

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' MOTION FOR LEAVE TO
EXCEED TYPE-VOLUME LIMITATION**

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Pursuant to Ninth Circuit Rule 32-2, Plaintiffs-Appellants respectfully seek leave to file an opening brief of no more than 26,500 words, which exceeds the applicable type-volume limitation. *See* Fed. R. App. P. 32(a)(7)(B).

This case involves issues of immense importance for thousands of same-sex couples throughout the Ninth Circuit, asking whether the federal guarantees of due process and equal protection afford same-sex couples the freedom to marry. Eight loving and committed same-sex couples (“Plaintiff Couples”) from Nevada brought suit against various government officials (“Defendant Officials”) who enforce Nevada law barring same-sex couples from civil marriage. This class-based exclusion of lesbians and gay men from marriage imposes manifold harms on them and their children, including the deprivation of sweeping federal rights and responsibilities for spouses, and a host of practical difficulties, vulnerabilities, and dignitary harms that accompany being marked by one’s government as second-class citizens.

Substantial need supports Plaintiff Couples’ request to file an oversized brief, given the profound importance and uniqueness of the underlying issues, the detailed nature of the underlying record, including expert and other evidence, the fact that this appeal presents multiple questions of either first impression or unsettled law in this Circuit as well as other federal Courts of Appeals, and the fact

that recent decisions of the Supreme Court require briefing of certain involved issues for the first time before any federal appellate court.

As an example, the district court held that the fundamental right to marry shelters only different-sex couples, and not same-sex couples. No U.S. Court of Appeals has yet decided whether the fundamental right to marry — or other fundamental rights and liberty interests in autonomy, family integrity, and association — afford same-sex couples the freedom to marry. This case also asks whether same-sex couples are protected against discrimination in marriage by guarantees of equal protection without regard to sexual orientation — an issue that this Court decided in an opinion that was subsequently vacated. *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated on other grounds sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

The demanding legal analysis and importance of this case have only heightened in light of recent rulings of the Supreme Court. This Circuit had weighed in on the constitutionality of marriage bans in the context of California’s Proposition 8. But because that decision was vacated, the Court will here decide as a matter of first impression whether marriage bans, such as the Nevada ban challenged in this case, can survive the appropriate level of constitutional review. On the same day that the Court decided *Hollingsworth*, moreover, it also held the key portion of the federal Defense of Marriage Act (“DOMA”) unconstitutional in

United States v. Windsor, 133 S. Ct. 2675 (2013). The Court held that this provision of DOMA “violates basic due process and equal protection principles.” *Id.* at 2693. The legal impact of *Windsor*, and how its due process and equal protection analysis applies to the States, has not been presented to any U.S. Court of Appeals. The recent development of the law by the Supreme Court, therefore, further demonstrates the substantial need for additional space to brief these evolving and multi-faceted legal issues.

This appeal involves other unsettled areas of law with implications for the constitutional rights of lesbians and gay men extending beyond the questions about marriage presented here. For example, the appropriate level of constitutional scrutiny for government classifications based on sexual orientation remains an open question in this Circuit, and the answer to that question will determine the analysis for a range of claims involving unfavorable treatment of gay people by the government. A brief of this size is thus necessary to give careful consideration and description to the wide array of factual and legal issues in this case.

In addition, the district court decision incorporated and relied heavily on the lengthy decision of another district court, *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065 (D. Haw. 2012), thus requiring Plaintiff Couples to respond to two lower courts’ analysis in their brief. Plaintiff Couples’ brief also must address the arguments of three different parties defending Nevada’s marriage ban, including

Defendants-Appellees Governor Sandoval and Carson City Clerk-Recorder Alan Glover, and Intervenor-Defendant-Appellee Coalition for the Protection of Marriage, each of whom filed separate briefs in the district court.

All of Plaintiff Couples' claims are supported by extensive written testimony from six experts on topics including the essential attributes of marriage and its history in Nevada and across the United States; the history of discrimination against gay people; the fixed, core nature of sexual orientation; similarities between the committed relationships of same-sex and different-sex couples; the factors that affect the length and stability of relationships for both different-sex and same-sex couples; the political powerlessness of lesbians and gay men; and the scientific research showing that the children of same-sex couples and different-sex couples are equally well-adjusted. An adequate exposition of the Plaintiff Couples' claims and the supporting evidence accordingly requires additional length for the brief. This Court's resolution of the motion to exceed the page limits in *Perry* provides further support for Plaintiff Couples' motion here. In that appeal, which involved similar issues, this Court granted permission for an opening brief of up to 31,000 words. *Perry v. Brown*, No. 10-16696, Dkt. 20-1, 25.

No other party in this case opposes Plaintiff Couples' request:

1. Counsel for Defendant-Appellee Governor Sandoval indicated that he consents to this request.

2. Counsel for Defendant-Appellee Clark County Clerk Diana Alba indicated that she has no position on this request.

3. Counsel for Defendant-Appellee Washoe County Clerk Nancy Parent indicated that she does not oppose this request.¹

4. Counsel for Defendant-Appellee Carson City Clerk-Recorder Alan Glover, and for Intervenor-Defendant-Appellee Coalition for the Protection of Marriage (“Coalition”), indicated that their respective clients do not oppose this request, on the condition that Plaintiff Couples would not object if their clients also sought leave to file an oversize answering brief. Assuming that any such request would seek leave to file a brief no longer than the 26,500 words requested here, Plaintiff Couples would not object.

This appeal involves one of the most “vital personal rights essential to the orderly pursuit of happiness,” *Loving v. Virginia*, 388 U.S. 1, 12 (1967), and will determine the course of family life for thousands of same-sex couples. In light of the nature of this case and the numerous, currently unresolved legal issues that

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Washoe County Clerk Nancy Parent is substituted for her predecessor, Amy Harvey.

must be addressed in the briefing, Plaintiff Couples respectfully request leave to file an opening brief of no more than 26,500 words.

DATE: October 18, 2013

Respectfully submitted,

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Attorneys for Plaintiffs-Appellants

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

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Attorneys for Plaintiffs-Appellants

I, Tara L. Borelli, declare as follows:

1. I am an attorney with Lambda Legal Defense and Education Fund, Inc., counsel for Plaintiffs-Appellants Beverly Sevcik and Mary Baranovich; Antioco Carrillo and Theodore Small; Karen Goody and Karen Vibe; Fletcher Whitwell and Greg Flamer; Mikyla Miller and Katrina Miller; Adele Terranova and Tara Newberry; Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins; and Megan Lanz and Sara Geiger. I make this declaration in support of Plaintiffs-Appellants' Motion for Leave to Exceed Type-Volume Limitation for their opening brief. I have personal knowledge of the facts set forth herein.

2. This case involves issues of immense importance for thousands of same-sex couples throughout the Ninth Circuit, asking whether the federal guarantees of due process and equal protection afford same-sex couples the freedom to marry. Eight loving and committed same-sex couples ("Plaintiff Couples") from Nevada brought suit against various government officials ("Defendant Officials") who enforce Nevada law barring same-sex couples from civil marriage. This class-based exclusion of lesbians and gay men from marriage imposes manifold harms on them and their children, including the deprivation of sweeping federal rights and responsibilities for spouses, and a host of practical difficulties, vulnerabilities, and dignitary harms that accompany being marked by one's government as second-class citizens.

3. Substantial need supports Plaintiff Couples' request to file an oversized brief, given the profound importance and uniqueness of the underlying issues, the detailed nature of the underlying record, including expert and other evidence, the fact that this appeal presents multiple questions of either first impression or unsettled law in this Circuit as well as other federal Courts of Appeals, and the fact that recent decisions of the Supreme Court require briefing of certain involved issues for the first time before any federal appellate court.

4. As an example, the district court held that the fundamental right to marry shelters only different-sex couples, and not same-sex couples. No U.S. Court of Appeals has yet decided whether the fundamental right to marry — or other fundamental rights and liberty interests in autonomy, family integrity, and association — afford same-sex couples the freedom to marry. This case also asks whether same-sex couples are protected against discrimination in marriage by guarantees of equal protection without regard to sexual orientation — an issue that this Court decided in an opinion that was subsequently vacated. *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated on other grounds sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

5. The demanding legal analysis and importance of this case have only heightened in light of recent rulings of the Supreme Court. This Circuit had weighed in on the constitutionality of marriage bans in the context of California's

Proposition 8. But because that decision was vacated, the Court will here decide as a matter of first impression whether marriage bans, such as the Nevada ban challenged in this case, can survive the appropriate level of constitutional review. On the same day that the Court decided *Hollingsworth*, moreover, it also held the key portion of the federal Defense of Marriage Act (“DOMA”) unconstitutional in *United States v. Windsor*, 133 S. Ct. 2675 (2013). The Court held that this provision of DOMA “violates basic due process and equal protection principles.” *Id.* at 2693. The legal impact of *Windsor*, and how its due process and equal protection analysis applies to the States, has not been presented to any U.S. Court of Appeals. The recent development of the law by the Supreme Court, therefore, further demonstrates the substantial need for additional space to brief these evolving and multi-faceted legal issues.

6. This appeal involves other unsettled areas of law with implications for the constitutional rights of lesbians and gay men extending beyond the questions about marriage presented here. For example, the appropriate level of constitutional scrutiny for government classifications based on sexual orientation remains an open question in this Circuit, and the answer to that question will determine the analysis for a range of claims involving unfavorable treatment of gay people by the government. A brief of this size is thus necessary to give careful consideration and description to the wide array of factual and legal issues in this case.

7. In addition, the district court decision incorporated and relied heavily on the lengthy decision of another district court, *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065 (D. Haw. 2012), thus requiring Plaintiff Couples to respond to *two* lower courts' analysis in their brief. Plaintiff Couples' brief also must address the arguments of three different parties defending Nevada's marriage ban, including Defendants-Appellees Governor Sandoval and Carson City Clerk-Recorder Alan Glover, and Intervenor-Defendant-Appellee Coalition for the Protection of Marriage, each of whom filed separate briefs in the district court.

8. All of Plaintiff Couples' claims are supported by extensive written testimony from six experts on topics including the essential attributes of marriage and its history in Nevada and across the United States; the history of discrimination against gay people; the fixed, core nature of sexual orientation; similarities between the committed relationships of same-sex and different-sex couples; the factors that affect the length and stability of relationships for both different-sex and same-sex couples; the political powerlessness of lesbians and gay men; and the scientific research showing that the children of same-sex couples and different-sex couples are equally well-adjusted. An adequate exposition of the Plaintiff Couples' claims and the supporting evidence accordingly requires additional length for the brief. This Court's resolution of the motion to exceed the page limits in *Perry* provides further support for Plaintiff Couples' motion here. In that appeal,

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9. No other party in this case opposes Plaintiff Couples' request:

a. Counsel for Defendant-Appellee Governor Sandoval indicated that he consents to this request.

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c. Counsel for Defendant-Appellee Washoe County Clerk Nancy Parent indicated that she does not oppose this request.¹

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¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Washoe County Clerk Nancy Parent is substituted for her predecessor, Amy Harvey.

10. In light of the nature of this case and the numerous, currently unresolved legal issues that must be addressed in the briefing, Plaintiff Couples respectfully request leave to file an opening brief of no more than 26,500 words.

I declare, under penalty of perjury under the laws of the United States, that these facts are true and correct and that this Declaration is executed this 18th day of October 2013 in Los Angeles, California.

s/ Tara L. Borelli

Tara L. Borelli

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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INTRODUCTION

This case arises from the exclusion of same-sex couples in Nevada from one of the most profound and cherished relationships in life: civil marriage. Two of the plaintiffs, Beverly Sevcik and Mary Baranovich, met decades ago when they lived across the street from one another. After spending many months talking and visiting, Beverly realized she had fallen in love with Mary — and Mary felt the same way. They exchanged rings on October 2, 1971, to symbolize their lifelong commitment to one another. More than forty years later, Mary and Beverly are grandparents living in Carson City, Nevada. Mary has “tremendous respect and admiration” for Beverly and “cannot imagine life without her.” Beverly loves, admires, and respects so many things about Mary that she “could not possibly list them all.” They have stood by one another “through the joys and struggles of life,” and have shown time and again that their commitment to one another is truly “’til death do us part.”¹

Despite this commitment, Beverly and Mary cannot get married in Nevada. They were turned away by the Carson City Marriage Bureau when they applied for a marriage license.² Although they can (and have³) registered as domestic partners,

¹ Excerpts of Record (“ER”) 180–181 ¶¶ 2, 7–8, 185 ¶ 2, 186 ¶ 8 (beginning of Beverly and Mary’s relationship); 181 ¶ 9, 186 ¶ 9 (exchange of rings); 180 ¶¶ 4–5, 181 ¶ 8, 186–187 ¶ 9 (Beverly and Mary’s status as grandmothers); 182 ¶¶ 11–12, 187 ¶ 10 (Beverly and Mary’s feelings about each other).

² ER 182–183 ¶ 14; 187–188 ¶ 13.

domestic partnership is different than marriage. As the Supreme Court recently reaffirmed, marriage confers “a dignity and status of immense import” that uniquely provides not only government but also community “recognition” and “protection” of couples and their families. *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). It also confers a status recognized in over a thousand federal statutes, many intended to support family stability. And it has been recognized, in numerous opinions of the Supreme Court, as a fundamental right that may be a core component of an individual’s pursuit of happiness.

Nevada denies same-sex couples access to marriage by constitutional amendment and statute. Defendants enforce their “marriage ban” both by barring same-sex couples from entering marriage, and by refusing to recognize marriages validly entered in other jurisdictions. But as the Supreme Court has acknowledged, treating the relationships of same-sex couples differently has the “purpose and practical effect . . . to impose a disadvantage, a separate status, and so a stigma.” *Id.* at 2693.

This case, arising under the federal Equal Protection and Due Process Clauses, was brought by Beverly and Mary and seven other same-sex couples whose relationships have flourished for a combined total of more than 100 years. Most of the couples have children, ranging from toddlers to middle-aged, and other

³ ER 180 ¶ 2.

couples are planning to have children soon. Some couples live near the Vegas Strip surrounded by dozens of wedding chapels, some live in northern Nevada amidst the Sierra Madres. Some have been married in other jurisdictions, some are registered as domestic partners in Nevada, and some are waiting for state-sanctioned rights until marriage is legal in their home state. One thing unites all of these couples: They wish to be married in the State of Nevada.⁴

The district court rejected Beverly, Mary, and the other Plaintiffs' claims primarily on the ground that, if same-sex couples were permitted to marry, "it is conceivable that a meaningful percentage of heterosexual persons would cease to value the civil institution as highly as they previously had and hence enter into it less frequently . . . because they no longer wish to be associated with the civil institution as redefined," ER 32 — in other words, that some might not want to join the club if "those people" are admitted. This appeal followed.

JURISDICTIONAL STATEMENT

The United States District Court for the District of Nevada (the "district court") had original subject matter jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1343 because the case raises claims under the Constitution of the United

⁴ See ER 179–88 (declarations of Beverly Sevcik and Mary Baranovich); 189–98 (declarations of Theodore Small and Antioco Carrillo); 199–207 (declarations of Karen Goody and Karen Vibe); 208–215 (declarations of Greg Flamer and Fletcher Whitwell); 216–223 (declarations of Mikyla and Katrina Miller); 224–231 (declarations of Adele and Tara Newberry); 232–239 (declarations of Caren and Farrell Cafferata-Jenkins); 240–248 (declarations of Sara Geiger and Megan Lanz).

States. Ruling on cross-motions for summary judgment, the district court issued a decision on the merits and ordered entry of judgment on November 26, 2012.

Judgment was entered and Plaintiffs filed a notice of appeal on December 3, 2012.

The appeal is timely under Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether the district court erred in holding that federal due process guarantees do not secure the freedom to marry for same-sex couples in Nevada, or require that their valid marriages from other jurisdictions be recognized as marriages in Nevada.⁵

2. Whether the district court erred in rejecting Plaintiffs' claim that excluding same-sex couples from marriage in Nevada, or from having their valid marriages from other jurisdictions recognized as marriages in Nevada, violates the federal right to equal protection regardless of one's sexual orientation. This claim was raised by Plaintiffs in their complaint, briefed by the parties on the merits, and decided in the district court's decision. ER 717–22 ¶¶ 86–103.

⁵ While Plaintiffs did not raise this claim below, the district court ruled on the issue regardless, ER 29, rendering appellate review of that ruling appropriate. See, e.g., *Citizens United v. FEC*, 558 U.S. 310, 323 (2010) (“Citizens United raises this issue for the first time before us, but we consider the issue because it was addressed by the court below.”) (internal quotation marks omitted); *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1054 (9th Cir. 2007) (“even if a party fails to raise an issue in the district court, we generally will not deem the issue waived if the district court actually considered it”).

3. Whether the district court erred in rejecting Plaintiffs’ claim that excluding same-sex couples from marriage in Nevada, or from having their valid marriages from other jurisdictions recognized as marriages in Nevada, violates the federal right to equal protection regardless of one’s sex. This claim was raised by Plaintiffs in their complaint, briefed by the parties on the merits, and decided in the district court’s decision. ER 13–16; 719–20 ¶¶ 86–94; 721 ¶¶ 97–98, 100; 722 ¶¶ 104–05.

The Court’s review of these issues is *de novo*. See Section I, below.

ADDENDUM OF PERTINENT AUTHORITIES

Pursuant to Ninth Circuit Rule 28-2.7, Appellants have reproduced pertinent constitutional and statutory provisions in an Addendum to this brief.

STATEMENT OF THE CASE

Plaintiffs (collectively, “Plaintiffs” or “Plaintiff Couples”) filed suit against Governor Brian Sandoval and three city and county clerks (“Defendant Officials”) on April 10, 2012 challenging “Nevada Constitution article 1, § 21, Nevada Revised Statutes § 122.020, and all other sources of state law that preclude marriage for same-sex couples or prevent recognition of marriages because those marriages were entered by individuals of the same sex.” ER 719 ¶ 89.⁶ Plaintiff

⁶ The district court puzzlingly stated that, aside from the Nevada constitutional and statutory ban on marriage for same-sex couples, “Plaintiff [Couples] do not appear to challenge any other provisions of Nevada law,” ER 12, overlooking

Couples sought injunctive and declaratory relief to redress the violation of their rights under the Fourteenth Amendment to the United States Constitution. ER 723 ¶¶ A–C. The Coalition for the Protection of Marriage, which was the proponent of the Nevada constitutional amendment banning access to marriage, moved to participate as a Defendant-Intervenor (“Intervenor”). Dist. Ct. Dkt. 30⁷; ER 3.

Governor Sandoval moved to dismiss the case, arguing solely that the district court lacked subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) to hear Plaintiff Couples’ claims based on the Supreme Court’s summary dismissal in *Baker v. Nelson*, 409 U.S. 810 (1972) (mem.). Dist. Ct. Dkt. 32. The district court, without explanation, subsequently recast this as a motion under Rule 12(b)(6). ER 4–5. Carson City Clerk-Recorder Alan Glover joined Governor Sandoval’s motion. Dist. Ct. Dkt. 33. Clark County Clerk Diana Alba and Washoe County Clerk Nancy Parent⁸ filed answers to the complaint. Dist. Ct. Dkt. 34, 35. Ms. Parent’s answer indicated “that she has no intention to defend the

Plaintiffs’ allegations that they challenge *all* sources of state law restricting them from marriage, or from having a valid marriage from another jurisdiction recognized. ER 719 ¶¶ 88–89; 723 ¶¶ A–B.

⁷ All “Dkt.” references are to filings in the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”). All “Dist. Ct. Dkt.” references are to filings in the district court.

⁸ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Washoe County Clerk Nancy Parent is substituted for her predecessor, Amy Harvey.

substantive merits of this case,” Dist. Ct. Dkt. 35 at 2, and neither Ms. Alba nor Ms. Parent has submitted any substantive filings since.

On August 10, 2012, at the hearing that had been scheduled on both the motion to intervene and the motion to dismiss, the parties entered stipulations into the record expressing their agreement to defer argument and decision on the motion to dismiss for consideration with additional dispositive motions, and to proceed with a schedule for cross-motions for summary judgment. ER 644–45. Plaintiffs agreed to withdraw their opposition to intervention as of right but reserved the ability to revisit the issue at a later stage if necessary. ER 644-46.

The district court issued an order allowing the case to proceed accordingly and granted Intervenor’s request for intervention. Dist. Ct. Dkt. 67. Cross-motions for summary judgment were filed by Plaintiffs, Governor Sandoval, Defendant Glover, and Intervenor, Dist. Ct. Dkt. 72, 74, 85, and 86, and the district court ruled on all pending motions in a November 26, 2012 order.

In that order, the district court granted Defendant Sandoval and Glover’s motion to dismiss in part, finding that Plaintiff Couples’ claims were precluded by *Baker v. Nelson*, except to the extent that they relied on *Romer v. Evans*, 517 U.S. 620 (1996), which was decided after *Baker*. ER 11–12. The district court found that rational basis review governs Plaintiff Couples’ claim that the marriage ban violates guarantees of equal protection regardless of one’s sexual orientation. ER

13. Applying this standard, the district court found that the marriage ban is supported by a governmental interest in the “protection of the traditional institution of marriage.” ER 30–31. The court also held that the “perpetuation of the human race depends upon traditional procreation between men and women,” and if same-sex couples are permitted to marry it is “conceivable that a meaningful percentage of heterosexual persons” would see the institution as marred and “enter into it less frequently, . . . leading to an increased percentage of out-of-wedlock children, single-parent families, difficulties in property disputes after the dissolution of what amount to common law marriages in a state where such marriages are not recognized, or other unforeseen consequences.” ER 32–33.

The district court rejected Plaintiff Couples’ claim that the marriage ban discriminates against them based on their sex in relation to the sex of their partner or spouse, because, according to the court, “it is homosexuals who are the target of the distinction here,” and not “members of a particular gender.” ER 15.

Acknowledging that Plaintiff Couples had not raised a due process claim, ER 12, the district court ruled on the issue regardless, holding that the marriage ban does not deprive same-sex couples of the fundamental right to marry. ER 28–29.

In its November 26, 2012 order, the district court also granted Governor Sandoval, Defendant Glover, and Intervenor summary judgment, and denied

Plaintiff Couples the same. ER 42.⁹ The court entered judgment, and Plaintiffs noticed their appeal on December 3, 2012. ER 43–45. On December 5, 2012 Intervenor filed a petition for certiorari before judgment with the Supreme Court, which was denied on June 27, 2013. Dkt. 3, 16.

STATEMENT OF FACTS

I. PLAINTIFF COUPLES.

Each unmarried Plaintiff wishes to marry his or her one irreplaceable love in life, and each married Plaintiff Couple wishes to be recognized as married in the place they call home. ER 182–83 ¶ 14; 192 ¶ 12; 202 ¶ 11; 211 ¶ 12; 218 ¶¶ 6–7; 231 ¶11; 238 ¶¶ 8–9; 248 ¶¶ 12–13. Plaintiff Couples reflect the rich diversity of Nevada and include two proud grandmothers to their four grandchildren, a social worker for abused children and an advertising executive, a teacher and a non-profit executive director who advocates for adults and children with HIV, professionals in medical sales and financial advice, a couple who work together as a civil litigator and an office manager, a Ph.D. student and a lawyer for low-income clients, the executive director of Nevada’s ethics commission and the founder of a

⁹ The district court also denied Plaintiff Couples’ request to submit a reply brief and supplemental declarations. ER 42. The proposed reply brief and declarations sought to respond to, *inter alia*, new, unfounded attacks on Plaintiff Couples’ child welfare expert, which were raised for the first time in Intervenor’s summary judgment opposition. ER 46–130. The district court had informed the parties that it would accept reply briefs on summary judgment if needed to respond to new material, ER 655:18 – 656:5, and the district court erred in thereafter denying Plaintiff Couples the opportunity to do precisely that.

sign language academy, and a professional flutist and a college music instructor.

ER 180 ¶ 5; 186–87 ¶ 9; 190 ¶ 3; 195 ¶ 3; 200 ¶ 3; 204 ¶ 3; 209 ¶¶ 5–6; 213 ¶ 4; 217 ¶ 3; 221 ¶ 3; 225 ¶ 3; 229 ¶ 3; 233 ¶ 3; 237 ¶ 5; 241 ¶ 4; 246 ¶ 4. All couples have devoted years of their lives to each other, with relationships ranging from six to more than forty years together. *See, e.g.*, ER 180 ¶ 2; 190 ¶ 2. Six couples are raising or have raised children together, and others plan to adopt in the near future. ER 186–87 ¶ 9; 191 ¶ 9; 210 ¶ 8; 218 ¶ 8; 226 ¶ 8; 237 ¶ 5; 247 ¶ 8.

The enforcement of the marriage ban denies Plaintiff Couples access to marriage — the venerated hallmark of a couple’s commitment to build a family life together. This denial touches every aspect of their lives. Some Plaintiffs have encountered medical professionals who tried to block them from their partner’s bedside during medical emergencies, or made clear that one partner could be dismissed from the hospital room at staff whim. ER 218 ¶ 6; 222 ¶ 10; 242 ¶ 11; 247 ¶ 8. Other Plaintiff Couples have struggled to obtain health insurance or equal treatment by government agencies and businesses. ER 218–19 ¶¶ 8–9; 222 ¶¶ 9, 11; 229–30 ¶¶ 7–9; 234–35 ¶¶ 7–8; 238 ¶ 10; 247–48 ¶¶ 10–11. Plaintiffs routinely struggle to correct confusion about the nature, depth, and permanence of their relationships in work, family, and doctor’s office settings because they cannot honestly state that they are married in Nevada. ER 182 ¶ 13; 192 ¶ 11; 197 ¶ 10; 201–02 ¶¶ 9–10; 206–07 ¶¶ 11, 13–14; 214 ¶ 9; 226–27 ¶¶ 10. Even children

understand that marriage is a cherished status in society. The State’s consignment of same-sex couples to a second-class status, therefore, sends profoundly hurtful messages to Plaintiffs’ children, teaching them that their families do not deserve the same societal status and respect as others. ER 191–92 ¶ 9; 196 ¶ 8; 210–11 ¶ 11; 214 ¶ 8; 218 ¶ 8; 231 ¶ 11; 238 ¶ 10; 242–43 ¶ 12.

II. NEVADA’S AND DEFENDANT OFFICIALS’ EXCLUSION OF SAME-SEX COUPLES FROM MARRIAGE.

Nevada’s exclusion of same-sex couples from marriage is enshrined both in state constitutional amendment and statute. Nev. Const. art. 1, § 21 (“Only a marriage between a male and female person shall be recognized and given effect in this state.”); Nev. Rev. Stat. § 122.020(1) (“a male and a female person . . . may be joined in marriage”). Defendant Officials play various roles in enforcing the marriage ban, including Governor Sandoval’s responsibility for executing the marriage ban, Nev. Const. art. 5, §§ 1, 7, and the roles of City and County Clerks Alba, Parent, and Glover in, *inter alia*, issuing marriage licenses, solemnizing marriages or certifying other persons to solemnize marriages, and maintaining records relating to marriage licenses, all in compliance with the marriage ban. Nev. Rev. Stat. §§ 122.040, 122.064, 122.173, 122.240; Washoe Cnty., Nev., Code § 5.460; Dkt. 34 ¶ 3; Dkt. 35 ¶ 15; ER 698–99 ¶¶ 14–15; 144 ¶¶ 1–2; 148–58; 182–83 ¶ 14; 192–93 ¶ 12; 207 ¶¶ 15–16; 211 ¶ 12.

Nevada's constitutional amendment was enacted in 2002, after voters in the 2000 and 2002 general elections approved the initiative known as "Question 2" biennially, as required to amend the state constitution. ER 144 ¶¶ 3–4; 159–69. Some of the campaign messages used to persuade voters to amend the state constitution relied on false, stigmatizing messages that same-sex couples are inferior to different-sex couples, and that both the institution of marriage and children need to be protected from same-sex couples. For example, one 2002 flier urged voters to adopt the constitutional amendment by saying "Let's not experiment with Nevada's children." ER 250 ¶ 2; 251–52. Intervenor, which managed the campaign, also issued a flier warning that, if same-sex couples could marry, "we would be unable to stop the proliferation of teaching that promotes homosexuality in our schools." ER 250 ¶ 3; 253–56.

Nevada's public policy now, however, recognizes that committed same-sex couples should be treated equally with respect to virtually every state law right and responsibility Nevada affords spouses.¹⁰ Enacted in 2009, the Nevada Domestic Partnership Act (the "Act") allows same-sex couples who have "chosen to share one another's lives in an intimate and committed relationship of mutual caring" to

¹⁰ As described further below, domestic partners are treated differently in the way they must register with the State, as compared to solemnizing a marriage, and with respect to adopting a common last name.

register with the State as domestic partners. Nev. Rev. Stat. §§ 122A.100, 122A.010 *et seq.*¹¹

The Act provides that registered domestic partners “have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.” Nev. Rev. Stat. § 122A.200(1)(a).¹² Registered domestic partners thus assume rights and responsibilities related to, for example, community property and community debt, Nev. Rev. Stat. § 123.220 *et seq.*; pre-marital agreements, Nev. Rev. Stat. § 123A.010 *et seq.*; postnuptial agreements, Nev. Rev. Stat. § 123.070 *et seq.*; dissolution of the relationship in family court, Nev. Rev. Stat. § 125.010 *et seq.*; and spousal support obligations, Nev. Rev. Stat. § 125.150 *et seq.* The Act similarly provides the rights and responsibilities of former spouses to former domestic partners, and of surviving spouses to surviving domestic partners. Nev. Rev. Stat. § 122A.200(1)(b), (c).

¹¹ Although different-sex couples may register as domestic partners, Nev. Rev. Stat. § 122A.100, they also are provided the choice to marry — an option denied same-sex couples.

¹² As discussed below, however, by not allowing access to marriage itself Defendants preclude same-sex couples from being able to obtain the full panoply of federal rights and benefits afforded to married couples and their families.

The Act expressly provides that the “rights and obligations of domestic partners with respect to a child of either of them are the same as those of spouses,” and includes the same protections for former or surviving domestic partners who are parents. Nev. Rev. Stat. § 122A.200(1)(d).

SUMMARY OF THE ARGUMENT

Defendant Officials’ enforcement of the marriage ban inflicts serious, sweeping harms on Plaintiff Couples and their families. Same-sex couples’ exclusion from the institution of marriage brands them as less deserving of equal dignity and respect and demeans them and their children. The marriage ban also blocks same-sex couples from rights and responsibilities across the entire spectrum of federal law. Relegating same-sex couples to registered domestic partnership is no remedy. That novel, inferior status qualifies unmarried same-sex couples for virtually no federal benefits, and instead designates same-sex couples as second-class citizens and subjects them to a host of practical difficulties and vulnerabilities.

The marriage ban violates core principles of due process by depriving same-sex couples of the fundamental right to marry. This fundamental right cannot be denied based on wordplay — the claim that Plaintiff Couples seek a different right of “same-sex marriage,” rather than the fundamental right to marry. Rather, the right has always been defined by its nature and not the identity of those who seek

it. And lesbians and gay men, as *Windsor* and *Lawrence v. Texas* demonstrate, seek to create the enduring bonds that make a marriage. Excluding same-sex couples from marriage also impermissibly infringes upon the due process right to liberty, privacy, and autonomy in core personal decisions regarding intimate association, structuring one's family, and child-rearing. Due process guarantees recognize that each individual's essential dignity, worth, and independence is core to our system of ordered liberty. *Windsor* held that same-sex couples share in this right, by speaking of their right to "equal dignity." The marriage ban violates all of these rights in the most manifest way.

Nevada's marriage ban also violates same-sex couples' right to equal protection without discrimination based on sexual orientation and sex. The ban should be subjected to heightened scrutiny on both grounds, because, as confirmed in case law and expert testimony, lesbians and gay men have faced a history of discrimination based on a fixed trait that is unrelated to the ability to contribute to society, and they remain politically vulnerable. The marriage ban should be subjected to heightened scrutiny also because it discriminates with respect to fundamental rights and liberty interests.

Defendant Officials' exclusion of same-sex couples from marriage, however, cannot survive even rational basis review. Rational basis is not met when officials merely want to continue a historical practice of discrimination, or

because of a baseless private view that marriage equality tarnishes the institution of marriage. Different-sex couples' decisions about whether to marry or have children are not affected by whether same-sex couples may share in the celebrated institution of marriage. Instead, the marriage ban serves only to punish the children of same-sex couples, depriving them of the myriad tangible benefits and societal status that accompany access to marriage. The expert testimony offered below and the consensus among all major medical and mental health organizations confirm that the children of same-sex and different-sex couples are equally well-adjusted. Nevada already acknowledges that same-sex couples are worthy of parenting rights and responsibilities of spouses by providing those rights and responsibilities through registered domestic partnership.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

Although the district court erroneously ruled on Governor Sandoval and Defendant Glover's motion to dismiss as if it had been raised under Rule 12(b)(6) instead of Rule 12(b)(1), ER 4, this Court reviews motions under both Rules *de novo*. *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1156 (9th Cir. 2007) ("We review *de novo* dismissals under Rules 12(b)(1) and 12(b)(6)."). The Court also reviews "*de novo* a district court's grant or denial of summary judgment." *Lopez-Valenzuela v. County of Maricopa*, 719 F.3d 1054, 1059 (9th Cir. 2013).

II. NEVADA’S MARRIAGE BAN INFLICTS PROFOUND HARMS UPON SAME-SEX COUPLES AND THEIR CHILDREN, AND SHUNTING SAME-SEX COUPLES INTO REGISTERED DOMESTIC PARTNERSHIPS DOES NOT CURE THESE HARMS.

The district court failed to appreciate the extraordinary injuries inflicted by the marriage ban. *See, e.g.*, ER 29 (minimizing the burdens imposed by the marriage ban on Plaintiff Couples). Those harms have only increased — in fact, exponentially — since Section 3 of the federal Defense of Marriage Act (“DOMA”) was held unconstitutional. The marriage ban now subjects unmarried same-sex couples to the same deprivation of federal rights and responsibilities that *Windsor* held unconstitutional, imposes practical hardships on same-sex couples, and inflicts dignitary harms on same-sex couples and their families.

A. The Marriage Ban Deprives Same-Sex Couples’ Families of a Sweeping Safety Net of Federal Protections.

On June 26, 2013, the Supreme Court found Section 3 of DOMA unconstitutional. *Windsor*, 133 S. Ct. at 2695–96. As a result, the federal government no longer treats the valid marriages of same-sex couples as nullities, or the spouses in those marriages as strangers to each other for all federal purposes. *Windsor*, 133 S. Ct. at 2695–96 (finding unconstitutional 1 U.S.C. § 7, which provided that for all federal purposes, “marriage” and “spouse” could only refer to different-sex married couples). DOMA’s effect was far-reaching, comprising “a directive applicable to over 1,000 federal statutes and the whole realm of federal

regulations.” *Id.* at 2690; *see also id.* at 2694 (“Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans’ benefits.”).

Windsor confirmed both that our federalist system delegates authority to the states as gatekeepers to marriage, and that all marriage eligibility rules must comport with basic federal constitutional guarantees. *Id.* at 2691 (“[State marriage laws], of course, must respect the constitutional rights of persons, . . . but, subject to those guarantees, regulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States.”) (internal citation and quotation marks omitted). As the arbiter of which couples may be married in the State, Nevada thus holds the key to access for the sweeping array of spousal rights and responsibilities available under federal law, and keeps them locked away from same-sex couples under the marriage ban. By foreclosing same-sex couples from marriage, Nevada inflicts virtually the same collection of federal harms and deprivations on unmarried same-sex couples as DOMA previously did, since nearly all federal benefits are unavailable to unmarried couples, regardless of whether they are registered domestic partners. Same-sex couples married in other jurisdictions also face harms, as discussed below.

The federal benefits and obligations now barred to unmarried same-sex couples in Nevada include, for example, exemptions from income tax payments on

health care coverage for a spouse, 26 U.S.C. §§ 105, 106(a), 26 C.F.R. § 1.106-1 (1960); access to COBRA coverage for a spouse and a spouse's children, 29 U.S.C. §§ 1163(1)–(6), 1167(3); health insurance coverage for federal employees' spouses, 5 U.S.C. §§ 8901(5), 8901(10), 8905; payment of money to a “widow or widower” of a deceased federal employee, 5 U.S.C. § 5583(a); certain public safety officers' death benefits, 42 U.S.C. §§ 3796(a), 3796d(3), 3796d-1(a)(1), 28 C.F.R. §§ 32.3, 32.33; bankruptcy code protections for domestic-support obligations and other debts to a spouse or child, 11 U.S.C. §§ 101(14A), 507(a)(1)(A), 523(a)(5), 523(a)(15); and a citizen's ability to sponsor a spouse for immigration purposes, 8 U.S.C. § 1186a. In addition, after *Windsor* a number of federal agencies have issued implementation guidance, and “the clear trend has been . . . to limit the extension of benefits to only those same-sex couples in legally recognized marriages.” *Garden State Equal. v. Dow*, No. MER L-1729-11, slip op. at 15 (Sup. Ct., Mercer Cnty. Div. Sept. 27, 2013), *available at* www.judiciary.state.nj.us/samesex/Decision_Summary_Judgment_and%20Order.pdf.¹³ The

¹³ The federal agencies that have extended benefits to only married same-sex couples include:

1. Office of Pers. Mgmt., “Benefits Administration Letter,” at 2 (July 17, 2013), *available at* <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf> (“[S]ame-sex couples who are in a civil union or other forms of domestic partnership other than marriage will remain ineligible for most Federal benefits programs.”).

2. Office of Gov't Ethics, "LA-13-10: Effect of the Supreme Court's Decision in *United States v. Windsor* on the Executive Branch Ethics Program," at 2 (Aug. 19, 2013), *available at* www.oge.gov/OGE-Advisories/Legal-Advisories/LA-13-10--Effect-of-the-Supreme-Court-s-Decision-in-United-States-v--Windsor-on-the-Executive-Branch-Ethics-Program (explaining that the term "spouse" does not "include a federal employee in a civil union, domestic partnership, or other legally recognized relationship other than a marriage").

3. Internal Revenue Serv., "Treasury and IRS Announce That All Legal Same-Sex Marriages Will Be Recognized for Federal Tax Purposes . . ." (Aug. 29, 2013), *available at* <http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples> (announcing equal federal tax treatment for same-sex spouses, clarifying that "the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law").

4. Dep't of Health & Human Servs., "Impact of *United States v. Windsor* on Skilled Nursing Facility Benefits . . ." at 1 (Aug. 29, 2013), *available at* http://www.cms.gov/Medicare/Health-Plans/HealthPlansGenInfo/Downloads/SNF_Benefits_Post_Windsor.pdf (defining spouse to include only "individuals of the same sex who are lawfully married under the law of a state, territory, or foreign jurisdiction").

5. Dep't of Labor, Wage & Hour Div., "Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act," at 2 (August 2013), *available at* <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm> (clarifying that a spouse must be "recognized under state law for purposes of marriage in the state where the employee resides").

6. Dep't of Labor, "Technical Release No. 2013-04, Guidance to Employee Benefit Plans on the Definition of 'Spouse' and 'Marriage' under ERISA . . ." (Sept. 18, 2013), *available at* <http://www.dol.gov/ebsa/newsroom/tr13-04.html> (providing that same-sex spouses shall be recognized for purposes of ERISA, but not "individuals in a formal relationship recognized by a state that is not denominated a marriage under state law, such as a domestic partnership or a civil union").

7. Dep't of State, "U.S. Visas for Same-Sex Spouses, FAQs for Post-Defense of Marriage Act," *available at* http://travel.state.gov/visa/frvi/frvi_6036.html

federal rights and responsibilities Nevada now denies these couples, like DOMA itself, burdens these couples' lives "by reason of government decree, in visible and public ways . . . touch[ing] many aspects of married and family life, from the mundane to the profound." *Windsor*, 133 S. Ct. at 2694.

Same-sex couples married in another state may be recognized — at most — as domestic partners under Nevada law, if they take the additional step of registering in compliance with the same rules for domestic partners (something not required of different-sex married couples). Nev. Rev. Stat. § 122A.500. But, even if married same-sex couples take that step, the language of a number of statutes and regulations governing access to certain federal rights and benefits (including family medical leave, certain copyright rights, and certain spousal veterans' benefits) refer to whether an individual's state of residence or domicile recognizes

("[O]nly a relationship legally considered to be a marriage in the jurisdiction where it took place establishes eligibility as a spouse for immigration purposes.").

Thus far, only the Department of Defense and Department of Veterans Affairs have suggested they may or will provide benefits more broadly than to validly married same-sex couples. *See* 78 Fed. Reg. 54,633 (Sept. 5, 2013); 78 Fed. Reg. 57,067 (Sept. 17, 2013) (to be codified at 38 C.F.R. pt. 17) (allowing domestic partners access to services, but only for certain kinds of counseling).

In addition, a mere handful of benefits may be available to same-sex registered domestic partners in Nevada, where the federal government also allows access based on a state's laws of intestacy, but these are rare exceptions to the rule. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(ii) (defining family status for purposes of the Social Security Act).

them as married.¹⁴ Nevada’s refusal to recognize marriages legally entered by same-sex couples as marriages under Nevada law thus prevents those couples from obtaining federal rights and benefits available to all other legally-married couples.

Countless of these rights have tangible and financial consequences for same-sex couples and their families, in many instances depriving them of resources that different-sex couples may use as a matter of course to support family needs, such as their children’s education. *See Windsor*, 133 S. Ct. at 2695 (“DOMA also brings financial harm to children of same-sex couples.”). Nevada’s marriage ban, like DOMA before it, “writes inequality into the entire United States Code,” and “divests married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept.” *Id.* at 2694, 2695.

B. The Marriage Ban Visits a Host of Other Practical Harms and Difficulties upon Same-Sex Couples’ Families.

Nevada’s marriage ban “instructs all . . . officials, and indeed all persons with whom same-sex couples interact, including their own children, that their

¹⁴ *See, e.g.*, Family Medical Leave Act (“FMLA”) of 1993, 29 U.S.C. §§ 2601 *et seq.*, 29 C.F.R. § 825.102 (defining “spouse” for purposes of the FMLA as “a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides”); 17 U.S.C. § 101 (“author’s ‘widow’ or ‘widower’ is the author’s surviving spouse under the law of the author’s domicile”); 38 U.S.C. § 103(c) (“In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid . . . according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.”).

[relationship] is less worthy than the [relationships] of others.” *See Windsor*, 133 S. Ct. at 2696. This treatment frustrates same-sex couples’ goals and dreams, personal happiness and self-determination, and it triggers disrespect in virtually every sphere of their lives.¹⁵

For many, the pinnacle of entering married life is a wedding with loved ones present to bear witness to their commitment. Conducted pursuant to the State’s requirement that marriages be solemnized, these ceremonies carry not only deep personal significance, but also the imprimatur of State approval. Nev. Rev. Stat. § 122.010(1). While many heterosexual couples remember their wedding day as among the best in their life, there is no such ritual for domestic partnership, which instead is done merely by filing a notarized form with the Secretary of State. Nev. Rev. Stat. § 122A.100.¹⁶ Same-sex couples’ inability to marry also can negatively affect how family and others view their relationship.¹⁷

¹⁵ *See also* ER 314 ¶¶ 38–40 (expert testimony reviewing a large body of research demonstrating that marriage fosters “psychological well-being, physical health, and longevity”).

¹⁶ *See* ER 192 ¶ 10 (when Plaintiffs Theodore Small (“Theo”) and Antioco Carrillo (“Antioco”) registered as domestic partners, it was a sterile process devoid of any celebration, and Theo “recall[s] standing in the middle of a bank lobby with our right hands raised to swear that the information on the form was true. That is not the equivalent of a wedding on any level, where two people take vows to love and care for each other in sickness and in health, through a public celebration that melds their families as one.”).

¹⁷ *See* ER 221–22 ¶ 8 (although Plaintiffs Mikyla Jewel Miller (“Mikyla”) and Katrina Miller (“Katie”) previously had a commitment ceremony with friends and

In a further signal of the State’s official view that domestic partnerships are less significant and enduring, they may be summarily terminated through the Secretary of State, rather than through the family court proceedings required to dissolve a marriage. Nev. Rev. Stat. § 122A.300; ER 313–14 ¶ 36 (testimony of expert psychologist describing how barriers to ending a relationship increase couples’ likelihood of staying together).

Nevada law also denies registered domestic partners the same streamlined process for one partner to adopt the other’s surname, an important rite for many couples to signify to themselves, their children, and the community that they are forming a family. Unlike different-sex spouses, however, who may change a last name in connection with their marriage, registered domestic partners must obtain a court order. ER 234 ¶ 7; 143–44; 170–76. The partner wishing to adopt a common name must file a state court petition certifying that she is neither a felon

family, it was only after they were legally married in California that Mikyla’s parents began referring to Katie publicly as their daughter-in-law); ER 197 ¶ 10 (although Antioco’s family knows he and Theo are a couple, Antioco’s family “believes that marriage is the honorable way to show respect for your relationship and your intentions for the future, and our registered domestic partnership simply is not adequate to do that”); ER 202 ¶ 10 (Plaintiff Karen Goody’s testimony that, “Marrying [her partner Karen Vibe] would legitimize our relationship in the eyes of our family in a way that nothing else ever will”); ER 214 ¶ 9 (Plaintiff Fletcher (“Fletcher”) Whitwell’s mother acknowledges his brother’s wedding anniversary each year, but does not acknowledge any anniversary for Fletcher and his partner Greg Flamer (“Greg”), even though both couples have been together for the same amount of time).

nor attempting to defraud creditors, and to publish notice of the petition in a newspaper. Nev. Rev. Stat. §§ 41.270, 41.280. As Plaintiff Caren Cafferata-Jenkins testified, having to undertake this process “was a demeaning reminder of how lesbian and gay couples are treated as inferior to heterosexual couples: while heterosexual couples’ marriages are profiled in the society pages, lesbian and gay couples who merely want to change their names to unite their family must publicly attest that they are not criminals.” ER 234 ¶ 7.

The government is a powerful teacher of discrimination to others. Bearing the government’s imprimatur, Nevada’s marriage ban, and relegation of same-sex couples to the unfamiliar and lesser status of domestic partnership proliferates confusion and results in a wide range of harms.¹⁸ Many private entities defer to marital status in defining “family” for an array of important benefits, often excluding same-sex couples and their children from important safety nets such as private employer-provided health insurance for family members.¹⁹ The State also

¹⁸ See, e.g., ER 218–19 ¶ 8 (Mikyla and Katie had to struggle with hospital staff to have Katie listed as a parent on their child’s birth certificate as the domestic partnership law requires); ER 201 ¶ 9; ER 206 ¶ 131 (because Plaintiffs Karen Goody and Karen Vibe cannot use the word “spouse,” they find themselves repeatedly having to correct others’ mistaken assumption in workplace and social settings that they are merely business partners).

¹⁹ See ER 226–27 ¶ 12 (Plaintiffs Adele (“Adele”) and Tara (“Tara”) Newberry, whose valid marriage is not recognized in Nevada, have had to pay higher premiums for family health insurance than the insurer provides to different-sex spouses); ER 229–30 ¶¶ 7–8 (after hospital staff refused to list Tara on their birth

encourages disrespect of committed same-sex couples and their children by others in workplaces, schools, businesses, and other major arenas of life, in ways that would be less likely to occur and more readily corrected if marriage were available to same-sex couples.

Children from a young age understand that marriage signifies an enduring family unit. They likewise understand when the State has deemed a class of families as less worthy than other families, undeserving of marriage, and not entitled to the same societal and governmental recognition and support as other families.²⁰ Under Nevada's marriage ban, same-sex couples and their children must live with the vulnerability and stress inflicted by the ever-present possibility that others may question their familial relationship — in social, educational, and

certificate for their first child, Tara went through a year-and-a-half ordeal with government agencies to obtain a birth certificate correctly listing her as the second parent; after the birth of the couple's second child, hospital staff required Tara to leave the hospital to retrieve extensive documentation before she could be listed as a parent on the birth certificate).

²⁰ See ER 210–11 ¶ 11 (Fletcher and Greg worry that as their toddler grows older she “will be deprived of a sense of normalcy and may feel socially outcast” because the government deems her parents unworthy of marriage); ER 242–43 ¶ 12 (Plaintiffs Sara Geiger (“Sara”) and Megan Lanz (“Megan”) fear that their young daughter will absorb the message that the State sees their family as inferior, and make it harder for her to feel “proud” of their family).

medical settings and in moments of crisis — in a way that spouses can avoid by simple reference to being married.²¹

C. The Marriage Ban Inflicts Profound Dignitary Harms upon Same-Sex Couples' Families.

Marriage has been described by the Supreme Court as “one of the vital personal rights essential to the orderly pursuit of happiness” and “the most important relation in life.” *Zablocki v. Redhail*, 434 U.S. 374, 383, 384 (1978) (internal quotation marks omitted).²² The California Supreme Court and numerous

²¹ See ER 222 ¶ 9 (as Katie testified, “People have questioned my status as a parent and often consider me A.L.M.’s stepparent rather than her mother. Some have challenged the veracity of my claim that Mikyla is my wife. I try to treat these moments as educational opportunities, but it can be frustrating and tiresome.”); ER 247 ¶ 8 (when Sara gave birth to the couple’s daughter, hospital staff said to Megan words to the effect of, “we don’t have to let you stay here, but we’re just going to look the other way”); ER 226 ¶ 10 (when Adele and Tara took one of their children to the emergency room, hospital staff asked which one of them was “the mom”; when they responded that they were both their child’s mother, the staff asked “which one is the real mom?”); ER 210 ¶ 9 (Greg carries a letter from an attorney with him at all times documenting his relationship as a father to his daughter, for fear that his relationship will be questioned).

²² See also *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 970 (N.D. Cal. 2010) (“Domestic partnerships lack the social meaning associated with marriage, and marriage is widely regarded as the definitive expression of love and commitment in the United States.”); *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 417 (Conn. 2008). For similar reasons, the Massachusetts Supreme Judicial Court advised the state senate in 2004 — after the court had ruled that same-sex couples must be allowed to marry — that the senate could not implement the court’s ruling by merely providing civil unions. See *Opinions of the Justices to the Senate*, 440 Mass. 1201, 1207–08 (2004) (“The dissimilitude between the terms ‘civil marriage’ and ‘civil union’ is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex . . . couples to second-class status.”).

other courts have held that domestic partnership cannot compare to marriage. *In re Marriage Cases*, 183 P.3d 384, 445 (Cal. 2008) (stating that because of the widespread understanding that marriage “describes a union unreservedly approved and favored by the community,” granting same-sex couples access “to only a novel alternative designation, realistically must be viewed as constituting significantly unequal treatment to same-sex couples”); ER 263 ¶ 9; 265 ¶ 12 (testimony of expert marriage historian about the unparalleled status marriage holds in society). The difference in stature also is borne out in different-sex couples’ preferences: In jurisdictions that allow both domestic partnerships and marriages, most eligible different-sex couples choose marriage. For example, in California in 2000, 98% of different-sex couples whose age allowed them to enter a domestic partnership were instead legally married. ER 360–62 ¶¶ 40–44 (expert testimony reviewing research that demonstrates domestic partnerships are widely viewed as less desirable than marriage).

The district court held that “[t]he State has not crossed the constitutional line by maintaining minor differences in civil rights and responsibilities . . . or by reserving the label of ‘marriage’ for one-man–one-woman couples in a culturally and historically accurate way.” ER 31. But it was also “culturally and historically accurate” that women could not serve on juries, be executors of estates, or pay alimony before those sex-based distinctions were held unconstitutional. *See Taylor*

v. Louisiana, 419 U.S. 522, 531 (1975); *Reed v. Reed*, 404 U.S. 71, 77 (1971); *Orr v. Orr*, 440 U.S. 268, 283 (1979). Attempts to reserve a privileged status for a favored group through creation of a separate, inferior status for the excluded group have been rejected over several painful chapters in this country's history. *See, e.g., Sweatt v. Painter*, 339 U.S. 629, 634 (1950); *United States v. Virginia*, 518 U.S. 515, 554 (1996). As the Supreme Court has "repeatedly emphasized, discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants" in the community, can cause serious "injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984) (footnote and citations omitted).

Windsor powerfully answers the district court's claim that consigning same-sex couples to domestic partnership cures the constitutional violation. The Supreme Court's observations about the effect of DOMA on same-sex couples' valid marriages apply equally here: Nevada undermines "both the public and private significance" of same-sex couples' relationships, "for it tells those couples, and all the world" that their relationships are "unworthy" of governmental recognition, and "places same-sex couples in an unstable position of being in a second-tier" relationship that "demeans the couple." 133 S. Ct. at 2694.

**III. NEVADA’S MARRIAGE BAN VIOLATES SAME-SEX COUPLES’
FUNDAMENTAL RIGHTS AND LIBERTY INTERESTS, INCLUDING THEIR
RIGHT TO EQUAL DIGNITY.**

By denying same-sex couples access to civil marriage and instead consigning them to the novel, inferior status of domestic partnership, Defendant Officials violate Plaintiffs’ due process rights under the U.S. Constitution. Defendant Officials’ enforcement of the marriage ban denies Plaintiffs the fundamental right to marry, and the concomitant freedom to marry the spouse of their choice, free from interference from government. This fundamental right of liberty, privacy, and autonomy is defined by the attributes and singular status that attaches to marriage — not by the identity of the people who seek to exercise it or who have been excluded from doing so in the past. In addition, Defendant Officials’ enforcement of the marriage ban denies Plaintiff Couples equal dignity in contravention of the Fourteenth Amendment’s Due Process Clause, which does not permit the government to command whom individuals may or may not marry unless necessary to satisfy a compelling state interest. Nevadans are not mere instrumentalities of the State; they are autonomous individuals, with the right to build personal bonds of an enduring nature with those whom they choose, and to be free from stigma imposed by the government relegating one individual’s personal bonds to a less valuable status than another’s.

A. The Marriage Ban Denies Same-Sex Couples the Fundamental Right to Marry and Other Important Liberty Interests.

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” *Loving v. Virginia*, 388 U.S. 1, 12 (1967). “Although *Loving* arose in the context of racial discrimination, prior and subsequent decisions of [the Supreme] Court confirm that the right to marry is of fundamental importance for all individuals.” *Zablocki*, 434 U.S. at 384; *see also Maynard v. Hill*, 125 U.S. 190, 205 (1888) (characterizing marriage as “the most important relation in life”); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (recognizing that the right “to marry, establish a home and bring up children” is a central part of the liberty protected by the Due Process Clause).

The right to marry also is protected as part of the fundamental “right of privacy” implicit in the Due Process Clause. *See Griswold v. Connecticut*, 381 U.S. 479, 495 (1965) (Goldberg, J., concurring). “While the outer limits of [the right of personal privacy] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage” *Carey v. Population Servs. Int’l*, 431 U.S. 678, 684–85 (1977). And the right to marry touches on other fundamental privacy rights, including decisions each individual makes about how to structure one’s family, *see Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), and child-rearing and education, *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535

(1925); *see also Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974)

(“This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment”).

The Supreme Court has found numerous restraints on marriage and family relationships to be unconstitutional — even some far less restrictive than Nevada’s blunt, absolute denial of marriage to same-sex couples. *Boddie v. Connecticut*, for example, held that filing fees for divorce actions violated the due process rights of indigents unable to pay the fees, by burdening the freedom of indigents to marry another person. 401 U.S. 371, 380–81 (1971). Similarly, in *Zablocki*, the Court overruled a statute that required parents with existing child-support obligations to show the parent was current on those obligations and obtain court approval, prior to marriage. 434 U.S. at 375–77.²³

²³ The *Zablocki* Court distinguished another case, *Califano v. Jobst*, 434 U.S. 47 (1977), decided earlier the same term. In *Jobst*, the Court upheld certain sections of the Social Security Act providing for termination of a dependent child’s benefits upon marriage to a person not entitled to benefits. The Court in *Jobst* noted that the rule terminating benefits upon marriage was not “an attempt to interfere with the individual’s freedom to make a decision as important as marriage.” *Id.* at 54. The *Zablocki* Court noted further that the Social Security provisions “placed no direct legal obstacle in the path of persons desiring to get married, and . . . there was no evidence that the laws significantly discouraged, let alone made practically impossible, any marriages.” 434 U.S. at 387 n.12 (citation and quotation marks omitted). Here, of course, Nevada has made the marriages of certain people more than “practically” impossible, and so the regulation of marriage is direct and substantial.

Indeed, the Supreme Court has not hesitated to strike down laws directly interfering with the freedom to marry, such as Nevada’s marriage ban, without a supportable basis, making clear that an essential part of the fundamental right to marry is the “freedom of choice” of whom to marry that “resides with the individual and cannot be infringed by the State.” *Loving*, 388 U.S. at 12. The freedom to marry without the freedom to choose one’s partner is no freedom to marry at all, because it robs marriage of the love and autonomy that are the center of that relationship. *See Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (“When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.”). As the Supreme Court explained in *Lawrence*, “our laws and tradition afford constitutional protection to personal decisions relating to marriage . . . [and] family relationships” because of “the respect the Constitution demands for the autonomy of the person in making these choices” — and “[p]ersons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.” 539 U.S. at 574.

To be sure, one could imagine a world where government is simply not necessary to marriage. “The state has been a relative latecomer in the regulation of marriage,” and only in the eighteenth century did marriage become more than “a

purely private transaction.” Mary Ann Case, *Marriage Licenses*, 89 Minn. L. Rev. 1758, 1766 (2005). If the state did not hold a monopoly on authorizing marriage and divorce, individuals might be free to hold religious or secular ceremonies, hold themselves out as married, rear children, and otherwise live in an intimate relationship that is a fundamental part of the pursuit of happiness. But our history has played out differently. The state currently has a monopoly over both marriage and divorce. *See Boddie*, 401 U.S. at 375. The law determines, for example, whether society will recognize one partner as a widow or surviving spouse after death, *see, e.g., Obergefell v. Kasich*, No. 1:13-cv-501, 2013 WL 3814262 (S.D. Ohio July 22, 2013). Having assumed the monopoly over marriage from the individual, the state cannot deny it categorically to some of its citizens unless that is the least restrictive means of meeting the strongest of government interests, a test Defendant Officials cannot satisfy.

The Supreme Court has instructed states to beware of measures that would restrict the liberty of individuals to build important personal relationships. The right of all people to enter into intimate associations, and develop those associations into enduring bonds, cannot be lightly denied. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (“Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society”) (internal quotation marks omitted). “This, as a

general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects.” *Lawrence*, 539 U.S. at 567.

There is no reason why same-sex partners are not capable of participating in matrimony. In *Turner v. Safley*, the Supreme Court held that the constitutional right to marry was available to prison inmates, notwithstanding the obvious limitations on a prisoners’ conduct. 482 U.S. 78 (1987). In so doing, the Court recognized the many fundamental aspects of marriage. These include “expressions of emotional support and public commitment,” 482 U.S. at 95, “an exercise of religious faith as well as an expression of personal dedication,” *id.* at 96, and the fact that marriage is “a pre-condition to the receipt of government benefits . . . property rights . . . and other, less tangible benefits (*e.g.*, legitimation of children outside of wedlock).” *Id.* These “religious and personal aspects of the marriage commitment” are “important and significant” and, more importantly, protected by the Due Process Clause of the Fourteenth Amendment. *Id.* As the Court further explained in *Zablocki*:

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

434 U.S. at 384 (quoting *Griswold*, 381 U.S. at 486).

Lawrence, of course, established that same-sex partners suffer no disability preventing them from creating these enduring personal bonds. 539 U.S. at 567. Likewise, after *Windsor* it is beyond debate that those in same-sex relationships can benefit in multiple tangible and intangible ways from the protection and dignity that marriage affords. 133 S. Ct. at 2692. And the Court has never conditioned the right to marry on the power to “naturally” procreate. In *Turner*, 428 U.S. at 95, the Court extended the right to marry to individuals — inmates — who lack the present power to procreate with their spouse, and in *Griswold*, 381 U.S. at 485–86, the Court made clear that individuals have the right to choose to procreate or not regardless of whether they are married.

It is beyond cavil that there is a fundamental right to marry; countless pronouncements of the Supreme Court tell us so. The Supreme Court also warns against “attempts . . . to define the meaning of the relationship or to set its boundaries absent injury” *Lawrence*, 539 U.S. at 567. But Defendant Officials have not identified injury to the institution of marriage. Nor can they. Same-sex partners participate equally in the personal and spiritual aspects of marriage. They support each other in the same way different-sex partners do. And same-sex parents raise children next door to different-sex parents. Nevada recognized the absence of harm when it enacted the domestic partnership statute and when it afforded same-sex registered domestic partners all the same parenting

rights and responsibilities as spouses. In the face of Supreme Court precedent, it is clear that Nevada cannot now directly and substantially restrict the liberties of Nevadans through the marriage ban.

The district court alluded to a question about whether it is the fundamental right to marry at stake, and not the “right to marry a person of the same sex,” ER 31, but fundamental rights are defined by what they are, not who can exercise them. This critical distinction — that history guides the *what* of due process rights, but not the *who* of which individuals have them — is central to due process jurisprudence. If it were otherwise, it would be difficult to square with *Loving*’s overruling — on due process grounds — of a statute outlawing interracial marriage. *See Planned Parenthood v. Casey*, 505 U.S. 833, 847–48 (1992) (“[I]nterracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in *Loving* . . .”). Supreme Court cases have not recast the fundamental right to marry as merely “the right to interracial marriage,” “the right to inmate marriage,” or “the right of people owing child support to marry.” *See Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 983 n.5 (N.D. Cal. 2012) (citing *Loving*, 388 U.S. at 12); *Turner*, 482 U.S. at 94–96; *Zablocki*, 434 U.S. at 383–86. The same is true for

Plaintiff Couples, who seek the fundamental right to marry — nothing more, and nothing less.

B. The Marriage Ban Improperly Infringes the Right to Equal Dignity.

“[T]he essential dignity and worth of every human being [is] a concept at the root of any decent system of ordered liberty.” *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring); *see also* William J. Brennan, Jr., *The Constitution of the United States: Contemporary Ratification*, 27 S. Tex. L. Rev. 433, 438 (1986) (stating that the Constitution “is a sublime oration on the dignity of man, a bold commitment by a people to the ideal of libertarian dignity protected through law”).

The Constitution limits the scope of government’s intrusion into the decisions that men and women make about how to conduct their private lives, and how the government can treat individuals within our democratic system. The Supreme Court has recognized claims, rooted in both due process and equal protection, that involve fundamental limitations on the government’s power to strip individuals of their personal autonomy. These claims center around the extent to which the state may permissibly intrude on an intrinsically private and personal sphere of life.

The Supreme Court has recognized a protection of dignity as inherent in our constitutional structure, where dignity may be synonymous with or closely related

to concepts of autonomy, *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (“Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”); *Casey*, 505 U.S. at 851 (opinion of O’Connor, J., Kennedy, J., and Souter, J.) (“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”); freedom from government-endorsed stigma, *Lawrence*, 539 U.S. at 574–75 (discussing stigma created by criminalization of intimate contact by gay people); the freedom of individuals to an equal opportunity to achieve social status or rank, *Windsor*, 133 S. Ct. at 2689 (discussing New York’s decision to grant same-sex couples the right to marry “and so live with pride in themselves and their union and in a status of equality with all other married persons”); and the freedom of personal conscience, *Casey*, 505 U.S. at 851 (“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”). At its heart, these concepts of dignity reflect an understanding that human beings ought never be treated as mere instruments of government, because men and women possess a dignity, autonomy, and individuality that is an essential component of humanity.²⁴

²⁴ This concept of dignity and the authority to govern one’s own existence was present at the founding on both sides of the Atlantic Ocean. See Markus Dirk Dubber, *Toward a Constitutional Law of Crime and Punishment*, 55 Hastings L.J.

A protection of dignity need not always, but often may, intersect with the protection of equal protection. The Supreme Court has held, for instance, that “[o]ne of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 746 (2007) (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)); see also *id.* at 797 (Kennedy, J., concurring) (“To be forced to live under a state-mandated racial label is inconsistent with the dignity of individuals in our society.”); *Korematsu v. United States*, 323 U.S. 214, 240 (1944) (Murphy, J., dissenting) (“To give constitutional sanction [to the detention of U.S. citizens of Japanese descent] . . . is to adopt one of the cruelest of rationales used by our enemies to destroy the dignity of the individual and to encourage and open

509, 542–43 (2004); Michael J. Meyer, *Kant’s Concept of Dignity and Modern Political Thought*, in 8 *Hist. of Eur. Ideas* 319, 327 (1987). Indeed, a Kantian notion that ties the rights of men as against the power of the government was celebrated by James Madison as “the capacity of mankind for self-government.” *The Federalist* No. 39 (James Madison); see also *The Federalist* No. 1 (Alexander Hamilton) (urging citizens to adopt the Constitution as “the safest course for your liberty, your dignity, and your happiness”); Thomas Paine, *Rights of Man* 41 (Gregory Claeys ed., Hackett Pubs. 1992) (1791) (arguing that the “natural dignity of man” was the reason to protect individual rights that transcend authoritative rule); *id.* at xvii (noting in introduction Thomas Jefferson’s positive reception to Paine’s views in the *Rights of Man*).

the door to discriminatory actions against other minority groups”).²⁵ The overlap of due process and equal protection as mutually reinforcing guarantees runs throughout federal jurisprudence, as explained further below in Section IV(D) *infra* (describing the well-established principle that invidious discrimination with respect to fundamental rights and liberty interests warrants heightened scrutiny). See *Truax v. Corrigan*, 257 U.S. 312, 332 (1921) (holding the provisions “overlap” such “that a violation of one may involve at times the violation of the other, [though] the spheres of the protection they offer are not coterminous”). At least one decision of the Supreme Court has also emphasized that dignity is an overlapping concept, by equating it to “equal liberty,” a term that inherently

²⁵ Dignity is a significant constitutional concept even outside equal protection and due process. For instance, the Supreme Court has noted, in holding that a particular punishment must conform to “evolving standards of decency,” that “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958); see also *Hope v. Pelzer*, 536 U.S. 730, 745 (2002) (holding a particular punishment “antithetical to human dignity” because it was “degrading and dangerous”). The Court has also held that “the constitutional foundation underlying the privilege [against self-incrimination embodied by the Fifth Amendment] is the respect a government — state or federal — must accord to the dignity . . . of its citizens.” *Miranda v. Arizona*, 384 U.S. 436, 460 (1966). The Court has noted that the “overriding function” of the Fourth Amendment’s protection against unreasonable search and seizure is “to protect personal privacy and dignity against unwarranted intrusion by the State.” *Schmerber v. California*, 384 U.S. 757, 767, 769–70 (1966) (“The interests in human dignity and privacy which the Fourth Amendment protects forbid [invasive behavior by the state].”). In the Fourth Amendment, thus, dignity is bound up with privacy. Although neither amendment is directly relevant in this case, the protections underlying these amendments emphasize a zone where the government has no right to intrude.

embodies principles of both equal protection and due process. *Stenberg v. Carhart*, 530 U.S. 914, 920 (2000); *see also Windsor*, 133 S. Ct. at 2693 (explaining how DOMA interferes with “equal dignity” of marriages of same-sex couples).

The protection of human dignity creates both a zone of legitimate government interest, and a zone where government may not intrude. This concept of liberty has its roots in decisions of the Supreme Court protecting an individual’s right, for instance, to make personal and fundamental decisions in child-rearing free from government interference. *See, e.g., Pierce*, 268 U.S. at 535 (overruling state statute requiring children to attend public, not parochial schools, because of the autonomy of parent and child, and because the state may not “standardize its children” since “[t]he child is not the mere creature of the state”); *Meyer*, 262 U.S. at 399 (overruling state law prohibiting the education of children in the German language, because it interfered with an autonomy that is “essential to the orderly pursuit of happiness by free men.”) Indeed, courts have long recognized “the private realm of family life which the state cannot enter.” *Prince*, 321 U.S. at 166.²⁶

²⁶ In *Moore v. East Cleveland*, 431 U.S. 494 (1977), the Court reiterated this point with a caveat: “[T]he family is not beyond regulation.” *Id.* at 499. But the Court distinguished regulation that treats families equally, like those at issue in *Prince*, and those that “intrude[] on choices concerning family” where the court

The protection of dignity has experienced its most profound and explicit expression when states have sought to regulate intimate associations. In *Lawrence*, the Court invalidated a statute criminalizing same-sex couples' intimate relationships on the basis that the statute violated individuals' due process rights. 539 U.S. 558. Significantly, the Court declined to rule on two, arguably narrower, grounds. The Court declined to conceive of the statute solely as a violation of privacy, *id.* at 564–65 (describing right to privacy but then considering the statute as a violation of general liberty), or as a violation solely of the equal protection rights of gay people who were specifically targeted by some sodomy statutes, such as one challenged in Texas, *id.* at 574–75. Instead, the Court overruled all remaining sodomy statutes, regardless of whether they targeted gay people alone, or physical intimacy by heterosexual couples too, based on a broader liberty interest involving “the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy.” *Id.* at 574 (quoting *Casey*, 505 U.S. at 851). These intimate choices, the Court continued, are critical if individuals are to “retain their dignity as free persons.” *Id.* at 567. In addition to an autonomy-based understanding of dignity, the Court also understood that dignity is the antithesis of government-sponsored stigma, resting its ruling in part on how this particular statute essentially labeled all gay people as criminals, “with

“must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.” *Id.*

all that imports for the dignity of the persons charged.” *Id.* at 575. And irrespective of whether the statutes applied to homosexual or heterosexual sodomy, they sought “to control a personal relationship that . . . is within the liberty of persons to choose without being punished as criminals.” *Id.* at 567. The Court held:

This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.

Id.

The Supreme Court emphasized the important relationship between marriage and dignity in *Windsor*.²⁷ New York “sought to protect . . . personhood and dignity” by granting to all couples the right to marry. 133 S. Ct. at 2696. That liberty to marry “conferred upon” same-sex couples “a dignity and status of immense import,” and, when New York so conferred that right, it “enhanced the

²⁷ This connection also was made, or at least implied, by Justice Jackson’s concurrence in *Skinner v. Oklahoma*, 316 U.S. 535 (1942). Justice Jackson noted that “[t]here are limits to the extent to which a legislatively represented majority may conduct biological experiments,” in that case the forced sterilization of inmates, “at the expense of the dignity and personality and natural powers of a minority.” *Id.* at 546 (Jackson, J., concurring).

recognition, dignity, and protection of the class in their own community.” *Id.* at 2692. DOMA, by contrast, caused an “injury and indignity” to “an essential part of the liberty” protected by the Due Process Clause of the Fifth Amendment. *Id.* DOMA thus “interfere[d] with the equal dignity of same-sex marriages.” *Id.* at 2693.

Cases surrounding marriage for same-sex couples in California similarly ground the right to marry as governed by a right to dignity. In first holding that marriage for same-sex couples is a protected right under the California Constitution, the California Supreme Court observed that “the core set of basic *substantive* legal rights and attributes traditionally associated with marriage . . . are so integral to an individual’s liberty and personal autonomy” that these “core substantive rights include . . . the opportunity of an individual to establish — with the person with whom the individual has chosen to share his or her life — an *officially recognized and protected family* possessing mutual rights and responsibilities and entitled to the same respect and dignity accorded a union traditionally designated as marriage.” *Marriage Cases*, 183 P.3d at 399 (emphasis in original). The Court elaborated,

One of the core elements of the right to establish an officially recognized family that is embodied in the California constitutional right to marry is a couple’s right to have their family relationship accorded dignity and respect equal to that accorded other officially recognized families, and assigning a different designation for the family relationship of same-sex couples while reserving the historic

designation of “marriage” exclusively for opposite-sex couples poses at least a serious risk of denying the family relationship of same-sex couples such equal dignity and respect.

Id. at 400. The California Supreme Court thus understood dignity as being inherently opposed to stigmatization by being accorded a different designation and a right to stand on equal footing. In sum, the liberty interest in possessing mutual rights and responsibilities, respected on equal footing with heterosexual counterparts, represents the zone where government may not tread.

To be sure, dignity is not a limitless concept. *See Washington v. Glucksberg*, 521 U.S. 702 (1997) (declining to find a right to assistance from others in order to die a dignified death). While the Supreme Court has sometimes allowed states to regulate the ability to enlist *other individuals* to assist with the exercise of a right, *e.g.*, *Glucksberg*, the Supreme Court has recognized the right of individuals to directly exercise an important right — which is at issue in this case too. *See, e.g., Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 279 (1990) (assuming “that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition” and thereby to end one’s life). Moreover, the heart of this dignity right has always been described as the right to make “personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.” *Glucksberg*, 521 U.S. at 726 (quoting *Casey*, 505 U.S. at 851). There is little

question, therefore, that impositions on marriage, family relationships, and child-rearing of the kind at issue here clearly impinge on Plaintiff Couples' dignity rights.

Marriage is a key, personal, and individual decision, and the protections of the Constitution shield individuals against having the government as their match-maker. The dignity right certainly provides that the State cannot tell individuals that they can get married, but only to a person of a certain race. *See Loving v. Virginia*, 388 U.S. 1 (1967).²⁸ But the dignity right goes further than that. Absent narrow tailoring to a compelling government interest, Nevada likewise could not decree that its citizens could only marry other Nevadans, or only marry non-Nevadans, or only marry persons from their own counties. Still less can Nevada

²⁸ The Court held:

To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.

Loving, 388 U.S. at 12.

deprive lesbians and gay men of any opportunity to marry, or to be recognized as married, to their one cherished partner in life.²⁹

Of course, as noted, the protection of dignity under the Due Process Clause carries extra force. In *Lawrence*, for instance, the Court emphasized that the imposition of a law with discriminatory impact bore special consideration under a due process analysis. 539 U.S. at 575. There, the Court held that “[w]hen homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.” *Id.* Nevada’s decision to ban marriage for same-sex couples “demeans the lives of homosexual persons,” *id.*, and it is fundamentally outside the role of any State to demean the lives of any person with respect to decisions fundamental to that person’s autonomy and self-determination.

IV. NEVADA’S MARRIAGE BAN VIOLATES THE FOURTEENTH AMENDMENT’S GUARANTEE OF EQUAL PROTECTION.

Nevada’s marriage ban violates the central command of the Fourteenth Amendment’s Equal Protection Clause that “all persons similarly circumstanced shall be treated alike.” *Reed*, 404 U.S. at 76 (internal quotation marks omitted).

²⁹ It is thus no answer, as was argued below, that each of the plaintiffs here *can* get married, so long as they choose to marry a person of the different sex. It is not the government’s province to limit such decisions, unless Defendant Officials and Intervenor meet their burden of demonstrating that limitation is the least restrictive way of achieving a compelling state interest.

The ban violates equal protection guarantees on three principal grounds. First, it classifies same-sex couples for differential treatment based on their sexual orientation, warranting heightened scrutiny or, at a minimum, meaningful rational basis review. Defendant Officials' exclusion of same-sex couples from marriage cannot, however, survive even the most glancing review for the reasons described below. Second, the marriage ban discriminates against same-sex couples based on their sex in relation to their cherished life partner or spouse, requiring heightened review. Third, the marriage ban discriminates with respect to Plaintiff Couples' exercise of fundamental rights and liberty interests, also warranting heightened review.

A. Heightened Review Applies to Sexual Orientation Discrimination.

A growing number of federal courts have recognized that any faithful application of the test for heightened constitutional review requires such scrutiny for sexual orientation classifications. *Windsor v. U.S.*, 699 F.3d 169, 181 (2d Cir. 2012); *Pedersen v. Ofc. of Pers. Mgmt.*, 881 F. Supp. 2d 294, 333 (D. Conn. 2012); *Golinski*, 824 F. Supp. 2d at 989; *In re Balas*, 449 B.R. 567, 573–75 (Bankr. C.D. Cal. 2011) (decision of 20 bankruptcy judges); *Perry*, 704 F. Supp. 2d at 997.³⁰ As

³⁰ A number of state courts have reached the same conclusion. *Varnum v. Brien*, 763 N.W.2d 862, 885–96 (Iowa 2009); *Marriage Cases*, 183 P.3d at 442–45; *Kerrigan*, 957 A.2d at 432–61.

Notably, the Second Circuit's heightened scrutiny finding was squarely presented for the Supreme Court's review in *Windsor*, which neither overruled nor

explained further below, the level of review remains unsettled in this Court’s jurisprudence and the district court erred in concluding that the traditional hallmarks of heightened scrutiny do not apply to sexual orientation. Additionally, as *Witt* found by looking to *Lawrence*, this Court should find that *Windsor*’s “careful consideration” of the sexual orientation classification in that case requires at least some form of heightened review here. *Witt v. Dep’t of Air Force*, 527 F.3d 806, 819 (9th Cir. 2008).

1. No Ninth Circuit precedent forecloses heightened scrutiny.

Other than a cursory citation to earlier opinions in a limited context, this Court last examined the level of scrutiny for sexual orientation classifications 23 years ago in *High Tech Gays v. Defense Industrial Security Clearance Office*. 895 F.2d 563, 571 (9th Cir. 1990). That precedent and its progeny, however, are no longer sound and do not bind this Court. *High Tech Gays* rested in part on the since-overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986), concluding that laws classifying lesbians and gay men for adverse treatment are not subject to heightened scrutiny “because homosexual conduct can . . . be criminalized.” *Id.* at 571. But *Lawrence* definitively renounced that premise. 539 U.S. at 578 (“*Bowers* even expressed doubt about the holding. Compare *Windsor*, 133 S. Ct. at 2684 (noting that the Second Circuit had “applied heightened scrutiny to classifications based on sexual orientation, as both the Department [of Justice] and *Windsor* had urged”) with *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 442 (1985) (expressly overruling the Fifth Circuit’s ruling that classifications based on developmental disabilities should receive intermediate scrutiny).

was not correct when it was decided, and it is not correct today.”). Where an intervening decision of a higher court is clearly irreconcilable with a Ninth Circuit decision, “a three-judge panel should consider itself bound by the later and controlling authority, and should reject the prior circuit opinion as having been effectively overruled.” *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc).³¹ In fact, this Court has interpreted *High Tech Gays* itself as applying something more than traditional rational basis review. See *Pruitt v. Cheney*, 963 F.2d 1160, 1165–66 (9th Cir. 1992) (“it is clear that [in *High Tech Gays*] we applied the type of ‘active’ rational basis review employed by the Supreme Court in *City of Cleburne v. Cleburne Living Center, Inc.*”). *Pruitt* noted that *High Tech Gays* had engaged in a heightened form of review “despite our conclusion that *Bowers v. Hardwick* . . . militated against a higher level of scrutiny.” *Id.* at 1166 n.5. In light of *Bowers*’ demise, some form of heightened review is even more appropriate here.

