents are raising children are neither an oddity nor a rarity. As explained above, approximately a quarter of a million children are currently being raised by same-sex parents.

When amici talk to these children, they hear the same theme over and over again: their families are typical American families. Their moms and dads are

¹³ Brian Arsenault, Op-Ed, *supra* note 12.

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.

As Malina Simard-Halm, a student raised by two gay dads, explained to amicus Family Equality, “The truth is my family really is not that different than everyone else’s. We watch movies together, play board games, my dad cooks for me, and my other dad drops us off at school.”¹⁴ Or, in the words of 14-year-old McKinley Quinn BarbouRoske, “We are a normal family of four – well, as normal as any family with a teenage girl and an elementary school girl can be, which at some times isn’t much for anyone.”¹⁵ Nine-year-old Austin Covey echoed these sentiments: “Marriage is about family and my dads take the best care of me and my brother. My family is no different than any other family. We go to the movies, they take me to my sports practice, play games, and make the holidays, especially Christmas, awesome.”¹⁶

¹⁴ Statement from Malina Simard-Halm to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council) (“Malina Simard-Halm”).

¹⁵ Statement from McKinley Quinn BarbouRoske to Family Equality Council (Feb. 1, 2013) (on file with Family Equality Council) (“McKinley Quinn BarbouRoske”).

¹⁶ Statement from Austin Covey to Our Family Coalition (Feb. 5, 2013) (on file with Our Family Coalition).

Amicus Sarah Gogin, now 24, describes growing up with her two dads:

I was the multiracial daughter being raised by two Catholic Jesuit psychologists. This was a therapy session waiting to happen. But ultimately, my childhood was like any other. Plaid skirts and Peter Pan collars itched from K through 8 at St. Gabriel's school, where I participated in the Academic Decathlon, winter and spring performances, and athletic teams including soccer, volleyball, basketball, and baseball. Kevin, aka Pop (Papa, Pa, Poppy, Popsicle), became the first male president of the Mother's Board and Dan, aka Dad (just Dad), became assistant soccer coach and one of the key members of the Athletic Board. Needless to say, my family made moves and made ourselves known.

Following in the footsteps of my fathers and their fathers before them, I became the fourth generation McPherson Gogin to attend St. Ignatius College Preparatory. Again, my high school experience was like many other hormonal teen girls' high school experiences. It sucked. Acne, hormones, boys, college, SATs, musicals, proms, sporting tournaments. You name it; I went through it – with my dads' support every step of the way.

As Sarah, then a high school student, said in the documentary project *In My Shoes: Stories of Youth With LGBT Parents*, she appreciated the fact that –

unlike many of her friends' families – she and her fathers regularly took time to eat and talk together: “[W]e sit down together. We eat dinner together. And we talk.”¹⁷

Zach Wahls, a University of Iowa engineering student who was raised by two moms, described his family to the Iowa House of Representatives in 2011: “I guess the point is our family really isn’t so different from any other Iowa family. You know, when I’m home we go to church together, we eat dinner, we go on vacations. But, you know, we have our hard times too, we get in fights.”¹⁸

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

I live in a home with two women who love each other very much. I call them my mothers. There is nothing wrong with the way they live or the way they raise their children. I have proof of this. I’ve seen it in the morning when my mothers are trying to get the three of us out the door for school. I’ve also

¹⁷ IN MY SHOES, *supra* note 2, at 3:20-3:27.

¹⁸ *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”).

seen it when they work together at our bakery and café as a family.¹⁹

The ordinary nature of the lives of families headed by same-sex parents is often something of a revelation for those without first-hand experience. As then-seventeen-year-old Marina Gatto explained, “My friends . . . would meet my moms and . . . say, ‘Wow, you guys are just like my family. You know, you have dinner, you take your dog out for walks.’ There are just really not a whole lot of differences.”²⁰

The families of Brian, Malina, McKinley, Austin, Sarah, Zach, Gabrielle, Marina, and thousands of other young people are successfully fulfilling the mission of “responsibly creating and nurturing the next generation” that the *Hollingsworth* Petitioners insist is at the heart of marriage. *Hollingsworth*, Pet’r. Br. at 8. Belying the assertion that marriage must be confined to opposite-sex couples in order to “promot[e] an optimal social structure for educating, socializing, and preparing [our] future citizens to become productive participants in society,” *Hollingsworth*, Pet’r Br. at 37, the children raised in same-sex-parented households are thriving as “productive participants in society.”

