

Case No. 14-2184

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

ADA M. CONDE-VIDAL, et al.,
Plaintiffs-Appellants,

v.

DR. ANA RÍUS-ARMENDÁRIZ, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
For the District of Puerto Rico, Case No. 3:14-cv-01253-PG
The Honorable Juan M. Perez-Gimenez, U.S. District Judge

BRIEF OF AMICI CURIAE
FAMILY EQUALITY COUNCIL, COLAGE, and THE UNIVERSITY OF
PUERTO RICO SCHOOL OF LAW - CLINIC ON
SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION
In Support of Plaintiffs and Reversal
(filed with consent of all parties)

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

Each of the *amici curiae* certifies that it is neither a corporation that issues stock nor has a parent corporation that issues stock.

STATEMENT OF CONSENT TO FILE

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

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STATEMENT PURSUANT TO FRAP RULE 29(c)(5)

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

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are organizations dedicated to promoting equality among 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 their families are typical families, with the same joys and challenges as other families. Yet these families must overcome official governmental opprobrium in the form of laws that stigmatize and de-legitimize their family relationships on a legal, social, and psychological level. Amici curiae share these stories in this brief.¹

Family Equality Council (“Family Equality”) is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing lesbian, gay, bisexual, and transgender parents and their children. Family Equality works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers young adults with LGBT parents to speak out about their families, share their own stories and become advocates for family equality. Family Equality

¹ Some 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.

submits this brief on behalf of all of the young people and their parents with whom it has worked.

COLAGE is the only national organization led for and by people with a lesbian, gay, bisexual, transgender, or queer parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats our families differently can be isolating and challenging, particularly for children. COLAGE, which was founded in 1990, has active chapters across the United States and provides networks, programs, and support to thousands nationwide. Based on its direct experience in working with thousands of youth being raised in lesbian, gay, bisexual, gay, transgender, and queer families for 25 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.

The University of Puerto Rico School of Law - Clinic on Sexual Orientation and Gender Identity Discrimination (“U.P.R. Law Clinic”) has provided for over ten years pro bono representation for individuals who seek legal aid in disputes related to their sexual orientation and identity. The Clinic has appeared before the Supreme Court of Puerto Rico, lower courts, and U.S. district federal court as well as before the Legislative bodies advancing human and civil rights of lesbians, gay, bisexual, transsexual and transgender persons in Puerto

Rico. The Clinic provides advocacy, raises community awareness, and lobbies elected officials, promoting and advancing respect for human rights and equal protection of the laws for lesbian, gay, bisexual, transsexual and transgender persons in Puerto Rico and their families. As partners in the collaborative process of drafting the amicus, the Clinic coordinated, conducted and collected the interviews herein, which reflect the often ignored voice of Puerto Rico's youth regarding the matter.

INTRODUCTION

I am fourteen years old, and I currently live in San Juan, Puerto Rico. ... I have two lesbian mothers and I've had a perfectly normal and happy life.

I am writing to ask you to please recognize my parents' right to marry, and have the rights to protect me.²

J.A.V.V. (14 years old, San Juan, P.R.)

As a young adult I often find myself making decisions that will influence my career and personal life, and the thought of getting married and having a family is a big part of that. These laws make me feel unsafe and unwelcome in my own country.³

Fernando J. Fuentes Burgos (22 years old, Mayagüez, P.R.)

Too often missing from discussions of “traditional” families or “family values” are the voices of children raised by same-sex parents—those who live every day within the family structure at the heart of this lawsuit. Those who oppose marriage for same-sex couples frequently make assumptions about the quality of these children’s family lives, yet the children themselves are rarely asked to explain what they actually experience.

² Statement from J.A.V.V. to amicus U.P.R. Law Clinic (Dec. 8, 2014) (“J.A.V.V.”). Each of the statements to U.P.R. Law Clinic cited in this brief are on file with U.P.R. Law Clinic. Because she is a minor, J.A.V.V. is referred to by initials, pursuant to Fed. R. App. P. 25.

³ Statement from Fernando J. Fuentes Burgos to U.P.R. Law Clinic (Dec. 7, 2014) (“Fuentes”).