This Court did not decide whether sexual-orientation classifications are subject to heightened review in *Witt*, 527 F.3d 806, which involved a challenge to the military’s defunct “Don’t Ask, Don’t Tell” (“DADT”) policy for gay service

³¹ The district court misunderstood this argument, which is not that *Lawrence* “adopt[ed] a[] standard of review applicable to distinctions drawn according to sexual orientation,” as the district court said. ER 16–17. Rather, Plaintiff Couples argue that to the extent *High Tech Gays* relied on *Bowers*, that analysis simply is no longer applicable law.

members. Instead, the Court merely noted in a single sentence — in the context of the military, where judicial deference “is at its apogee” — that if rational basis review were applied, DADT would survive that inquiry. *Id.* at 821; *see also id.* at 823–24 (Canby, J., concurring in part, dissenting in part) (noting that Major Witt did not pursue an equal protection claim comparing differential treatment of gay people to heterosexuals, instead preserving it for en banc review).³²

2. Although this Court already has found a history of discrimination against gay people, the district court refused to follow that holding.

While no single consideration is dispositive, *see Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 321 (1976), the presence of any heightened scrutiny consideration is a sign that the particular classification is more likely “to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective.” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982).

³² Witt did not hold, as the district court suggested, that “*High Tech Gays* survived *Lawrence*.” ER 17. Rather, Witt noted prior Ninth Circuit authority that DADT survives rational basis review, and assumed without deciding that such analysis applied. 527 F.3d at 821. Where the Court assumes a legal principle without expressly addressing it, subsequent panels remain free to consider the merits of the issue anew in a subsequent case. *See Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) (where prior cases have not “squarely addressed . . . and have at most assumed the applicability” of the relevant standard, “we are free to address the issue on the merits”) (superseded by statute on other grounds, as stated in *Gutierrez v. McGinnis*, 389 F.3d 300, 304 (2d Cir. 2004)); *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (holding that where an issue was not “raised in briefs or argument nor discussed in the opinion of the Court . . . the case is not a binding precedent on this point”); *Sethy v. Alameda Cnty. Water Dist.*, 545 F.2d 1157, 1159–60 (9th Cir. 1976) (en banc).

Both the evidence and settled law recognize that lesbians and gay men have been subjected to a long and painful history of discrimination. ER 391–426 (testimony of expert historian); *High Tech Gays*, 895 F.2d at 573 (“homosexuals have suffered a history of discrimination”); *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 954 (9th Cir. 2009) (observing that defendants would be “hard pressed to deny that gays and lesbians have experienced discrimination in the past in light of the Ninth Circuit’s ruling in *High Tech Gays*”); *Pickup v. Brown*, Nos. 12-17681, 13-15023, 2013 U.S. App. LEXIS 18068, at *8–9 (9th Cir. Aug. 29, 2013) (describing history of efforts to change individuals’ sexual orientation, instituted at a time when homosexuality was considered a mental illness, including inducing nausea, vomiting, or paralysis; providing electric shocks; and castration); *Lawrence*, 539 U.S. at 571 (“for centuries there have been powerful voices to condemn homosexual conduct as immoral”).

Pronouncing itself bound by *High Tech Gays*, the district court nonetheless rejected *High Tech Gays*’ holding that gay people have suffered a history of discrimination. ER 19. Citing no authority, the district court improvised a novel standard regarding history of discrimination, insisting that because “homosexuals do not in effect inherit the effects of past discrimination through their parents,” “it is contemporary disadvantages that matter” most, and that “[a]ny such disabilities with respect to homosexuals have been largely erased since 1990.” ER 19. No

federal case supports the district court’s invention, which defeats the very purpose of *historical* discrimination as a consideration. The district court also ignored the sweeping discrimination against gay people in the decades after 1990, which saw some of the most virulent targeting of gay people at the ballot box and state houses and produced patently unconstitutional laws such as those finally reversed in *Romer*, *Windsor*, and *Perry*.

3. Sexual orientation is not related to the ability to contribute to society.

Rather than resting on “meaningful considerations,” *Cleburne*, 473 U.S. at 441, laws that discriminate based on sexual orientation, like laws that discriminate based on race, national origin, or sex, target a characteristic that “bears no relation to ability to perform or contribute to society.” *Id.* (internal quotation marks omitted). This principle is embedded in Nevada’s state public policy, which recognizes that in every realm of life — from employment to family life, to daily transactions in society — sexual orientation discrimination has no place. *See Nev. Rev. Stat. §§ 613.330, 122A.200, 651.070.* This view is the consensus among mainstream social scientists, and was confirmed most recently by *Windsor*. *See* ER 311–12 ¶ 29–31; 353 ¶ 14; *Windsor*, 133 S. Ct. at 2694 (affirming that same-sex couples are equally worthy of the federal responsibilities of marriage, which, as well as rights, “enhance the dignity and integrity of the person”).

4. Sexual orientation is a core, defining, and immutable characteristic.

Sexual orientation classifications violate the fundamental principle that burdens should not be distributed — particularly by a majority that would not inflict them upon itself — on “groups disfavored by virtue of circumstances beyond their control.” *Plyler*, 457 U.S. at 216 n.14. Courts have considered a trait “immutable” when altering it would “involve great difficulty, such as requiring a major physical change or a traumatic change of identity,” or when the trait is “so central to a person’s identity that it would be abhorrent for government to penalize a person for refusing to change [it].” *Watkins v. U.S. Army*, 875 F.2d 699, 726 (9th Cir. 1989) (Norris, J., concurring); *Golinski*, 824 F. Supp. 2d at 987; *Pedersen*, 881 F. Supp. 2d at 326.

Although federal equal protection doctrine never has treated the immutability of a personal trait as a prerequisite for heightened scrutiny,³³ this Court has held and reaffirmed that sexual orientation should be considered immutable. *See, e.g., Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (“Sexual orientation and sexual identity are immutable; they are so

³³ Laws that classify based on religion, alienage, and legitimacy all are subject to some form of heightened scrutiny, despite the fact that religious people may convert, undocumented people may naturalize, and illegitimate children may be adopted. *See Windsor*, 699 F.3d at 181 (holding that immutability and relative political powerlessness are not necessary factors for identifying a suspect classification; collecting authorities).

fundamental to one’s identity that a person should not be required to abandon them.”) (overruled in part on other grounds by *Thomas v. Gonzales*, 409 F.3d 1177, 1187 (9th Cir. 2005)); *Karouni v. Gonzales*, 399 F.3d 1163, 1173 (9th Cir. 2005) (affirming that sexual orientation is “a fundamental aspect of . . . human identity”); *see also Perry*, 704 F. Supp. 2d at 966 (after a 12-day trial, finding that “[n]o credible evidence supports a finding that an individual may . . . change his or her sexual orientation”).

This understanding follows the settled consensus of the major professional psychological and mental health organizations. *Pickup*, 2013 U.S. App. LEXIS 18068, at *13 (describing “the well documented, prevailing opinion of the medical and psychological community that SOCE [sexual orientation change effort] has not been shown to be effective and that it creates a potential risk of serious harm”);³⁴ ER 310–11 ¶¶ 26–27 (psychologist’s expert testimony that “[s]exual orientation is highly resistant to change” and “there is no credible evidence that [sexual orientation change efforts] are . . . effective”); *see also generally* ER 308–11 ¶¶

³⁴ The Court explained that this overwhelming consensus is documented in materials “published by . . . the American Psychological Association, the American Psychiatric Association, the American School Counselor Association, the American Academy of Pediatrics, the American Medical Association, the National Association of Social Workers, the American Counseling Association, the American Psychoanalytic Association, the American Academy of Child and Adolescent Psychiatry, and the Pan American Health Organization.” *Id.*, 2013 U.S. App. LEXIS 18068, at *13.

21–28. But “[s]cientific proof aside, it seems appropriate to ask whether heterosexuals feel capable of changing *their* sexual orientation.” *Watkins*, 875 F.2d at 726 (Norris, J., concurring) (emphasis in original).

Yet, the district court relied on *High Tech Gays*, ER 13, 16–20, which found that sexual orientation is “behavioral,” rather than a deeply rooted, immutable characteristic warranting heightened judicial protection. 895 F.2d at 573. But the Supreme Court has authoritatively rejected this artificial distinction, noting that its “decisions have declined to distinguish between status and conduct in th[e] context” of sexual orientation. *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2990 (2010); *see also Lawrence*, 539 U.S. at 583 (O’Connor, J., concurring) (a law criminalizing same-sex intimacy is “targeted at more than conduct . . . [i]t is instead directed toward gay persons as a class”). Conditioning equal treatment on the sacrifice of a trait so fundamental to individual conscience ignores the Supreme Court’s recognition that same-sex couples in a “relationship may seek autonomy for these purposes, just as heterosexual persons do.” *Lawrence*, 539 U.S. at 574; *see also Windsor*, 133 S. Ct. at 2696 (holding that same-sex couples who have married should not have to abandon their commitment to each other to receive equal federal treatment).

5. The District Court erred by ruling that relative political powerlessness requires a group's chances of legislative success to be "virtually hopeless."

Two key errors infect the district court's holding that political powerlessness precludes heightened scrutiny for sexual orientation. First, the district court distorted the weight of this element, which is not required for heightened scrutiny. ER 25; 20 (describing relative political powerlessness as not only "a critical factor," but also the one that figured "[m]ost importantly" in the district court's analysis). While the political powerlessness of a group "may be relevant, . . . that factor is neither necessary, as the gender cases demonstrate, nor sufficient, as the example of minors illustrates." *Cleburne*, 473 U.S. at 472 n.24 (Marshall, J., concurring and dissenting). For this reason the Supreme Court repeatedly has referred to this requirement in the disjunctive: "a suspect class is one saddled with such disabilities, *or* subjected to such a history of purposeful unequal treatment, *or* relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Murgia*, 427 U.S. at 313 (emphasis added) (internal quotation marks omitted); *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (referring to whether a group is "a minority *or* politically powerless") (citing *Murgia*, 427 U.S. at 313–14) (emphasis added).

Second, the district court ignored the governing standard for this element, improvising its own requirement that a group be “so weak and ineffective as to make attempts to succeed democratically utterly futile,” and show its “chances of democratic success [to] be virtually hopeless.” ER 22; 28. But when the Supreme Court has considered this element, the Court always has examined relative, not absolute, political powerlessness, *i.e.*, whether the “discrimination is unlikely to be *soon rectified* by legislative means.” *Cleburne*, 473 U.S. at 440 (emphasis added); *Windsor*, 699 F.3d at 184 (“The question is not whether homosexuals have achieved political successes over the years; they clearly have. The question is whether they have the strength to politically protect themselves from wrongful discrimination.”).

The Supreme Court’s analysis of race- and sex-based classifications clearly illustrates this point. *Korematsu v. United States* applied heightened review to race-based classifications, even though race discrimination was prohibited by three federal constitutional amendments and federal civil rights enactments dating back to 1866. 323 U.S. at 216; ER 473–74 ¶¶ 85–86. When the Supreme Court applied heightened review to sex-based discrimination in *Frontiero v. Richardson*, Congress had already “manifested an increasing sensitivity to sex-based classifications” by enacting protections under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963, and by approving the federal Equal Rights

Amendment for ratification by the states. 411 U.S. 677, 685–687 (1973) (plurality); see also ER 472 ¶ 83. In stark contrast, gay people lack any express statutory protections from discrimination in employment, housing, or public accommodations at the federal level, and the majority of states still offer no express protection in any of those spheres. ER 416 ¶ 77; 417 ¶ 80.³⁵ Moreover, the relevant inquiry is not just the degree of current political powerlessness; the Supreme Court has reaffirmed application of heightened scrutiny to race- and sex-based classifications despite still further political progress by racial minorities and women. See *United States v. Virginia*, 518 U.S. at 524; *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).³⁶

³⁵ The district court tries to explain away *Frontiero* by noting that women were previously denied the right to vote, serve on juries, and own property, and faced discrimination based on the “high visibility” of one’s sex. ER 24–25. But as heightened scrutiny of legitimacy-based classifications illustrates, none of these historical features are required. Moreover, the fact that sexual orientation can be concealed points to political vulnerability rather than strength; the decision to hide one’s sexual orientation — an understandable one given the severe societal approbation one may face — dampens the community’s ability to mobilize and attract allies. ER 463–65 ¶¶ 57–64. See also ER 460–72 ¶¶ 49–81 (expert political scientist’s testimony about the many systemic barriers contributing to gay people’s marked disparity in political power).

³⁶ The district court contorts the analysis by looking to Nevada’s anti-discrimination statutes, ER 20, 22, 24, but the examination of a federal equal protection claim looks to the relative political powerlessness of a group nationally, not in any one state. To perform the analysis differently might lead to varying conclusions state-by-state, which plainly is not consistent with equal protection jurisprudence. See, e.g., *Frontiero*, 411 U.S. at 685–88 (examining the relative

High Tech Gays is not dispositive on the issue. *High Tech Gays*' conclusion that lesbians and gay men are too politically powerful to warrant heightened protection is irreconcilable with the Supreme Court's treatment of race- and sex-based classifications, and was so even when *High Tech Gays* was decided. Compare *Frontiero*, 411 U.S. at 685, 686 n.17 (finding that women still faced barriers in the political arena, even though "the position of women in America has improved markedly in recent decades" and "viewed in the abstract, women do not constitute a small and powerless minority") with *High Tech Gays*, 895 F.2d at 574 n.10 (holding that gay people had demonstrated power through the enactment of limited anti-discrimination statutes in three states, and a smattering of governor's executive orders and local ordinances). Since then, however, the nation has seen widespread and virulent political backlash against lesbians and gay men — with the Hawaii Supreme Court's 1993 decision about marriage for same-sex couples spawning a reaction that led to the adoption of DOMA and state constitutional amendments barring marriage equality in three-fifths of the states. ER 459 ¶ 45.

Rather than affording lesbians and gay men effective means to protect themselves from discrimination, the legislative process has in some ways uniquely disadvantaged them. No other group has been stripped so persistently of basic

political powerlessness of women generally, without regard to the fact that the suit arose in Alabama).

antidiscrimination and family protections through the legislative and initiative process. ER 459 ¶ 44 (according to testimony of expert political scientist, “the initiative process has now been used specifically against gay men and lesbians more than against any other social group”); *cf. Romer*, 517 U.S. at 634 (considering one of these measures, the Supreme Court observed lesbians and gay men constitute a “politically unpopular group”) (internal quotation marks omitted).

B. At a Minimum, Rational Basis Review of the Marriage Ban Must Be Meaningful, Although the Marriage Ban Cannot Withstand Any Form of Rational Review.

1. The Court must closely consider a law that targets and demeans a historically disfavored group, or impinges upon important relationships.

While any challenged law must, at a minimum, rationally relate to a legitimate government purpose, Defendant Officials’ class-based exclusion of Plaintiff Couples from marriage requires particularly meaningful review. As Justice O’Connor explained in *Lawrence*, the Supreme Court has applied “a more searching form of rational basis review” when a law exhibits “a desire to harm a politically unpopular group” or “inhibits personal relationships.” 539 U.S. at 580 (O’Connor, J., concurring); *see also Kelo v. City of New London*, 545 U.S. 469, 490–91 (2005) (Kennedy, J., concurring) (distinguishing between the rational basis test applied to “economic regulation” versus “a government classification that is

clearly intended to injure a particular class of private parties”); *Golinski*, 824 F. Supp. 2d at 996.

Windsor powerfully reinforces this doctrine, reviewing DOMA with a form of “careful consideration” that clearly breaks from deferential rational basis review. To assess *Windsor*’s mode of analysis, this Court should engage in the same thoughtful inquiry as it did in *Witt*, where this Court “carefully” reviewed *Lawrence* “by considering what the Court actually *did*, rather than by dissecting isolated pieces of text.” *Witt*, 527 F.3d at 816 (emphasis in original); *see also id.* (holding that the Court “[could not] reconcile . . . *Lawrence* with the minimal protections afforded by traditional rational basis review”). *Witt* relied on three features of *Lawrence* to discern that the Supreme Court had applied something more than deferential rational basis review, all of which are shared by *Windsor*:

- 1) *Witt* noted that *Lawrence* focused on “the extent of the liberty at stake,” a consideration irreconcilable with rational-basis emphasis on judicial deference and interests conceived *post hoc*. 527 F.3d at 817. *Windsor* — which marries liberty and equality principles, and focuses on the extent of the harm to same-sex couples — shares this feature. 133 S. Ct. at 2693 (referring to a right of “equal dignity”); *id.* at 2692–96 (discussing extensively the scope of the harms DOMA inflicted on same-sex spouses, from dignitary injuries to the couple and their children, to other tangible and financial harms).

2) *Witt* also noted that *Lawrence* relied on a number of cases that applied heightened scrutiny, and found particularly significant that *Lawrence* overturned *Bowers* because *Bowers*’ “‘continuance as precedent demean[ed] the lives of homosexual persons.’” *Witt*, 527 F.3d at 817 (quoting *Lawrence*, 539 U.S. at 575). *Windsor* similarly relied on *Lawrence* and focused heavily on the ways in which DOMA “demeans” same-sex couples. 133 S. Ct. at 2692, 2694.

3) Finally, *Witt* noted that *Lawrence*’s analysis was inconsistent with rational basis review because *Lawrence* “declared: ‘The Texas statute furthers no legitimate state interest *which can justify its intrusion into the personal and private life of the individual.*’” *Witt*, 527 F.3d at 817 (quoting *Lawrence*, 539 U.S. at 578). *Witt* explained that were *Lawrence* “applying rational basis review, it would not identify a legitimate state interest to ‘justify’ the particular intrusion of liberty . . . [because] any hypothetical rationale for the law would do.” *Id.* *Windsor* uses very similar balancing-test language: “no legitimate purpose *overcomes the purpose and effect to disparage and to injure*” same-sex couples. 133 S. Ct. at 2696 (emphasis added). And unlike rational basis review, where “any hypothetical rationale . . . would do,” *Windsor* found several interests raised in DOMA’s defense — including those relating to procreation and child welfare — so inadequate that the Court did not even address them. *See Br. on the Merits for Resp’t the Bipartisan Legal Advisory Group of the U.S. House of Representatives*

at 44–49, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307) (“Br. on the Merits for Resp’t BLAG”), 2013 U.S. S. Ct. Briefs LEXIS 280, at *74–82.

But even in the ordinary equal protection case “calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained.” *Romer*, 517 U.S. at 632. A governmental interest must, at a minimum, “find some footing in the realities of the subject addressed by the legislation.” *Heller v. Doe*, 509 U.S. 312, 321 (1993); *Mathews v. Lucas*, 427 U.S. 495, 510 (1976) (rational basis analysis is not “toothless”). These protections ensure that “classifications are not drawn for the purpose of disadvantaging the group burdened by the law.” *Romer*, 517 U.S. at 633.

The district court erred in holding that the marriage ban can be justified by the tradition of privileging only different-sex couples with access to marriage, and by some individuals’ private dislike of gay people. ER 30–33. These rationales fail at the threshold because, as a matter of law, they are not even legitimate. Still other rationales raised by Defendant Officials and Intervenor lack any rational connection to the marriage ban. Nevada’s marriage ban thus utterly fails rational basis review, as described further below.

2. Same-sex couples may not be barred from marriage merely to sustain the tradition of excluding them, or based on a private view that their inclusion mars the institution.

In sustaining the marriage ban, the district court primarily relied on two rationales, both of which are not legitimate governmental purposes as a matter of law. First, the district court held that Nevada can maintain “the traditional institution of marriage” because a state is permitted to “prevent[] abuse of an institution the law protects.” ER 30–31 (internal quotation marks omitted).

Second, the district court explained that:

Should [marriage] be expanded to include same-sex couples with the state’s imprimatur, it is conceivable that a meaningful percentage of heterosexual persons would cease to value the civil institution as highly as they previously had and hence enter into it less frequently, opting for purely private ceremonies, if any, whether religious or secular, but in any case without civil sanction, because they no longer wish to be associated with the civil institution as redefined, leading to an increased percentage of out-of-wedlock children, single-parent families, difficulties in property disputes after the dissolution of what amount to common law marriages in a state where such marriages are not recognized, or other unforeseen consequences.

ER 32–33 (footnote omitted). As a matter of law, these purported interests are not legitimate governmental purposes.

a. Tradition.

A tradition of excluding a minority group merely describes rather than explains the challenged practice, and is by itself insufficient to justify maintaining a discriminatory classification. “[N]o one acquires a vested or protected right in

violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.” *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (internal quotation marks omitted); *see also Williams v. Illinois*, 399 U.S. 235, 239 (1970) (holding that a law failed rational basis scrutiny even where the custom at issue “dates back to medieval England and has long been practiced in this country”). The Supreme Court has not hesitated to strike down “historic” laws targeting gay people, recognizing that the antiquity of such discrimination does not make it rational. *Lawrence*, 539 U.S. at 577–78 (recognizing that “neither history nor tradition could save a law prohibiting miscegenation from constitutional attack”) (internal quotation marks omitted); *Windsor*, 133 S. Ct. at 2689 (finding that, notwithstanding a long history of discrimination against same-sex couples in marriage, DOMA violated equal protection guarantees).

Far from adhering to “tradition for the sake of tradition,” the institution of marriage has shed many inveterate discriminatory practices, including the doctrine of coverture (depriving wives of any separate legal or economic existence), the requirement of fault for divorce, and restrictions on interracial marriage. *See generally* ER 280–82 ¶¶ 73–83 (describing how marriage has thrived precisely

because of its ability to adapt to changing societal needs).³⁷ Nevada’s historical exclusion of same-sex couples from marriage thus speaks powerfully to the length of the injustice, not a reason to continue perpetrating it.

The district court relied on Justice O’Connor’s concurrence in *Lawrence* to bolster its ruling, but this does not sustain the district court’s conclusion. ER 30–31 (citing 539 U.S. at 585 (referring to “preserving the traditional institution of marriage”)). Justice O’Connor referred opaquely to this potential state interest in her solo concurrence, but did not even speculate about its application in a future case. 539 U.S. at 585. Since then, the Supreme Court rejected precisely this argument in *Windsor*. Both the intervenor in that case and DOMA’s legislative history attempted to justify the law based on tradition. See Br. on the Merits for Resp’t BLAG at 10, 2013 U.S. S. Ct. Briefs LEXIS 280, at *25–26; 133 S. Ct. at 2693 (describing legislative references to “traditional heterosexual marriage”) (internal quotation marks omitted). The argument was sufficiently insubstantial that the majority opinion did not even dignify it with a response.

³⁷ The district court’s invocation of the protection of traditional marriage is tinged with a certain irony, given Nevada’s unique history in the development of no-fault divorce laws in the country. In fact, Nevada was at the forefront of this trend, adopting laws in 1931 that made it the easiest venue in the nation to obtain a divorce, with only a six-week residency requirement and expanded grounds for divorce. ER 278–79 ¶¶ 68–69. “Reno and Las Vegas fueled the state’s economy by marketing nation-wide the availability there of quick and easy divorce, as well as quick and easy marriage.” ER 278–79 ¶ 68.

b. Caution.

Proceeding “cautiously” by continuing to deny equal treatment to an unpopular group also is not a legitimate state interest. Contrary to the district court’s suggestion, a law cannot be justified based on speculation that, absent any justification today, one may appear in the future. ER 33 (holding that the State could have reasoned that there may be future consequences from “altering the traditional definition of civil marriage”). *See Pedersen*, 881 F. Supp. 2d at 345–46 (“Categorizing a group of individuals as a ‘vast untested social experiment’ . . . to justify their exclusion, . . . until long-term evidence is available to establish that such a group will not have a harmful effect upon society is a rationale, which, . . . would eviscerate the doctrine of equal protection by permitting discrimination until equal treatment is proven, by some unknown metric, to be warranted.”); *Golinski*, 824 F. Supp. 2d at 1001 (“Congress cannot, like an ostrich, merely bury its head in the sand and wait for [the purported] danger to pass, especially at the risk of permitting continued constitutional injury” upon same-sex couples).

Even if proceeding cautiously were a legitimate interest, the State’s marriage ban does not rationally advance that interest. Nevada’s constitutional amendment adopted an absolute ban, unlimited in time, intended to erect a fundamental barrier

to adoption of a different policy.³⁸ In fact, the supporting ballot argument was that existing statutes failed to do *enough* to exclude same-sex couples from marriage. ER 144 ¶ 3–4; 159–62; 165–68. By enshrining the marriage ban in the State Constitution, the voters did not enact a time-specific moratorium to allow more study, but rather ensured a blunt, definitive prohibition that could not be changed without “enlisting the citizenry of [Nevada] to amend the State Constitution,” yet again. *Romer*, 517 U.S. at 631.³⁹

c. Private bias.

The district court’s other primary rationale for upholding the exclusion of same-sex couples from marriage must be unmasked for what it is: elevation of the

³⁸ Nevada’s marriage ban also is constitutionally suspect because it locks same-sex couples out of the normal political process, making it uniquely more difficult for them to secure access to marriage. Unlike a citizen seeking to effect a different change in Nevada’s marriage eligibility rules, such as lowering the age at which persons may marry without parental consent, same-sex couples are uniquely burdened with having to amend the Nevada constitution. It is well-established that imposing a selective disparity that disadvantages a targeted class in the ability to advocate for change in the law is constitutionally suspect. *See Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 467–68 (1982); *Hunter v. Erickson*, 393 U.S. 385, 391 (1969); *Coal. to Defend Affirmative Action v. Regents of the Univ. of Mich.*, 701 F.3d 466, 477 (6th Cir. 2012) (en banc), *cert. granted sub nom. Schuette v. Coal. to Defend Affirmative Action*, 185 L. Ed. 2d 615 (U.S. Mar. 25, 2013). Nevada’s marriage ban is the kind of selective burden that “undermines the Equal Protection Clause’s guarantee that all citizens ought to have equal access to the tools of political change.” *Coal. to Defend*, 701 F.3d at 470.

³⁹ Neither the Defendants nor the district court has explained how Nevada’s decision to afford same-sex couples virtually all rights and responsibilities of spouses, while withholding only the honored designation of marriage, exhibits a “cautious” approach.

private opposition of some into a “moral code” for all. *See Lawrence*, 539 U.S. at 571. The district court worried that if marriage included same-sex couples, some different-sex couples might shun it. ER 32. Such arguments have a disreputable pedigree. *See Paltore v. Sidoti*, 466 U.S. 429, 433–34 (1984) (collecting and denouncing cases in which state officials relied on private disquietude to defend a housing ordinance requiring segregation and delaying desegregation of city parks); *United States v. Virginia*, 518 U.S. at 543–45 (reviewing various prophecies that institutions would be degraded when forced to admit women to practice law, attend schools of law and medicine, and join police forces). The Supreme Court has not hesitated to reject these claims, recognizing that the “Constitution cannot control such prejudices but neither can it tolerate them,” and although private biases “may be outside the reach of the law, . . . the law cannot, directly or indirectly, give them effect.” *Paltore*, 466 U.S. at 433; *see also Lawrence*, 539 U.S. at 577 (“the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice”) (internal quotation marks omitted).

3. No additional rationales offered by Defendant Officials or Intervenor can survive rational basis review.

- a. Excluding same-sex couples from marriage promotes neither “responsible procreation” nor interests in child welfare, serving instead only to harm Plaintiff Couples’ children.*

The district court’s primary concern about procreation was that affording same-sex couples the freedom to marry will somehow taint the institution for different-sex couples, causing them to “enter into it less frequently . . . leading to an increased percentage of out-of-wedlock children” and “single-parent families.” ER 32–33. But as described above, the private disapproval of a few is not a legitimate basis on which to govern all. The expert evidence introduced below established, and *Windsor* helps confirm, that although no one else’s children are harmed by allowing same-sex couples to marry, the marriage ban hurts same-sex couples’ children immeasurably. A law that accomplishes the opposite of its supposed purpose is the height of irrationality. While the district court relied primarily on the rationale that allowing same-sex couples to marry would sully marriage, driving different-sex couples to form their families outside of it, ER 32–33, the court also cited *Jackson v. Abercrombie* with approval, *id.*; 884 F. Supp. 2d 1065 (D. Haw. 2012), and Plaintiff Couples accordingly address the reasoning in both decisions.

i. Channeling procreation.

The district court’s analysis of procreation is premised on the idea that “[h]uman beings are created through the conjugation of one man and one woman,” upon which the “perpetuation of the human race depends,” and that marriage by same-sex couples would threaten that regime. ER 31–32.⁴⁰ *Jackson* relied on the notion that maintaining “the prestige and social significance of marriage” — by excluding same-sex couples — might induce different-sex couples to marry and thus increase the likelihood of children being raised within marriage. 884 F. Supp. 2d at 1112. The theory posits that those who may “accidentally” conceive particularly need inducements to marry, while those who plan for children, such as same-sex couples, do not require the same support and protections.

But the idea that allowing same-sex couples to marry would somehow make different-sex couples less likely to have children, or less likely to do so within the bounds of marriage, is unworthy of credence. In fact, neither the district court nor any other party has offered a wisp of explanation about how bolting the doors of marriage to same-sex couples would affect the profound, life-altering decision by different-sex couples to wed — either before, after, or in the absence of children —

⁴⁰ The district court belittlingly refers to same-sex couples’ means of creating their families (means also used by many different-sex couples) as merely “a social backstop for when traditional biological families fail.” ER 32. But *Windsor* confirms that these children, regardless of their means of conception, are no less sheltered by constitutional guarantees protecting their dignity. 133 S. Ct. at 2694–96.

aside from the offensive suggestion that excluding same-sex couples makes marriage more desirable to different-sex couples. ER 32–33.

A host of courts have concluded that it is nonsensical to suggest that a heterosexual person — otherwise on bended knee and poised to propose lifelong matrimony — would abandon marriage or flee the institution simply because same-sex couples are allowed to marry. *See, e.g., Perry*, 704 F. Supp. 2d at 972 (“Permitting same-sex couples to marry will not affect the number of opposite-sex couples who marry, divorce, cohabit, have children outside of marriage or otherwise affect the stability of opposite-sex marriages.”); *Golinski*, 824 F. Supp. 2d at 998 (“Denying federal benefits to same-sex married couples has no rational effect on the procreation and child-rearing practices of opposite-sex married (or unmarried) couples.”); *Windsor*, 699 F.3d at 188 (“DOMA does not provide any incremental reason for opposite-sex couples to engage in ‘responsible procreation.’ Incentives for opposite-sex couples to marry and procreate (or not) were the same after DOMA was enacted as they were before.”) (footnotes omitted).

The argument that preventing same-sex couples from marriage causes more heterosexual couples to marry is not only impossible to credit, but also disproven by the evidence. As the expert testimony below demonstrated, the factors that contribute to the stability or instability of different-sex relationships (such as communication styles and ways of handling conflict) or that contribute to divorce

(such as age at marriage) are well-understood, and function independently of whether same-sex couples may marry. ER 141 ¶ 6; 321 ¶ 59. Allowing same-sex couples to marry, as thirteen states and the District of Columbia currently do, has not adversely affected the institution of marriage. ER 140–41 ¶ 5.

Equally important, reducing the significance of marriage to merely the regulation of sexual relations diminishes its unparalleled role in civic society — and cannot be harmonized with either its historical development or contemporary reality. Just as *Lawrence* found that *Bowers* had demeaned same-sex couples by reducing their family relationships to “the right to engage in certain sexual conduct,” rather than “a personal bond that is more enduring,” it similarly “would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.” *Lawrence*, 539 U.S. at 567; *see also Griswold*, 381 U.S. at 486 (“[M]arriage is an association that promotes a way of life, . . . a harmony in living, . . . [and] a bilateral loyalty.”).

Procreation is not now, nor has it ever been, “the prime mover in states’ structuring of the marriage institution in the United States.” ER 269 ¶ 26. No state in the country has barred couples either unwilling or unable to produce children from marriage. ER 268 ¶ 24. Rather, as an expert marriage historian testified below, marriage has served throughout American history to create stable households, create public order and economic benefit, legitimate children, assign

providers to care for dependents and limit the public's liability for them, facilitate property ownership and inheritance, and facilitate governance. ER 267–68 ¶¶ 20–23. All of these interests apply equally to same-sex couples, making the effort to apply a procreation-based conception of marriage to gay people alone (and not any others such as the elderly, the infertile, or the sterile) all the more indefensible. See *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002) (holding that a law may be “so woefully underinclusive as to render belief in [its purported] purpose a challenge to the credulous”); *Lawrence*, 539 U.S. at 604 (Scalia, J., dissenting) (“[W]hat justification could there possibly be for denying the benefits of marriage to homosexual couples exercising ‘[t]he liberty protected by the Constitution’? Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry.”) (internal citation omitted); *Eisenstadt v. Baird*, 405 U.S. 438, 449 (1972) (holding that where a law is “so riddled with exceptions,” the asserted interest “cannot reasonably be regarded as its aim”).

For all of these reasons, federal jurisprudence already has settled as a matter of law that the ability to “naturally procreate” is not a ground upon which access to marriage can be restricted. The Supreme Court has not allowed marriage to be denied to those who could not procreate when they married, such as prisoners. *Turner*, 482 U.S. 78; *id.* at 95–96 (describing the significant qualities of marriage, all of which would benefit same-sex couples equally); see also *Windsor*, 133 S. Ct.

at 2689 (referring to the right to marry as the ability to “live with pride in themselves and their union and in a status of equality with all other married persons”). Conversely, the Supreme Court has made clear that individuals have the right to choose to procreate or not regardless of their marital status. *See Eisenstadt*, 405 U.S. at 453 (“[I]t is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as a decision whether to bear or beget a child.”); *Griswold*, 381 U.S. at 485–86 (recognizing the right of married couples to access contraception).

But the irrationality of the marriage ban is nowhere more evident than in its effect: the exclusion does nothing to help different-sex couples’ children, but affirmatively harms same-sex couples’ children. In fact, any potential governmental interest in channeling childrearing into marriage, so that children may benefit from its stabilizing effects, applies with equal force to same-sex couples’ children. Plaintiff Couples’ children are no less worthy than different-sex couples’ children of the security and family safeguards marriage offers. *Windsor*, 133 S. Ct. at 2694; *Marriage Cases*, 183 P.3d at 433 (“[A] stable two-parent family relationship, supported by the state’s official recognition and protection, is equally as important for the numerous children . . . who are being raised by same-sex couples”); *Pedersen*, 881 F. Supp. 2d at 339 (“[I]t is irrational to strive to incentivize the rearing of children within the marital context by affording benefits

to one class of marital unions in which children may be reared while denying the very same benefits to another class of marriages in which children may also be reared.”).

ii. Promoting children’s well-being.

While the marriage ban does not affect, let alone help, anyone else’s children, same-sex couples’ children are profoundly harmed when their family is deprived of the same safety net as all others. Ruling pre-*Windsor*, *Jackson* found it “debatable” whether it would be best for children to be raised by different-sex biological parents. 884 F. Supp. 2d at 1115–16. This argument fails for two independent reasons. First, the marriage ban does not result in any child having different-sex biological parents rather than same-sex biological parents and therefore is not rationally related to a government aim of fostering “optimal” parenting — and a law cannot punish children to deter their parents. Second, the overwhelming scientific consensus, based on decades of peer-reviewed research, shows unequivocally that children raised by same-sex and different-sex couples are equally well-adjusted.

The marriage ban has no effect on whether same-sex couples form life-long relationships with each other and raise children together, as many same-sex couples are doing across Nevada. ER 353 ¶ 13 (approximately 17% of same-sex

couples in Nevada are raising a child under the age of 18).⁴¹ The marriage ban ensures, however, that these parents must raise their children without the dignity and instant, assured recognition of those bonds that flow from marriage. Like DOMA, this exclusion “humiliate[s]” the “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 in their daily lives.” *Windsor*, 133 S. Ct. at 2694. To the extent that the marriage ban visits these harms on children in an attempt (albeit irrationally) to deter same-sex couples from having children, the Supreme Court has invalidated similar efforts to incentivize parents by punishing children as “illogical and unjust.” *Plyler*, 457 U.S. at 220 (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972)). “Obviously, no child is responsible for his

⁴¹ As numerous courts have found, it defies rationality to think that, simply because lesbians and gay men cannot marry their partner, they will end their same-sex relationships to marry a different-sex partner. *See, e.g., Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374, 389 (D. Mass. 2010) (“[T]his court cannot discern a means by which the federal government’s denial of benefits to same-sex spouses might encourage homosexual people to marry members of the opposite sex.”), *aff’d sub nom., Massachusetts v. United States Dep’t of Health and Human Servs.*, 682 F.3d 1, 14–15 (1st Cir. 2012) (“Certainly, the denial [of benefits under DOMA] will not affect the gender choices of those seeking marriage.”).

birth and penalizing the . . . child is an ineffectual — as well as unjust — way of deterring the parent.” *Id.* (quoting *Weber*, 406 U.S. at 175).⁴²

Because the State’s interest in child welfare is not conceivably furthered by the marriage ban, that ends the inquiry and Intervenor’s arguments fail as a matter of law. But even if the Court considers whether there is any legitimate basis for preferring different-sex parents over same-sex ones, the answer is clear. An undeniable consensus among the leading authorities in pediatrics, psychology, and child welfare has long confirmed that the children of same-sex parents are equally likely to be well-adjusted as the children of different-sex parents. As Professor Lamb, a preeminent researcher on children’s adjustment and well-being, explained below, decades of scholarship and empirical study overwhelmingly demonstrate that children raised by same-sex parents are as likely to be emotionally healthy and educationally and socially successful as those raised by different-sex parents. ER 508 ¶ 29 (describing approximately 30 years of scholarship of same-sex couples and their children, including more than 100 articles and 50 peer-reviewed empirical reports); 502 ¶ 14 (it is “beyond scientific dispute” that the factors that account for the adjustment of children are the quality of the youths’ relationships

⁴² Any law adopted with the purpose of burdening gay people’s ability to procreate would also warrant strict scrutiny for implicating the fundamental right to decide “whether to bear or beget a child.” *Casey*, 505 U.S. at 851 (quoting *Eisenstadt*, 405 U.S. at 453); see also *Pedersen*, 881 F. Supp. 2d at 341.

with their parents, the quality of the relationship between the parents or significant adults in the youths' lives, and the availability of resources — not the parents' sex or sexual orientation).

This consensus has been confirmed by the preeminent national medical, mental health, and child welfare authorities — many of which have issued statements affirming that same-sex parents are as effective as different-sex parents in raising well-adjusted children and should not face discrimination — including the American Psychological Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American Psychoanalytic Association, the National Association of Social Workers, and the Child Welfare League of America. ER 510 ¶ 34. Courts across the country also have acknowledged this consensus. *See Perry*, 704 F. Supp. 2d at 1000; *Golinski*, 824 F. Supp. 2d at 991; *Gill*, 699 F. Supp. 2d at 388.

Moreover, by enacting the domestic partnership law, the State has acknowledged that registered same-sex domestic partners should be treated equally to different-sex spouses for the State's full spectrum of parental obligations and protections.⁴³ Through registered domestic partnership, same-sex couples in

⁴³ The district court misunderstood Plaintiff Couples' arguments about the significance of Nevada's domestic partnership law. ER 35–36 (claiming that Plaintiff Couples' argument “would permit a plaintiff to show an equal protection

Nevada have access to parenting rights identical to those of married couples, including the presumption of parenthood for any child born into the relationship, adoption, child custody and visitation, and obligations of child support. *See Nev. Rev. Stat. § 122A.200(1)(d)*. Nevada, as a matter of policy and law, thus recognizes that lesbians and gay men “are fully capable of . . . responsibly caring for and raising children.” *Marriage Cases*, 183 P.3d at 428; *see also Perry*, 704 F. Supp. 2d at 1000 (finding that same-sex couples can and do have children, and

violation by the very fact that a state had recently *increased* his rights”). Plaintiff Couples argue not that the domestic partnership law *creates* the equal protection violation, but rather that the purported governmental interests in the marriage ban must be tested *in light of* the domestic partnership law. *See, e.g., United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938) (“[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 492–93 (1954) (“in [evaluating segregated schools], we cannot turn the clock back to 1868 . . . [and instead] must consider public education in the light of its full development and its present place in American life . . .”). Where a purported governmental interest defies the state’s policy and practice, that interest cannot be credited. *See, e.g., Eisenstadt*, 405 U.S. at 448 (recognizing that regardless of the governmental interest in a law when it is first passed, the government can “abandon[]” that interest through subsequent lawmaking).

The district court makes the odd suggestion that the domestic partnership law might be relevant if the State first offered a lesser status to same-sex couples at the same time that it restricted the superior status to different-sex couples. ER 35. This has never been the law. At the time the Fourteenth Amendment was adopted virtually no African-American children attended school in the South; that did not prevent the Supreme Court from holding unconstitutional the later-created system of segregated education. *Brown*, 347 U.S. at 489–90, 495. Surely the district court would blanch at the idea that interracial couples could be relegated to a lesser status of “interracial partnership,” so long as that status was created *after* a state instituted marriage itself.

under California’s domestic partnership law, “[w]hen they do, they are treated identically to opposite-sex parents”). The exclusion of same-sex couples from marriage thus has absolutely no effect on the ability of same-sex couples to become parents, or the manner in which children are raised in Nevada.⁴⁴

Although Nevada affords same-sex couples the same methods of securing their parental bonds with their children, it nonetheless withholds the dignity and immediate recognition of those bonds that marriage secures. The State’s marriage ban thus not only fails to further the State’s interest in promoting its children’s welfare, but instead hinders it. *Windsor*, 133 S. Ct. at 2694; *Golinski*, 824 F. Supp. 2d at 992.

⁴⁴ In an en banc opinion issued just this month, the Nevada Supreme Court confirmed that this state policy applies to same-sex couples without regard to either parent’s genetic connection to the child or gender. *St. Mary v. Damon*, No. 58315, 129 Nev., Advance Opinion 68 (Oct. 3, 2013) (en banc). The case involved a custody dispute between a same-sex couple who had a child before Nevada’s domestic partnership law took effect, and later separated. *Id.* at 3–4. One mother’s fertilized egg had been implanted in the other mother, who carried the child to term. *Id.* The Court found the trial court had erred in treating the mother who had carried the child as a mere surrogate, and in refusing to consider the former couple’s co-parenting agreement. *Id.* at 3. The Court confirmed that under Nevada law, “a determination of parentage rests upon a wide array of considerations rather than genetics alone.” *Id.* at 9; *see also id.* (holding that Nevada law “clearly reflects the legislature’s intent to allow nonbiological factors to become critical in a [parentage] determination”) (internal quotation marks omitted). The “best interest of the child is the paramount concern,” *id.* at 11, and that “interest is served by maintaining two actively involved parents,” regardless of whether those parents are same-sex, *id.* at 12.

The Chicken Little predictions described above also were raised by the respondent in *Windsor*, to absolutely no effect. Br. on the Merits for Resp't BLAG at 44–49, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307), 2013 U.S. S. Ct. Briefs LEXIS 280 at *74–82. *Windsor* found instead that where the government denies official recognition to same-sex couples' relationships — in that case, their valid marriages — the government “diminish[es] the stability and predictability of basic personal relations.” 133 S. Ct. at 2694. Rather than credit alleged concerns about “irresponsible procreation” or stereotypes about the ability of same-sex couples to parent, *Windsor* found the only child-related harm worth discussing was the grievous injury caused to the children of same-sex couples when their families are cast out of the same family protection system afforded all others. *Id.* That ends the inquiry here too.

b. Affording same-sex couples access to civil marriage will have no effect on religious liberties.

Allowing same-sex couples to marry does not affect the First Amendment rights of those who are opposed. Although Intervenor raised religious liberty as a purported rationale for the marriage ban, the district court declined to address it — a sensible response given the argument's implausibility. See Nev. Rev. Stat. § 122.010 (marriage “is a civil contract”). Affording same-sex couples access to civil marriage “will not impinge upon the religious freedom of any religious organization, official, or any other person” — any more than lawful interfaith

marriages threaten the freedom of those religious entities and leaders who forbid them. *Marriage Cases*, 183 P.3d at 451. “[N]o religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs,” *id.* at 451–52 — such requirements would violate the First Amendment. In fact, the Supreme Court’s recent decision upholding the Westboro Baptist Church’s right to picket military funerals displaying crass anti-gay messages without any legal liability shows that the First Amendment remains a bulwark of protection for religious expression. *Snyder v. Phelps*, 131 S. Ct. 1207 (2011). For these reasons, analysis of Plaintiff Couples’ claims must be guided by constitutional standards and not private religious views; the Court is “not permitted to do less and would damage our constitution immeasurably by trying to do more.” *Varnum*, 763 N.W.2d at 905 (Iowa 2009); *see also Perry*, 704 F. Supp. 2d at 976–77; *Kerrigan*, 957 A.2d at 475–76.⁴⁵

⁴⁵ Intervenor also argued below that allowing same-sex couples to marry would result in a parade of horrors, including the loss of tax-exempt status and liability due to anti-discrimination lawsuits. Dist. Ct. Dkt. 72 at 26–27. But no church has ever lost its tax exempt status for refusing to perform marriages it does not approve. And Nevada’s marriage ban does nothing to alter state anti-discrimination laws, which prohibit sexual orientation discrimination in public accommodations regardless of Nevada’s marriage ban. *See, e.g.*, Nev. Rev. Stat. § 651.050(3); § 651.070 (prohibiting sexual orientation discrimination in public accommodations).

C. Nevada’s Marriage Ban Also Discriminates Based on Sex, Further Warranting Heightened Review.

Nevada’s exclusion of same-sex couples from marriage requires heightened scrutiny for an additional reason: it denies Plaintiff Couples equal protection based on their sex in relation to the sex of their committed life partners. For example, if Plaintiff Karen Goody were a man, she could marry her beloved partner, Plaintiff Karen Vibe. Simply because she is a woman, however, Defendant Officials deny her this socially-cherished right.⁴⁶ Such sex-based classifications require heightened scrutiny. *See United States v. Virginia*, 518 U.S. at 524.

Courts have recognized that discrimination against gay people because they form a life partnership with a same-sex rather than a different-sex partner is sex discrimination. *See Perry*, 704 F. Supp. 2d at 996; *Golinski*, 824 F. Supp. 2d at 982 n.4; *In re Balas*, 449 B.R. at 577–78; *In re Levenson*, 560 F.3d 1145, 1147 (9th Cir. EDR Op. 2009); *Baehr v. Lewin*, 852 P.2d 44, 67–68 (Haw. 1993). Sex and sexual orientation “are necessarily interrelated,” because entering into an intimate relationship with someone based on that person’s sex “is a large part of what defines an individual’s sexual orientation.” *Perry*, 704 F. Supp. 2d at 996;

⁴⁶ When Karen Goody and Karen Vibe went to the Washoe County Marriage Bureau to obtain a marriage license, the security officer asked, “Do you have a man with you?” ER 207 ¶ 16. When Karen Vibe said they did not, and explained that she wished to marry Karen Goody, she was told she could not even obtain or complete a marriage license application. *Id.* (stating that employee of Defendant Harvey told them “Two women can’t apply” for a marriage license and the security guard added that marriage is “between a man and a woman”).

Golinski, 824 F. Supp. 2d at 982 n.4 (“Sexual orientation discrimination can take the form of sex discrimination.”). Indeed, sexual orientation cannot be understood without sex-based references and distinctions. A restriction such as Nevada’s, arising because a lesbian or a gay man has a same-sex life partner, thus constitutes discrimination based on sex as well as sexual orientation. *Perry*, 704 F. Supp. 2d at 996.

As the district court recognized, *Loving* establishes that Nevada’s restriction on marriage is not gender-neutral simply because it denies both men *and* women the right to marry a same-sex life partner. ER 14. *Loving* discarded “the notion that the mere ‘equal application’ of a statute containing racial classifications is enough to remove the classifications from the Fourteenth Amendment’s proscription of all invidious racial discriminations.” *Id.* at 8; *see also McLaughlin v. Florida*, 379 U.S. 184, 191 (1964) (holding that equal protection analysis “does not end with a showing of equal application among the members of the class defined by the legislation”); *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127 (1994) (holding that the government may not strike jurors based on sex, even though such a practice, as a whole, does not favor one sex over the other). After all, “[e]qual protection of the laws is not achieved through indiscriminate imposition of inequalities.” *Romer*, 517 U.S. at 633 (internal quotation marks omitted); *see also Shelley v. Kraemer*, 334 U.S. 1, 21–22 (1948) (holding that it is no answer, in a

challenge to racially restrictive covenants, that they may also be enforced against prospective white property owners).

The district court rejected the sex discrimination claim, however, incorrectly treating *Loving*'s equal application holding as cabined to the context of race. ER 15. But *Loving*'s wisdom is not so limited; rather, *Loving* found that even if racial discrimination had not been at play and the Court presumed "an even-handed state purpose to protect the 'integrity' of all races," Virginia's anti-miscegenation statute still was "repugnant to the Fourteenth Amendment." 388 U.S. at 12 n.11; *see also J.E.B.*, 511 U.S. at 140–41 (holding that individual jurors have a right to nondiscriminatory jury selection, and "this right extends to both men and women"). Nevada's marriage ban is equally repugnant to the Fourteenth Amendment, and there is no refuge in its equal application to men and women.⁴⁷

The district court also claimed the marriage ban cannot constitute sex discrimination because "there is no indication of any intent to maintain any notion of male or female superiority." ER 15; *see also id.* (holding that no "gender-based animus can reasonably be perceived" in the marriage ban). Two fundamental

⁴⁷ *See also* Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 N.Y.U. L. Rev. 197, 202–03 (1994) ("In the same way that the prohibition of miscegenation preserved the polarities of race on which white supremacy rested, the prohibition of homosexuality preserves the polarities of gender on which rests the subordination of women. . . . [S]tigmatization of gays in contemporary American society functions as part of a larger system of social control based on gender.").

errors lie therein: First, *no* showing of intent is necessary because the sex-based restriction is clear on the face of the marriage ban. *See Wayte v. United States*, 470 U.S. 598, 609 n.10 (1985) (facial discrimination obviates the need to show intent); Nev. Const. art. 1, § 21 (“Only a marriage between a *male* and *female* person shall be recognized and given effect in this state.”) (emphasis added); Nev. Rev. Stat. § 122.020(1) (“a *male* and a *female* person . . . may be joined in marriage”) (emphasis added). Second, no gender-based notions of “superiority” or “animus” are required to prove discrimination based on sex. *See, e.g., Locke v. Davey*, 540 U.S. 712, 732 (2004) (Scalia, J., dissenting) (racial segregation could not have been saved by “a well-meaning but misguided belief that the races would be better off apart”); *also compare* ER 15 (district court’s observation that there is no indication that “the members of a particular gender were targeted”) *with J.E.B.*, 511 U.S. at 140–41 (holding that “individual jurors themselves have a right to nondiscriminatory jury selection procedures” and “this right extends to both men and women”). It matters not whether the sex-based classification is motivated by a well-intentioned but misplaced desire to provide for “women and their need for special protection,” or even “to compensate for and ameliorate the effects of past discrimination.” *Orr*, 440 U.S. at 283. The Fourteenth Amendment’s prohibition is simple: the government may not without an exceedingly persuasive justification

classify its citizens for differential treatment “based on sex,” *United States v. Virginia*, 518 U.S. at 524, and the marriage ban is such a classification.

Nevada’s marriage ban fails for the additional reason that it is premised on impermissible sex stereotyping, by perpetuating the idea that proper women should marry and raise children with men, and proper men should marry and raise children with women. Intervenor’s papers, rife with gender-typed notions, lay bare these stereotyped ideas. *See* Dist. Ct. Dkt. 72 at 19 (referring to mother as “often vulnerable” and portraying father as the source of support and stability); *id.* at 25 (describing marriage for different-sex couples as “bridging the male-female divide,” which requires a “massive cultural effort . . . at all times and in all places”). Indeed, Intervenor’s suggestion that a marriage becomes “genderless” when entered by same-sex couples rests on the idea that only when a man and a woman are paired do they retain sufficient masculinity and femininity respectively to remain gendered in a “man-woman marriage.” *See id.* 2, 13 (asserting that “[g]enderless marriage is a profoundly different institution than man-woman marriage”); *id.* at 13, 29 (referring to “heteronormativity” as a legitimate government interest, rather than an unconstitutional interest in perpetuating sex-stereotyped treatment of men and women); *id.* at 24–25 (asserting that so-called “man-woman marriage” is the only means of “confer[ring] the status of husband and wife” and “prepar[ing] a male for the role, status and identity of husband,

transform[ing] him into a husband, and sustain[ing] him over time in his performance of that role. The same is true for a female relative to wife.”). The district court itself adopted this gendered language. ER 34 (accepting the idea that allowing same-sex couples to marry would constitute a “‘genderless marriage’ regime”); ER 13 (claiming that the marriage ban “at most, [intends to maintain notions] of heterosexual superiority or ‘heteronormativity’ by relegating . . . homosexual legal unions to a lesser status”).⁴⁸

The unmistakable sex stereotyping underlying Nevada’s marriage ban constitutes impermissible sex discrimination. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982) (“Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions [based on sex].”); *Craig v. Boren*, 429 U.S. 190, 202 n.14 (1976) (overturning Oklahoma’s differential treatment of young men and women regarding access to alcohol and

⁴⁸ Intervenor’s assertion below that “heteronormativity” is a purported state interest for the marriage ban offers a surprisingly candid window into the marriage ban’s purpose: to stigmatize gay people as less worthy members of society, and to elevate heterosexuals as embodying the superior “norm.” This purpose has been rejected by federal courts. *See Lawrence*, 539 U.S. at 567 (lesbians and gay men have a constitutionally protected liberty interest in forming enduring family relationships); *Windsor*, 133 S. Ct. at 2694 (“[DOMA’s] differentiation demeans [same-sex] couple[s], whose moral and sexual choices the Constitution protects . . .”). Premising the marriage ban on such a government goal could not more strongly violate *Romer*’s command that “the Constitution neither knows nor tolerates classes among citizens” (quoting Justice Harlan’s dissent in *Plessy v. Ferguson*, 163 U.S. 557, 559 (1896)), and instead must “rest[] on a commitment to the law’s neutrality where the rights of persons are at stake.” 517 U.S. at 623.

discussing the distorting effects of gender-based stereotypes); *Orr*, 440 U.S. at 283 (holding that where a gender-neutral law will serve a state’s purposes, the state may not adopt one that “gender classifies and therefore carries with it the baggage of sexual stereotypes”).

The marriage ban is the last vestige of sex-based discrimination in Nevada’s marriage laws. *See Perry*, 704 F. Supp. 2d at 998 (holding that the now-defunct California marriage ban is “nothing more than an artifact of a foregone notion that men and women fulfill different roles in civic life”). The marriage ban thus warrants the heightened judicial review afforded to sex-based classifications, which it cannot survive.

D. Nevada’s Marriage Ban Discriminates with Respect to Fundamental Rights and Liberty Interests and Must Be Afforded Heightened Scrutiny for that Reason as Well.

Nevada’s marriage ban warrants heightened scrutiny for the additional reason that it restricts the exercise of fundamental rights and liberty interests, *see* Section III *supra*, along invidious lines. Some rights acquire such importance that, absent a sufficiently important governmental interest in discrimination, they must be distributed evenhandedly. *See Skinner*, 316 U.S. at 541 (holding that it is “essential” that courts employ strict scrutiny when a state law denies “groups or types of individuals” rights such as “[m]arriage and procreation [that] are fundamental”); *see also* Erwin Chemerinsky, *Constitutional Law: Principles and*

Policies, § 10.1.1 (“[O]nce a right is deemed fundamental, under due process or equal protection, strict scrutiny is generally used.”) (emphasis added).⁴⁹ This marriage ban targets a particular segment of the population, lesbians and gay men, to deny them both a right to marry and equal dignity under the law. “[W]here fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966).

With respect to classifications restricting access to marriage, the Supreme Court has held that “the right to marry is of fundamental importance, and since the classification at issue here significantly interferes with the exercise of that right, we believe that ‘critical examination’ of the state interests advanced in support of the classification is required.” *Zablocki*, 434 U.S. at 383 (citation omitted) (finding the challenged statute to violate equal protection guarantees). *Zablocki* examined, and rejected, Wisconsin’s rule that no state resident under a court order to support a

⁴⁹ The Supreme Court has applied heightened review to state action that selectively denies important rights in a wide range of contexts. *See, e.g., Mem’l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 254 (1974) (holding that a residency requirement for free medical care that discriminates with respect to the right to travel must be justified by a compelling state interest); *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 99 (1972) (observing that an ordinance treating one class of picketing differently from others “must be tailored to serve a substantial governmental interest”); *Harper*, 383 U.S. at 670.

child not in his custody could marry without court permission, to be granted only upon proof of compliance with the support obligation, and a showing that his children were not presently, nor likely to become, public charges. *Id.* at 375. The Court explained that, for those who could not or would not satisfy the state's concern of providing for existing offspring, blocking marriage for that targeted group was improper because it did not promote the welfare of those children and it well might lead to harm for an individual's future children, for whom the law's "only result [is] in the children being born out of wedlock, as in fact occurred in appellee's case." *Id.* at 390. The same is true here. The marriage ban cannot be justified as an attempt to encourage gay people to marry a different-sex partner, or to impose legal disabilities on them and their children under any standard of review, let alone the "critical examination" that *Zablocki* requires.

The district court claimed, without support, that the fundamental right to marry does not include access to the term "marriage," and rather encompasses merely the family formation rights already available to registered domestic partners. ER 29. Whether or not the name "marriage" is considered a core element of that fundamental right, having now provided this status of unparalleled stature in society, the State may not withhold it from some along invidious lines of sexual orientation and sex. *See Eisenstadt*, 405 U.S. at 453 ("[W]hatever the rights of the individual to access to contraceptives may be, the rights must be the same

for the unmarried and the married alike.”). The ban “significantly interferes with the exercise of a fundamental right [and] it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate those interests.” *Zablocki*, 434 U.S. at 388. The Defendant Officials will not meet this test. *See infra* at III.

The Equal Protection Clause thus secures mutually reinforcing guarantees of freedom both from unequal treatment on the basis of invidious classifications, *and* from invidious classifications with respect to important rights and liberty interests. Nevada’s marriage ban violates these dual principles and cannot stand.

V. BAKER V. NELSON PRESENTS NO BARRIER TO RELIEF IN THIS CASE.

The District Court held that Plaintiff Couples’ claims were largely precluded by the Supreme Court’s summary dismissal in *Baker v. Nelson*, which arose from a suit filed by a same-sex plaintiff couple seeking to marry in early 1970s Minnesota. ER 9–12; *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971). When the *Baker* plaintiffs sought review of their loss in the Minnesota Supreme Court under former 28 U.S.C. § 1257(2), the Supreme Court summarily dismissed the appeal. 409 U.S. 810 (1972) (mem.).

The Supreme Court has recognized that summary decisions “are obviously not of the same precedential value as would be an opinion of this Court . . . on the merits,” *Richardson v. Ramirez*, 418 U.S. 24, 83 n.27 (1974). The District Court

failed to recognize that subsequent doctrinal developments may vitiate any force a summary decision might have had. *Hicks v. Miranda*, 422 U.S. 332, 344 (1975); *Jones v. Bates*, 127 F.3d 839, 852 n.13 (9th Cir. 1997). In the more than 40 years since *Baker* was decided, the Supreme Court has recognized that sex-based classifications require heightened scrutiny, *Frontiero*, 411 U.S. at 688; held that a bare desire to harm gay people cannot constitute a legitimate government interest, *Romer*, 517 U.S. at 634–35; and recognized that lesbian and gay individuals have the same liberty interest in intimate family relationships as heterosexuals, *Lawrence*, 539 U.S. at 578.⁵⁰

Any lingering shadow *Baker* may have cast, however, was extinguished by *Windsor*. Justice Ginsburg previewed the Court’s skepticism when the issue was raised during oral argument about California’s marriage ban in *Hollingsworth*, saying,

Mr. Cooper, *Baker v. Nelson* was 1971. The Supreme Court hadn’t even decided that gender-based classifications get any kind of heightened scrutiny. . . . And the same-sex intimate conduct was

⁵⁰ While it attempted to atomize *Romer* by treating it as distinct from equal protection doctrine, ER 11–12 (distinguishing between “*Romer* doctrine” and a “traditional equal protection claim”), the district court conceded that arguments pursuant to *Romer* could not be precluded by *Baker*. ER 11–12. *Romer* informs constitutional doctrine as a whole, as the Supreme Court recognized in relying on the decision both in *Lawrence*, 539 U.S. at 574–76, and *Windsor*, 133 S. Ct. at 2692, 2693. The district court’s artificial treatment of *Romer* as creating a new, severable doctrine underscores the court’s failure to appreciate that *Baker* simply has been superseded.

considered criminal in many States in 1971, so I don't think we can extract much in *Baker v. Nelson*.

Tr. of Oral Arg. at 12, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (No. 12-144), 2013 U.S. Trans. LEXIS 40, at *10. Ultimately, *Baker* did not earn so much as a passing reference in any of the Supreme Court's merits opinions about same-sex couples and marriage last term. *See, e.g., Windsor*, 133 S. Ct. at 2705–11 (Scalia, J., dissenting) (discussing the merits of DOMA's constitutionality without referencing *Baker*); *id.* at 2714–20 (Alito, J., dissenting) (same). In light of *Windsor*'s ruling that DOMA is unconstitutional because it imposes “a disadvantage, a separate status, and so a stigma” on same-sex couples, as Nevada does now, it is no longer plausible that Plaintiff Couples' claims fail even to raise a federal question. 133 S. Ct. at 2693.⁵¹

⁵¹ Even were this Court to conclude that *Baker* precludes a merits ruling on a due process or broad equal protection claim, *Baker* certainly is not a bar to any ruling in Plaintiffs' favor. A summary dismissal's limited precedential value extends only to “prevent lower courts from coming to opposite conclusions on the *precise* issues presented and *necessarily decided* by those actions.” *Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (per curiam) (emphasis added). The Court could resolve this case in a manner tailored to Nevada's state policy, which recognizes that same-sex couples are worthy of the rights and responsibilities of spouses by providing them through domestic partnership, even as the state denies them the honored designation of marriage. *Baker* could not even have imagined, let alone decided, that question in 1971, when no state in the country offered any relationship protection for same-sex couples.

CONCLUSION

In the first case to fulfill same-sex couples' freedom to marry, Massachusetts' high court observed that the "plaintiffs are members of our community, our neighbors, our coworkers, our friends. . . . [They] volunteer in our schools, worship beside us in our religious houses, and have children who play with our children, to mention just a few ordinary daily contacts. We share a common humanity and participate together in the social contract that is the foundation" of a shared society. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 973 (Mass. 2003) (Greaney, J., concurring). Plaintiff Couples, like other same-sex couples across Nevada, yearn for recognition of their shared humanity and a family life accorded equal dignity by the State. They also hope "that someday lesbian and gay youth in Nevada will be able to grow up with the same dreams of marrying their one, cherished partner as their heterosexual peers, with all of the validation, dignity, and respect that this shared dream communicates to others." ER 195–96 ¶ 4. Federal guarantees of due process and equal protection require nothing less. The district court's judgment should be reversed.

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///

///

DATE: October 18, 2013

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Plaintiffs-Appellants are aware of only one other related case pending in the United States Court of Appeals for the Ninth Circuit which raises some issues closely related to those in the instant case: *Jackson, et al. v. Abercrombie*, Nos. 12-16995 and 12-16998 (9th Cir. filed Sept. 7, 2012).

Dated: October 18, 2013

By: s/ Tara L. Borelli
Tara L. Borelli

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Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-4, 29-2(c)(2) and (3), 32-2 or 32-4¹ for Case Number 12-17668

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (check appropriate option):

- ☐ This brief complies with the enlargement of brief size permitted by Ninth Circuit Rule 28-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- ☐ This brief complies with the enlargement of brief size granted by court order dated _____. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- ☒ This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 32-2 and is 25,529 words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- ☐ This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 29-2(c)(2) or (3) and is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- ☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or
Unrepresented Litigant

s/ Tara L. Borelli

("s/" plus typed name is acceptable for electronically-filed documents)

Date October 18, 2013

¹ If filing a brief that falls within the length limitations set forth at Fed. R. App. P. 32(a)(7)(B), use Form 6, Federal Rules of Appellate Procedure.

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U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Nev. Const. art. I, § 21

Only a marriage between a male and female person shall be recognized and given effect in this state.

Nev. Rev. Stat. § 122.020

122.020. Persons capable of marriage; consent of parent or guardian.

1. Except as otherwise provided in this section, a male and a female person, at least 18 years of age, not nearer of kin than second cousins or cousins of the half blood, and not having a husband or wife living, may be joined in marriage.

2. A male and a female person who are the husband and wife of each other may be rejoined in marriage if the record of their marriage has been lost or destroyed or is otherwise unobtainable.

3. A person at least 16 years of age but less than 18 years of age may marry only if the person has the consent of:

- (a) Either parent; or
- (b) Such person's legal guardian.

Nev. Rev. Stat. § 122A.200

122A.200. Rights and duties of domestic partners, former domestic partners and surviving domestic partners.

1. Except as otherwise provided in NRS 122A.210:

(a) Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving domestic partner, following the death of the other partner, has the same rights, protections and benefits, and is subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of domestic partners with respect to a child of either of them are the same as those of spouses. The rights and obligations of former or surviving domestic partners with respect to a child of either of them are the same as those of former or surviving spouses.

(e) To the extent that provisions of Nevada law adopt, refer to or rely upon provisions of federal law in a way that otherwise would cause domestic partners to be treated differently from spouses, domestic partners must be treated by Nevada law as if federal law recognized a domestic partnership in the same manner as Nevada law.

(f) Domestic partners have the same right to nondiscriminatory treatment as that provided to spouses.

(g) A public agency in this State shall not discriminate against any person or couple on the basis or ground that the person is a domestic partner rather than a spouse or that the couple are domestic partners rather than spouses.

(h) The provisions of this chapter do not preclude a public agency from exercising its regulatory authority to carry out laws providing rights to, or imposing responsibilities upon, domestic partners.

(i) Where necessary to protect the rights of domestic partners pursuant to this chapter, gender-specific terms referring to spouses must be construed to include domestic partners.

(j) For the purposes of the statutes, administrative regulations, court rules, government policies, common law and any other provision or source of law governing the rights, protections and benefits, and the responsibilities, obligations and duties of domestic partners in this State, as effectuated by the provisions of this chapter, with respect to:

(1) Community property;

(2) Mutual responsibility for debts to third parties;

(3) The right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership; and

(4) Other rights and duties as between the partners concerning ownership of property, any reference to the date of a marriage shall be deemed to refer to the date of registration of the domestic partnership.

2. As used in this section, “public agency” means an agency, bureau, board, commission, department or division of the State of Nevada or a political subdivision of the State of Nevada.

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court

for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME 1 OF 5**

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UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Beverly Sevcik, et al

Plaintiffs,

V.

Brian Sandoval, et al

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 2:12-cv-00578-RCJ-PAL

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

judgment is hereby entered per Order #102 filed November 26, 2012.

December 3, 2012

Date



/s/ Lance S. Wilson

Clerk

/s/ Molly Morrison

(By) Deputy Clerk

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BEVERLY SEVCIK et al.,	)	
	)	
Plaintiffs,	)	
	)	2:12-cv-00578-RCJ-PAL
vs.	)	
	)	
BRIAN SANDOVAL et al.,	)	ORDER
	)	
Defendants.	)	
_____	)	

This case arises out of the refusal of the State of Nevada to permit same-sex couples to enter into civil marriages, as well as its refusal to recognize same-sex marriages performed in other states as “marriages” under Nevada law. The question before the Court is not the wisdom of providing for or recognizing same-sex marriages as a matter of policy but whether the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits the People of the State of Nevada from maintaining statutes that reserve the institution of civil marriage to one-man one-woman relationships or from amending their state constitution to prohibit the State from recognizing marriages formed in other states as “marriages” under Nevada law if those marriages do not conform to Nevada’s one-man one-woman civil marriage institution. For the reasons given herein, the Court rules that it does not. To the extent the present challenge is not precluded by U.S. Supreme Court precedent, Defendants are entitled to summary judgment.

///

I. FACTS AND PROCEDURAL HISTORY

The sixteen Plaintiffs in this case comprise eight same-sex couples who desire to marry one another in Nevada or who have validly married one another in other jurisdictions and desire to have their marriages recognized as “marriages” by the State of Nevada. (*See* Compl. ¶¶ 5–12, Apr. 10, 2012, ECF No. 1). Defendants are Governor Brian Sandoval, Clark County Clerk and Commissioner of Civil Marriages Diana Alba, Washoe County Clerk and Commissioner of Civil Marriages Amy Harvey, and Carson City Clerk Recorder Alan Glover. (*See id.* ¶¶ 13–16). Except for the fact that they are of the same sex, the unmarried Plaintiff couples are otherwise legally qualified to marry one another in Nevada. (*See id.* ¶ 24). Between April 1 and 6, 2012, four of the unmarried Plaintiff couples were denied marriage licenses in Clark County, Washoe County, and Carson City, variously, for this reason. (*See id.* ¶¶ 25–28). The other four Plaintiff couples were validly married in other jurisdictions and challenge the State’s refusal to recognize their foreign marriages as “marriages,” as opposed to “domestic partnerships,” under Nevada law. (*See id.* ¶¶ 29–32).

Plaintiffs sued Defendants in this Court on a single claim under the Equal Protection Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983, requesting declaratory and injunctive relief. The Court granted the Coalition for the Protection of Marriage’s (the “Coalition”) motion to intervene after Plaintiffs withdrew their opposition to the motion. The Court has heard oral argument on Governor Sandoval’s and Clerk Recorder Glover’s separate motions to dismiss. The Coalition, Clerk Recorder Glover, Governor Sandoval, and Plaintiffs have since filed cross motions for summary judgment. The Court decides all of these motions via the present Order.

II. LEGAL STANDARDS

A. Dismissal

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

1 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
2 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47
3 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
4 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
5 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720
6 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
7 failure to state a claim, dismissal is appropriate only when the complaint does not give the
8 defendant fair notice of a legally cognizable claim and the factual grounds upon which it rests.
9 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint
10 is sufficient to state a claim, the court will take all material allegations as true and construe them
11 in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
12 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
13 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
14 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
15 with conclusory allegations is not sufficient; a plaintiff must plead facts pertaining to his own
16 case making a violation plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 79
17 (2009) (citing *Twombly*, 550 U.S. at 556) (“A claim has facial plausibility when the plaintiff
18 pleads factual content that allows the court to draw the reasonable inference that the defendant is
19 liable for the misconduct alleged.”). In other words, under the modern interpretation of Rule
20 8(a), a plaintiff must not only specify a cognizable legal theory (*Conley* review), but also must
21 plead the facts of his own case so that the court can determine whether he has any plausible basis
22 for relief under the legal theory he has specified, assuming the facts are as he alleges (*Twombly*-
23 *Iqbal* review).

24 “Generally, a district court may not consider any material beyond the pleadings in ruling
25 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the

complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

B. Summary Judgment

A court must grant summary judgment when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* A principal purpose of summary judgment is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). In determining summary judgment, a court uses a burden-shifting scheme:

When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.

C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations and internal quotation marks omitted). In contrast, when the nonmoving party bears the burden

1 of proving the claim or defense, the moving party can meet its burden in two ways: (1) by
2 presenting evidence to negate an essential element of the nonmoving party's case; or (2) by
3 demonstrating that the nonmoving party failed to make a showing sufficient to establish an
4 element essential to that party's case on which that party will bear the burden of proof at trial. *See*
5 *Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden, summary
6 judgment must be denied and the court need not consider the nonmoving party's evidence. *See*
7 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

8 If the moving party meets its initial burden, the burden then shifts to the opposing party to
9 establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
10 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party
11 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
12 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
13 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
14 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid summary judgment
15 by relying solely on conclusory allegations unsupported by facts. *See Taylor v. List*, 880 F.2d
16 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and
17 allegations of the pleadings and set forth specific facts by producing competent evidence that
18 shows a genuine issue for trial. *See Fed. R. Civ. P. 56(e); Celotex Corp.*, 477 U.S. at 324.

19 At the summary judgment stage, a court's function is not to weigh the evidence and
20 determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477
21 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are
22 to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely
23 colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

24 ///

25 ///

III. ANALYSIS

A. Nevada's Marriage and Domestic Partnership Laws

The Nevada Constitution prohibits official recognition of same-sex marriages by the State. *See* Nev. Const. art. I, § 21 (“Only a marriage between a male and female person shall be recognized and given effect in [Nevada].”). The Nevada Legislature, however, has recently provided for “domestic partnerships” between two persons of any gender. *See generally* Nev. Rev. Stat. ch. 122A. Nevada recognizes both foreign marriages and foreign quasi-marriage relationships that do not qualify as “marriages” under the Nevada Constitution as “domestic partnerships” under Chapter 122A, regardless of the label used in the jurisdiction where the relationship was formed. *See* Nev. Rev. Stat. § 122A.500.

A couple desiring to enter into a domestic partnership in Nevada must satisfy eligibility requirements similar to, but not identical to, those requirements a couple desiring to enter into a marriage must satisfy. *See* Nev. Rev. Stat. §§ 122A.100, 122A.110. Prospective domestic partners must prove to the Secretary of State that they share a residence on at least a part-time basis, that they are neither married nor in a domestic partnership in any state, that they are not related by blood in a way that would prevent them from being married in Nevada, and that they are both eighteen years old and competent to consent. *See id.* at § 122A.100(2), (4). If these requirements are satisfied, the couple must then file with the Secretary of State a signed, notarized form declaring their decision “to share one another’s lives in an intimate and committed relationship of mutual caring” and that they desire of their own free will to enter into a domestic partnership, and they must pay a reasonable fee to the Office of the Secretary of State. *See id.* at § 122A.100(1). Domestic partners may solemnize their relationship, but they need not do so to perfect it, and religious ministers and organizations may choose not to solemnize or otherwise recognize such relationships. *See id.* at § 122A.110. Nevada’s laws do not purport to prevent the celebration of domestic partnerships in religious or secular ceremonies, nor do they

1 purport to prevent domestic partners or others from using the word “marriage” to describe the
2 relationship.

3 A couple desiring to enter into a civil marriage must satisfy slightly different
4 requirements, some of which are more stringent, and some of which are less stringent.
5 Prospective spouses must be one male and one female, and both must be eighteen years old,
6 although a person who is at least sixteen years old may marry with the permission of at least one
7 parent or legal guardian, and a person under sixteen may marry with the permission of at least
8 one parent or legal guardian plus approval by the district court exceptions that are not available
9 to prospective domestic partners. *See id.* at §§ 122.020, 122.025. Although prospective domestic
10 partners must be neither married nor in another domestic partnership, *see Nev. Rev. Stat.*
11 § 122A.100(2)(b), a person who is already in a domestic partnership could apparently marry a
12 third person in Nevada, because the anti-bigamy clause under the marriage chapter prevents only
13 married persons from marrying again and says nothing of persons who are already in domestic
14 partnerships, *see id.* at § 122.020(1). Also, Chapter 122A is silent on whether opposite-sex
15 couples may enter into domestic partnerships; presumably, therefore, they can, though such a
16 union would not constitute a “marriage” under the Nevada Constitution. *See id.* at § 122A.510.
17 Unlike prospective domestic partners, prospective spouses may obtain the required marriage
18 license from the county clerk in any county in Nevada but must provide the clerk with certain
19 documentary evidence and must answer questions on the application form under oath. *See id.* at
20 § 122.040. They must also pay a fee to the county clerk. *See id.* at § 122.060. However, unlike
21 the “reasonable fee” to be charged by the Secretary of State to prospective domestic partners, the
22 fees to be paid by prospective spouses to county clerks are fixed by statute. *See id.* at § 122.060.
23 Unlike domestic partnerships, a judge, justice, or minister must solemnize a marriage. *See id.* at
24 § 122.010.

25 Except as otherwise provided in the statutes, domestic partners in Nevada have the same

rights and responsibilities as spouses have, Nev. Rev. Stat. § 122A.200(1)(a), former domestic partners have the same rights and responsibilities as former spouses have, *id.* at § 122A.200(1)(b), surviving domestic partners have the same rights and responsibilities as widows and widowers have, *id.* at § 122A.200(1)(c), domestic partners and former and surviving domestic partners have the same rights and responsibilities with respect to their children as spouses and former and surviving spouses have, *id.* at § 122A.200(1)(d), where state actors are concerned, Nevada law immunizes domestic partners from any discriminatory effects of federal law, *id.* at § 122A.200(1)(e) (“[t]o the extent that provisions of Nevada law adopt, refer to or rely upon provisions of federal law in a way that otherwise would cause domestic partners to be treated differently from spouses, domestic partners must be treated by Nevada law as if federal law recognized a domestic partnership in the same manner as Nevada law”), and domestic partners have the same right to nondiscriminatory treatment as spouses as a general matter, *id.* at § 122A.200(1)(f). There is at least one notable exception to these equality provisions: “The provisions of this chapter do not require a public or private employer in this State to provide health care benefits to or for the domestic partner of an officer or employee,” *id.* at § 122A.210(1), though employers may offer such coverage voluntarily, *id.* at § 122A.210(2). Although the Nevada Constitution independently provides that a domestic partnership between persons of the same sex cannot be a “marriage” in Nevada, Chapter 122A itself provides that no domestic partnership is a “marriage” under the Nevada Constitution. *See id.* at § 122A.510. The statutory provision is likely only important for opposite-sex domestic partners, because it adds nothing to the Nevada Constitution’s prohibition against same-sex marriages.