¹⁹ *An Act to Protect Religious Freedom and Promote Equality in Civil Marriage: Hearing on S. 115 Before the Vt. Sen. Judiciary Comm., section on Children and Families* (Mar. 19, 2009) (statement of Gabrielle Benham).

²⁰ IN MY SHOES, *supra* note 2, at 25:00-25:21.

As Zach Wahls told the Iowa House of Representatives:

Being a student at the University of Iowa, the 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.²¹

Twelve-year-old Matthew Lannon told the Rhode Island House Judiciary Committee that “having gay parents has changed [his] life for the better,” that he is “more aware,” “much more accepting,” and “more sensitive to differences in the world.”²² McKinley Quinn BarbouRoske explained that her mothers “make sure we know the importance of community service. They make sure we can try new things. They

²¹ Zach Wahls, *supra* note 18.

²² *Hearing on H 5015 Sub. A Before the R.I. House Jud. Comm.* (Jan. 15, 2013) (statement of Matthew Lannon), *available at* <http://www.youtube.com/watch?v=Y9Fmm9z5o9g>.

support our interests. [They] have gone to every single one of my music concerts and my sister's sport games without exception."²³

Sarah Gogin credits her fathers with her present-day success:

Not only have my dads physically and financially supported me throughout my childhood, but they also have supported me emotionally, spiritually, and mentally as I have transitioned into adulthood. For over forty years, my dads have been living proof that true love does exist and that perseverance through adversity helps to define who we are. They have taught me to stay true to myself, to change for no one, and to be the best *me* that I can be.

Importantly, LGBT parents model positive and committed relationships, not just positive same-sex relationships. As Ella Robinson said of the relationship between her father, Bishop Gene Robinson, and his partner:

Their relationship, which started when I was 7 years old, was such an important example of what a loving, committed relationship should look like that I never thought to question it. I never knew to be embarrassed if someone looked at our family differently, or to worry if my friend coming to my Dad's

²³ McKinley Quinn BarbouRoske, *supra* note 15.

with me for the weekend would be uncomfortable. I just knew we'd have fun, watch the Golden Girls and play some board games (competitively).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 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

The experiences of these individuals are consistent with social science findings: children of same-sex parents fare equally well academically, psychologically, and socially as the children of opposite-sex parents. Research has shown that LGBT parents of young children are active and involved in their children's education, a factor which results in better

²⁴ Ella Robinson, *How and Why I Am Outspoken*, Family Equality Council Family Room Blog (June 19, 2012), http://www.familyequality.org/equal_family_blog/2012/06/19/1292/how_and_why_i_am_outspoken (last visited Feb. 22, 2013).

²⁵ Brian Arsenault, Op-Ed, *supra* note 12.

academic achievement for children.²⁶ A study by amicus GLSEN revealed that LGBT parents were more likely to attend their children's parent-teacher conferences and volunteer in the schools than a national sample of parents.²⁷ Nearly all of the LGBT parents surveyed (94%) reported attending parent-teacher conferences, as compared to 77% of the national sample of parents.

The same study showed that LGBT parents were also more likely to stay involved in their children's schooling as the children progressed through the educational system, with 89% of LGBT parents attending a high school parent-teacher conference or back-to-school night as compared to 56% of the parents in the national sample.²⁸ LGBT parents also reported a higher level of communication with their children's school than the national sample regarding their child's future education, their child's school program, information on doing schoolwork at home, their child's positive or negative behavior at school, and about doing volunteer work at school.²⁹

²⁶ *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in our Nation's K-12 Schools*, Gay, Lesbian and Straight Education Network (2008) at 25, available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1104-1.pdf.