The absence of their voices is unfortunate because these children are uniquely qualified to speak about how their families look, feel, and function and how the availability – or unavailability – of marriage for their parents colors their daily lives. The voices of lesbian, gay, bisexual, and transgender (LGBT) youth are also too frequently disregarded in these debates. Article 68 of the Puerto Rico Civil Code, banning same-sex couples from marriage, informs these young people that Puerto Rico deems the intimate relationships they may form as unworthy of the “dignity and status” that come with the right to marry. *United States v. Windsor*, 133 S.Ct. 2675, 2692 (2013). This state-sanctioned stigmatization has a profoundly negative impact on these young people’s self-esteem, sense of purpose, and well-being that threatens to burden them for the rest of their lives.

This brief presents the voices of young people directly impacted by laws prohibiting or refusing to recognize marriage for same-sex couples.

SUMMARY OF ARGUMENT

Families are at the heart of marriage laws. In upholding Puerto Rico’s prohibition against marriage for same-sex couples – including recognition of marriages entered into outside of Puerto Rico – the District Court invoked “[t]he ancient understanding and traditional doctrine of marriage and family life expressed by Article 68.”⁴ The court decried the “peculiar inability” of courts that have ruled such marriage restrictions unconstitutional to “recall the principles embodied in existing marriage law,” namely, that “traditional marriage” is “inextricably linked to procreation and biological kinship.”⁵

The assumption that the principles underlying marriage do not apply to families headed by same-sex couples cannot be squared with the actual experiences of these families. The assumption treats the children of same-sex parents as, at best, invisible and, at worst, unworthy of protection. And it treats young members of Puerto Rico’s LGBT community as second-class citizens, unfit to participate in what the District Court called “the fundamental unit of the political order.”⁶

As children raised by same-sex parents attest, their family relationships are no different than anybody else’s and no less deserving of the marital protections

⁴ Opinion and Order, *Conde-Vidal v. Garcia-Padilla* (D. P.R. Case No. 14:1253 (PG), Doc. 57 (filed Oct. 21, 2014) (“Op.”) at 2-3.

⁵ *Id.* at 20 (quoting *Windsor*, 133 S. Ct. at 2718 (Alito, J., dissenting)).

⁶ *Id.* at 20.

afforded to families headed by different-sex couples. Denying marriage to same-sex couples stigmatizes and de-legitimizes their families, withholding from them the very recognition, encouragement, and support that proponents of marriage restrictions typically insist are essential for promoting family stability.

LGBT youth in Puerto Rico understand all too well what the unavailability of marriage means for their futures. Not only does Article 68 inform these young Puerto Ricans that the government considers them – and the relationships they may form – to be inferior, but it also means they enter adult life knowing the families they may build will not be protected like the families of their heterosexual peers. 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.”⁷

Amici curiae believe the first-hand accounts of LGBT youth and children of same-sex couples presented in this brief will help the Court better understand the issues before it.

⁷ Anthony Michael Kreis, *Is Marriage Equality Inevitable*, HUFFPOST GAY VOICES, Sept. 13, 2012, at 1, http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html (last visited Jan. 28, 2015).

ARGUMENT

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

My family is as good as any. I am proof of that.

J.A.V.V. (14 years old, San Juan, P.R.)⁸

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

Brian Arsenault (then a college sophomore, Maine).⁹

As Brian Arsenault writes, “families come in many different shapes and sizes.” Families differ in the number of children, the age ranges of the children and the parents, the families’ religion, and the activities they enjoy doing together. Some children, regardless of their parents’ sexual orientation, come from divorced or blended families. And some children have LGBT parents living in committed

⁸ J.A.V.V., *supra* note 2.

⁹ 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.

and loving same-sex relationships. In both same- and different-sex-parented families, the parents may have married, joined through civil unions or commitment ceremonies, or chosen not to seek any governmental or ceremonial recognition of their relationship. However, only for same-sex-parented families has Puerto Rico denied the parents the right to marry.