B. *Baker v. Nelson*

Defendants argue that the present equal protection challenge is precluded by *Baker v. Nelson*, 409 U.S. 810 (1972). In that case, the Supreme Court summarily dismissed an equal protection challenge to Minnesota’s marriage laws for lack of a substantial federal question. *See*

1 *id.* at 810.

2 The summary dismissal of an appeal for want of a substantial federal question operates as
3 a decision on the merits. *Hicks v. Miranda*, 422 U.S. 332, 344–45 (1975) (“[U]nless and until the
4 Supreme Court should instruct otherwise, inferior federal courts had best adhere to the view that
5 if the Court has branded a question as unsubstantial, it remains so except when doctrinal
6 developments indicate otherwise. . . . [L]ower courts are bound by summary decisions by this
7 Court until such time as the Court informs [them] that [they] are not.” (citations and internal
8 quotation marks omitted; alterations in original)). “Summary . . . dismissals for want of a
9 substantial federal question . . . reject the specific challenges presented in the statement of
10 jurisdiction and do leave undisturbed the judgment appealed from. They do prevent lower courts
11 from coming to opposite conclusions on the precise issues presented and necessarily decided by
12 those actions.” *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). “A summary disposition affirms
13 only the judgment of the court below, and no more may be read into [the] action than was
14 essential to sustain that judgment.” *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S.
15 173, 182–83 (1979) (citation omitted). “Questions which ‘merely lurk in the record’ are not
16 resolved, and no resolution of them may be inferred.” *Id.* at 183 (citation omitted). Accordingly,
17 *Baker* controls the present case, unless the specific challenge presented in this case was not
18 decided by the Minnesota Supreme Court.

19 In *Baker*, the Minnesota Supreme Court ruled, *inter alia*, that “[t]he equal protection
20 clause of the Fourteenth Amendment, like the due process clause, is not offended by the state’s
21 classification of persons authorized to marry. . . . We hold, therefore, that [the statute permitting
22 only opposite-sex marriage] does not offend the . . . Fourteenth Amendment[] to the United
23 States Constitution.” *Baker v. Nelson*, 191 N.W.2d 185, 187 (Minn. 1971). The Supreme Court
24 summarily dismissed the appeal from this decision “for want of a substantial federal question.”
25 *See Baker*, 409 U.S. at 810. The challenged statute in *Baker* was Chapter 517 of the Minnesota

1 Statutes, which prohibited same-sex marriages. *See Baker*, 191 N.W.2d at 186. The plaintiffs in
2 *Baker* challenged that statute under the Ninth Amendment and the Due Process and Equal
3 Protection Clauses of the Fourteenth Amendment. *See id.* The Minnesota Supreme Court ruled
4 that the statute offended none of these constitutional provisions. *See id.* at 186–87. The U.S.
5 Supreme Court summarily dismissed the appeal, *see Baker*, 409 U.S. at 810, so this Court “had
6 best adhere to the view that” the question of whether a state’s refusal to recognize same-sex
7 marriage offends the Equal Protection Clause is constitutionally insubstantial, *see Hicks*, 422
8 U.S. at 344–45, and the Court is prevented from coming to an opposite conclusion, *see Mandel*,
9 432 U.S. at 176.

10 Governor Sandoval and Clerk Recorder Glover therefore ask the Court to dismiss.
11 Plaintiffs respond that *Baker* does not control because *Baker* concerned the broader question of
12 whether the Equal Protection Clause requires a state to permit same-sex marriages, whereas the
13 present case concerns the narrower question of whether the Equal Protection Clause permits a
14 state to set up nearly identical civil institutions, i.e., marriage and domestic partnership, and then
15 exclude same-sex couples from one and not the other. As discussed in more detail, *infra*, the
16 State of Nevada has not done this in the way Plaintiffs argue it has. The Court finds that the
17 present challenge is in the main a garden-variety equal protection challenge precluded by *Baker*.
18 Plaintiffs also argue that the outcome in *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012) cannot be
19 squared with Defendants’ interpretation of the *Hicks* doctrine. But the Court finds *Perry* to be
20 consistent with the view that *Baker* precludes a large part of the present challenge. The equal
21 protection claim is the same in this case as it was in *Baker*, i.e., whether the Equal Protection
22 Clause prevents a state from refusing to permit same-sex marriages. There is an additional line
23 of argument potentially applicable in this case based upon *Romer v. Evans*, 517 U.S. 620 (1996)
24 concerning the withdrawal of existing rights or a broad, sweeping change to a minority group’s
25 legal status. A *Romer*-type analysis is not precluded by *Baker*, because the *Romer* doctrine was

1 not created until after *Baker* was decided. But the traditional equal protection claim is precluded,
2 and this is consistent with *Perry*. The *Perry* court was clear and emphatic that its decision was
3 based solely upon the Supreme Court’s withdrawal-of-existing-rights theory adopted in *Romer* in
4 1996, twenty-four years after *Baker* was decided, not upon a general equal protection challenge,
5 which the Court finds *Baker* precludes.

6 In summary, the present equal protection claim is precluded by *Baker* insofar as the claim
7 does not rely on the *Romer* line of cases, and Defendants are entitled to dismissal in part,
8 accordingly. Although the Court finds that *Baker* precludes a large part of the present challenge,
9 the Court will conduct a full equal protection analysis so that the Court of Appeals need not
10 remand for further proceedings should it rule that *Baker* does not control or does not control as
11 broadly as the Court finds.

12 C. Plaintiffs’ Equal Protection Challenge

13 “[B]ecause of the[] differences [in the rights and responsibilities of spouses and domestic
14 partners], coupled with the stigma of exclusion and of being branded by the government as
15 inferior, same-sex couples and their children suffer both tangible and dignitary harms, all of
16 which are of constitutional dimension.” (*See* Compl. ¶ 39). For this reason, Plaintiffs challenge
17 Section 21 of Article I of the Nevada Constitution (“Section 21”) and Nevada Revised Statutes
18 (“NRS”) section 122.020 under the Equal Protection Clause of the Fourteenth Amendment, both
19 facially and as applied. (*See* Compl. ¶¶ 88–89). Section 21 provides that only a marriage
20 between one man and one woman may be recognized as a marriage in Nevada, *see* Nev. Const.
21 art I, § 21, and NRS section 122.020 provides that prospective spouses must be, *inter alia*, of
22 opposite sexes to qualify for marriage, *see* Nev. Rev. Stat. § 122.020. Plaintiffs do not appear to
23 challenge any other provisions of Nevada law in the present lawsuit, and they have brought no
24 due process challenge.

25 In analyzing an equal protection challenge, a court first identifies the categorical

1 distinction the state has drawn and determines what level of constitutional scrutiny applies to
2 such distinctions. *E.g.*, *United States v. Lopez-Flores*, 63 U.S. 1468, 1472 (9th Cir. 1995) (citing
3 *Jones v. Helms*, 452 U.S. 412, 423–24 (1981); *Hernandez v. Texas*, 347 U.S. 475, 479 (1954)).
4 The court then scrutinizes the challenged law, accordingly. *Id.* (citing *Plyler v. Doe*, 457 U.S.
5 202, 217–18 (1982)).

6 **1. Identification of the Distinction Drawn by the State**

7 The parties appear to agree that the distinction drawn by the state of Nevada is
8 heterosexual versus homosexual persons, except that at least one Defendant argues that the State
9 has drawn no distinction at all because the laws at issue are facially neutral with respect to both
10 gender and sexual orientation. Under the conception of the distinction drawn by the State as
11 being between homosexual and heterosexual persons, the Court would apply rational-basis
12 scrutiny. *See High Tech Gays v. Def. Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir.
13 1990).

14 Before determining the level of review, however, the Court will more closely analyze the
15 distinction the State has drawn. Although the distinction the State has drawn (between one-
16 man one-woman marriages on the one hand, and any other gender- or number-configuration of
17 spouses on the other hand) largely burdens homosexuals, the distinction is not by its own terms
18 drawn according to sexual orientation. Homosexual persons may marry in Nevada, but like
19 heterosexual persons, they may not marry members of the same sex. That is, a homosexual man
20 may marry anyone a heterosexual man may marry, and a homosexual woman may marry anyone
21 a heterosexual woman may marry. In this sense, the State of Nevada has drawn no distinction at
22 all. Under this conception of the (lack of) distinction drawn by the State, the laws at issue would
23 receive no scrutiny at all under the Equal Protection Clause.

24 In another sense, the State of Nevada may be said to have drawn a gender-based
25 distinction, because although the prohibition against same-sex marriage applies equally to men

1 and women, “the statutes proscribe generally accepted conduct if engaged in by members of” the
2 same gender. *Loving v. Virginia*, 388 U.S. 1, 11 (1967). In pre-1967 Virginia, both Caucasians
3 and non-Caucasians were prohibited from interracial marriage (though a non-Caucasian could
4 marry another non-Caucasian of a difference race), and in Nevada, both men and women are
5 prohibited from same-sex marriage. The *Loving* Court, however, specifically rejected the
6 argument that a reciprocal disability necessarily prevents heightened scrutiny under the Equal
7 Protection Clause. *See id.* at 8 (“Because we reject the notion that the mere ‘equal application’ of
8 a statute containing racial classifications is enough to remove the classifications from the
9 Fourteenth Amendment’s proscription of all invidious racial discriminations, we do not accept
10 the State’s contention that these statutes should be upheld if there is any possible basis for
11 concluding that they serve a rational purpose.”). In other words, *Loving* could fairly be said to
12 stand, *inter alia*, for the proposition that if a person could engage in generally acceptable activity
13 (marriage) but for characteristic X₁ (non-Caucasian), then the level of scrutiny applicable to X-
14 based (race-based) distinctions applies to the disability, regardless of whether persons with
15 characteristic X₂ (Caucasian) are subject to a reciprocal disability according to their own X-based
16 characteristic. Application of this principle here might counsel the use of intermediate scrutiny.
17 That is, just as in pre-1967 Virginia a Caucasian but not a non-Caucasian could marry another
18 Caucasian, and vice versa, in Nevada a man but not a woman may marry another woman, and
19 vice versa. *Cf. id.* at 11 (“There can be no question but that Virginia’s miscegenation statutes rest
20 solely upon distinctions drawn according to race. The statutes proscribe generally accepted
21 conduct if engaged in by members of different races.”). Under this conception of the distinction
22 drawn by the State, i.e., a gender-based distinction, the Court would apply intermediate scrutiny.
23 *See, e.g., Hibbs v. Dep’t of Human Res.*, 273 F.3d 844, 855 (9th Cir. 2001).

24 Although the State appears to have drawn no distinction at all at first glance, and although
25 the distinction drawn by the State could be characterized as gender-based under the *Loving*

1 reciprocal-disability principle, the Court finds that for the purposes of an equal protection
2 challenge, the distinction is definitely sexual-orientation based. The issue turns upon the alleged
3 discriminatory intent behind the challenged laws, which is the *sine qua non* of a claim of
4 unconstitutional discrimination. See *Washington v. Davis*, 426 U.S. 229, 240 (1976). “To state a
5 claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth
6 Amendment a plaintiff must show that the defendants acted with an intent or purpose to
7 discriminate against the plaintiff based upon membership in a protected class.” *Lee v. City of*
8 *L.A.*, 250 F.3d 668, 686 (9th Cir. 2001) (quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
9 Cir. 1998)). “Where the challenged governmental policy is ‘facially neutral,’ proof of its
10 disproportionate impact on an identifiable group can satisfy the intent requirement only if it tends
11 to show that some invidious or discriminatory purpose underlies the policy.” *Id.* (citing *Vill. of*
12 *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 66 (1977) (citing *Washington*,
13 426 U.S. at 242)).

14 The laws at issue here are not directed toward persons of any particular gender, nor do
15 they affect people of any particular gender disproportionately such that a gender-based animus
16 can reasonably be perceived. So although the *Loving* reciprocal-disability principle would
17 indicate a gender-based distinction in a case where the members of a particular gender were
18 targeted, because it is homosexuals who are the target of the distinction here, the level of scrutiny
19 applicable to sexual-orientation-based distinctions applies. See *Loving*, 388 U.S. at 11 (noting
20 that the anti-miscegenation laws at issue in that case targeted racial minorities because the laws
21 were “designed to maintain White Supremacy”). Here, there is no indication of any intent to
22 maintain any notion of male or female superiority, but rather, at most, of heterosexual superiority
23 or “heteronormativity” by relegating (mainly) homosexual legal unions to a lesser status. In
24 *Loving*, the elements of the disability were different as between Caucasians and non-Caucasians,
25 whereas here, the burden on men and women is the same. The distinction might be gender based

1 if only women could marry a person of the same sex, or if only women could marry a
2 transgendered person, or if the restriction included some other asymmetry between the burdens
3 placed on men and the burdens placed on women. But there is no distinction here between men
4 and women, and the intent behind the law is to prevent homosexuals from marrying.

5 **2. The Level of Scrutiny Applicable to Sexual-Orientation-Based Distinctions**

6 The Supreme Court has never explicitly stated what level of scrutiny inferior courts are to
7 apply to distinctions drawn according to sexual orientation, though it has implied that rational
8 basis scrutiny applies because it has never applied any higher standard in relevant cases. *See, e.g.,*
9 *Romer*, 517 U.S. at 631–32 (citing *Heller v. Doe*, 509 U.S. 312, 319–20 (1993)) (applying the
10 rational basis standard). The Court of Appeals, however, has ruled that “homosexuals do not
11 constitute a suspect or quasi-suspect class entitled to greater than rational basis scrutiny under the
12 equal protection component of the Due Process Clause of the Fifth Amendment.” *High Tech*
13 *Gays*, 895 F.2d at 574.¹ Although the *High Tech Gays* court cited to *Bowers v. Hardwick*, 478
14 U.S. 186 (1986) (holding that private, homosexual activity may be criminalized), which was
15 overruled by *Lawrence v. Texas*, 539 U.S. 558 (2003), *see Golinski v. Office of Pers. Mgmt.*, 824
16 F. Supp. 2d 968, 983–84 (N.D. Cal. 2012), the *Lawrence* Court did not adopt any standard of
17 review applicable to distinctions drawn according to sexual orientation for the purposes of equal
18 protection, and therefore *Lawrence* is not on point for the purposes of the standard of review to
19 be applied, and only the Court of Appeals sitting en banc may overrule *High Tech Gays*’
20 adoption of the rational basis standard for distinctions drawn according to sexual orientation, *see*
21 *Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc).

22
23
24 ¹ Although *High Tech Gays* concerned the “equal protection component” of the Fifth
25 Amendment, *see id.*, “[e]qual protection analysis in the Fifth Amendment area is the same as that
under the [Equal Protection Clause of the] Fourteenth Amendment,” *Buckley v. Valeo*, 424 U.S.
1, 93 (1976).

1 *High Tech Gays*’ adoption of rational basis scrutiny for sexual-orientation-based
2 distinctions is not “clearly irreconcilable” with *Lawrence* such that a district court may ignore it
3 under *Miller*. Rather, the Court agrees with the *Jackson* and *Dragovic* courts, which have ruled
4 that *High Tech Gays* survived *Lawrence* in this regard. See *Jackson v. Abercrombie*, No.
5 11 00734 ACK KSC, 2012 WL 3255201, at *29, (D. Haw. 2012) (ruling that *Lawrence* did not
6 undercut *High Tech Gays*’ holding that rational basis scrutiny applies to sexual-orientation-based
7 distinctions); *Dragovich v. U.S. Dep’t of the Treasury*, No. C 10 01564 CW, 2012 WL 1909603,
8 at *9 (N.D. Cal. 2012) (same). More importantly, as those courts also noted, the Court of
9 Appeals directly ruled just four years ago that *High Tech Gays* survived *Lawrence* with respect to
10 the level of scrutiny to be applied in sexual-orientation-based equal protection challenges. See
11 *Witt v. Dep’t of Air Force*, 527 F.3d 806, 821 (9th Cir. 2008) (citing *Philips v. Perry*, 106 F.3d
12 1420, 1424 25 (1997) (citing *High Tech Gays*, 895 F.2d at 574)) (“*Philips* clearly held that [the
13 Department of Defense’s former ‘don’t ask, don’t tell’ policy] does not violate equal protection
14 under rational basis review, and that holding was not disturbed by *Lawrence*, which declined to
15 address equal protection.” (citation omitted)).

16 And this would be the result even in the absence of *Witt*. The *Lawrence* Court had
17 certified three questions: (1) whether Texas’ anti-sodomy law was infirm under the Equal
18 Protection Clause of the Fourteenth Amendment; (2) whether the law was infirm under the Due
19 Process Clause of the Fourteenth Amendment; and (3) whether *Bowers* should be overruled. See
20 539 U.S. at 564. The Court resolved the case under the second two questions. See *id.* (“We
21 conclude the case should be resolved by determining whether the petitioners were free as adults
22 to engage in the private conduct in the exercise of their liberty under the Due Process Clause of
23 the Fourteenth Amendment to the Constitution. For this inquiry we deem it necessary to
24 reconsider the Court’s holding in *Bowers*.”). *Lawrence*’s rejection of Texas’ anti-sodomy law
25 was based upon the Due Process Clause, not upon the Equal Protection Clause. See *id.* at 578

1 (“Their right to liberty under the Due Process Clause gives them the full right to engage in their
2 conduct without intervention of the government.”). *Bowers* in turn had also been decided purely
3 under the Due Process Clause. *See Bowers*, 478 U.S. at 190 (“The issue presented is whether the
4 Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy”);
5 *id.* at 201 (Blackmun, J., dissenting) (lamenting the Court’s refusal to consider an equal
6 protection challenge).

7 The *High Tech Gays* court noted that other Courts of Appeals had reasoned that the fact
8 that homosexual behavior could be criminalized outright necessarily precluded a ruling that a
9 group defined by a desire or propensity to engage in such activity could be a suspect or quasi-
10 suspect class for the purposes of equal protection. *See* 895 F.2d at 571 & n.6. But it simply does
11 not follow that because *Bowers* independently prevented heightened scrutiny, that heightened
12 scrutiny is necessarily an open question now that *Bowers* has been overruled. That would be the
13 case if *High Tech Gays* had relied exclusively upon *Bowers*, but it did not. The *High Tech Gays*
14 court’s analysis of whether sexual-orientation-based distinctions deserve heightened scrutiny did
15 not need to rely on *Bowers* simply because *Bowers* independently necessitated the result. The
16 *High Tech Gays* court separately analyzed whether homosexuals constituted a suspect class under
17 the traditional factors and determined they did not. *See* 895 F.2d at 573–74. The court noted that
18 to obtain recognition as a suspect class for equal protection purposes, the class “must 1) have
19 suffered a history of discrimination; 2) exhibit obvious, immutable, or distinguishing
20 characteristics that define them as a discrete group; and 3) show that they are a minority or
21 politically powerless, or alternatively show that the statutory classification at issue burdens a
22 fundamental right.” *Id.* at 573 (citing *Bowen v. Gilliard*, 483 U.S. 587, 602–03 (1987) (citing
23 *Lyng v. Castillo*, 477 U.S. 635, 638 (1986))). The court found that homosexuals had suffered a
24 history of discrimination, but that homosexuality was not immutable and that homosexuals were
25

1 not politically powerless because they had successfully lobbied legislatures to pass anti-
2 discrimination legislation protecting them. *See id.* at 573–74.

3 Although *Witt* confirmed that *Lawrence* did not reopen *High Tech Gays'* determination
4 that homosexuals are not a suspect or quasi-suspect class, reexamination of the issue today would
5 only tend to tilt the scales further towards rational basis review. First, homosexuals have indeed
6 suffered a history of discrimination, but it is indisputable that public acceptance and legal
7 protection from discrimination has increased enormously for homosexuals, such that this factor is
8 weighted less heavily towards heightened scrutiny than it was in 1990. It is the present state of
9 affairs and any lingering effects of past discrimination that are important to the analysis, not the
10 mere historical facts of discrimination taken in a vacuum. Although historical discrimination
11 taken alone may be relevant to a showing under the second factor, i.e., whether the group is in
12 fact a discretely identifiable group, without a showing of continuing discrimination or lingering
13 effects of past discrimination, the first factor does not tend to support an argument that the group
14 need be protected from majoritarian processes. Unlike members of minority races, for example,
15 homosexuals do not in effect inherit the effects of past discrimination through their parents. That
16 is, members of certain racial minorities are more likely to begin life at a socioeconomic
17 disadvantage because of historical discrimination against their ancestors, the effects of which are
18 passed from parent to child, taking many generations to ameliorate via the later removal of
19 discrimination. On the contrary, homosexuality by its nature, whether chosen or not, is a
20 characteristic particularly unlikely to be passed from parent to child in such a way that the effects
21 of past discrimination against one's ancestors will have effects upon oneself. In the context of a
22 characteristic like homosexuality, where no lingering effects of past discrimination are inherited,
23 it is contemporary disadvantages that matter for the purposes of assessing disabilities due to
24 discrimination. Any such disabilities with respect to homosexuals have been largely erased since
25 1990.

1 Second, the Supreme Court has not yet ruled that homosexuality is immutable for the
2 purposes of equal protection, so although public and scientific opinion on the matter may have
3 changed in the intervening years, *High Tech Gays*' analysis on the point cannot be
4 countermanded by a district court on that basis. Assuming for the sake of argument that the
5 characteristic is immutable for the purposes of an equal protection analysis, this factor would
6 weigh in favor of heightened scrutiny.

7 Third, and most importantly, the Supreme Court has not ruled that homosexuals lack
8 political power such that *High Tech Gays*' determination that they do not lack it has been
9 undermined, and homosexuals have in fact gained significant political power in the years since
10 *High Tech Gays* was decided. Today, unlike in 1990, the public media are flooded with editorial,
11 commercial, and artistic messages urging the acceptance of homosexuals. Anti-homosexual
12 messages are rare in the national informational and entertainment media, except that anti-
13 homosexual characters are occasionally used as foils for pro-homosexual viewpoints in
14 entertainment media. Homosexuals serve openly in federal and state political offices. The
15 President of the United States has announced his personal acceptance of the concept of same-sex
16 marriage, and the announcement was widely applauded in the national media. Not only has the
17 President expressed his moral support, he has directed the Attorney General not to defend against
18 legal challenges to the Defense of Marriage Act ("DOMA"), a federal law denying recognition to
19 same-sex marriages at the federal level. It is exceedingly rare that a president refuses in his
20 official capacity to defend a democratically enacted federal law in court based upon his personal
21 political disagreements. That the homosexual-rights lobby has achieved this indicates that the
22 group has great political power. The State of Nevada has itself outlawed sexual-orientation-
23 based discrimination as a general matter. *See generally* Nev. Rev. Stat. ch. 233. Congress has
24 not included the category under Title VII's protections, however. *See* 42 U.S.C. § 2000e-2. In
25 2012 America, anti-homosexual viewpoints are widely regarded as uncouth. All in all, the

1 political power of homosexuals has increased tremendously since 1990 when the *High Tech Gays*
2 court ruled that the group did not, even then, sufficiently lack political power for the purposes of
3 an equal protection analysis. This factor therefore weighs greatly in favor of rational basis
4 review.

5 The Court respectfully disagrees with the recent conclusion of the Second Circuit to the
6 contrary in a DOMA case. *See Windsor v. United States*, Nos. 12-2335, 12-2435, 2012 WL
7 4937310 (2nd Cir. 2012). That court concluded: “The question is not whether homosexuals have
8 achieved political successes over the years; they clearly have. The question is whether they have
9 the strength to politically protect themselves from wrongful discrimination.” *Id.* at *9. That
10 statement is strictly true, but the answer to the second question is powerfully influenced by the
11 answer to the first question, because political success is the most direct, if not defining, indicator
12 of the ability to protect oneself through political processes. The Court believes the test as
13 presented, or at least as applied, by the Second Circuit is little test at all, but rather a reason
14 behind an absolute (or nearly absolute) rule that the Second Circuit has now impliedly adopted,
15 i.e., that a discrete minority group challenging a discriminatory law necessarily lacks political
16 power for the purposes of a level-of-scrutiny analysis based purely upon the fact that the group
17 has not been able democratically to avoid or alter the law it is challenging in a particular case.
18 That result obviates the Supreme Court’s use of political powerlessness as a factor in assessing
19 the level of scrutiny to be applied. If a plaintiff could necessarily win on the political
20 powerlessness factor of the level-of-scrutiny analysis by the very fact that he was unable to
21 challenge a particular law democratically, the factor would be meaningless. Political
22 powerlessness for the purpose of an equal protection analysis does not mean that the members of
23 a group have failed to achieve all of their goals or have failed to achieve the particular goal they
24 aim to achieve via the lawsuit in which the political powerlessness issue is litigated. The English
25 suffix “-less” means “without,” and “powerless” means “without power,” not “without *total*

1 power.” If there were no legal space in which a minority group had sufficient political power
2 such that it were not entitled to heightened scrutiny under an equal protection analysis, but where
3 it had failed to succeed democratically on a particular challenged issue, then the analysis of the
4 group’s political power for the purposes of a heightened scrutiny analysis would be no analysis at
5 all a plaintiff would have prevailed on the issue by the mere fact that he had standing to file a
6 lawsuit. What legal space would such reasoning leave for a state to prevail on the Supreme
7 Court’s political powerlessness factor, which inferior courts must presumably treat as a
8 meaningful inquiry?

9 Any minority group can reasonably argue that its political power is less than it might be
10 were the group either not a minority or more popular. That is simply an inherent aspect of
11 democracy. That issue is relevant to the powerlessness analysis, but it is not dispositive of it.
12 There are a myriad of factors in a democratic society that may permit a minority or disfavored
13 group to succeed democratically, such as legislators’ disinclination to be labeled as bigots or
14 even as unreasonable, the desire of another faction to pass legislation on which it needs the first
15 minority’s or their allies’ cooperation, or other factors. The question of “powerlessness” under
16 an equal protection analysis requires that the group’s chances of democratic success be virtually
17 hopeless, not simply that its path to success is difficult or challenging because of democratic
18 forces. Even assuming that homosexuals are themselves under-represented in legislatures, *see id.*
19 (discussing the practical difficulty in assessing this fact), this does not mean that pro-homosexual
20 legislators are under-represented or that anti-homosexual (or indifferent) legislators cannot be
21 made to compromise democratically. In the present case, it simply cannot be disputed that there
22 have historically been sufficient pro-homosexual legislators (or anti-homosexual and indifferent
23 legislators who can be democratically bargained with) in the State of Nevada to protect
24 homosexuals from oppression as a general matter. *See, e.g., Nev. Rev. Stat. §§ 118.020, 233.010,*
25 *613.330.* Plaintiffs’ democratic loss on a particular issue does not prove that they lack political

1 power for the purposes of an equal protection analysis. That homosexuals cannot protect
2 themselves democratically without aid from other groups is a conclusion that is necessarily true
3 for any minority group by definition, so treating this point as dispositive would avoid any
4 meaningful analysis of the political powerlessness factor. *See City of Cleburne v. Cleburne*
5 *Living Ctr.*, 473 U.S. 432, 445 (1985) (“Any minority can be said to be powerless to assert direct
6 control over the legislature, but if that were a criterion for higher level scrutiny by the courts,
7 much economic and social legislation would now be suspect.”). The relevant consideration is the
8 group’s “ability to attract the attention of the lawmakers,” an ability homosexuals cannot
9 seriously be said not to possess. *See id.* The issue of homosexual rights, and particularly the
10 issue of same-sex marriages or quasi-marriage relationships has been front and center in
11 American politics for nearly a decade. Just this month, the People of several more States voted
12 whether to approve or prohibit same-sex marriages.

13 The *Windsor* court wrote that “it is safe to say that the seemingly small number of
14 acknowledged homosexuals [in positions of power or authority] is attributable either to a
15 hostility that excludes them or to a hostility that keeps their sexual preference private which,
16 for our purposes, amounts to much the same thing.” *Id.* But it is not necessarily safe to say this.
17 A small number of homosexuals in certain positions of power could just as easily indicate that
18 homosexuals constitute an equally small proportion of the population. The number of open
19 homosexuals in such positions will only “seem[] small” to an observer who assumes that the
20 proportion of homosexuals in society at large is greater than the proportion of open homosexuals
21 in these kinds of positions. And there is a third option the *Windsor* court did not discuss, i.e.,
22 that the “seemingly” small number of open homosexuals in positions of power or authority may
23 be largely attributable to neither exclusion nor sexual-orientation-based shame that discourages
24 them from identifying themselves, but rather to the fact that people as a general matter and
25 especially people in positions of power and prestige tend not to draw attention to their sexual

practices or preferences, *whatever they may be*, for social, career, and economic reasons. This natural disinclination of public figures to announce their sexual practices or preferences does not necessarily transform into passive oppression simply because the sexual practices or preferences of a particular subset of persons also happens to be a matter of special social controversy. Lastly, a homosexual person simply need not announce his or her own homosexuality to be active in the fight for homosexual rights. Many advocates of homosexual rights are themselves heterosexual, and there is no need to announce one's sexual orientation or preferences in order to advocate for homosexual rights. To whatever degree homosexuals have not been able to succeed politically to the extent many people wish, it is clear that, in Nevada at least, homosexuals have been able to enact laws protecting their interests through the democratic process, including laws protecting them from discrimination in areas such as employment and housing, as well as laws creating outright legal status for homosexual relationships.

In arguing for heightened scrutiny for gender-based distinctions in 1973, Justice Brennan opined that women's recent political successes should not be dispositive of the political powerlessness analysis. *See Frontiero v. Richardson*, 411 U.S. 677, 685–86 (1973) (Brennan, J.) (plurality opinion).² But even assuming this reasoning were precedential, the reasons with which Justice Brennan supported his conclusion in that case are for the most part not present here. Although women had been able to attract the attention of lawmakers during the early- and mid-Twentieth Century, they had been under-represented democratically for a long time prior to those political successes because they could not vote, such that for centuries their political voice was disproportionately small compared to their numbers. *See id.* at 685. Women had also been excluded from juries and even been denied the basic right of property ownership for centuries.

²Four justices concurred in the judgment, based upon rational basis review. *See id.* at 691 (Stewart, J., concurring in the judgment with Burger, C.J., and Blackmun, J.) (citing *Reed v. Reed*, 401 U.S. 71 (1971)); *id.* (Powell, J., concurring in the judgment) (citing *Reed*, 401 U.S. 71).

1 *See id.* Homosexuals have not historically been denied the right to vote, the right to serve on
 2 juries, or the right to own property. Although the right to vote could have been lost for
 3 conviction under a felony anti-sodomy law, the fraction of homosexuals disenfranchised due to
 4 conviction of such crimes was almost certainly minuscule, and the need or desire to keep one's
 5 sexual orientation secret because of such laws, though perhaps regrettable, would have no effect
 6 on one's ability to vote, serve on a jury, or otherwise participate in American democracy. Also,
 7 the continued discrimination against women in 1973 was largely due to the high visibility of the
 8 sex characteristic, a visibility that the characteristic of homosexuality does not have to nearly the
 9 same extent as gender. *See id.* at 686.

10 The assessment of a group's disabilities and its political power to remove them is a
 11 critical factor in determining whether heightened scrutiny should apply under the Fourteenth
 12 Amendment where a particular prohibition is not textually clear, because political power is the
 13 factor that speaks directly to whether a court should take the extreme step of removing from the
 14 People the ability to legislate in a given area. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411
 15 U.S. 1, 28 (1973) (noting that a suspect class is one that is "saddled with such disabilities, or
 16 subjected to such a history of purposeful unequal treatment, or relegated to such a position of
 17 political powerlessness as to command extraordinary protection from the majoritarian political
 18 process").

19 Gross movements by the judiciary with respect to democratic processes can cause an
 20 awkward unbalancing of powers in a Madisonian constitutional democracy³ and undermine both

21 ³Justice Powell's note in concurrence in *Frontiero* that the plurality's suggestion of strict
 22 scrutiny for gender-based classifications would preempt the democratic adoption of the Equal
 23 Rights Amendment ("ERA") then being considered for ratification by the states was prophetic.
 24 *See Frontiero*, 411 U.S. at 692 (Powell, J., concurring in the judgment). Perhaps because of the
 25 usurpation of the issue by the courts, the state legislatures felt neither the need nor the political
 pressure to adopt that proposed amendment, which has languished for nearly half a century after
 approval by Congress. Because the courts have withdrawn the issue from legislative control,
 what rational state legislator would risk his political career by attempting to force a vote on the

public confidence in the judiciary and the legitimacy of the government in general. Where a constitutional prohibition is reasonably clear, a court's removal of the relevant issue from legislative control is largely uncontroversial, and appropriately so, because the People realize that the issue has in fact already been decided democratically, either at the Constitutional Convention or later via the Article V amendment procedure. In such cases, the judiciary does not usurp the democratic process but rather respects and enforces a democratic decision made at the constitutional level as against a more recent democratic attempt to change the law at a lower legislative level.

The Constitution and Amendments thereto, which have been ratified by the States, represent a collection of democratic choices adopted in order to control future democratic choices. The Constitution is in this regard a "super statute," i.e., a statute that controls the enactment of statutes. *Cf.* H.L.A. Hart, *The Concept of Law* 81 (2d ed. 1961) (explaining what he calls "primary" and "secondary" rules). When the judiciary interferes with a legislative democratic choice in favor of a constitutional democratic choice, it ensures that a legislature cannot countermand an earlier democratic choice to which the People have assigned a higher level of priority. *See Marbury v. Madison*, 5 U.S. 137, 176 80 (1803) (Marshall, C.J.). Such an act of "judicial review" is therefore not in derogation of democratic principles, but rather is ultimately in support of them.⁴

ERA where there is no longer any practical need to do so? The supporters of the ERA no longer exert pressure on the legislatures to act, because they have been satisfied by the courts. A legislator has little to gain by supporting the ERA at this stage but the enmity of the amendment's opponents.

⁴It is often said that the Constitution is "anti-democratic" because it restricts legislative choices. But so long as judges read constitutional restrictions reasonably, the process remains democratic at its core, because the Constitution itself was and is subject to democratic forces. It was ratified by the People of the States, and it remains subject to amendment through a defined, democratic process. By contrast, in some nations, such as in the Islamic Republic of Iran, the process of judicial review is truly anti-democratic, because the standards by which a body such as the Guardian Council reviews the acts of the legislature are subject not only to a written constitution, but also to the Guardian Council's interpretation of a religious tradition that is not

1 But a court must only take such action when the constitutional rule is reasonably clear.
2 The most difficult problems arise when the text of a constitutional provision provides vague
3 standards, such as “equal protection of the laws.” Judges and laymen alike often disagree
4 whether a particular law runs afoul of the vaguer prohibitions of the Constitution. Where a court
5 considers invalidating a democratically adopted law because of a conflict with one of these
6 vaguer clauses, it must tread lightly, lest its rulings appear to the People not to constitute a fair
7 and reasonable enforcement of constitutional restrictions to which they or their ancestors have
8 previously democratically agreed, but rather a usurpation of democratic governance via judicial
9 whim a judicial practice much in vogue today. Where there is no clear prohibition of
10 discrimination according to a particular category, and where the group complaining of
11 discrimination has meaningful political power to protect its own interests, it is inappropriate for a
12 court to remove the issue from legislative control.

13 The States are currently in the midst of an intense democratic debate about the novel
14 concept of same-sex marriage, and homosexuals have meaningful political power to protect their
15 interests. At the state level, homosexuals recently prevailed during the 2012 general elections on
16 same-sex marriage ballot measures in the States of Maine, Maryland, and Washington, and they
17 prevailed against a fourth ballot measure that would have prohibited same sex marriage under the
18 Minnesota Constitution. It simply cannot be seriously maintained, in light of these and other

19 _____
20 and has never been subject to democratic forces. Whether such a standard is grounded in religion
21 or secular philosophy makes no difference with respect to the issue of self-governance. If the
22 standards by which a judge reviews legislative acts are the product of his private philosophical
23 views, and not simply a reasonable interpretation of a legal text to which the governed have
24 agreed, he exceeds his lawful power over the governed and to that extent becomes a despot just
25 as if an executive officer had made the decision himself. Were a court’s opinions in the area of
judicial review treated only as advisory, the possibility of harm would not be so great. But so
long as the Executive and the States are not practically free to ignore a court’s opinions in the
area of judicial review, but rather will follow them as a matter of course according to the
constitutional culture of the Nation, it makes no difference that the judge himself does not have
the power of execution via officers directly in his employ.

1 recent democratic victories, that homosexuals do not have the ability to protect themselves from
2 discrimination through democratic processes such that extraordinary protection from majoritarian
3 processes is appropriate.⁵

4 “[D]emocratic institutions are weakened, and confidence in the restraint of the Court is
5 impaired, when we appear unnecessarily to decide sensitive issues of broad social and political
6 importance at the very time they are under consideration within the prescribed constitutional
7 processes.” *Frontiero*, 401 U.S. at 692 (Powell, J., concurring in the judgment). Only where a
8 discrete minority group’s political power is so weak and ineffective as to make attempts to
9 succeed democratically utterly futile is it even arguably appropriate for a court to remove relevant
10 issues from the democratic process, except where a constitutional prohibition clearly removes the
11 issue from legislative control, in which case a court’s intervention is mandated by democratic
12 constitutional principles. *See Marbury*, 5 U.S. at 176–80. The Equal Protection Clause of the
13 Fourteenth Amendment does not clearly remove laws distinguishing between persons on the
14 basis of sexual orientation from democratic control. Although the courts have ruled that a
15 challenge to virtually any law is entitled to at least rational basis review under the Equal
16 Protection Clause, the above analysis makes heightened scrutiny inappropriate in this case.

17 The *High Tech Gays* court also ruled that no fundamental rights were burdened in that
18 case, because there was no fundamental right to homosexual activity. That holding has been
19 directly overruled by the *Lawrence* Court, but unlike the Department of Defense policy at issue
20 in *High Tech Gays* that made homosexual activity an automatic trigger for heightened
21 investigative attention when applying for a security clearance, *see* 895 F.2d at 568, the laws at
22 issue in the present case do not burden the right to private, consensual, homosexual activity that

23
24 ⁵The fact that national attitudes are shifting in favor of acceptance of same-sex marriage
25 and homosexual rights in general only tends to weaken the argument that homosexuals require
extraordinary protection from majoritarian processes via heightened scrutiny under the Equal
Protection Clause.

1 the *Lawrence* Court recognized. The rights burdened under the challenged laws in this case are
2 certain state-created rights, such as the right to have one's partner covered under an employer-
3 provided health insurance plan and the right to enter into a marriage or quasi-marriage
4 relationship with a sixteen or seventeen year-old person if that person's parent or guardian
5 consents, *see supra*, which rights are not fundamental. Although there is a fundamental right to
6 "marry," that right consists substantively of the ability to establish a family, raise children, and,
7 in certain contexts, maintain privacy. *Zablocki v. Redhail*, 434 U.S. 374, 383 84 (1978)
8 (collecting cases). It is these components that comprise the fundamental "right to marry"
9 recognized under the Fourteenth Amendment, not the civil benefits and responsibilities
10 accompanying the legal status of marriage, which vary from state to state. Although the title of
11 "marriage" has been withheld, the State of Nevada has burdened none of the core substantive
12 rights that comprise the right to marry, sometimes referred to as the "constitutional incidents of
13 marriage." Plaintiffs may establish legally cognizable families under Nevada's domestic
14 partnership laws an option that was not available to Mr. Redhail in 1978 Wisconsin.

15 It is also worth noting that Nevada's laws do not purport to prevent (nor could they under
16 the First Amendment prevent) the private use of the word "marriage" in the context of same-sex
17 relationships, and same-sex couples will of course use the word if they wish to. This has no
18 bearing on whether the State must give the title its imprimatur.

19 Finally, the right to privacy is not implicated here, as Plaintiffs desire not to be left alone,
20 but, on the contrary, desire to obtain public recognition of their relationships. In summary, no
21 fundamental rights are burdened by Nevada's marriage domestic partnership regime. Because
22 homosexuals are not a suspect or quasi-suspect class, and because the laws at issue burden no
23 fundamental rights, rational basis scrutiny applies.

24 ///

25 ///

3. Application of Rational Basis Scrutiny

Under rational basis review, a court does not judge the perceived wisdom or fairness of a law, nor does it examine the actual rationale for the law when adopted, but asks only whether “there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Heller*, 509 U.S. at 319–20 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)). Those challenging a law on rational basis grounds “have the burden to negat[e] every conceivable basis which might support it.” *Diaz v. Brewer*, 676 F.3d 823, 826 (9th Cir. 2012) (O’Scannlain, J., dissenting from order denying rehearing en banc) (quoting *Beach Commc’ns*, 508 U.S. at 315 (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973))) (alteration in *Diaz*; internal quotation marks omitted). The question of rationality is a matter of law for which a state need not provide evidence but may rely on speculation alone. *Heller*, 509 U.S. at 320. In the summary judgment context, if the facts determining a question that is subject only to rational basis review are “at least debatable,” the state is entitled to summary judgment. *See Jackson*, 2012 WL 3255201, at *33 (citing *Vance v. Bradley*, 440 U.S. 93, 110–11 (1979); *Lupert v. Cal. State Bar*, 761 F.2d 1325, 1328 (1985)).

The protection of the traditional institution of marriage, which is a conceivable basis for the distinction drawn in this case, is a legitimate state interest. Although traditional moral disapproval is not alone a valid state interest for prohibiting private, consensual activity, *see Lawrence*, 539 U.S. at 577–78 (quoting *Bowers*, 478 U.S. at 216 (Stevens, J., dissenting)), civil marriage is at least partially a public activity, and preventing “abuse of an institution the law protects” is a valid state interest, *see id.* at 567. More specifically:

That [the Texas anti-sodomy law] as applied to private, consensual conduct is unconstitutional under the Equal Protection Clause does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail under rational basis review. Texas cannot assert any *legitimate state interest* here, *such as* national security or *preserving the traditional institution of marriage*. Unlike the moral disapproval of same-sex relations the asserted state interest in this

1 case other reasons exist to promote the institution of marriage beyond mere moral
2 disapproval of an excluded group.

3 *Id.* at 585 (O'Connor, J., concurring in the judgment) (emphases added). The *Lawrence* Court
4 appears to have strongly implied that in an appropriate case, such as the present one, the
5 preservation of the traditional institution of marriage should be considered a legitimate state
6 interest rationally related to prohibiting same-sex marriage. *See id.* at 578 (majority opinion)
7 ("The present case does not involve . . . whether the government must give formal recognition to
8 any relationship that homosexual persons seek to enter."). The State of Nevada has made
9 available to same-sex partners the vast majority of the civil rights and responsibilities of
10 marriage, and it has made all of the fundamental rights comprising the "right to marry" available
11 via the domestic partnership laws, even assuming for the sake of argument that it is the "right to
12 marry" or the "right to marry a person of one's choice," and not the "right to marry a person of
13 the same sex" that is at issue. The State has not crossed the constitutional line by maintaining
14 minor differences in civil rights and responsibilities that are not themselves fundamental rights
15 comprising the constitutional component of the right to marriage, or by reserving the label of
16 "marriage" for one-man one-woman couples in a culturally and historically accurate way. And
17 unlike in *Perry*, the State of Nevada has not stripped away any existing right to the title of
18 "marriage" while leaving its constitutional incidents in place. *See Perry*, 671 F.3d at 1076-78.

19 As Justice O'Connor noted in concurrence in *Lawrence*, there are additional reasons to
20 promote the traditional institution of marriage apart from mere moral disapproval of homosexual
21 behavior, and these reasons provide a rational basis for distinguishing between opposite-sex and
22 same-sex couples in the context of civil marriage. Human beings are created through the
23 conjugation of one man and one woman. The percentage of human beings conceived through
24 non-traditional methods is minuscule, and adoption, the form of child-rearing in which same-sex
25 couples may typically participate together, is not an alternative means of creating children, but

1 rather a social backstop for when traditional biological families fail. The perpetuation of the
 2 human race depends upon traditional procreation between men and women. The institution
 3 developed in our society, its predecessor societies, and by nearly all societies on Earth throughout
 4 history to solidify, standardize, and legalize the relationship between a man, a woman, and their
 5 offspring, is civil marriage between one man and one woman. *See Maynard v. Hill*, 125 U.S. 190,
 6 211 (1888) (“It is an institution, in the maintenance of which in its purity the public is deeply
 7 interested, for it is the foundation of the family and of society, without which there would be
 8 neither civilization nor progress.”).⁶ Should that institution be expanded to include same-sex
 9 couples with the state’s imprimatur, it is conceivable that a meaningful percentage of
 10 heterosexual persons would cease to value the civil institution as highly as they previously had
 11 and hence enter into it less frequently, opting for purely private ceremonies, if any, whether
 12 religious or secular, but in any case without civil sanction, because they no longer wish to be
 13 associated with the civil institution as redefined,⁷ leading to an increased percentage of out-of-

14
 15 ⁶ Plaintiffs’ historical and sociological experts attest that marriage has changed in various
 16 ways throughout history, that homosexuality is no longer considered a “disorder” by mainstream
 17 psychiatrists and sociologists, that same-sex couples can be suitable parents, that same-sex
 18 marriage would not harm traditional marriages, that there is and has been discrimination against
 19 homosexuals, that they lack political power, and even concerning the alleged economic impact of
 20 the challenged laws, but even assuming the Court were to find all of these opinions credible a
 21 finding the Court need not make in the rational basis context none of Plaintiffs’ experts attest
 22 that same sex marriage has ever been recognized in the history of the Anglo-American peoples
 23 except very recently and sporadically. (*See generally* Cott. Decl., Sept. 4, 2012, ECF No. 86-2, at
 24 3; Peplau Decl., Aug. 20, 2012, ECF No. 86-2, at 45; Badgett Decl., Sept. 7, 2012, ECF No. 86-
 25 2, at 92; Chauncey Decl., June 27, 2012, ECF No. 86-2, at 132; Segura Decl., Sept. 5, 2012, ECF
 No. 86-3, at 3; Lamb Decl., Aug. 27, 2012, ECF No. 86-3, at 57). The level of scrutiny is
 controlled by precedent in this case. Because that level of scrutiny is rational basis scrutiny, the
 Court need not examine the parties’ evidence (which evidence is, in any case, better
 characterized as dueling collections of sociological opinions as opposed to scientific or other
 specialized evidence). The State need only have a conceivable basis for its laws.

⁷ Some commentators have argued that the fact that same-sex couples may marry takes
 nothing from the value of an opposite-sex couple’s marriage. *See, e.g.,* Michael Mello, *For
 Today, I’m Gay: The Unfinished Battle for Same-Sex Marriage in Vermont*, 25 Vt. L. Rev. 149,
 229 (2000). Traditional spouses will have lost no rights, after all. But the legal question under

wedlock children, single-parent families, difficulties in property disputes after the dissolution of what amount to common law marriages in a state where such marriages are not recognized, or other unforeseen consequences. *See Jackson*, 2012 WL 3255201, at *39–41. Because the family is the basic societal unit, the State could have validly reasoned that the consequences of altering the traditional definition of civil marriage could be severe. *See id.* at *44 (“[I]t is not beyond rational speculation to conclude that fundamentally altering the definition of marriage to include same-sex unions might result in undermining the societal understanding of the link between marriage, procreation, and family structure.”). The Court finds Judge Kay’s conclusions concerning the rational bases for Hawaii’s marriage–civil union regime equally persuasive as applied to Nevada’s marriage–domestic partnership regime. *See id.* at *38–45.

Although a nontrivial argument can be made that the nature of marriage as a philosophical matter is any exclusive romantic relationship between any two (or more) persons, or some other such definition, and that the condition that the partners in a marriage must be one man and one woman is only a special case no matter how historically consistent, the State of Nevada need not eschew tradition in the name of philosophical purity, not in the context of rational basis review, anyway, and certainly not where the philosophical issue is itself controversial. The legal question is not whether Plaintiffs have any conceivable rational

rational basis review is not whether spouses or prospective spouses have good reasons (in a court’s reckoning) for believing that their marriages will be harmed by the inclusion of same-sex couples in the institution of civil marriage. The question is whether the State has any conceivable basis, even speculatively, to believe that spouses or prospective spouses might feel this way, for whatever reason, and that their reaction to the redefinition of civil marriage to include same-sex couples might have detrimental societal effects. *See Jackson*, 2012 WL 3255201, at *44. One might argue by analogy that the expected reaction of bigots would be an insufficient reason for a state to refuse to implement policies of racial equality, but the analogy would be flawed, because race-based distinctions command strict scrutiny under the Equal Protection Clause, whereas sexual-orientation-based restrictions command only rational basis scrutiny.

1 philosophical argument concerning the nature of marriage. They do.⁸ The legal question is
2 whether the State of Nevada has any conceivable rational basis for the distinction it has drawn. It
3 does, and the laws at issue in this case therefore survive rational basis review under the Equal
4 Protection Clause.⁹

5 Plaintiffs also argue that because the State has provided for domestic partnerships with
6 most of the same rights and responsibilities that accompany civil marriage, the State has
7 necessarily abandoned any possible basis for withholding the title of “marriage” apart from the
8 sole and improper purpose of stigmatizing Plaintiffs. But the Court finds that there are rational
9 bases for withholding the title of marriage. *See supra*. The conceivable benefits to society from
10 maintaining a distinction between traditional marriage and same-sex domestic partnerships
11 provide a rational basis for the State of Nevada to maintain the distinction, even if one result of
12 the distinction is the stigmatization of same-sex relationships or if bias was one motivating
13 factor. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001) (citing *Cleburne*, 473
14 U.S. at 448) (noting that even where animus is a motivating factor, a law survives rational basis
15 review where there is also a conceivable legitimate purpose behind it). Preserving the traditional
16 institution of marriage is different from the mere moral disapproval of a disfavored group,

17
18 ⁸If the State were to adopt a “genderless marriage” regime, it would almost certainly
19 withstand a putative equal protection attack by opposite-sex spouses arguing that the state had no
20 rational basis for implementing genderless marriage because of some perceived reduction in the
prestige of their traditional marriages, i.e., a putative “reverse stigma” argument. Where both
sides of an issue have fair arguments, the State may choose between them without risking an
equal protection violation under rational basis review.

21 ⁹ As to a putative due process challenge, which Plaintiffs do not bring, unlike laws against
22 homosexual activity per se, which were not prevalent in the United States until the late
Nineteenth Century and therefore have no “ancient roots,” *see Lawrence*, 539 U.S. at 568 70, the
23 prohibition against same-sex civil marriage has been nearly ubiquitous since antiquity, *see, e.g.,*
Andersen v. King Cnty., 138 P.3d 963, 976 77 (Wash. 2006) (en banc) (collecting cases). Until
24 very recently, it has been utterly unknown to the history or traditions of this Nation, and it is still
unknown in the vast majority of American jurisdictions, as well as in the vast majority of
25 international jurisdictions. Unlike private, consensual, homosexual activity, therefore, same-sex
civil marriage is not a fundamental right.

1 *Massachusetts v. HHS*, 682 F.3d 1, 16 (1st Cir. 2012), and the positive benefits of preserving the
2 distinction need only be conceivable for the state's laws to stand. Plaintiffs argue that preserving
3 the traditional institution of marriage as between one man and one woman necessarily excludes
4 same-sex couples, based at least in part upon a normative bias. But this is permitted so long as
5 preserving the traditional institution of marriage is a legitimate state interest in-and-of-itself and
6 any attendant bias is based upon a distinction subject only to rational basis review. *See Cleburne*,
7 473 U.S. at 448.

8 Plaintiffs' argument that Nevada's creation of a parallel but differently titled civil
9 institution for same-sex relationships necessarily renders the State's pre-existing prohibition
10 against same-sex marriages invalid, if accepted, would permit a plaintiff to show an equal
11 protection violation by the very fact that a state had recently *increased* his rights in relevant
12 respects, which is not the law. *Cf. Jackson*, 2012 WL 3255201, at *37 (noting that such a holding
13 would both discourage the states from experimenting with social change for fear of
14 constitutionalizing issues and would provide perverse incentives for the states to withhold
15 rights). Perhaps if there had previously been no such institution as civil marriage, and if the State
16 of Nevada had simultaneously, or nearly so, created both the institutions of civil marriage and
17 domestic partnership, excluding only same-sex couples from one but not the other, Plaintiffs'
18 stigmatization argument would carry more weight. In such a case, although same-sex partners'
19 rights would have been increased by the State in an absolute sense, their rights with respect to
20 other persons' rights would have been simultaneously decreased, indicating a potential
21 constitutional harm. Here, the State of Nevada has only increased Plaintiffs' rights and has not
22 simultaneously decreased them with respect to other persons' rights. The traditional form of civil
23 marriage predates the State of Nevada by many centuries, having existed in the same form in the
24 relevant respect (one man and one woman) for millennia in Nevada's predecessor societies. The
25 State of Nevada's extension of the fundamental (and most of the civil) incidents of marriage to

1 same-sex couples in recent years cannot reasonably be said to reflect anti-homosexual animosity
2 under these circumstances, but only benevolence. Perceiving a violative malevolence in the
3 expansion of rights alone is possible only if one presupposes that there is an additional right
4 being withheld, which reasoning is circular. Where a minority group's rights have not been
5 decreased by a state's acts either absolutely or in relation to other person's rights, the proffered
6 additional right must stand on its own.

7 Furthermore, standing in this case cannot be based upon an allegation of harm consisting
8 of pure stigma, because the relief Plaintiffs seek cannot redress that measure of harm. *See Lujan*
9 *v. Defenders of Wildlife*, 504 U.S. 555, 568 (1992). Any stigma arising out of the State's refusal
10 to recognize same-sex relationships as "marriages" simply cannot be removed by judicial decree.
11 In some cases, where the stigma complained of is entirely created by the state, as in the
12 hypothetical example given above, a judicial decree might remedy it. Here, however, one-
13 man one-woman civil marriage is a longstanding institution not created by State of Nevada, and
14 the decision not to recognize same-sex marriages was adopted by the People through ballot
15 initiative. It is not plausible that the People of the State of Nevada will change their views on the
16 matter because of any judicial decree or proclamation by the State (voluntary or not) that
17 conflicts with their private beliefs concerning the nature of marriage. Nor can a judicial decree
18 cure the State's own contribution to any stigma, because an act or statement made involuntarily is
19 not, and will be known both by Plaintiffs and the rest of the populace not to be, a genuine
20 reflection of the State's viewpoint, which is, of course, simply the collection of the viewpoints of
21 its citizens. That is, the People will know because they know their own opinions that the
22 State of Nevada does not approve of same-sex marriages despite the fact that it has been forced
23 by judicial decree to act as if it does. This is not to say that Plaintiffs have no recourse, but they
24 must rely on more than pure stigma as the measure of harm. Plaintiffs must rely on a measure of
25

1 harm that the Court can actually redress, i.e., the denial of equal treatment under the law itself.

2 The Court has addressed Plaintiffs' claim in this regard under the relevant standards.

3 **4. *Romer v. Evans***

4 There is an additional line of cases to consider when a state withdraws an existing right or
5 enacts sweeping, draconian changes in a minority group's legal status, and the Court finds that
6 analysis under this line of cases is not precluded by *Baker*. In *Romer*, the Supreme Court ruled
7 that a law born of animosity for a discrete minority group that withdraws existing rights from the
8 group, or which effects a sweeping change in the legal status of the group, does not survive
9 rational basis review under the Equal Protection Clause. *See* 517 U.S. at 627 ("The amendment
10 withdraws from homosexuals, but no others, specific legal protection from the injuries caused by
11 discrimination, and it forbids reinstatement of these laws and policies").¹⁰

12 Based upon *Romer*, the Court of Appeals recently struck down an amendment to the
13 California Constitution that had withdrawn an existing state law right to same-sex marriage while
14 leaving the constitutional incidents of marriage in place via the domestic partnership laws. *See*
15 *Perry*, 671 F.3d at 1076 (citing *Romer*, 517 U.S. at 634-35) ("Proposition 8 singles out same-sex
16 couples for unequal treatment by *taking away* from them alone the right to marry, and this action
17 amounts to a distinct constitutional violation because the Equal Protection Clause protects
18 minority groups from being targeted for the deprivation of an existing right without a legitimate
19 reason."). The *Perry* court, however, explicitly declined to address whether the amendment
20 would have failed under the Fourteenth Amendment had there never been a right to same-sex

21 ¹⁰The *Perry* Court struck down the amendment to the California Constitution enacted via
22 Proposition 8 because it believed *Romer* prevented the targeted withdrawal of any right
23 whatsoever from a minority group, whereas the dissent believed *Romer* prevented only sweeping
24 changes in a minority group's legal status. In other words, the dispositive disagreement in that
25 case concerned the meaning of *Romer*, which is somewhat cryptic as to its applicability beyond
the facts of that case itself. Although the *Romer* doctrine is still nascent and controversial, the
Court will for the sake of argument assume that either type of state action—withdrawal of an
existing right or a sweeping change in legal status—is infirm under *Romer*.

1 marriage in California. *See id.* at 1064. The dispositive issue in *Perry* was that the State of
2 California had targeted a discrete group and withdrawn an existing right from its members. *See*
3 *id.* at 1076. The People of California had only withdrawn from same-sex couples the right to the
4 title of “marriage,” while leaving the constitutional incidents of marriage in place via a domestic
5 partnership regime. *See id.* at 1077–78 (“Proposition 8 did not affect [certain civil incidents of
6 marriage under California law] or any of the other constitutionally based incidents of marriage
7 guaranteed to same-sex couples and their families. In adopting the amendment, the People
8 simply took the designation of marriage away from lifelong same-sex partnerships, and with it
9 the State’s authorization of that official status” (citations and internal quotation marks
10 omitted)). The Court of Appeals ruled that the right to the title of marriage was concrete enough
11 to establish an injury (though not itself of constitutional dimension), and that the withdrawal of
12 the right to the title of marriage was therefore unconstitutional under *Romer* regardless of the
13 constitutional dimension of the right itself. *See id.* at 1096 (“By using their initiative power to
14 target a minority group and withdraw a right that it possessed, without a legitimate reason for
15 doing so, the People of California violated the Equal Protection Clause.”).

16 Because there has never been a right to same-sex marriage in Nevada, *Romer* and *Perry*
17 are inapplicable here as to NRS section 122.020. That section of the NRS removed no
18 preexisting right and effected no change whatsoever to the legal status of homosexuals when
19 adopted by the Nevada Territorial Legislature in 1861. *See Nev. Comp. Laws* § 196 § 2, at 65
20 (1861–1873).

21 It can be argued, however, that Section 21 removed an existing right for the purposes of a
22 *Romer* analysis. Section 21 did not remove any preexisting right to the formation of same-sex
23 marriage, but it did make it more difficult to change section 122.020 and other statutes through
24 the democratic process. Before the adoption of Section 21, the People of the State of Nevada
25 could have democratically altered section 122.020 via legislation to provide for same sex

1 marriages. Section 21 removed their ability to do so. Although homosexuals have meaningful
2 political power, they would now have to convince their fellow citizens to amend the Nevada
3 Constitution to achieve the particular democratic goal of legalizing same-sex marriage in
4 Nevada, and it is more difficult to amend the Nevada Constitution than it is to amend the NRS.

5 The *Romer* Court does not, however, appear to have announced a general constitutional
6 principle that any state action making it more difficult for the People to achieve a particular goal
7 in aid of the rights of a discrete minority group through democratic processes is necessarily
8 infirm under the Equal Protection Clause. Such a rule would be so broad and dramatic as to be
9 unmistakable when announced.¹¹ Rather, the *Romer* Court emphasized the insidious nature of
10 laws that impose general hardships, as contrasted with laws imposing only particular disabilities.
11 See 517 U.S. at 633 (“Respect for this principle explains why laws singling out a certain class of
12 citizens for *disfavored legal status or general hardships* are rare. A law declaring that *in general*
13 it shall be more difficult for one group of citizens than for all others to seek aid from the
14 government is itself a denial of equal protection of the laws in the most literal sense.” (emphases
15 added)). That is not to say that laws imposing particular disabilities are immune from equal
16 protection challenges, but it is to say that such challenges are governed by traditional equal
17 protection principles, not by *Romer*, which governs only the imposition of generalized
18 disabilities upon a disfavored group.

19
20
21 ¹¹Although, according to a separate line of cases not argued by the parties, an equal
22 protection violation may result from a law making it more difficult for members of a racial
23 minority group to protect themselves through democratic processes, such violations only occur in
24 the context of race. *Hunter v. Erickson*, 393 U.S. 385, 391 93 (1969); *Coalition to Defend*
25 *Affirmative Action v. Regents of the Univ. of Mich.*, ---F.3d ---, 2012 WL 5519918, at *8 (6th
Cir. 2012). Also, the *Hunter* principal applies only when the racial classification appears on the
face of the challenged law. *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 484 85 (1982).
Section 21 contains no facial distinction on the basis of sexual orientation, much less on the basis
of race.

1 Where a legitimate state purpose is furthered by the challenged legislation, as here, it
2 survives an equal protection analysis at the rational basis level. There was no legitimate state
3 purpose behind the challenged law in *Romer*, because the sole conceivable purpose there was
4 anti-homosexual animus. *See id.* at 634–35. Colorado’s constitutional provision “prohibit[ed] all
5 legislative, executive or judicial action at any level of state or local government designed to
6 protect the named class,” *id.* at 624, effected a “[s]weeping and comprehensive . . . change in
7 legal status,” *id.* at 627, and was “inexplicable by anything but animus toward the class it
8 affect[ed],” *id.* at 632. Section 21, by contrast, imposes a single, particularized disability, not a
9 broad, sweeping change in legal status, and it was not passed without any legitimate purpose.
10 *Romer* was an extreme case concerning a novel and ambitious type of law—a law that identified
11 a minority group and declared that no organ of the State of Colorado should dare attempt to
12 protect the group under the law. That kind of law is prevalent only under totalitarian regimes,
13 and the *Romer* Court noted that it was totally outside of American constitutional traditions to
14 enact such laws. *See id.* at 633. Section 21 is not in the character of the constitutional provision
15 struck down in *Romer*. It does not purport to remove any of the many protections already in
16 place in the State of Nevada prohibiting discrimination on the basis of sexual orientation or to
17 prevent the adoption of additional protections. It prevents only the amendment of state statutes
18 to provide for same-sex marriage—a targeted discrimination, to be sure, but one based upon a
19 distinction subject only to rational basis review, based at least in part upon a legitimate state
20 interest, i.e., the protection of the traditional institution of marriage, and not based purely upon
21 anti-homosexual animus, as the constitutional provision in *Romer* was. Section 21 therefore
22 survives *Romer* review.

23 Because the maintenance of the traditional institution of civil marriage as between one
24 man and one woman is a legitimate state interest, because the exclusion of same-sex couples
25 from the institution of civil marriage is rationally related to furthering that interest, and because

1 the challenged laws neither withdraw any existing rights nor effect a broad change in the legal
2 status or protections of homosexuals based upon pure animus, the State is entitled to summary
3 judgment. As to those Plaintiffs validly married in other jurisdictions whose marriages the State
4 of Nevada refuses to recognize, the protection of Nevada's public policy is a valid reason for the
5 State's refusal to credit the judgment of another state, lest other states be able to dictate the
6 public policy of Nevada. *See Nevada v. Hall*, 440 U.S. 410, 423 24 (1979) ("Full Faith and
7 Credit does not . . . enable one state to legislate for the other or to project its laws across state
8 lines so as to preclude the other from prescribing for itself the legal consequences of acts within
9 it." (quoting *Pac. Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493, 504 05 (1939))).

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1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Motions to Dismiss (ECF Nos. 32, 33) are
3 GRANTED IN PART and DENIED IN PART. The Complaint is dismissed as precluded by
4 *Baker v. Nelson* with respect to the traditional equal protection challenge, but the Complaint is
5 not dismissed with respect to the challenge under *Romer v. Evans*.

6 IT IS FURTHER ORDERED that the Motions for Summary Judgment (ECF Nos. 72, 74,
7 85) are GRANTED.

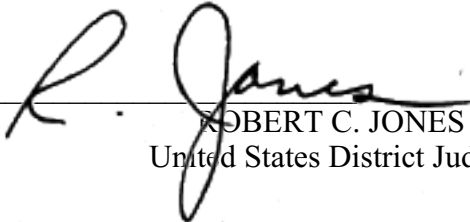
8 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 86) is
9 DENIED.

10 IT IS FURTHER ORDERED that the Motion for Leave to File Reply (ECF No. 100) is
11 DENIED. No party has been permitted to file a reply. The arguments have been
12 comprehensively presented, and no reply is necessary to preserve the relevant issues on appeal.

13 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

14 IT IS SO ORDERED.

15 DATED: This 26th day of November, 2012.

16
17 
18 ROBERT C. JONES
19 United States District Judge
20
21
22
23
24
25

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME 2 OF 5**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,
Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

PLAINTIFFS' NOTICE OF APPEAL

Notice is hereby given pursuant to Fed. R. App. P. 3 that all Plaintiffs, through counsel, respectfully appeal to the United States Court of Appeals for the Ninth Circuit the District Court's November 26, 2012 order, Dkt. 102, and final judgment, Dkt. 103, insofar as they (i) grant the motion to dismiss filed by Defendant Sandoval, Dkt. 32, and joined by Defendant Glover, Dkt. 33; (ii) grant the motions for summary judgment filed by Defendant Sandoval, Dkt. 85, Defendant Glover, Dkt. 74, and Defendant-Intervenor Coalition for the Protection of Marriage, Dkt. 72; (iii) deny Plaintiffs' motion for summary judgment, Dkt. 86; and (iv) deny Plaintiffs' motion for leave to file a summary judgment reply brief and supporting declarations, Dkt. 100 through 100-4.

The statutory basis for this appeal is 28 U.S.C. § 1291. A copy of the order and a copy of the final judgment are attached hereto as Exhibits A and B, respectively.

DATED: December 3, 2012

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
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I hereby certify that I will electronically file the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on December 3, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

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DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

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Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**PLAINTIFFS' MOTION FOR LEAVE
TO FILE SUMMARY JUDGMENT
REPLY BRIEF AND SUPPORTING
DECLARATIONS OF MICHAEL
LAMB, PH.D. AND TARA BORELLI**

1 Plaintiffs respectfully move this Court for an order permitting them to file a brief in reply
 2 to the opposition of Defendant-Intervenor Coalition for the Protection of Marriage (the
 3 “Coalition”) to Plaintiffs’ motion for summary judgment, in order to address new material raised
 4 for the first time in the Coalition’s opposition brief and the Coalition’s related filings.

5 At a prior August 10, 2012 hearing setting a schedule for any motions for summary
 6 judgment, this Court expressly noted that parties could seek leave to file reply briefs:

7 If you feel the need because of a response or something raised brand-new in the response
 8 for the first time, then, of course, you can ask for permission and the Court will
 9 undoubtedly grant you permission to file a reply for newly-raised issues in a response. ...
 So if in the response for the first time a party is raising something anew, of course, ask
 permission and I’ll give you permission to reply to that item.

10 Transcript of Motion Hearing, August 10, 2012, Dkt. 69 at 16:18-22, and 17:3-5. Plaintiffs seek
 11 leave to address new matters raised for the first time in both the Coalition’s opposition to
 12 Plaintiffs’ motion for summary judgment, Dkt. 95, and in a supplement to the Coalition’s index
 13 that the Coalition untimely filed after the deadline had passed for opposition briefs, Dkt. 99.

14 On October 25, 2012, the Coalition filed its opposition to Plaintiffs’ motion for summary
 15 judgment raising new arguments regarding the consistency of the testimony of Michael Lamb,
 16 Ph.D., Plaintiffs’ expert on children development, and about the qualifications of two authors for
 17 certain sources cited by the Coalition in opposition to Dr. Lamb’s testimony. Dkt. 95 at 14-15.
 18 In addition to these new arguments, the Coalition also submitted a previously undisclosed article
 19 that contains a range of factual assertions about Dr. Lamb and claims to find contradictions in Dr.
 20 Lamb’s work, based on articles published early in his career and his testimony in *Perry v.*
 21 *Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).¹

22 Thereafter, on October 31, 2012, the Coalition untimely filed an “Addition to Appendix,”
 23 Dkt. 99, consisting of an article by Mark Regernus (which also was not offered in the form of
 24 admissible evidence). Although the article indicates that it was available online since August 28,
 25 2012, Dkt. 99, Coalition’s Appendix at 1459, the Coalition inexplicably neglected to include the
 26 article in the appendix to the Coalition’s motion for summary judgment, which the Coalition filed
 27 on September 10, 2012, 13 days after the article became available on line. Nor did the Coalition

28 ¹ As with all of the other materials submitted by the Coalition thus far, the substance of this
 article was not even offered in the form of admissible evidence.

include the article in its appendix supporting its brief in opposition to plaintiffs' motion for summary judgment, which the Coalition filed on October 25, 2012, which was 58 days after the article became available on line. Dkt. 95-1. Instead, 64 days after the article became available online, and six days after summary judgment oppositions were due, the Coalition filed the document without even seeking permission to do so untimely.

Accordingly, pursuant to the Court's guidance at the September 10, 2012 hearing, Plaintiffs respectfully request that the Court grant their motion for leave to file a reply brief and supporting declarations, addressing only the new issues raised in the Coalition's opposition brief and this Addition to Appendix. Local Rule 7-2(e) normally authorizes the filing of a reply brief in support of a motion for summary judgment within 14 days after a brief in opposition, and Plaintiffs have timely filed this motion within 14 days after the Coalition filed its opposition. Plaintiffs' proposed Brief in Reply to the Coalition's Opposition to Plaintiff's Motion for Summary Judgment is attached hereto as Exhibit A; the supporting declarations of Michael Lamb, Ph.D. and Tara Borelli are attached hereto as Exhibits B and C, respectively; and a proposed order is attached hereto as Exhibit D.

DATED: November 8, 2012

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
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I hereby certify that I will electronically file the foregoing document, and all exhibits, with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on November 8, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

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Exhibit A

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**PLAINTIFFS' BRIEF IN REPLY TO
THE COALITION'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

1 Plaintiffs respectfully submit this reply brief in response to two new arguments raised by
2 Defendant-Intervenor Coalition for the Protection of Marriage (the “Coalition”) in its opposition
3 to Plaintiffs’ motion for summary judgment, which were not previously raised in the Coalition’s
4 earlier briefs in this case: (1) that earlier work of Plaintiffs’ expert on child development,
5 Michael Lamb, Ph.D., purportedly contradicts the expert opinions Dr. Lamb has offered in this
6 case; and (2) that the authors upon which the Coalition chiefly relies are “at least as qualified in
7 their fields” as Dr. Lamb is. Both arguments are patently untrue.

8 First, the Coalition’s attack on Dr. Lamb is lacking in any basis whatsoever. The
9 Coalition relies on a piece written not by another child development expert, but instead by a
10 “legal analyst,” William Duncan. Dkt. 95-1, Coalition’s Appendix at 1332-36. Duncan makes
11 two claims about Dr. Lamb: first, that Dr. Lamb’s expert conclusions purportedly are
12 contradicted by Dr. Lamb’s early writings on fatherhood; and second, that Dr. Lamb contradicted
13 his own testimony during the *Perry* trial. The first assertion is misleading. Dr. Lamb explained
14 in detail during his *Perry* testimony that his early speculation about the role of fathers in child
15 development has been superseded by advances in research, which have proved the early
16 hypotheses incorrect. (Lamb Decl. ¶¶ 12-15.) With regard to the second assertion, the selectively
17 quoted portions of Dr. Lamb’s testimony that Duncan heralds as self-contradictory are either
18 deliberately taken out of context – with glaring omissions of Dr. Lamb’s explanations for his
19 answers – or are actually *consistent* with Dr. Lamb’s expert opinions in this case. (Lamb Decl.
20 ¶ 16.)

21 Second, the assertion that the two principal authors relied upon by the Coalition, Mark
22 Regnerus and Loren Marks, are “as qualified” as Dr. Lamb is so divorced from reality as to be
23 incapable of being given any credibility whatsoever. Dr. Lamb is a preeminent expert in child
24 development who has published more than 600 publications either in peer-reviewed professional
25 journals or in books published by academic presses, who has received the American
26 Psychological Association’s award for lifetime achievement in 2003, and whose expert testimony
27 has been admitted in at least 10 cases involving lesbian and gay parents over the last four years
28

1 alone. Pltfs' Appendix, Dkt. 86-3 at 315, 317, 333.¹

2 In contrast, Marks was initially designated as an expert by the Proposition 8 proponents in
3 *Perry*, but they withdrew him after the plaintiffs in that case filed a *Daubert* challenge
4 demonstrating his utter lack of qualifications to testify about child adjustment and same-sex
5 parents. *Id.* (See Declaration of Tara Borelli in Support of Plaintiffs' Summary Judgment Reply
6 Brief ("Borelli Decl.") Ex. 1.)² Regnerus's article, *How different are the adult children of parents*
7 *who have same-sex relationships?*, appears to be his first foray into the field of parenting by
8 same-sex couples. But Regnerus's data and analysis are so faulty that the paper does not even
9 measure what it purports, and does not allow for any conclusions about the quality of lesbian and
10 gay parents. Regnerus himself even acknowledged that the vast majority of his respondents did
11 not come from planned families with lesbian or gay parents. Pltfs' Appendix, Dkt. 86-3 at 326
12 n.5. As Dr. Lamb testified, the majority of respondents in Regnerus's study described as having a
13 "gay father" or "lesbian mother" spent very little time living in households headed by same-sex
14 couples, and most were in families that went through divorces and transitions to single-parent or
15 step-family life, which are known correlates of poorer child outcomes. In contrast, for the
16 heterosexual parents in his study Regnerus *excluded* all who had gone through divorce, including
17 only those that remained intact throughout the respondents' childhoods. Pltfs' Appendix, Dkt.
18 86-3 at 325.

19 As soon as the Regnerus and Marks papers were released, experts in the field identified so
20 many deficiencies with them that the publishing journal ordered an internal audit. (Declaration of
21 Michael Lamb, Ph.D. Supporting Plaintiffs' Summary Judgment Reply Brief ("Lamb Decl.")

22 ¹ Dr. Lamb also has written or edited nearly 50 books in the field of developmental
23 psychology, development in infancy, mother-child relationships, father-child relationships, the
24 role of the father, sibling relationships, the effects of nontraditional rearing circumstances, the
25 effects of daycare, child abuse, and forensic interview practices. Many of his books are used
26 widely as texts in graduate courses. Pltfs' Appendix, Dkt. 86-3 at 315.

27 ² Though the Coalition cites Marks as criticizing the research on child adjustment described
28 by Plaintiffs' expert, Marks admitted in deposition in *Perry* that his "primary research interest" is
in "faith and families," and that he does not "study the specific concept of child adjustment."
(Borelli Decl. Ex. 2 at 53:21-54:17.) He has "never conducted any original research on families
headed by lesbian or gay parents" or "published writings or articles in the press discuss[ing]
children raised by lesbian or gay parents." (*Id.* at 58:3-12.) He further admitted that he formed
his beliefs about "the ideal family structure" before doing any research in this area and, indeed,
before he had even graduated from college. (*Id.* at 275:5-22.)

¶ 5.) *The internal audit concluded that the journal should not have published either paper.*

(Lamb Decl. ¶¶ 5-8, Ex. 1.)

In the same edition of the journal that published the audit, Regnerus wrote a response to his critics, **acknowledging** that the failings identified in his data and analysis were in fact true. (Lamb Decl. ¶ 9-11 (Regnerus’s response acknowledged that most of the children in his so called “lesbian mother” and “gay father” groups spent very little time living in households headed by same-sex couples; that he had not controlled for differences between groups related to transitions involving divorce or single parenting, which are known correlates of poorer outcomes; and that only two respondents out of his entire sample lived with same-sex parents throughout their childhood).)

Indeed, it is telling that the Coalition has chosen to rely upon Regnerus and Marks’s articles, rather than to submit a scrap of evidence in admissible form, such as the sworn testimony of those individuals.³ The purpose of the extended 45-day period afforded by this Court for summary judgment oppositions was to facilitate the opportunity to depose witnesses relied upon in the parties’ motions, Tr. of Mot. Hearing, August 10, 2012, Dkt. 69 at 11:5-11, and yet the Coalition has opted to circumvent that process. Instead, it has tossed bald assertions about their authors’ qualifications into its opposition brief, preventing Plaintiffs from testing these individuals’ qualifications and opinions through deposition. This appears to be a deliberate attempt to shield Marks and Regnerus from the adversarial process of discovery, where their arguments have fared poorly in the past. *See Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 944-53 (N.D. Cal. 2010) (finding testimony offered by proponents of Proposition 8 on similar topics to be unreliable). Upon closer examination of Regnerus and Marks, the Coalition’s motivation is understandable.

Aside from the new issues described above, the Coalition raises no new substantive arguments to support its position, restating the same claims that were answered by Plaintiffs’ motion for summary judgment, Dkt. 86, and Plaintiffs’ opposition to Defendants’ motions for

³ In fact, the Coalition claimed in its motion to intervene that the “evidence – the plaintiffs’ and the Coalition’s – must consist of ... expert testimony that satisfies the requirements of Rule 702, FRE.” Dkt. 42 at 3.

summary judgment, Dkt. 98, which briefing Plaintiffs incorporate herein. For all of those reasons, Plaintiffs respectfully request that the Court deny Defendants' motions for summary judgment, and enter judgment in Plaintiffs' favor.