²⁷ *Involved, Invisible, Ignored*, *supra* note 26, at 27.

²⁸ *Involved, Invisible, Ignored*, *supra* note 26, at 27-28.

²⁹ *Involved, Invisible, Ignored*, *supra* note 26, at 28-32.

Decades of social science research confirms that children of LGBT parents have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.³⁰ Several studies have even suggested that children raised by LGBT families are better adjusted psychologically than their peers.³¹

³⁰ Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012) (“[N]umerous studies of children and adolescents raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that they are as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents.”); see also Ian Rivers, V. Paul Poteat and Nathalie Noret, *Victimization, Social Support, and Psychological Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, DEVELOPMENTAL PSYCHOLOGY, 1:127-134 (2008); Stephen Erich, Patrick Leung and Peter Kindle, *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, JOURNAL OF GLBT FAMILY STUDIES, 1:43-60 (2005); Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, CHILD DEVELOPMENT, 75:1886-1898 (2004); Fiona MacCallum and Susan Golombok, *Children Raised in Fatherless Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence*, JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY, 8:1407-1419 (2004).

³¹ Henny M.W. Bos, Frank van Balen and Dymph van den Boom, *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 77:38-48 (2007); Richard W. Chan *et al.*, *Division of Labor Among*

(Continued on following page)

All of the leading national child welfare and social service organizations agree that children raised by lesbian, gay, and bisexual parents are just as happy, healthy, and well-adjusted as children raised by opposite-sex parents. The American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, Child Welfare League of America, and National Association of Social Workers all have published organizational statements confirming that lesbian, gay, and bisexual people make excellent parents who raise developmentally healthy children.³²

Lesbian and Heterosexual Parents: Associations with Children's Adjustment, JOURNAL OF FAMILY PSYCHOLOGY, 12:402-419 (1998).

³² American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised and approved 2009), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Feb. 22, 2013); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples*, PEDIATRICS, 109(2):339-340 (2002), reaffirmed May 2009; American Psychiatric Association, *Position Statement on Adoption and Co-parenting of Children by Same-sex Couples* (2002), <http://www.psychiatry.org/advocacy--newsroom/position-statements> (last visited Feb. 22, 2013); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited Feb. 22, 2013); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/programs/culture/glbtposition.htm> (last visited Feb. 22, 2013); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS (2003-2006), 146-150, available at

(Continued on following page)

The state's interest in "providing status and stability to the environment in which children are raised," *Hollingsworth* Pet'r Br. at 36 (citation and quotation omitted), applies to all families raising children and not just those headed by opposite-sex couples.

II. BOTH PROPOSITION 8 AND DOMA STIGMATIZE AND DE-LEGITIMIZE SAME-SEX-PARENTED FAMILIES IN THE EYES OF THE LAW AND SOCIETY

I worry about my little sisters and the lingering doubt in their minds about how legitimate their family is compared to their friends' families. It's a corrosive feeling of doubt. They really struggle with it.

"Honoring All Maine Families" (2009)³³

My parents do not need marriage to affirm their love for one another. Even without marriage, we are as close and loving as any other family. However, the simple notion that one type of family deserves more concessions than another stigmatizes families like mine. I

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

³³ *Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage*, Center for the Prevention of Hate Violence (Apr. 2009) ("*Honoring All Maine Families*") at 4, available at <http://www.preventinghate.org/wp-content/uploads/2011/03/Honoring-All-Maine-Families-2009.pdf>.

know that we are not inferior, simply extraordinary.

Malina Simard-Halm, as told to Family Equality³⁴

Although the Proponents claim an interest in stabilizing the American family structure, the elimination of marriage for same-sex couples in California and the refusal to recognize validly married couples on the federal level have the exact opposite effect. Placing an official stamp of governmental opprobrium on the relationships of same-sex parents instead serves to stigmatize and de-legitimize the relationships and, as a result, the children themselves. Indeed, the major challenge most same-sex-parented families must surmount is nothing inherent in their family structure, but rather the societal and governmental disapproval that both Proposition 8 and DOMA represent and perpetuate.