Amici, and the children of LGBT parents whom amici represent, dispute the notion that a family is worthy of protection only if it has one male and one female parent. A family is not defined by the genders of those who appear in the family portrait. It is defined by its everyday experiences, the “thousands of little things that keep a household running.”¹⁰ 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. More than 6,500 same-sex couples live in Puerto Rico, and at least 15% of them are raising children under 18.¹¹ When amici talk to the children raised by same-sex parents, they hear the same theme over and over again: their

¹⁰ *Id.*

¹¹ Gary J. Gates, *Same-Sex Couples in Puerto Rico: A Demographic Summary*, Williams Institute, UCLA School of Law (Jan. 2015), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/PR-same-sex-couples-demo-jan-2015.pdf>.

families are typical families. Their moms and dads are raising their children to 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.

Fourteen-year-old J.A.V.V., of San Juan, explains that she “ha[s] two lesbian mothers and [has] had a perfectly normal and happy life.”¹²

S.R.R, now 29, describes growing up in Puerto Rico with two mothers: “It was only different because other families had a mother and a father or one mother ... But my family and our relationship weren’t different at all, it was all normal, it was natural to me.” The partner of S.R.R.’s biological mother was “part of [S.R.R.’s] daily life”: “She would discipline me, pick me up at school, cook me breakfast, bathe me ... everything. She would always sit with me to help me do my physics, chemistry, and math homework ... and make sure I didn’t need anything.”¹³

¹² J.A.V.V., *supra* note 2.

¹³ Statement from S.R.R. to U.P.R. Law Clinic (Dec. 2, 2014) (“S.R.R.”). Concerns about hostility to LGBT individuals within their community in Puerto Rico have caused S.R.R.’s parents to keep the nature of their relationship private. To avoid disclosing their identity, S.R.R. has requested that she be referred to by her initials in this brief.

These experiences accord with those of children raised by same-sex parents outside Puerto Rico. In 2011, Zach Wahls, then a college student, told Iowa legislators about life with his two moms: “I guess the point is our family really isn’t so different from any other Iowa family. [W]hen I’m home we go to church together, we eat dinner, we go on vacations. But, you know, we have our hard times too, we get in fights.”¹⁴ 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 seen it when they work together at our bakery and café as a family.¹⁵

S.R.R.’s experiences were similar. “[M]y mother and [her partner] were always together in all the activities we went to. We would go together to the church’s activities and family reunions, everywhere, with them together.”¹⁶

Isabel Batteria, now 33, was also raised in Puerto Rico by two mothers, whom Isabel credits with nurturing values she now cherishes. It was Isabel’s non-

¹⁴ *Hearing on HJR 6 Before the Iowa H.R.* (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 *An Act to Protect Religious Freedom and Promote Equality in Civil Marriage: Hearing on S. 115 Before the Vt. Sen. Judiciary Comm., section on Children and Families* (March 19, 2009) (statement of Gabrielle Benham).

¹⁶ S.R.R., *supra* note 13.

biological mother “who recommended reading material, who would lie on the couch reading on weekends and invite [Isabel] to do the same, who would take [her] to museums on lazy days.” And her biological mother “would let [Isabel] explore anything [she] wanted that would contribute to [Isabel’s] culture, often paying for stuff that was really expensive for [the family], like music lessons.” As Isabel, who is now an editor, writer, and translator, explains: “To me, education and love for books and reading is the greatest gift I could have received, because today words are my livelihood.”¹⁷

S.R.R. echoes this appreciation for the way her parents raised her: “[T]hey both had a huge role in teaching me values. They would both discipline me and helped to form me as a person.” S.R.R. adds that her mother’s partner is a scientist and gave S.R.R. “a fascination for sciences”: “While I didn’t follow a career in sciences, I will always remember how she would share her knowledge with me and motivate me.”¹⁸

Brian Arsenault explains how same-sex parents can model positive and committed relationships – not just positive same-sex relationships:

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

¹⁷ Statement from Isabel Batteria to U.P.R. Law Clinic (Dec. 3, 2014).

¹⁸ S.R.R., *supra* note 13.

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.¹⁹

The experiences of J.A.V.V., S.R.R., Brian, Zach, Gabrielle, and Isabel are consistent with social science findings: children of same-sex parents fare just as well academically, psychologically, and socially as the children of different-sex parents.

Research has shown that LGBT parents of young children are active and involved in their children's education, a factor which results in better academic achievement for children.²⁰ A study by the Gay, Lesbian and Straight Education Network revealed that LGBT parents were more likely to attend their children's parent-teacher conferences and volunteer in the schools than a national sample of parents and 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.²¹ Compared to the national average, LGBT parents also reported a higher level of communication with their

¹⁹ Brian Arsenault, Op-Ed, *supra* note 9.