DATED: November 8, 2012

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
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/s/ Tara L. Borelli

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**DECLARATION OF MICHAEL
LAMB, PH.D. IN SUPPORT OF
PLAINTIFFS' SUMMARY
JUDGMENT REPLY BRIEF**

1 I, Michael Lamb, Ph.D., hereby declare and state as follows:

2 1. I am a Professor of Psychology in the Department of Psychology at the University
3 of Cambridge in the United Kingdom. I have actual knowledge of the matters stated in this
4 declaration and could and would so testify if called as a witness.

5 2. On June 24, 2011, I submitted my expert declaration in this matter, which set forth
6 my relevant background and experience (my "Original Declaration," Dkt. 86-3, Pltfs' Appendix
7 at 314-454), and attached my curriculum vitae and a list of my publications from the last 10 years
8 as Exhibits A and B respectively. On October 25, 2012 I submitted a supplemental declaration in
9 support of Plaintiffs' opposition to Defendants' motions for summary judgment (my
10 "Supplemental Declaration," Dkt. 98-1). My Original Declaration set forth the principal opinion
11 that I am offering in this case: that children and adolescents raised by same-sex parents are as
12 likely to be well-adjusted as children raised by heterosexual parents, including those children's
13 "biological" parents. My Supplemental Declaration responded to sources cited by the Coalition
14 for the Protection of Marriage (the "Coalition") in support of their arguments that children are
15 best adjusted when raised by married mothers and fathers who are their biological parents, that
16 children conceived through assisted reproductive technology experience poorer outcomes, and
17 that recent papers call into question the conclusion that the children of lesbians and gay men are
18 as likely to be well-adjusted as children raised by married heterosexual couples. As I explained in
19 my Supplemental Declaration, neither the sources cited by the Coalition nor the authoritative
20 body of research on this subject support their arguments.

21 3. I have read the relevant portions of the "Coalition's Response Brief Re: Plaintiffs'
22 Motion For Summary Judgment." Dkt. 95 at 14-15. On pages 14 through 15, the Coalition raises
23 two arguments in an attempt to refute my prior conclusions, but neither is credible.

24 a) First, the Coalition claims that the articles by Loren Marks and Mark
25 Regnerus discussed in my Original Declaration should be credited because they appeared in peer-
26 reviewed journals. See Dkt. 95 at 14 (citing my discussion of Loren Marks and Mark Regnerus at
27
28

1 Dkt. 86-3 at 67-71).¹ But as explained further below, both pieces were subsequently discredited
2 by an internal audit conducted by the journal that published them, and, more importantly, neither
3 piece actually supports the conclusions for which it has been cited. A response by Mark
4 Regnerus to his critics, discussed below, actually acknowledges that his study did not even
5 “measure” parents’ sexual orientation, and concedes the other problems that I discussed in my
6 Original Declaration. Dkt. 99, Coalition’s Appendix at 1460.

7 b) Second, the Coalition wrongly claims that my conclusions in this case are
8 contradicted by my own work, citing some of my early speculation in the 1970s about fatherhood.
9 Dkt. 95 at 14-15. In this regard, the Coalition relies on a piece from an advocacy organization,
10 written by a “legal analyst” (not a child development expert), discussing my trial testimony in
11 *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010). This piece disingenuously
12 ignores my testimony at that trial explaining how that early speculation had been refuted by
13 decades of empirical research by respected experts in the field. It is this authoritative body of
14 research that I summarized in my *Perry* testimony, as well as in my Original Declaration. Dkt.
15 86-3, Pltfs’ Appendix at 318-330.

16 **A. Recent pieces by Marks and Regnerus do not support conclusions about the quality**
17 **of lesbian and gay parents, and have been discredited in an audit by the journal that**
18 **published them.**

19 4. I have previously testified why the articles believed by the Coalition to raise
20 questions about the suitability of same-sex parents do not actually measure or accomplish what
21 they claim to do. See Dkt. 86-3, Pltfs’ Appendix at 324-26 (explaining that Regnerus’s piece,
22 *How different are the adult children of parents who have same-sex relationships? Findings from*
23 *the New Family Structures Study*, did not actually assess parental sexual orientation, or children
24 raised by intact families with same-sex parents); Dkt. 98-1 at 6-7 (explaining that Marks’s piece,
25 *Same-Sex Parenting and Children’s Outcomes: A Closer Examination of the American*
26 *Psychological Association’s Brief on Lesbian and Gay Parenting*, is a materially incomplete
27 review of the literature that mischaracterizes the extensive research about same-sex parents

28 ¹ The Coalition’s reference to my Original Declaration does not use the correct pagination for that document, but nonetheless clearly refers to my discussion of the articles by Loren Marks and Mark Regnerus.

published before 2005, and ignores entirely the many informative studies published since then); Dkt. 86-3, Pltfs' Appendix at 327 (same).

5. Both Regnerus's and Marks's pieces were subsequently discredited by an internal audit conducted by the journal that published them. See Darren E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, Social Science Research 41 (2012) 1346–1349. A true and correct copy of this audit is attached hereto as Exhibit 1.

6. Speaking about both the Regnerus and Marks pieces, the auditor noted that “[b]oth papers have serious flaws and distortions” and “neither paper should have been published.” *Id.* at 1347, 1349.

7. With respect to the Regnerus piece, the auditor observed:

Reviewers [of Regnerus's article] uniformly downplayed or ignored the fact that the study did not examine children of identifiably gay and lesbian parents, and none of the reviewers noticed that the data were inappropriate for a top-tier social scientific journal, particularly given the marginal population to which these estimates pertain. Throughout the paper, Regnerus points to the social and psychological deficits of children of gays and lesbians; yet, the study found only a handful of children of gays or lesbians. This is not a small semantic issue, since it cuts to the heart of what Regnerus has argued in his paper and in the media.

8. With respect to the Marks piece, the auditor wrote:

I was very disappointed to see a paper like the Marks paper published in [Social Science Review]. ... [I]t appears to conduct a lowbrow meta-analysis of studies of the effect of same sex parents on children, [and] no ... systematic meta-analysis [was] conducted. It is an argumentative review paper trying to make a case against a particular conclusion in an [American Psychological Association] brief. Reviewers should have known that this was inappropriate for a journal that publishes original quantitative research.

9. A subsequent piece by Mark Regnerus entitled *Parental same-sex relationships, family instability, and subsequent life outcomes for adult children: Answering critics of the New Family Structures Study with additional analyses*, which responds to the widespread critiques of the deficiencies in his article, actually recognizes the problems I identified with his study. I observed in my Original Declaration that most of the children in the so called “lesbian mother” and “gay father” groups spent very little time living in households headed by same-sex couples. Dkt. 86-3, Pltfs' Appendix at 325. Regnerus recognizes that this is true. He reports that, of the 85 respondents who reported mothers who had same-sex relationships, the vast majority – 51 of

1 them – lived with the same-sex couple for two years or less. Dkt. 99, Coalition’s Appendix at
 2 1461. Only six lived with a same-sex couple for 10 years. *Id.* at 1462. Only two respondents
 3 reported living with a same-sex couple from the beginning of their lives to the age of 18. *Id.*
 4 Most of the “lesbian mother” and “gay father” participants were the product of failed
 5 heterosexual marriages whose parents had same-sex relationships at some point in time. This
 6 study does not tell us anything about children who grow up in families with same-sex parents.

7 10. I also testified that most of Regnerus’ so called “gay father” and “lesbian mother”
 8 participants were in families that went through divorces and transitions to single-parent or step-
 9 family life, which are known correlates of poorer child outcomes, while Regnerus *excluded* from
 10 his heterosexual comparison group all of the families that went through divorce and family
 11 transitions. Dkt. 86-3, Pltfs’ Appendix at 325. This, too, Regnerus acknowledges. Dkt. 99,
 12 Coalition’s Appendix at 1461 (acknowledging that he did not control for these differences
 13 between the two groups, and that “in an ideal data world, that makes sense”); *id.* at 1463 (unlike
 14 in the intact heterosexual families category, Regnerus included in his lesbian mothers and gay
 15 fathers categories parents who were *single*, another known correlate of adjustment difficulties).
 16 The “alternative analyses” reported by Regnerus in his new article do not address this
 17 fundamental problem: He compared exclusively intact heterosexual parent families with mostly
 18 non-intact “gay father” and “lesbian mother” families and, thus, could legitimately only conclude
 19 from this study something that we have long known – that family break-up is associated with
 20 poorer child outcomes.

21 11. Nothing in Regnerus’s new piece alters my original conclusion that his study did
 22 not actually measure outcomes for children raised by same-sex parents; to the contrary, Regnerus
 23 has confirmed my concerns.

24 **B. Early hypotheses about fathers’ roles in child development have been proven**
 25 **incorrect by an extensive body of research; this research demonstrates beyond**
 26 **dispute that the gender of the parents has no bearing on children’s adjustment.**

27 12. When I began my research in the early 1970s, as I testified in *Perry*, many
 28 believed that children needed to be raised in heterosexual families that include fathers in order to
 be well-adjusted, and I initially assumed that this hypothesis was likely to be true, although it had

1 not been established by empirical research. As explained further below, a robust body of
2 evidence-based research has since proven that hypothesis incorrect, and scientists in the field
3 have long since discarded the idea that parents' gender affects children's adjustment.

4 13. My initial research focused on the attachments that young babies form to their
5 mothers and fathers. In that early research, I explored differences in the ways in which mothers
6 and fathers behaved and examined whether these differences were in fact important to children's
7 adjustment, and whether they showed that children needed to be raised by both male and female
8 parents. The results of both my research and that of other child development experts has
9 confirmed the conclusion that I discussed in my Original Declaration as well as in numerous
10 articles published by a variety of scholars over at least two decades: what makes parents effective
11 is the same regardless of their gender. Children do not need to have masculine-behaving fathers
12 or feminine-behaving mothers to be well-adjusted.

13 14. Instead, as I previously testified, three categories of factors account for the
14 adjustment of children and adolescents: the quality of the parent-child relationship, the quality of
15 the relationship between the parents, and the adequacy of resources to support the family
16 (sometimes referred to herein as "family process variables"). Dkt. 86-3, Pltfs' Appendix at 319.
17 Research in the field of child development began to focus on and coalesce around this emphasis
18 on family process variables in the early to mid-1980s, and by the early 1990s it was the
19 overwhelming consensus in the field. The literature and evidence are so extensive that experts in
20 the field consider this conclusion to be established beyond dispute.

21 15. I have reviewed a piece submitted in this case by the Coalition, which was written
22 by legal analyst William Duncan. Dkt. 95-1, Coalition's Appendix at 1332-36 (entitled
23 *Misplaced Reliance on Social Science Evidence in the Proposition 8 Case*). This piece discusses
24 the trial testimony I gave in the Proposition 8 case, but profoundly misrepresents what I said. For
25 example, the piece quotes from some of my early 1970s work described above, in which I was
26 testing that era's speculation regarding the way fathers might affect children's development. *Id.*
27 at 1333-35. Duncan suggests in his piece that the difference between these early beliefs and the
28 current scientific consensus I described can only be explained by ideological bias. *Id.* at 1334-35.

1 This allegation is untrue. Although Duncan quotes at some length from my testimony in *Perry*,
2 he does so selectively, and does not acknowledge that I answered at that trial precisely the
3 question he raises, explaining, as I have above, that research over the past three decades has
4 proved the early hypotheses about fatherhood incorrect. See Exhibit 2, attaching true and correct
5 copies of relevant excerpts from the *Perry* Transcript, at 1014:8 – 1015:5.

6 16. Duncan’s brief attributes a number of specific quotes about gender-differentiated
7 parenting and fathers to me, but all of them misstate my testimony:

8 a) Many of Duncan’s statements selectively quote me and deliberately omit
9 my *explanation* of that testimony. For example:

10 i) Duncan quotes from one of my early articles, written in 1975, in
11 which I stated, “It is disturbing that there appears to have been a devaluation of the father’s role in
12 western society such that many children may suffer affective paternal deprivation.” Dkt. 95-1,
13 Coalition’s Appendix at 1333. But as I explained in my testimony, I wrote that as a graduate
14 student at the beginning of my career, when there was a singular focus on the relationships
15 between children and their heterosexual mothers in the field, and complete inattention to the
16 possibility that children might have other significant relationships. Exhibit 2, *Perry* Transcript at
17 1072: 2-10. My article was intended to draw attention to the fact that, for children who grew up
18 with two heterosexual parents, it was important to study the role of both of their parents, not just
19 their mothers. *Id.* at 1072: 10-13. I subsequently came to understand that an even broader
20 examination of the significant relationships in children’s lives, including those with siblings and
21 grandparents, is needed if we are to understand fully the factors that affect children’s
22 development. *Id.* at 1072:14 – 1073:2. My belief that we need to broaden our understanding of
23 the factors shaping children’s development has been a consistent theme from the beginning of my
24 scholarly career.

25 ii) Duncan quotes a statement from an article I co-authored suggesting
26 that boys “growing up without fathers seem especially prone to exhibit problems in the areas of
27 sex role and gender identity development.” Dkt. 95-1, Coalition’s Appendix at 1333. When I
28 was asked about this statement during the *Perry* trial, I explained that the statement was actually

describing another author's work and that this hypothesis was not supported by subsequent research, which does not show differences in sex role and gender identity development in children raised in families without fathers. Exhibit 2, *Perry* Transcript at 1074: 11-16.

iii) Duncan quotes a statement from another early article I wrote, claiming that I said the data "suggests that the differences between maternal and paternal behavior are more strongly related to either the parents' biological gender or sex roles, than to either of their degree of involvement in infant care or their attitudes regarding the desirability of paternal involvement in infant care." Dkt. 95-1, Coalition's Appendix at 1333-34. But when I was asked about this during the *Perry* trial, I explained that this was a description I had written about another researcher's "study that was conducted ... in the late 1970s." I also explained "that is a finding that has not held up in subsequent research." Exhibit 2, *Perry* Transcript at 1069: 17-24; *see also* 1068: 15-21.

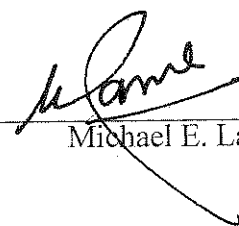
iv) Duncan takes out of context the questions I was asked suggesting that boys without resident fathers were prone to perform poorly at school and to be more poorly adjusted psychologically. Dkt. 95-1, Coalition's Appendix at 1334. Exhibit 2, *Perry* Transcript at 1074: 17-24. As I explained on the stand, it is not the absence of a male parent that accounts for these outcomes; instead, as I testified in *Perry*, these outcomes are explained by the family process variables I also discussed above, *e.g.*, the quality of parent-child relationships and exposure to parental conflict. Exhibit 2, *Perry* Transcript at 1075: 4-11.

v) According to Duncan, I stated that men and women are not "completely interchangeable with respect to skills and abilities," but he fails to acknowledge that the quote was expressly premised on several additional paragraphs of testimony explaining what I meant. Dkt. 95-1, Coalition's Appendix at 1335. I explained at trial that I had given that testimony in my deposition, during which "I continued for several paragraphs explaining what I meant," which was that the capacity to be a good parent is not determined by the parent's gender; rather, the quality of the parent-child relationship is generally shaped by the family process variables I have described above. *Perry* Transcript at 1065: 6-7.

vi) Duncan claims that I “admitted” that it is an accurate summary of the literature to say, “[w]e conclude that in practice the kind of mother-father relationship most conducive to responsible fathering in contemporary U.S. society is a caring, committed, collaborative marriage. Outside of this arrangement, substantial barriers stand in the way of active, involved fathering.” Dkt. 95-1, Coalition’s Appendix at 1334. Again he misrepresents my answer, which was that “It accurately summarizes the literature that they’re talking about, which is studies of heterosexual parents raising children, yes.” Exhibit 2, *Perry* Transcript at 1102: 10-12. As I have testified previously, there is a body of literature demonstrating that children in two-parent families on average tend to fare better than children in one-parent families. Dkt. 86-3, Pltfs’ Appendix at 321. But the lack of male or female parents *per se* is not a predictor of adjustment, and no conclusions can be drawn from such studies about the quality of parenting by lesbian and gay parents.

b) Duncan implies that all of the quotes he lists from my trial testimony contradict my expert opinion in *Perry*, which is the same opinion I have expressed here. That is not true. The testimony I gave in *Perry* is consistent with the conclusion that the children of lesbians and gay men are as likely to be well-adjusted as the children of heterosexuals. For example, Duncan cites my testimony about the differences between men and women, such as the fact that women tend to live longer than men and that men earn more money than women on average. Dkt. 95-1, Coalition’s Appendix at 1335. But these differences do not suggest that either men or women are superior parents, or that children with different-sex parents are more likely to be well adjusted than children with same-sex parents. Rather, it is the family process variables described above that shape children’s well-being, not parental gender or sexual orientation.

Signed under penalty of perjury under the laws of the United States this 8th day of November, 2012.



Michael E. Lamb, Ph.D.

Exhibit 1



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The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance[☆]

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The publication of Mark Regnerus' research paper claiming to show that gays and especially lesbians have poor parenting outcomes has unleashed a firestorm of controversy among social scientists who study family and sexuality—fanned by the author's cultivation of popular media reporting on the study. Less attention has been paid to the review paper by Loren Marks, arguing against the American Psychological Association's stance that same-sex parenting is not dysfunctional, but the process by which *Social Science Research* published that paper is also in question. At the request of the editor, Professor James D. Wright (and at the suggestion of Dr. David Brady of Duke University), I have independently reviewed the submission and review process for both papers, and I report on that process from a perspective of editorial realism. I do this with an eye towards explaining how available and customary procedures can lead to substandard outcomes. I will leave the more detailed critiques of Regnerus' and Marks' studies to other scholars.

The publication of the Regnerus paper raised red flags for many scholars, including myself, and the timeline of the data collection, article submission, and acceptance led many to assume that *Social Science Research* colluded with the author and violated standard editorial policy as well as ethical standards. Indeed, the timeline of Regnerus' data collection effort and paper submission is highly unusual—Regnerus wrote and submitted the first draft of the paper before the data collection had been completed. Regnerus did not indicate that data collection was ongoing in the first draft of his paper. The paper was reviewed, revised, and accepted in only 6 weeks. Normally, an editor would be praised by the scientific community for accomplishing such a miraculous turnaround time for manuscript reviews, but in this case many questioned Wright's actions and implied a nefarious motive. Wright provided me with all of the reviews and reviewer information, along with the timeline of correspondence, and I will summarize the review process and how I see it in terms of the normal realities of editing a major journal like *Social Science Research*.

This incident provides us with an opportunity to reflect on the peer review process, and how we critically evaluate research. There are new political realities which social scientists, perhaps especially sociologists, have not previously had to engage. And there are also constant issues of conflicts of interest that need to be better addressed in the editorial process—and here the onus lies as much on reviewers as on journal editors to admit when one is too close to an author or an issue to make a valid judgment about the worth of the research.

1. Editing is hard, and peer review is a crap shoot

Most scholars give little reflection to what it takes to edit a scholarly journal, and very few will ever take up the task. *Social Science Research* has received a record-breaking number of submissions each year for the last 3 years, and is on track to process more than 350 new submissions this year (plus a hundred or so revisions of papers originally submitted in previous years). Wright processes these manuscripts with one assistant and a student worker. For each manuscript at least three reviewers have to be found to provide reviews in a timely fashion, and revised manuscripts and conflicting reviews often require soliciting additional reviewers. *Social Science Research* has one of the best turnaround times among the top-tier in the social sciences. Social scientists are becoming increasingly uncooperative as reviewers in an era of increasing scholarly

[☆] Comments and information from Neal Caren, Phillip Cohen, Lisa Keister, Shamus Khan, Debra Umberson, and Rhys Williams were helpful. Thanks also to James D. Wright for providing a thorough accounting of the editorial history of the two articles.

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output, and finding three willing reviewers usually takes six or more solicitations. Who cooperates and when is an issue of concern and structural features like editorial boards help but do not guarantee that reviews are produced. The result is that the review process may not always be as thorough or as objective as one would hope.

Like many journals, Social Science Research relies heavily on its editorial board for manuscript reviews, and members of the board doing research on popular topics are often called upon to review manuscripts. Wright also consults board members regarding potential reviewers. Given the frantic pace of scholarly output and paper submissions, imperfections can arise from several quarters. Both of the articles in question fit squarely in the area of family and sexuality, and having two papers on a similar topic in the review process at the same time crowds out potential cooperative reviewers. There has been a marked increase in research on sexuality and the family, and because of this many scholars are up to their ears with manuscript reviews. As is normal, Wright turned first to two editorial board members who work on topics related to the papers—and one of these board members reviewed both papers. Wright attempted to get five reviews for the Regnerus paper and he secured three reviewers, while all four scholars who were asked agreed to review the Marks paper (which is unusual). Two of the reviewers indicated that they had a potential conflict of interest related to consulting on the Regnerus paper but both averred that this consulting relationship would not preclude an objective, critical assessment; another reviewer reported that he had read a previous draft of the Marks paper (the reviewer claimed that he did not otherwise know Marks and had never met him in person). All of the reviewers provided quick feedback, and all of the reviews were positive. The editor required revisions in both articles as a result of the reviews, and the revisions were completed quickly and successfully with the guidance of the reviewers and the editor.

Who is asked and who cooperates to do a review is a somewhat random feature of academic publication. In a general-interest journal like Social Science Research, the editor cannot possibly know of the conflicts of interest or particularities of controversies in subfields far beyond his own. Social Science Research is a quantitative journal, and the editorial board and reviewers reflect that orientation. On the issue of sexuality and family, most studies have been smaller scale and qualitative; and scholars doing this sort of research would be unlikely to review for a quantitative journal like Social Science Research. Quantitative family scholars tend to be conservative, and three of the six reviewers for these two articles are bone fide conservatives—scholars who are on public record opposing marriage rights for LGBT persons. Wright indicated to me that he knew that one of the three conservative scholars held these commitments, but he did not know of the religious/political activism of the other two. This puts Wright even with me—I knew that one of the three was a religious and political conservative, but I had to search for the public views of the other two (and I did not know of the conservatism of the scholar Wright was familiar with). Five of the reviewers are very regular, reliable, SSR reviewers, and all six were notable scholars. Indeed, the three scholars who are not publicly conservative can accurately be described as social science superstars. I should also note that none of the reviewers were female, and all but one was over 50 years old.

The reviewers are not without some connection to Regnerus. Two admitted to being paid consultants on the Regnerus study, and it would have been ideal to solicit an additional review. However, at that point, Wright was sitting on three completed reviews by distinguished scholars and Editorial Board members—all of them advocating publication. I do not know which of the six reviewers reviewed which of the two manuscripts; however, two of the six reviewers are former coauthors with Regnerus (though neither has written with him in a decade). In any case, with two exceptions the reviewers certainly did not mention their conflicts of interest, and the editor could not have known. Can you make an unbiased decision about research you have consulted on a project? When you are former colleagues? When the paper is authored by a former coauthor? When you have been funded by the same foundations? The answer is “maybe not.” More people should turn down reviews because they have conflicts of interest. Both Regnerus and Marks got a lucky roll of the dice—in large part because the SSR die are loaded in favor of conservatives in the area of family, and because scholars who should have known better failed to recuse themselves from the review process. It can be argued that Wright should have been more aggressive in asking about such conflicts but this is probably unrealistic given the large number of papers SSR processes.

2. Glad-handing reviews and the editor's echo chamber

I see little serious engagement of the papers in any of the reviews. Both papers have serious flaws and distortions that were not simply ignored, but lauded in the reviews. Given that the reviewers were mostly comfortable conservatives, it is not surprising that the reviews were very positive, and contained minimal critique of the data, measures, or methods used in the studies. This lack of critical reflection on the part of reviewers could be because of ideological blinders, but it is also certainly related to reviewer fatigue—if you generally like a paper and have four more on your desk to review, you may not bother pointing out what you think are minor flaws (even when those flaws are not minor).

I was very disappointed to see a paper like the Marks paper published in SSR. While it appears to conduct a lowbrow meta-analysis of studies of the effect of same sex parents on children, no original data were collected or analyzed, nor was a systematic meta-analysis conducted. It is an argumentative review paper trying to make a case against a particular conclusion in an APA brief. Reviewers should have known that this was inappropriate for a journal that publishes original quantitative research. Indeed, the reviewers seemed so enamored with the basic argument in the Marks paper that they failed to notice that it does not fit the aims of the journal. Three reviewers voted “accept but suggest revisions”, and one reviewer suggested “revise and resubmit”. The manuscript was revised, resubmitted, and reviewers agreed it should be published.

The Regnerus paper received even more favorable reviews. Reviewers uniformly downplayed or ignored the fact that the study did not examine children of identifiably gay and lesbian parents, and none of the reviewers noticed that the data were inappropriate for a top-tier social scientific journal, particularly given the marginal population to which these estimates pertain. Throughout the paper, Regnerus points to the social and psychological deficits of children of gays and lesbians; yet, the study found only a handful of children of gays or lesbians. This is not a small semantic issue, since it cuts to the heart of what Regnerus has argued in his paper and in the media. Regnerus' peculiar definition of "gay" and "lesbian" also guided his selection of respondents. Regnerus' reviewers are effusively positive and point to ways to further bolster his argument and justify his use of a very bad measure on flawed data. What was the vote count? Two "accept with suggested revisions", one "accept with revisions". The manuscript was revised, and reviewers thought it worthy of publication.

If I were in Wright's shoes, I may well have made the same decisions. I might have desk-rejected the Marks paper, but I may not have noticed that the research was not real (it does appear to have tables). I might have read the Regnerus paper and realized it was substandard, but how many of those 350 manuscripts a year are you going to read with full reviewer goggles? And, it is unfair to expect Wright to hear the warning sirens when none were sounded by the reviewers. Of course, I also might also have noticed the political bent of the two papers and made sure that the reviewers were more diverse in their perspectives. One thing that was sounded by all the reviewers was that these papers will stimulate enormous interest. This is something that has helped bolster research on sexuality in the last few years (left, right, and center), and it is well known in social scientific publishing circles that sexuality is the hot-button download ticket. Indeed, last year the top two downloaded papers in Social Science Research were on homosexuality and written from a pro-civil rights perspective; and I was a coauthor of one of them (Sherkat et al., 2011). Our paper was accepted by Wright over the objections of two conservative reviewers—out of three reviews, two were certainly voting "reject". The accusation that Wright was somehow part of a conservative conspiracy to undermine civil rights for LGBT persons is ludicrous, and I know this from his prior actions.

3. Data quality, political interests, and scientific research

The reviewers and the commentaries on the articles uniformly failed to attend to a key problem with the Regnerus study—it estimates population parameters based on a sample from a panel maintained on-line by a research firm. The Regnerus data were financed by two extremely conservative foundations (the Bradley Foundation and the Witherspoon Institute), who contributed \$795,000 to pay for this research (according to Regnerus' vita). Notably, these conservative institutions are not well known—and the editor was unaware of the political bent of these foundations. There should be reflection about a conservative scholar garnering a very large grant from exceptionally conservative foundations to make incendiary arguments about the worthiness of LGBT parents—and putting this out in time to politicize it before the 2012 United States Presidential election.

The data were derived from a panel survey constructed from a national probability sample of households and also from a random digit dialing survey (the percentage of panelists recruited using each method is unclear). Panel members were recruited using monetary incentives and free internet and computer hardware, and panel members are expected to complete 2–4 surveys per month. There is no indication from Regnerus on the percentage of randomly targeted individuals who agreed to participate in the panel, or on the initial response rate of the RDD survey. Given the standards that prevail, it is likely that the recruitment rate is extremely low for both the RDD and "address based" sampling. I am unclear on the basis for the national representativeness of the study, particularly given the skewed distribution on gender, religiosity, and other measures. And, given that only 1.7% of respondents were (mis)classified as children of "gays" or "lesbians", these data are certainly not up to the task of adequately informing our understanding of same sex parenting. Regnerus' web page shows that the panel has suffered 34% attrition (what are called "withdrawn panelists"), and only 61.6% of the current panel responded to the Regnerus survey. Regnerus uses withdrawn panelists (only 21.6% of whom responded) to sample people who claim that a parent had a "romantic relationship" with someone of the same sex, but withdrawn panelists are not used for the sample of respondents with biological, intact, "heterosexual" parents. Given that withdrawn respondents were likely withdrawn because of concerns about their reliability as members of the data panel—it is inappropriate to have 11% of the fictive children of "gays and lesbians" recruited from these withdrawn panelists.

Predictably, there are several red flags in these data. The "nationally representative" panel is 32.7% male and 67.3% female. Respondents who claimed that their mother had a romantic relationship with another woman were disproportionately minority: 45% were white; 26% African American; 17% Hispanic; and, 12% other. The Regnerus codebook also reveals numerous unlikely responses, for example: 26 respondents had vaginal sex before the age of 8–10 of them at age 0; 20 male respondents have had sex with more than 100 women, while 16 female respondents have had sex with more than 100 men; Two respondents were pressured into have sex with their parent/adult caregiver for the first time after the age of 30. Ten respondents have been pregnant a dozen or more times; and, 15 respondents had sex more than 30 times in the last 2 weeks. In the rush to complete this paper before the data were even fully collected, data cleaning was apparently not something in the research agenda. Yet, none of these problems were transparent to either the reviewers or the editor, and would only be revealed by a careful analysis of additional materials from Regnerus' website.

Data quality has declined over the last 30 years, and much of the social scientific response to this decrease in quality has been resignation and a revision of scientific standards. The fact that similar data have been used in other peer-reviewed studies should not be used to justify Regnerus' use of marginal data to study an important and contentious issue. Nobody should

expect to publish a paper in a journal of the tier of Social Science Research on crucial questions using data collected in this manner. Indeed, the “gold standard” of research on family outcomes would require a randomly drawn sample of parents and children followed longitudinally and interviewed by a human. Commenting on the specific parameter estimates produced by such a non-scientific study merely privileges this “research” and enables it to inform public debate on consequential issues regarding sexuality and civil rights. The “debate” begins with a study with a questionable sample and inappropriate measures commissioned by an activist–scholar with funding from conservative foundations; but science is not a debate. It is notable that the day after publication of the Regnerus study it was cited in an *amicus curiae* brief by a conservative Christian political organization to justify denying marriage rights to same sex couples (http://www.ca9.uscourts.gov/datastore/general/2012/06/11/12-15388_Amicus_brief_American_College.pdf). Thankfully, other scholars and scholarly associations (including the American Psychological Association) have filed amicus briefs countering the claims made in Regnerus’ severely flawed study and by the anti-LGBT activists who support it (http://www.ca9.uscourts.gov/datastore/general/2012/07/10/12-15388_Amicus_Brief_Psychological.pdf).

4. The numbers game and scientific priorities

My review of the editorial processing of the Regnerus and Marks papers revealed that there were no gross violations of editorial procedures—the papers were peer reviewed, and the “peers” for papers on this topic were similar to what you would expect at Social Science Research. Obviously, the reviewers did not do a good job—because of both ideology and inattention—but the clear signal to the editor was “publish these papers”. Still, once they were accepted there was an unseemly rush to publication (at least for the Regnerus paper), and that was justified based on the attention that these studies would generate. The published responses were milquetoast critiques by scholars with ties to Regnerus and/or the Witherspoon Institute, and Elsevier assisted with the politicization by helping to publicize the study and by placing these papers in front of the pay wall.

Because of the race to get these into print—certainly to boost the number of hits on Social Science Research’s meter—Wright picked people he knew would write something in a timely fashion. It is easy to produce a quick response when you are a paid consultant and are already familiar with the project. All three of the respondents to these papers have ties to the Witherspoon Institute: Professor Osborne is a “key collaborator” on the Regnerus study, Professor Amato was a consultant, and Professor Eggebeen is a signatory of a Witherspoon declaration that limits marriage to heterosexual couples (“Marriage and the Public Good: Ten Principles” [http://www.winst.org/family_marriage_and_democracy/WI_Marriage.pdf]). Notably, unbeknownst to the editor, Eggebeen has also been a vocal opponent of same sex marriage who testified before the Hawaii Supreme Court. Wright did try to get Professors Charlotte Patterson and Michael Rosenfeld to be respondents, but he could not secure their cooperation. It seems possible that if these papers were held up for a more normal “backlog” of publication several distinguished and critical reviewers would have happily responded.

Controversy over sexuality sells and in only a week after publication these papers have already skyrocketed to the most downloaded papers published in Social Science Research. But neither paper should have been published, in my opinion. Undoubtedly, any researcher doing work on same-sex parenting will now have to address the Regnerus paper, and these citations will inflate the all-important “impact factor” of the journal. It is easy to get caught up in the empirical measures of journal success, and I believe this overcame Wright in driving his decision to rush these into print. The fetishism of the journal impact factors comes from the top down, and all major publishers prod editors about the current state of their impact factor. Elsevier is particularly attentive to this and frequently inquires about what Wright is doing to improve the already admirable impact factor of Social Science Research. As social scientists, popularity should not be the end we seek, and rigorous independent evaluation of these manuscripts would have made Social Science Research a less popular but better journal.

There are a few things that might help prevent papers like these from falling through the peer review process at Social Science Research. First, the Editorial Board needs expansion and diversification. Given the number of manuscripts being processed, the Board is too small, and perhaps a bit too old, straight, white, and male. Second, Social Science Research should begin the review process with a series of prompts about the author and the study (SSR is a single blind journal, so reviewers know who wrote the paper) to ascertain whether reviewers may have a conflict of interest. Third, the comments for the author/editor form should require that reviewers directly assess the quality of the data, measures, and analysis relative to the standards expected in a substantive area. This is especially important since reviewers may not recall that Social Science Research only publishes original research (not literature reviews, essays, or theoretical papers) and is a top-tier quantitative journal where data, measures, and analytic methods should be of highest quality.

Reference

Sherkat, D.E., Melissa, P.-W., Gregory, M., Kylan de Vries, 2011. Religion, politics, and support for same-sex marriage in the United States, 1988–2008. *Social Science Research*. 40, 167–180.

Exhibit 2

Volume 5

Pages 991 - 1255

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY,
SANDRA B. STIER, PAUL T. KATAMI,
and JEFFREY J. ZARRILLO,

Plaintiffs,

VS.

NO. C 09-2292-VRW

ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of
California; EDMUND G. BROWN, JR.,
in his official capacity as
Attorney General of California;
MARK B. HORTON, in his official
capacity as Director of the
California Department of Public
Health and State Registrar of
Vital Statistics; LINETTE SCOTT,
in her official capacity as Deputy
Director of Health Information &
Strategic Planning for the
California Department of Public
Health; PATRICK O'CONNELL, in his
official capacity as
Clerk-Recorder for the County of
Alameda; and DEAN C. LOGAN, in his
official capacity as
Registrar-Recorder/County Clerk
for the County of Los Angeles,

Defendants.

San Francisco, California
Friday
January 15, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

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1 researcher to ask those questions about why these differences
2 exist, rather than simply to note the numbers themselves.

3 The final thing that's missing here, and that would
4 concern me as a summary of the evidence, is that it doesn't
5 acknowledge the fact that, notwithstanding these differences,
6 the majority of children growing up in families without their
7 father are perfectly well adjusted.

8 **Q.** Dr. Lamb, did you have hold the view that children need a
9 family structure with a male parent to adjust well?

10 **A.** You know, when I began my career in the early 1970's, that
11 was widely believed to be true. And so when I began my
12 research, it was with the presumption or prediction that this
13 was likely to be the case.

14 My first research was concerned with exploring the
15 attachments that young babies form to their mothers and
16 fathers. And I explored in that early research the differences
17 and the ways in which is mothers and fathers behaved and asked
18 whether those differences, in fact, were important, whether
19 they did show that children needed to be raised by a masculine
20 as well as by a feminine parent.

21 The results of both my research and, more
22 significantly, the larger body of research that developed since
23 the early 1970's has made clear that that initial prediction
24 was incorrect.

25 And we have now as a field come to the conclusion

1 that I stated earlier; that what makes for an effective parent
2 is the same whether or not you are talking about a mother or a
3 father, and that children do not need to have a
4 masculine-behaving parent figure, a father, in order to be well
5 adjusted.

6 **Q.** Is there any support for the view that children need to
7 have a female parent to adjust well?

8 **A.** No. The same is true with respect to that.

9 **Q.** How long has it been accepted as the consensus view within
10 your field that the three factors you described earlier, as
11 opposed to family structure, are the factors that most affect
12 child adjustment?

13 **A.** I think the fields began to coalesce around and to focus
14 on these issues from the early to mid-1980's. And I would say
15 that by the beginning of the 1990's, this would have been the
16 overwhelming consensus in the field.

17 **Q.** And if I could get into Cambridge and take a class in
18 developmental psychology, is this what I would be taught today?

19 **A.** It is.

20 **Q.** Do you have -- you should have in front of you a copy of
21 two books. One is your own book, the role of the father in
22 child development, and that has been marked as PX-2266.

23 And the other is a book by Susan Golombok entitled
24 "*Parenting, What Really Counts.*" And that is marked as
25 DIX-792.

1 A. It certainly can, yes.

2 Q. And there is evidence that men who are married to women,
3 however, are less likely to drink heavily and less likely to
4 gamble, correct?

5 A. I've heard of that research. It's obviously outside of my
6 expertise -- range of expertise, yes.

7 Q. When it comes to parenting skills and abilities, you're
8 not saying that men and women are completely interchangeable,
9 correct?

10 A. What I'm saying is that where it comes to the aspects of
11 parenting that affect children's adjustment, it's the same
12 features of the parents' behavior that are important for their
13 children's adjustment.

14 Q. I would like to direct your attention to page 225 of your
15 deposition in this case, lines 9 through 14.

16 A. That's back to --

17 Q. Binder 1, the testimony binder.

18 A. Okay. Number 1. And what pages was that?

19 Q. 225.

20 A. Okay.

21 Q. And line 9, it says -- let me make sure I'm in the right
22 place here. All right. Line 9 through 14. Line 9 starts with
23 my question:

24 "Is it your opinion that men and women are
25 completely interchangeable in terms of

1 processes involved when you have something occurring very early
2 in the child's life. You have longer periods of time involved.
3 That's correct.

4 **Q.** The attachment between -- excuse me.

5 There are studies that show that the attachment
6 between babies and fathers is also strong, and that it might
7 serve needs that are not met in the infant-mother relationship,
8 correct?

9 **A.** I'm -- well, certainly, I conducted a lot of that area of
10 research on babies' attachments to mothers and fathers. And if
11 you're talking about babies being raised in families with two
12 parents, there's a significant amount of evidence that both of
13 those relationships have an important impact on those
14 children's development.

15 **Q.** And there is data that suggests that the differences
16 between maternal and paternal behavior are more strongly
17 related to either the parents' biological gender or sex roles,
18 than to either of their degree of involvement in infant care or
19 their attitudes regarding the desirability of paternal
20 involvement in infant care, correct?

21 **A.** I think that's generally not the case.

22 **Q.** Well, let's look at tab 12. And this is, "Attachment and
23 Affiliative Systems." And I'd like to direct your attention to
24 page 117. This is a -- do you recall writing chapter 10 of
25 this book, "Effect of Gender and Caretaking Role on

1 Parent/Infant Interaction"?

2 **A.** Believe it or not, I do, even though it was written in the
3 late 1970s, and published in 1982.

4 **Q.** Okay. And let's turn to page 117.

5 **A.** Uh-huh.

6 **Q.** And here, you, as an author wrote:

7 "The data suggests that the differences
8 between maternal and paternal behavior are
9 more strongly related to either the parents'
10 biological gender or sex roles, than to
11 either their degree of involvement in infant
12 care or their attitudes regarding the
13 desirability of paternal involvement in
14 infant care."

15 You believed that at the time you wrote this,
16 correct?

17 **A.** I wrote this chapter describing a particular study that
18 was conducted, as I said, in the late 1970s. And the sentence
19 that you just read was our summary of the results of that study
20 conducted in the late 1970s.

21 As I testified earlier, I certainly believed, at that
22 point, that these issues might be really important. And that's
23 why we did studies like this. As I also testified earlier,
24 that is a finding that has not held up in subsequent research.

25 **Q.** Well, so science was wrong?

1 statement to be true?

2 **A.** Well, as you pointed out, I wrote this when I was a
3 graduate student beginning my career, studying the
4 relationships between infants and fathers and infants and
5 mothers.

6 And in that context, in the context of a field where
7 there was a tremendous focus on the relationships between
8 children and their heterosexual mothers, and complete
9 inattention to the possibility that children might have other
10 significant relationships, I wrote this article, drawing
11 attention to the fact that for those many children who grew up
12 with two heterosexual parents it was important to study the
13 role of those other individuals in the child's life.

14 I wrote another article in the same -- in the same
15 journal, a few years later -- and perhaps you have this under
16 one of these other tabs, too, -- in which I pointed out --
17 you've done a great job for me, in bringing back these great
18 old memories --

19 (Laughter)

20 **Q.** There'll be more.

21 **A.** I'm sure.

22 -- where I focused on the fact that children actually
23 grow up in more complicated social environments. Not only do
24 many of them have significant relationships with fathers, many
25 also have a significant relationship with a brother, a sister,

1 A. Uh-huh.

2 Q. It's entitled "Fatherhood in the 21st Century." And you
3 were a coauthor of it; is that right?

4 A. That's right, yeah.

5 Q. Okay. And if we turn to the second page, which is page
6 128, in the left-hand column, second full paragraph, the second
7 sentence says, "Boys growing up with [sic] fathers seem
8 especially prone to exhibit problems in the areas of sex role
9 and gender identity development."

10 Has that finding that was in your article held up?

11 A. Uhm, that finding is not as clear in the larger sample
12 studies that have been conducted. The quotation there was
13 citation to a study done by a psychologist, Mavis Hetherington.

14 And most of the research on the effects of father
15 absence, as we've discussed it here, doesn't show those
16 differences in sex role and gender identity development.

17 Q. All right. Now, how about the finding that you reference
18 in your 2000 paper, about boys without fathers being prone to
19 poor school performance. Has that held up?

20 A. Yes.

21 Q. And what about psychosocial adjustment, has that finding
22 with respect to that held up?

23 A. Yeah, we talked about that on -- in the direct
24 examination. There are those correlations.

25 Q. And is there -- what about self-control?

1 **A.** Uhm, there certainly are differences associated with
2 self-control; particularly manifest, say, in difficulties with
3 delinquent behavior in adolescence.

4 **Q.** Is there a causal connection between father absence and
5 these problems?

6 **A.** No. As I tried to explain earlier, the literature
7 suggests that the processes that I talked about, the quality of
8 the relationships with the parents, the quality of the
9 relationships between the parents, and the social, emotional
10 and economic resources available to the family, are the most
11 important factors in directly explaining those differences.

12 **Q.** All right. Now, you would agree that nurturant fathers
13 may contribute greatly to the psychological adjustment of their
14 daughters, correct?

15 **A.** Yeah.

16 **Q.** And they may facilitate their happiness in subsequent
17 heterosexual relationships?

18 **A.** Yes.

19 **Q.** All right. And there is evidence suggesting that
20 disturbed father-child relationships and the failure to achieve
21 same-sex identification may be pathogenic; is that correct?

22 **A.** Can we take those two things apart?

23 **Q.** Sure.

24 **A.** Just repeat them again for me. The first, in terms of the
25 importance of a satisfying relationship with a parent, that's

1 "We conclude that in practice the kind of
2 mother-father relationship most conducive to
3 responsible fathering in contemporary U.S.
4 society is a caring, committed, collaborative
5 marriage. Outside of this arrangement,
6 substantial barriers stand in the way of
7 active, involved fathering."

8 Does this statement accurately summarize the
9 literature?

10 **A.** It accurately summarizes the literature that they're
11 talking about, which is studies of heterosexual parents raising
12 children, yes.

13 **Q.** All right. And let's turn to the next tab in your binder,
14 tab 26. This is another report by the Institute for American
15 Values. It's DIX38.

16 **MR. THOMPSON:** And we'd ask the Court to take
17 judicial notice of DIX38.

18 **THE COURT:** Very well.

19 **BY MR. THOMPSON:**

20 **Q.** And turning your attention, Dr. Lamb, to page 32 of this
21 report, under the conclusion. Are you there?

22 **A.** Yeah.

23 **Q.** Okay. It says, in the second paragraph, under conclusion:

24 "But marriage matters. Children in average
25 intact married families do better than

1 children in average single and stepparent
2 families."

3 Do you agree with that statement?

4 **A.** On average, yes, I think that's -- that's true.

5 **Q.** Okay.

6 **A.** As I've testified earlier.

7 **Q.** I'd like to direct your attention to the next tab in your
8 binder, 27, which is DIX121. This is a document from the
9 Progressive Policy Institute entitled, "Putting Children
10 First" --

11 **THE COURT:** Before you go on to that --

12 **MR. THOMPSON:** Yes.

13 **THE COURT:** -- let me ask the witness: With
14 reference to the statement that counsel has referred you to in
15 DIX38, is that statement based upon evidence drawn from
16 opposite-sex couples?

17 **THE WITNESS:** Not to my knowledge.

18 **THE COURT:** So this would include same-sex couples?

19 **THE WITNESS:** I believe it does not.

20 **THE COURT:** Does not?

21 **THE WITNESS:** Correct. I'm sorry.

22 **THE COURT:** So it would be based solely upon evidence
23 drawn from studies of opposite-sex couples; is that correct?

24 **THE WITNESS:** I believe that's true, yes. I'm not
25 familiar with this document. But the -- you know, it's -- the

CERTIFICATE OF REPORTERS

We, KATHERINE POWELL SULLIVAN and DEBRA L. PAS,
Official Reporters for the United States Court, Northern
District of California, hereby certify that the foregoing
proceedings in C 09-2292 VRW, **Kristin M. Perry, et al. vs.
Arnold Schwarzenegger, in his official capacity as Governor of
California, et al.**, were reported by us, certified shorthand
reporters, and were thereafter transcribed under our direction
into typewriting; that the foregoing is a full, complete and
true record of said proceedings at the time of filing.

/s/ Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR
U.S. Court Reporter

/s/ Debra L. Pas

Debra L. Pas, CSR #11916, RMR CRR
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Saturday, January 16, 2010

Exhibit C

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,
Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF TARA BORELLI
IN SUPPORT OF PLAINTIFFS'
REPLY TO THE COALITION'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

1 I, Tara L. Borelli, hereby declare and state as follows:

2 1. I am a staff attorney with Lambda Legal Defense and Education Fund, Inc., and
3 co-counsel of record for the plaintiffs in this matter. I am licensed to practice law in the States
4 of Washington and California and was admitted *pro hac vice* to practice before this Court. I
5 make this declaration of my own personal knowledge and, if called as a witness, could and
6 would testify competently to the matters stated herein.

7 2. Attached as Exhibit 1 is a true and correct copy of Plaintiff's and Plaintiff
8 Intervenor's Notice of Motion and Motion in Limine to Exclude the Expert Reports, Opinions,
9 and Testimony of Katherine Young, Loren Marks and David Blankenhorn, filed December 7,
10 2009 in *Perry v. Schwarzenegger*, No. 09-CV-2292 VRW (N.D. Cal.).

11 3. Attached as Exhibit 2 is a true and correct copy of excerpts from the certified
12 deposition transcript of Loren Marks taken on October 30, 2009 in *Perry v. Schwarzenegger*,
13 No. 09-CV-2292 VRW (N.D. Cal.).

14
15 Signed under penalty of perjury under the laws of the United States this 8th day of
16 November, 2012.

17
18 /s/ Tara L. Borelli
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Exhibit 1

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRISTIN M. PERRY, *et al.*,
Plaintiffs,
and
CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Intervenor,
v.

ARNOLD SCHWARZENEGGER, *et al.*,
Defendants,
and
PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,
Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S NOTICE OF MOTION
AND MOTION *IN LIMINE* TO EXCLUDE
THE EXPERT REPORTS, OPINIONS, AND
TESTIMONY OF KATHERINE YOUNG,
LOREN MARKS AND DAVID
BLANKENHORN**

PLAINTIFFS' MIL NO. 1 OF 2

*[Declaration of Rebecca Justice Lazarus and
Proposed Order Filed Concurrently Herewith]*

Final Pretrial Conference

Date: December 16, 2009
Time: 10:00 a.m.
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on December 16, 2009, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the United States District Court for the Northern District of California, San Francisco Division, Courtroom 6, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarillo (collectively, “Plaintiffs”) and Plaintiff-Intervenor the City and County of San Francisco (“Plaintiff-Intervenor”) will and hereby do move *in limine* for an order excluding the expert reports, opinions, and testimony of the following individuals, each of whom were designated as an expert witness in this matter by Defendant-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, Mark A. Jansson, and ProtectMarriage.com – Yes on 8, A Project of California Renewal (“Proponents”):

- (1) Katherine Young;
- (2) Loren Marks; and
- (3) David Blankenhorn.

This Motion is made pursuant to Rules 104, 403, and 702 of the Federal Rules of Evidence, on the grounds that Katherine Young, Loren Marks and David Blenkhorn are not qualified experts and the opinions and testimony of Proponents’ Proposed Experts are neither relevant nor reliable pursuant to the standards set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and its progeny. Moreover, the expert opinions and testimony of the Proposed Experts are inadmissible because any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, waste of time, undue delay, and needless presentation of cumulative evidence. *See* Fed. R. Evid. 403.

Because the purported expert testimony of Katherine Young, Loren Marks, and David Blankenhorn does not meet the standards set forth in *Daubert*, it should not be admitted into evidence or, at the very least, should be accorded little to no weight. Given that this is a bench trial, Plaintiffs and Plaintiff-Intervenor leave to the Court’s discretion whether it wishes to exclude this evidence in advance of trial or, alternatively, explore these experts’ qualifications during trial through direct and cross-examination and make the determination based on that more complete testimony. In any event,

1 the testimony offered by Proponents is not admissible to prove or refute any issue germane to this
2 case.

3 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum of
4 Points and Authorities, the pleadings, records, and papers on file with this Court, all matters upon
5 which this Court may take judicial notice, and such oral arguments as the Court may receive.

6
7 DATED: December 7, 2009

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Proponents have offered three purported experts – Katherine Young, Loren Marks, and David Blankenhorn – who fail to meet even the minimum requirements imposed by the Federal Rules of Evidence.¹

Katherine Young. A self-described expert in “comparative religion” with an emphasis on “Hinduism,” Proponents offer Dr. Young’s testimony on “what universally constitutes marriage and why.” But Dr. Young lacks any relevant expertise to opine on this topic, and the conclusions set forth in her report and deposition consist of little more than her own personal reflections on the meaning of marriage. They are based on no scientific or specialized methodology; indeed, Dr. Young has not even reviewed the vast majority of the relevant literature and policy statements produced by professional associations in the fields of anthropology, psychology, medicine, or child welfare (to name only a few) because she deems them “irrelevant” to her inquiry. For many of these same reasons, Dr. Young’s testimony was excluded in *Varnum v. Brien*, No. CV5965 (Iowa Dist. Ct. 2007), a case in which she offered testimony on the same issues. Because Dr. Young lacks the necessary qualifications to serve as an expert on any issues relevant to this matter and has no reliable support for her conclusions, her testimony should be found inadmissible.

Loren Marks. Dr. Marks seeks to opine generally on why the biological, marriage-based family is the “ideal” structure for child outcomes, but lacks any relevant qualifications or background to address that question with respect to the issues presented by this case – whether biological, marriage-based families produce child outcomes that are better, worse or the same as same-sex parent families, or even opposite-sex parent, adoptive families. Dr. Marks has no discernible methodology on which to base his claims (indeed, at several points, he disavowed his own conclusions on the

¹ Rebuttal expert discovery is ongoing and, pursuant to this Court’s order of August 19, 2009, does not conclude until December 31, 2009. Doc #160. Proponents’ rebuttal experts have not yet been deposed. Accordingly, Plaintiffs and Plaintiff-Intervenor reserve the right to move *in limine* to exclude rebuttal expert reports, opinions, and testimony pursuant to Rules 104, 403, and 702 of the Federal Rules of Evidence following the completion of rebuttal expert discovery.

1 importance of a biological link to child outcomes) and as such, his opinions are unreliable and
2 irrelevant under Federal Rule of Evidence 702. Thus, this Court should find Dr. Marks' testimony,
3 opinions, and report inadmissible.

4 **David Blankenhorn.** Mr. Blankenhorn has no expertise in any academic field relevant to this
5 litigation, but nonetheless purports to offer "expert" opinion based on nothing more than his "reading
6 and reflection" on works from various fields in which he lacks expertise. Mr. Blankenhorn's report
7 eschews any mention of either Prop. 8 or California generally. Instead, he seeks to offer his general
8 conclusions on the purpose of the institution of marriage and the harms he personally believes will
9 result from allowing marriage of gay and lesbian individuals. He has neither reviewed, nor is aware
10 of any data that support his belief that the institution of marriage is designed primarily to provide a
11 stable and loving environment for the biological children produced from that marriage. Instead, he
12 supports his views by stringing together quotations from various other authors and pointing to his list
13 of the supposed harms of allowing gay and lesbian individuals to marry. This list consists of nothing
14 more than a partial regurgitation of a list produced during an anonymous "group thought
15 experiment," and thus is not based on a reliable methodology as is required of admissible expert
16 conclusions under the Federal Rules of Evidence. As such, his opinions should be deemed
17 inadmissible.

18 In short, these individuals are not qualified to serve as expert witnesses. More importantly,
19 each of their generic conclusions, untethered to any of the specific factual issues in this case,
20 combined with the lack of any discernible methodology to support them, renders each of their
21 opinions unreliable and irrelevant under Federal Rule of Evidence 702. For the reasons explained
22 herein, it is entirely appropriate for this Court to exclude these witness' testimony in advance of trial.
23 However, if the Court determines that it would be appropriate to explore their qualifications at trial
24 through direct and cross-examination, Plaintiffs and Plaintiff-Intervenor ask the Court to exclude
25 their testimony from evidence, or accord it little or no weight, after such evidence is presented during
26 trial.

II. THE LEGAL STANDARD GOVERNING EXPERT TESTIMONY

Federal Rule of Evidence 702 provides that expert testimony relating to “scientific, technical, or other specialized knowledge” is admissible only if it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702. A witness qualified as an expert may only offer testimony “in the form of an opinion or otherwise, if: (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.” Fed. R. Evid. 702.

In practical terms, this means that: (1) Proponents’ Proposed Experts must qualify as experts, (2) the testimony, reports, and opinions of Proponents’ Proposed Experts must be based on scientific, technical, or “other specialized knowledge” and concern a matter beyond a layperson’s understanding; and (3) the testimony, reports, and opinions of Proponents’ Proposed Experts must be reliable and relevant. *See, e.g., United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000). Additionally, expert testimony is subject to general evidentiary rules, such as Federal Rule of Evidence 403. *See id.*

A. The Witness Must Qualify as an Expert

As a preliminary matter, a witness must first qualify as an expert before he or she may proffer expert testimony. *See* Fed. R. Evid. 104(a). A witness may be qualified as an expert on the basis of “knowledge, skill, experience, training or education.” *See* Fed. R. Evid. 702. While Rule 702 “contemplates a broad conception of expert qualifications” that may be satisfied by a “minimal foundation of knowledge, skill, and experience,” *see Thomas v. Newton Int’l Enters.*, 42 F.3d 1266, 1269 (9th Cir. 1994), a witness still must have some *foundation* of knowledge, skill, or experience—a witness with cursory or very limited experience does not satisfy this “foundation” requirement. *See, e.g., Jinro Am. Inc. v. Secure Investments, Inc.*, 266 F.3d 993, 1005–1006 (9th Cir. 2001), *amended by* 272 F.3d 1289 (9th Cir. 2001) (finding purported expert on Korean business culture unqualified because witness lacked legal, business, or financial expertise to evaluate substance of transaction at issue, and witness had no education or training as a cultural expert or on Korean culture specifically); *LuMetta v. United States Robotics, Inc.*, 824 F.2d 768, 771 (9th Cir. 1987) (affirming district court’s

finding that proffered witnesses were unqualified to serve as experts because of their minimal experience and personal knowledge regarding the subject of their proposed testimony).

B. The Witness’ Testimony Must Be Based on Scientific, Technical, or “Other Specialized” Knowledge and Must Concern a Matter Beyond a Layperson’s Common Knowledge

In order to be admissible expert testimony, the testimony must be based on “scientific, technical, or other specialized knowledge [that] will assist the trier of fact.” Fed. R. Evid. 702. A witness may not testify as an expert unless he or she testifies about matters that are beyond the ability and experience of the average layperson. *See United States v. Vallejo*, 237 F.3d 1008, 1019 (9th Cir. 2001), *amended by* 246 F.3d 1150 (9th Cir. 2001) (explaining expert testimony must also “address an issue beyond the common knowledge of the average layman”); *Beech Aircraft Corporation v. United States*, 51 F.3d 834, 842 (9th Cir. 1995) (excluding purported experts who were to offer testimony “deciphering” audio recordings because “hearing is within the ability and experience of the trier of fact.”) Testimony on an issue not outside a layperson’s understanding does not assist the trier of fact and is thus not admissible expert testimony.

C. The Witness’ Testimony Must be Reliable and Relevant

Under Federal Rule of Evidence 702, the trial judge is charged with the task of ensuring that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591–592 (1993). This “gatekeeping obligation” applies not only to scientific testimony, but also to testimony based on “technical” and “other specialized” knowledge. *See Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147–150 (1999). Accordingly, Proponents bear the burden of establishing by a preponderance of the evidence that the testimony, opinions, and reports of Proponents’ Proposed Experts are relevant and reliable. *See Fed. R. Evid. 104(a); Daubert*, 509 U.S. at 589–593.

1. Reliability

To be reliable, an expert’s conclusions must be based on the knowledge and experience of his or her discipline, rather than on subjective belief or unsupported speculation. *See, e.g., Daubert*, 509 U.S. at 589–590; *Kumho Tire*, 526 U.S. at 148. The trial court must “make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom

the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire*, 526 U.S. at 152 (emphasis added). In cases of scientific testimony, this means that an expert’s testimony must not only reflect scientific knowledge, but it also must be “derived by the scientific method” and the work product must amount to “good science.” See *Daubert v. Merrell Dow Pharmaceuticals*, 43 F.3d 1311, 1315 (9th Cir. 1995) (emphasis added) (“*Daubert II*”). In cases of “technical” or “other specialized” testimony, the same standard applies, as would be applied to that particular field. See *Kumho Tire*, 526 U.S. at 147–150. In essence, the Court “must ensure that ‘junk science’ plays no part in the decision.” *Mukhtar v. Cal. State Univ.*, 299 F.3d 1053, 1063 (9th Cir. 2002), amended by 319 F.3d 1073 (9th Cir. 2003).

The following non-exclusive factors may be considered in evaluating the reliability of an expert’s methodology or technique: (1) whether the methodology or technique used can be (and has been) tested; (2) whether the methodology or technique has been subjected to peer review and publication; (3) whether the methodology or technique has a known potential rate of error; and (4) whether the methodology or technique is generally accepted in the relevant scientific or technical community. See *Daubert*, 509 U.S. at 591, 593–594; *Kumho Tire*, 526 U.S. at 149–150.

Whether the expert’s testimony “grow[s] naturally and directly out of research they have conducted *independent of the litigation*, or whether they have developed their opinions expressly for purposes of testifying” is particularly significant in evaluating reliability. *Daubert II*, 43 F.3d at 1317 (emphasis added). The Court, with few exceptions, “may not ignore the fact that a scientist’s normal workplace is in the lab or the field, not the courtroom or the lawyer’s office.” *Id.* If evidence of pre-litigation research or peer review is not available, the expert must (1) “explain precisely how they went about reaching their conclusions” and (2) “point to some objective source – a learned treatise, a policy statement of a professional association, a published article in a reputable science journal or the like to show that they have followed the scientific method as it is practiced by (at least) a recognized minority of scientists in their field. *Carnegie Mellon Univ. v. Hoffman-LaRoche, Inc.*, 55 F. Supp. 2d. 1024, 1030, 1034 (N.D. Cal. 1999), citing *Daubert II*, 43 F.3d at 1319.

Finally, the Court must inquire into whether the witness has *applied* the principles and methods reliably to the facts of the case. See *Daubert*, 509 U.S. at 593. Although the trial court may

not decide upon the *correctness* of the expert’s conclusion, it may “conclude that there is simply too great an analytical gap between the data and the opinion proffered.” *Domingo ex rel. Domingo v. T.K.*, 289 F.3d 600, 607 (9th Cir. 2002) (quoting *General Electric v. Joiner*, 522 U.S. 136, 146 (1997)). In other words, the necessary connection between the expert’s methodology and ultimate conclusion may not be established on speculation alone. *Joiner*, 522 U.S. at 146 (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”)

2. Relevance

In addition to being based reliable, an expert’s testimony must be relevant. The Court must assess whether the proffered expert testimony is sufficiently tied to the facts of the case such that it will “assist the trier of fact to understand the evidence or to determine a fact in issue.” *Daubert*, 509 U.S. at 591 (citing Fed. R. Evid. 702). Specifically, there must be a “fit” or valid connection between the expert’s reasoning or methodology and the pertinent inquiry—the facts at issue—before the Court. *Daubert*, 509 U.S. at 591–593.

In the context of this case, this Court has already identified areas of factual dispute that may be relevant to the issues presented in three areas: (1) the appropriate level of scrutiny under the Equal Protection clause; (2) evaluation of the state interests Proponents assert as bases for Prop. 8; and (3) whether Prop. 8 discriminates based on sexual orientation or gender or both; and (4) whether Prop. 8 was passed with a discriminatory intent. Doc #76 at 6–9. With respect to each of these categories, the Court elaborated the areas of factual development that may assist the Court in deciding these issues:

D. The Probative Value of the Purported Expert’s Testimony Must Outweigh its Prejudicial Effect

Finally, as with all evidence, expert testimony may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, waste of time, undue delay, or needless presentation of cumulative evidence. Fed. R. Evid. 403; *United States v. Verdusco*, 373 F.3d 1022, 1032–1035 (9th Cir. 2004) (affirming trial court’s exclusion of testimony of expert witness under Fed. R. Evid. 403). Because expert evidence may be misleading and is

difficult to evaluate, a judge “exercises more control over experts than lay witnesses” in weighing prejudice against probative value. *Daubert*, 509 U.S. at 595 (quoting Jack B. Weinstein, *Rule 702 of the Federal Rules is Sound*, 138 F.R.D. 631, 632 (1991)).

III. THE COURT SHOULD EXCLUDE THE TESTIMONY OF PROPONENTS’ PROPOSED EXPERTS – YOUNG, MARKS AND BLANKENHORN

Proponents offer Katherine Young, Loren Marks and David Blankenhorn as expert witnesses in this case. The reports of each of these witnesses and their statements during their depositions establish that they do not meet the requirements set forth in Federal Rule of Evidence 104, 403 and 702.

A. Katherine Young

1. Dr. Young is Not Qualified to Offer an Expert Opinion on Any Issue in This Case

Proponents proffer Katherine Young, a professor in the Faculty of Religious Studies at McGill University, as an expert in “comparative religion.” (Young Expert Report (“Young Rep.”) 1.) Dr. Young seeks to offer her “expertise” to explain “what universally constitutes marriage and why.” (*Id.*) Dr. Young is not an expert in sociology, psychology, anthropology, biology, medicine, child development, statistics, survey construction and methodology or political science. (Young Dep. 7:8-20; 37:14-38:9, November 13, 2009.) She admits she has not submitted any articles for peer review in any relevant field. (*See, e.g., id.* at 11:19-13:5.) Indeed, her “expertise” is far more narrow than the term “comparative religion” might indicate. She considers herself an expert only in the field of religious studies, and then only in Hinduism. (*Id.* at 29:11-19; 60:19-25.) She does not specialize in American religions, and she is not an expert on American denominations. (*Id.* at 65:14-16; 67:5-11.) She has not studied marriage of same-sex couples in California, the United States, or in the world generally. (*Id.* at 104:14-25.) As an academic in the field of Hindu religious studies, Dr. Young simply has no foundation of knowledge, skill or experience necessary to serve as an expert on “comparative religion” and certainly not on any of the factual issues presented by this case. Indeed, she has acknowledged that the separation of church and state renders any comparison between legal regimes based on religion (i.e., Hindu) to western civil law regimes inapposite to the question of whether Prop. 8 is unconstitutional under Equal Protection Clause. (*Id.* at 232:21-233:6.)

Accordingly, Dr. Young lacks even a minimal foundation of knowledge required by Federal Rule of Evidence 702 to qualify her as an expert in this case. *See, e.g., LuMetta*, 824 F.2d at 771 (affirming exclusion of experts for their minimal experience and lack of substantial personal knowledge of the subject matter relevant to the case).

2. Dr. Young's Opinion Lacks Relevance to the Factual Issues of this Case

This Court has identified certain factual issues that may be pertinent to the resolution of the issues presented by this litigation. Doc #76 at 6–9. Those issues are specific to the factual situation presented in this case – the passage of Prop. 8 in California and the resulting deprivation of the constitutional rights of gay and lesbian individuals in California. Not only does Dr. Young's testimony in her expert report and deposition have *no* relationship to any of the issues identified by the Court, but Dr. Young has expressly disclaimed her willingness or ability to offer expert testimony on those issues, even when those issues might have some interplay with her study of religion. Specifically, Dr. Young has stated that she has no opinion on: (1) whether permitting marriage of same-sex couples would affect the number of heterosexual marriages or divorces (*id.* at 120:3-14); (2) whether permitting marriage of same-sex couples affects the desire of heterosexuals to marry (*id.* at 120:15-18); (3) whether or not discrimination against gay and lesbian individuals causes stress or psychological damage (*id.* at 172:5-16; 173:18-25); (4) whether or not prohibiting gay and lesbian individuals from marrying would have an adverse effect on them or their children, or whether permitting them to marry would benefit them and their children. (*Id.* at 191:17-192:1.) She has further stated that she has no opinion on what proportion of people opposed to marriage of same-sex couples in California were motivated primarily by their religious beliefs. (*Id.* at 69:6-13.)

In short, Dr. Young seeks to testify on some broad-based conception of the “universal” features and functions of marriage that have no relationship to any of the factual issues in dispute and is based on little more than her speculation that such musings might be relevant. They are not and, even if testimony on such supposed “universal” truths were somehow relevant, any opinion Dr. Young might provide could not meet the standards for reliable expert testimony under Federal Rule of Evidence 702. Indeed, any opinions Dr. Young has – *by her own admission* – are not based on review of any studies that might enable her to offer conclusions on any issue in this case, and thus her

opinions are based on nothing more than the “subjective belief or unsupported speculation” found insufficient in *Daubert*. *Daubert*, 509 U.S. at 589–590.

3. Dr. Young’s Opinion Lacks a Reliable Methodology

As an initial matter, Dr. Young lacks any methodology for arriving at the conclusions stated in her report and deposition. Her report consists of nothing more than her examination of a random selection of societies to search for patterns that she categorizes as “universal.” (Young Rep. 2, 8.) And her “comparative study of the worldview of major cultures and religions and the worldviews of small-scale societies” is based on nothing more than her review of the work of one other academic who did not consider the possibility of marriage of same-sex couples. (Young Rep. 2, 12; Young Dep. 137:1-141:18.) Dr. Young has no systematic criteria for determining what constitutes a “pattern” or what can determine “universality” and even concedes that these characterizations are not absolute. (Young Rep. 2.) This haphazard sampling cannot constitute a methodology and amounts to little more than a recitation of Dr. Young’s personal musings on what might be included in the definition of marriage. The absence of any discernible methodology renders Dr. Young’s testimony inadmissible as unreliable under Federal Rule of Evidence 702. *Daubert*, 509 U.S. at 590 (“Proposed testimony must be supported by appropriate validation”); *Daubert II*, 43. F.3d at 1319 (“experts must explain precisely how they went about reaching their conclusions”); *Jinro America Inc.*, 266 F.3d at 1006 (excluding “impressionistic generalizations” based on haphazard experiences, anecdotal examples, and news articles). Indeed, Dr. Young previously offered virtually identical testimony in litigation raising similar issues in *Varnum v. Brien*, No. CV5965 (Iowa Dist. Ct. 2007), and the trial court there ruled Dr. Young’s testimony inadmissible under the Iowa rules of evidence for precisely this reason. (See Declaration of Rebecca Justice Lazarus, Exh. G at 6–7.)

Moreover, by definition, Dr. Young cannot bring “the same level of intellectual rigor that characterizes the practice of an expert in the relevant field,” *Kumho Tire*, 526 U.S. at 152, to her testimony because she admits that she has not studied any issues central to the factual disputes in this case. She purports to offer opinions and conclusions on the importance of protecting her defined “norm” of marriage and predicts that changes in those norms would destabilize marriage. (Young Rep. 11; Young Dep. 222:12-15.) But Dr. Young has not studied whether allowing gay and lesbian

individuals to marry would actually affect that norm. For example, Dr. Young has not studied: (1) the extent to which permitting marriage of same-sex couples affects the desire of heterosexuals to marry (*id.* at 120:15-18); (2) the extent to which permitting marriage of same-sex couples affects the stability or number of heterosexual marriages (*id.* at 119:10-120:18); (3) whether civil unions are equally as successful as marriage at creating “durable” relationships (*id.* at 87:20-88:23); or (4) the effects of domestic partnership laws or civil unions on marriage (*id.* at 95:4-97:18; 98:7-101:2). In effect, Dr. Young’s failure to offer any support for her conclusions renders her opinions little more than “junk science” that the Court “must ensure takes no part in the decision.” *Mukhtar*, 299 F.3d at 1063.

Indeed, the lack of any objective data results in internal inconsistencies in Dr. Young’s analysis that further undermines the reliability of her conclusions. She acknowledges that it is not necessarily harmful (and, in fact, can be beneficial) if norms of the past change to accommodate alterations in social values and understandings (*id.* at 197:12-18), but has not studied the conditions in the United States that might be relevant to whether it is desirable for the United States and its citizens to end the prohibition on marriage by gay and lesbian individuals. (*Id.* at 211:16-23.)

Dr. Young also cannot offer reliable testimony because she has failed to consult, review or evaluate *any* of the relevant authorities (and their associated methodologies) in *any* academic field on the issues surrounding the marriage rights of gay and lesbian individuals. She has not endeavored to determine what the various professional associations who have issued opinions on the implications of marriage of same-sex couples have said with respect to any of the opinions she advances in her expert report. (*Id.* at 152:15-153:23.) Indeed, she believes that such information would not be relevant to her analysis. (*Id.* at 156:5-19.) She does not know whether the professional associations in the fields of psychology, anthropology or sociology have taken a position on whether gay and lesbian individuals should be permitted to marry one another, much less what those positions are. (*Id.* at 105:8-106:4; 152:15-153:23.) She offers opinions on the “likely effects of legalizing same-sex marriage on children” (Young Rep. 18), but she has not studied what proportion of children are being raised by two married people of the opposite sex. (*Id.* at 73:6-19.) Similarly, she has no knowledge of any statements by professional organizations concerning whether or not same-sex parents are as

effective as heterosexual parents in raising well-adjusted children. (*Id.* at 106:5-107:16; 108:15-109:22.) She has not looked at the question of whether psychologists and sociologists believe it is necessary to have time series data to address the effect of marriage of same-sex couples on child welfare. (*Id.* at 91:21-92:3.) Dr. Young simply ignores what others with actual expertise in relevant academic fields have concluded or considered in analyzing the same question she purports to answer. Such willful blindness renders her report unreliable. *See, e.g., Daubert*, 509 U.S. at 589–590 (holding expert conclusions must be based on the knowledge and experience of his or her discipline, not on “subjective belief or unsupported speculation”); *LuMetta*, 824 F.2d at 771 (affirming exclusion of witnesses who lacked knowledge about the relevant subject matter).

Even in the area of religion, in which Dr. Young purports to have some expertise, she has failed to review or study any information that might provide a basis for her conclusions in this case. For example, she has not studied how the major Western religions or U.S. churches view homosexuality. (*See, e.g., Young Dep.* 63:7-20 (Roman Catholicism), 69:21-70:10 (Baptist), 70:11-12 (Presbyterianism)). These deficiencies underscore that Dr. Young has not (and cannot) apply the principles she espouses to the facts of this case in any reliable manner.

4. Dr. Young’s Testimony Would Waste Time and Create Confusion and is thus Inadmissible Under Federal Rule of Evidence 403

Dr. Young does not even purport to offer any opinion on any factual dispute in this case, and her opinions are unreliable. Thus, consideration of Dr. Young’s testimony would waste time and create confusion. *See Fed. R. Evid.* 403. Accordingly, Dr. Young’s testimony also fails to satisfy the requirements of Federal Rule of Evidence 403 and should be excluded.

B. Loren Marks

1. Dr. Marks is Not Qualified to Offer an Expert Opinion in this Case

Proponents also proffer Dr. Loren Marks, an associate professor at the College of Agriculture at Louisiana State University. (Marks Expert Report (“Marks Rep.”) 1.) Dr. Marks seeks to testify as an expert on whether a “biological, marriage-based family” is “the ideal structure for child outcomes.” (*Id.*) But Dr. Marks does not have the experience or education necessary to make a determination on what type of family structure is “ideal” for child outcomes. His self-described areas

of research interest include faith and families and African American families – discrete areas that hardly provide Dr. Marks an adequate foundation to opine on an “ideal structure” for child outcomes. (Marks Dep. 44:10-16, October 30, 2009.) He has never conducted original research on children with gay or lesbian parents, and has never published or even written any works on the issue. (*Id.* at 58:3-12.) Similarly, Dr. Marks’ work has not even focused on the general subject area of child adjustment. (*Id.* at 53:21-54:10.) Dr. Marks’ expert report further demonstrates his lack of qualifications. As Dr. Marks has no experience in the field in which he is purported to be an expert, Dr. Marks’ expert report contains no references to his own work, and he did not consider any of his own work for the report. *See* Marks Rep. Thus, Dr. Marks lacks the experience or knowledge required to qualify as an expert on the “ideal” family structure for “child outcomes.” *See LuMetta*, 824 F.2d at 771 (excluding experts who had some knowledge, but lacked experience with either the specific contract in question or the specific type of company in question).

2. Dr. Marks’ Report, Opinions, and Testimony Have No Relevance to this Litigation

Dr. Marks’ expert report, opinions, and testimony should be excluded because the subjects upon which Dr. Marks opines have no relevance to the factual issues in this litigation. To be admissible, an expert opinion must be “sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.” *See, e.g., Daubert*, 509 U.S. at 591. The only factual dispute that Dr. Marks has been proffered to opine on is Proponents’ claim that the state has an interest in preventing marriage of gay and lesbian individuals because it would negatively affect child outcomes. This Court has specified that this specific factual dispute is whether a married mother and father provides the optimal child-rearing environment and whether excluding same-sex couples from marriage promotes this environment. Doc #76 at 7–8. Dr. Marks’ report does not assist in answering those questions, however, because he does not address child outcomes when the parents are of the same-sex and thus cannot possibly illuminate any relevant factual disputes. Dr. Marks himself admits that his expert report does not express an opinion about child outcomes for same-sex couples. (*Id.* at 114:2-115:14.) Dr. Marks’ report only addresses the comparison of outcomes for children in biological, intact families with non-marital, divorced, and/or step-families. (*Id.* at 88:17-90:9.) All three of

these categories exclude the relevant family unit at issue here—a couple – gay or straight, that biologically cannot have children, but together decide to adopt or utilize an egg or sperm donor. As Dr. Marks has asserted that his expert opinions are limited to those cited in his expert report and “whatever shows up in [his] rebuttal,”² the universe of what Dr. Marks has to offer the Court, in way of expert opinion, lies in his expert report. (*Id.* at 61:10-62:4.) However, Dr. Marks’ expert report entirely fails to address the relevant issue at hand – the outcomes of children of same-sex couples as compared to children of opposite sex couples who are biologically related to their children. Thus, Dr. Marks’ expert opinions must be excluded as they will not assist the Court to understand whether the Proponents’ claim that excluding same-sex couples from marrying will promote optimal outcomes. *See Daubert*, 509 U.S. at 591 (explaining expert opinion must assist trier of fact to resolve a factual dispute to be admissible).

Further, Dr. Marks would be unable to draw any relevant conclusions from his understanding of studies comparing child outcomes in a biological, “in-tact” family with non-marital, divorced, and step-families, as he concedes that same-sex parents should be studied as their own discrete category. (*See id.* at 239:14-22.) Accordingly, Dr. Marks’ complete reliance on studies excluding same-sex parents undermines his ability to opine on the impact same-sex parents have on child outcomes. *Joiner*, 522 U.S. at 144–145 (upholding district court’s rejection of expert opinions because the opinions were based on studies that were too dissimilar to the facts presented in the relevant litigation and the experts failed to explain how and why they were able to extrapolate their opinions from the dissimilar studies). Moreover, in his deposition, Dr. Marks withdrew his claim that *genetic* parent-child relationships are important to child outcomes and noted that he knows of no empirical research that identifies biology as the cause of good outcomes for children. (*Id.* at 81:18-82:9; 147:9-21.) Dr. Marks also has no opinion as to the best family form for a child for which the “intact, biological family” (as he defines it) is unavailable. (*Id.* at 102:7-10.) Thus, Dr. Marks should not be permitted

² Given the major deficiencies in Dr. Marks’ expert report, during his deposition, Dr. Marks claimed that he planned to prepare and submit a rebuttal report to specifically address literature on same-sex parents. (Marks Dep. 32:13-33:1, 37:8-40:1, 61:10-62:4.) Dr. Marks never submitted such a rebuttal.

to extrapolate any opinions, as he has admitted that he has no familiarity with any material that would be able to support his conclusions without causing the “analytical gap” prohibited in *Joiner*, 522 U.S. at 145.