The petitioners in *Hollingsworth* disclaim any intent to stigmatize or demean same-sex-parented families. They write that “providing special recognition to one class of individuals does not demean others who are not similarly situated with respect to the central purpose of the recognition. It is simply not stigmatizing for the law to treat different things differently, or to call different things by different names.” *Hollingsworth*, Pet’r Br. at 63.

³⁴ Malina Simard-Halm, *supra* note 14.

But this rationalization is simply not reflective of what the children of same-sex parents actually experience; they are in fact very much demeaned and stigmatized by being “treated differently.” Their feelings of stigmatization, inferiority, and illegitimacy are very real.

Indeed, these feelings of stigmatization, inferiority, and de-legitimization are common themes heard by the amici who work every day with children raised by same-sex parents. As the former program director of amicus COLAGE told the New Jersey Civil Union Review Commission, many children with whom she has worked have had their peers “question[] the validity of their families because their parents aren’t able to get married.”³⁵ 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.”³⁶

To the children with whom the amici work, marriage inequality is an insult, but even more, it makes them feel as if the government deems the relationship, the entire family, and the children

³⁵ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 38 (Apr. 16, 2008) (statement of Meredith Fenton) (“Fenton Testimony”), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf>.

³⁶ Fenton Testimony, *supra* note 35, at 76:4-5.

themselves as inferior, as “lesser citizens.”³⁷ It sends the message that their families are “not legitimate” and “not welcome.”³⁸ It creates an insecurity – a “corrosive feeling of doubt” – in their perceived stability of their family.³⁹ It fosters confusion because “my family doesn’t mean to other people what it means to me.”⁴⁰ In one example relayed to Family Equality, the young son of two gay men was compelled to ask, “Dad, are we a family?” after overhearing hospital staff say that his one father was not able to sign his

³⁷ “I feel like a lesser citizen because my parents’ love and commitment to each other isn’t considered ‘legal’ by the United States government.” Statement from Kira Findling to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).

³⁸ *Honoring All Maine Families*, *supra* note 33, at 5.

³⁹ *Honoring All Maine Families*, *supra* note 33, at 4.

⁴⁰ “I consider my mom’s partner my stepmom. But society does not. My school doesn’t. My doctor doesn’t. Sometimes my friend’s parents don’t either. So that leaves me in a strange position. My family doesn’t mean to other people what it means to me. I am stuck saying ‘my mom’s partner’ or ‘my mom’s girlfriend,’ when, really, I should have the right to call her ‘my stepmom.’” *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (Apr. 22, 2009) (statement of Samuel Putnam-Ripley), available at <http://www.youtube.com/watch?v=pT1Bd8MXyqo&feature=related>.

other father's medical paperwork because they were "not family."⁴¹

Moreover, these children feel "cheated" by marriage inequality.⁴² As one child of same-sex parents told amicus Family Equality:

It really hurts me that my family isn't recognized by the government, it makes me feel like we aren't seen as a family, which makes me feel insecure. It's not fair to my parents, who love each other just as much as straight couples.⁴³

As 18-year-old Maggie Franks told OFC:

My moms have been together for 22 years, and I could not have asked for better, more supportive parents. Both DOMA and Prop 8 essentially sentence my parents' relationship to second class status, not only making our family feel less worthy than others, but denying us rights that are enjoyed by other families headed by straight parents.⁴⁴

⁴¹ "*Jeff, Josh, and Andrew*," Family Stories, Family Equality Council, http://www.familyequality.org/get_informed/family_stories/ (last visited Feb. 22, 2013).

⁴² Statement from Ella Robinson to Family Equality Council (Jan. 29, 2013) ("Ella Robinson Statement").

⁴³ Statement from Elizabeth Byrnes-Mandelbaum to Family Equality Council (Jan. 29, 2013) (on file with Family Equality Council).