²⁰ *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in our Nation's K-12 Schools*, Gay, Lesbian and Straight Education Network (2008) at 25, available at <http://glsen.org/learn/research/national/report-iii>.

²¹ *Id.* at 27–28.

children's schools regarding the schools' programs, doing schoolwork at home, their children's positive or negative behavior at school, and their children's future education.²²

Decades of social science research confirms that children of same-sex parents have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.²³ Several studies have even suggested that children raised by same-sex parents are better adjusted psychologically than their peers.²⁴

²² *Id.* at 28–32.

²³ Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCI., 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*, J. GLBT FAM. 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*, J. CHILD PSYCHOLOGY & PSYCHIATRY, 8:1407–1419 (2004).

²⁴ Henny M.W. Bos, Frank van Balen and Dymph van den Boom, *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, AM. J. ORTHOPSYCHIATRY, 77:38–48 (2007); Richard W. Chan et al., *Division of Labor*

All of the leading national child welfare and social service organizations agree that children raised by lesbian, gay, and bisexual parents are just as happy, healthy, and well-adjusted as children raised by different-sex parents. The American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, Child Welfare League of America, and National Association of Social Workers all have published organizational statements confirming that lesbian, gay, and bisexual people make excellent parents who raise developmentally healthy children.²⁵

Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment, J. FAM. PSYCHOLOGY, 12:402–419 (1998).

²⁵ 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 Jan. 29, 2015); 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/file%20library/advocacy%20and%20newsroom/position%20statements/ps2002_adoption.pdf (last visited Jan. 29, 2015); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), <http://www.apa.org/about/policy/parenting.aspx> (last visited Jan. 29, 2015); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, <http://www.cwla.org/position-statement-on-parenting-of-children-by-lesbian-gay-and-bisexual-adults/> (last visited Jan. 29, 2015); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003–2006, 146–150, *available at* <http://www.socialworkers.org/pressroom/features/policy%20statements/146-153%20Foster.pdf>.

II. THE LAWS OF PUERTO RICO DE-LEGITIMIZE SAME-SEX-PARENTED FAMILIES AND LEAVE CHILDREN WITHOUT CRITICAL LEGAL PROTECTIONS.

It's terrible, you know? Imagine ... it's terrible. She raised me, with my mother. The two of them were the most important people in my raising. If something were to have happened, she should have had the right to take decisions.

S.R.R. (29 years old, San Juan, P.R.)²⁶

[T]he Puerto Rico Senate proposed legislation to change the law that keeps us from being adopted by our parents. ... During the hearings I kept hearing [that] our parents are not able to be good parents. These things and the whole fact that they kept saying that we weren't a real family angered me and confused me.

J.A.V.V. (14 years old, San Juan, P.R.)²⁷

When “the procreative potential embodied in traditional marriage”²⁸ is invoked in defense of barring same-sex couples from marriage, the assertion is typically that restricting marriage to different-sex couples benefits society by stabilizing the family structure. This Court has already rejected the notion that withholding marital status from same-sex couples furthers an “asserted goal of strengthening the bonds and benefits to society of heterosexual marriage.”

Commonwealth of Mass. v. United States Dept. of Health and Human Servs., 682

²⁶ S.R.R., *supra* note 13.

²⁷ J.A.V.V., *supra* note 2.

²⁸ *Op.*, *supra* note 4, at 20.

F.3d 1, 15 (1st Cir. 2012). The government interests proposed to justify the federal Defense of Marriage Act (“DOMA”) in that case included “defending and nurturing the institution of traditional, heterosexual marriage,” “support[ing] child-rearing in the context of stable marriage,” and “encouraging responsible procreation and child-rearing.” *Id.* at 14 & n.10. This Court explained that “DOMA does not increase benefits to opposite-sex couples – whose marriages may in any event be childless, unstable, or both – or explain how denying benefits to same-sex couples will reinforce heterosexual marriage.” *Id.* at 14.