3. Dr. Marks’ Report, Opinions, and Testimony are Unreliable

In addition to being irrelevant, Dr. Marks’ expert opinions are unreliable. To arrive at his conclusions, Dr. Marks utilizes no discernible methodology. *See Daubert II*, 43 F.3d at 1319 (explaining that a failure to explain the methodology utilized to arrive at a conclusion does not satisfy the *Daubert* reliability requirement). At best, Dr. Marks’ expert report and testimony are akin to a shallow book report. As evidenced by his expert report and deposition testimony, Dr. Marks’ “opinions” are nothing more than brief, out-of-context quotations of *other* scholars. Reciting the conclusions or summaries of others, without offering explanation or elaboration on how these out-of-context conclusions from other studies relate to the immediate case, cannot be considered to meet the “same level of *intellectual rigor* that characterizes the practice of an expert in the relevant field.” *See Kumho Tire*, 526 U.S. at 152. Further, not only does Dr. Marks simply parrot the conclusions of others, Dr. Marks makes no effort to explain why such conclusions are applicable in the immediate case. Although “[t]rained experts commonly extrapolate from existing data,” “opinion evidence that is connected to existing data only by the *ipse dixit* of the expert” may be excluded. *See Joiner*, 522 U.S. at 146. Further, without any context or insight into the quoted studies, it is impossible to determine if the studies themselves are reliable or being cited in a reliable manner that is true to their full findings.

Not only does Dr. Marks fail to offer any analysis or insight into any of the studies he quoted, but he admits that he did not even completely read the studies cited in his report. (Marks Dep. 65:10-66:6; 67:6-13.) Failing to read the sources upon which one *entirely* relies to draw conclusions can hardly be considered a hallmark of a reliable methodology.³ More critically, Dr. Marks did not know

³ Further calling into question Dr. Marks’ diligence, Dr. Marks admits that some of the work he has done should not be considered “high quality social science.” (Marks Dep. 50:10-14; 51:9-52:7; 54:12-17.) Dr. Marks also admits that none of his own published articles can be characterized as “gold standard, high end work.” (*Id.* at 71:1-7.)

1 how the studies he cited actually defined the terms “biological” or “intact” – an essential piece to
 2 understanding the meaning of the studies Dr. Marks relies upon for making his conclusions. (*See*,
 3 *e.g.*, 158:12-159:8.) Dr. Marks was similarly unable to verify that the studies he cited that used the
 4 term “biological parent” defined it in a manner which excluded adoptive parents, as Dr. Marks
 5 purports the term “biological parent” should. In one instance, Dr. Marks even cites a study, which
 6 cited another study, that states most studies *do not* distinguish biological parents from adoptive
 7 parents. (*Id.* at 144:3-13.) This lack of clarity in how his sources use “biological” is clearly not
 8 because the definition of “biological” is unimportant to Dr. Marks’ findings – Dr. Marks himself
 9 admits that using two sources, that each define the term differently, to draw one conclusion is
 10 problematic. (*See id.* at 139:14-140:9.) Thus, it would be hard for Dr. Marks to credibly claim that
 11 he employed the *same level of intellectual rigor* that an expert in his field would be expected to
 12 employ. *See Kumho Tire*, 526 U.S. at 152 (holding trial court must “make certain that an expert . . .
 13 employs in the courtroom the same level of intellectual rigor that characterizes the practice of an
 14 expert in the relevant field”).

15 Dr. Marks himself also lacks familiarity with relevant studies that would assist him in coming
 16 to his conclusions. At the time of Dr. Marks’ deposition, Dr. Marks could only name two studies,
 17 one from 1996 and one from 2004, that compared different family structures, including same-sex
 18 parents. (*See Marks Dep.* 30:4-32:10.) Dr. Marks was unable to provide any specificity about either
 19 study at his deposition and did not cite either study in his expert report or list either study in his
 20 “materials considered” index. (*See id.*; Marks Rep.) Dr. Marks was also unable to name or even
 21 generally describe any other studies comparing child outcomes by same-sex couples and heterosexual
 22 couples. (*See id.*) Dr. Marks stated that “if he [was] a betting person” he would assume that “there
 23 have been studies that have come out recently that I’m unaware of.” (Marks Dep. 33:3-7.) Dr.
 24 Marks’ lack of relevant knowledge not only indicates a likely lack of methodology, it also indicates
 25 the opinions Dr. Marks has to offer about “ideal” child outcomes or child outcomes in same-sex
 26 families were developed purely for this litigation. An important hallmark of evaluating reliability is
 27 whether the purported expert’s opinions are based in research that was conducted independently from
 28 the litigation. *See Daubert II*, 43 F.3d at 1317. Clearly, Dr. Marks’ opinions asserted in this

litigation were developed for the first time after being commissioned for this litigation. Accordingly, Dr. Marks was required to “explain precisely how [he] went about reaching [his] conclusions” – which he has entirely failed to do. *Id.*

Further, Dr. Marks’ admitted personal, religious views towards traditional marriage also undermine the objectivity (and thus reliability) of his conclusions. Dr. Marks’ religious conviction and personal dogma is that children are entitled to be born within the bonds of matrimony and to be reared by a father and mother who honor marital vows with complete fidelity. (Marks Dep. 260:15-262:6.) This personal dogma was developed *before* Dr. Marks graduated from college and well before Dr. Marks began to consider himself a “social scientist.” (*Id.* at 275:5-276:3.) Dr. Marks admitted that this personal dogma “ran around in [his] head” when he wrote his expert report. (*Id.* at 274:8-275:4.) Accordingly, not only does Dr. Marks’ lack of methodology cast severe doubt about the admissibility of his conclusions, but Dr. Marks’ own possible personal bias calls his unsupported conclusions further into question.

4. Dr. Marks’ Report, Opinions, and Testimony Lack Probative Value and are thus Inadmissible Under Federal Rule of Evidence 403

The complete irrelevance of Dr. Marks’ conclusions to any issue in the case demonstrates the lack of any probative value his conclusions may offer the Court. Thus, Dr. Marks’ report, opinions, and testimony are inadmissible under Fed. R. Evid. R. 403.

C. David Blankenhorn

1. Mr. Blankenhorn is Not Qualified to Offer an Expert Opinion in this Case

Proponents submit David Blankenhorn as an expert on “issues of family policy and family well-being with a particular focus on the institution of marriage.” (Blankenhorn Expert Report (“Blankenhorn Rep.”) 1.) Mr. Blankenhorn considers himself to be an expert on marriage, fatherhood and family structure. (Blankenhorn Dep. 116:8-22, November 3, 2009.) But none of Mr. Blankenhorn’s undergraduate or graduate course work focused on any of these issues. Indeed, he did not take any courses in anthropology, psychology, child welfare or sexual orientation. (*Id.* at 19:18-22; 22:6-17; 24:18-22.) Rather, his undergraduate course work was focused on labor history, and his masters thesis researched the comparative contributions of two British cabinetmakers’ trade unions

“in shaping the emergence of the British working people.” (*Id.* at 20:3-9; 23:11-24:17.) Other than his bachelors and masters work focused on labor history, Mr. Blankenhorn has no other academic training. (*Id.* at 25:6-11.) He does not have a Ph.D. (*Id.*) His claim to “expertise” in the areas in which he seeks to testify is based on nothing more than his work with the Institute for American Values and his “continuing anthropological, historical and cultural study of the institution of marriage.” (*Id.* at 30:1-6; 54:3-15.) This “study” consists of “reading and reflecting on the texts in the field” and “discussions with other scholars.” (*Id.* at 54:3-15.) He has never published any work in any peer-reviewed journal; most of his published work is produced by his organization, the Institute for American Values. (*Id.* at 55:19-56:14.) In short, Mr. Blankenhorn has no expertise in any relevant academic field and is not qualified to serve as an expert under Federal Rule of Evidence 104.

2. Mr. Blankenhorn Has No Relevant Opinions to Offer

It is not at all clear what relevance Mr. Blankenhorn’s self-described “personal” views on marriage and family have to the specific factual issues in this case. (*Id.* at 92:20-93:2.) Mr. Blankenhorn has not reviewed the Complaint in this action. (*Id.* at 74:12-18.) He is not offering any opinions about the actual motivation of voters or official proponents in passing Prop. 8. (*Id.* at 84:15-85:2.) Indeed, he does not mention either Prop. 8 or the state of California in his report. (*See generally* Blankenhorn Rep.; *see also* Blankenhorn Dep. 76:13-17; 77:21-78:2; 89:21-90:18.) In these circumstances, Mr. Blankenhorn is incapable of tying his proffered testimony to the facts of the case, and any testimony he might give would be irrelevant to the issues in this case. *See Daubert*, 509 U.S. at 591 (holding expert testimony must be sufficiently tied to the facts of the case such that it will “assist the trier of fact to understand the evidence or to determine a fact in issue” to be admissible).

3. Mr. Blankenhorn’s Conclusions Are Not Based on a Discernible Methodology and are Unreliable

Given the lack of Mr. Blankenhorn’s expert qualifications, it is not surprising that his conclusions are based on no objective data or discernible methodology, and that there are numerous inconsistencies in his testimony. In his report, Mr. Blankenhorn states that “[a]s an intellectual

matter, whether or not to grant equal marriage rights to gay and lesbian persons depends importantly on one's answer to the question, "What is marriage?" (Blankenhorn Rep. 3.) He then groups quotations taken from a number of sources into two categories – those quotations he believes support the argument that "marriage is fundamentally a private adult commitment" and those that support the argument that "marriage is fundamentally a pro-child social institution." (Blankenhorn Rep. 3–11.) Although he acknowledges that it is not possible to demonstrate empirically that the view that marriage is fundamentally a "pro-child" social institution is the only valid view (Blankenhorn Rep. 11), Mr. Blankenhorn nonetheless asserts that it is possible to demonstrate that that view is "consistent with much of the most respected scholarship of the modern era" and "widely embraced by intelligent, fair-minded leaders and citizens of good will." (Blankenhorn Rep. 11.) He then argues that marriage as an institution focuses on "bringing together the male and female of the species into a common life" (Blankenhorn Rep. 12) "because humans favor the survival and success of the human child." (*Id.* at 13.) To support this claim, Mr. Blankenhorn again lists several pages of quotations taken from various selected articles and reports. (*Id.* at 13-15.) This list of quotations, together with Mr. Blankenhorn's personal views, are the sole basis for his conclusion that "[i]f human beings were not sexually embodied creatures who everywhere reproduce sexually and give birth to helpless, socially needy offspring who remain immature for long periods of time and who therefore depend decisively on the love and support of both of the parents who brought them into existence, the world almost certainly would not include the institution of marriage." (Blankenhorn Rep. 15; Blankenhorn Dep. at 105:16-106:9.) Indeed, this type of testimony embodies the very type of expert testimony prohibited in *General Electric v. Joiner*, 522 U.S. at 146.

In a nutshell, Mr. Blankenhorn's conclusion is that the primary purpose of marriage is to insure that children receive love and support from their biological parents. But that conclusion is unsupported by logic – let alone data or research. Mr. Blankenhorn admits that the law governing who can marry does not inquire into the motivation of those individuals to marry – procreative or otherwise. (Blankenhorn Dep. 174:19-190:2; 189:17-190:2.) Indeed, he acknowledges that people who cannot procreate at all are still allowed to marry, as are people who have had children previously and abandoned them. (*Id.* at 189:17-190:2; 195:4-199:17.) He also admits that a lesbian or gay

1 couple that adopts a child is no less attentive or loving or caring toward their children than a
 2 heterosexual couple. (*Id.* at 211:8-21.) Indeed, in a situation in which biological parents do not want
 3 a child, he is not opposed to a gay or lesbian couple adopting that child. (*Id.* at 231:6-22.)

4 Although Mr. Blankenhorn “personally” opposes marriage of same-sex couples on these
 5 grounds (*id.* at 92:20-93:2), he relies on no discernible methodology to support his views. Indeed, he
 6 summarizes the process through which he arrived at these views for purposes of this litigation as
 7 devoting “some days and weeks to reading and trying to organize my thoughts and trying to refresh
 8 my recollection about other previous work that I have done.” (*Id.* at 116:8-22.) He has expressly
 9 disclaimed relying on anything more rigorous to form his opinion in this case (*id.* at 105:16-106:9)
 10 and admits he has not even read all of the “materials considered” listed in his expert report in their
 11 entirety. (*Id.* at 110:8-22.) Despite Mr. Blankenhorn’s thesis that marriage confers advantages on
 12 children biologically related to both parents in the marriage, in his deposition, he could not provide
 13 the name or authors of any published studies that compare one family where both parents have a
 14 biological connection to the child and a family where one or both parents is not biologically
 15 connected to the child. (*Id.* at 267:5-272:16.) And he admits that he certainly did not consider any
 16 such study in assembling his report. *Id.* Similarly, he is aware of no studies supporting the view that
 17 children raised from birth by gay or lesbian couples have any worse outcomes than those raised by
 18 biological different sex parents. (*Id.* at 272:17-21.) He candidly admits that allowing a same-sex
 19 couple with children to marry would likely be beneficial for both the couple and their children. (*Id.*
 20 at 282:21-283:10.)

21 Mr. Blankenhorn also purports to offer the opinion that marriage of gay and lesbian
 22 individuals will “deinstitutionalize” marriage, transforming it “from a pro-child social institution into
 23 a post-institutional private relationship.” (Blankenhorn Rep. 22.) Of course, Mr. Blankenhorn’s
 24 conclusion on this point is built on his argument that marriage is a “pro-child institution” and, as
 25 explained above, he has no reliable methodology or basis to support that conclusion. Moreover, Mr.
 26 Blankenhorn admits that the “deinstitutionalization” of marriage was occurring long before marriage
 27 of gay and lesbian individuals was legalized in any jurisdiction. (Blankenhorn Dep. 293:21-294:13.)
 28 Indeed, he identifies the primary drivers of the phenomenon as: “divorce, out of wedlock

childbearing and nonmarital cohabitation,” not marriage between people of the same-sex. (*Id.* at 288:13-290:2.)

Mr. Blankenhorn lists “nineteen specific answers” to the question of the potential harms he believes will result from allowing gay and lesbian individuals to marry. (Blankenhorn Rep. 22-24.) But these “answers” can hardly constitute reliable expert testimony. The list is taken word for word from his book *Future of Marriage* with the exception that five “answers” in the book were omitted. (Blankenhorn Dep. 314:2-315:11.) But Mr. Blankenhorn did not develop the list in either *Future of Marriage* or his report. Rather, the list represents Mr. Blankenhorn’s “report” on the results of a “group thought experiment” in which the list was developed by a group of anonymous⁴ individuals who met in three one-day sessions. (*Id.* at 315:12-316:10; 318:6-18.) The “methodology” employed by the group to generate the list consisted of writing ideas voiced by members of the group on chalkboards and poster paper over the course of these three meetings. (*Id.* at 316:21-317:16; 320:10-14; 320:21-321:3; 322:1-6.) This is a far cry from what courts in this Circuit and elsewhere have required to constitute a reliable methodology on which to base expert testimony and conclusions. *See, e.g., Domingo*, 289 F.3d at 607 (“reasoning between steps in a theory must be based on objective, verifiable evidence and scientific methodology of the kind traditionally used by experts in the field”). Indeed, it would be impossible to even apply, much less evaluate, the factors courts generally consider in evaluating the reliability of the expert’s methodology because Mr. Blankenhorn’s “group thought experiment” is based on no methodology at all. *See Daubert II*, 43. F.3d at 1319 (“experts must explain precisely how they went about reaching their conclusions”); *Mukhtar*, 299 F.3d at 1063 (“the trial judge must ensure that ‘junk science’ plays no part in the decision”); *Jinro Am. Inc.*, 266 F.3d at 1006 (excluding “impressionistic generalizations”).

4. Mr. Blankenhorn’s Testimony Would Waste Time and Create Confusion and is thus Inadmissible Under Federal Rule of Evidence 403

Mr. Blankenhorn possesses no expertise in any relevant academic field. He does not offer opinions relevant to the specific facts in dispute, and his conclusions do not even approach the

⁴ Mr. Blankenhorn refused to identify the participants in the “group thought experiment” when asked to do so at his deposition. (Blankenhorn Dep. 334:21-335:21.)

requirements for reliable expert testimony under the Federal Rules of Evidence. Because inclusion of his testimony and conclusions would provide no benefit to the Court and, indeed, is likely to waste time and confuse the issues in this case, this Court should find Mr. Blankenhorn's testimony inadmissible.

IV. THE COURT SHOULD EITHER EXCLUDE THE TESTIMONY OF THESE PROPOSED EXPERTS BEFORE TRIAL OR REJECT SUCH TESTIMONY AFTER EXPLORING THEIR QUALIFICATIONS DURING TRIAL

For the reasons set forth above, Plaintiffs and Plaintiff-Intervenor believe that this Court properly could exclude the reports and testimony of Katherine Young, Loren Marks, and David Blankenhorn in advance of trial and bar Proponents from calling them as witnesses. Even in a bench trial, this Court may exclude the expert testimony in limine if it wishes, as the "trial judge acting as trier of fact 'has broad discretion to admit or exclude' expert testimony that is helpful to its decision." *CFM Comm., LLC v. Mitts Telecasting Co.*, 424 F. Supp. 2d 1229, 1234 (E.D. Cal. 2005) (citing *Beech Aircraft*, 51 F.3d at 842 (holding that the court properly excluded from a bench trial expert opinion concerning what could be heard in a tape recorded conversation because the trial judge was in a better position to make that determination)).

However, if the Court determines that it would be appropriate to explore these experts' qualifications during trial, *see Kumho Tire*, 526 U.S. at 142; *Verduzco*, 373 F.3d at 1032; *United States v. Alatorre*, 222 F.3d 1098, 1103–1104 (9th Cir. 2000), Plaintiffs and Plaintiff-Intervenor are willing to defer any decision on their motion until *after* the Proponents' Proposed Experts offer full testimony via direct and cross examination. This approach is commonly used in bench trials because the Court is both the "gatekeeper" and the finder of fact. *See, e.g., Volk v. United States*, 57 F. Supp. 2d 888, 896 n.5 (N.D. Cal. 1999) (noting that the *Daubert* gatekeeping obligation may be less pressing in connection with a bench trial and the court may properly consider *Daubert* challenges either in limine or at trial); *Laconner Assoc. Ltd. Liab. Co. v. Island Tug & Barge Co.*, 2008 WL 2077948, at *2 (W.D. Wash. May 15, 2008) (reserving ruling on admissibility of expert testimony until after vigorous cross examination and presentation of contrary evidence); *Fechtig v. Sea Pac.*

1 *Inc.*, 2006 WL 2982148 (N.D. Cal. 2006) (rejecting expert's theoretical conclusions after hearing
2 expert testimony and determining what weight to give the testimony).⁵

3 V. CONCLUSION

4 For the reasons set forth above, Plaintiffs and Plaintiff-Intervenor request that the Court find
5 that the expert testimony of Katherine Young, Loren Marks, and David Blankenhorn is inadmissible
6 at trial, or accord such testimony little or no weight. Plaintiffs and Plaintiff-Intervenors leave to this
7 Court's discretion whether it wishes to exclude the testimony in advance of the bench trial in this
8 matter or to do so after exploring each witness' qualifications on the witness stand.

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26 ⁵ In so doing, Plaintiffs and Plaintiff-Intervenor do not waive the objections set forth in this
27 motion by their participation in examination of Proponents' Proposed Experts. *See, e.g.,*
28 *Jones v. United States*, 127 F.3d 1154, 1156 (9th Cir. 1997) (noting that after two week bench
trial, trial court granted Plaintiff's *Daubert* motion in limine to exclude expert).

Respectfully Submitted,

DATED: December 7, 2009

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ATTESTATION PURSUANT TO GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

By: _____/s/
Theodore B. Olson

Exhibit 2

Loren Dean Marks

October 30, 2009

Washington, DC

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 KRISTIN M. PERRY, et al.,)
4 Plaintiffs,)
5 v.) No. 09-CV-2292 VRW
6 ARNOLD SCHWARZENEGGER, in)
7 his official capacity as)
8 Governor of California,)
9 et al.,)
10 Defendants.)
11
12 Washington, D.C.
13 Friday, October 30, 2009
14 Deposition of LOREN DEAN MARKS, called for
15 examination by counsel for Plaintiffs in the
16 above-entitled matter, the witness being duly sworn
17 by CHERYL A. LORD, a Notary Public in and for the
18 District of Columbia, taken at the offices of COOPER
19 & KIRK PLLC, 1523 New Hampshire Avenue N.W.,
20 Washington, D.C., at 9:31 a.m., and the proceedings
21 being taken down by Stenotype by CHERYL A. LORD, RPR,
22 CRR.

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Washington, DC

1 Dunn & Crutcher, for the plaintiffs.

2 MS. KATSUR: Melanie Katsur, of Gibson
3 Dunn & Crutcher, also for the plaintiffs.

4 MS. BERNSTEIN: Erin Bernstein, for
5 plaintiff intervenor, city and county of San
6 Francisco.

7 MR. THOMPSON: David Thompson, of Cooper &
8 Kirk, for the defendant intervenors.

9 THE WITNESS: Loren Dean Marks.

10

11 Whereupon,

12 LOREN DEAN MARKS

13 was called as a witness by counsel for Plaintiffs,
14 and, having been duly sworn by the Notary Public, was
15 examined and testified as follows:

16

17 EXAMINATION BY COUNSEL FOR PLAINTIFF

18 BY MR. MCGILL:

19 Q. Thank you for joining us today, Dr. Marks.

20 Would you please state your full name for
21 today's record.

22 A. Yes.

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1 A. The way that I just used, expert, was in
2 connection with the -- the lay audience with the
3 general population.

4 Q. As of approximately what date do you
5 believe that you became an expert?

6 MR. THOMPSON: Objection to the extent it
7 calls for a legal conclusion.

8 A. In connection with this -- this expert
9 report, the first one, in -- in academia generally,
10 once -- once one has achieved tenure, that would be a
11 widely accepted benchmark, not just landing a first
12 job or receiving a Ph.D. degree, but achieving tenure
13 would be a significant landmark.

14 I think that's -- that's as good as most.
15 Still inadequate, probably.

16 BY MR. MCGILL:

17 Q. And do I remember correctly that you
18 became a tenured professor about -- was it June of
19 2008 that you said?

20 A. June of 2008.

21 Q. Do you consider yourself to be an expert
22 in your areas of primary research interest?

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Washington, DC

1 **A. In the areas of faith and families and**
2 **specifically strong African American families, yes,**
3 **yes, I would.**

4 **Q. Are you an expert in child adjustment?**

5 MR. THOMPSON: Objection, vague.

6 **A. Child adjustment is one of -- again one of**
7 **the many, many areas that I'm responsible for knowing**
8 **something about.**

9 **Is it one of my focal interest areas?**

10 **No, it is not.**

11 BY MR. MCGILL:

12 **Q. But you still consider yourself to be an**
13 **expert in child adjustment?**

14 **A. By the standards of my field, I don't**
15 **study the specific concept of child adjustment. I do**
16 **study child outcomes at some length, and family**
17 **outcomes.**

18 **Q. And you would not have contended in --**
19 **earlier than your date of being a tenured professor**
20 **that you were an expert in any field, would you?**

21 MR. THOMPSON: Objection, mischaracterizes
22 the testimony.

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Washington, DC

1 **generally.**

2 BY MR. MCGILL:

3 Q. Am I correct that you have never conducted
4 any original research on families headed by lesbian
5 or gay parents?

6 A. Yes.

7 Q. Do any of your published writings or
8 articles in press discuss children raised by lesbian
9 or gay parents?

10 A. No, Mr. McGill, I don't believe they do
11 one way or the other, meaning positively or
12 negatively.

13 Q. Are there any other qualifications
14 that you have that we have not discussed that relate
15 to your opinion as you've set it forth in your
16 report?

17 A. In the expert report -- that's a broad
18 question.

19 None come to mind at the moment that
20 directly bear on it, but there -- there may be.

21 Q. When were you retained as an expert?

22 A. Mr. Thompson contacted me by phone in

Loren Dean Marks

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1 **definition, any reasonable social scientist is going**
2 **to admit that there are differences of**
3 **interpretation.**

4 **Certainly Dr. Lamb and I would agree on**
5 **that point, I think.**

6 BY MR. MCGILL:

7 Q. You mentioned Dr. Lamb.
8 Is he an authority in his field?

9 MR. THOMPSON: Objection, vague.

10 A. **He is.**

11 BY MR. MCGILL:

12 Q. Would you consider him an expert in his
13 field?

14 MR. THOMPSON: Objection to the extent it
15 calls for a legal conclusion.

16 A. **I would.**

17 BY MR. MCGILL:

18 Q. Let us at last turn to your actual report.
19 Could you please turn to paragraph 42,
20 which appears on page 10 of what has been marked as
21 exhibit 2.

22 There you state: Based on available

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1 my earlier statement that I also have taken upon me
2 the burden of challenge. This is -- you know,
3 scholarship is about strengths and challenges, not
4 just dogmatically presenting one.

5 Q. When is the first time you held the belief
6 that the ideal family structure is marriage between a
7 man and a woman and a child biologically related to
8 each?

9 MR. THOMPSON: Objection, relevance.

10 A. Mr. McGill, I don't know. I don't know
11 how to answer that question.

12 BY MR. MCGILL:

13 Q. Is it -- is it fair to say that you held
14 that view, you held that belief before your
15 engagement as an expert in this case?

16 A. Yes.

17 Q. Is it fair to say you held that belief
18 before you received your Ph.D. degree?

19 A. Yes.

20 Q. Did you hold that belief before you
21 graduated from college?

22 A. Yes.

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1 MR. MCGILL: Thank you.

2 As Melanie wrote to me, "you are done."

3 THE VIDEOGRAPHER: This concludes the
4 deposition of Dr. Loren Marks. The time is now 6:18
5 PM. The total number of videotapes used were 7.

6 Thank you.

7 (Whereupon, at 6:18 p.m., the taking of
8 the instant deposition ceased.)

9

10

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12



13

Signature of the Witness

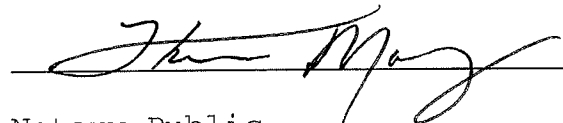
14

15 SUBSCRIBED AND SWORN to before me this 25th day of
16 November, 2009.

17

18

19



20

Notary Public

21

22 My Commission Expires: _____

THERESA MOONEY
Notary Public #10120
East Baton Rouge Parish
State of Louisiana
Lifetime Commission

Loren Dean Marks

October 30, 2009

Washington, DC

CERTIFICATE OF COURT REPORTER

UNITED STATES OF AMERICA)

DISTRICT OF COLUMBIA)

I, CHERYL A. LORD, the reporter before
whom the foregoing deposition was taken, do hereby
certify that the witness whose testimony appears in
the foregoing deposition was sworn by me; that the
testimony of said witness was taken by me in machine
shorthand and thereafter transcribed by
computer-aided transcription; that said deposition is
a true record of the testimony given by said witness;
that I am neither counsel for, related to, nor
employed by any of the parties to the action in which
this deposition was taken; and, further, that I am
not a relative or employee of any attorney or counsel
employed by the parties hereto, or financially or
otherwise interested in the outcome of this action.

CHERYL A. LORD

Notary Public in and for

the District of Columbia

My Commission expires April 30, 2011

JON W. DAVIDSON (*pro hac vice*)
TARA L. BORELLI (*pro hac vice*)
PETER C. RENN (*pro hac vice*)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**SUPPLEMENTAL DECLARATION OF
MICHAEL LAMB, PH.D. IN SUPPORT
OF PLAINTIFFS' COMBINED
OPPOSITION TO MOTIONS FOR
SUMMARY JUDGMENT BY
DEFENDANT SANDOVAL, DEFENDANT
GLOVER, AND DEFENDANT-
INTERVENOR COALITION FOR THE
PROTECTION OF MARRIAGE**

1 I, Michael Lamb, Ph.D., hereby declare and state as follows:

2 1. I am a Professor of Psychology in the Department of Psychology at the University
3 of Cambridge in the United Kingdom. I have actual knowledge of the matters stated in this
4 declaration and could and would so testify if called as a witness.

5 2. On June 24, 2011, I submitted my expert declaration in this matter, which set forth
6 my relevant background and experience (my "Original Declaration," Dkt. 86-3, Pltfs' Appendix
7 at 314-454), and attached my curriculum vitae and a list of my publications from the last 10 years
8 as Exhibits A and B respectively.

9 3. That Original Declaration set forth the principal opinion that I am offering in this
10 case: that children and adolescents raised by same-sex parents are as likely to be well-adjusted as
11 children raised by heterosexual parents, including those children's "biological" parents.¹

12 4. I have read the relevant portions of the Motion for Summary Judgment and
13 Memorandum in Support filed by Defendant-Intervenor Coalition for the Protection of Marriage
14 ("Coalition"), Dkt. 72. More specifically, the text on pages 16 through 24 of the Coalition's
15 memorandum asserts that children are best adjusted when raised by co-resident married mothers
16 and fathers who are their biological parents, Dkt. 72 at 16-24 (described as "bionormativity");
17 that children conceived through assisted reproductive technology experience poorer outcomes,
18 Dkt. 72 at 17; and that recent papers in this field undermine the conclusion that the children of
19 lesbians and gay men have equally good outcomes as children raised by married heterosexual
20 couples, Dkt. 72 at 21-22. I submit this further declaration in order to respond to these
21 statements, which are neither correct nor credible. I also have reviewed the materials the
22 Coalition cited in this portion of its brief and submitted in its Appendix in Support of the
23 Coalition's Motion for Summary Judgment.

24 5. In my Original Declaration, I already offered testimony rebutting a number of the
25 sources the Coalition cites in its memorandum, and I will not repeat that testimony in full here.
26 See Dkt. 86-3 at 11-13, Pltfs' Appendix at 324-26 (discussing Mark Regnerus, *How different are*

27 ¹ All cites in this supplemental declaration that appear in shortened form refer to articles cited in
28 the Bibliography attached as Exhibit B to my Original Declaration. Dkt. 86-3, Pltfs' Appendix at
444-454. All new sources appear in full citation form.

the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study, Social Science Research 41 (2012) 752–70); Dkt. 86-3 at 14 n.6, Pltfs’ Appendix at 327 (discussing Loren D. Marks, *Same-Sex Parenting and Children’s Outcomes: A Closer Examination of the American Psychological Association’s Brief on Lesbian and Gay Parenting*, 41 Soc. Sci. Research 735, 748 (2012)); Dkt. 86-3 at 10 n.1, Pltfs’ Appendix at 323 (discussing David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood and Marriage are Indispensable for the Good of Children and Society* (1996)); Dkt. 86-3 at 16 n.7, Pltfs’ Appendix at 329 (discussing Kristen Anderson Moore, et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do about It*, Child Trends Research Br. (June 2002)).

6. As described further below, none of the additional materials submitted by the Coalition substantively question the conclusion in my Original Declaration that children and adolescents raised by same-sex parents are as likely to be well-adjusted as children raised by different-sex parents, including biological parents, because they do not provide empirical evidence in support of the claims they make. None of the Coalition’s sources provide any basis for questioning the robust research in the field that consistently shows equally good outcomes for children of gay and heterosexual parents.

A. There is no reliable social science research showing that heterosexual parents who are biologically related to their children are superior to other parents.

7. The Coalition argues that the ideal family structure for children comprises a married mother and father who are the biological parents of their children. See, e.g., Dkt. 72 at 19. As support for this claim, it cites certain publications reporting that children raised in continuously intact households fare better on average than children raised in single-parent households, divorced households, and step-families. These publications are consistent with the opinions in my Original Declaration, and do not support conclusions either that parents who are genetically linked to their children are inherently superior to other parents, or about the parenting abilities of same-sex couples.

8. As I testified in my Original Declaration, advocacy groups that oppose parenting

by same-sex couples sometimes cite research showing the risk of maladjustment associated with divorce, transitions to single-parent or step-family life, or being raised in one-parent families to support their claim that youths need both heterosexual mothers and fathers. Dkt. 86-3 at 15-16, Pltfs' Appendix 328-29. However, this research does not explore the effect of parental sexual orientation or gender, and therefore does not allow for any conclusions to be reached about the adjustment of children with same-sex parents.

9. Several of the conclusions cited by the Coalition involve these types of logical errors, including for example, (i) Institute for American Values, *Why Marriage Matters: Thirty Conclusions from the Social Sciences* (Third Edition 2011); (ii) Kristen Anderson Moore, et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do about It*, Child Trends Research Br. (June 2002); (iii) Elizabeth Wildsmith, et al., *Childbearing Outside of Marriage: Estimates and Trends in the United States*, Child Trends Research Br. (2011); (iv) Samuel W. Sturgeon, *The Relationship Between Family Structure and Adolescent Sexual Activity*, familyfacts.org, Special Report, At a Glance (Nov. 2008); and (v) Paul R. Amato, *The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation*, 15 *The Future of Children* 75-96 (2005). While these sources discuss a range of risk factors for couples and their children, such as the ones discussed above, not one of them expressly discusses same-sex parents or their children. As such, no conclusions can be drawn from them about the quality of parenting by lesbian and gay parents. Instead, such publications suggest that, all other things being equal, children and adolescents with same-sex parents, like their peers, likely would benefit if their parents could marry and solidify their family and parental ties.²

² For example, the U.S. Department of Health and Human Services, Administration for Children & Families, *Distribution of Abuse and Neglect by Family Characteristics*, report cited by the Coalition is misrepresented by the Coalition in a similar way. The article compares families that it describes as those headed by (i) "married biological parents," (ii) "other married parents (not both biological but both having a legal parental relationship to the child)," as well as (iii) other family forms, such as single parents. Coalition's Appendix at 658. However, those "other married parents" includes step-families where children are at a higher risk for adverse outcomes for reasons explained in my Original Declaration (i.e., these children may have endured parental conflict and separation, as well as related dislocations and abandonment by parents, and the step-parents may have entered their lives relatively late, adversely affecting the quality of the relationships). One would not expect to see these difficulties in families formed by same-sex couples who jointly plan to marry and have children. Further, as discussed in my Original

10. As for the Coalition's assertion that biological parenthood is superior, there is high quality social science research exploring possible associations between genetic linkages and measures of children's adjustment and development. Specifically, when children are conceived using assisted reproductive technologies, they may be genetically linked to their mothers but not their fathers (*e.g.*, sperm donation), to their fathers but not their mothers (*e.g.*, egg donation), or to neither mothers nor fathers (*e.g.*, embryo donation). Research has consistently showed that children conceived in these ways develop well.³ The research also consistently shows that individuals conceived via assisted reproductive technology also function well throughout the lifespan, including adolescence⁴ and adulthood.⁵ Research on adopted children, who are not genetically related to the parents who rear them, also shows that the majority benefit from adoption, although some are psychologically affected by adverse earlier experiences (including prenatal experiences, such as prenatal exposure to drugs or alcohol).⁶ In summary, well-designed, high quality research that is directly relevant to the issue of genetic relatedness clearly shows that children may thrive psychologically whether or not they are genetically linked to the parents who rear them. Unfortunately, the Coalition's brief ignores this body of research entirely.

11. The Coalition cites a report issued by the advocacy organization Institute for American Values called "Daddy's Name is Donor." This report, which is based on an online survey, purports to show poorer child outcomes among children conceived by way of sperm and egg donation. Dkt. 72 at 17. It is hard to understand how purported concerns about the well-being of children conceived via egg or sperm donation are relevant to the question of whether same-sex couples ought to be excluded from marriage, given that – as this report acknowledges – the vast majority of donor-conceived children are born into heterosexual parent families. Indeed,

Declaration, the consensus within the field is that processes within the family (as opposed to family structures) are the best predictors of child and adolescent outcomes.

³ See, *e.g.*, Lamb, 2012; Golombok, Murray, Jadv, Lycett, MacCallum & Rust, 2006; Golombok, Tasker & Murray, 1997; MacCallum, Golombok & Brinsden, 2007; and MacCallum & Keeley, 2008. See also Golombok, S. (2013) (in press). *Families created by reproductive donation*. Child Development Perspectives.

⁴ See, *e.g.*, MacCallum & Golombok, 2004; Owen & Golombok, 2009; and Scheib, Riordan & Rubin, 2005.

⁵ See, *e.g.*, Golombok & Badger, 2010.

⁶ See, *e.g.*, Grotevant, van Dulmen, Dunbar, Nelson-Christinedaughter, Christensen, Fan & Miller, 2006; Juffer & van Dzendoorn, 2005, 2007.

1 in this report, only a small fraction of the respondents were raised by lesbian parents. In any case,
2 as discussed above, the research on donor-conceived children that has been published in scientific
3 journals after being subjected to the peer review process shows that these children are developing
4 normally.⁷

5 **B. The Coalition's claim that children fare better with different-sex parents is**
6 **not supported by the science, which uniformly shows that children of same-**
7 **sex parents are equally well-adjusted.**

8 12. The Coalition claims that social scientists view child-rearing by married
9 heterosexual parents as optimal for children (*see, e.g.*, Dkt. 72 at 21), but cites no reliable studies
10 to support that proposition. To the contrary, the Coalition relies here and throughout its briefing
11 about childrearing (Dkt. 72 at 16-22) primarily on sources taken out of context that do not support
12 the point the Coalition ascribes to them (as described above in paragraph 9, for example), and
13 sources that are not reports of scientific research, but rather are commentaries written by
14 advocates in other professions, such as philosophy and political science. *See, e.g.*, Coalition's
15 Appendix at 504, 607, and 1078.

16 13. None of the articles the Coalition cites are reliable sources from which to draw
17 accurate conclusions regarding children raised by gay parents. The Coalition also cites articles by
18 Mark Regnerus and Loren Marks, Dkt. 72 at 22 n.48, which, as I explained in my Original
19 Declaration, do not support the conclusions their authors offer. *See* Dkt. 86-3 at 11-13, Pltfs'
20 Appendix 324-26 (discussing Regnerus); Dkt. 86-3 at 14 n.6, Pltfs' Appendix 327 (discussing
21 Loren D. Marks).

22 14. Contrary to Marks's claims, research on child-rearing by lesbians and gay men
23 meets established standards in the field and has produced reliable conclusions consistent with the
24 wider body of research on parent-child relationships. As I mentioned previously, Marks
25 published his article in 2012, but limited his review of the literature on children raised by lesbian
26 and gay parents to studies through 2005, rendering his analysis incomplete and outdated.
27 Furthermore, Marks failed to recognize that studies published prior to and after 2005 have
28 consistently shown that children raised by gay and lesbian parents are as likely to be well-

⁷ Golombok, 2013.

1 adjusted as children raised by heterosexual parents. As described in my Original Declaration, the
2 body of research specific to same-sex parenting represents approximately 30 years of scholarship
3 and the methodologies used in the major studies of same-sex parenting meet the standards for
4 research in the field of developmental psychology and psychology generally. Dkt. 86-3 at 11, 14-
5 15, Pltfs' Appendix 324, 327-28. Marks fails to acknowledge that research published both
6 before⁸ and after⁹ 2005 included samples of both lesbian and gay parents from a representative
7 variety of ethnic and economic backgrounds – all confirming that parents' sexual orientation is
8 not related to children's adjustment. He also fails to acknowledge that multiple cross-sectional
9 and longitudinal studies have repeatedly revealed no significant differences in the psychological
10 adjustment of children and adolescents raised by lesbian or gay parents as opposed to
11 heterosexual parents, regardless of the methods, measures, mode of recruitment, characteristics of
12 the families, and sizes of the samples.

13 15. Relying on flawed sources such as these, as well as on a number of opinion pieces
14 that ignore the empirical evidence, the Coalition thus fundamentally mischaracterizes the
15 scientific consensus which, as more fully summarized in my Original Declaration, is that the
16 children of same-sex and different-sex parents are equally likely to be well-adjusted. Dkt. 86-3
17 (see extended bibliography attached as Exhibit B).¹⁰

18 16. The conclusion stated in my Original Declaration – that it is beyond scientific
19 dispute that children raised by gay, lesbian, and heterosexual couples are as likely as one another
20 to be well-adjusted because it is the quality of parenting and parent-child relationships, the quality

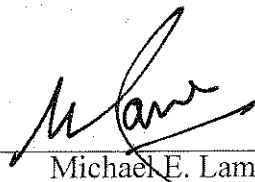
21 ⁸ See, e.g., Wainright et al. (2004).

22 ⁹ See, e.g., Wainright & Patterson (2006, 2008); Rosenfeld (2010).

23 ¹⁰ Nor should one be misled by the Coalition's submission about the consensus among national
24 child welfare organizations on this issue. As described in my Original Declaration, Dkt. 86-3 at
25 13, Pltfs' Appendix at 326, numerous mainstream medical, mental health and child welfare
26 organizations, including the American Academy of Pediatrics ("AAP"), have issued statements
27 confirming that same-sex parents are as effective as different-sex parents in raising well-adjusted
28 children and adolescents. The AAP, the largest and most prestigious group representing medical
practitioners concerned with the health and well-being of children and adolescents, should not be
confused with the "American College of Pediatricians," whose amicus brief the Coalition cites.
Coalition's Appendix at 750. The "American College of Pediatricians," which was formed in
2002, lacks the same broad, inclusive membership, prestige and standing in the medical and child
welfare community as the AAP, and lists as an express organizational goal "[t]o promote the
basic father-mother family unit as the optimal setting for childhood development." See "About
Us," American College of Pediatricians, <http://www.acpeds.org/About-Us/>.

1 of the parents' relationships with partners and other significant adults, and their social and
2 economic resources, rather than their family structure or type that determines children's outcomes
3 – is well supported by the empirical research literature. The Coalition does not cite a single
4 reliable scientific study to the contrary, misrepresents unsupported assertions of opinion as facts,
5 introduces terms like "bonding interest" and "bionormativity" that have no standing in the social
6 science literature, and provides no reason to ignore the conclusive empirical evidence that is well-
7 accepted in the scientific community and has been summarized in my original declaration.

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9 Signed under penalty of perjury under the laws of the United States this 4th day of
10 October, 2012.

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14 Michael E. Lamb, Ph.D.
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**SUPPLEMENTAL DECLARATION OF
LETITIA ANNE PEPLAU, PH.D. IN
SUPPORT OF PLAINTIFFS' COMBINED
OPPOSITION TO MOTIONS FOR
SUMMARY JUDGMENT BY
DEFENDANT SANDOVAL, DEFENDANT
GLOVER, AND DEFENDANT-
INTERVENOR COALITION FOR THE
PROTECTION OF MARRIAGE**

1 I, Letitia Anne Peplau, Ph.D., hereby declare and state as follows:

2 1. I have been retained by counsel for Plaintiffs as an expert in connection with the
3 above-referenced litigation. I have actual knowledge of the matters stated in this declaration and
4 could and would so testify if called as a witness.

5 2. I have already provided a declaration of my opinions in this litigation. A complete
6 explanation of my background, qualifications, expert testimony experience, and compensation
7 appears in my declaration dated August 20, 2012. Dkt. 86-2.

8 3. I have reviewed the Motion for Summary Judgment and Memorandum in Support
9 filed by Defendant-Intervenor Coalition for the Protection of Marriage (“Coalition”). Dkt. 72.
10 Nothing in the motion disproves or contradicts the testimony I offered in my original declaration.
11 I have been called upon to respond to certain assertions made in the motion, including that (1)
12 allowing same-sex couples to marry would harm the institution of marriage and that (2) marriages
13 between same-sex couples are more focused upon love and personal fulfillment and less focused
14 upon duty and responsibility than marriages between different-sex couples. I submit this further
15 declaration in order to respond to these assertions, which are unsupported by, and disproven by,
16 the evidence.

17 **I. Allowing Same-Sex Couples to Marry Will Not Harm The Institution of Marriage or**
18 **Minimize Its Importance in Society.**

19 4. The Coalition asserts that allowing same-sex couples would “de-institutionalize
20 the man-woman marriage institution,” and defines “de-institutionalization” as when a “social
21 institution constituted by [previously institutionalized public] meanings and norms disappears.”
22 Dkt. 72 at 3. To the extent that the Coalition contends that allowing same-sex couples to marry
23 would cause the institution of marriage to “disappear” – or to be negatively affected in any way –
24 this is false and misleading.

25 5. Although marriage has changed over the years, it has not disappeared as a social
26 institution. Marriage continues to be held in high esteem by most Americans, and most
27 Americans either have married or would like to marry. See Saad, L. (2006), *Americans Have*
28 *Complex Relationship With Marriage*, Gallup News Service, retrieved September 27, 2012 from:

1 <http://www.gallup.com/poll/23041/americans-complex-relationship-marriage.aspx>. Allowing
2 same-sex couples to marry, as six states and the District of Columbia currently do, certainly has
3 not caused the institution of marriage to cease to exist or to be adversely affected.

4 6. There is no empirical reason to believe that allowing marriage by same-sex
5 couples will lead different-sex couples to abandon the institution of marriage, either by declining
6 to marry or ending their current marriages. To the contrary, institutions are stronger when they
7 have more (rather than fewer) members. Allowing same-sex couples to marry would bring
8 additional people within the institution of marriage who are otherwise denied membership rights.
9 As explained in my original declaration, the factors that cause different-sex couples to marry or
10 divorce and that contribute to relationship quality and stability are well-understood, and they
11 function independently of whether same-sex couples may marry.

12 7. The notion that permitting same-sex couples to marry will cause some
13 heterosexual people – either for religious or moral reasons – to reject marriage as unacceptable or
14 repugnant is also far-fetched and unsupported by anything but conjecture. Even if same-sex
15 couples could marry across the United States, those same-sex couples who married would still
16 constitute a small percentage of all married American couples. It is hard to fathom how this tiny
17 minority would suddenly become the “baseline” for the marriage experience.

18 **II. Same-Sex Couples Are Similar To Different-Sex Couples; There Is No Support For**
19 **The Notion That Same-Sex Couples Are More Focused On Love And Personal**
20 **Fulfillment And Less Focused on Duty and Responsibility Than Different-Sex**
Couples.

21 8. The Coalition asserts that allowing same-sex couples to marry would “teach[] that
22 marriage is a ‘private relationship between two people created primarily to satisfy the needs of
23 adults’” rather than children. Dkt. 72 at 14. First, it does not make sense to suggest that same-sex
24 couples who want to marry are less focused than different-sex couples on duty and responsibility
25 because, as discussed in my original declaration, marriage itself creates many duties and
26 responsibilities. Same-sex couples who marry are embracing the same responsibilities as
27 different-sex couples who marry. Allowing same-sex couples to marry has no necessary
28 implication for the many rights and responsibilities of spouses, for expectations about trust and

1 commitment in marriage, or for expectations about the durability of marriage over time.

2 9. Second, the notion that marriage is selfless and child-centered for different-sex
3 couples – but selfish for same-sex couples – is false and not supported by the evidence. Many
4 married different-sex couples choose not to have children, whereas many same-sex couples are
5 raising children. These same-sex couples are no less devoted parents than their married different-
6 sex peers and, as discussed in my original declaration, same-sex couples are remarkably similar to
7 different-sex couples. There is no support for the notion that different-sex couples who marry are
8 somehow less focused on their own love for and commitment to their spouses than are same-sex
9 couples who wish to marry. There is also no support for the notion that same-sex couples have
10 less concern than different-sex couples for providing a positive, stable environment in which to
11 raise and provide for children.

12 Signed under penalty of perjury under the laws of the United States this 12 day of
13 October, 2012.

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16 Letitia Anne Peplau, Ph.D.
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

1 Plaintiffs Beverly Sevcik and Mary Baranovich; Antioco Carrillo and Theodore Small;
2 Karen Goody and Karen Vibe; Fletcher Whitwell and Greg Flamer; Mikyla Miller and Katrina
3 Miller; Adele Terranova and Tara Newberry; Caren Cafferata-Jenkins and Farrell Cafferata-
4 Jenkins; and Megan Lanz and Sara Geiger (“Plaintiffs”), by and through their counsel,
5 respectfully request that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules
6 of Evidence, of the following items:

- 7 (1) Copies of web pages from the website for Defendant Carson City Clerk-Recorder
8 Alan Glover (attached as Exhibit A), retrieved from:
 - 9 a. <http://www.carson.org/Index.aspx?page=88>;
 - 10 b. <http://www.carson.org/Index.aspx?page=87>;
 - 11 c. <http://www.carson.org/Index.aspx?page=2179>; and
 - 12 d. <http://www.carson.org/Index.aspx?page=102>.
- 13 (2) A copy of a web page from the website for Defendant Clark County Clerk Diana
14 Alba, retrieved from <http://www.clarkcountynv.gov/depts/clerk/Pages/default.aspx>
15 (attached as Exhibit B).
- 16 (3) A copy of excerpted material from the Nevada Secretary of State regarding the
17 results of the 2000 vote on Question 2, retrieved from
18 <http://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2000.pdf>
19 (attached as Exhibit C).
- 20 (4) A copy of excerpted material from the Nevada Secretary of State regarding the
21 results of the 2002 vote on Question 2, retrieved from
22 <http://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2002.pdf>
23 (attached as Exhibit D).
- 24 (5) A copy of an excerpt from the Social Security Administration’s (“SSA’s”)
25 Program Operations Manual entitled “PR 02707.031 Nevada,” which was
26 retrieved from the SSA’s Program Operations Manual System at
27 <https://secure.ssa.gov/poms.nsf/lnx/1502707031> (attached as Exhibit E).
- 28 (6) A copy of a web page entitled “Name Changes” from the website for the State of

1 Nevada, Department of Motor Vehicles, retrieved from

2 <http://www.dmvnv.com/namechange.htm> (attached as Exhibit F).

3 Federal Rule of Evidence 201(b) provides that a court may judicially notice “a fact that is
4 not subject to reasonable dispute because it: (1) is generally known within the trial court’s
5 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
6 accuracy cannot reasonably be questioned.” As described below, the attached exhibits all are
7 proper subjects for judicial notice as easily verifiable public records, and as self-authenticating
8 sources pursuant to the Federal Rules of Evidence.

9 ***Exhibits A, B, E, and F are self-authenticating copies of web pages from official***
10 ***government websites.*** Exhibits A, B, E, and F consist of print-outs of web pages from the official
11 government websites for Defendants Carson City Clerk-Recorder Alan Glover, Clark County
12 Clerk Diana Alba, the federal Social Security Administration, and Nevada’s Department of Motor
13 Vehicles, respectively. As this Court has recognized, “[i]n this new technological age, official
14 government or company documents may be judicially noticed insofar as they are available via the
15 worldwide web.” *In re AgriBioTech Sec. Litig.*, Case No. CV-S-990144 PMP (LRL), 2000 U.S.
16 Dist. LEXIS 5643, *4-5 (D. Nev. March 2, 2000); *see also Simon v. Bank of Am., N.A.*, Case No.
17 10-cv-00300-GMN-LRL, 2010 U.S. Dist. LEXIS 63480, *15 n.1 (D. Nev. June 23, 2010) (“The
18 Court takes judicial notice of this information provided on the government website.”); *Daniels-*
19 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (finding it “appropriate” to take
20 judicial notice of information posted on school district websites “as it was made publicly
21 available by government entities” and there was no dispute about its authenticity). Additionally,
22 all of these sources also are appropriate subjects for judicial notice because they are self-
23 authenticating pursuant to Federal Rule of Civil Procedure 902(5) (defining as self-authenticating
24 “[a] book, pamphlet, or other publication purporting to be issued by a public authority.”).¹

25 ***Exhibits C and D are ballot materials issued by the Nevada Secretary of State, and thus***
26 ***are self-authenticating public records.*** Exhibits C and D are properly subject to judicial notice
27 as official publications of the Nevada Secretary of State that have been archived online by the

28 ¹ Exhibits A and B also are admissible evidence for an independent reason: they each
qualify as party admissions pursuant to Federal Rule of Evidence 801(d)(2).

Research Division of the Nevada Legislative Counsel Bureau (“Research Division”). See <http://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/index.cfm> (webpage of the Research Division archiving Nevada ballot questions since 1942). First, Exhibits C and D should be judicially noticed for all the reasons above, since they also constitute information issued by a government agency through its official website. See also *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1157 (D. Nev. 2009) (“Here, the documents presented by Plaintiffs are capable of accurate and ready determination from the Nevada Secretary of State. Thus, the Court will consider the documents’ contents and their filings.”); *Chamness v. Bowen*, Case No. CV 11-01479 ODW (FFMx), 2011 U.S. Dist. LEXIS 94876, *10 n.4 (C.D. Cal. Aug. 23, 2011) (taking judicial notice of sample ballots, official voter guides, and official candidate lists because “a court ‘may presume that public records are authentic and trustworthy[.]’”), quoting *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999).

Additionally, Exhibits C and D – just as the Exhibits discussed above – are self-authenticating pursuant to Federal Rule of Civil Procedure 902(5) as “publication[s] purporting to be issued by a public authority.”

For the forgoing reasons, Plaintiffs respectfully request that this Court take judicial notice of each of the documents described above and attached as exhibits hereto.

DATED: September 10, 2012.

Respectfully submitted,

/s/ Tara L. Borelli
TARA L. BORELLI (*pro hac vice*)
JON W. DAVIDSON (*pro hac vice*)
PETER C. RENN (*pro hac vice*)
SHELBI DAY (*pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

CARLA CHRISTOFFERSON (*pro hac vice*)
DAWN SESTITO (*pro hac vice*)
MELANIE CRISTOL (*pro hac vice*)
RAHI AZIZI (*pro hac vice*)
O’MELVENY & MYERS LLP

KELLY H. DOVE (Nevada Bar No. 10569)
MAREK P. BUTE (Nevada Bar No. 09989)
SNELL & WILMER LLP

Exhibit A



Carson City
NEVADA

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Health and Human Services

Human Resources

Juvenile Detention-Probation

Library

Parks and Recreation

Public Works

Senior Center

Sheriff's Office

Treasurer

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City Government » Clerk-Recorder

Alan Glover

Printer Friendly



Alan Glover, Carson City Clerk-Recorder, is a native of Carson City, attended Carson City schools, and is a graduate of the University of Nevada in Reno. While a senior at the University he was elected to the Nevada State Assembly where he served five terms before being elected to the State Senate. In 1985 Mr. Glover resigned from the Senate and was appointed as the Carson City Recorder. In 1987 the office of Recorder was combined with that of Clerk and Mr. Glover served in that position until 1991 when he went back to private business. In 1994 he was elected Carson City Clerk-Recorder and has served in that capacity since.

Mr. Glover is a past president of the County Fiscal Officers Association and the Nevada Association of County Clerks and County Election Officials. Mr. Glover is the Ex-Officio Clerk of: the First Judicial District, Board of Supervisors, Board of Equalization and General Obligation Bond Commission, and is Ex-Officio Public Administrator. Mr. Glover also oversees the operations of the Records Office, Marriage Bureau, Elections, and Records Management.

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[City Government » Clerk-Recorder » Marriage Bureau](#)

Minister Licensing and Applications

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APPLICATIONS FOR CERTIFICATES OF AUTHORITY TO SOLEMNIZE MARRIAGES

Chapter 122 of the Nevada Revised Statutes (NRS) governs the issuance of Certificates of Authority to Perform Marriages. According to Chapter 122:

1. You must be a licensed, ordained, or appointed minister or other person authorized to solemnize a marriage in good standing within your church or religious organization;
2. Your church or religious organization must be incorporated, organized or established in this state (except for out-of-state ministers);
3. Your ministry must be one of service to a church or religious organization.

To review Chapter 122, click on **NRS** which governs marriage and authority to perform marriages.

NOTE: NRS 122.064, Subsection 3(c), mandates that "...the county clerk shall, before approving an initial application, satisfy himself that the applicant had not been convicted of a felony, released from confinement or completed his parole or probation, whichever occurs later, within 10 years before the date of the application."

OBTAINING CERTIFICATION TO PERFORM A MARRIAGE

To obtain a Certificate of Authority to Perform a Marriage in the State of Nevada, please select the link for the appropriate application.

- **Permanent Status** (PDF) - Resident of Carson City wishing to conduct wedding ceremonies on a continuous basis.
- **Temporary Status** (PDF) - Out-of-State applicant for a one-time event.

CHURCH / RELIGIOUS ORGANIZATION FORMS - to be filled out on behalf of applicant seeking to perform marriages within the State of Nevada.

Affidavit of Revocation of Authority to Solemnize Marriages (PDF)

If you have any questions, please call our office at 775-887-2084.

Treasurer

Bid Opportunities

Last updated date: 6/8/2011 8:09:11 AM

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Marriage Bureau

Printer Friendly

Welcome to the Carson City Marriage Bureau

To be legally married in the State of Nevada you must purchase a marriage license **and** have a marriage ceremony. The license fee in Carson City is \$75.00. We accept **cash or credit card**. **A transaction fee of \$2.50 will be added to the credit card purchase.**

Both parties must appear together at the Courthouse to show identification and to sign the license and application. Before you come in, you may want to fill out the [Marriage License Application](#). The marriage license/application is good for one-year after purchase.

After the wedding ceremony, the marriage certificate needs to be mailed as soon as possible to the Carson City's Marriage Bureau. The document will be recorded and certified then mailed to you. This is included in the \$75 fee. Instant Recordings of your marriage certificate are available 6 days a week at no extra charge. Some counties require your certified certificate (legal copy) to be requested separately at a later date. To obtain more information on "Getting Married" [click here](#).

Purchasing a copy of your marriage certificate

If the license was purchased in Carson City, you may obtain a certified copy (\$15) of a Recorded Marriage Certificate. Please allow 2 weeks for your copy(s) to arrive. All orders are returned via U.S. Postal Service.

By Mail: Complete a [request form](#) (PDF) and mail to Carson City Marriages, 885 E. Musser Street, Suite 1025, Carson City, NV, 89701. (request form is optional)

By Online Payment: Go to our online [Marriage License Payment](#) Form.

By Telephone with Credit Card (VISA or MC only): Call 775-887-2084 during regular business hours. A transaction fee of \$2.50 will be added to the credit card order.

To search for a marriage purchased and recorded in Carson City [CLICK HERE](#). If you did not purchase your license in Carson City (previously known as Ormsby County), contact the County Recorder in the County where you purchased your marriage license. ([List of County Recorders](#))

For answers to the most common questions and directions to our office, please visit our [Common Questions](#) page.

The Marriage Bureau is located on the first floor of the [Carson City Courthouse](#), 885 East Musser Street, Suite 1025, Carson City, Nevada 89701.

HOURS: 8 AM to 5 PM - Monday thru Friday **AND** 9 AM to 4 PM - Saturday & selected Holidays. We are closed on Thanksgiving Day, Christmas Day and various holidays listed below.

Always call the marriage office the day you plan on coming in. On weekends or holidays make sure the office is open!

Treasurer
Bid Opportunities

HOLIDAY HOURS

For additional information, please feel free to call (775)887-2084, **24 hour marriage information hotline (775)887-2085**, fax (775)887-2146, or email marriages@carson.org.

MARRIAGE RECORDS LOOKUP

Last updated date: 11/17/2011 11:15:28 AM

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Exhibit B



erpayments

Saturday, September 8, 2012

Clark County > Departments > Clerk

Quick Look-up

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Marriage Pre-Application



Clerk

Services provided by the Clark County Clerk

Official Records

Official documents, including board meeting minutes, voting records and county contracts are maintained by the County Clerk. Requests for copies of official records are submitted to the County Clerk rather than to members of the various boards. This is to assure that responses to such requests are timely, complete and accurate. The County Clerk responds equally and fairly to all parties needing access to county records.

Marriage Licenses

The Clark County Clerk is responsible for the issuance of all marriage licenses in the County. Clark County is home to Las Vegas, Nevada, the "marriage capital of the world." In 2011, approximately 89,000 marriage licenses were issued by the Clark County Clerk's Office, more than any other county. The marriage industry is a very large part of the Las Vegas tourist economy. It is the duty of the County Clerk to not only assure compliance with all laws and statutes when issuing marriage licenses, but to do everything possible to make getting married in Las Vegas a pleasant and happy experience for the many couples who come here each year.

Minister Licensing - Certificates of Authority to Solemnize Marriages

All ministers and "other persons authorized to perform marriages" must obtain a Certificate of Authority to Solemnize Marriages from the County Clerk. The performance of marriages is a serious responsibility. Getting married changes a couple's vital records. In addition, it often affects their finances, including disbursement of retirement accounts, distribution of social security benefits and beneficiary designations on life insurance policies, to name just a few. It is the Clerk's responsibility to ensure that individuals who solemnize marriages perform this duty responsibly, and process vital documents according to state law.

Civil Marriage Ceremonies

As the Commissioner of Civil Marriages, the Clark County Clerk operates the "Office of the Commissioner of Civil Marriages" where couples may have their marriage solemnized in a tranquil, private and dignified ceremony. The fee for these civil marriage ceremonies is set by Nevada law and Clerk employees may not receive any additional compensation for this service.

Fictitious Firm Names

Every person doing business in Nevada under an assumed or fictitious name, must file with the County Clerk a certificate containing the business name. (Commonly referred to as a "DBA" certificate.)

Bonds and Oaths of Notary Publics

Every person wishing to become a Notary Public must file his or her bond, together with the oath, with the County Clerk of the county in which the applicant resides. The County Clerk immediately certifies to the secretary of state that the required bond and oath have been filed and recorded. Applicants may also be sworn in by the County Clerk or one of her deputies.

Passport Acceptance

The Clark County Clerk operates as a Passport Acceptance Agency for the U. S. Department of State. Passport applications and renewals are processed by the Clerk's Office from 8 a.m. to 4 p.m., Monday through Friday.



Diana Alba, Clark County Clerk

Exhibit C

State of Nevada

Ballot Questions

2000



**Ballot Questions That Will Appear on the
November 7, 2000 General Election Ballot**

Issued by
Dean Heller
Secretary of State

DONALD J. REIS
Chief Deputy Secretary
of State



OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

SUSAN MORANDI
Deputy Secretary
for Elections

Dear Fellow Nevadan:

As a part of ensuring an informed, knowledgeable electorate, before each General Election the Secretary of State prepares a compilation of the statewide ballot questions. This booklet is provided as a vehicle to inform and to educate voters about the questions that will appear on the Tuesday, November 7, 2000, General Election Ballot.

Ballot Questions are an important part of the electoral process. As a voter, your actions can make laws or amend the Nevada Constitution. I encourage you to invest the time to read this booklet and become a more informed voter.

There are three statewide questions for your consideration. Ballot Question Number 1 exists through action by the Nevada State Legislature. Ballot Question Number 2 qualified this year through the initiative petition process. Ballot Question Number 9, which also qualified through the initiative petition process, passed at the 1998 General Election and appears for the second and last time on the 2000 General Election Ballot.

This booklet includes a copy of each ballot question. Each question contains a condensation, an explanation, arguments for and against the passage, a fiscal note, and the complete text of the measure. The fiscal note is meant to explain direct adverse impacts on state and local governments. However, there is either no fiscal impact or none that can currently be determined for Questions 1, 2, and 9.

These Ballot Questions are also available on our web site: <http://sos.state.nv.us>. Please do not hesitate to contact this office if you need additional information.

Respectfully,

A handwritten signature in cursive script that reads "Dean Heller".

DEAN HELLER
Secretary of State

MAIN OFFICE:
101 N. Carson Street
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Carson City, Nevada 89701-4786
Telephone (775) 684-5708
Fax (775) 684-5725

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Fax (702) 486-2452

SECURITIES SATELLITE OFFICE:
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Suite 211
Reno, Nevada 89502
Telephone (775) 688-1855
Fax (775) 688-1858

CORPORATE SATELLITE OFFICE:
555 E. Washington Avenue
Suite 2900
Las Vegas, Nevada 89101
Telephone (702) 486-2880
Fax (702) 486-2888

QUESTION NO. 2

Amendment to the Nevada Constitution

An Initiative relating to the definition of marriage

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to provide that: "Only a marriage between a male and female person shall be recognized and given effect in this state?"

Yes 412,688 ☒

No 180,077 ☐

EXPLANATION

The proposed amendment, if passed, would create a new section to Article 1 of the Nevada Constitution providing that, "Only a marriage between a male and female person shall be recognized and given effect in this state."

ARGUMENTS FOR PASSAGE

Proponents argue that passage will ensure that Nevada law upholds the definition of marriage as being only between a man and a woman. While a Nevada statute provides that marriage may only be between a male and a female, current law provides that a legal marriage that took place outside Nevada is generally given effect under the "Full Faith and Credit Clause" of the United States Constitution. Proponents argue that if same gender marriages ever become legal in another state, under the Full Faith and Credit Clause Nevada could be required to recognize such marriages entered into legally in another state.

Proponents argue that this constitutional amendment is needed to define Nevada's public policy on marriage being only between a male and a female.

A "Yes" vote means that the Nevada Constitution should be amended to provide that only marriages between a male and a female should be recognized and given effect in this state.

ARGUMENTS AGAINST PASSAGE

Opponents argue that the proposed amendment singles out one group of Nevadans for different treatment in our Constitution. By singling out same gender couples, opponents argue that discrimination occurs because the rights and privileges of marriage are denied to couples of the same gender. They argue that same gender couples are entitled to the same constitutional protections, legal rights and benefits as other couples. In addition,

opponents argue that the proposed amendment is contrary to Nevada's public policy that supports equality and civil rights for all Nevadans.

Opponents argue that a constitutional change is redundant and unnecessary because the definition of marriage as being only between a male and a female is already contained in Nevada Revised Statutes 122.020(1) and federal law.

A "No" vote means that the Nevada Constitution should not be amended to provide that only marriages between a male and a female should be recognized and given effect in Nevada.

FISCAL NOTE

Financial Impact- None that can be determined.

FULL TEXT OF THE MEASURE

The People of the State of Nevada do enact as follows:

RESOLVED, That a new section designated Section 21 be added to Article 1 of the Constitution of the State of Nevada to read as follows:

“Only a marriage between a male and female person shall be recognized and given effect in this state.”

Exhibit D

State of Nevada Statewide Ballot Questions 2002



To Appear on the November 5, 2002
General Election Ballot

Issued by
Dean Heller
Secretary of State

DEAN HELLER
Secretary of State

STATE OF NEVADA

CHARLES E. MOORE
Securities Administrator

RENEE L. PARKER
*Chief Deputy Secretary
of State*



SCOTT W. ANDERSON
*Deputy Secretary
for Commercial Recordings*

PAMELA A. ASHWORTH
*Deputy Secretary for
Southern Nevada*

SUSAN BILYEU
*Deputy Secretary
for Elections*

**OFFICE OF THE
SECRETARY OF STATE**

Dear Fellow Nevadan:

You will soon be taking advantage of one of your most important rights as an American citizen: the right to vote! As Secretary of State and the state's Chief Election Officer, I take the job of informing the public about various statewide ballot questions very seriously. An informed and knowledgeable electorate is a cornerstone to fair and just elections.

With that in mind, the Secretary of State's office has prepared this booklet detailing the statewide questions that will appear on the 2002 General Election Ballot. The booklet contains "Notes to Voters," a complete listing of the exact wording of each question, along with a summary, arguments for and against each question's passage, and, where applicable, a fiscal note. Any fiscal note included in this booklet explains only adverse impacts and does not note any possible cost savings.

I encourage you to carefully and thoughtfully review the ballot questions listed in the booklet. As a voter, your actions on these ballot questions can create new laws, amend existing laws or amend the Nevada Constitution.

On the 2002 General Election Ballot, there are nine statewide questions. Ballot Question Numbers 1,3,4,5,6,7 and 8 appear on the ballot through the actions of the Nevada State Legislature. Ballot Question Number 9 qualified for this year's ballot through the initiative petition process. Ballot Question Number 2, which also qualified through the initiative petition process, was passed by a vote of the people during the 2000 General Election. If Question Number 2 passes in 2002, it will amend the Nevada Constitution.

You can also view these ballot questions on the Secretary of State's web site at <http://sos.state.nv.us>. If you require further assistance or information, please feel free to contact my office at 775/684-5705.

Respectfully,

A handwritten signature in cursive script that reads "Dean Heller".

DEAN HELLER
Secretary of State

NEVADA
LEGISLATIVE COUNSEL BUREAU
RESEARCH LIBRARY

DEC 02 2002

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Fax (702) 486-2453

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Carson City, Nevada 89101
Telephone (775) 684-5708
Fax (775) 684-5725

QUESTION NO. 2

Amendment to the Nevada Constitution

An Initiative relating to the definition of marriage

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to provide that: "Only a marriage between a male and female person shall be recognized and given effect in this state?"

Yes.....☒ 337,197
No.....☐ 164,573

EXPLANATION

The proposed amendment, if passed, would create a new section to Article 1 of the Nevada Constitution providing that, "Only a marriage between a male and female person shall be recognized and given effect in this state."

ARGUMENTS FOR PASSAGE

Proponents argue that passage will ensure that Nevada law upholds the definition of marriage as being only between a man and a woman. While a Nevada statute provides that marriage may only be between a male and a female, current law provides that a legal marriage that took place outside Nevada is generally given effect under the "Full Faith and Credit Clause" of the United States Constitution. Proponents argue that if same gender marriages ever become legal in another state, under the Full Faith and Credit Clause Nevada could be required to recognize such marriages entered into legally in another state.

Proponents argue that this constitutional amendment is needed to define Nevada's public policy on marriage being only between a male and a female.

A "Yes" vote means that the Nevada Constitution should be amended to provide that only marriages between a male and a female should be recognized and given effect in this state.

ARGUMENTS AGAINST PASSAGE

Opponents argue that the proposed amendment singles out one group of Nevadans for different treatment in our Constitution. By singling out same gender couples, opponents argue that discrimination occurs because the rights and privileges of marriage are denied to couples of the same gender. They argue that same gender couples are entitled to the same constitutional protections, legal rights and benefits as other couples. In addition, opponents argue that the

proposed amendment is contrary to Nevada's public policy that supports equality and civil rights for all Nevadans.

Opponents argue that a constitutional change is redundant and unnecessary because the definition of marriage as being only between a male and a female is already contained in Nevada Revised Statutes 122.020(1) and federal law.

A "No" vote means that the Nevada Constitution should not be amended to provide that only marriages between a male and a female should be recognized and given effect in Nevada.

FISCAL NOTE

Financial Impact- None that can be determined.

FULL TEXT OF THE MEASURE

The People of the State of Nevada do enact as follows:

RESOLVED, That a new section designated Section 21 be added to Article 1 of the Constitution of the State of Nevada to read as follows:

"Only a marriage between a male and female person shall be recognized and given effect in this state."

Exhibit E

Social Security Online

www.socialsecurity.gov

POMS Section: PR 02707.031

Search

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Effective Dates: 10/20/2011 - Present

TN 6 (01-10)

PR 02707.031 Nevada

A. PR 10-045 Nevada Domestic Partner Legislation Effective October 1, 2009

DATE: December 28, 2009

1. SYLLABUS

A Certificate of Registered Domestic Partnership, entered in the State of Nevada, is not proof of a legal name change.

2. OPINION

On October 1, 2009, the Nevada Secretary of State issued a Certificate of Registered Domestic Partnership to Kaylynn S. P~ and Jennifer R. C~. You asked whether this Certificate is valid. You also asked for information about the Nevada Domestic Partnership Act and how it might affect benefits under the Social Security Act.

SHORT ANSWER

The Certificate of Registered Domestic Partnership that you submitted appears to be a valid document reflecting a legally registered domestic partnership (not a legal marriage) between Kaylynn S. P~ and Jennifer R. C~. The Certificate does not appear to reflect a legal name change.

The Nevada Domestic Partnership Act should have no effect on spouses' benefits or deceased spouses' benefits under the Social Security Act. However, a valid, registered domestic partnership may impact determinations about whether and upon whom children are dependant, and determinations about claimants' assets.

ANALYSIS

The Nevada Domestic Partnership Act (NDP Act) took effect on October 1, 2009. The NDP Act added a new chapter (Ch. 393) to the provisions of the Nevada Revised Statutes (NRS) pertaining to domestic relations (Title 11). NDP Act, Tit. 11, ch. 393 (2009) (to be codified at Nev. Rev. Stat. § 393.__), available at http://leg.state.nv.us/75th2009/Bills/SB/SB283_EN.pdf

The NDP Act establishes the “domestic partnership as a new type of civil contract recognized in the State of Nevada,” giving registered domestic partners many of “the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to title 11 of NRS.” *Id.* The NDP Act does not require public or private employers in Nevada to provide health care benefits to the registered domestic partners of employees. *Id.* § 8. It specifies that “a domestic partnership is not a marriage” under the Nevada Constitution. *Id.* § 11. Under the Nevada Constitution, “[o]nly a marriage between a male and female person shall be recognized and given effect.” Nev. Const. Art. I, § 21.

Although a registered domestic partnership is not recognized as a marriage, the NDP Act does not limit the ability to register a domestic partnership to only same-sex couples. All “persons sharing a common residence,” who are at least 18 years old and not related by blood, who are competent to consent to the partnership, and who are neither married nor a member of another domestic partnership, are eligible to register for a domestic partnership in Nevada. NDP Act, § 6.

In order to register, a couple who wishes to form a legal, domestic partnership must complete a form entitled “Declaration of Domestic Partnership,” in which they declare that they meet the eligibility requirements outlined above, and of their own free will, they “have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.” *Id.* Both parties must sign the declaration before a Notary Public, pay a filing fee, and deliver it to the Nevada Secretary of State. Nev. Sec’y of State, Information on Domestic Partnership Filings, <http://nvsos.gov> (last visited December 28, 2009). If the couple satisfies the requirements, the Nevada Secretary of State’s Office issues a Certificate of Registered Domestic Partnership. *Id.*

Registered domestic partners who submitted their paperwork in advance were able to obtain a Certificate of Registered Domestic Partnership on October 1, 2009, the date the law became effective. *Id.* Thus, the Certificate of Registered Domestic Partnership issued to Ms. P~ and Ms. C~ on October 1, 2009, appears to be valid. We now discuss the rights and obligations conferred by this certificate.

First, if the parties wish to terminate their registered domestic partnership, they must comply with the procedures set forth in NRS, chapter 125, pertaining to the dissolution of marriage. Nev. Rev. Stat. Ann. §§ 125.005-125.560 (West 2009). However, the parties may expedite the termination if they have been registered for less than 5 years and meet all of the following conditions: the partners have no minor children for which they have not executed a custody agreement; no female partner is pregnant; the partners have no jointly held property for which they have not executed a disposition agreement; both partners have waived their right to future support; and both partners have waived their right to terminate the partnership under NRS, chapter 125. Nev. Sec’y of State, Domestic Partnership - Frequently Asked Questions (FAQ), <http://nvsos.gov> (last visited December 28, 2009).

For the purposes of Nevada law, the rights and responsibilities conferred by the NDP Act upon current domestic partners, former domestic partners, and the surviving partners of deceased domestic partners are the same as those granted and imposed upon spouses, former spouses, and surviving spouses. The NDP Act sets forth the following specific rights and obligations:

The rights and obligations with respect to a child of either domestic partner shall be the same as those afforded and imposed upon spouses. The rights and obligations pertaining to community property; third-party debts; financial support following dissolution of the partnership; and other rights and duties as between the partners concerning ownership of property shall be the same as those afforded and imposed upon spouses, commencing on the date of the registration of the partnership.

Domestic partners have the same right to nondiscriminatory treatment as that provided to spouses.

Nevada public agencies shall not discriminate against any person or couple on the basis or ground that he or she is in a domestic partnership rather than a marriage.

NDP Act, § 7. The NDP Act also specifies that, to the extent that any provision of Nevada law adopts, refers to, or relies upon a provision of federal law that otherwise would cause domestic partners to be treated differently from spouses, the provision must be construed as recognizing a domestic partnership in the same manner as Nevada law. *Id.*

The NDP Act contains no requirement that one or both domestic partners change his/her name when entering into a registered domestic partnership. Nev. Sec’y of State, FAQ. The Secretary of State’s guidance instructs that, if one or both registered domestic partners subsequently pursue a legal name change, they may obtain a new Certificate of Registered Domestic Partnership depicting the legally-changed name(s) by filing a name change amendment and submitting a copy of the legal proof of name change (e.g., court order). *Id.*; see also Domestic Partnership Certificate Reorder and Amendment Form, available at <http://nvsos.gov>. The Secretary of State recognizes that “it is not within the Office’s jurisdiction to determine or require federal agencies to process a name change based on the Domestic Partnership certificate.” *Id.*

Because the NDP Act has been in effect for almost three months, we could find no cases discussing its various provisions. We anticipate that these provisions will eventually be tested in Nevada courts. Therefore, any specific questions pertaining to child relationships or assets, where a Nevada registered domestic partnership is implicated, should be referred for a legal opinion.

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/1502707031>



Exhibit F



State of Nevada

Department of Motor Vehicles

Important Announcements!

Online Duplicates: Order your duplicate license, permit or ID card online.

Reminder: Update your insurance with us whenever you change companies or coverage.

Kiosks: Save time. Use our self-service kiosks. New services at more locations!

Home

About Us

Driver License

Registration

License Plates

Business

Forms

Offices

Name Changes

On this Page

- Driver License/ID Card
- Vehicle Registration & Title
- Family Trusts

Related Topics

- Address Changes
- Driver License Fees
- Title Basics
- Office Locations
- Driver License Home Page
- Registration Home Page

Driver License/ID Card

If you are legally changing your name because of marriage, divorce or a court-approved legal name change, you must change your name with the Social Security Administration first. See [Changing your name on your Social Security card](#). You must visit a Social Security office in person.



The DMV electronically verifies your name, birth date and social security number with the SSA. You may wish to wait for two or more business days for Social Security to update your records.

You must have your current license or ID and the original legal documents which authorize the change. For marriage, this must be the certified Marriage Certificate which is recorded with the County Recorder. The Marriage License issued before the ceremony is not acceptable. Divorce decrees or other court documents must be originals or certified copies.