⁴⁴ Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013) (on file with Our Family Coalition).

Ten-year-old Kasey Nicholson-McFadden told New Jersey legislators that this was his experience, as well. For Kasey, the absence of marriage as an option for his parents led him to question the legitimacy of his family: “It doesn’t bother me to tell kids my parents are gay. It **does** bother me to say they aren’t married. It makes me feel that our family is less than a family.”⁴⁵

This stigmatization is exacerbated by the fact that to these children the distinctions these laws make simply are nonsensical in relation to what the children have themselves experienced. As Ella Robinson said:

How can they tell me that my family doesn’t count? That the relationship between my two dads that I have not only learned from and cherished, but also reaped the benefits of, isn’t acknowledged on the federal level? That the love they share isn’t deserving of the same protection and laws that a man and a woman receive?⁴⁶

To one young woman, whose mothers have been together for almost thirty years, the repeated governmental efforts to place an official stamp of “differentness” on same-sex marriage sparked strong feelings

⁴⁵ Sarah Wildman, *Children Speak for Same-Sex Marriage*, N.Y. TIMES (Jan. 20, 2010), at E0, available at http://www.nytimes.com/2010/01/21/fashion/21kids.html?pagewanted=all&_r=0.

⁴⁶ Ella Robinson Statement, *supra* note 42.

of injustice and betrayal. She described to Family Equality how formerly she “never cared about the issue of marriage” because she “couldn’t have asked for a happier, healthier, more loving family and there was nothing that anyone could do to change that.” But the efforts to limit full recognition of marriage to opposite-sex couples “felt like a slap in the face”:

How could the free society that raised me and taught me everything that I know, now deny me my other foundation, a family that is recognized and protected as such? It felt like a slap in the face from my country. I had never asked for validation, but blatant exclusion hurts.⁴⁷

Social science research confirms that what these individual children are experiencing is typical of what many children of same-sex-parents feel. As Dr. Judith Glassgold, a licensed psychologist, testified before the New Jersey Civil Union Review Commission, the feeling that their parents’ relationship is deemed “inherently different and potentially inferior to heterosexual relationships,” and that their parents are “inherently less deserving than heterosexual couples of society’s full recognition,” psychologically burdens the children of same-sex parents.⁴⁸

⁴⁷ Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013) (on file with Our Family Coalition).

⁴⁸ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 45 (Apr. 16, 2008) (statement of Dr. Judith Glassgold), available at <http://www.nj.gov/oag/dcr/> (Continued on following page)

The stigma and feelings of illegitimacy, anger and unfairness that these children perceive are well-founded, particularly when the practical effects of DOMA are considered. Since the law's passage, the federal government has singled out married same-sex couples for exclusion from the tax incentives built into the tax code. Same-sex couples cannot file joint federal tax returns or maximize dependency exemptions, child tax credits, children and dependent care credits, and education deductions and therefore carry a heavier tax burden than their opposite-sex counterparts. They often have to split their children between two different tax returns in order to gain any tax relief.⁴⁹ Moreover, because of DOMA, if an employer offers health insurance coverage to same-sex partners or to the children of same-sex partners, both the employer and the employee are taxed on the benefit. Additionally, same-sex headed families are not accurately counted when determining eligibility for safety-net programs such as Medicaid or Children's Health Insurance Program (CHIP), which provide free or low-cost health insurance to low-income children; Supplemental Social Security Income (SSI), which provides assistance to children who are blind

downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf.