The same is true here. In fact, the unavailability of marriage for same-sex couples in Puerto Rico can only *de-stabilize* families in Puerto Rico and undermine the welfare of the children raised within them. By withholding the possibility of marriage from their parents, Puerto Rico’s marriage ban damages the youth whom amici represent, depriving them of tangible governmental protections, alienating them from their communities, and creating an insecurity among them about their families. Such laws “instruct[] all [state] officials, and indeed all persons with whom same-sex couples interact, including their own children, that their [relationship] is less worthy than the [relationships] of others.” *Windsor*, 133 S.Ct. at 2696.

A 23-year-old member of Puerto Rico’s LGBT community writes that marriage discrimination “sends out a harmful message to children who are part of

LGBT families, that their parents are second-class citizens, not worthy of equal treatment within our society.”²⁹ 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 laws like Article 68 represent and perpetuate. A 19-year-old from Idaho explains: “The only difficult part about my father’s relationship is the fact that I, as his child, have to watch as society continually tries to deny our family the right to be recognized as one.”³⁰

In the context of DOMA, the Supreme Court recognized that this kind of differential treatment “humiliates tens of thousands of children now being raised by same-sex couples” and “makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and their daily lives.” *Windsor*, 133 S.Ct. at 2694.

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 has testified, 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

²⁹ Statement from Eric J. Muñoz Hernández to U.P.R. Law Clinic (Dec. 7, 2014) (“Muñoz”).

³⁰ Statement from Payton McGriff to Family Equality (July 21, 2014).

married.”³¹ 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.”³²

To the children with whom the amici work, marriage inequality is an insult; but even more, it makes them feel as if the government deems their parents’ relationship, their entire family, and the children themselves as inferior. It sends the message that their families are “not legitimate” and “not welcome.”³³ It creates an insecurity—a “corrosive feeling of doubt”—in their perceived stability of their family.³⁴ In one example relayed to Family Equality, the young son of two gay men was compelled to ask, “Dad, are we a family?” after overhearing hospital staff say that one of his fathers was not able to sign the other’s medical paperwork because they were “not family.”³⁵

³¹ *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).

³² *Id.* at 76:4-5.

³³ *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.

³⁴ *Id.* at 4.

³⁵ “Jeff, Josh, and Andrew,” Family Stories, Family Equality Council, http://www.familyequality.org/get_informed/family_stories/ (last visited Jan. 29, 2015).

A 10-year-old told New Jersey legislators that the absence of marriage as an option for his parents led him to question the legitimacy of his family: “It doesn’t bother me to tell kids my parents are gay. It *does* bother me to say they aren’t married. It makes me feel that our family is less than a family.”³⁶

Social science research confirms that what these individual children are experiencing is typical of what many children of same-sex-parents feel. As licensed psychologist Dr. Judith Glassgold has testified, 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.³⁷

The stigma and feelings of illegitimacy, anger, and unfairness that these children perceive are well-founded, particularly when the practical effects of marriage denial are considered. Just as DOMA did before it was struck down, Puerto Rico’s marriage ban “touches many aspects of ... family life, from the mundane to the profound.” *Windsor*, 133 S.Ct. at 2694.

³⁶ 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.

³⁷ *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n* at 45 (April 16, 2008) (statement of Dr. Judith Glassgold), available at <http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf>.

Eleven-year-old J.A.V.V. worries about the practical implications of Puerto Rico's refusal to recognize her mothers' marriage:

Another bad thing that could happen is that if you have to go to the hospital, the parent that doesn't have legal rights over you, can't authorize your treatment, ... they can't even visit you without the other parent around. So if my mom is on a business trip and I break my arm, my other mother can't visit me until my other mom comes back. Thinking about that makes anyone feel insecure.³⁸

Evelyn Marchany Garcia, a Puerto Rican who married in New York and is raising two young children with her wife, describes how her family flourished in Puerto Rico: "There are significant amount of LGBT families in PR with kids, and we are blended in all the community without putting ourselves in the closet. Our community accepts us, our church accepts us, our kids' schools accept us and have adapted their curriculum to embrace diversity." She explains, however, that "[w]hat is missing is the law that treats us equally in marriage and adoption matters."³⁹

In order to look after her "family rights and the peace of mind that [her] family will be safe and protected by law as it should be," Evelyn finally left her "beloved" Puerto Rico and moved her family to New Jersey. "[T]he major impact [of Article 68] is that it limits us on where to live, where to take our children to the hospital, how safe are they if one of us is no longer alive, how protected is my

³⁸ J.A.V.V., *supra* note 2.