You must visit a [DMV Office](#) to have a new driver license or ID card issued. This cannot be done online or through the mail. The DMV will punch a hole in your existing license or ID and return it to you with an interim document. Your new license or ID will be mailed to you.

Vehicle Registration & Title

Registration

If you are changing your name, you must have the legal document which authorizes the change (Marriage Certificate, divorce decree, etc.). Divorce decrees should include language which awards the vehicle to the new owner by Vehicle Identification Number. You do not have to change the title for a name change only, but we suggest you do so if possible.

We will match the full legal name on your driver license. You must get a new Nevada Evidence of Insurance card with the name(s) exactly as they will be listed on the license and registration. Bring the name change document, proof of insurance card and current registration slip to a [DMV office](#).

An emissions inspection and registration renewal are not required as long as one of the current owners remains on the new registration.

You have the option of renewing your vehicle registration for a full year. You will need to complete an emissions inspection if required and if the last test was completed more than 90 days ago. Your expiration date will change if the current expiration date is more than 35 days away. Credit will be given for the unused portion of your current Nevada registration.

Vehicle Title

If you are adding or dropping vehicle owners, you must change the vehicle title as well as the registration. We suggest changing it even if the owner(s) remain the same. If you have the title, bring it with you.



- If the title says 'person 1' **AND** 'person 2', both parties must sign it.
- If the title says 'person 1' **OR** 'person 2', either party can sign without the other.

If you have a loan or lease on the vehicle, you must ask the lienholder to approve the change. The lienholder may ask you to sign either the title or a power of attorney. The lienholder may wish to refinance any loan if you are adding or dropping vehicle owners. The lienholder will have to apply for the new title and issue you a letter, including the Vehicle Identification Number, stating they will do so. You may also satisfy the lien and bring the signed-off title to the DMV.

Lienholders who are not familiar with Nevada procedures should call Title Research at 775-684-4810 for exact instructions. See the [Registration and Title Guide \(PDF - 216 pages - 10 mb\)](#).

DMV Title Research
555 Wright Way
Carson City, NV 89711
(775) 684-4810 in Reno/Carson City
(702) 486-4368 in Las Vegas

1-877-368-7828 in rural Nevada/out of state

Family Trust

To transfer vehicles into a Family Trust, you must ask any lienholder to approve the change. The lienholder may ask you to sign either the title or a power of attorney, and may wish to refinance any loan. The lienholder will have to apply for the new title and issue you a letter, including the Vehicle Identification Number, stating they will do so. You may also satisfy the lien and bring the signed-off title to the DMV.

You must add the name of the insured trustee to the registration and title or request that your insurance company report the vehicle in the name of the trust. The name of the insured on the Nevada Evidence of Insurance card must match either a name of a trustee or the trust as the vehicle will be registered. This is necessary to comply with [Nevada LIVE Insurance Validation](#).

Please note the name of the trust can be a maximum of 34 characters. Bring the following items to a [DMV Full-Service Office](#):

- Vehicle Title or lienholder letter
- Current registration
- Nevada Evidence of Insurance Card
- A completed [Trustee Appointment and Powers Affidavit \(VP-188\)](#)

An emissions inspection and registration renewal are not required.

You have the option of renewing your vehicle registration for a full year. You will need to complete an emissions inspection if required and if the last test was completed more than 90 days ago. Your expiration date will change if the current expiration date is more than 35 days away. Credit will be given for the unused portion of your current Nevada registration.

If you have a Governmental Services Tax Exemption for Veterans, Disabled Veterans, Surviving Spouses or the Blind, you may apply this to a vehicle registered to a trust by completing the [Trust Affidavit for Exemptions \(VP-242\)](#). This must be filed at the [registration renewal](#) each year.

How Do I...

- Change My Address
- Change Names on my License or Vehicle
- Get a Handicapped Placard or Plates
- Get a Driver History Printout
- Get a Duplicate License or ID
- Buy and Register a Vehicle
- Get a Duplicate Title
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- More Info...

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- Beginning Driver Training
- English | Spanish
- Traffic Safety Resources

Driving Schools

- Teens & Beginning Drivers
- Traffic Safety
- DUI
- Commercial

DMV

- Newsroom
- Employment
- Mission and Divisions
- Public Meetings
- Administrative Hearings
- Records
- Motor Vehicle Laws
- 50 State DMV Links

Nevada

- State Home Page
- DPS - Public Safety
- DOT - Transportation
- B&I - Business & Industry

Contact Information

- Email:
Contact Us
- Address:
Nevada Department of Motor Vehicles
555 Wright Way
Carson City, NV 89711
- Telephone:
Las Vegas Area:
(702) 486-4368 (486-4DMV)
Reno/Sparks/Carson City:
(775) 684-4368 (684-4DMV)
Rural Nevada:
(877) 368-7828 Toll Free
TDD (Hearing Impaired Only):
(775) 684-4904

Governor - Brian Sandoval | DMV Director - Bruce Breslow



[Driver License](#) | [Registration](#) | [Forms](#) | [Locations](#) | [FAQs](#) | [Online Services](#) | [Site Map](#) | [Privacy Policy](#) | [Home](#)

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,
Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**APPENDIX TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT,
VOLUME 1**

APPENDIX, VOLUME 1

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No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
BEVERLY SEVCIK IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

1 I, Beverly Sevcik, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my life partner Mary
3 Baranovich. I am 74 years old and I reside in Carson City, Nevada. I have personal knowledge
4 of the matters stated in this declaration and could and would so testify if called as a witness.

5 2. Mary and I are lesbian individuals in a loving, committed relationship of more
6 than 40 years. We committed our lives to one another and exchanged rings on October 2, 1971,
7 and registered as domestic partners in Nevada when it became possible to do so in 2009. Mary is
8 the love of my life, and I long for the day that I can marry her and call her my wife.

9 3. I was born in Moscow, Idaho, and spent most of my childhood in Washington
10 State. During World War II, my family moved to Bremerton, Washington so that my father could
11 work in the Bremerton Navy Yard; after the war ended, we moved to Seattle where my father had
12 been offered a job. I lived in Seattle until 2001. Over the years, I did secretarial and insurance
13 work, as well as some credit collection. I retired from employment at age 54.

14 4. Mary and I moved to Carson City in 2001. We had traveled to Reno several times
15 throughout the years to enjoy the sunshine and casinos, and we grew to really love the area. So,
16 after my ailing mother, whom I had been caring for, succumbed to Alzheimer's Disease we
17 decided to leave Seattle. We have lived in Carson City ever since, and have found it to be a
18 wonderful community.

19 5. I have three children (ages 49, 51, and 53 years) and four grandchildren (ages 14,
20 19, 23, and 28). I have a close relationship with my children and grandchildren, and truly enjoy
21 being a mother and grandmother.

22 6. Marriage has always been very important to me. My parents each came from large
23 families in Canada, and were married for 64 years. And, at age 20, I did what was expected of
24 every young girl in the 1950s – I got married and then had children. Although I loved being a
25 mother, I was extremely unhappy in my marriage and subsequently divorced my husband. At the
26 time of my divorce, our three children were 8, 10, and 12 years old, and I was awarded primary
27 custody of all three of them.

28 7. I realized that I had always been a lesbian when I developed very strong feelings

1 for my friend and neighbor, Mary. She and I had been friends for quite some time and spent a lot
2 of time at each other's houses talking and visiting, but I had not previously realized that my
3 feelings for her had grown way beyond friendship. So, one day when Mary was visiting my
4 house, I told her how I felt. She was very surprised and immediately went home without any
5 further conversation. After she left, the gravity of what I had said and what that meant – that I
6 was in love with a woman – hit me like a ton of bricks. For days, I couldn't eat or sleep and was
7 in complete emotional turmoil. I went to talk to a psychologist and he assured me that my
8 feelings were "okay" and said that "there are good productive people out there who are gay." He
9 told me I didn't have to feel ashamed or afraid. While it was not until the last few years that I felt
10 safe and comfortable telling people I am a lesbian, it is part of who I am and there is no denying
11 it.

12 8. Soon after I told Mary how I felt, we revisited our previous conversation and she
13 told me she was in love with me as well. We began living together and Mary helped me raise my
14 three children. Although we lived together and shared a bedroom, we hid our relationship and
15 sexual orientation and let others simply think whatever they wanted to think. Despite the fact that
16 we were very good and loving parents, it was the early 1970s and we feared having the children
17 taken away. Mary grew very close to my children and became an important parental figure in
18 their lives. Our children are very accepting of our relationship, and have never expressed anything
19 except for love and support for us. In fact, when my daughter had her first child, she asked us if
20 her child could call Mary "Nana." Of course, we said "yes".

21 9. Not long after we began living together, I told Mary that I wanted to be with her
22 forever, and that it was important to me that we make a verbal commitment to one another and
23 seal that promise by exchanging rings. She agreed and we designated October 2, 1971, as the day
24 we would make a lifelong commitment to one another. To celebrate, we stayed in a hotel in
25 downtown Seattle and went to JCPenney and bought each other a ring. We were careful not to
26 buy matching rings, however, because we were afraid that if we did others would figure out that
27 we were a lesbian couple. We have celebrated that day as our anniversary ever since.

28 10. In 2009, as soon as domestic partnerships became available in Nevada, we went to

1 the Secretary of State's Office and registered as domestic partners. We picked up our certificate
2 of domestic partnership on October 1, 2009, the day before our 38th anniversary. Although it
3 meant a lot to me, I found myself longing to be married instead.

4 11. I feel that it is truly shameful that after 40 years together, Mary and I cannot get
5 married. Our love is real and our commitment has endured over four decades. There are so many
6 things about her that I love, admire, and respect that I could not possibly list them all. She is
7 sensible and well grounded; kind, compassionate, and friendly; and I enjoy her company and love
8 spending time with her. Mary goes out of her way to take good care of me and make sure that my
9 needs are met. We are compatible in every respect – we have similar interests, dislikes, and likes.
10 Mary and I have an amazing bond, and it feels like we have been together forever. She is my best
11 friend, my companion, and my one true love. I truly cannot imagine my life without her.

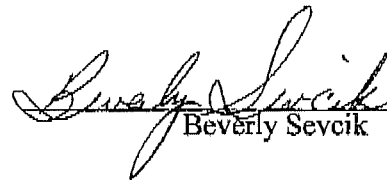
12 12. Mary has been a loving parent to my children and a grandmother to my
13 grandchildren. After 40 years together, our lives are intertwined in every way possible. We have
14 been together so long, that we are emotionally, mentally, financially, and physically dependent on
15 one another. We have stood by one another through the joys and struggles of life, and we have
16 proven that our commitment to one another is truly “til death do us part.” Like any loving and
17 committed couple, we want for our relationship to be given the respect and recognition that it
18 deserves. I want to be able to say “I do” and call Mary “my wife.”

19 13. Over the years, I have grown tired of having to explain my relationship with Mary
20 to others. Several times, I have been asked if Mary is my sister. And, the issue almost always
21 comes up when filling out forms and getting medical care. I want to be able to tell people
22 proudly, “she is my wife,” and have them understand exactly what that means. Domestic
23 partnership simply does not do that. Although registering as domestic partners and having wills
24 and powers of attorney drawn up has alleviated some stress, it just does not have the same
25 meaning as marriage. Marriage is the only way that I will feel completely secure that my
26 relationship is fully protected and recognized, as it deserves to be.

27 14. On April 3, 2012, Mary and I went to the Carson City Marriage Bureau in Carson
28 City, Nevada to get a marriage license. We had the identification required to prove our names

1 and ages, and were prepared to pay the \$75 fee and complete a marriage application. When we
2 requested a marriage license, the employee working behind the counter stated, "You have to go to
3 the Secretary of State's office to register as domestic partners, we don't do that here." I
4 responded that we are already registered as domestic partners in Nevada and wanted to get a
5 marriage license, the employee refused our request. Being denied the right to get married, after
6 40 years together, felt degrading, hurtful, and extremely unfair.

7
8 Signed under penalty of perjury under the laws of the United States this ^{Oh} 7 day of
9 September, 2012.

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12 Beverly Sevcik
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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Plaintiffs,

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Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF MARY
BARANOVICH IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

1 I, Mary Baranovich, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my life partner Beverly Sevcik.

3 I am 76 years old and I reside in Carson City, Nevada. I have personal knowledge of the matters
4 stated in this declaration and could and would so testify if called as a witness.

5 2. Beverly and I are lesbian individuals, and we have been in a loving and committed
6 relationship for almost 41 years. We committed our lives to one another and exchanged rings on
7 October 2, 1971, and we are registered as domestic partners in Nevada. I have spent more than
8 half of my life with Beverly, and want to be able to marry her and have our love and relationship
9 recognized for what it is – two lives shared as one in love, respect, and commitment.

10 3. I was born in Vancouver, Washington, and lived there with my parents and older
11 brother until I was 20 years old, at which time I moved to Seattle. I obtained an associate's
12 degree in liberal arts from Clark College in Vancouver, Washington, and worked as an insurance
13 secretary and then a bookkeeper. For 7 years, during the AIDS epidemic, I also did volunteer
14 work with AIDS patients in Seattle at the Bailey-Boushay House, a residential care facility. I
15 retired from employment at age 54, and until recently I volunteered at the Nevada State Museum
16 in Carson City.

17 4. I lived in Seattle until 2001, when, after retiring, Beverly and I moved to Carson
18 City. We had traveled to the Reno area several times throughout the years, and we wanted to
19 retire in a place where we could enjoy the sunshine and good weather. We really like Carson City
20 and the surrounding area and, after so many years of rainy Seattle weather, I often joke that we
21 have "died and gone to heaven."

22 5. I realized I was a lesbian when I was 18 years old. I was taking an "abnormal
23 psychology" class in college, and we were talking about homosexuality. The professor was
24 talking about homosexuality as "abnormal" and as a psychological disorder, and I realized he was
25 talking about me. I felt distressed and isolated, but it was not a choice I had made and was just
26 part of who I am. I began dating women in my early 20s, but never told my parents that I was a
27 lesbian.

28 6. Throughout my life, I have witnessed discrimination and homophobia in many

1 forms. I remember being in women's bars in the mid-to-late 1950s, when I was in my early 20s,
2 and how the police would storm in and raid the bar. As soon as the police arrived, which could
3 happen at any time, the bartender would give everyone a signal so that everyone would be on
4 their best behavior. The police would walk around amongst the tables, with their nightsticks in
5 hand. No one ever knew what was going to happen and there was always the fear that you would
6 be taken away. Also, I frequently heard stories of violence and arrests at the men's bar. It was
7 very, very frightening.

8 7. When I went to the women's bar, it was for a sense of community and to meet
9 other people like me. But, I was always extremely guarded and never gave anyone my last name,
10 because I knew I would be terminated from my job if my sexual orientation was discovered.
11 After Beverly and I became a couple, I even avoided associating with any lesbians who looked
12 masculine, and tried to blend into the heterosexual world the best I could to make sure no harm
13 would befall the family. I feared that, if anyone discovered my relationship with Beverly, we
14 could lose our jobs, lose custody of Beverly's children, or have our house vandalized or broken
15 into. Unfortunately, that was just the reality of the time.

16 8. I met Beverly when I was in my early 30s. She lived across the street, and we
17 became good friends. We spent a lot of time visiting one another and grew to be very close. I
18 cared for Beverly deeply, but had not given my feelings much thought because I did not know she
19 was a lesbian and did not see her as being available. But, one day when I was visiting at
20 Beverly's house, she told me she had fallen in love with me. I was so dumbfounded, that I went
21 home without saying a word. Soon after, we saw one another again and I told her that I too was
22 in love with her. We have been together ever since.

23 9. In 1971, I moved in with Beverly and her three young children. Shortly thereafter,
24 on October 2, 1971, we decided to make a lifelong commitment to one another and we exchanged
25 rings as a symbol of our love and commitment. Beverly and her children are my family. She has
26 always been a wonderful mother, and through the years I have grown to love her children just as
27 if they were my own. I have a great relationship with all three kids, who are now grown and have
28 children of their own. When our daughter had the first of her two children, she asked us if they

1 could call me “Nana.” I was honored, and love being a grandmother.

2 10. Beverly is truly the love of my life. I cannot imagine life without her. She is a
3 wonderful person, and I have tremendous respect and admiration for her. She is open-minded,
4 thoughtful, and kind. One of the qualities I admire about her most is that there is simply nothing
5 that she won’t tackle – be it installing light fixtures or fixing the plumbing, to fixing a delicious
6 meal for a group of our friends. For example, when we lived in Seattle, she didn’t like the type of
7 walls we had in the house, so she single handedly tore them out and installed new ones. She also
8 has a tremendous sense of humor, and I love to hear her sing and whistle throughout the day. She
9 is a beautiful person, inside and out, and I have made it my mission in life to ensure that she is
10 happy and well taken care of. Beverly is my best friend and my closest confident, and she is the
11 most important person in my life. I want to be able to call her my wife.

12 11. Shortly after we moved to Carson City, Question 2 was on the ballot for the
13 second biennial vote. I remember hearing the degrading campaign messages on the radio and
14 television and seeing them on billboards, expressing the misguided view that allowing same-sex
15 couples to marry would somehow destroy marriage between a man and a woman. This message
16 was extremely hurtful and disparaging, and I have never heard anyone explain how recognizing
17 my commitment to Beverly of over 40 years would have an adverse effect on anyone or affect
18 anyone else’s marriage in any way whatsoever.

19 12. Although it meant a great deal to us when we registered as domestic partners in
20 2009, I am deeply disappointed and hurt by not being able to marry Beverly. We have been
21 together for more than four decades, and have proven that our love is enduring and our
22 commitment is forever. I feel like the state is saying that we are good enough to handle the same
23 responsibilities as spouses, but we are not deserving of the respect and recognition of marriage.

24 13. On April 3, 2012, Beverly and I went to the Marriage Bureau in Carson City,
25 Nevada to get a marriage license. We had the identification required to prove our names and
26 ages, and were prepared to pay the \$75 fee and complete a marriage application. When we
27 requested a marriage license, an employee of Defendant Carson City Clerk-Recorder Alan
28 Glover, who was working behind the counter, directed us to the Secretary of State’s Office to

1 register as domestic partners. When Beverly explained that we already were registered and
2 wanted to get married, we were told we could not. The fact that I cannot marry the woman who I
3 have been with for more than 40 years is hurtful and degrading. Our relationship has endured the
4 ups and down of life for over four decades. Our love and commitment are real. Our bond is
5 undeniable. I want to be able to call Beverly my wife so that everyone knows and understands
6 our relationship, and who she is to me.

7
8 Signed under penalty of perjury under the laws of the United States this 7th day of
9 September, 2012.

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11 Mary Baranovich
12 Mary Baranovich
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
THEODORE SMALL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Theodore Small, hereby declare and state as follows:

2 1. I am a plaintiff in this case, and reside in Las Vegas, Nevada. I have actual
3 knowledge of the matters stated in this declaration and could and would so testify if called as a
4 witness.

5 2. Antioco Carrillo and I are gay men and have been in a loving, committed
6 relationship for six years and wish to marry each other. We are registered as domestic partners in
7 Nevada.

8 3. I am 44 years old, and have undergraduate and master's degrees in education.
9 After 12 years of working in the classroom, I took a position as a professional developer and
10 trainer for teachers of English language learners, and worked as a professional developer for the
11 state to train science teachers. I returned to teach in the elementary school classroom 4 years ago.
12 I have now worked in the same school district for nearly two decades. In December of 2011, I
13 was nominated as a Classroom Superhero, as part of a project created by the National Education
14 Association that allows parents, students, and community members to show support to educators.
15 I love being a teacher and, while it is not without challenges, I feel fortunate to be able to do such
16 rewarding work.

17 4. I was born in Logan, Utah, and was raised in Bear Lake, Idaho. I moved to Las
18 Vegas in 1994 to accept a new teaching job, and this has been my home ever since.

19 5. I grew up in a conservative religious family, and was taught through my faith that
20 being gay is the worst sin next to murder. I had always known I was different, even as a young
21 child, and it was painful to be taught this core aspect of my identity was an abomination. I tried
22 to ignore my sexual orientation, but those efforts were futile. Being gay is part of my essence,
23 and it has never been a choice for me. Anti-gay teachings, and efforts to force gay youth into
24 sexual orientation conversion programs were common in my community. As a result, I saw first-
25 hand the damaging toll that these programs took on gay youth, who suffer disproportionate rates
26 of depression and suicide. Motivated to help others, I finally decided to break my silence and live
27 openly and honestly as a gay man at the age of 23.

28 6. Even then, however, I could not have imagined that I would someday meet a life

1 partner who brings me as much joy as Antioco does. One of the things I treasure most about him
2 is his sense of humor and incredible wit. I love that he is always ready to put others at ease with a
3 joke. The story of how we met is no different. I ran a church group in the 1990s called
4 Welcoming Congregation, and Antioco participated as a panelist in one of our events. At the
5 time, we were involved in other relationships, and did not begin dating until six years ago.
6 Antioco likes to joke, however, that I waited all those years to be with him. In a sense, he is right.
7 If I had known that he was going to be my happy ending, I would have counted down the days.

8 7. Our relationship began six years ago when I was volunteering with a local chapter
9 of an organization called the Gay, Lesbian and Straight Education Network (“GLSEN”), which
10 works to reduce bullying and harassment of lesbian, gay, bisexual and transgender (“LGBT”) youth.
11 A local school was refusing to allow lesbian and gay youth to attend their homecoming
12 dance with a same-sex date, and the students were crushed by the idea of missing out on one of
13 the most important nights of their high school years. I worked with GLSEN to organize another
14 homecoming dance so that they could have their homecoming after all, and sent out emails to
15 friends looking for chaperones. With his characteristic humor, Antioco responded that he would
16 volunteer “only if I can dance with you.” I was intrigued and said in a reply email that I would
17 save him a dance.

18 8. After a year of dating, we moved in together. It did not take me long to realize
19 that Antioco was “the one” for me. I quickly came to appreciate that Antioco not only loves me
20 for who I am, but also inspires me to be my best self. With Antioco’s humor and enthusiasm for
21 life, we laugh often and love spending time together, but also support each other’s individuality.
22 We also both enjoy spending time with friends and family, an important common value that has
23 shaped our lives together.

24 9. In fact, we hope to start a family of our own in the near future. We plan to adopt
25 because we know there are many children in the child welfare system looking for a “forever”
26 home, and we want to provide that love and nurturance as parents. We both share a deep desire,
27 however, to raise our children as a married couple. We do not want our children to wonder why
28 their government treats their family differently, or to absorb the message that, because our state

1 does not allow us to marry, their family is less worthy or valued than others.

2 10. Antioco and I registered as domestic partners with the state in October of 2010, but
3 know that it cannot begin to substitute for a marriage. We decided not to invite family and
4 friends because it could not begin to approximate a wedding, and we want to have a *real*
5 celebration with them on the day that we can finally get married. Our domestic partnership
6 registration, on the other hand, was a sterile process devoid of any celebration. It required us to
7 get the appropriate form notarized, and I recall standing in the middle of a bank lobby with our
8 right hands raised to swear that the information on the form was true. That is not the equivalent
9 of a wedding on any level, where two people take vows to love and care for each other in sickness
10 and in health, through a public celebration that melds their families as one. Instead, we filed the
11 form with the Nevada Secretary of State and picked it up the next day. Part of what makes a
12 wedding such a cherished life event is that there is no substitute for it, and we were painfully
13 reminded of that as we went through this dry administrative process.

14 11. We have many friends and family who are waiting for us to get married and,
15 when that day finally arrives, we know it will be the celebration of our lifetime. I also look
16 forward to the part of our lives when I do not have to confront daily reminders of the way the law
17 sets us apart, including for example, every time I have to cross out “spouse” on forms at the
18 doctor’s office, and write “domestic partner” instead.

19 12. Antioco and I are both over the age of 18, are not barred from marrying each other
20 as a result of being too closely related to each other, and are not married to anyone else. On April
21 6, 2012, we appeared in person at the Marriage Bureau for the Office of the Clerk for Clark
22 County in Las Vegas, Nevada to seek a marriage license. We both were prepared to present valid
23 forms of identification to prove our names and ages, pay the required \$60 fee, and complete a
24 marriage application. As we approached the counter to apply for a marriage license we saw a
25 sign indicating that applicants must be a “bride and groom only.” When we asked a clerk for a
26 marriage license application, she responded that we would have to contact the Secretary of State
27 to register as domestic partners. When we indicated that we had already registered as domestic
28 partners and wished to marry, she said we could not because the state does not issue marriage

1 licenses for same-sex couples. Although Antioco and I were both aware of the law, this was a
2 painful reminder that the state sees us as second-class citizens.

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4 Signed under penalty of perjury under the laws of the United States this 7th day of
5 September, 2012.

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8 Theodore Small
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
 Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
 Defendants,

and

COALITION FOR THE PROTECTION
 OF MARRIAGE,
 Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
 ANTIOCO CARRILLO IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT**

1 I, Antioco Carrillo, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner, Theodore (“Theo”)
3 Small. I am 45 years old, and reside in Las Vegas, Nevada. I have personal knowledge of the
4 matters stated in this declaration and could and would so testify if called as a witness.

5 2. Theo and I are gay men and have been in a loving, committed relationship for six
6 years and wish to marry each other. We are registered as domestic partners in Nevada.

7 3. I serve as the executive director of Aid for AIDS in Nevada, a non-profit
8 organization that provides support and advocacy for adults and children living with HIV/AIDS in
9 southern Nevada. I was trained as a social worker, receiving both a bachelor’s and master’s
10 degree in social work from the University of Nevada, Las Vegas (“UNLV”). I also am working
11 to complete a Ph.D. in clinical psychology. Prior to accepting my current position, I worked for
12 19 years at the Community Counseling Center in Las Vegas, providing HIV counseling to people
13 dealing with their HIV diagnosis, mental health issues and substance abuse related disorders,
14 eventually becoming the organization’s Chief Operating Officer. Because mentoring other
15 professionals in the field is important to me, I also teach classes at the UNLV School of Social
16 Work and serve on the school’s advisory board.

17 4. Theo and I began our relationship six years ago when he worked to organize an
18 alternative dance for some local lesbian and gay high school students who had been barred from
19 bringing their dates to their homecoming dance. I was involved in the community at that time as
20 a volunteer advisor for a youth group at the Gay & Lesbian Community Center of Southern
21 Nevada (the “Center”). This work is near and dear to my heart because of the challenges facing
22 lesbian, gay, bisexual and transgender (“LGBT”) youth, who frequently receive societal messages
23 that they are not valued, from the bullying and harassment that many face at school, to the state’s
24 relegation of same-sex couples to the second-class relationship status of domestic partnership. I
25 have seen this take a deep toll on many youth, and this is in fact one of the reasons I am
26 participating in this case: I hope that someday lesbian and gay youth in Nevada will be able to
27 grow up with the same dreams of marrying their one, cherished partner as their heterosexual
28 peers, with all of the validation, dignity, and respect that this shared dream communicates to

1 others.

2 5. Approximately six years ago, I received an email over a listserv from Theo asking
3 for chaperones at an event for LGBT youth and their allies that Theo was helping to organize.
4 Having known Theo for a number of years I thought he was really special, and I decided to be
5 brave and make my feelings known. I emailed him to say I would volunteer “only if I can dance
6 with you.” When Theo replied that he would save me a dance, I was thrilled.

7 6. We quickly figured out that we were meant to be together, and moved into a
8 shared home just over a year after we started dating. We have entwined our finances and
9 supported each other throughout our years together, pooling our resources into joint accounts and
10 listing each other as beneficiaries on our retirement accounts. I knew early on that I wanted to
11 spend the rest of my life with Theo. We each have a deep respect for each other and a mutual
12 affection that is even stronger today than when we first fell in love. Theo is “the one” for me
13 because I simply cannot imagine myself with anyone else. Theo is very selfless, and I know
14 without question that he will remain devoted to our relationship no matter what challenges lie
15 ahead, as will I.

16 7. We also look forward to beginning the next chapter of our lives together as
17 parents. We are preparing to adopt children through the child welfare system. Having worked
18 with a number of families involved in the system as a counselor, I am prepared for some of the
19 challenges that youth face after having been removed from the homes they were living in and
20 placed in the system. With my mental health background, and Theo’s enthusiasm for kids as a
21 schoolteacher, we think that we could provide the loving home that our children would deserve.

22 8. We both long for the day, however, when we can raise children as a married
23 couple. Even children know what a marriage is, and I don’t want ours to grow up knowing that
24 the state has set their family apart as less valued because their parents cannot get married.

25 9. When we registered as domestic partners with the state in October of 2010, Theo
26 felt strongly that he did not want to have a “wedding” or family celebration until we could
27 actually be married, and I agreed. We knew that staging a ceremony bereft of the state
28 recognition afforded to different-sex couples who marry would feel inauthentic. While we have

1 attended commitment ceremonies for other same-sex couples, and understand their desire to find
2 some way to celebrate their commitment to live their lives together, we knew that for us it would
3 feel like an imitation. We do not want the crumbs of a full life; we want to live a full life
4 together.

5 10. We are waiting for the day when we can affirm our commitment to each other
6 through a wedding, in front of all of our loved ones. While my family knows that we are a
7 couple, and appreciates how much joy Theo has brought to my life, only the ceremony and ritual
8 of a real marriage will cause them to understand our relationship the way they understand their
9 own and others' marriages. My family believes that marriage is the honorable way to show
10 respect for your relationship and your intentions for the future, and our registered domestic
11 partnership simply is not adequate to do that. I cannot wait for the day when everyone in my
12 family, from my mother (my father is dead) to my nieces and nephews, can see that Theo and I
13 are respected under the law just like every other married couple.

14 11. Theo and I are both over the age of 18, are not barred from marrying each other as
15 a result of being too closely related to each other, and are not married to anyone else. On April 6,
16 2012, we appeared in person at the Marriage Bureau for the Office of the Clerk for Clark County
17 in Las Vegas, Nevada to seek a marriage license. We both were prepared to present valid forms
18 of identification to prove our names and ages, pay the required \$60 fee, and complete a marriage
19 application. As we approached the counter to apply for a marriage license we saw a sign
20 indicating that applicants must be a "bride and groom only." When we asked a clerk for a
21 marriage license application, she responded that we would have to contact the Secretary of State
22 to register as domestic partners. When we indicated that we had already registered as domestic
23 partners and wished to marry, she said we could not because the state does not issue marriage
24 licenses for same-sex couples. While I was prepared for our request to be denied, I was not fully
25 prepared for the experience to feel as hurtful as it did. Although the law is a daily reminder that

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1 we are viewed as unequal to other couples in the eyes of our government, the in-person denial
2 made that second-class treatment painfully clear.

3
4 Signed under penalty of perjury under the laws of the United States this 6th day of
5 September, 2012.

6 
7 Antioco Carrillo

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF KAREN
GOODY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

1 I, Karen Goody, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Karen Vibe. I am
3 51 years old and reside in Reno, Nevada. I have personal knowledge of the matters stated in this
4 declaration and could and would so testify if called as a witness.

5 2. My partner Karen and I are lesbian individuals in a loving, committed relationship.
6 We have been together for almost 7 years. We are engaged to be married, and are waiting until
7 we have the legal right to do so in Nevada, the state in which we live and work. For the reasons
8 explained below, we have chosen not to register as domestic partners and are holding out until we
9 can legally marry in our home state.

10 3. I was born in Santa Cruz, California, and lived there with my parents and older
11 sister until I left for college when I graduated high school. I have a bachelor's degree in
12 management from Sonoma State University. I currently am a medical sales representative for
13 Henry Schein, Inc., the largest provider of health care products and services to medical, dental,
14 and veterinary office-based practitioners.

15 4. Shortly after I began college, I realized that I am a lesbian. I had my first
16 relationship with a woman when I was 19 years old, and it was the first time I allowed myself to
17 put it all together and acknowledge my sexual orientation. Although I was out to my friends in
18 Sonoma County, I did not tell my family that I am a lesbian until approximately 10 years later.
19 Overall, my family has been very accepting, and I have maintained a good relationship with them.
20 Being a lesbian was not a choice for me, it is simply part of who I am.

21 5. I met my partner Karen in August of 2005, at a gay pride celebration in Reno. I
22 was working at a booth at the parade, for my then-employer Allstate. When I took a break to
23 walk around the festival, Karen caught my eye. She was working at the Smith Barney booth, and
24 I went over to the booth and introduced myself. We talked for a while, and I knew right away
25 that Karen was someone special.

26 6. Karen and I started spending time together and I really enjoyed her company. I
27 was interested in her, but she was very honest with me from the beginning that she was newly out
28 of a relationship and was not ready for another serious relationship. I truly appreciated and

1 admired her honestly and openness, and so we took things slowly and started out as “just friends.”
2 While I knew I wanted more than a friendship with Karen, I felt that it was important to give her
3 the time she needed. In retrospect, that time was invaluable because it allowed us to really get to
4 know one another and create a strong foundation for what has become the most significant love of
5 my life. Despite being “just friends,” our feelings for one another grew quickly and it was not
6 long before I found myself falling in love with her. By November, we were dating exclusively.

7 7. On December 23, 2005, Karen surprised me with a marriage proposal. After a
8 romantic dinner at the steakhouse in Harrah’s, we exchanged Christmas gifts in front of the
9 fireplace. When I opened my “Christmas gift,” I found a beautiful diamond engagement ring and
10 Karen said “Will you marry me? I know it is soon, but we are made for each other. I want to be
11 with you forever.” I was so happy that I burst into tears. Of course, I said “yes.”

12 8. Karen and I have talked about our wedding and we know exactly what we want the
13 ceremony to look like. We want to get married, because of what “marriage” means to us and to
14 others in society. Our primary motivation for marriage is our love for one another and our desire
15 to commit ourselves to one another for life, not the rights and responsibilities that come with
16 marriage. So, after a lot of discussion, we have decided to wait to get married until it is legally
17 recognized in Nevada, and we have decided not to register as domestic partners. We want to be
18 married, and a domestic partnership simply is not a marriage. When Karen proposed to me, her
19 question was “Will you marry me?” not “will you be in a joint state-sanctioned relationship on a
20 secondary level with me?” We do not want to settle for less than being married.

21 9. I want to be able to call Karen my spouse. I am tired of having to figure out how
22 to describe our relationship to other people. For example, I once introduced Karen as “my
23 partner” to a coworker and for the first several minutes of our conversation, he thought Karen was
24 my business partner. This has happened to us repeatedly. From client interactions to social
25 interactions, there is hardly a time when we don’t have to educate someone on what our
26 relationship is and what that means. If I could introduce Karen as “my spouse” or “my wife” then
27 people would understand her relationship to me and my relationship to her without any further
28 explanation.

10. Marriage is important to me, and has always been significant to my family. My parents were married until my father passed away shortly after their 50th wedding anniversary, and my older sister has been married for more than 25 years. Marrying Karen would legitimize our relationship in the eyes of our family in a way that nothing else ever will.

11. Karen and I are both over the age of 18, are not barred from marrying each other as a result of being too closely related to each other, and are not married to anyone else. On April 1, 2012, Karen and I went to the Washoe County Marriage Bureau in Reno, Nevada to get a marriage license. We both had identification so we could prove our names and ages, and were prepared to pay the required \$60 fee and complete a marriage application. Our experience was horrible. We were not even allowed to go through security to enter the Marriage Bureau and we were told we could not fill out a marriage license form.

11. I found it incredible that we were not even allowed in the door to the Marriage Bureau. Not only were we made to feel like second class citizens, we were treated that way. The whole experience was hurtful, and it reinforced our belief that people will not understand or view our relationship or view it as truly significant, until we are able to get married just like different-sex couples who wish to commit their lives to one another.

Signed under penalty of perjury under the laws of the United States this 6th day of September, 2012.

Karen Goody
Karen Goody

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF KAREN
VIBE IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

1 I, Karen Vibe, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Karen Goody. I am
3 38 years old and reside in Reno, Nevada. I have personal knowledge of the matters stated in this
4 declaration and could and would so testify if called as a witness.

5 2. My partner Karen and I are lesbians and we are in a loving, committed relationship
6 with one another. We have been together for almost seven years, and we are engaged to be
7 married. The only reason we have not already married is because Nevada, the state in which we
8 both live and work, does not currently allow marriage between two people of the same-sex. As
9 explained in more detail below, we have chosen not to register as domestic partners.

10 3. I was born in Sacramento, California, and grew up in Bakersfield, California. I
11 have a bachelor's degree in classical music performance from California State University at
12 Northridge, and a master's degree in classical musical performance from the University of
13 Nevada – Reno (UNR). Shortly after obtaining my undergraduate degree, I moved to Reno, and
14 worked in medical sales while performing with the Reno Philharmonic Orchestra and obtaining
15 my masters degree at UNR. In March of 2005, after finishing my master's degree, I went to work
16 for Smith Barney and have worked there since that time as a financial advisor.

17 4. Community involvement is important to me. I am on the Board of Directors for
18 the Reno Chamber Orchestra, and I am on the marketing committee of the Reno Philharmonic
19 Orchestra. I have played percussion in the Reno Philharmonic Orchestra since moving to Reno
20 twelve years ago. I volunteer for the Philharmonic's educational outreach program, Discovery
21 Music, for which I travel with two other percussionists from the Philharmonic to Washoe County
22 Schools (K-6 grade) and perform for the students and teach them about percussion instruments in
23 hopes of getting them excited about music and interested in the orchestra.

24 5. I also am involved in the Professional Saleswomen of Nevada, a non-profit
25 networking organization that strives to develop and promote women in the business world and
26 build a network of successful professional women. In 2009, I was honored with an award for
27 Saleswoman of the Year.

28 6. I have always known I am gay and do not feel as though it was a choice for me. I

1 was 18 years old when I had my first relationship, but I did not tell anyone that I am a lesbian for
2 three years because I was raised in an extremely conservative family and I knew that my parents
3 would not approve. I came out to my parents when I was 21 years old, and their response was to
4 completely disown me. Eventually, I re-established a relationship with them, but it has been
5 extremely rocky through the years because of their views about my sexual orientation and we
6 have not spoken for more than a year.

7 7. I met my partner Karen in August of 2005, at Reno's annual gay pride celebration.
8 I was working at Smith Barney's booth at the pride festival, when she walked up to the booth and
9 introduced herself. We talked for a while, and I found myself instantly drawn to her.

10 8. We began spending time together, but remained "just friends" for the first few
11 months. When we met, I was only a few months out of a six-and-a-half year relationship and
12 needed some time to continue to deal with that break up and the impact it had on me. Although I
13 was very attracted to and interested in Karen at the time, I wanted to take it slow. So, I was
14 honest with her about where I was, and she respected my needs. After two months of being "just
15 friends," and casually dating other women, a light bulb turned on for me – the "right" person was
16 standing right in front of me and I did not want to pass up the opportunity to be with her.
17 Although we had only known each other for a short time, I knew that Karen was everything I
18 wanted in a partner and more. She is a beautiful person – inside and out; she is my best friend. I
19 felt truly connected to her, and found myself deeply in love with her. In November of 2005, we
20 began our relationship and soon thereafter I decided I wanted to make our relationship permanent.

21 9. Although our relationship was still young, I knew with all my heart that I wanted
22 to be with my partner Karen forever. I decided to ask her to marry me, and bought an
23 engagement ring to surprise her with that Christmas. Because we each had plans to spend
24 Christmas eve and Christmas day of 2005 with our families, we celebrated "our Christmas" on
25 December 23. We went to the steakhouse at Harrah's and had a romantic dinner, and exchanged
26 Christmas gifts in front of the fireplace. When Karen opened her gift – a ring box – I asked her to
27 marry me. She said "yes." It was one of the best nights of my life.

28 10. We have talked a lot about our wedding. We know exactly what we want the

1 ceremony to look like, but we have decided to wait to have our wedding when we can actually get
2 married in Nevada. We have built our life together in Nevada, and I want the opportunity to tell
3 the world that I want to be with Karen forever and have our love and commitment recognized in
4 the same way as other married couples. I believe that day will come, and prefer to wait for it.

5 11. For me, the decision to marry Karen is an emotional one. Thus, Karen and I have
6 not registered with the state as domestic partners and we do not intend to do so. To me, domestic
7 partnership is a second class status and screams “you are less than us.” A domestic partnership
8 would not give my relationship with Karen the social recognition or meaning it deserves. Neither
9 our families nor the people we encounter on a day-to-day basis would understand what a domestic
10 partnership is, and they would not give our relationship the same respect they would if we were
11 married. A domestic partnership just does not hold the same weight as marriage. When I decided
12 to propose to Karen, I did not think to myself “I want to enter into a second class status with this
13 woman.” I proposed to her for the same reason most heterosexual people get married – because
14 they love the other person and want to be with that person forever.

15 12. Since we currently cannot get married in Nevada, we have taken several steps to
16 safeguard ourselves and one another. We have health care proxies, powers of attorney, and living
17 wills that name the other as the decision-maker should one of become incapacitated; and we have
18 revocable living trusts and life insurance policies that name the other as the beneficiary. We also
19 own our condo as joint tenants with the right of survivorship, and have a joint bank account from
20 which we pay our common expenses.

21 13. On a day-to-day basis, I find it difficult and frustrating to try to explain to others
22 what my relationship status is and who Karen is to me. Oftentimes, when I introduce Karen as
23 “my partner,” I get a puzzled look and end up having to explain that we are in a romantic
24 relationship and not a business relationship. It feels like I am constantly explaining my
25 relationship to others, both in business and social settings. I would love to be able to introduce
26 Karen at a work function or cocktail party and simply say, “this is my wife.” When people ask if
27 I am married, I want to be able to say “yes.”

28 14. I also have grown tired of having to fill out forms that ask my relationship status. I

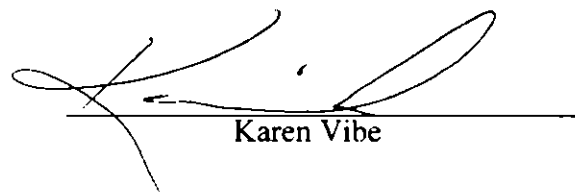
1 used to cross out "spouse" when it appeared on a form and would write in "partner." But, I am so
2 tired of crossing things out on forms, that I have stopped doing it. Each time I have to fill out a
3 form, it is a reminder that others view my relationship as less important.

4 15. Karen and I are both over the age of 18, are not barred from marrying each other
5 as a result of being too closely related to each other, and are not married to anyone else. On April
6 1, 2012, Karen and I went to the Washoe County Marriage Bureau in Reno, Nevada to get a
7 marriage license. We both had the required identification, and were prepared to pay the required
8 \$60 fee and complete a marriage application. From the moment we arrived, we were treated like
9 second class citizens. The security guard would not even let us go through security to obtain a
10 marriage license, solely because we were two women. It was very clear that, if we had been a
11 man and a woman, our experience would have been very different.

12 16. When we walked into the front door of the building that houses the Marriage
13 Bureau, the security guard asked us the purpose of our visit. I told him that we were there to
14 apply for a marriage license for the two of us to marry each other. The security officer then asked
15 us, "Do you have a man with you?" When I said "no" and explained that the two of us wanted to
16 marry one another, the security guard said that we could not get a marriage license. I asked him if
17 we could at least go to the Marriage Bureau counter and fill out the marriage license application.
18 An employee of Defendant Harvey who was standing behind the Marriage Bureau counter
19 responded, "Two women can't apply." The security officer added that the marriage has to "be
20 between a man and a woman." The employee behind the counter then told us we could "apply for
21 a civil partnership with the Secretary of State."

22 17. Our experience in trying to obtain a marriage license, and not even being permitted
23 past the door, was terribly distressing. It is hurtful and devaluing to be denied the same
24 recognition of our relationship as other committed couples.

25 Signed under penalty of perjury under the laws of the United States this 6th day of
26 September, 2012.

27
28 
Karen Vibe

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
GREG FLAMER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Greg Flamer, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Fletcher Whitwell.

3 I am 40 years old and reside in Las Vegas, Nevada. I have personal knowledge of the matters
4 stated in this declaration and could and would so testify if called as a witness.

5 2. Fletcher and I are gay men in a loving, committed relationship. We have been
6 together for more than 14 years and have registered as domestic partners in Nevada.

7 3. I was born in the Bronx, New York, and grew up on Long Island. I have a
8 bachelor's degree in psychology from the State University of New York at Binghamton and a
9 master's degree in family therapy from Northwestern University.

10 4. I met Fletcher on March 14, 1998, when I was 25. That day was one of the most
11 important days of my life, along with the day Fletcher and I adopted our daughter, H.R.W.
12 Fletcher was 23 years old when we met and had only recently come out to his family about the
13 fact that he was gay, but he was ready to start a committed relationship. Fletcher has an
14 incredible heart and is a loving, loyal person. The two of us instantly connected because of our
15 mutual interest in sports, travel, music, and, most importantly, family and friends.

16 5. Almost a decade into our relationship, Fletcher and I moved from Chicago to Las
17 Vegas in 2006. Fletcher had an opportunity to advance his career, and I was happy to move so
18 that he could take advantage of that opportunity, although it meant uprooting my own career. In
19 Chicago, I had worked as a mental health counselor conducting family therapy and crisis
20 intervention and, thereafter, as the admissions director at a psychiatric hospital. The move to Las
21 Vegas was hard for me at first because I had difficulty finding work in my field, and I temporarily
22 took a job as a blackjack dealer for a few months. Nonetheless, it was important to me to support
23 Fletcher's career, and both Fletcher and I are glad to be raising our daughter in Nevada.

24 6. I ultimately secured a position with the Clark County Department of Family
25 Services, where I currently work as a licensing supervisor helping to find homes for abused and
26 neglected children.

1 7. On the first day when we were able to do so in 2009, Fletcher and I registered as
2 domestic partners with the State of Nevada. As much as we value the state law rights and
3 responsibilities that come with a domestic partnership, it felt like a half-measure. For example,
4 neither Fletcher nor I “proposed” to each other in order to register as domestic partners as would
5 have happened if we had been getting married, because we knew we were not being allowed to
6 marry. Our inability to marry makes us feel “less than” other people and that our relationship is
7 somehow less valuable than other relationships. Being able to say that we are married would
8 instantly convey the depth and permanence of our relationship in a way that no substitute for
9 marriage can do.

10 8. Fletcher and I have longed to start a family and that dream finally became a reality
11 in 2011, when we welcomed a baby girl, H.R.W., into our family through adoption. To increase
12 our chances of being matched with a birth mother, we used an adoption agency that works
13 nationally. All told, we spent around \$60,000 finalizing H.R.W.’s adoption.

14 9. Despite the fact that I am a legal parent to H.R.W., I worry that others may
15 challenge or question my parental relationship to her, particularly given confusion and
16 misunderstanding around whether a same-sex couple in a domestic partnership can both be legal
17 parents to a child in the same way as a married different-sex couple can. I therefore carry a letter
18 with me, drafted by an attorney, explaining that Fletcher and I are in a domestic partnership and
19 that both of us are legal parents of H.R.W. I have never heard of a married couple needing to do
20 the same with respect to explaining their marriage or documenting legal ties to their own children.

21 10. Fletcher and I share the typical responsibilities and joys of parenting a young
22 child: we feed, bathe, and clothe her; we teach her to walk and to recognize different shapes and
23 colors; we play peek-a-boo with her and take her to visit her grandparents; we care for her when
24 she’s sick; and we read her bedtime stories and rock her to sleep at night.

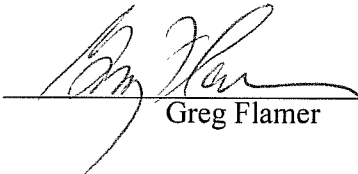
25 11. Fletcher and I wish to marry for our daughter’s sake as well as our own. We
26 worry that, as she grows older, she will be deprived of a sense of normalcy and may feel socially
27 outcast because she will absorb the message she receives from her government that Fletcher and I
28

1 as her parents are not worthy of marriage. We hope that, one day, H.R.W. will be able to walk
2 down the aisle at our wedding as the flower girl and that she will understand that the love and
3 commitment Fletcher and I feel for one another—and for our family—is as great as that felt by
4 other couples who currently may marry.

5 12. Fletcher and I are both over the age of 18, are not barred from marrying each other
6 as a result of being too closely related to each other, and are not married to anyone else. On April
7 4, 2012, we appeared in person at the Marriage Bureau for the Office of the Clerk for Clark
8 County in Las Vegas, Nevada to seek a marriage license. We both were prepared to present valid
9 forms of identification to prove our names and ages, pay the required \$60 fee, and complete a
10 marriage application. When we took our application for a marriage license to the clerk, we were
11 directed to the Secretary of State's website to register as domestic partners. When I clarified that
12 we were there to get a marriage license, the clerk denied our request. It was hurtful and devaluing
13 to be denied the same recognition of our relationship as other couples.

14 Signed under penalty of perjury under the laws of the United States this 30th day of

15 August, 2012.

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18 _____
19 Greg Flamer
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
FLETCHER WHITWELL IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Fletcher Whitwell, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Greg Flamer. I am
3 37 years old and reside in Las Vegas, Nevada. I have personal knowledge of the matters stated in
4 this declaration and could and would so testify if called as a witness.

5 2. Greg and I are gay men in a loving, committed relationship. We have been
6 together for more than 14 years and have registered with the State of Nevada as domestic
7 partners.

8 3. I was born in Memphis, Tennessee, and was raised in Mississippi. I have a
9 bachelor's degree in journalism and business from the University of Mississippi.

10 4. I am currently the Vice President of Media and Digital Activation at a regional
11 advertising firm, which many know for its creation of the "what happens in Vegas stays in
12 Vegas" advertising campaign.

13 5. Greg is one of the smartest, kindest, and most patient people I know. He is a
14 selfless person and always puts others first.

15 6. Both Greg and I share a passion for advancing child welfare. Greg does this for
16 his full-time job with the Clark County Department of Family Services. I serve on the board of a
17 non-profit literacy program that distributes books to schools in southern Nevada. I am also an
18 active member of a foundation through my work that is engaged in an anti-bullying campaign,
19 which was launched in 2010 after a surge in reported suicides among gay teens. The campaign
20 has worked to meet with superintendents about this issue and has donated \$1.5 million for radio
21 spots to raise awareness about bullying.

22 7. Greg and I welcomed a daughter to our family last year. Greg and I often
23 celebrate Christmas with my family in Mississippi, where extended family from surrounding
24 areas gather and continue family traditions such as singing karaoke on Christmas eve. We were
25 excited to introduce our daughter to these family traditions and added another stocking to the
26 fireplace mantle for her last year. I also enjoy playing many sports and look forward to the day
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28

1 when our daughter is old enough to enjoy these activities too and when I might be able to coach
2 one of her teams.

3 8. One of the things that I dread, however, is the day when we will have to explain to
4 our daughter why her parents are not married. I want her to understand that her family is as
5 valuable and worthy of dignity as any other family in the community, but it will be difficult to
6 reconcile that with the fact the State has barred our family from marriage.

7 9. Our inability to marry affects us in many ways, large and small, but each one is a
8 constant reminder that we are somehow less worthy of equal respect and treatment than others.
9 Every year, my mother writes my brother a check on his wedding anniversary, even though Greg
10 and I have been together the same amount of time as my brother and his wife, and even though
11 my parents visit Greg and I, and now H.R.W., several times a year. The money is not what is
12 important, of course. I mention this example simply to show how our inability to marry causes
13 strangers, friends, and even family to perceive us differently than other families. These moments
14 are hurtful and devaluing and chip away at our sense of equal worth in the community.

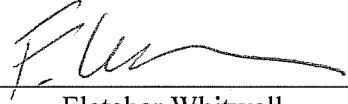
15 10. Greg and I are completely committed to each other and to our family, and our lives
16 are intertwined. We have a joint checking account; our house is in both our names; and we have
17 designated each other as beneficiaries for every account on which that is an option, including our
18 life insurance policies. We also hired an estate planning attorney because, among other things,
19 we were concerned that the one of us might be denied hospital visitation to the other in times of
20 medical emergency.

21 11. Greg and I are over the age of 18, are not barred from marrying each other as a
22 result of being too closely related to each other, and are not married to anyone else. On April 4,
23 2012, we appeared in person at the Marriage Bureau for the Office of the Clerk for Clark County
24 in Las Vegas, Nevada to seek a marriage license. We both were prepared to present valid forms
25 of identification to prove our names and ages, pay the required \$60 fee, and complete a marriage
26 application. When we took our application for a marriage license to the clerk, we were directed
27 to the Secretary of State's website to register as domestic partners. When Greg clarified that we
28

1 were there to get a marriage license, the clerk denied our request.

2 Signed under penalty of perjury under the laws of the United States this 30th day of

3 August, 2012.

4 

5 Fletcher Whitwell

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
MIKYLA JEWEL MILLER IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Mikyla Jewel Miller, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my wife Katrina (Katie) Miller.

3 I am 30 years old and live in Reno, Nevada. I have personal knowledge of the matters stated in
4 this declaration and could and would so testify if called as a witness.

5 2. I was born in Oakland, California and raised in Redding, California.

6 3. I have a bachelor's degree in speech pathology and audiology from the California
7 State University, Sacramento. In 2010, I received my law degree from the University of Pacific,
8 McGeorge School of Law. Shortly after graduating I started my own legal practice and began
9 providing services to low-income clients referred to me by a legal aid clinic. In January 2004 I
10 met the love of my life, Katie Miller. She lived in my dormitory and one day asked me if she
11 could borrow a hanger. To make a good impression, I gave her all of my hangers. We began
12 dating in February 2004 after Katie asked me out in sign language in front of the capital building.
13 Later that summer we moved in together.

14 4. I came out to my family in March 2004. My mother admitted that she had a
15 feeling that Katie was more than a friend after I had introduced her to the family. While she and
16 my stepfather were initially excited to meet Katie, my mother's attitude changed due to influence
17 from her church. She told me that she was very concerned with my "soul." She began attending
18 "pray the gay away" classes and tried to pressure me to accompany her. Fortunately, my mom's
19 attitude changed again after her church appointed a new pastor. The pastor asked my mother if
20 Katie would offer me everything a husband could. When she said yes, my pastor told her that she
21 should love Katie. And so she did and does to this day.

22 5. Katie and I knew that we wanted to spend the rest of our lives together, so we
23 planned a commitment ceremony for May 17, 2008. At that time we planned the ceremony,
24 marriage was not yet available for same-sex couples in California but we wanted to celebrate our
25 commitment to each other anyway. At around the same time, the California Supreme Court
26 recognized the right of same-sex couples to marry and the state of California began issuing
27 marriage licenses to same-sex couples. On June 17, 2008, we were thrilled to obtain our marriage
28 license in California. The significance of our marriage was apparent in many ways, especially

1 with respect to my family's treatment of Katie. Immediately after we were married, they started
2 referring to her as family, which they did not do before, even though they had participated in our
3 May 17, 2008 ceremony. This was one of the reasons why the passage of Proposition 8 a few
4 months later was so devastating—we were heartbroken to see other couples barred from marriage
5 after realizing how transformative it was for us.

6 6. Katie and I moved to Nevada in May 2010. It was upsetting to learn that our
7 marriage is not recognized here, and it has led to concrete problems for us. For example,
8 sometime last February, I drove to the hospital after experiencing chest pain. When my name
9 was called, I told the staff that my wife was en route and asked them to admit her to my room.
10 One of the clerks did a double take when I used the word "wife" and said that they only allow
11 patients to the rooms. I repeated the clerk's words to the doctor, who informed me that the
12 hospital allows visitors to see patients. When I told him that I felt like I was being discriminated
13 against, he left to retrieve Katie and brought her to see me.

14 7. Because Nevada does not recognize our marriage, Katie and I registered as
15 domestic partners in Nevada on June 17, 2010. But a domestic partnership is not the same as
16 marriage. Far from it. To me, domestic partnership feels like just a piece of paper. Marriage
17 represents something far more significant—a universal recognition of our ability to love and be
18 loved. Katie and I know that we will always be together, and that is why we chose to get married
19 in California. But that commitment to each other is not recognized in Nevada.

20 8. In July, I gave birth to our daughter, A. L. M. Her middle name "Love"—which
21 has been passed down Katie's family for five generations—symbolizes our desire to raise our
22 daughter in an environment free of intolerance and bias. We do not want the misunderstanding
23 that we have faced to affect her, but it has become difficult to protect her from it. For example, it
24 took a great deal of legwork to arrange for the hospital to designate Katie as A.L.M.'s parent on
25 her birth certificate. After researching the matter, I learned that the hospital was obliged to do
26 this. However, the hospital records staff thought I was wrong and insisted that Katie first had to
27 formally adopt A.L.M.—a step that no spouse would be required to take. I advised them to
28 consult the hospital's legal department, and after they did so they told me that they would only

1 add Katie's name if we provided additional paperwork and a copy of our domestic partnership
2 registration. Once I gave the hospital this information they accepted our application to add
3 Katie's name to the birth certificate, but if Katie and I had been married we would not have been
4 put through this burdensome and stressful process.

5 9. Moreover, when we researched health insurance coverage for A.L.M., we
6 encountered yet another frustrating hurdle. Providing our baby girl with good health coverage is
7 a huge priority for us, and while I could have insured A.L.M. through my employment, the
8 coverage is certainly not as comprehensive as Katie's health plan, which she receives through her
9 university. Had we been married, we likely would have been able to have A.L.M. insured
10 through Katie's plan as a matter of course. Instead, we were required to undertake the process
11 described above to add Katie's name to A.L.M.'s birth certificate before we could insure A.L.M.
12 through Katie's plan. This was another stressful roadblock and reminder of our second-class
13 status as registered domestic partners.

14 10. Katie and I are both over the age of 18, are not barred from marrying each other as
15 a result of being too closely related to each other, and are not married to anyone else.

16 Signed under penalty of perjury under the laws of the United States this 9th day of
17 September, 2012.

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19 _____
20 Mikyla Jewel Miller
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
KATRINA MILLER IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

1 I, Katrina Miller, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my wife Mikyla Jewel Miller.
3 I am 27 years old and live in Reno, Nevada. I have personal knowledge of the matters stated in
4 this declaration and could and would so testify if called as a witness. Although my legal name is
5 “Katrina,” I go by the name “Katie.”

6 2. I was born in Pacific Grove, California and lived there until I was 18. My father
7 passed away when I was a young child, but I had (and have) a great relationship with my mother.
8 She and my grandmother raised me.

9 3. I have a bachelor’s and a master’s degree in English from the California State
10 University, Sacramento. In 2010, I started a five-year doctoral program in English with a
11 specialization in rhetoric and composition at the University of Nevada, Reno. I also work part-
12 time as a teaching assistant.

13 4. I can say with certainty that I was born gay. It was not a choice for me. I realized
14 in middle school that I did not have the same crushes my friends who were girls had. In high
15 school I secretly dated a girl. Eventually, I began coming out to friends, and in March 2004 I
16 came out to my family.

17 5. In January 2004, I met the woman who would become the “one” in my life,
18 Mikyla Jewel Weber. We met while living in the same dormitory. I was smitten with her and we
19 began dating in February 2004, after I asked her out in sign language in front of the capital
20 building in Sacramento. That summer we moved in together.

21 6. By August 2005, Mikyla and I had grown extremely close. We lived together,
22 bought a car and a dog, and started a joint bank account. We also began wearing monogamy
23 rings. Finally, I bought her a diamond ring and proposed to her on New Year’s Day 2007.

24 7. Mikyla and I had a commitment ceremony in California on May 17, 2008,
25 attended by friends and family. At around the same time, the California Supreme Court
26 recognized the right of same-sex couples to marry and the state of California began issuing
27 marriage licenses to same-sex couples.

28 8. On June 17, 2008, we obtained our marriage license, a few weeks after the

1 California Supreme Court recognized the right of same-sex couples to marry in the state. The
2 impact of our marriage on our family was immediately apparent. While Mikyla's mother and
3 stepfather had considered me a part of their family, it wasn't until after our marriage that they
4 began publicly referring to me as family by introducing me to others as their daughter-in-law.

5 9. Mikyla and I moved to Nevada in May 2010 and were upset to learn that our
6 marriage would not be recognized here. Instead, we registered as domestic partners with the state
7 the following month. But that is not the same. We have embraced Nevada as our home, but we
8 are pained by constant reminders that we are second class citizens because the state will not
9 recognize our marriage. These reminders became more visceral after Mikyla became pregnant
10 and gave birth to our child, A.L.M., in July 2012. People have questioned my status as a parent
11 and often consider me A.L.M.'s stepparent rather than her mother. Some have challenged the
12 veracity of my claim that Mikyla is my wife. I try to treat these moments as educational
13 opportunities, but it can be frustrating and tiresome. When filling out medical and other forms,
14 Mikyla and I cannot state that we are married. We would check the domestic partnership box, but
15 it usually does not appear on these forms.

16 10. As another example, last February, Mikyla had to go to the hospital after
17 experiencing chest pain at work. I rushed to the hospital she called me, but the staff refused to let
18 me see her. Mikyla finally had to ask the doctor to intercede on our behalf. It is terribly
19 distressing that I was prevented from seeing my wife during a medical emergency. Visitors are in
20 fact allowed to see patients and the staff knew this. I do not believe that this would have
21 happened if our marriage was recognized in Nevada.

22 11. Another incident arose when I applied for financial aid at my university. On my
23 financial aid forms, I designated Mikyla as the person in charge of our household finances, but
24 the school initially declined to accept the forms because our marriage is not recognized in
25 Nevada. After a long argument with the staff, the cashier's office finally accepted the forms.

26 12. Because of the marriage ban, I feel like my voice does not matter. I feel like other
27 people who have decided that my relationship with Mikyla does not deserve to be considered a
28 marriage are controlling my fate. I want to be in control of my own destiny by being recognized

1 as married to the woman I love.

2 13. Mikyla and I are both over the age of 18, are not barred from marrying each other
3 as a result of being too closely related to each other, and are not married to anyone else.

4 Signed under penalty of perjury under the laws of the United States this 9th day of
5 September, 2012.

6 
7 Katrina (Katie) Miller

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BRIAN SANDOVAL, et al.,

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COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
ADELE NEWBERRY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Adele Newberry (formerly known as Adele Terranova), hereby declare and state as
2 follows:

3 1. I am one of the Plaintiffs in this lawsuit along with my partner Tara Newberry. I
4 am 31 years old and reside in Las Vegas, Nevada. I have personal knowledge of the matters
5 stated in this declaration and could and would so testify if called as a witness.

6 2. Tara and I are lesbian individuals in a loving, committed relationship. We have
7 been together for 7 years and have registered as domestic partners in Nevada.

8 3. I was born in Boston, Massachusetts and have lived in Nevada for approximately
9 5 years. I have a bachelor's degree in criminology and psychology from University of
10 Massachusetts Amherst. I also obtained a certificate for fraud examination and accounting from
11 the University of California, San Diego. I work as the office manager at the Connaghan
12 Newberry Law Firm.

13 4. I met Tara in 2005 at a dinner organized by a mutual friend. We hit it off and
14 began meeting for lunch. Within months we were officially dating and we have been together
15 ever since. One thing that clued me in from the beginning that Tara was a warm and wonderful
16 person was how loving she was toward my dog. I found that very endearing.

17 5. Tara and I registered as domestic partners in California in October 2006. When
18 we filled out the domestic partnership paperwork, we went to a postal annex to get the forms
19 notarized. The notary asked us what kind of business we were opening up. This is just one
20 example of how domestic partnership is viewed differently from marriage -- I've never heard of
21 marriage ceremony being confused with starting a business. Domestic partnership was important
22 to us regardless, since it was all we could obtain at the time.

23 6. Tara and I moved to Nevada in 2007, and then traveled back to California to marry
24 in San Diego on October 25, 2008. We chose to get married in 2008 to demonstrate our love for
25 each other through the universally understood bonds of marriage. We celebrated the occasion
26 with friends.

27 7. Because Nevada does not recognize our marriage, and therefore did not afford us
28 with any of the recognition, rights or responsibilities of marriage, we registered as domestic

1 partners in Nevada when it became available in 2009.

2 8. Our lives currently revolve around our two-and-a-half year old son, E.D.N., and
3 our nine-month old daughter, E.A.N. I stayed home with E.D.N. until he started preschool at
4 eighteen months old. We took him out of preschool when his sister, E.A.N., was born earlier this
5 year. We returned him to school when she was approximately six weeks old, but he brought
6 home a virus that made her very ill. When that happened, we decided to keep the children at
7 home. Tara and I split our time between work and taking care of our children, with part-time help
8 from a nanny.

9 9. I recently changed my last name from Terranova to Newberry. Tara and I wanted
10 a single family surname for easy recognition of our parental and family relationship. Having the
11 same last name as our children is important to me so that I am not questioned when I am picking
12 up the kids from school or going to the hospital. In the past, I have been asked why I have a
13 different last name than my children and school officials assumed that the E.D.N. was Tara's
14 child because he had Tara's last name.

15 10. We are often forced to answer questions that generally are never asked of
16 different-sex spouses. When we took E.A.N. to the emergency room in February, hospital staff
17 asked "which one of you is the mom?" We responded that we are both E.A.N.'s mother. In
18 response, staff asked "which one is the real mom?" If we could tell hospital staff that we are
19 married, our family structure and relationship to our children would be less subject to question
20 and disrespect.

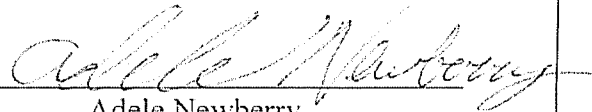
21 11. Tara and I are financially interdependent. We have a trust, pour-over will,
22 financial power of attorney, and durable power of attorney for medical decisions. We took these
23 steps to protect our family and children as soon as E.D.N. was born. If our marriage was
24 recognized in Nevada, we would not have had to take these steps because these protections and
25 responsibilities would be secure and recognized in the state.

26 12. We have encountered other examples of disrespect for our domestic partnership.
27 For example, we were denied a marriage-related discount by our insurance company for our
28 family health coverage. This means that we have had to pay higher premiums than if our

1 marriage was recognized. I believe that, if the state of Nevada recognized our marriage, the
2 insurance company would have done so as well.

3 13. Tara and I are both over the age of 18, are not barred from marrying each other as
4 a result of being too closely related to each other, and are not married to anyone else.

5 Signed under penalty of perjury under the laws of the United States this 7th day of
6 September, 2012.

7
8 
9 Adele Newberry

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Plaintiffs,

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Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF TARA
NEWBERRY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Tara Newberry, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Adele Newberry
3 (who was previously known as Adele Terranova). I am 37 years old and reside in Las Vegas,
4 Nevada. I have personal knowledge of the matters stated in this declaration and could and would
5 so testify if called as a witness.

6 2. Adele and I are lesbian individuals in a loving, committed relationship. We have
7 been together for 7 years and have registered as domestic partners in Nevada.

8 3. I was born in Shreveport, Louisiana and have lived in Nevada for approximately 5
9 years. I have a bachelor's degree in criminal justice and history. From 1997 until 2004, I worked
10 as a police officer. I then attended California Western School of Law and graduated with a J.D.
11 in 2006. I currently work at a small law firm in Las Vegas, Connaghan Newberry Law Firm.

12 4. I am involved in the community. I have volunteered with Trial by Peers since
13 2007. Trial by Peers is a diversion program for first-time juvenile offenders. The attorneys and
14 jurors are all peers. I act as a mentor and sometimes as a judge. I am also active in a children's
15 play group for same-sex couples' families called "We are Family." I also act as a state-appointed
16 mediator through a program with the Nevada Supreme Court.

17 5. I met Adele in 2005 at a dinner organized by a mutual friend. We began dating
18 shortly after that and we have been together continuously ever since. Adele is the nicest person I
19 have ever met. Her incredible kindness is part of what initially drew me to her.

20 6. Adele and I registered as domestic partners in California in October 2006. We
21 moved to Nevada in 2007, and then traveled back to California to marry in San Diego on October
22 25, 2008, while that was legally permissible there. When domestic partnership became available
23 in 2009, we also registered as domestic partners in Nevada.

24 7. Our lives currently revolve around our two-and-a-half year old son, E.D.N., and
25 our nine-month old daughter, E.A.N. Although registered domestic partners are presumed the
26 parents of children born into the relationship, when E.D.N. was born a hospital social worker
27 insisted that "the dad" had to fill out the declaration of paternity and refused to let me be listed.
28 Because of this, E.D.N.'s birth certificate was returned from the State with a blank for the second

1 parent's name. It took a year-and-a-half to get a corrected certificate listing me as the second
2 parent. During this process, I had to complete another declaration of paternity form, although I
3 had to alter it by crossing out various provisions to make references to me in it accurate. The
4 State returned the form, insisting that it could not be processed as altered. It was a struggle to get
5 the State to accept the form as modified. I eventually had to point out that I would be required to
6 perjure myself on the form if I was not able to modify it. The entire process was demoralizing. I
7 believe that, if Nevada treated us as the married couple we are rather than forcing us to be
8 considered in a novel, little understood status, none of this would have happened.

9 8. There were similar issues when E.A.N. was born earlier this year. The hospital
10 social worker agreed that I could be listed on the birth certificate, but I had to provide a copy of
11 our domestic partnership paperwork and other documentation showing that Adele and I live at the
12 same address. I do not believe that I would have been required to provide that same
13 documentation if our marriage was recognized in Nevada. In order to comply, I had to leave the
14 hospital shortly after the birth of my daughter to bring back the demanded paperwork. Once I did
15 that, my name was put on E.A.N.'s birth certificate.

16 9. This is not the only example of our relationship with our children being
17 disrespected. We are sometimes asked by medical and government personnel which one of us is
18 the "real" mother and other questions that are not generally asked of different-sex, married
19 couples. As another example, E.A.N. was sick and had to be taken to the emergency room in
20 February 2012. The hospital assumed that I was the biological mother (probably because the
21 children had my last name -- Newberry -- and Adele had not yet changed her name), and were
22 told that only one of us could go into the emergency room with E.A.N. It was only after we
23 explained that we are both E.A.N.'s legal parents because we are registered domestic partners that
24 the staff let us both into the emergency room. These types of situations cause me a lot of concern
25 and so I feel a particular sense of urgency to have our marriage recognized. I believe that it will
26 help reduce this and other sorts of confusion if Adele and I can say that we are married.

27 10. I recently adopted both our children. Adopting both children was very important
28 to me because I wanted to be sure that I would be recognized as a legal parent even if we were

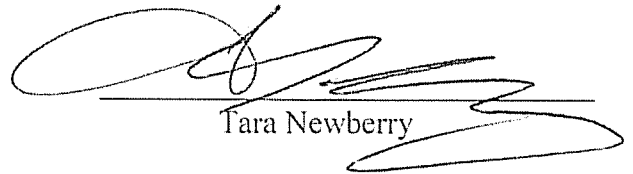
1 out-of-state with the children (such as at Disneyworld in Florida). Although an adoption
2 normally costs several thousand dollars per child, I am a lawyer and was able to do the legal work
3 for the adoption. I know through my legal practice, however, that many other same-sex couples
4 must spend valuable family resources on adoption lawyers to help reduce the chance of confusion
5 about their status as a legal parent, because they cannot count on the assured recognition of
6 parentage that generally flows from marriage.

7 11. As our children get older, I believe that it would help their social development if
8 we were considered married in Nevada. We want our children to know that our relationship is
9 just as permanent and stable as that of any other married couple. Neither Adele nor I are going to
10 leave, and we want E.D.N. and E.A.N. to feel secure in our family.

11 12. Adele and I are both over the age of 18, are not barred from marrying each other as
12 a result of being too closely related to each other, and are not married to anyone else.

13 Signed under penalty of perjury under the laws of the United States this 7th day of
14 September, 2012.

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Tara Newberry

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OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
CAREN CAFFERATA-JENKINS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

1 I, Caren Cafferata-Jenkins, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with my partner Farrell Cafferata-
3 Jenkins. I am 54 years old and reside in Carson City, Nevada. I have personal knowledge of the
4 matters stated in this declaration and could and would so testify if called as a witness.

5 2. Farrell and I are lesbian individuals in a loving, committed relationship. We have
6 been together for more than 15 years and have registered as domestic partners in Nevada.

7 3. I was born in Philadelphia, Pennsylvania and have lived in Nevada for
8 approximately 25 years. I have a bachelor's degree in parks and recreation from Penn State, a
9 master's degree in arts administration from Golden Gate University, and a law degree from
10 Golden Gate University School of Law. I am currently the Executive Director of the Nevada
11 Commission on Ethics.

12 4. Both Farrell and I believe that it is important to give back to the community in
13 which we are raising our two children, and we enjoy doing so. We are both on the board of a
14 statewide advocacy and resource center for those who are deaf and hard of hearing. I also
15 previously served as the president of the Carson City Court Appointed Special Advocates, which
16 works on behalf of abused and neglected children, and as the vice-chairman of the Carson City
17 Library Board of Trustees and as an officer of the First Judicial District Bar Association.

18 5. I met Farrell 15 years ago at a potluck. As an excuse to get to know her better, I
19 hired Farrell to help with my landscaping; and she, in turn, took longer than necessary pulling
20 weeds so the two of us could spend more time together. We have been together ever since.

21 6. We had our first son in 2003 and then welcomed a second son in 2005. Farrell and
22 I traveled to California to marry in 2008 both because of our love for each other and our desire to
23 unite our entire family, including our children, through the universally understood bonds of
24 marriage. Our marriage in California possessed and imparted a legitimacy that was absent from
25 both a prior commitment ceremony that we held in Nevada in 2002, as well as our registration as
26 domestic partners in Nevada in 2009. But that legitimacy evaporated once we returned to
27 Nevada, because Farrell and I are deemed unmarried in our home state, which makes us feel like
28 outsiders in our own community, undeserving of equal respect and treatment.

1 7. Farrell and I changed our last names to Cafferata-Jenkins—a hybrid of both our
2 last names—because, among other reasons, we wanted to convey to others that we are a family.
3 Unlike different-sex married couples, however, registered domestic partners do not have access to
4 the same streamlined process for one partner to adopt the other’s last name. Different-sex
5 spouses can complete a name change through the federal Social Security Administration and the
6 Nevada Department of Motor Vehicles with a marriage certificate, but domestic partners must
7 seek and obtain a court-ordered name change. Farrell and I undertook this expensive and time-
8 consuming process. The name change required us to file verified petitions that we were not
9 felons and that we were not attempting to defraud creditors. We also had to publish notice of our
10 requested name change in the newspaper. This was a demeaning reminder of how lesbian and
11 gay couples are treated as inferior to heterosexual couples: while heterosexual couples’ marriages
12 are profiled in the society pages, lesbian and gay couples who merely want to change their names
13 to unite their family must publicly attest that they are not criminals. We subsequently learned,
14 however, that same-sex couples who married in California need not go through this process,
15 which is an example of the confusion that same-sex couples in Nevada face even for something as
16 seemingly simple as a name change and that could be avoided if they were permitted to marry or
17 have their marriages recognized. Same-sex registered domestic partners in Nevada, who are not
18 married elsewhere, must still go through this process to change their names.

19 8. For the vast majority of the time that I have worked as a state employee, and until
20 very recently, I was excluded from receiving the same subsidized family health care coverage that
21 the State provides to different-sex spouses of state employees. Although the State allowed its
22 employees to access domestic partner health coverage, those employees were required to pay the
23 entire premium, whereas spouses of state employees received subsidized coverage. Earlier this
24 year, the state agency in charge of public employee benefits, the Public Employees’ Benefits
25 Program Board, agreed to provide domestic partners with the same subsidy as it provides to
26 spouses of state employees.¹ But, for several years, I paid hundreds of dollars more per month for

27 ¹ This decision is reflected in the March 29, 2012 action minutes of the Public Employees’
28 Benefits Program Board, which are available at <http://www.pebp.state.nv.us/brdpkts/3-29-12ActionMinutes.pdf> (last visited Sept. 3, 2012).

1 covering Farrell as compared to a heterosexual colleague covering his or her spouse. This
 2 siphoned off family resources that otherwise could have otherwise seeded our children's college
 3 fund or helped with retirement plans. Furthermore, the domestic partnership law specifically
 4 exempts public employers from any obligation to provide domestic partner coverage.² Thus,
 5 there is no statute that prevents the state agency from reversing its course and reverting to its prior
 6 policy, particularly given that its new policy is funded from the state agency's current reserves.³

7 9. Farrell and I are both over the age of 18, are not barred from marrying each other
 8 as a result of being too closely related to each other, and are not married to anyone else.

9 Signed under penalty of perjury under the laws of the United States this 6th day of
 10 September, 2012.

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 13 Caren Cafferata-Jenkins
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24 ² The domestic partnership law states that it "do[es] not require a public or private employer in
 25 this State to provide health care benefits to or for the domestic partner of an officer or employee."
 Nev. Rev. Stat. § 122A.210.

26 ³ The Public Employees' Benefits Program Board stated that "Due to available reserves, it is
 27 possible for the Board to approve providing the same level of subsidization to domestic partners
 28 as it provides to spouses." Meeting Notice and Agenda, Agenda Item VII ("Plan Year 2013 Plan
 Design and Rates"), <http://www.pebp.state.nv.us/brdpkts/03-29-12Packet.pdf> (last visited Sept. 3,
 2012)

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TARA L. BORELLI (*pro hac vice*)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
FARRELL CAFFERATA-JENKINS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

1 I, J. Farrell Cafferata-Jenkins, hereby declare and state as follows:

2 1. I am one of the Plaintiffs in this lawsuit along with Caren Cafferata-Jenkins. I am
3 49 years old and reside in Carson City, Nevada. I have personal knowledge of the matters stated
4 in this declaration and could and would so testify if called as a witness.

5 2. I was born in Portland, Oregon, and I was raised in Reno, where my father was
6 born. Our family has deep ties to Nevada, and my grandmother was the first woman elected to
7 federal office in Nevada.