⁴⁹ *Unequal Taxation and Unique Burdens for LGBT Families Report*, Movement Advancement Project, Family Equality Council, and Center for American Progress (Apr. 2012) at 5, available at <http://www.lgbtmap.org/file/unequal-taxation-undue-burdens-for-lgbt-families.pdf>.

or disabled; and Temporary Assistance for Needy Families (TANF), which provides monetary assistance to help with food, clothing, housing, and other basic needs. This inaccurate counting of same-sex headed families can unfairly deny children with same-sex parents assistance that would be granted to children with married, opposite-sex parents.⁵⁰

Both DOMA and Proposition 8 are hurtful to the youth whom amici represent and create an insecurity among them about their families. The lived reality of individual amici and other children of same-sex-parented families is that measures like Proposition 8 and DOMA have stigmatizing and de-legitimizing effects.⁵¹

⁵⁰ *Issue Brief: How DOMA Harms Children*, Movement Advancement Project, Family Equality Council, and Center for American Progress (Nov. 2011), available at <http://action.familyequality.org/site/DocServer/issue-brief-how-doma-harms-children.pdf?docID=2781>; *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families*, Family Equality Council, Movement Advancement Project, Center for American Progress (Oct. 2011) at 51-60, 62-72, available at http://www.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/all_children_matter.pdf.

⁵¹ In contrast, the legalization of marriage for same-sex couples can have a profound de-stigmatizing effect. A 2004 *New York Times* article profiled several children whose same-sex parents had recently been permitted to marry. One 13-year-old noted the difference in people's reactions to her parents' relationships: "Before it was 'Oh, your parents are just partners' . . . Now they're spouses. So it's a bigger way of thinking about them." Patricia Leigh Brown, *For Children of Gays, Marriage Brings Joy*, N.Y. TIMES (Mar. 19, 2004), at A1. Indeed, the

(Continued on following page)

III. PROPOSITION 8 AND DOMA ALSO HARM LGBT YOUTH BY INFORMING THEM THAT THEIR GOVERNMENT CONSIDERS THEM, AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM AS ADULTS, TO BE INHERENTLY INFERIOR TO THOSE OF THEIR HETEROSEXUAL PEERS

It is exhausting to have the same goals and aspirations as everyone else and yet be denied many of them, simply because of the gender of who I want to share them with. 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.

Matthew Pagnotti, college student⁵²

DOMA and Proposition 8 also hurt another group of young people – LGBT youth. These young people's

Hollingsworth petitioners' own expert conceded at trial that marriage equality would benefit the children of same-sex couples. *Hollingsworth*, App. to Pet'r Br. at 157a.

⁵² Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT (on file with amicus Child Rights Project) (compiled Jan. 29, 2013) ("Child Rights Project Survey").

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. By officially sanctioning their exclusion from marriage and placing existing marriages of same-sex couples in the singular position of being “not marriages” for federal law, these measures exacerbate feelings of hopelessness about the future and perpetual “different-ness” that many LGBT youth already feel and discourage them from aspiring to full participation in civic life.

Limiting marriage to heterosexual couples and treating marriages between same-sex couples as invalid undermines the self-worth of LGBT youth and impinges their development in relation to their peers. It is an influence that is deeply felt and experienced, but one that has not received recognition or the proper attention it deserves.

As one young woman wrote in the context of New Jersey’s marriage equality initiative:

Although gay and lesbian youth aren’t going to marry any time soon, most plan to in the future. It is a dream for many young people to grow up, marry the person they love, and perhaps raise children with that person. And yet, that dream cannot be fulfilled in today’s New Jersey, if the person you love is of the same gender as you. For many LGBT youth, the worry that they cannot live a fulfilling, happy life is one that causes much despair. By refusing young people the opportunity to

commit themselves to someone with whom they want to share the rest of their life, New Jersey would only encourage that fear and despair.⁵³

Another young woman expressed similar feelings in testimony before the Maine Legislature's Judiciary Committee:

I feel happiness and sadness and I feel love, yet there are stipulations for marriage based on my love, while my heterosexual friends enjoy the benefits of marriage rights. My love is equal and it should be acknowledged equally. When it isn't, it impacts how I feel as a member of society: unequal. [¶] When young people like me are constantly told that we don't have the same rights as other people it's hard to sense belonging. . . . It's frustrating knowing that I won't have the same opportunities as my peers simply because I'm a lesbian.⁵⁴

A sixteen-year-old told the Child Rights Project that the unavailability of marriage "has made [him] feel less as a person." It meant to him that he "would

⁵³ Isabella Levy, *Why marriage matters to the youth*, Garden State Equality (Feb. 12, 2012), <http://www.gardenstateequality.org/2012/02/why-marriage-matters-to-the-youth/> (last visited Feb. 22, 2013).