³⁹ Statement from Evelyn G. Marchany Garcia to U.P.R. Law Clinic (Dec. 2014).

spouse if I die in NJ or in PR, how well can we teach our children that being diverse is what creates the better world we all want.”⁴⁰

III. BANNING SAME-SEX COUPLES FROM MARRIAGE ALSO HARMS LGBT YOUTH IN PUERTO RICO BY INFORMING THEM THAT THEIR GOVERNMENT CONSIDERS THEM, AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM, TO BE INHERENTLY INFERIOR.

I believe that every person should be able to be with the person they love and get married if they want. I do not understand why the state invests so much time and energy into keep[ing] the possibility to marry away from us LGBT community members when the impact it would have on the country would actually be positive.

Fernando J. Fuentes Burgos
(22 years old, Mayagüez, P.R.)⁴¹

I do not feel that the state respects my status at all. On the contrary, I feel completely judged and even attacked.

Alexandra M. Vázquez Calderón
(25 years old, San Juan, P.R.)⁴²

By withholding from same-sex couples the marital status and benefits afforded to opposite-sex couples, Article 68 hurts another group of young people in Puerto Rico: LGBT youth. State-sanctioned disapproval of same-sex relationships informs them that they are lesser than their heterosexual counterparts, not

⁴⁰ *Id.*

⁴¹ Fuentes, *supra* note 3.

⁴² Statement from Alexandra M. Vázquez Calderón to U.P.R. Law Clinic (Dec. 3, 2014) (“Vázquez”).

deserving of the “dignity and status” that comes with marriage. *Windsor*, 131 S. Ct. at 2692. This disapproval is deeply felt by LGBT youth.

Krystal Calero Asencio, a 23-year-old from Isabela, writes: “I believe that by limiting the possibility of marrying the person I love the state demotes me to a second-class citizen status.”⁴³ “If I am not allowed to marry who I love,” says Emmanuel Rusalleda-Escobar, a 25-year-old from Aguadilla, “then I am being considered different and they are considering my relationship as inferior or not as important as heterosexual relationships. Since the same-sex marriage is not accepted by law it makes us feel like we are not accepted as people.”⁴⁴

Young members of Puerto Rico’s LGBT community also describe how painful it is to be unable to aspire to marry and build a family. “Knowing that I cannot expect to live life at its fullest because my options are limited by the state is truly a devastating reality. When I meet someone and begin a relationship, I already know from the start that my love story will not and cannot be the same as the one my heterosexual friends will live.”⁴⁵

The repercussions include the purely practical: “If we decide to have a life partner, we cannot get married and enjoy the benefits of this contract. If we decide

⁴³ Statement from Krystal Calero Asencio to U.P.R. Law Clinic (Dec. 6, 2014) (“Calero”).

⁴⁴ Statement from Emmanuel Rusalleda-Escobar to U.P.R. Law Clinic (Dec. 6, 2014) (“Rusalleda”).

⁴⁵ Statement from Ricardo Benítez Bajandas to U.P.R. Law Clinic (Dec. 4, 2014).

to have children, we are forced to be single parents and expose our children and family to the threats and disadvantages of having only one legal guardian.”⁴⁶

Krystal agrees that the unavailability of marriage can cause LGBT youth in Puerto Rico to see their relationships as having “no future, ... unlike heterosexual relationships that may progress and further their commitment through marriage that allows them better rights for them as a couple and their children if they decide to have them.”⁴⁷ According to 24-year-old Luis Fernández of Bayamon, “[b]ecause of ... the belief that they will never achieve the last ‘stage’ of a committed relationship, some [LGBT youth] are discouraged from continuing a serious relationship in Puerto Rico.”⁴⁸

The government’s message to LGBT youth about the validity of the committed relationships they hope to form can powerfully influence these young people’s perceptions of their futures. Officially sanctioning their exclusion from marriage exacerbates feelings of hopelessness about the future and perpetual “different-ness” that many LGBT youth already feel. In the words of Eric Muñoz: “[F]or a long time I denied the truth of my sexual orientation because I felt that being gay was wrong. Having a government that discriminate[d] because of my

⁴⁶ *Id.*

⁴⁷ Calero, *supra* note 43.