8 3. I have a bachelor's degree in general studies from the University of Nevada at
9 Reno and recently obtained an associate's degree in deaf studies.

10 4. Both Caren and I believe it is important to be engaged in our community. In
11 addition to my work on behalf of the deaf community, described below, I am also involved in the
12 Parent Teachers Association at our children's school, and I formerly served on the Board of the
13 Nevada AIDS Foundation.

14 5. Caren and I have two boys, ages 8 and 7. Our older son was diagnosed with
15 autism at age 2 and became non-verbal for a period of time. His therapist encouraged sign
16 language as a way to communicate with him, and so I took sign language classes at a local
17 college. Our son no longer needs to sign to communicate, but I am still active in the deaf
18 community. I founded, and am currently the president of, the Nevada Academy of Sign
19 Language. Caren and I also serve on the board of a statewide advocacy and resource center for
20 those who are deaf and hard of hearing.

21 6. Caren and I met 15 years ago at a potluck, at which Caren had arrived on a
22 motorcycle. When Caren took off her helmet, and I locked eyes with her, there was an instant
23 "zing." I was doing landscaping work at the time and gave Caren my business card; when I got
24 home from the potluck, there was already a voicemail message from Caren.

25 7. Both Caren and I are Jewish and, in 2002, we held a commitment ceremony in
26 Reno that incorporated elements of our faith. Surrounded by loved ones, we committed our lives
27 to each other under a red velvet *chuppah*, or canopy, signifying the home that we wanted to build
28 together. However, we felt that we could not accurately call it a "wedding" because same-sex

1 couples could not marry in Nevada and it would therefore be inaccurate for us to use the word
2 “wedding” on our invitations to friends and family. Instead, we had to explain on our invitations
3 that the ceremony was instead a *b’rit ahu’vah*, and then define that the phrase, in Hebrew, meant
4 “covenant of love.” It was a painful reminder—in the midst of what should have been a joyful
5 occasion—that we were not equal to other couples and could not use the same vocabulary to
6 express our love and commitment to one another. It was also a bittersweet time for us because
7 just a few days after our ceremony, which took place on October 27, 2002, the Constitution of the
8 State of Nevada was amended to exclude same-sex couples from marriage, even though there was
9 already a statute that did the same thing.

10 8. Caren and I traveled to California to marry in 2008, during the brief window of
11 time before the passage of Proposition 8 when it was possible for same-sex couples to marry
12 there. Because of that experience, we know first-hand how marriage can change the way we and
13 others view our relationship—but we also know first-hand how hurtful it can feel for that
14 marriage to be disregarded. After returning to our home state of Nevada, we felt as though the
15 State “unmarried” us and that we had to start over from scratch. Although we subsequently
16 registered as domestic partners in Nevada, it felt like consigning ourselves to an inferior, second-
17 class status, compared to being treated as married.

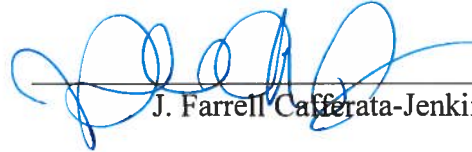
18 9. Marriage has always been important in our family: both Caren’s parents and my
19 parents have been married for more than 50 years, and Caren and I long for the opportunity to
20 follow in our parents’ footsteps and celebrate a golden anniversary.

21 10. Recognition of our marriage would also be important for our children. To take just
22 one example, Caren and I experience difficulty identifying to others that both of us are parents to
23 our children, because school forms often only envision different-sex married parents.

24 11. Caren and I are financially interdependent and we have also taken as many steps as
25 we can, through private contract, to protect our family in the event of death or disaster. We have
26 powers of attorney, a family trust, and pour-over wills, which were costly to obtain. But no
27 amount of estate planning can replicate the security that uniquely flows from marriage, which
28 everyone understands and respects.

1 12. Caren and I are both over the age of 18, are not barred from marrying each other as
2 a result of being too closely related to each other, and are not married to anyone else.

3 Signed under penalty of perjury under the laws of the United States this 6th day of
4 September, 2012.

5 
6 J. Farrell Cafferata-Jenkins

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DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
SARA GEIGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

1 I, Sara Geiger, hereby declare and state as follows:

2 1. I am one of the plaintiffs in this lawsuit along with my partner Megan Lanz. I am
3 27 years old and reside in Las Vegas, Nevada. I have personal knowledge of the matters stated in
4 this declaration and could and would so testify if called as a witness.

5 2. Megan and I are lesbian women in a loving, committed relationship. We have
6 been together for seven years. We are married in Canada and are registered as domestic partners
7 in Nevada.

8 3. I was born in Atlantic City, New Jersey, and grew up in Marietta, Georgia. I
9 moved to Nevada when I was 17 and have lived here ever since. Both of my parents now live in
10 Nevada as well. Megan, our daughter, and I see my mother on most Tuesdays and Wednesdays,
11 and my father watches our daughter on Thursdays. My family frequently spends weekends with
12 my parents and siblings at my father's house on Lake Mohave.

13 4. I received my bachelor's degree in music performance from the University of
14 Nevada, Las Vegas, in 2007. After college, I taught high school band for the Clark County
15 School District. I really enjoyed teaching and decided to pursue additional education so I could
16 teach at the College of Southern Nevada ("CSN"). This past May, I received my master's degree
17 in music performance from UNLV. I currently teach two music appreciation classes at CSN, and
18 I also work at a coffee shop.

19 5. I met Megan at a mutual friend's birthday party in September of 2005. She was
20 warm and inviting, and I was drawn to what I now call her "five-part smile": first, the corners of
21 her lips start to curl up; then her lips part and you can see a little bit of her teeth; her eyes squint;
22 her lips expand into a full-blown smile; and then her tongue sticks a tiny bit between her teeth.
23 The night we met, we didn't really talk about anything of substance, and I don't know that I was
24 listening that much because I was just staring at her the whole time. I had a feeling I'd never felt
25 before. Someone took my chair, and I sat on the ground so I could continue talking to her.

26 6. Soon after we started dating in November of 2005, I knew a relationship couldn't
27 get any better than this. Megan and I can talk with each other about anything, and we often spend
28 hours and hours talking without even realizing the time has gone by. When we disagree, our

1 feelings are never hurt because we respect each other and know the best ways to communicate
2 with one another. Megan is one of the most selfless and giving people that I know, and she is an
3 incredibly talented musician. She puts so much passion into everything she does, even if she's
4 not getting something out of it. For example, she'll continue working with students after their
5 private lessons have ended so that her students can finish a piece of music or so they can finish a
6 discussion. She doesn't get paid for that time, but she does it because she loves teaching and she
7 wants her students to succeed.

8 7. I proposed to Megan in November of 2006, and we got married in Vancouver,
9 Canada, in June of 2007. It was important for us to get married, once we knew that marriage was
10 available to us in Canada, rather than to voluntarily enter into a second-class status in another
11 state, such as registering as domestic partners in California. The word "partnership" makes it
12 sound like we have entered a business transaction. I don't want to downgrade how I feel about
13 Megan.

14 8. We talked about having kids around the time we got married, and I got pregnant
15 through donor insemination in the spring of 2008. I loved being pregnant (up until the last two
16 weeks), and we couldn't wait to become parents.

17 9. Megan was a superhero during my 22 hours of labor. I was in so much pain that I
18 couldn't do anything but breathe, and I don't think I could even speak to her the entire time.

19 10. Because our marriage is not recognized in Nevada and because domestic
20 partnerships were not available until after J.G.L. was born, Megan does not have an automatically
21 recognized status as the legal parent of J.G.L.

22 11. As Megan told me later, while we were in the recovery room, a nurse reminded
23 Megan that she wasn't entitled to be there because the staff did not see her as immediate family.
24 Megan is such an integral part of my life and of our daughter's life, and I couldn't believe that
25 someone would just dismiss her like that. It was agonizing for me just to hear what had happened
26 to her, particularly because I was powerless to change it — I can't imagine being in Megan's
27 shoes during that conversation.

28 12. J.G.L. is now 3 ½ years old, and she surprises us every day with how much she

1 knows about the world. She loves anything musical, and she makes up her own rhyming songs.
2 She knows when she is being funny and she gets proud of herself when she makes us laugh. She
3 is very empathetic — if she sees that I have a bruise or a cut, she'll say "Oh, poor girl!" and give
4 me a kiss. J.G.L. reads books that teach her about all kinds of families (single mom, multi-racial
5 parents, grandparents raising kids, etc.), and when we ask her how she feels about having a
6 mommy and a momma, she says, "It makes me so happy." We worry, however, that as she grows
7 older and learns that we cannot be recognized as married in Nevada, she will absorb a message
8 that the state sees her family as less worthy than others. We want her always to feel proud of our
9 family, and that's one of the biggest reasons that being recognized as married is so important to
10 us.

11 13. Although Megan and I feel strongly that registering as domestic partners does not
12 capture the full extent of our love, commitment, and devotion to each other, we registered in
13 Nevada as soon as it was permissible, in 2009. Our marriage is not recognized in Nevada and we
14 wanted the rights and responsibilities that came with entering a legal status in our home state. We
15 also wanted to make sure that our daughter was protected to the fullest legal extent possible, and
16 we wanted to be "counted" among partnered gay couples in Nevada.

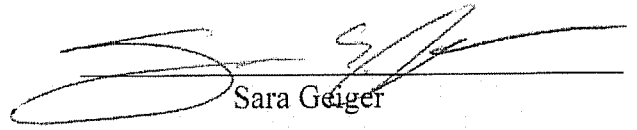
17 14. Every time Megan and I have to fill out a form that requires us to check "single" or
18 "married," it's a hassle. We are never sure how to list our names, and we dread the explaining
19 that is often required when we turn in forms.

20 15. We know that Megan might not be recognized as a parent at doctor's offices or,
21 eventually, at schools. Once, J.G.L. needed to go to the doctor's office while Megan was
22 watching her. We didn't want to risk Megan being turned away, so I left work to bring J.G.L. to
23 the doctor.

24 16. I believe that marriage is viewed as a more stable and more final institution than
25 domestic partnership. In stark contrast to what most people envision when they think about their
26 wedding day, you can notarize your domestic partnership form at a shipping outlet like PostNet,
27 and, in many instances, it can be easily dissolved. People often dismiss the relationship as "*just* a
28 domestic partnership." My relationship with Megan means so much more than that.

17. Megan and I are over the age of 18, are not barred from marrying each other as a result of being too closely related to each other, and are not married to anyone else.

Signed under penalty of perjury under the laws of the United States this 6th day of September, 2012.


Sara Geiger

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TARA L. BORELLI (*pro hac vice*)
PETER C. RENN (*pro hac vice*)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

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BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF PLAINTIFF
MEGAN LANZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

1 I, Megan Lanz, hereby declare and state as follows:

2 1. I am one of the plaintiffs in this lawsuit along with my partner Sara Geiger. I am
3 31 years old and reside in Las Vegas, Nevada. I have personal knowledge of the matters stated in
4 this declaration and could and would so testify if called as a witness.

5 2. Sara and I are lesbian women in a loving, committed relationship. We have been
6 together for seven years. We are married in Canada and are registered as domestic partners in
7 Nevada.

8 3. I was born in Denver, Colorado, and I have lived in Las Vegas, Nevada, for the
9 past eight years. I received a bachelor's degree from the University of North Texas in 2004 and a
10 master's in 2006 and a doctorate in 2010 from the University of Nevada, Las Vegas ("UNLV").
11 All of my degrees are in music performance.

12 4. I teach private flute lessons to children and adults across Las Vegas as well as
13 classroom lessons at the College of Southern Nevada. I also perform in local orchestras. For
14 example, I am currently performing in the pit orchestra of the touring musical Wicked, which is
15 playing a six-week run at the Smith Center in Las Vegas.

16 5. In the fall of 2005, Sara and I were both attending UNLV. I had seen her around
17 campus, and I thought she was adorable. My friend from school was having a birthday party in
18 September, and I asked her to invite Sara. Sara and I ended up talking all night, and the
19 conversation flowed seamlessly. Over the next few weeks, we spent a lot of time together. I
20 enjoyed her company, no matter what we were doing. She eventually told me she also was gay,
21 and soon after we started dating.

22 6. Sara and I have complementary personalities. When one of us is feeling stressed
23 out, the other tries to be everything that that person needs. During graduate school, I was often
24 uptight, and Sara provided the comic relief. Sara recently started teaching, so now she is
25 experiencing more stress and I am more laid back. Sara is a great listener and friend, and she's
26 extremely trustworthy. We both have strong values and believe in the importance of honesty and
27 responsibility.

28 7. On June 15, 2007, Sara and I got married in Vancouver, Canada. Soon after, we

1 talked about having children. One day we were standing in the bathroom both brushing our teeth,
2 and I envisioned a child walking through the door to join us at the sink — I just couldn't wait. I
3 longed to be a parent and mentor to a child, just like my parents were to me.

4 8. I was so thrilled when Sara gave birth to our daughter J.G.L. in January of 2009.
5 The technical legal status of my relationship with my daughter was the last thing on my mind on
6 that incredible day. But then a nurse in the recovery room said words to the effect of, "You
7 know, we don't have to let you stay here, but we're just going to look the other way." I couldn't
8 understand why this nurse would taint something so special by saying that — it had no effect on
9 the ultimate outcome, but it was hurtful and stressful at a time when we were supposed to be
10 celebrating. If Nevada recognized Sara and me as married at the time our daughter was born, I
11 would have automatically been recognized as our daughter's parent, and this hurtful incident
12 would not have occurred.

13 9. J.G.L. calls me "Momma" and calls Sara "Mommy." Our work schedules allow us
14 to spend a good deal of time with J.G.L., and we are fortunate to have babysitting help from our
15 friends and family for the time when Sara and I have performances or meetings at the same time.
16 Although she is not yet four years old, J.G.L. is developing a great sense of imagination, and Sara
17 and I have so much fun watching her play creatively. She has wide range of interests, from
18 Tinkerbell to pirates, from *Beauty and the Beast* to *Star Wars*.

19 10. Several months after J.G.L. was born, Nevada began allowing domestic
20 partnerships. Sara and I entered into a domestic partnership on the first day it was permitted in
21 October of 2009. But since J.G.L. was born before domestic partnerships were available, and, as
22 noted above, since our Canadian marriage is not recognized in Nevada, I was not considered a
23 parent to our daughter when she was born, or even after we registered as domestic partners. Sara
24 and I have thought about me adopting J.G.L. as a second parent as is permitted by Nevada law,
25 but the process costs around \$3,000, and, at this point in our careers, we cannot afford it. We also
26 are frustrated that the state's refusal to recognize our marriage means having to divert resources to
27 have our child legally recognized as ours — different-sex spouses can put that money toward
28 summer camp for their children or a college fund.

11. The state's refusal to recognize our marriage also has caused problems and stress in other areas of our life. In the spring of 2010, I got pulled over by the police for having expired plates on our car, and the officer asked for proof of insurance. Sara is the primary insured, so I showed the officer the insurance and explained that Sara is my partner. The officer said, "What's that about? What do you mean, she's your partner?" The officer finally accepted my explanation when I showed her that the insurance lists me as a secondary driver. I do not believe the incident would have occurred if Nevada recognized my marriage, because everyone understands what that status means.

12. Domestic partnership is, and is perceived as, less of a permanent commitment than marriage. I know two people who were boyfriend and girlfriend, and they registered as domestic partners just for the insurance benefits — they are not together anymore. There's a perception that people get domestic partnerships if they have been living together for a long time and don't want to make the full commitment of marriage. It's insulting that domestic partnership is the highest level of recognition that Sara and I can obtain for our relationship in Nevada. While it is a step forward, I hope it is not an ending point.

13. I want my marriage to Sara to be recognized in Nevada because I want everyone to know how much we love each other and how committed we are, and we want our daughter to grow up with the security of knowing we are married.

14. Sara and I are both over the age of 18, are not barred from marrying each other as a result of being too closely related to each other, and are not married to anyone else.

Signed under penalty of perjury under the laws of the United States this 6 day of

September, 2012.


Megan Lanza

JON W. DAVIDSON (*pro hac vice*)
TARA L. BORELLI (*pro hac vice*)
PETER C. RENN (*pro hac vice*)
SHELBI DAY (*pro hac vice*)
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COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF TARA L. BORELLI
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

1 I, Tara L. Borelli, hereby declare and state as follows:

2 1. I am a staff attorney with Lambda Legal Defense and Education Fund, Inc., and
3 co-counsel of record for the plaintiffs in this matter. I am licensed to practice law in the States
4 of Washington and California and was admitted *pro hac vice* to practice before this Court. I
5 make this declaration of my own personal knowledge and, if called as a witness, could and
6 would testify competently to the matters stated herein.

7 2. Attached as Exhibit A is a true and correct copy of a document bearing the logo
8 of the Coalition for the Protection of Marriage's "Vote Yes on 2" campaign to bar marriage for
9 same-sex couples by amending Nevada's constitution. I retrieved this document from an online
10 repository of historical documents relating to the campaign on September 5, 2012.

11 3. Attached as Exhibit B is a true and correct copy of a letter dated August 2002
12 bearing the logo of the Coalition for the Protection of Marriage. This document was retrieved
13 from a collection of historical documents maintained by the library of the University of Nevada,
14 Las Vegas.

15
16 Signed under penalty of perjury under the laws of the United States this 7th day of
17 September, 2012.

18
19 /s/ Tara L. Borelli
Tara L. Borelli

Exhibit A

Do you want your children taught that a same-sex union has the same moral authority as marriage?

In Vermont same-sex unions have been given the approval and power of the state. Here is what is happening right now in Vermont Schools:



- There has been a wholesale revision of classroom discussion of marriage and family.
- Sex education now involves instructions for both heterosexual and homosexual interaction.
- A same-sex union is taught as a viable and healthy alternative lifestyle, violating the beliefs and desires of parents.

It's happening in Vermont right now, and homosexual activists want to export that system to us here in Nevada.

Question 2, the Protection of Marriage Initiative, gives constitutional protection to Nevada's current definition of marriage between a man and a woman by adding just 18 words to the Nevada Constitution: "Only a marriage between a male and female person shall be recognized and given effect in this state."

The impact of Vermont's cultural shift will be seen for generations to come.

**Let's not experiment
with Nevada's children.**



Protect Marriage

**VOTE
YES
On 2**

November 5th

Or Early Vote: Oct. 19 - Nov. 1

Exhibit B

FROM : Kendall Stagg

FAX NO. : 7753339431

Aug. 26 2002 11:23AM P1

Aug 26 02 10:42a

WASHINGTON LEGAL

775 324 5509

P.2



Coalition For The Protection Of Marriage in Nevada

"Only a marriage between a male and female person shall be recognized and given effect in this state."

Sponsoring Committee:

Coalition Chairman
Richard B. Sandi Ziser

Gene Appel
Jay B. Fran Bingham
Mollie Bowman
N. Morgan Burdick
D. Michael Carpenter
Jay B. Kana Chamberlain
Don L. Christensen, M.D.
Glen Cochrane
Assemblyman Tom & Kathy Collins
Dennis Dahl

Joe & Judy DeLuge
Dennis R. DeCraeger
Don L. & Christy B. Dyer
Ross S. Easley
Clair & Mildred Earl
Flaine Farnes
Gerard & Patricia Glenn
Assemblyman Don Gustafson
Jonine Hansen
Becky Blackwood Harris

Dr. Ken Hawkins
Michael J. & Joyce Hazard
Pastor Paul M. Holland
Mayor Charles Horne
Craig & Kristine Jensen
Robin Joyce
Rev. Larry & Valerie Kincaid
Louise Kopf
Nita S. Lawert
Assemblyman John E. Marilyn Lee
Joan & Lucile Lusk
Becky Maddux
Pastor Greg Massarani
Churchwoman Lynette E. McDonald
Nannette Mueller
Mayor Michael & Antonette Montshoon
Rebecca Bingham Morgan
Judith Moss
Ernest & Lisa P. Nelson
Senator Ann & Robert O. Connell
Pastor Kevin Odo
Brook Ostroff
Grant & Anna Peterson
John Palen
School Trustee Leslie Porter
Senator Ray & Linda Hawdon
Jana & Pierce Sanford
Ivy & Julia Stephens
Alan & Rhonda Stock
William H. Stodgers
Dr. Joe & Taylor
Barbara F. Vuceljaovich
J.C.T. & Susan Ward
Russell & Gail R. Warmers
Senator Maurice & Donna Washington
Michael & Bonnie Weber
Alice E. White
Partial list.

August 2002

Dear Protection of Marriage Supporters:

Protection of marriage between one man and one woman is important to Nevadans! On November 7, 2000, Nevada voters overwhelmingly passed Question 2 - the Nevada Protection of Marriage Initiative - with 70% of the vote statewide. As an amendment to the Nevada Constitution, Question 2 will require a second vote on November 5, 2002.

As many of you know, one of the key arguments against Question 2 during the 2000 campaign was that no one was trying to change our marriage laws in Nevada and that there was no national agenda to do so anywhere else. They concluded that Question 2 was unnecessary.

It's a good thing that Nevadans didn't listen to the homosexual community and its supporters. Just four months after Question 2 passed with 70% of the vote, homosexual activists introduced legislation in our Nevada Legislature that would have allowed for same-sex unions in Nevada. They were trying to squeeze it in before the next and final vote on Question 2.

So much for the argument that no one is trying to change Nevada law!

Many of you know that the legislature in the State of Vermont was forced by their Supreme Court to enact a same-sex marriage statute, which they call a "civil union." Last summer a homosexual couple traveled to Vermont and obtained a "civil union." They then returned to their home state of Georgia and challenged Georgia's marriage laws. Fortunately, Georgia had enacted a protection of marriage statute similar to our Question 2 and just this last February the Georgia Court of Appeals ruled against the recognition of Vermont's "civil unions."

So much for the argument that Question 2 is unnecessary!

P.O. Box 80057 • Las Vegas, Nevada 89180-0057 • (702) 307-6175 • FAX (702) 307-6177
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FROM : Kendall Stagg

FAX NO. : 7753339431

Aug. 26 2002 11:23AM PZ

Aug 26 02 10:42a

WASHINGTON LEGAL

775 324 5509

P. J

2

During the 2000 campaign we were repeatedly told that allowing same-sex marriages in Nevada would not affect our heterosexual marriages and families. Our response was that any state recognition of same-sex unions would give those unions the full power and sanction of the state. We argued that such recognition and state sanction would lead to schools teaching our children that the homosexual lifestyle is a viable and healthy alternative to heterosexual marriages.

We were right.

Just two months ago it was disclosed at a Capitol Hill conference that the Gay, Lesbian and Straight Education Network (GLSEN) had developed and was distributing curricula that promotes cross-dressing to kindergartners.

GLSEN is selling and distributing a curriculum guide titled *Preventing Prejudice: Lesbian/Gay/Bisexual/Trans-gendered Lesson Plan Guide for Elementary Schools*. It includes a lesson geared to children in kindergarten through the third grade that uses a children's book titled *Jesse's Dream Skirt*.

Jesse's Dream Skirt is a story about a young boy named Jesse who likes trying on his mother's dresses and dreams of a skirt "that whirled, twirled, flowed and glowed, and felt soft inside." Jesse's mom makes him a skirt and he wears it to day care, where his classmates tease him. The day care teacher, Bruce, gathers the kids and gives them a lesson in tolerance and acceptance. The children then discuss it, with one boy pointing out his father's intolerance over him dressing up in his mom's dresses. All of the children end up liking Jesse's skirt and some want one for themselves. The story ends with Jesse twirling in his "dream skirt," with his boy-style underwear showing. GLSEN says the "key message" in *Jesse's Dream Skirt* is: "Respect means keeping our minds open. Having open minds means giving people freedom to be who they want to be."

Some may think *Jesse's Dream Skirt* to be mild. And it is, compared to the explicit homosexual sex acts taught at a GLSEN conference held in Massachusetts with young high school girls present. Believe me, you don't want to hear the details.

We have stated in our campaign that adults are free to make lifestyle choices for themselves. But allowing the Gay, Lesbian and Straight Education Network to teach its lifestyle to our children in our public schools is stepping far over that line.

You may not be aware that GLSEN-sponsored student groups are now active in seven of Clark County's high schools. If Nevada was to recognize or give state sanction to same-sex unions at any level, we would be unable to stop the proliferation of teaching that promotes homosexuality in our schools.

With this kind of teaching in our public schools, there is no question that state-sanctioned, same-sex unions would affect our entire society - marriages, families and children.

So much for the argument that same-sex marriage won't affect our families!

FROM : Kendall Stagg

FAX NO. : 7753339431

Aug. 26 2002 11:24AM P4

Aug 26 02 10:44a

WISHOE LEGAL

775 324 5500

P.5

3

We have kept the campaign for Question 2, the Protection of Marriage Initiative, on high ground. We have consistently stated that this campaign is about protecting Nevada's current marriage laws from judges and legislators in other states. We have carefully pointed out that Question 2 will not give or take away any rights based on current Nevada law. We have confidently affirmed that the institution of marriage has been the cornerstone of our society for thousands of years, and that Question 2 sends a clear and positive message to our children that marriage between a man and a woman is a valuable and respected institution.

We must now continue the good fight for the Protection of Marriage. The battle is not over, and we must endure to the very end - until marriage between a man and a woman is securely protected in the Nevada Constitution. Our opposition has the power of the media on their side and we are continuously attacked for standing up for the sacred institution of marriage.

Many of you played an important role in our 2000 victory and now we need your help again. It is very important that we increase our 70% margin on November 5, 2002. Anything less will be to give up ground to the opposition.

Here is what we need you to do:

- ✦ Encourage all your family members and friends to register to vote.
- ✦ Put a Question 2 yard sign in your yard and ask your family and friends to do the same.
- ✦ Vote in the Primary and General elections and urge your family and friends to do the same.

Please return the enclosed volunteer card and let us know you are ready to help protect marriage.

For Marriage and the Family,

Richard Ziser

Richard Ziser
Chairman

P.S. As I mentioned above, our opposition has the power of the media on their side. In order to get out our message and overcome our opposition's misrepresentations and distortions of the truth, we must use paid media. As you know, paid media is expensive. Please help us in this battle with your financial support by sending us your most generous gift today. Thank you!

P.P.S. The Coalition for the protection of Marriage does not endorse or recommend candidates for political office. It is, however, very important that Nevadans elect public officials that will continue to defend marriage after the November election. The coalition has asked candidates statewide to sign a Marriage Protection Pledge supporting Question 2 and affirming their continued support beyond November. A copy of the pledge is on the back of this letter. They were asked very specifically whether they supported the initiative and if they would continue to protect the essence of marriage - not just the word "marriage" - as being between a man and a woman. Because so many of you have asked where various candidates stand on this issue we have enclosed a list of candidates who have signed the pledge.

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on September 10, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

By: /s/ Sklar Toy
Sklar Toy
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court

for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME 3 OF 5**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**APPENDIX TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT,
VOLUME 2**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,

Plaintiffs,

v.

BRIAN SANDOVAL, et al.,

Defendants,

and

COALITION FOR THE PROTECTION
OF MARRIAGE,

Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF NANCY F. COTT,
PH.D. IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

1 I, Nancy F. Cott, Ph.D., hereby declare and state as follows:

2 **I. QUALIFICATIONS AND ENGAGEMENT**

3 1. I am presently the Jonathan Trumbull Professor of American History at Harvard
4 University. In 1969, I received a master's degree in History of American Civilization from
5 Brandeis University. In 1974, I received a Ph.D. degree in History of American Civilization from
6 Brandeis University. Since that time, I have researched and taught United States history. I taught
7 for twenty-six years at Yale University, where I gained the highest honor of a Sterling
8 Professorship, and in 2002, I joined the faculty at Harvard University.

9 2. I teach graduate students and undergraduates in the area of American social,
10 cultural, and political history, including history of marriage, the family, and gender roles. I also
11 am the Pforzheimer Family Foundation Director of the Schlesinger Library on the History of
12 Women in America, Radcliffe Institute for Advanced Study.

13 3. I have received numerous fellowships, honors and grants, from a John Simon
14 Guggenheim Memorial Foundation Fellowship in 1985 and National Endowment for the
15 Humanities Fellowship in 1993, to a Fulbright Lectureship in Japan in 2001 and election to the
16 American Academy of Arts & Sciences in 2008.

17 4. I am the author or editor of eight published books, including *Public Vows: A*
18 *History of Marriage and the Nation* (Harvard Univ. Press, 2000), the subject of which is marriage
19 as a public institution in the United States. I also have published over twenty scholarly articles,
20 including several discussing the history of marriage in the United States. I have delivered scores
21 of academic lectures and papers over the past thirty-five years on a variety of topics, including the
22 history of marriage in the United States. I also have served on many advisory and editorial
23 boards of academic journals. My background, experience, and list of publications are
24 summarized in my curriculum vitae, which is attached as Exhibit A to this Declaration.

25 5. I spent over a decade researching the history of marriage in the United States,
26 especially its legal attributes, obligations, and social meaning, before and while writing my book
27 *Public Vows: A History of Marriage and the Nation*. The claims and evidence in this Declaration
28 come principally from the research for that book and are more fully documented there and in an

1 article based on that research, “Marriage and Women’s Citizenship,” which was published in
2 *American Historical Review* in 1998. The numerous historical sources, legal cases, and
3 government documents that I studied and analyzed while researching and writing the book, as
4 well as the other scholars’ work that I consulted, are cited in my published footnotes in the book
5 and article. In addition, I have supplemented my past research with more recent reading and
6 research on matters referenced in this Declaration. In preparing to write this Declaration, I
7 reviewed the Complaint in this case, *Public Vows*, “Marriage and Women’s Citizenship” and
8 certain of the sources cited therein, and Nevada legal and historical records and other materials
9 listed in the attached Exhibit B. I have also relied on my years of experience in this field, as set
10 out in my curriculum vitae, and on the materials listed therein.

11 6. I have been retained by Plaintiffs’ counsel in connection with the above-referenced
12 litigation. I am being compensated for this effort at a flat rate of \$1,000.00 for reports, \$250.00
13 per hour for deposition testimony, and \$1,000.00 per day for trial testimony. I also will be
14 reimbursed for expenses in the event that I have to travel in connection with my services. My
15 compensation does not depend on the outcome of this litigation, the opinions I express, or the
16 testimony I provide. My opinions expressed herein are my true opinions as an expert in the
17 history of marriage. I have actual knowledge of the matters stated in this Declaration and could
18 and would so testify if called as a witness.

19 7. I reserve the right to supplement or amend this Declaration in consequence of
20 documents or other discovery that any party, or any entity or person (including other expert
21 witnesses), has not yet produced or any witness testimony that has not yet been given.

22 8. In the past four years, I have submitted an expert report, been deposed as an
23 expert, or testified as an expert at trial in *Dragovich v. U.S. Dep’t of the Treasury*, 4:10-cv-01564-
24 CW (N.D. Cal.); *Golinski v. Office of Personnel Management*, 3:10-cv-0257-JSW (N.D. Cal.),
25 *Windsor v. U.S.*, 1:10-cv08435-BSJ-JCF (S.D.N.Y.), *Pedersen v. Office of Personnel*
26 *Management*, 3:10-cv-01750-VLB (D. Conn.), *Perry v. Schwarzenegger*, 3:09-cv-2292-JW (N.D.
27 Cal.), and *Commonwealth of Massachusetts v. U.S. Department of Health and Human Services*,
28 1:09-cv-11156-JLT (D. Mass.).

II. SUMMARY OF FACTS AND OPINION

9. I have been asked for my expert opinion concerning the United States' history of marriage, including the purpose, meaning, and evolution of marriage in the U.S. My conclusions, based on my research and as set forth more fully in Section III herein, are as follows:

- Marriage is not a fixed institution. In the United States, marriage has changed dramatically over time. It inherited and retained some essential characteristics from the English Common Law, including its basis in free consent of two parties, but in many other respects, marriage has changed significantly to meet changing social and ethical needs.
- In the United States, marriage is both public and private. It is a public institution in that it is constituted by the state; its form and requirements are created by public authority, and it operates as systematic public sanction, bringing rights and benefits along with duties. At the same time, marriage signifies a freely-chosen relationship between two individuals and founds a private realm of individual liberty and familial intimacy. Marriage has a unique meaning. Nothing has the same meaning, significance, obligations, rights and benefits as marriage except for marriage itself.
- Marriage in all the states of the United States has always been a civil matter, under the control of legislative and judicial authorities, rather than religious authorities. Religious authorities were permitted to solemnize marriages by acting as deputies of the civil authorities. They were never permitted to determine the qualifications for entering or leaving a marriage that would be valid at law, although they were free to determine what qualifications they would accept for religious validation.
- Marriage in the United States has been defined and controlled at the state level, historically, in accord with premises established by the U.S. Constitution. Marriage has been shaped by legislators and judges in the various states to reflect and adjust to the changing needs of society and culture over time. Societal change over the centuries has produced new features in marriage that are commonly

accepted today although they would have been unthinkable at the founding of the United States. Marriage has been a successful civil institution precisely because it has been flexible, not static.

- States have varied from one another in defining the basic elements of marriage, including whether or not ceremonies are required for validation, how spousal roles shall be defined and enforced, what other “race” may marry a “white” person, how marriage may be dissolved, and other issues. States’ variance today on validating marriage for couples of the same sex resembles and is parallel to the history of states’ divergences with respect to many other dimensions of marriage validity.
- Heated controversy often surrounded changes to the features of marriage on which state laws diverged in the past. The controversies today focusing on marriage between couples of the same sex, and state variance on the matter, resemble these past disagreements.
- The exclusion from marriage of same-sex couples stands at odds with the direction of historical change in marriage in the United States. Contemporary public policy assumes that marriage is a public good. Excluding some citizens from the power to marry, or marking some as unfit to be part of the national family on the basis of their marriage choice, is not in keeping with public policy regarding either the benefit of marriage or the rights of citizens.

III. BASIS AND REASONS FOR OPINIONS

A. Significance of Marriage in American Society.

10. Marriage is a capacious and complex institution – a paradoxical hybrid, combining public and private, status and contract, governance and liberty. It has political, social, economic, legal, personal, and emotional contents, and meanings and consequences that operate in more than one arena. The idea that marriage is the “happy ending,” the marker of a relationship’s intimacy, a rite of passage signifying adult belonging, and the definitive expression of love, commitment, and family, is deeply ingrained in our society. It is reflected in and perpetuated through law, custom, literature, and even folk tales.

1 11. Since marriage is authorized by civil authorities in all of the United States, there
2 has always been a close relation between marriage and government. It is most visible in that each
3 state sets forth the requirements for marriage eligibility, issuance of marriage licenses,
4 solemnizing and dissolving marriages. State and federal governments' special recognition of
5 marriage appears in many forms, including the areas of immigration and citizenship, tax policy,
6 and property rights. Each state affords myriad benefits, responsibilities, and rights to spouses.
7 And, as the General Accounting Office reported in 1996, the corpus of federal law mentions more
8 than 1,000 kinds of benefits, responsibilities, and rights connected with marriage.

9 12. Marriage thus is a bundle of rights, obligations, and benefits, but it also is much
10 more than that. Marriage has a legitimacy earned through many years of validation and
11 institutionalization in law and society. Having been enhanced by government recognition for
12 centuries, the state of being married always has been, and remains, a privileged and unparalleled
13 status.

14 13. Marriage is a profound exercise of the individual freedom promised by the
15 American way of life. Legal marriage expresses and enhances individual freedoms because it is
16 based on consent and freedom of choice. Mutual consent of the two parties always has been seen
17 as essential to the marriage contract. The power to give such consent is the mark of the free
18 person in possession of basic civil rights. This fact is most compellingly illustrated by the history
19 of slavery in the United States. Slave marriages had no legal validity, most basically because
20 slaves did not have the freedom to consent to the obligations of marriage, which their masters'
21 power could always overcome.

22 **B. Development of American Marriage Law and Policy.**

23 14. From the beginning of the United States, marriage has been an institution
24 authorized and regulated by civil law. Each colony, state, and territory, including Nevada,
25 enacted marriage laws and regulations among its very first founding legislation. These laws
26 (often very detailed) were supreme over any religious views or practices of marriage, indicating
27
28

1 each state's wish to define the institution for its citizens and to use that means to create public
2 order and social benefit.¹

3 15. Marriage developed this way in the United States for several reasons. The Church
4 of England was in charge of marriages in England at the time of English colonization, but never
5 succeeded in setting up an effective ecclesiastical authority in America. The arriving colonists
6 practiced more than one religion. The great majority of colonists believed in the basic tenets of
7 Christianity, but nonetheless intentionally established secular control over the making and
8 breaking of marriages. When the United States was founded, it established itself as a nation of
9 religious toleration, and all states established civil marriage.

10 16. For many, but not all, Americans, marriage is also invested with religious
11 significance, and the solemnization of marriages commonly takes religious form; nonetheless,
12 marriage is and has always been governed by civil rather than religious authorities. Whether a
13 marriage is recognized or not by a religion does not dictate its legality or validity. Religious
14 authorities have been authorized to act as deputies of the civil authorities in performing marriage
15 ceremonies, but not to determine the qualifications for entering or leaving a legally valid
16 marriage. This is true nationally and in Nevada, where state law characterizes marriage as a
17 "civil contract." Nevada Compiled Laws: Supplement 1943-1949, 325 (1950) ("That marriage,
18 so far as its validity at law is concerned, is a civil contract, to which the consent of the parties
19 capable in law of contracting is essential."); *Clark v. Clark*, 44 Nev. 44, 59-60 (1920) ("marriage
20 is a civil contract").

21 17. Marriage in all of the United States has always been a consent-based, voluntary
22 choice by the partners. But it is also a legal status conferred and controlled by the state. Although
23 a marriage must be grounded in mutual consent, most states, like Nevada, require and prescribe a
24 form for solemnization and set out the specific requirements for obtaining a marriage license.
25 Nor can a marriage be ended simply by consent; the state controls the granting of divorce. The

26 ¹ "Common law marriages" in which the marital relationship has not been licensed or legally
27 formalized, but the parties themselves consent, hold themselves out as and live together as
28 married, are recognized in some states but have been abolished in most. Nevada permitted
common law marriage until 1943, when it changed its law to require solemnization of all
marriages newly entered into after that date. See Nevada Compiled Laws: Supplement 1943-
1947, 325 (1950).

1 state prescribes the obligations as well as rights of marriage in its dual role as a party to and
2 guarantor of the couple's consent to wed. The state formally and legally transforms the status of
3 couples who follow the appropriate marriage regulations, giving them a new legal standing and a
4 distinctive set of obligations and rights pertaining to them as married persons.

5 18. Societies in various times and places have defined marriage in different ways.
6 Marriage is an institution of human culture and thus can vary as much as human cultures vary.
7 What is seen as legitimate marriage in a given society may be, for instance, polygamous or
8 monogamous, matrifocal or patrifocal, patrilineal or matrilineal, lifelong or temporary, open or
9 closed to concubinage, divorce-prone or divorce-averse, and so on.

10 19. In the United States, the institution of marriage is a public/private hybrid. Its very
11 definition by civil law makes it a public institution that the state has authorized; it is also public in
12 the sense that a couple makes vows publicly before a witness, and the state reciprocally
13 guarantees to recognize the couple's new rights and obligations by granting them a marriage
14 license. At the same time, marriage is the exercise of an individual liberty and the foundation of
15 the private familial realm.

16 C. Purposes of Marriage

17 20. Marriage in the United States has served numerous complementary purposes and
18 functions, the relative salience of which has changed over time. The private, subjective
19 experience of "being married" may vary as much as individuals vary, but historians can certainly
20 document how the institution of marriage has been defined by law, functioned and changed.
21 Among the purposes that marriage and its regulation by civil authorities have served through
22 American history are: to create stable households; to create public order and economic benefit; to
23 legitimate children; to assign providers to care for dependents (including the very young, the very
24 old, and the disabled) and thus limit the public's liability to care for the vulnerable; to facilitate
25 property ownership and inheritance; to shape the "people," or to compose the body politic; and to
26 facilitate governance (state regulation of the population).

27 21. In the interest of public order, state governments have bundled together legal
28 obligations with social rewards in marriage to encourage couples to choose committed

relationships of sexual intimacy over transient relationships, whether or not these relationships will result in children. In the Anglo-American practice of several centuries ago that underlies our contemporary system, marriage was designed to be a regulatory institution that established recognizable household heads who would take economic responsibility for their dependents. In the early United States, state governments encouraged marriage (among the free white population) because maritally-organized households organized the broader population under male household heads and promised economic stability, both of which functions contributed to the common good. These benefits advantaged the state in the past when households more often included large numbers of people, as well as now, when most households and families are small.

22. Today, too, the purpose of the state in licensing and incentivizing marriage is to create stable households in which the adults who reside there are committed to one another by their own consent and will support one another and any dependents they may have.

23. Over time, marriage has developed a social meaning in which the state places a unique value on the couple's choice to join in marriage, to remain committed to one another, to form a household based on their relationship, and to join in an economic partnership to support one another in the material needs of life.

24. The ability or willingness of couples to produce progeny has never been required for or necessary to marriage under the law of any American state. For example, no state ever barred women past menopause from marrying or allowed a husband to divorce his wife because she was past childbearing age. Men or women known to be sterile have not been prevented from marrying. Nor could a marriage be annulled for an inability to bear or beget children.

25. In the past, widows and widowers remarried whenever a willing mate could be found; although it was often clear that no children would result, marriage was nonetheless desirable because it produced the division of labor expected to undergird a well-functioning household. In our contemporary post-industrial economy, many divorced or widowed older adults marry when they are past childbearing age, usually for reasons of intimacy and stability. Ever since the 1920s, when birth control became available, sexual intimacy has been seen as separable from necessary reproductive consequences even for those of reproductive age. Since

1 then – and even more commonly since contraception became more reliable and widely available
2 in the 1960s – couples with no interest in or expectation of childbearing marry, and re-marry.

3 26. The notion that the main purpose of marriage is to provide an ideal or optimal
4 context for raising children was never the prime mover in states’ structuring of the marriage
5 institution in the United States, and it cannot be isolated as the main reason for the state’s interest
6 in marriage today. Nor is it historically correct to say that a biological link between parents and
7 children is a necessary foundation for marriage or the principal or sole reason why marriage is
8 good for society.

9 27. States’ marriage rules with respect to children have aimed more consistently at
10 supporting them than producing them. While having children was never a requirement, support
11 for any child born or adopted into a family always has been an obligation of the household head.
12 Today, it is a shared responsibility among the family, as much in the case of divorce or separation
13 as in an intact marriage. Such rules have benefitted states by putting a critical limit on public
14 responsibility for the young and the dependent.

15 28. Historically, marriage between the parents of a child was required for the child’s
16 “legitimacy.” Marriage drew the line between legitimacy and illegitimacy—a function that was
17 particularly important among the propertied who were concerned about “legitimacy” in lines of
18 inheritance. Today, parentage can be determined for all children regardless of their parents’
19 marital status, and both adoption and reproductive technology create parents apart from biology.
20 The law requires all parents to support their children, regardless of the circumstances in which
21 those children came to be and regardless of the parents’ marital status.

22 **D. The Evolution of Marriage and Its Legal Meaning.**

23 29. Marriage in the United States has been a flexible rather than a static or immutable
24 institution. As with other successful civil institutions, marriage has evolved over time to reflect
25 changes in society at large. Marriage has been a successful civil institution precisely because it
26 has been flexible, not static. Adjustments in key features of marital roles, duties, obligations, and
27 its rules of entry have been necessary to preserve the appeal and value of marriage in our dynamic
28 society, and to meet social needs and promises.

1 30. Marriage rules have varied from state to state, and legislators and judges in every
2 state have changed those rules and interpretations significantly over time. Since the founding of
3 the United States, different states have set, interpreted, altered and adjusted marriage terms and
4 rules in response to local circumstances and preferences. Over time there have been many
5 nontrivial differences in states' laws on who was permitted to marry, what steps composed a valid
6 marriage, what spousal roles should be, and what conditions permitted divorce. State marriage
7 laws arose and responded to changes in the political and economic environment, religious forces,
8 changes in the ethnic composition of a state's residents, and many other local conditions.

9 31. Our country's history reveals a number of striking and long-persisting episodes in
10 which marriage laws were used to discriminate among members of the populace, creating
11 hierarchies of value and benefit, declaring some persons more worthy of the freedom, liberty, and
12 privacy inherent in marriage rights than others. These laws created or enforced inequalities that
13 were justified by their supposed naturalness while they existed; over time, however, these
14 inequalities came to seem unwarranted and discriminatory – indeed, unconstitutional – because
15 they defied the guarantee of equal protection of the laws.

16 32. Regional and cultural differences, as well as state legislators' understandings of
17 their states' interests, resulted in a patchwork quilt of marriage rules in the United States.
18 Sometimes, as was the case with Nevada, states purposely distinguished their marriage rules from
19 those of other states to compete in drawing population to their borders or with the intent to reap
20 economic benefit for their own state.

21 33. As changes in marriage laws began to take place in the past, they were not readily
22 welcomed by everyone, and were difficult for some in society to accept. Indeed, many features of
23 modern marriage that we take for granted today – such as the ability of both spouses to act as
24 individuals, to marry someone of another race, or to divorce for numerous reasons – were fiercely
25 resisted as they were coming into being, and were viewed by opponents as threatening to destroy
26 the institution of marriage itself.

27 34. Three major areas of change over time illustrate ways that civil marriage has been
28 modified by the actions of courts and legislatures to adapt to societal changes, showing the

1 resilience that has kept the institution of marriage vigorous and appealing: (a) spouses' respective
2 roles and rights; (b) racial restrictions; and (c) divorce.

3 **(i) Spouses' Respective Roles and Rights.**

4 35. Since our country's founding, marriage laws have undergone many significant
5 changes, in Nevada and elsewhere, to reflect modified societal views about the equality of the two
6 sexes. Over time our country has moved to gender parity in marriage which would have been
7 unthinkable to most Americans at the founding of the United States.

8 36. Under the Anglo-American common law, marriage gave very different roles and
9 legal rights to husbands and wives. The bargain of marriage as enshrined in early American
10 statutes presumed and prescribed profound asymmetry and inequality in the respective roles and
11 rights of husband and wife.

12 37. Historically, Anglo-American marriage law was based on the legal fiction that
13 married couples were a single entity, with the husband serving as the sole legal, economic, and
14 political representative of that unit, and the woman's identity merging into her husband's. This
15 doctrine of marital unity was called coverture, and reflected society's views of the marital couple
16 as a unit naturally headed by the husband.

17 38. Under coverture doctrine in American law, the wife had no separate legal or
18 economic existence. (That is why Ann Doe became Mrs. John Smith.) A married woman could
19 not, under her own name, own or dispose of property, earn money, have a debt, sue or be sued, or
20 enter into an enforceable agreement because her husband had to represent her in these things.
21 Neither married partner could testify for or against the other in court – nor commit a tort against
22 the other – because the two were considered one person. The two partners were assigned
23 opposite economic roles understood as complementary: the husband was bound to support and
24 protect the wife, and the wife owed her service and labor to her husband. Any property she
25 owned before marriage became his. In community property states such as Nevada, unlike
26 common law states, the wife retained title to her property, but coverture was reflected in the fact
27 that the husband alone controlled management of that property and had the right to dispose of it;
28 all community property was controlled solely by the husband until his death.

39. During the mid-1800s, the notion that married women could have no economic personhood apart from their husbands began to clash with the realities of a developing society. In addition to arguments for married women's individuality from an equal rights point of view, functional economic arguments for change were persuasive to many. The static rural economy in which the coverture doctrine had arisen had begun to give way to a dynamic market economy. While coverture defined the roles of the two spouses as absolutely different, in practice the tasks of husband and wife often overlapped. Wives needed, and began to demand, rights to their own property and earnings, and legislators and husbands too could see advantages in wives being able to hold property in their own names. Judges and legislators saw the societal advantages in keeping families supported on both spouses' assets rather than the husband's only. If a wife had separate property, that could keep a family solvent if a husband's creditors sought his assets. If wives could keep their earnings, then women married to profligate husbands would be able to support their children, and reduce pressure on the public purse for economic relief.

40. The property basis of coverture, which had been in place for hundreds of years and understood as absolutely essential to marriage, was nonetheless eliminated by all the states, over an extended period of time. Far from viewing marriage as immutable, courts and legislatures altered marriage fundamentally in order to take account of societal needs and spouses' evolving relationships within their households and in the larger society.

41. In several waves of statutory reform between the 1830s and the mid-twentieth century, states replaced the common law understanding of marriage with their own detailed and evolving provisions about the economic competence of married women. The timing and content of individual state actions depended on local conditions.

42. The unseating of coverture was a protracted process, because it involved revising the gender asymmetry in the marital bargain. The assumption that the husband was the provider, and the wife his dependent, did not disappear as soon as the wife became legal owner of her own property and wages earned outside the home. As late as the mid-twentieth century, the hand of the past showed itself most with regard to the wife's household labor, traditionally seen as her husband's domestic right. A legal writer in the 1930s noted that "the courts have jealously

1 guarded the right of the husband to the wife's services in the household," as part of the legal
 2 definition of marriage. Judges saw the wife's service as a necessary corollary to the husband's
 3 asymmetrical obligation of support; every state legally obliged the husband to his wife but not
 4 vice-versa.²

5 43. Over a century, repeated law-making in every state incrementally eliminated the
 6 property basis of coverture and replaced it with myriad state laws. Community property states –
 7 always seen as allowing a more equal bargain between spouses than common-law states – later
 8 came to see the spousal inequalities in their marital property requirements. Nevada changed its
 9 law in 1959 to reflect equality of interest in marital property between husband and wife, and
 10 current Nevada law acknowledges equity between spouses in control and ownership of
 11 community property. 1959 Nev. Stat., ch. 298, at 408; Nev. Rev. Stat. § 123.230.

12 44. The evolution of gender neutrality in marriage beyond the ownership and control
 13 over property occurred over time through legislative developments and case holdings. During the
 14 1970s, repeated successful challenges to sex discrimination in state laws had profound effects on
 15 domestic relations. Although the strenuous campaign to put an Equal Rights Amendment into the
 16 U.S. Constitution failed, states passed their own Equal Rights Amendments, which led toward
 17 gender neutrality in marriage and divorce reform. In divorce, for example, as in other aspects of
 18 family law today, gender neutrality in roles and decision-making is the premise. Obligations of
 19 the two spouses upon marital dissolution used to be assigned by gender, and they were
 20 asymmetrical: the husband was responsible for the economic support of any dependent children,
 21 while courts gave the mother a strong preference for custody. Under current divorce laws, in
 22 contrast, both parents of dependent children have responsibility for economic support and for
 23 childrearing; gender neutrality is the judicial starting point for post-divorce arrangements.

24 45. For couples who consent to marry today, marriage has been transformed from an
 25 institution rooted in gender inequality and prescribed spousal roles to one in which the
 26 contracting parties decide on appropriate behavior toward one another, and the legal obligations

27 ² The laws requiring husbands' support – although by no means wholly effective inside marriage
 28 or out – had consequences in marital roles, in the spouses' relative power, and in the labor market
 (disadvantaging married women seeking employment), as well as having coercive force over
 husbands, who could be thrown in jail for nonsupport.

1 and benefits of the spouses do not depend on their sex. The two partners in a marriage are still
2 economically and in other ways bound to one another by law. But the law no longer assigns
3 asymmetrical roles to the two spouses. These changes reflect the modern view of marriage as an
4 arrangement between two equal and consenting parties who have freely chosen one another.

5 46. Courts and legislatures have changed laws governing the meaning and structure of
6 marriage to keep it current with the time. The gender equality of marriage today would
7 profoundly shock any American from the era of the American Revolution or the Civil War. But,
8 they would recognize in contemporary marriage the institution's foundation in two consenting
9 parties freely choosing one another.

10 **(ii) Marriage across the Color Line.**

11 47. A major example of state variation in marriage law is the criminalization,
12 nullification, and voiding of marriages that crossed a "racial" or color line. This is a chequered
13 history, not at all confined to the American South. The first such laws were passed in the
14 Chesapeake colonies, but most slaveholding states before the Civil War relied on the regime of
15 slavery itself, more than marriage bans, to prevent legitimate marriage between whites and
16 blacks. Because slaves lacked basic civil rights (*i.e.*, the right to body, liberty and property),
17 states regarded them as also lacking the ability to consent validly to marriage. Furthermore,
18 marriage obliged those undertaking it to fulfill certain duties defined by the state; a slave's prior
19 and overriding obligation of service to the master made carrying out the duties of marriage
20 impossible.

21 48. Following the abolition of slavery, state legislators strengthened bars to marriage
22 across the color line. Ten states enacted new laws that voided or criminalized marriage between
23 blacks and whites, eight others strengthened their similar laws, and still others kept theirs in
24 place. Enforcement of these laws usually occurred at the point of obtaining a marriage license.

25 49. Also around the time of the Civil War, fear and furor over immigration from China
26 arose in the western United States. The territorial legislature of Nevada in 1861 first named
27 "Chinese" as a group who were prohibited from marrying whites. Soon five Western states
28 (including Nevada) added Indians, Chinese and "mongolians" to those (Negro and mulatto)

1 already prohibited from marrying whites. As theories of “race” continued to develop, laws using
2 racial designations to ban and criminalize certain marriages became more complex, especially the
3 Western states. As many as 41 states and territories of the U.S. banned, nullified, or criminalized
4 marriages across the color line for some period of their history, often using “racial” classifications
5 that are no longer recognized.

6 50. These laws varied widely across the states. New England was less avid in
7 preventing these marriages than other regions; Vermont, New York, and Connecticut never had
8 such laws, but Massachusetts, Rhode Island, and Maine did, early in their histories.

9 51. Many states had complicated histories on this issue, legislating repeatedly and
10 differently over the decades. Some imposed outsize punishments: Alabama, for example,
11 penalized marriage, adultery, or fornication between a white and “any negro, or the descendant of
12 any negro to the third generation,” with hard labor of up to seven years. Some states (especially
13 in the West) expanded the categories of groups whose marriage to whites was prohibited. As the
14 historian Peggy Pascoe has shown (WHAT COMES NATURALLY, at 119): “In one state or
15 another, all of the following groups were prohibited from marrying Whites: Negroes, Mulattoes,
16 Quadroons, Octoroons, Blacks, Persons of African Descent, Ethiopians, Persons of Color,
17 Indians, Mestizos, Half-Breeds, Mongolians, Chinese, Japanese, Malays, Kanakas, Coreans,
18 Asiatic Indians, West Indians, and Hindus.”

19 52. Nevada , in its original territorial laws in 1861, made it a criminal offense (with a
20 mandatory prison term of at least one year) for marriage or cohabitation to occur between, and for
21 someone to solemnize the marriage of any "white man or woman" with any "black person,
22 mulatto, Indian, or Chinese." In 1912, Nevada added even more prohibited categories, making its
23 law the most racially comprehensive in the nation (but then in 1919 removed the category of
24 native Americans from the ban). 1912 Rev. Laws of Nev., Vol. 2, at 1869; 1919 Nev. Stat., ch.
25 72, at 124.

26 53. Legislators often justified the laws criminalizing marriage across the color line by
27 saying that such marriages were against nature or against the Divine plan, much as opponents of
28 same-sex marriage argue today. They contended that permitting cross-racial couples to marry

1 would fatally degrade the institution of marriage. To the white legislators who passed these laws,
2 only marriage to other whites qualified as “natural.”

3 54. Whatever the high-flown rhetoric surrounding them, however, these bars to
4 marriage served to deny public approval to intimate relationships between whites and persons of
5 color. By preventing such a relationship from ever gaining the status of marriage, legislators
6 sought to delegitimize the relationship altogether. In parallel fashion, preventing legal
7 recognition of a relationship between a couple of the same sex (either at the state or federal level)
8 functions to discredit that relationship.

9 55. While these laws did not completely exclude anyone from entering marriage, they
10 deeply constrained free choice of marital partner. Couples in love across the color line had to
11 settle for the dangerous status of informal marriage (which was also criminal in Nevada and many
12 other states, and lacked respect in their communities), or, alternatively, marrying someone other
13 than the person they loved.

14 56. These laws expressed state preferences at the time. In 1930, laws in thirty states
15 still nullified and punished marriage between whites and black, and many of them, like Nevada's
16 law, treated marriage between whites and Asians the same way. As a result, marriage was the
17 most criminalized form of race-related conduct at the time.

18 57. Social and legal views on this question changed slowly and haltingly during the
19 twentieth century, although racially-based marriage bans continued. They continued to be
20 justified on now-discredited grounds. For example, legislators often said that such prohibitions
21 mirrored what nature or God dictated, and were necessary to prevent “corruption” of the
22 institution of marriage.

23 58. A major shift of opinion occurred in the wake of World War II, which had
24 stimulated an emphasis on cultural and religious pluralism as a national value in the United
25 States. In 1948, the Supreme Court of California, where marriages between whites and either
26 blacks or Asians had been prohibited for almost a century, was the first state high court to hold
27 that race-based restrictions on marriages were unconstitutional. The Court struck down race-
28 based restrictions on choice of spouse, holding that legislation addressing the right to marry “must

1 be free from oppressive discrimination to comply with the constitutional requirements of due
2 process and equal protection of the laws.” *Perez v. Sharp*, 32 Cal.2d 711, 715 (1948).

3 59. Over the next two decades, more than a dozen other states eliminated their own
4 race-based bars to marriage, spurred, to be sure, by the civil rights movement’s impact on
5 Americans’ racial views. In 1959, Nevada repealed its laws prohibiting interracial marriage.
6 1959 Nev. Stat., ch.193, at 216.

7 60. Eventually, a challenge to Virginia’s 1924 law (which made marriage between a
8 white and a non-white person a felony) led the Supreme Court of the United States to affirm
9 freedom of choice of spouse regardless of race in *Loving v. Virginia*, 388 U.S. 1 (1967). This
10 ended the nearly 300-year history of race-based legislation on marriage.

11 61. Today, virtually no one in the United States questions the legal right of individuals
12 to choose a marriage partner without government interference based on race. In Nevada in 2008-
13 10, more than a quarter of new marriages were cross-racial, the highest rate in the nation except
14 for Hawaii.³ A prohibition long embedded in laws and concepts of marriage in Nevada and the
15 majority of the United States has been entirely eliminated.

16 (iii) Divorce.

17 62. Legal and judicial views of divorce likewise have evolved to reflect society’s view
18 of marriage as an embodiment of choice and consent, in which the marriage partners decide
19 themselves what is an appropriate enactment of their marital roles.

20 63. Divorce was possible in some of the English colonies and was introduced in
21 several states immediately after the American Revolution. Within several decades most states
22 and territories allowed divorce, albeit under extremely limited circumstances. Divorce grounds
23 initially involved only such breaches of the marriage as adultery, desertion, or conviction of
24 certain crimes. Grounds such as cruelty appeared later, in the mid-nineteenth century. Nevada's
25 initial law stipulated divorce grounds typical in 1861 when it was passed: impotence, adultery,

26
27 ³ Pew Research Center report, released February 16, 2012 , "The Rise of Intermarriage:
28 Rates, Characteristics Vary by Race and Gender," by Wendy Wang, Appendix 2.
<http://www.pewsocialtrends.org/2012/02/16/the-rise-of-intermarriage/7/#appendix-2-state-and-regional-rates> accessed 8-30-2012.

1 willful desertion, felony conviction, habitual drunkenness, extreme cruelty, husband's neglect to
2 provide.

3 64. Divorce began as (and long remained) an adversary proceeding; that is, one spouse
4 had to accuse the other of committing a wrong against the marriage. The essence of divorce was
5 that one of the partners had broken the social and legal contract embodied in marriage and set by
6 the state. The guilty party's fault was a fault against the state, as well as against his or her spouse.

7 65. Like other early marriage rules, early divorce laws presupposed different and
8 asymmetrical marital roles for husband and wife. For instance, desertion by either spouse was a
9 ground for divorce, but failure to provide was a breach that only the husband could commit. In
10 court, a wife seeking divorce had to show that she had been a model of obedience and service to
11 her husband in order to succeed in her petition.

12 66. Over time, divorce became more easily obtainable as state legislation expanded the
13 grounds for it, while courts were still required to find one of the parties to be at fault. The
14 expansion of grounds for divorce was hotly debated, and fiercely opposed in some quarters,
15 throughout the nineteenth century. Critics viewed divorce as antagonistic to the institution of
16 marriage. Major religions opposed divorce entirely, or accepted adultery as the sole justification
17 for divorce.

18 67. Alarmist critics were sure that liberalized treatment of divorce would undermine
19 the marital compact entirely. As some states expanded their grounds for divorce in response to
20 local circumstances, extreme differences among them arose. For example, South Carolina
21 permitted no divorces until the late 1940s, and New York granted divorce for adultery only until
22 the 1960s. Nevada went in the opposite direction, becoming the state most generous in granting
23 divorce. The significant differences among states' provisions caused great alarm about
24 "migratory" divorce (i.e., couples traveling from their home state to a more lenient jurisdiction
25 such as Nevada) and this possibility was attacked as a pernicious evil.

26 68. Beginning in the early 1900s, Nevada enacted increasingly liberal divorce laws. In
27 the 1910s and 1920s, Reno and Las Vegas began building a tourist economy by publicizing
28 Nevada's divorce laws. Despite heated controversy concerning divorce throughout the nation,

1 Nevadans reemphasized its own latitude, with especially lenient residency requirements and no
2 restrictions on remarriage. In 1927, Nevada reduced its residency requirement for divorce-
3 seekers to three months. Then, in 1931, it reduced the residency requirement further to only six
4 weeks, besides expanding grounds for divorce and requiring virtually no proof, thus becoming the
5 most liberal venue for obtaining a divorce in the nation. Reno and Las Vegas fueled the state's
6 economy by marketing nation-wide the availability there of quick and easy divorce, as well as
7 quick and easy marriage.

8 69. In 1967, Nevada adopted incompatibility as an additional ground for divorce,
9 essentially creating no-fault divorce in the state. This was the beginning of a trend, formally
10 visible when in 1969, California enacted the nation's first complete no-fault divorce law,
11 removing consideration of marital fault from the grounds for divorce, awards of spousal support,
12 and division of property. (The American bar had led this reform, since many divorce lawyers had
13 been troubled for decades that the adversary or 'fault' principle often led to cursory fact-finding
14 hearings and even fraud upon the court by colluding spouses seeking to separate.)

15 70. The enactment of no-fault divorce was soon embraced nationally as a means of
16 dealing honestly with marital breakdowns, achieving greater equality between men and women
17 within marriage, and advancing further the notion of consent and choice as to one's spouse. By
18 1977, all but three U.S. states had adopted some form of no-fault divorce, reflecting society's
19 view that both parties' consent should persist through a marriage, and that the couple themselves
20 were the best judges of the sufficiency of their performance of marital roles.

21 71. The liberalization of divorce that took place in the twentieth century vastly
22 changed the institution of marriage as it had been known and experienced in earlier centuries.
23 The state, through the courts, today still retains a strong role in the ending of marriages (since
24 post-divorce terms of support must have court approval to be valid), but the move to no-fault
25 divorce showed a major shift toward enabling spouses to set their own marriage goals and to
26 determine how well those goals were being met.

27 72. In divorce, as in other aspects of family law today, the law promotes gender
28 neutrality, including as to custody and obligations of alimony and child support. Previously,

1 when a marriage broke up, the father was responsible for the economic support of any dependent
2 children, while courts gave the mother a strong presumption for custody of young children.
3 Under current divorce laws, in contrast, both parents of dependent children have responsibility
4 both for economic support and for childrearing. Gender neutrality is the judicial starting point for
5 post-divorce arrangements, including alimony, in consequence of an equal protection challenge to
6 the gender asymmetry of earlier alimony provisions (See *Orr v. Orr*, 440 U.S. 268 (1979).)

7 **E. Marriage Today.**

8 73. Marriage has lasted as well as changed throughout the centuries. Marriage retains
9 its basis in voluntary consent, mutual love and support, and economic partnership. The changes
10 in marriage observable over time, as illustrated above, have all been in the direction of increasing
11 equality of the partners, gender-neutrality of marital roles, and control of marital role definition
12 and satisfaction by the marriage partners themselves rather than by state prescription.

13 74. Among the many other striking changes in American marriage laws over time, in
14 addition to the changes discussed above, the states have removed most criminal restrictions on
15 extramarital or nonprocreative sexual activities; the law no longer treats men who conceive
16 children out of wedlock as non-parents; children are not formally deemed “bastards” or
17 “illegitimates” at law if born out of wedlock; issues of custody and visitation have been separated
18 from marital misconduct unrelated to childrearing; and the age for entry into marriage has
19 generally risen.

20 75. Marriage has evolved into a civil institution through which the state formally
21 recognizes and ennobles individuals’ choices to enter into long-term, committed, intimate
22 relationships. In Nevada, and elsewhere, marital relationships are founded on the free choice of
23 two individuals and their continuing mutual consent to stay together.

24 76. Nevada, along with other states, has eliminated gender-based rules and distinctions
25 relating to marriage in order to reflect contemporary views of gender equality and to provide
26 fundamental fairness to both marriage partners. Nevada law treats men and women without
27 regard to sex and sex-role stereotypes – except in its statutory and constitutional requirements that
28 men may only marry women and women may only marry men.

1 77. Nevada law expressly limits marriage to one man and one woman. See Nev. Rev.
2 Stat. § 122.020. By ballot initiative approved by voters in 2000 and 2002 during the general
3 election, Nevada amended its Constitution to define marriage as the union of one man and one
4 woman. Nev. Const. art. 1, § 21. (“Only a marriage between a male and female person shall be
5 recognized and given effect in this state.”). This sex-based requirement is out of step with the
6 gender-neutral approach of contemporary marriage law.

7 78. In 2009, the Nevada Legislature enacted the Nevada Domestic Partnership Act,
8 which allows eligible couples, either of the same sex or different sex, to register with the state as
9 domestic partners. Nev. Rev. Stat. §§ 122A.100, 122A.010, et seq. This law provides registered
10 domestic partners with comprehensive rights and responsibilities under state law, comparable to
11 the rights and responsibilities of married couples. Significantly, civil union and domestic
12 partnership laws such as Nevada’s are a recent phenomenon. Never before the 21st century in any
13 of the United States have states created such a separate legal status for couples, or means of
14 obtaining comprehensive legal rights and responsibilities comparable to marriage.

15 79. The exclusion of same-sex couples from equal marriage rights stands at odds with
16 the direction of historical change in marriage in the United States. Other uses of marriage
17 restrictions to discriminate between and among groups of citizens in their freedom to marry
18 partners of their choice have been eliminated. Contemporary public policy assumes that marriage
19 is a public good. Depriving some citizens of the power to marry the one whom they love – or
20 marking some citizens as unfit to join the national family because of their choice of loved one – is
21 not in keeping with public policy regarding either the benefit of marriage or the rights of citizens.

22 **IV. CONCLUSION**

23 80. Despite the creation of alternative legal statuses for couples of the same sex, no
24 other means of recognizing a freely-chosen intimate relationship has the same meaning, status,
25 significance, and benefits as marriage.

26 81. Throughout American history, state legislatures and courts have made and altered
27 laws governing the meaning and structure of marriage. Restrictions on marriage that were seen as
28 necessary in their time have since been removed as unwarranted and/or unconstitutional.

1 Americans from the era of Nevada's beginnings would be profoundly shocked by the gender
2 equality of marriage today and the frequency of marriage across the color line, as well as the wide
3 acceptance of divorce. Yet, Americans of any era would recognize in contemporary marriage the
4 institution's foundation in two consenting parties freely choosing one another, and the state's role
5 in defining and honoring their committed relationship, economic partnership, and common
6 household.

7 82. The institution of marriage has endured in great part because it has been flexible
8 and resilient, not static. State legislators have preserved the appeal and value of marriage in our
9 dynamic society by making adjustments in key features of marital roles, duties, obligations, and
10 rules of entry.

11 83. Allowing same-sex couples to marry legally and to enjoy marriage equality would
12 be consistent with and continue the long-term direction of historical change in the institution of
13 marriage. It would further enable marriage to remain a vital institution, in step with societal
14 needs.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed on this 4 day of September, 2012.

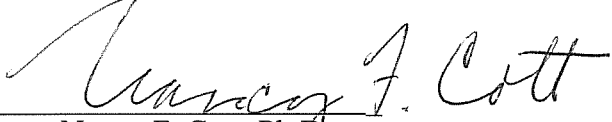
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20 _____
21 Nancy F. Cott, Ph.D.
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Exhibit A

NANCY F. COTT

ncott@fas.harvard.edu

Jonathan Trumbull Professor of American History, Harvard University, and
Carl and Lily Pforzheimer Foundation Director of the Schlesinger Library on the History of Women in
America, Radcliffe Institute for Advanced Study

Department of History
35 Quincy St.
Harvard University
Cambridge MA 02138
tel. 617-495-3085

Schlesinger Library
10 Garden St.
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tel. 617-495-8647

EDUCATION:

Ph.D. 1974, in History of American Civilization, Brandeis University.
M.A. 1969, in History of American Civilization, Brandeis University.
B.A. 1967, magna cum laude in History, Cornell University.

TEACHING APPOINTMENTS:

Harvard University: Jonathan Trumbull Professor of American History, and Carl and Lily Pforzheimer
Foundation Director of the Schlesinger Library, Radcliffe Institute for Advanced Study, 2002—
1979-86; Professor, 1986-90; Chair of Women's Studies Program, 1980-1987, 1992-93; Chair of
American Studies Program, 1994-97; Stanley Woodward Professor of History and American Studies,
1990--2000; William Clyde DeVane Professor, spring 1998; Sterling Professor of History and American
Studies, 2001.
Boston Public Library, NEH Learning Library Program, Lecturer, 1975.
Wellesley College: Instructor of History, part-time, 1973-74.
Clark University: Instructor of History, part-time, 1972.
Wheaton College: Instructor of History, part-time, 1971.

HONORS, FELLOWSHIPS AND GRANTS:

Mary L. Cornille Distinguished Visiting Professor in the Humanities, Wellesley College, 2012.
American Academy of Arts & Sciences elected member, 2008--
Centre d'etudes nord-americaines, Ecole des Hautes Etudes en Sciences Sociales, Paris: French-American
Foundation Chair, 2003-04.
Fulbright Lectureship Grant (Japan-U.S. Educational Commission), July 2001.
Center for Advanced Study in the Behavioral Sciences, Stanford CA, 1998-99, 2008-09.
Radcliffe College Alumnae Association Graduate Society Medal, 1997.
Visiting Research Scholar, Schlesinger Library, Radcliffe College, 1991, 1997.
National Endowment for the Humanities Fellowship, 1993-94.
Liberal Arts Fellowship in Law, Harvard Law School, 1993-94, 1978-79,.
A. Whitney Griswold grant (Yale Univ.), 1984, 1987, 1988, 1991, 1993, 2000.
American Council of Learned Societies Grant-in-Aid, 1988.
Charles Warren Center Fellowship, Harvard University, 1985.
John Simon Guggenheim Memorial Foundation Fellowship, 1985.
Fellow, Whitney Humanities Center, Yale University, 1983-84, 1987.
Radcliffe Research Scholarship, Spring 1982.
Rockefeller Foundation Humanities Fellowship, 1978-79.
Phi Beta Kappa, 1966; Phi Kappa Phi, 1967.

PUBLICATIONS: BOOKS

Public Vows: A History of Marriage and the Nation (Harvard U. Press, 2000).
No Small Courage: A History of Women in the United States, editor (Oxford U. Press, 2000).
Root of Bitterness: Documents of the Social History of American Women, revised edition, coeditor with



Jeanne Boydston, Ann Braude, Lori D. Ginzberg, and Molly Ladd-Taylor, Northeastern U. Press, 1996)
A Woman Making History: Mary Ritter Beard Through Her Letters (Yale U. Press, 1991).
The Grounding of Modern Feminism (Yale U. Press., 1987).
A Heritage of Her Own: Towards a New Social History of American Women, coeditor with E. H. Pleck
 (Simon & Schuster, 1979).
The Bonds of Womanhood: 'Woman's Sphere' in New England, 1780-1835 (Yale U. Press, 1977; 2d ed.
 with new preface, 1997).
Root of Bitterness: Documents of the Social History of American Women (E.P.Dutton, 1972)

PUBLICATIONS: ARTICLES

"Revisiting the Transatlantic 1920s: Vincent Sheean vs. Malcolm Cowley," American Historical Review,
 forthcoming February 2013.
 "The Public Stake," in Just Marriage, Mary Lynn Shanley et al., (NY, Oxford U Press, 2004), 33-36.
 "Public Emblem, Private Realm: Family and Polity in the United States," in Democratic Vistas, ed.
 Anthony Kronman, (New Haven, Yale U. Press, 2004).
 "Women's Rights Talk," American Studies in Scandinavia 32:2 (2000), 18-29.
 "Marriage and Women's Citizenship in the United States, 1830-1934," American Historical Review 103:5
 (Dec. 1998), 1440-74.
 "Justice for All? Marriage and Deprivation of Citizenship in the United States," in Justice and Injustice,
 Amherst Series in Law, Jurisprudence & Social Thought, ed. Austin Sarat (Ann Arbor, U. Mich, 1996).
 "'Giving Character to Our Whole Civil Polity': Marriage and State Authority in the Late Nineteenth
 Century," in U.S. History as Women's History, ed. Linda Kerber et al. (Chapel Hill, U.N.C., 1995).
 "Early Twentieth-Century Feminism in Political Context: A Comparative Look at Germany and the
 United States," in Suffrage & Beyond, ed. Caroline Daley and Melanie Nolan (Auckland, NZ, Auckland
 U.P., 1994).
 "The Modern Woman of the 1920s, American Style," in La Storia Delle Donne, vol. V, Francoise
 Thebaud, ed., G. Laterza & Figli (Italy), 1992 (also French, Dutch, Spanish and U.S. editions).
 "Two Beards: Coauthorship and the Concept of Civilization," American Quarterly, 42:2 (June 1990).
 "Historical Perspectives: The Equal Rights Amendment in the 1920s," in Conflicts in Feminism, ed.
 Marianne Hirsch and Evelyn Fox Keller (N.Y., Routledge, 1990).
 "On Men's History and Women's History," in Meanings for Manhood: Constructions of Masculinity in
 Victorian America, ed. Mark Carnes and Clyde Griffen (Chicago, U. Chicago Press, 1990).
 "Across the Great Divide: Women's Politics Before and After 1920," in Women, Politics, and Change,
 ed. Louise Tilly and Patricia Gurin (N.Y., Russell Sage Foundation, 1990); revised and reprinted in One
 Woman, One Vote: Rediscovering the Woman Suffrage Movement, ed. M. Wheeler (NewSage, 1995).
 "What's in a Name? The Limits of Social Feminism or, Expanding the Vocabulary of Women's History,"
Journal of American History, 76:3 (December 1989).
 "The South and the Nation in the History of Women's Rights," in A New Perspective: Southern Women's
 Cultural History from the Civil War to Civil Rights, ed. Priscilla C. Little and Robert C. Vaughan
 (Virginia Foundation for the Humanities, Charlottesville, 1989).
 "Beyond Roles, Beyond Spheres: Thinking about Gender in the Early Republic," with Linda Kerber et al.,
William and Mary Q., 3d ser., 46 (July 1989).
 "Women's Rights: Unspeakable Issues in the Constitution," The Yale Review, 77:3 (Spring 1988), 382-
 96.
 "Feminist Theory and Feminist Movements: The Past Before Us," in What is Feminism? ed. Juliet
 Mitchell and Ann Oakley (Oxford, Basil Blackwell, 1986, and N.Y., Pantheon, 1986).
 "Feminist Politics in the 1920s: The National Woman's Party," Journal of American History, 71 (June
 1984).
 "Passionlessness: An Interpretation of Anglo-American Sexual Ideology, 1790-1840," Signs: A Journal of
 Women in Culture and Society, 4 (1978).

"Notes Toward an Interpretation of Antebellum Childrearing," The Psychohistory Review 6 (Spring 1978).

"Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records," Journal of Social History, 10 (Fall 1976).

"Divorce and the Changing Status of Women in 18th-Century Massachusetts," William and Mary Quarterly, 3rd ser., 33 (October 1976).

"Young Women in the Second Great Awakening in New England," Feminist Studies, 3 (Fall 1975).

PUBLICATIONS: MISCELLANY

"Introduction," Feminists Who Changed America, 1963-75, ed. Barbara Love (U. of Illinois Press, 2006).

"Afterword," Haunted by Empire: Geographies of Intimacy in North America, ed. Ann Laura Stoler, (Duke Univ. Press, 2006).

"Janet Flanner," in Notable American Women: Completing the Twentieth Century (Cambridge, Harvard Univ. Press, 2005).

Co-editor with Drew Gilpin Faust, The Magazine of History, special issue on Gender History, March 2004.

"Considering the State of U.S. Women's History," with others, Journal of Women's History 15:1 (2003).

"Response," to "Books in Review: *Public Vows: A History of Marriage and the Nation*," The Good Society, 11:3 (2002), 88-90.

"The Great Demand," in Days of Destiny, ed. James MacPherson and Alan Brinkley, Society of American

Historians (Agincourt Press, 2001).

Introduction to Jane Levey's "Imagining the Postwar Family," Journal of Women's History, Fall 2001.

"Mary Ritter Beard," in American National Biography (Oxford U. Press, 1999).

"Challenging Boundaries: Introductory Remarks," Yale Journal of Law and Feminism 9 (1997).

"A Conversation with Eric Foner," culturefront 4:3 (Winter 1995-96).

"Bonnie and Clyde," in Past Imperfect: History and the Movies, ed. Mark Carnes (N.Y., Henry Holt, 1995).

"Privacy"; "Domesticity"; "Mary Ritter Beard"; in A Companion to American Thought, ed. Richard Wightman Fox and James Kloppenberg (Cambridge, Basil Blackwell, 1995).