⁵⁴ *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (Apr. 22, 2009) (statement of Gabriella do Amaral).

never be able to have a family, a wedding, or things [he] had dreamed about since childhood.”⁵⁵ Another high school student wrote:

I’ve known I was gay since I was in 6th grade but I also knew that if I was gay I wouldn’t be able to get married with that one I truly loved, therefore I wouldn’t be able to share those moments [that] my parents enjoyed[.] I thought that the bond of marriage is what keeps two people together through thick and thin [but] was not for me, and thus my adult life would not be the haven [that I had thought] as a kid.⁵⁶

This is not just a question of short-lived, adolescent disappointment. The current generation of LGBT youth is the next generation of LGBT parents. Denying them what one of Proponents’ supporters calls “a gateway to adult responsibilities, including childbearing, childrearing, and the inculcating of civic virtues in the next generation for the benefit of the larger society,”⁵⁷ is flatly inconsistent with the interests asserted by the Proponents in both *Hollingsworth* and *Windsor*.

Comments from LGBT youth illustrate the powerful effect of state-sanctioned disapproval of the

⁵⁵ Child Rights Project Survey, *supra* note 52.

⁵⁶ Child Rights Project Survey, *supra* note 52.

⁵⁷ Brief of Amicus Curiae Helen M. Alvaré in Supp. of *Hollingsworth* and *BLAG* Addressing the Merits and Supporting Reversal at 34.

relationships that many – including the Proponents – tout as the cornerstone of responsible adulthood. A college student described the laws at issue in these cases as “saying I am a second-rate citizen. . . . My expectation is that while the rest of my community may disengage me because of my orientation, my government would not.”⁵⁸ Another young man wrote:

The federal government denying marriage equality has led to a sense of ‘it’s against the law to be gay.’ . . . I felt that the feelings I felt were wrong, even illegal. It took me several years to finally accept myself. Not even the government approved of me.⁵⁹

Barring millions of young people from full participation in the institution the Proponents insist is uniquely capable of supporting “stable and enduring” relationships cannot be reconciled with the interest the Proponents claim is at the heart of the issues before the Court – that of “nurturing the next generation.”⁶⁰



CONCLUSION

While the Proponents will tell you that Proposition 8 and DOMA are good for children, children raised by same-sex parents will tell you otherwise. These children will tell you that Proposition 8 and

⁵⁸ Child Rights Project Survey, *supra* note 52.

⁵⁹ Child Rights Project Survey, *supra* note 52.

⁶⁰ *Hollingsworth*, Pet’r Br. at 41 & 8.

DOMA stigmatize and de-legitimize their families. And they will tell you that their families are just as deserving of recognition, respect, and protection as those of children with opposite-sex parents. And while the Proponents say that Proposition 8 and DOMA will improve society by encouraging individuals to commit to adult responsibilities, the LGBT youth whom these laws actively discourage from assuming these responsibilities and who have personally experienced the harm that these laws engender and perpetuate cannot agree.

Based on the foregoing, amici urge this Court to affirm the Ninth Circuit's decision in *Hollingsworth v. Perry* and the Second Circuit's decision in *United States v. Windsor*.

Respectfully submitted.

WILLIAM J. HIBSHER	BRYAN CAVE LLP
K. LEE MARSHALL	560 Mission Street, 25th Floor
DAVID GREENE	San Francisco, CA 94105-2994
KATHERINE KEATING	(415) 268-2000
<i>Counsel of Record</i>	katherine.keating@ bryancave.com

*Counsel for Amici Curiae Family Equality Council;
COLAGE; Our Family Coalition; Gay, Lesbian and
Straight Education Network; the Center on Children and
Families; the Child Rights Project; and Sarah Gogin*