⁴⁸ Statement from Luis Fernández to U.P.R. Law Clinic (Dec. 2, 2014) (“Fernández”).

sexual orientation made me feel that there was something immoral about it and made me want to hide it.”⁴⁹

Hiram Rivera Mercado, a 25-year-old from San Juan, notes that young people in Puerto Rico are exposed to a great deal of religious and cultural messaging “about the threat that the LGBT community is to family and values,” which makes it even more important for the government to treat same-sex couples fairly: “[W]e don’t need the state to tell us once again that having a different sexual orientation is wrong and that because of it I don’t deserve the same right to get married and have a family.”⁵⁰

LGBT youth have also told amici that Puerto Rico’s prohibition of marriage for same-sex couples contributes to intolerance in Puerto Rican society. “The fact that the government continues to discriminate against LGBT people serves as a support and fuel for the narrow minded bigotry the community faces constantly;”⁵¹ exclusion from marriage “stigmatizes LGBT families as inferior and sends out a message that it is acceptable to discriminate against them”⁵² and “make[s] close-

⁴⁹ Muñoz, *supra* note 29.

⁵⁰ Statement from Hiram Rivera Mercado to U.P.R. Law Clinic (Dec. 2, 2014).

⁵¹ Vázquez, *supra* note 42.

⁵² Muñoz, *supra* note 29.

minded people think they have the right to undermine and discriminate against us.”⁵³

Conversely, “[i]f same-sex marriage is accepted it will contribute to create a more tolerating society and reduce bigotry since it will send a message of acceptance to citizens.”⁵⁴ And “[h]aving the possibility to marry that special person can change a lot in how people of the LGBT community see relationships in Puerto Rico.”⁵⁵

The inability to marry forces many LGBT youth to consider the possibility of eventually leaving Puerto Rico. “If at some point I decide to marry a same-sex partner,” Krystal explains, “our only option would be to leave this jurisdiction in order to find laws that both respect and acknowledge our love and rights as a committed partnership.”⁵⁶ Emmanuel concurs: “If my relationship is not accepted and I do not get the same rights as other citizens I will have to move to a place where my partner and I get the benefits and protections of law.”⁵⁷

Fernando Fuentes admits that leaving Puerto Rico to live in a place that recognizes marriage for same-sex couples “has crossed [his] mind many times.”

⁵³ Fuentes, *supra* note 3.

⁵⁴ Rusalleda, *supra* note 44.

⁵⁵ Fernández, *supra* note 48.

⁵⁶ Calero, *supra* note 43.

⁵⁷ Rusalleda, *supra* note 44.

He does not want to have to face that choice: “I still have hope that these laws will be abolished and that I will be able to make my life and my family here. I would like my future children to call Puerto Rico home.”⁵⁸

Rafael Chaparro Barriera agrees: “I do not want to marry somewhere else.” His sister lives in Chicago but will soon return to Puerto Rico for her own wedding. Rafael asks, “Why should I not be able to dream the same thing? Why should I look for some other strange land to marry? Why cannot be my soil, my trees, my heat, my people the ones who surround me on my marriage?”⁵⁹

⁵⁸ Fuentes, *supra* note 3.

⁵⁹ Statement from Rafael A. Chaparro Barriera to U.P.R. Law Clinic (Dec. 2014).

CONCLUSION

As the stories offered in this brief illustrate, whether Puerto Rico continues to withhold marriage from same-sex couples has profound implications for both the children being raised by same-sex parents and the LGBT youth who hope to one day take up the protections and obligations of the institution. On behalf of the children of same-sex parents who believe their families are just as deserving of recognition, respect, and protection as the families of children with different-sex parents, and on behalf of the young members of Puerto Rico's LGBT community who believe that excluding them from marriage does them grave damage without serving any legitimate purpose, amici curiae urge the Court to reverse the order of the District Court.

Date: February 2, 2015

Respectfully submitted,

s/ G. Patrick Watson
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because this brief contains 4,569 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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

Date: February 2, 2015

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system in Case No. 14-2184 on February 2, 2015.

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Date: February 2, 2015

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