"Charles A. Beard and Mary Ritter Beard," The Reader's Companion to American History, ed. Eric Foner and John Garraty, 1991.

"Comment on Karen Offen's 'Defining Feminism: A Comparative Historical Approach,'" Signs: Journal of Women in Culture and Society, 15:11 (1989).

Editorial, Special issue of Women's Studies Quarterly, XVI:1/2 Spring/(Summer 1988), "Teaching the New Women's History."

Introduction to A New England Girlhood by Lucy Larcom (Boston, Northeastern U. Press, 1985).

"Women as Law Clerks: Memoir of Catherine G. Waugh," in The Female Autograph, New York Literary Forum, 12-13 (1984).

Afterword to Sarah Eisenstein, Bread and Roses, ed. Harold Benenson (London, RKP, 1983).

"Mary Ritter Beard," in Notable American Women: The Modern Period (1980).

PUBLICATIONS: REVIEW ESSAYS

"Adversarial Invention," American Quarterly, 47:2 (June 1995).

"Patriarchy in America is Different," American Bar Foundation Research Journal, 1987:4 (Fall 1987).

"Women and the Ballot," Reviews in American History, 15:2 (June 1987).

"The House of Feminism," New York Review of Books, 30 (March 17, 1983).

"The Confederate Elite in Crisis: A Woman's View," The Yale Review, 71 (Autumn 1981).

"Liberation Movements in Two Eras," American Quarterly, 32 (Spring 1980).

"Abortion, Birth Control, and Public Policy," The Yale Review, 67 (Summer 1978).

PUBLICATIONS: REVIEWS

in American Historical Review, American Prospect, Boston Globe, Business History Review, Intellectual History Newsletter, International Labor and Workingclass History, Journal of American History, Journal of Interdisciplinary History, New Mexico Historical Review, New York Times Book Review, Pacific Studies, Signs: A Journal of Women in Culture and Society, The Times Literary Supplement, Women's History Review, and The Yale Review.

PUBLICATIONS: EDITORIAL PROJECTS

General editor, The Young Oxford History of Women in the United States, 11 volumes, Oxford University Press, 1994.

Editor, History of Women in the United States, 20 volumes (article reprint series), K.G. Saur Publishing Co., 1993-94.

Guest Editor, special issue of Women's Studies Quarterly, XVI:1/2 (Spring/Summer 1988), on "Teaching the New Women's History."

OTHER PROFESSIONAL ACTIVITIES:**GRANT PROJECTS:**

Dissertation seminar in gender history for graduate students, Mellon Foundation, 2002.

Steering Committee, Ford Foundation Project on Women and Gender in the Curriculum in Newly-Coeducational Institutions, 1985-90.

Principal Investigator, National Endowment for the Humanities Implementation Grant, "Strengthening Women's Studies at Yale," 1983-86.

Principal investigator, National Endowment for the Humanities Pilot Grant to Women's Studies, Yale University, 1981.

ACADEMIC JOURNALS AND REFERENCE WORKS:

American National Biography, senior editor, 1989-98.

American Quarterly, editorial board, 1977-1980.

Feminist Studies, associate editor, 1977-85, editorial consultant, 1985-97.

Gender and History, advisory board, 1987-92; editorial collective, 1993-96.

Journal of American History, editorial board, 1996-99.

Journal of Social History, editorial board, 1978-.

Journal of Women's History, editorial board, 1987-98.

Notable American Women, volume 5, advisory board, 1999-04.

Orim: A Jewish Journal at Yale, editorial board, 1984-88.

The Readers' Encyclopedia of American History, advisory board, 1989-91.

Reviews in American History, editorial board, 1981-85.

Women's Studies Quarterly, editorial board, 1981-94.

Yale Journal of Law and the Humanities, advisory board, 1988-2001.

The Yale Review, editorial board, 1980-88, 1991-99.

SERVICE IN PROFESSIONAL ORGANIZATIONS:

American Historical Association, delegate to American Council of Learned Societies, 2008-12

Society of American Historians, Executive Board, 2006--

Elected member: American Antiquarian Society, Massachusetts Historical Society, Society of American Historians.

Organization of American Historians: Merle Curti Prize Committee, 2008; Binkley-Stephenson Prize Committee, 1987-1990 (chair, 1988); elected member of Nominating Committee, 1993-95 (Chair, 1994-95); elected member of Executive Board, 1997-2000; OAH Lecturer, 1997--.

Berkshire Conference of Women Historians: Co-Chair, Eighth Berkshire Conference on the History of Women (1990).

American Studies Association: Nominating Committee, 1981-84; National Council, 1987-90; American Quarterly Review Committee, 1989.

ACADEMIC ADVISORY BOARDS:

The Museum of Women/The Leadership Center, N.Y. State, (chair of historians' advisory board) 2000--.
 Princeton University Program in Women's Studies, 1985-2001.
 Project on Gender in Context, Mt. Holyoke College, 1982-83.
 The Correspondence of Lydia Maria Child, 1977-80.
 Schlesinger Library on the History of Women, Radcliffe College, 1977-80.

AUDIOVISUAL MEDIA PROJECTS:

Advisory Board, 888 Film Project, "Left on Pearl," 2006--.
 Advisory Board, Women 2.0 Summit, 2007.
 Advisory Board, Blueberry Hill Productions Ten Stories Project, 2005--
 WGBH documentary proposal on the History of Marriage in America, Principal consultant, 2002.
 Institute on the Arts and Civic Dialogue, Affiliated Scholar, American Repertory Theatre and W.E.B. DuBois Institute, summer 1999.
 Margaret Sanger film project (by Bruce Alfred), Consultant, 1994—96,
 "One Woman, One Vote: The Struggle for Woman Suffrage in the U. S.," Advisory Board, Educational Film Center, 1991-95.
 "The American Experience," Advisory Board, WGBH-TV, Boston, MA, 1986--90.
 Consultant, "Mary Silliman's War," film by Steven Schechter, 1987.
 Consultant, "Lowell Fever," film by Made in U.S.A., Inc. 1985-87.
 "Legacies: Family History in Sound," radio course on the history of women and the family in the U.S., Advisory Board, 1984-86.
 Connecticut Public Radio series, "Choices"/Everyday History, Radio Programs for Children 8 to 12," Consultant, 1982-83.
 Dan Klugherz (Film) Productions, N.Y., Consultant, 1981-82.
 Stanton Project on Films on Women in American History, Advisory Board, 1974-77.

PRIZE AND FELLOWSHIP SELECTION COMMITTEES:

Merle Curti Prize, Organization of American Historians, 2008.
 Mark Lynton History Book Prize, 2002.
 Bunting Institute Fellowship Program, Radcliffe College, 1982, 1996.
 American Antiquarian Society Fellowships, 1991, 1992, 1994.
 Governors' Prize, Yale University Press, 1990.
 American Council of Learned Societies, Fellowships for Recent Recipients of the Ph.D., 1987, 1988, 1990.
 Bancroft Prize (Columbia University), 1985.
 Radcliffe Research Scholars Program, 1982.
 Hamilton Prize, Women and Culture Series, U. Michigan Press, 1981.

CONSULTANT/EVALUATOR (selected list):

Johns Hopkins University, History Department, February 2011.
 Wellesley College, Wellesley Centers for Women, June 2010.
 University of Helsinki, city center campus, 2005.
 Univ. of California at Santa Barbara, Women's Studies Program, February 2002.
 National Endowment for the Humanities, fellowships for university teachers, 1998; media projects, 2001.
 History Department, University of Oregon, 1999.
 Woodrow Wilson Center Fellowships, 1991, 1992, 1994.



State of Colorado Commission on Higher Education, 1990.
 National Humanities Center Fellowships, 1988, 1989, 1991, 1992, 1994.
 "Foundations of American Citizenship," curriculum project, Council of Chief State School Officers, 1987.
 Connecticut Humanities Council, 1986.
 Rockefeller Foundation Gender Roles Fellowships Program, 1985.
 Radcliffe Research Scholars, 1983.
 Working Women's History Project, 9 to 5, Organization for Women Office Workers, 1981.
 Rockefeller Foundation Humanities Fellowships, 1980.

ACADEMIC LECTURES, PAPERS, COMMENTS DELIVERED (selected list):

"The Past, Present, and Future of Feminism," OAH night lecture for the AP U.S. Exam-Reading Session, Louisville, KY, June 2012.
 "The Past, Present, and Future of Feminism," keynote for the 19th annual Susan B. Anthony Institute Interdisciplinary Graduate Conference at the Univ. of Rochester, March, 2012.
 "The Future of Marriage," *Boston Review* evening symposium, M.I.T., March 2011.
 "The History of Marriage on Trial," Margaret Morrison Distinguished Lecture in Women's History, Carnegie Mellon University, Pittsburgh, PA March 2011.
 "Why History Matters: Same-Sex Marriage," U.C.L.A. History Department, February 2011.
 "The History of Marriage on Trial in *Perry v. Schwarzenegger*," American Association of Law Schools conference, San Francisco, January 2011.
 "Marriage on Trial," Gender and Women's Studies Program, University of Kentucky, December 2010.
 "The Craft of History and the Constitution: The Role of Historians as Expert Witnesses in *Perry v. Schwarzenegger*," Yale Law School, October 21, 2010.
 Keynote, "Embedded Bodies: Reproductive Justice in Social Context," Harvard Law School, October 15, 2010.
 "The History of Marriage on Trial," University of California at Berkeley, History Department, March 2010.
 Panelist, "State of the Field: History of Women/Gender/Sexuality," Organization of American Historians annual meeting, April 2010.
 "Born Modern," Center for Advanced Study in the Behavioral Sciences, Stanford University, October 2008.
 "Revisiting the Jazz Age," John O'Sullivan Memorial Lecture, Florida Atlantic U., November, 2007.
 "Recovering the Interwar Generation," Modern America Workshop, Princeton University, April 2007; University of Chicago Social History Workshop, May 2007.
 "The Reproduction of Gender," graduate student conference on Nineteenth-Century Reproduction, Temple University, February 2007.
 "Women in the Rubble," Newcombe Institute Summit on Educating Women for a World in Crisis, New Orleans, LA, February 2007.
 "Marriage and Citizenship in the History of the United States," Hall Center for the Humanities, University of Kansas, November 2006.
 "Women of Happenstance," First Ladies Conference, McKinley Homestead, Canton, OH, Apr 2006.
 "Revisiting the 1920s Generation," Rothermere American Institute, Oxford Univ., January 2006.
 "Boundaries and Blinders in History: Revisiting the 1920s Generation," keynote address, Western Association of Women Historians annual meeting, Phoenix, AZ, April 2005.
 Panelist, "The Political Spectrum of Same-Sex Marriage," conference on Breaking with Tradition: New Frontiers for Same-Sex Marriage, Yale Law School, March 2005.
 "Gender History and Generations," Women's History Month address, Rutgers-Camden Law School, Camden NJ, March 2005.
 "Collecting Women's History at the Schlesinger Library," Society of American Archivists annual meeting, August 2004.



Colloquium on George Chauncey's *Gay New York*, Dec. 2003, Ecole Normale Supérieure, Paris.

Closing remarks, Library of Congress symposium, "Resourceful Women," June 19-20, 2003.

"Women, Men, and Modern Marriage," Ecole des Hautes Etudes en Sciences Sociales, November 2003.

"What's Love Got to Do with It? Marriage as a Public Institution in the United States," Fairleigh Dickinson University, March, 2003.

Comment, "Revisiting Domesticity: Symbolic Economies of Sex and Gender," American Historical Assoc. annual meeting, Washington, D.C., January 2003.

"Gendering Colonial America, Making Women's History Colonial: A Roundtable," Berkshire Conference on Women's History, Storrs, CT, June 2002.

Comment, panel on "Race and Family in Wartime America: Illegitimacy, Immigration, and the Church," Organization of Amer. Hist. annual meeting, Washington, D.C. April 2002.

"New Directions in Women's History after 9/11," Brandeis University, March 2002.

"The Efficacy of Women's History," Bridgewater State University, March 2002.

"Marriage and the Nation," Harvard Law School Legal History Forum, October 2001.

"The Family, Citizenship, and Democracy in the United States," University of Tokyo, Japan, July 2001.

"Women as Workers, Citizens, and Activists in the Mid-Twentieth-Century U. S." four- seminar series, Ritsumeikan University, Kyoto, Japan, July 2001.

"Grooming Citizens: Marriage in the Political History of the United States," Kyoto American Studies Seminar, Kyoto, Japan, July 2001.

"Public Sanctity for a Private Realm: The Family, the Rhetoric of Democracy, and Constitutional Values in the U.S.," Bacon Lecture on the Constitution, Boston Univ., May 2001.

"Democracy and the Family," Yale Tercentennial Series "Democratic Vistas," April 2001.

"Marriage and the Nation: Historical Perspectives," Northeastern University Feminist Studies Colloquium, March 2001.

"Public Vows: On Marriage and the Nation in the Early Twentieth-Century U.S.," Center for Historical Study, U. Maryland, College Park, October 2000.

"Marriage Revised and Revived," Associated Yale Alumni faculty lecture, May, 2000.

Comment, session on "The Idea of Marriage: The British Atlantic Context," International Seminar on the History of the Atlantic World, 1500-1800, Harvard Univ., August 2000.

"Reflections on Women and/in Authority," Women, Justice, and Authority: A Working Conference, Yale Law School, April 28, 2000.

"Grooming Citizens: Marriage and the Civic Order in the United States," In the Company of Scholars Lecture Series, Yale University Graduate School, April 2000.

"Public Vows: Marriage as a Public Institution," History Department, Stanford University, January 2000.

"An Archaeology of American Monogamy," History Department, Northwestern Univ., October 1999.

"The Modern Architecture of Marriage," Gender and Policy Workshop, Department of Economic History, Stockholm University, Stockholm, Sweden, October 1999.

"Women's Rights Talk," conference on "Rights--Civil, Human, and Natural," University of Southern Denmark, Odense, Denmark, October 1999.

Comment, "Making and Breaking Marriages: Reconsidering American Families through the Law," Berkshire Conference on the History of Women, June 1999.

"Marriage Fraud in the Making of Immigration Restriction in the U.S." Center for Cultural Studies, Univ. of California, Santa Cruz, May 1999.

Panel discussant, women and citizenship, Univ. of California, Berkeley, October 1998.

"An Approach to Citizenship through Gender History," Univ. of Colorado at Colorado Springs, Feb. 1999.

"Marriage and Citizenship," Legal Theory Workshop, Yale Law School, October 1998.

Comment, "Public Policy and Marriage," American Society for Legal History, Seattle, WA, Oct. 1998.

"Thinking about Citizenship and Nationality through Women's History," keynote address, Australian Historical Association, Sydney, Australia, July 1998.

"Race, Blood, and Citizenship: A Gendered Perspective on U.S. Immigration Restriction, 1895-1917,"



International Federation for Research in Women's History conference, Melbourne, Australia, June 1998.
 Introduction, Conference on Sexual Harassment Law, Yale Law School, February 1998.
 "Marriage and Public Policy: The Politicization of Marriage in the 1850s," Schlesinger Library, Radcliffe College, May 1997.
 Comment, "Association-Building in America," Organization of American Historians annual meeting, San Francisco, April 1997.
 "Writing American Women's History: Retrospect on Nineteenth Century Domesticity," Clarion University, Clarion, Pa., April 1997.
 "Against Equality: Mary Ritter Beard and Feminism," DePauw University, March 1997.
 "Marriage and Women's Citizenship: A Historical Excursion," N.Y.U. Law School, March 1997.
 Discussant, "One Woman, One Vote: Painting a 70-year Battle on a 2-hour TV Canvas," Berkshire Conference on the History of Women, June 1996, U.N.C.
 Chair, "International Feminism, 1840-1945," American Historical Association annual meeting, January 1996, Atlanta, Ga.
 "The Gender of Citizenship and the 19th Amendment," keynote address, University of Texas 8th Biennial Graduate Student Historical Symposium, Austin, Oct.1995; Women's History Week lecture, Fitchburg State College, Fitchburg Mass., March 1996.
 "Effects of the 19th Amendment," Delaware Heritage Commission Conference on the 75th Anniversary of the 19th Amendment, Delaware State Univ., November, 1995.
 "Forming the Body Politic: Gender, Race, and Citizenship Traditions in the U.S.," John Dewey Lecture in the Philosophy of Law, Harvard Law School, October 1994; Jane Ruby Humanities Fund Lecture, Wheaton College, March 1995.
 "The Marriage Knot: Gender, Race and Citizenship Policy in the U.S., 1855-1934," UCLA Center for the Study of Women, October 1994.
 Chair and comment, "Debating Democracy in the 19th Century," annual meeting of the Organization of American Historians, Atlanta, GA, April 1994.
 "Justice for All? Marriage, Race, and Deprivation of Citizenship in the Early 20th-Century U.S.," Keck Lecture, Amherst College, February 1994; Harvard University, February 1994.
 "Marriage, Gender, and Public Order," Symposium of the Association for Women's History, Amsterdam, Holland, November 1993.
 "Early Education of Women," symposium on Uncovering Women's History in Museums and Archives, Litchfield (CT) Historical Society, October 1993.
 "Early 20th-century Feminism in Germany and the U.S. Compared," Suffrage Centenary Conference, Wellington, New Zealand, August 1993.
 "Reviewing the Private and the Public through Women's History," Conference for 20 Years of the Edith Kreeger Wolf Distinguished Visiting Professorship, Northwestern Univ., April 1993.
 "Marriage as/and Public Policy in the Late Nineteenth-Century U.S.," annual meeting of the Organization of American Historians, Anaheim, CA, ; Northwestern University History Department, Apr1993.
 "Against Equality: Mary Ritter Beard and Feminism," Conference on the 200th Anniversary of Wollstonecraft's Vindication of the Rights of Women, Sussex, England, Dec. 1992.
 "'Enlightenment Respecting Half the Human Race': Mary Ritter Beard and Women's History," Sophia Smith Collection Semi-Centennial, September 1992.
 "Women's History in Contemporary Perspective," Harvard University Women's History Week, Mar 1992.
 "Educating Women in the U.S.," Founders Day lecture, Mary Baldwin College, October 1991.
 "Feminism in the U.S. in the Early 20th Century in Comparative Perspective," German Association for American Studies annual conference, Muenster, Germany, May 1991.
 Comment, "Women and American Political Identity," conference on Political Identity in American Thought, Yale Univ., April 1991.



"Slavery, Race, and the History of Women's Rights in the U.S.," Trenton State College, NJ, March 1991.
 Comment, "Contextualizing Feminism," annual meeting of the American Historical Association, New York City, December 1990.
 "The Political Isn't Personal: Mary Ritter Beard's View of Women's History," Center for American Culture Studies, Columbia U., October 1990.
 "Mary Ritter Beard and Women's History," N.Y. Public Library, Sept. 1989.
 Chair, "Power in the Early Twentieth Century," Organization of American Historians annual meeting, St. Louis, April 1989.
 "What's in a Name?: The Limits of Social Feminism," Boston U., Jan. 1989; Brandeis U., Sept. 1989.
 Panelist, "Feminist Theory," 10th Anniversary Celebration of the Women's Studies Program at Brandeis U., November 1988.
 "Reconsidering Individualism and 'Nature Herself' in the Era of Laissez-Faire Constitutionalism," Harvard U. History Department, April 1988.
 Panelist, "Individualism," N. Y. U. Humanities Center, March 1988.
 Afterword, "Masculinity in Victorian America," Barnard College, Columbia U., January 1988.
 Panelist, "Beyond Roles, Beyond Spheres: Thinking about Gender in the Early Republic," U. of Pennsylvania, December 1987.
 Chair, "Women in American Constitutional History at the Bicentennial," Annual Meeting of the American Hist. Assoc., Washington, D.C., December 1987.
 "Women's Rights: Unspeakable Issues in the Constitution," Association of Yale Alumni Faculty Seminar, September 1987, New Haven, CT; Brandeis U., March 1988; Second Annual Lowell Conference on Women's History, Lowell, MA, March 1988; Conference on the Constitution as Historical and Living Document, Dutchess County Community College, April 1988; Richardson American Studies Lecture, Georgetown U., April 1988.
 "How Weird Was Beard? Mary Ritter Beard and American Feminism," Seventh Berkshire Conference on the History of Women, June 1987, Wellesley MA.
 "The Birth of Feminism," Women's Studies Program, Cornell U., March 1987.
 "Feminism and Women's Political Participation in the Early 20th Century," Conference on Women and Citizenship, Women Historians of the Midwest, St. Paul, MN, March 1987.
 "The Power of Communalism: Reflections through Women's History," Historic Communal Societies Conference, October 1986.
 Chair, "Women in the 1950s: An Interdisciplinary Exploration," Organization of American Historians annual meeting, N.Y., April 1986.
 "Feminism in the 1920s," Boston Area Feminist Colloquium, Northeastern U., January 1986.
 "History of Feminism," Institute for Policy Studies, Washington, D.C., May 1985.
 "Feminist Theory and Feminist Movements: The Past Before Us," Women's History Week, Harvard U., March 1985.
 "Problems of Feminism in the 1920s: the Political Environment," Women's History Series, New York U., February 1985; American Studies Lecture, Smith College, March 1985; Harvard Law School Faculty Colloquium, May 1985.
 "Has Modern Woman Disrupted the Home? 1920s Answers," Wesleyan Center for the Humanities, October 1984.
 "Feminism and Women in Professional Occupations in the 1920s," American Studies lecture, Amherst College, February 1984.
 "Feminism in Transition, 1910-1930," Sixth Berkshire Conference on the History of Women, June 1984, Northampton, MA.
 Comment, "Nineteenth-Century Gender Conventions," Smith-Smithsonian Conference on Conventions of Gender, February 1984.
 "Definitions of Feminism in the Early Twentieth-Century United States," Whitney Humanities Center,

Yale U., September 1983.

"Challenging Myths of Victorian Womanhood," American Psychiatric Association Convention, New York City, May 1983.

"Women's History and Feminism," Phi Beta Kappa Lecture, Sweet Briar College, February 1983; Sarah Lawrence College, March 1983.

"Reappraising the History of Feminism in the 1920s," American Studies Series, Boston College, February 1983; History Dept. Series, U. of Virginia, February 1983; Hamilton College, April 1983; Trinity College, April 1983.

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Comment, "Consciousness and Society in New England, 1740-1840," Organization of American Historians annual meeting, April 1980, San Francisco, CA.

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"Women and Feminism in the 20th Century," Bunting Institute, Radcliffe College, October 1978.

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"Ministers and Women in the Late 18th and Early 19th Century," Princeton Theological Seminary, March 1978.

"New England Women's Work in the Early National Period," Historic Deerfield, MA, February 1978.

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"Passionlessness: An Interpretation of Anglo-American Sexual Ideology, 1790- 1840," History Dept. Colloquium, U. of Mass., April 1977; Rutgers U., March 1978; Marjorie Harris Weiss Lectureship, Brown U., March 1978.

"Women and Religion in Early 19th-Century New England," History Department Colloquium Series, U. of Conn., February 1977; Old Sturbridge Village, March 1977.

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"What is Gender History?" Symposium on Women, History Connections Teaching American History Grant, Rockford Public Schools, Rockford, Illinois, October 2007.

"Marriage and the State," Thursday Morning Club (for the benefit of Mt. Auburn Hospital), Feb. 2006.

"What Can Venturesome Women of the 1920s Tell Us Today?" Linda Rosenzweig Memorial Lecture, Wellfleet Public Library, Wellfleet MA, August 2005.

"Marriage and the Public Order in the History of the United States," 2005 American Studies Summer Institute, John F. Kennedy Library, July 2005.

"Preserving Women's History at Radcliffe and Harvard," Committee on the Concerns of Women at Harvard, June 2005.

"Women's Education in the 18th Century," Adams Historic Site, Quincy, MA, April, 2005.

Moderator, "What Sort of a Right is Marriage?" Harvard University Human Rights Program, March 2005.

"What is Gender History?" annual luncheon for the College Board, Organization of American Historians, annual meeting, San Jose, CA, April 2005.

"What the State Has to Do with It: Changing Marriage," Democrats Abroad, Paris, Dec. 2003.

"Marriage and the Law," invited discussion with Senior Matrimonial Lawyers, educational retreat, Troutbeck Conference Center, Amenia NY, October 2003.

"Marriage as a Public Institution in the United States," Harvard Neighbors, February 2003; Harvard Librarians' group, February 2003.

"Looking at the World after 9/11 through a Women's History Lens," Radcliffe Seminars Final Conference, April 2002.

"Women as Workers and Citizens in the Twentieth Century," Institute for Emerging Civil Rights Leaders, Harvard Graduate School of Education, June 11, 2001.

"The Value of Women's Work: Historical, Public and Private Views," Bostonian Society, May 2001.

"Woman Suffrage: Why Did It Take So Long?" and "The Gender Structure of Citizenship," NEH Summer Institute for High School and Middle School Teachers on Women's Rights and Citizenship in American Thought," Ohio State Univ., July 2000.

"Education in Abigail Adams' Time," Women and the American Revolution Lecture Series, Adams National Historical Site, Quincy, MA, June 2000.

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"The History of Marriage," testimony and discussion before the Judiciary Committee, Vermont House of Representatives, January 2000.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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 WHITWELL and GREG FLAMER;
 MIKYLA MILLER and KATRINA
 MILLER; ADELE TERRANOVA and
 TARA NEWBERRY; CAREN

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF LETITIA ANNE
 PEPLAU, PH.D. IN SUPPORT OF
 PLAINTIFFS' MOTION FOR SUMMARY
 JUDGMENT**

CAFFERATA-JENKINS and FARRELL
CAFFERATA-JENKINS; and MEGAN
LANZ and SARA GEIGER,

Plaintiffs,

v.

BRIAN SANDOVAL, in his official capacity
as Governor of the State of Nevada; DIANA
ALBA, in her official capacity as Clerk for
Clark County; AMY HARVEY, in her
official capacity as Clerk for Washoe
County; and ALAN GLOVER, in his official
capacity as Clerk-Recorder for Carson City,

Defendants

I, Letitia Anne Peplau, Ph.D., hereby declare and state as follows:

PRELIMINARY STATEMENT

1. My professional background, experience, and publications are detailed in my curriculum vitae, which is attached as Exhibit A to this declaration. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration and could and would so testify if called as a witness.

2. I was a Professor of Psychology at the University of California, Los Angeles beginning in 1973, with promotions to tenure in 1978, to full professor in 1982, and to Distinguished Professor in 2010. From 2005-2011, I served as Director of the UCLA Interdisciplinary Relationship Science Program. This program, funded by the National Science Foundation, trained doctoral students in the study of families and other personal relationships. I formally retired from UCLA in June 2011, but am continuing to work at UCLA as Distinguished Research Professor and as the Psychology Department Vice Chair for Graduate Studies.

3. In broad terms, my research addresses topics concerning personal relationships, gender, and sexual orientation. I have conducted research on heterosexual couples, co-authored a book entitled Close Relationships, and published articles comparing empirical findings about

1 men's and women's experiences in close relationships. In the 1970s, I was one of the first
2 researchers to conduct empirical investigations of the intimate relationships of lesbians and gay
3 men, and I have continued this program of research for the past 30 years. In addition, I have
4 written several major reviews of the scientific research on same-sex relationships, including a
5 2007 article in the Annual Review of Psychology and a 2009 article in the Encyclopedia of
6 Human Relationships. I have also conducted empirical studies on gay and lesbian identity.

7 4. I received my B.A. in Honors Psychology from Brown University in 1968 and my
8 Ph.D. in Social Psychology from Harvard University in 1973. As reflected in my curriculum
9 vitae (Exhibit A), I have published more than 120 papers in scholarly journals and scholarly
10 books, primarily in the field of couple relationships. I have co-authored or co-edited over 10
11 books, and I have frequently presented my research at universities and scientific meetings.

12 5. My expertise extends beyond the specific areas addressed in my own empirical
13 research program to include other theory and empirical research related to sexual orientation and
14 same-sex relationships. A broad knowledge of this area has been necessary not only for my own
15 scholarship, but also for successfully completing my professional duties as a teacher, as Director
16 of the UCLA Interdisciplinary Relationship Science Program, and as a reviewer of academic
17 journals and book manuscripts.

18 6. As a result of my research and other accomplishments, I have received several
19 professional awards. I have been elected a fellow of the American Psychological Association and
20 of the Association for Psychological Science. I have received lifetime achievement awards from
21 the American Psychological Association, the International Association for Relationship Research,
22 and the Society for the Scientific Study of Sexuality. I also had the honor of being elected
23 president of the International Society for the Study of Personal Relationships (an organization
24 since renamed the International Association for Relationship Research).

25 7. In preparing this Declaration, I reviewed the Complaint in this case, and the
26 materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in
27 addition to the documents specifically cited as supportive examples in particular sections of this
28 Affidavit, as additional support for my opinions. I have also relied on my years of experience in

1 this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein.

2 8. In the past four years, I have testified as an expert – either at trial or through
3 declaration – or been deposed as an expert in *In the Matter of the Adoption of X.X.G. and N.R.G.*
4 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, Case No.
5 06-43881 FC 04, *Cole v. The Arkansas Department of Human Services* in the Circuit Court of
6 Pulaski County, Arkansas, Case No. CV2008-14284, *Perry v. Schwarzenegger*, Case No. 09-CV-
7 2292 VRW (N.D. Cal.), *Golinski v. Office of Personnel Management*, 3:10-cv-0257-JSW (N.D.
8 Cal.), *Windsor v. U.S.*, No. 10 Civ. 8435 (BSJ) (JCF) (S.D.N.Y.), *Pedersen v. Office of Personnel*
9 *Management*, No. 3:10-cv-01750-VLB (D. Conn.), *Dragovich v. U.S. Dep’t of the Treasury*, CV
10 4:10-01564-CW (N.D. Cal.), and *Donaldson and Guggenheim v. Montana* in the Montana First
11 Judicial District Court, Lewis and Clark County, Case No. BDV-2010-702.

12 9. For my work in this matter, I am being compensated at my standard consulting rate
13 of \$300 per hour for preparation time, time spent writing my report, and time spent giving
14 deposition and trial testimony. My compensation does not depend on the outcome of this
15 litigation, the opinions I express, or the testimony I provide.

16 **I. Summary of Opinions**

17 10. Sexual orientation refers to an enduring pattern of emotional, romantic, and/or
18 sexual attractions to men, women, or both sexes. Most adults are attracted to and form
19 relationships with members of only one sex. Efforts to change a person’s sexual orientation
20 through religious or psychotherapy interventions have not been shown to be effective.

21 11. It is well-established that homosexuality is a normal expression of human
22 sexuality. It is not a mental illness, and being gay or lesbian has no inherent association with a
23 person’s ability to lead a happy, healthy, and productive life or to contribute to society.

24 12. Research shows that same-sex couples closely resemble heterosexual couples.
25 Like their heterosexual counterparts, many lesbian, gay, and bisexual individuals form loving,
26 long-lasting relationships with a partner.

27 13. Marriage provides a range of social and other benefits and protections to spouses.
28 These contribute to enhanced psychological well-being, physical health, and longevity among

1 married individuals. Domestic partnerships are not as well-understood or respected by the
2 community as marriage, which has significant cultural values and expectations. Same-sex
3 couples are therefore harmed by being excluded from marriage.

4 14. In the United States, lesbian, gay, and bisexual individuals experience pervasive
5 social stigma and the added stress that results from prejudice and discrimination. Stigma is
6 reflected both in acts of individuals and in the institutions of society, including its laws, that
7 legitimate and perpetuate the second-class status of gay men, lesbians, and bisexuals. Nevada's
8 exclusion of same-sex couples from marriage both reflects and perpetuates stigma against
9 lesbians, gay men, and same-sex couples. The stigma and discrimination perpetuated by
10 Nevada's exclusion harm not only same-sex couples, but gay men, lesbians, and bisexuals as a
11 group.

12 15. There is no scientific support for the notion that allowing same-sex couples to
13 marry would harm different-sex relationships or marriages. The factors that affect the quality,
14 stability, and longevity of different-sex relationships would not be affected by marriages between
15 same-sex couples.

16 **II. Understanding Sexual Orientation**

17 **A. What is Sexual Orientation?**

18 16. The American Psychological Association provides a widely accepted definition of
19 sexual orientation: "Sexual orientation refers to an enduring pattern of emotional, romantic,
20 and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a
21 person's sense of identity based on those attractions, related behaviors, and membership in a
22 community of others who share those attractions."¹

23 17. Beginning with the research of Alfred Kinsey in the 1940s, researchers have
24 recognized that sexual orientation can range along a continuum from exclusively heterosexual to
25 exclusively homosexual. Nonetheless, it is most often discussed in terms of three categories:
26 heterosexual (having emotional, romantic, or sexual attractions to members of the other sex),
27 gay/lesbian (having attractions to members of one's own sex), and bisexual (having attractions to

28 ¹ American Psychological Association, 2008; Herek, 2000.

1 both men and women). Most adults in the United States can readily categorize themselves as
2 heterosexual, gay/lesbian, or bisexual.² The specific category name that an individual prefers
3 (e.g., homosexual, gay) may vary³, but in national surveys in the U.S., nearly all participants are
4 able to indicate their sexual orientation category.

5 18. For clarity, it is important to distinguish sexual orientation from other aspects of
6 sex and gender. These include biological sex (the anatomical, physiological, and genetic
7 characteristics associated with being male or female), gender identity (an individual's
8 psychological sense of being male or female), and gender-role orientation (the extent to which an
9 individual conforms to cultural norms defining feminine and masculine behavior).

10 19. Social scientists view sexual orientation as a multi-faceted phenomenon involving
11 attractions, related behaviors, and identity. In research studies, the particular component of
12 sexual orientation that researchers assess will differ depending on the purpose of the research.
13 For example, a study about the experiences of individuals in same-sex marriages would recruit
14 participants based on their behavior of marrying a person of the same sex. A study of personal
15 experiences of social stigma and discrimination among openly gay and lesbian individuals would
16 most likely recruit individuals who self-identify as gay or lesbian.

17 20. Sexual orientation is inherently linked to social relationships. Sexual orientation is
18 a characteristic of an individual, like their biological sex, age, or race, and it is also about
19 relationships – whether an individual is attracted sexually or romantically to partners of the same
20 sex or the opposite sex.⁴ Just as heterosexual individuals often express their sexual orientation
21 through relationships including marriage with a different-sex partner, so gay and lesbian
22 individuals express their sexual orientation through relationships including marriage with a same-
23 sex partner. Further, sexual orientation is not merely about sexual behavior but also about
24 building enduring intimate relationships. In other words, sexual orientation is centrally linked to
25 the most important personal relationships that adults form with other adults in order to meet their
26 basic human needs for love, attachment, and intimacy. These relationships, whether with a same-

27 ² See, e.g., Chandra, Mosher, Copen & Sionean, 2011, pp 29-30; Laumann, Gagnon, Michael &
28 Michaels, 1994, p. 293.

³ See, e.g., Herek, Norton, Allen & Sims, 2010.

⁴ Peplau & Cochran, 1990; Peplau & Fingerhut, 2007.

sex or different-sex partner, are an essential part of an individual's personal identity.

B. Can Sexual Orientation Be Changed?

21. Currently, the precise factors that cause an individual to be heterosexual, homosexual, or bisexual are still being researched. Much research has examined possible genetic, prenatal hormonal, developmental, and social influences on sexual orientation, and many scientists view sexual orientation as resulting from the interplay of those factors.⁵

22. A consistent finding across many studies, beginning with the work of Alfred Kinsey in the 1940s and 1950s and continuing through current research, is that most adults report having sexual attractions to and experiences with members of only one sex.⁶ As adults, the majority of these individuals have had exclusively heterosexual experiences and attraction, and a minority have had exclusively same-sex experiences and attraction. A small percentage of adults report sexual attractions and experiences with both sexes.⁷

23. The significant majority of adults exhibit a consistent and enduring sexual orientation.⁸ The fact that many lesbian and gay adults form long-term intimate relationships with a partner of the same sex,⁹ just as heterosexual adults do with a partner of the other sex, provides evidence of the stability of sexual orientation over time. Nonetheless, a small minority of individuals are exceptions to this majority pattern. For example, while in prison, some men who identify as heterosexual may nonetheless engage in sexual activities with men since female partners are unavailable. Some individuals have reported changes in their sexual orientation in midlife, perhaps as a result of meeting a particular person. Understanding these kinds of exceptions to the general pattern of stable sexual orientation described above is of theoretical interest to scholars. Researchers have used terms like "sexual fluidity" or "sexual plasticity" to

⁵ American Psychological Association, 2008.

⁶ Kinsey, Pomeroy & Martin, 1948; Kinsey, Pomeroy, Martin & Gebhard, 1953; Laumann, et al., 1994; Chandra, et al., 2011.

⁷ Some individuals are very clear about their sexual orientation at an early age. In contrast, because of the social prejudice and discrimination against gay men and lesbians, some adolescents and young adults go through a prolonged period of trying to understand their own sexual identity and coming to terms with being lesbian, gay, or bisexual.

⁸ Based on large-scale survey data, Chandra et al. (2011, p. 1) conclude that "Sexual attraction and identity correlate closely but not completely with reports of sexual behavior." Thus, most heterosexual individuals do not engage in sexual activity with same-sex partners, and most gay and lesbian individuals similarly do not engage in heterosexual behavior.

⁹ Carpenter & Gates, 2008; see also Peplau & Fingerhut, 2007.

1 refer to changes in sexual behavior, attractions, and identity over time or across situations.
2 Importantly, observations about fluidity in a small minority of people should not obscure the big
3 picture of stability for the majority of adults. In a discussion of women's sexual fluidity, Peplau
4 and Garnets¹⁰ noted: "Claims about the potential erotic plasticity of women do not mean that most
5 women will actually exhibit change over time. At a young age, many women adopt patterns of
6 heterosexuality that are stable across their lifetime. Some women adopt enduring patterns of
7 same-sex attractions and relationships." Nor does the fact that a small minority of people may
8 experience some change in their sexual orientation over their lifetime suggest that such change is
9 within their power to effect, let alone that individuals outside this small minority have the power
10 to change voluntarily their sexual orientation. This is why standard definitions of sexual
11 orientation characterize it as stable.

12 24. Before the emergence of gay communities in the United States, it was fairly
13 common for lesbians and gay men to marry a person of the other sex.¹¹ They entered these
14 ostensibly "heterosexual" marriages for diverse reasons: to avoid social stigma, in response to
15 pressure from family and friends, from a belief that marriage was the only way to have children,
16 and/or to participate in a fundamental social institution. In some cases, these individuals only
17 recognized or acknowledged their sexual orientation after marriage. It is psychologically harmful
18 to ask lesbians and gay men to deny a core part of who they are by ignoring their attraction to
19 same-sex partners and instead marrying a different-sex partner. Moreover, the disclosure that a
20 spouse is gay or lesbian is often hurtful to the heterosexual spouse, highly upsetting to their
21 children or other family members, and frequently sets the stage for separation or divorce.
22 Therefore, encouraging gay men and lesbians to enter into a marriage with a heterosexual partner
23 is not in the best interests of the individuals or the interests of society.

24 25. When gay men and lesbians are asked by researchers about their sexual
25 orientation, the vast majority report that they experienced no choice or very little choice about

26 ¹⁰ Peplau & Garnets, 2000, p. 333.

27 ¹¹ Bozett, 1982; Higgins, 2006. Researchers have estimated the percentage of lesbians and gay
28 men who have been married. An analysis of responses to a 2003 survey of adults in California
found that about 25% of lesbians and 9% of gay men ages 18-59 reported having ever been
married, most of them presumably to a person of the other sex (Carpenter & Gates, 2008, Table
3).

1 their sexual orientation. In a national survey conducted with a representative sample of more than
 2 650 self-identified lesbian, gay, and bisexual adults, 95% of the gay men and 83% of the lesbians
 3 reported that they experienced “no choice at all” or “very little choice” about their sexual
 4 orientation.¹²

5 26. Sexual orientation is highly resistant to change through psychological or religious
 6 interventions. Recently, the American Psychological Association appointed a task force to
 7 conduct a systematic review of the peer-reviewed journal literature on sexual orientation change
 8 efforts.¹³ The Task Force concluded that “efforts to change sexual orientation are unlikely to be
 9 successful and involve some risk of harm” (p. 3). Based on currently available research, there is
 10 no credible evidence that these efforts are either effective or safe, and ample reason to believe that
 11 these interventions can harm those who participate.¹⁴ The Task Force also found evidence that
 12 many individuals who unsuccessfully attempt to change their sexual orientation experience
 13 considerable psychological distress including anxiety, depression, thoughts of suicide, and sexual
 14 dysfunction.

15 27. Currently, no major mental health professional organization has approved
 16 interventions to change sexual orientation, and virtually all of them have adopted policy

17 ¹² Herek, Norton, Allen & Sims, 2010. In that survey, 88% of gay men reported that they had “no
 18 choice,” and 7% reported “very little choice.” Similarly, 68% of lesbians responded that they
 19 had “no choice at all,” and 15% reported having “very little choice.” See also results from a
 20 California survey by Herek, Gillis & Cogan, 2009, Table 5.

21 ¹³ APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009, *Report of*
 22 *the Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Washington, DC:
 23 American Psychological Association. This report provides a detailed review and analysis of
 24 relevant research. Available at: <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

25 ¹⁴ Although some psychotherapists and religious counselors have reported changing their clients’
 26 sexual orientation from homosexual to heterosexual, empirical support for these claims is lacking.
 27 After reviewing published empirical research on this topic, the APA Task Force reported that it
 28 found “serious methodological problems in this area of research, such that only a few studies met
 the minimal standards for evaluating whether psychological treatments, such as efforts to change
 sexual orientation, are effective” (p. 2). Based on its review of the studies that met acceptable
 standards, the Task Force concluded that “enduring change to an individual’s sexual orientation is
 uncommon. The participants in this body of research continued to experience same-sex
 attractions following SOCE [sexual orientation change efforts] and did not report significant
 change to other-sex attractions that could be empirically validated, though some showed lessened
 physiological arousal to all sexual stimuli. Compelling evidence of decreased same-sex sexual
 behavior and of engagement in sexual behavior with the other sex was rare. Few studies provided
 strong evidence that any changes produced in laboratory conditions translated to daily life. Thus,
 the results of scientifically valid research indicate that it is unlikely that individuals will be able to
 reduce same-sex attractions or increase other-sex sexual attractions through SOCE” (pp. 2-3).

statements cautioning professionals and the public about these treatments.¹⁵ These include the American Psychiatric Association, American Psychological Association, American Counseling Association, and National Association of Social Workers. Further, since adolescents may be subjected to these treatments after disclosing to their families that they are gay, lesbian, or bisexual, the American Academy of Pediatrics has adopted a policy statement advising that therapy directed specifically at attempting to change an adolescent's sexual orientation should be avoided and is unlikely to result in change. The Pan American Health Organization, which is the World Health Organization's regional office for the Americas and the oldest public health organization in the world, has stated that "there is no scientific evidence for the effectiveness" of efforts to change sexual orientation.¹⁶

28. In summary, there is convergent scientific evidence documenting that sexual orientation reflects an enduring set of attractions and experiences for most people. Efforts to change a person's sexual orientation through religious or psychotherapy interventions have not been shown to be effective.

III. Sexual Orientation Does Not Affect a Person's Ability to Function Effectively

29. The consensus view of scientific researchers and mental health professionals is that homosexuality is a normal expression of human sexuality. Homosexuality is not a mental illness, and being gay or lesbian has no inherent association with a person's ability to participate in or contribute to society.¹⁷ Lesbians and gay men are as capable as heterosexuals of leading a happy, healthy, and productive life. They are also as capable as heterosexuals of doing well in their jobs and of excelling in school.

30. Although homosexuality was once believed to be a mental illness, that mistaken view was discredited by scientific research beginning in the 1970s. In 1973, the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical Manual of Mental Disorders, noting that "homosexuality per se implies no impairment in judgment, stability,

¹⁵ These policy statements are compiled in *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*, a publication that is available from the Just the Facts Coalition on the American Psychological Association's website: <http://www.apa.org/pi/lgbt/publications/just-the-facts.pdf>.

¹⁶ Pan American Health Organization, 2012.

¹⁷ Herek, 2010; Herek & Garnets, 2007.

1 reliability, or general social or vocational capabilities.”¹⁸ In 1975, the American Psychological
 2 Association endorsed this position and urged psychologists to help educate the public and to
 3 dispel the stigma of mental illness associated with homosexuality.¹⁹

4 31. Gay and lesbian individuals are subject to the same stresses of life as their
 5 heterosexual counterparts, including the death of a close relative, loss of a job, or a serious illness.
 6 Research consistently demonstrates that high levels of stress are harmful not only to
 7 psychological well-being but also to physical health.²⁰ In addition to the life stresses that can
 8 affect everyone, members of stigmatized minority groups, including gay men and lesbians as well
 9 as ethnic/racial minorities, may experience additional stress caused by prejudice and
 10 discrimination. This has been termed “minority stress.”²¹ This excess stress has been associated
 11 with an increased risk of psychological problems, especially those like anxiety and depression
 12 that are most closely linked to stress.²² Despite the pervasive social stigma against homosexuality
 13 and the resulting unique social stressors lesbians and gay men experience, the vast majority of
 14 lesbian and gay individuals cope successfully with these challenges and lead healthy, happy, well-
 15 adjusted lives. And there is nothing about sexual orientation itself – whether one is heterosexual
 16 or homosexual – that makes a person more or less able to contribute to or participate in society.

17 32. Social relationships can play an important role in buffering individuals from the
 18 stresses of life. Like heterosexuals, lesbians and gay men benefit from having a close intimate
 19 relationship, for example, with a spouse. Further, people benefit from the social, emotional, and
 20 material support that can be provided by family, friends, and others. Research also documents
 21 that the psychological well-being of lesbians and gay men is enhanced by having positive feelings
 22 about being gay, having developed a positive sense of gay identity, and being open about their
 23 sexual orientation with important other people, such as family members.²³

24 ¹⁸ American Psychiatric Association, 1974. For other resolutions by this organization, see
 25 <http://www.healthyminds.org/More-Info-For/GayLesbianBisexuals.aspx>.

26 ¹⁹ Conger, 1975. Also, the American Psychological Association has endorsed several resolutions
 27 concerning sexual orientation. These can be found at:
 28 <http://www.apa.org/pi/lgbt/resources/policy/index.aspx>.

²⁰ Thoits, 2010.

²¹ Meyer, 2003, 2007.

²² Herek & Garnets, 2007; Pascoe & Richman, 2009.

²³ Herek & Garnets, 2007; Meyer, 2003; Pachankis, 2007; Pascoe & Richman, 2009.

IV. Scientific Research Into Same-Sex Couples' Relationships Establishes That They Closely Resemble Different-Sex Couples' Relationships

33. Negative stereotypes about same-sex couples are common in America, leading many people to believe and argue that same-sex relationships are fundamentally different from, and inferior to, heterosexual relationships. But the consensus of the scientific research is that this characterization is inaccurate.

34. Lesbians and gay men are as able to form loving, committed relationships with a same-sex partner as are heterosexuals in committed relationships with a different-sex partner. Empirical research has repeatedly shown that gay men and lesbians have happy, satisfying relationships.²⁴ Like their heterosexual counterparts, lesbians and gay men form deep emotional bonds and strong commitments to their partners. Research documents striking similarities between same-sex and heterosexual couples on standardized measures of love, relationship satisfaction, and relationship adjustment. The extensive body of research that examines the quality and functioning of same-sex relationships demonstrates that same-sex couples are not inherently different from heterosexual couples. To the contrary, same-sex couples closely resemble heterosexual couples and the processes that affect both types of relationships are remarkably similar.²⁵

35. Lesbians and gay men, like heterosexuals, value committed relationships and a majority would like to marry. In a national survey,²⁶ 74% of lesbians and gay men said that if they could legally marry someone of the same sex, they would like to do so.

36. Scientific research consistently shows that the same factors that contribute to commitment and stability in different-sex couples apply to same-sex couples. One factor is the quality of a couple's relationship. As noted above, research shows that, on average, same-sex and different-sex relationships are equally satisfying and well-adjusted. Couples with more satisfying relationships are more likely to stay together than other couples, regardless of sexual orientation. A second factor that contributes to commitment and stability within different-sex and same-sex

²⁴ Kurdek, 2004, 2005; Peplau & Fingerhut, 2007.

²⁵ American Psychological Association, 2004.

²⁶ Kaiser Family Foundation, 2001.

couples alike are barriers that make it difficult for a person to leave a relationship. Research demonstrates that, as with their heterosexual counterparts, lesbians and gay men who perceive more barriers to terminating a relationship are more likely to remain together. Third, certain demographic characteristics of different-sex couples are consistently correlated with breakup rates (e.g. their age at marriage, race, level of education, and religious affiliation). It is likely that the same demographic characteristics that predict stability and instability in different-sex couples also apply to same-sex couples.

37. In 2004, based on a review of research on marriage and same-sex relationships, the American Psychological Association passed a Resolution on Sexual Orientation and Marriage,²⁷ in which it concluded that “many lesbians and gay men have formed durable relationships” and “the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples.”

V. Barring Same-Sex Couples from Marriage Causes Them Harm

38. There is widespread consensus among social science researchers that marriage generally provides many benefits to both spouses. A large body of scientific research comparing heterosexuals who are currently married to those who are not married establishes that marriage fosters psychological well-being, physical health, and longevity.²⁸ Of course, marriages that are unhappy, conflict-ridden, or violent do not provide the same benefits as the average marriage.

39. Studies consistently associate marriage with better health and greater longevity; marriage also has a moderating effect on individual risk-taking behavior.²⁹ Illustrative data come from a report by the U.S. Center for Disease Control.³⁰ Using a large national database, CDC researchers found that regardless of age, sex, race, ethnicity, education, or income, married adults were on average healthier than cohabiting, divorced, widowed, or never married adults. Married

²⁷ American Psychological Association, 2004.

²⁸ E.g., Cherlin, 2009; Johnson, et al., 2000; Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Nock, 1995; Proulx, et al., 2007; Schoenborn, 2004; Umberson, 1992; Waite, 1995.

²⁹ Hu & Goldman, 1990; Johnson et al., 2000; Waite, 1995; Waldron, Hughes, & Brook, 1996.

³⁰ Schoenborn, 2004. Marital status and health: United States, 1999-2002. *Advance Data from Vital and Health Statistics, Number 351*, December 15, 2004. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

1 individuals reported lower rates of smoking, drinking heavily, or being physically inactive
 2 (although married men were more likely to be overweight than other men). Married adults also
 3 reported lower rates of being limited in their daily activities of living, being in poor health, or
 4 suffering from headaches or serious psychological distress. Other research using national data
 5 reliably demonstrates that, on average, married individuals live longer than unmarried
 6 individuals.

7 40. Marriage is also associated with enhanced psychological well-being. On average,
 8 married individuals report less anxiety and depression and greater happiness and satisfaction with
 9 life than do unmarried individuals.³¹

10 41. There are two explanations for the clear differences observed between married and
 11 unmarried individuals.³² One explanation is known as the selection effect: to some extent,
 12 individuals with better mental and physical health are more likely to choose to marry and/or better
 13 able to attract a partner and maintain a relationship over time. Using a variety of research
 14 methods, researchers have demonstrated that the selection effect only partially accounts for the
 15 physical and psychological differences found between married and unmarried individuals. These
 16 research methods include longitudinal studies of the effects of marriage over time, longitudinal
 17 studies of transitions into or out of marriage, and studies that statistically control for factors such
 18 as income that are known to be associated with health. For example, one longitudinal study
 19 found that individuals who married between the first and second assessment were less depressed
 20 at the time of the second assessment than those who remained unpartnered. This suggests that
 21 getting married on average led to a reduction in depression.³³

22 42. The second explanation for the positive physical and psychological benefits of
 23 marriage is known as the protection effect.³⁴ There are many ways in which marriage can provide
 24 protective benefits that contribute to the health and well-being of spouses. The marriage

25 ³¹ Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Proulx, et al., 2007; Waite, 1995.

26 ³² Gove, Hughes, & Style, 1984; Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Waldron,
 27 Hughes, & Brook, 1996.

28 ³³ Lamb, Lee, & DeMaris, 2003.

³⁴ Cherlin, 2009; Gove, Hughes, & Style, 1984; Kim & McKenry, 2002; Lamb, Lee, & DeMaris,
 2003; Waldron, Hughes, & Brook, 1996.

1 relationship is a social union and a legal contract that creates a well-recognized and valued
2 kinship relationship. Marriage binds spouses not only to each other but can also bind individuals
3 to the broader community, which understands, appreciates, and values the significance of the
4 marriage relationship. Marriage often “provides individuals with a sense of obligation to others,
5 which gives life meaning beyond oneself.”³⁵ For many people, marriage has great symbolic
6 significance, establishing that the individual has a new social identity and is part of a valued and
7 respected social institution.

8 43. In addition, marriage often entails a moral commitment by spouses to support each
9 other “in sickness and in health.” Spouses often help each other to adopt more healthful
10 lifestyles, cope with the stress and uncertainty of life, and recuperate from illness and injury.

11 44. The security of marriage often enables spouses to adopt a long-term perspective,
12 putting off immediate rewards to build a future life together and encouraging mutual sacrifice.
13 This has been referred to as “enforceable trust.”³⁶

14 45. One way that couples express the symbolic significance of their marriage is
15 through a wedding ceremony. Although cultures have differing traditions and individual couples
16 may choose to depart from certain customs and traditions, the celebration of a wedding is a ritual
17 that is important to the couple, their respective families, and the larger community. Wedding
18 ceremonies are typically state-sanctioned public rituals that signify not only the joining together
19 of the spouses, but the creation of new extended families and in-laws with shared interests and
20 mutual obligations. The formation of a marriage transforms biological strangers into kin.
21 Wedding ceremonies usually also involve members of the broader community – friends, co-
22 workers, neighbors – who come together to recognize the new status of the couple and their
23 changed position in their community.

24 46. Marriage is widely regarded as one of the most important rites of passage for
25 adulthood, and it marks a major transition in a person’s life. For many, marriage signifies entry
26 into full adulthood, with expectations that the individual will act in more mature ways. The sense
27 of being a responsible adult may be one reason why married individuals engage in less risky

28 ³⁵ Waite, 1995.

³⁶ Cherlin, 2009.

1 behavior than their unmarried peers. The marriage relationship itself is associated with certain
2 duties and responsibilities – for example, that spouses should care for each other and build a life
3 together.

4 47. When a couple marries, they may bring with them separate networks of family,
5 friends, and others who can support them in time of need. Marriage often merges these support
6 networks, expanding the circle of valued confidants, help givers, and others who are available to
7 the couple. Marriage typically involves spouses in new sets of social obligations: the new
8 responsibilities of each spouse toward their in-laws are complemented by the obligations of the
9 extended family to support the married couple.

10 48. Social support is central to the institution of marriage. Compared to unmarried
11 individuals, married adults tend to receive more social support from other people, especially from
12 their parents, and this support contributes to individual well-being. The public aspect of marriage
13 can increase each spouse's sense of security that the relationship will be long-lasting.

14 49. Although these conclusions are derived from studies of heterosexual couples, it is
15 reasonable to infer that same-sex couples will generally benefit from marriage as do their
16 heterosexual counterparts. This idea is supported by the many well-established similarities in the
17 nature and quality of same-sex and heterosexual couples' relationships.³⁷ As it does for many
18 different-sex couples, marriage for many same-sex couples would create bonds between the
19 spouses and a social network of in-laws, friends, and others who can provide emotional support
20 and tangible assistance. As with different-sex couples, marriage would bind same-sex couples
21 together in a well-understood and highly valued social union and legal contract.

22 50. Marriage embodies many cultural values and expectations, often reflected in
23 marriage vows by which spouses pledge to love and care for each other, to be faithful to each
24 other, and to stay together through good times and bad until separated by death. These cultural
25 expectations provide a framework that individuals can draw upon to understand and build a
26 relationship together. These cultural expectations also provide guidelines that relatives and
27 society can draw on. In this regard, marriage is expected to have benefits for same-sex couples

28 ³⁷ Kurdek, 2004, 2005; Peplau & Fingerhut, 2007.

1 that are not offered by domestic partnerships, which are not as well understood, appreciated, or
2 respected by the community as marriage.

3 51. Recent data of same-sex spouses in Massachusetts offer important insights on the
4 experience of married lesbian and gay American couples.³⁸ Most lesbians and gay men reported
5 that marriage had improved their social relationships: 62% said their family was more accepting
6 of their partner and 41% said their family was more accepting of their sexual orientation. In
7 addition, 69% felt more accepted in their community. Most respondents said that their parents
8 reacted positively to their marriage (82%) as did their siblings (91%). Lesbians and gay men
9 were also asked about ways that marriage had improved their relationship. A majority (72%)
10 agreed that they felt more committed to their partner. Many reported that they now worry less
11 about legal problems (48%) and nearly a third said that one of the spouses receives health benefits
12 from an employer as a result of marriage. Other benefits mentioned included feeling more
13 accepted by society (38%) and feeling more financially stable (14%). One in four of the same-
14 sex couples surveyed were raising children, and 93% of these respondents agreed that their
15 children were happier or better off as a result of their marriage; 2% disagreed, and 4% were
16 unsure.

17 52. Leading organizations of mental health professionals recognize the benefits of
18 marriage for same-sex couples and the harm created by denying access to civil marriage to same-
19 sex couples. As one example, in 2005 the American Psychiatric Association, the leading
20 organization representing physicians in the field of mental health, adopted a policy statement on
21 this issue. Their resolution stated: “In the interest of maintaining and promoting mental health,
22 the American Psychiatric Association supports the legal recognition of same-sex civil marriage
23 with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions
24 to those same rights, benefits, and responsibilities.”³⁹ Further, in its Resolution on Sexual
25 Orientation and Marriage,⁴⁰ the American Psychological Association resolved “[t]hat APA
26 believes that it is unfair and discriminatory to deny same-sex couples legal access to civil

27 ³⁸ Ramos, Goldberg & Badgett, 2009.

28 ³⁹ American Psychiatric Association, 2005.

⁴⁰ American Psychological Association, 2004.

marriage and all its attendant benefits, rights, and privileges.”

VI. Barring Same-Sex Couples from Marriage Reflects and Perpetuates Stigma Against Lesbians, Gay Men, and Same-Sex Couples

53. Lesbian, gay, and bisexual individuals are the targets of prejudice and discrimination in the United States.⁴¹ National opinion surveys document that many Americans have negative attitudes toward this group of people and toward marriage for same-sex couples. Research has also documented that heterosexuals often view same-sex couples more negatively than heterosexual couples.⁴² Gay, lesbian, and bisexual individuals experience discrimination at work and in their communities,⁴³ and most states provide no legal protection against discrimination based on sexual orientation. Significant numbers of gay, lesbian, and bisexual individuals are targets of harassment and violence.⁴⁴ These facts demonstrate that gay, lesbian, and bisexual individuals experience pervasive social stigma.

54. Social stigma refers to severe social disapproval of a class of people perceived as being different, deviant, or in violation of cultural norms.⁴⁵ In American society today, gay men, lesbians, and bisexuals continue to be a highly stigmatized minority group. Many heterosexuals, who are the dominant group in society, perceive gay men, lesbians, bisexuals, and same-sex couples, as fundamentally different, hold negative stereotypes about their characteristics, and view discrimination against them as acceptable. Social stigma is reflected both in the acts of individuals and in the institutions of society, including its laws, that legitimate and perpetuate the second-class status of gay men, lesbians, bisexuals, and same-sex couples.

55. By prohibiting same-sex couples from marrying, Nevada law both reflects and perpetuates stigma against lesbians, gay men, and same-sex couples. Nevada law devalues and delegitimizes the relationships of legally married same-sex couples. By giving heterosexuals exclusive access to the benefits associated with the institution of marriage, Nevada law perpetuates power differentials between heterosexual citizens and non-heterosexual citizens.

⁴¹ Herek, 2009a.

⁴² Testa, Kinder & Ironson, 1987.

⁴³ Herek, 2009b.

⁴⁴ Herek, 2009b.

⁴⁵ Herek, 2009a.

1 Nevada law signals that in the eyes of the state, the committed relationships of same-sex couples
2 are inferior to different-sex relationships and that partners in same-sex relationships are less
3 deserving of social recognition and government protection. The stigma perpetuated by Nevada
4 law affects not only individuals in committed relationships with a person of the same sex, but all
5 gay, lesbian, and bisexual individuals as a group.

6 **VII. There Is No Evidence That Heterosexual Relationships Would Be Harmed If**
7 **Same-Sex Couples Were Permitted To Marry**

8 56. For many decades, social scientists have studied and analyzed the factors that
9 contribute to rates of divorce.⁴⁶ There is a scientific consensus about the key factors that may be
10 responsible. First, increasing employment opportunities for women have led to a dramatic
11 increase in the percentage of married women in the workforce. Paid employment gives wives
12 greater economic independence from their husbands which in turn makes it more feasible to end
13 an unhappy marriage. Second, since the 1970s, economic opportunities for men without college
14 education have diminished, adding financial stress to the lives of some married couples. Third,
15 there have also been important changes in public attitudes. Public acceptance of divorce has
16 increased, as has the social acceptability of unmarried cohabitation. Some scholars also suggest
17 that a growing emphasis on individualism and personal fulfillment has eroded an earlier emphasis
18 on the importance of obligation and commitment in marriage. Fourth, state “no-fault” divorce
19 laws have made it easier for spouses to end their relationships.

20 57. In addition, research has identified several demographic characteristics that are
21 associated with an increased likelihood of divorce.⁴⁷ First, age at marriage matters: people who
22 marry as teenagers are more likely to divorce than those who are in their 20s or older. Second,
23 unemployment and low incomes are associated with greater rates of marital dissolution. Third, so
24 too is race or ethnicity. African Americans have significantly higher rates of marital separation,
25 Asian Americans have lower rates, and other groups fall in between. Fourth, individuals whose
26 parents divorced while they were growing up are at greater risk of divorce. Although a

27 ⁴⁶ Cherlin, 2009; Coontz, 2007; Bramlett & Mosher, 2002; Teachman, 2002.

28 ⁴⁷ Amato, 1996; Bramlett & Mosher, 2002; Heaton, 2002; Lehrer & Chiswick, 1993; Raley & Sweeney, 2007.

1 correlation exists, there is no scientific evidence that these demographic characteristics in and of
2 themselves cause relationships to end. When spouses are similar on such characteristics as
3 religion and age, the risk of divorce is lower.

4 58. None of these factors uniquely correlates with same-sex couples or with allowing
5 them to marry. Allowing same-sex couples to marry would not alter state marriage laws,
6 economic opportunities for married heterosexual women or men, public attitudes toward divorce
7 or cohabitation, or personal values of individualism or commitment. Nor would it affect the age
8 at which heterosexuals decide to marry, their personal history of parental divorce, their choice of
9 a similar or dissimilar partner, or their race or ethnicity. Indeed, the fact that lesbians and gay
10 men, a class of citizens formerly denied legal marriage, are seeking to obtain marriage rights
11 could be seen as beneficial, because it broadens the scope of support for the value of marriage as
12 a central social institution in American society.

13 59. Allowing same-sex couples to marry would not affect the quality, stability, or
14 longevity of different-sex relationships. The quality of a heterosexual couple's marriage depends
15 on such factors as the spouses' personalities, their communication styles and ways of handling
16 conflict with each other, the stress a couple experiences, and the social support and resources
17 available to the couple. None of these factors is altered if a same-sex couple living down the
18 block gets married. In addition, the stability of marriages between different-sex couples depends
19 on barriers to divorce, including investments the spouses have made in each other and their
20 relationship, their moral and personal convictions about marriage, the options they see available
21 outside of marriage, and the many legal, financial, and social obligations that come with a
22 marriage license. Finally, the longevity of a marriage is also affected by the spouses'
23 demographic characteristics — their age at marriage, race, level of education, and religious
24 affiliation. These factors are not influenced by the marital status of other couples. In short, there
25 is no scientific basis for the proposition that allowing same-sex couples to marry would affect the
26 underlying processes that foster stability in different-sex marriages.

27 60. In response to an effort to ban marriage for same-sex couples, the Executive Board
28 of the American Anthropological Association, the world's largest organization of anthropologists,

issued the following statement:

The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built upon same-sex partnerships, can contribute to stable and humane societies.⁴⁸

61. Further, recent data from Massachusetts, where marriage for same-sex couples became available in May 2004, do not support the contention that the marriages of same-sex couples affects marriage for different-sex couples. An examination of statistical data from 2000 to 2010 (the most recent data available) indicates that marriage of same-sex couples has not led to a decline in marriage nor to an increase in divorce in Massachusetts.⁴⁹ As shown in the table below, there are minor fluctuations in rates of marriage and divorce from year to year in Massachusetts; this is typical across all states in the U.S.

Massachusetts Marriage and Divorce Rates Per 1,000 Residents by Year

	<u>Before 2004</u>				<u>After 2004</u>						
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Marriage	5.8	6.2	5.9	5.6	6.5	6.2	5.9	5.9	5.7	5.6	5.6
Divorce	2.5	2.4	2.5	2.5	2.2	2.2	2.3	2.3	2.0	2.2	2.5

62. In the four years prior to when same-sex couples were permitted to marry (2000-2003), the average marriage rate was 5.9 marriages per 1,000 total population in the state. In the seven years after same-sex couples were permitted to marry (2004-2010), the average marriage rate was 5.9. Divorce rates from Massachusetts are also informative. In the four years prior to when same-sex couples were permitted to marry (2000-2003), the average divorce rate was 2.5. In the seven years after same-sex couples were permitted to marry (2004-2010), the divorce rate has been lower, averaging 2.2.

⁴⁸ American Anthropological Association, 2004.

⁴⁹ Marriage rates by State: 1990, 1995, and 1999-2010, Division of Vital Statistics, National Center for Health Statistics, CDC. Available at: http://www.cdc.gov/nchs/data/nvss/marriage_rates_90_95_99-10.pdf. Divorce rates by State: 1990, 1995, and 1999-2010, Division of Vital Statistics, National Center for Health Statistics, CDC. Available at: http://www.cdc.gov/nchs/data/nvss/divorce_rates_90_95_99-10.pdf.

63. In short, the data from Massachusetts suggest that marriages by same-sex couples would not harm marriage for different-sex couples. The finding that marriages between same-sex couples lacks a correlation with break-ups between different-sex spouses is entirely consistent with scientific theories about marriage and our knowledge about the sociological and psychological reasons why people divorce. Marriage by same-sex couples does not pose a threat to the stability of marriage for different-sex couples.

Signed under penalty of perjury under the laws of the United States this 20th day of August, 2012.

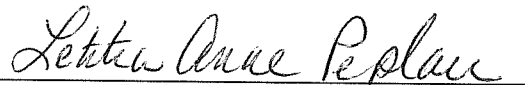

Letitia Anne Peplau, Ph.D.

Exhibit A

August, 2012

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Education

B.A. in Honors Psychology, Brown University, 1968 (Summa cum laude)
 Ph.D. in Social Psychology, Harvard University, 1973

Academic Positions at UCLA

1973-2010	Professor of Psychology
2010	Distinguished Professor of Psychology
2011	Distinguished Professor of Psychology, emeritus
1983-1988	Director, Graduate Program in Social Psychology
1985-1986	Associate Director, Center for the Study of Women
1988-1990	Acting Co-Director, Center for the Study of Women
1994-1995	Director, Graduate Program in Social Psychology
1999-2011	Faculty Affiliate, UCLA Center for the Study of Women
2005-2011	Director, NSF IGERT Interdisciplinary Relationship Science Program, UCLA
2004-present	Vice Chair for Graduate Studies, UCLA Psychology Department

Honors and Professional Societies

Danforth Graduate Fellowship, 1968-1973
 National Science Foundation Predoctoral Fellowship, 1968-1970
 Phi Beta Kappa
 Sigma Xi
 American Psychological Association (elected fellow in Divisions 8, 9, 35 and 44)
 Association for Psychological Science (fellow)
 American Sociological Association
 Society for Experimental Social Psychology
 Society for the Psychological Study of Social Issues
 International Academy of Sex Research
 Society for the Scientific Study of Sexuality
 Outstanding Achievement Award, Committee on Lesbian and Gay Concerns, APA, 1986
 President, International Society for the Study of Personal Relationships, 1994-1996
 Distinguished Scientific Achievement Award, Society for the Scientific Study of Sexuality, 1997
 Monette/Horwitz Trust Award for Research on Gay, Lesbian, and Bisexual Studies, 2000.
 Outstanding Faculty Award, UCLA Lesbian, Gay, Bisexual and Transgender Campus Center, June 2001.
 Distinguished Publication Award 2001, Association for Women in Psychology
 Distinguished Scientific Contribution Award, Division 44, APA, 2002
 Invited Master Lecture at the annual meeting of the American Psychological Association, 2002.

Elected to membership in the International Academy of Sex Research, 2003
 Distinguished Teaching Award, UCLA Psychology Department, 2003
 Award for Distinguished Faculty Service, Women's Studies Program, UCLA, 2005
 Mentoring Award, International Association for Relationship Research, 2006
 Distinguished "Elder" Award, APA National Multicultural Summit and Conference, 2007
 Heritage Award for Research, APA Division 35 (Society for the Psychology of Women), 2007
 Awarded the Evelyn Hooker Award for Distinguished Contribution by an Ally, APA Division 44 (Society for the Psychological Study of Lesbian, Gay and Bisexual Issues), 2008

Editorial Activities

Member, Editorial Board, *Journal of Social Issues*, 1974-1977
 Member, Editorial Board, *Social Psychology Quarterly*, 1977-1979
 Consulting Editor, *Psychology of Women Quarterly*, 1978-1980
 Member, Editorial Board, *Journal of Homosexuality*, 1980-1985
 Member, Editorial Board, *SIGNS: A Journal of Women in Culture and Society*, 1981-1989
 Member, Advisory Board, *Journal of Personal and Social Relationships*, 1985-1987
 Consulting Editor, *Journal of Personality and Social Psychology*, 1985-1989
 Member, Editorial Board, *Journal of Psychology and Human Sexuality*, 1987-1989
 Member, Advisory Board, *Advances in Personal Relationships*, 1986-1992
 Member, Editorial Board, *Journal of Social Issues*, 1992-1995
 Member, Advisory Board, Columbia University Press Series on Lesbian and Gay Studies, 1993-2000
 Associate Editor, *SIGNS: A Journal of Women in Culture and Society*, 2000-2005
 Member, Editorial Board, Contemporary Perspectives on Lesbian, Gay, and Bisexual Psychology, APA Books, 2001-2009
 Member, Editorial Board, *Sexuality Research and Social Policy: Journal of NSRC*, 2003-2011
 Member, International Advisory Board, *Ibadan Journal of Social Sciences*, 2004-2010

Selected Recent Professional Activities

Member, Editorial Board, *Psychology and Sexuality*
 Member, Scientific Review Panel for the Placek Research Award Program, American Psychological Foundation, 1995-2000
 Member, Committee on Women in Psychology Network (representative from Division 8), 1998-present
 Member, Working Group on Same-Sex Families, American Psychological Association, April 2004.
 Chair, Fellows Selection Committee, Society for the Psychological Study of Social Issues (Div. 9 of APA), 2004-2005.
 Member, Fellows Selection Committee, Society for the Psychological Study of Lesbian, Gay and Bisexual Issues (Div. 44 of APA), 2006-2008.

Books and Edited Volumes

Taylor, S. E., Peplau, L. A., & Sears, D. O. (2006). *Social psychology*, 12th Ed. Upper Saddle River, NJ: Prentice-Hall.

Taylor, S. E., Peplau, L. A., & Sears, D. O. (2003). *Social psychology*, 11th Ed. Upper Saddle River, NJ: Prentice-Hall.

Published into Russian in 2004.

Peplau, L. A., & Garnets, L. D. (Eds.) (2000). Women's sexualities: Perspectives on sexual orientation and gender. *Journal of Social Issues*, 56 (whole number 2).

This volume was selected for the 2001 Distinguished Publication Award of the Association for Women in Psychology.

Taylor, S. E., Peplau, L. A., & Sears, D. O. (2000). *Social psychology*, 10th Ed. Upper Saddle River, NJ: Prentice-Hall.

Peplau, L. A., DeBro, S. C., Veniegas, R. C., & Taylor, P. (Eds.) (1999). *Gender, culture and ethnicity*. Mountain View, CA: Mayfield Publishing.

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Taylor, S. E., Peplau, L. A., & Sears, D. O. (1994). *Social psychology*, 8th Ed. Englewood Cliffs, NJ: Prentice-Hall.

Rubin, Z., Peplau, L. A., & Salovey, P. (1993). *Psychology*, 1st Ed. Boston, MA: Houghton-Mifflin.

Sears, D. O., Peplau, L. A., & Taylor, S. E. (1991). *Social psychology*, 7th Ed. Englewood Cliffs, NJ: Prentice-Hall.

Peplau, L. A., Sears, D. O., Taylor, S. E., & Freedman, J. L. (Eds.) (1988). *Readings in social psychology: Classic and contemporary contributions*. Englewood Cliffs, NJ: Prentice-Hall.

Sears, D. O., Peplau, L. A., Freedman, J. L., & Taylor, S. E. (1988). *Social psychology*, 6th Ed. Englewood Cliffs, NJ: Prentice-Hall.

Sears, D. O., Freedman, J. L., & Peplau, L. A. (1985). *Social psychology*, 5th Ed. Englewood Cliffs, NJ: Prentice-Hall.

Peplau, L.A., & Goldston, S. E. (Eds.) (1984). *Preventing the harmful consequences of severe and persistent loneliness*. DHHS Publication No. (ADM) 84-1312. Washington, DC: U.S. Government Printing Office (Monograph).

Kelley, H. H., Berscheid, E., Christensen, A., Harvey, J., Huston, T., Levinger, G., McClintock, E., Peplau, L. A., & Peterson, D. (1983). *Close relationships*. New York: Freeman.

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Peplau, L. A., & Jones, R. (Issue Editors) (1982). Homosexual couples. *Journal of Homosexuality*, 8 (whole number 2).

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Peplau, L. A., & Hammen, C. L. (Eds.) (1977). Sexual behavior: Social psychological issues. *Journal of Social Issues*, 33, (whole number 2).

Articles and Book Chapters

Ghavami, N., & Peplau, L. A. (revise and resubmit). An intersectional analysis of gender and ethnic stereotypes: Testing three hypotheses. *Psychology of Women Quarterly*.

Lavner, J., Waterman, J., & Peplau, L. A. (under review). Parent adjustment over time in gay, lesbian, and heterosexual parent families adopting from foster care. *Journal of Orthopsychiatry*.

Lavner, J., Waterman, J., & Peplau, L. A. (accepted for publication). Can gay and lesbian parents promote healthy development in high-risk children adopted from foster care? *Journal of Orthopsychiatry*.

Fingerhut, A.W. & Peplau, L. A. (forthcoming). Same-sex romantic relationships. In C. J. Patterson & A. R. D'Augelli (Eds.), *Handbook of psychology and sexual orientation*. New York: Oxford University Press.

Preciado, M. A. & Peplau, L. A. (2011). Self-perception of same-sex sexuality among heterosexual women: Association with personal need for structure. *Self and Identity*, doi:10.1080/15298868.2010.51572.

Ghavami, N., Fingerhut, A. W., Peplau, L. A., Grant, S. K., & Wittig, M. A. (2011). Testing a model of minority identity achievement, identity affirmation and psychological well-being among ethnic minority and sexual minority individuals. *Cultural Diversity and Ethnic Minority Psychology*, 17, 79-88.

Fingerhut, A. W., Peplau, L. A., & Gable, S. L. (2010). Identity, minority stress and psychological well-being among gay men and lesbians. *Psychology and Sexuality*, 1(2), 101-114.

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Conley, T. D., & Peplau, L. A. (2009). Gender and perceptions of romantic partners' sexual risk. *Journal of Sexual Medicine*, 7, 794-802.

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Impett, E. A., & Peplau, L. A. (2002). Why some women consent to unwanted sex with a dating partner: Insights from attachment theory. *Psychology of Women Quarterly*, 26, 360-370.

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- Peplau, L. A., & Spalding, L. R. (2000). The close relationships of lesbians, gay men and bisexuals. In C. Hendrick & S. S. Hendrick (Eds.), *Close relationships: A sourcebook* (pp. 111-124). Thousand Oaks, CA: Sage Publications.
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- Peplau, L. A., Veniegas, R. C., Taylor, P. L., & DeBro, S. C. (1999). Sociocultural perspectives on the lives of women and men. In L. A. Peplau, S. C. DeBro, R. C. Veniegas, & P. Taylor (Eds.) *Gender, culture and ethnicity* (pp 23-37). Mountain View, CA: Mayfield Publishing.
- Peplau, L. A., Spalding, L. R., Conley, T. D., & Veniegas, R. C. (1999). The development of sexual orientation in women. *Annual Review of Sex Research*, Vol 10, 70-99.
- Vincent, P. C., Peplau, L. A., & Hill, C. T. (1998). A longitudinal application of the theory of reasoned action to women's career behavior. *Journal of Applied Social Psychology*, 28, 761-778.
- Hill, C. T., & Peplau, L. A. (1998). Premarital predictors of relationship outcomes: A 15-year followup of the Boston Couples Study. In T. N. Bradbury (Ed.), *The developmental course of marital dysfunction* (pp. 237-278). New York: Cambridge University Press.
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- Spalding, L. R., & Peplau, L. A. (1997). The unfaithful lover: Heterosexuals' stereotypes of bisexuals and their relationships. *Psychology of Women Quarterly*, 21, 611-625.
- Veniegas, R. C., & Peplau, L. A. (1997). Power and the quality of same-sex friendships. *Psychology of Women Quarterly*, 21(2), 279-297.

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Selected Recent Paper Presentations, Invited Addresses and Posters

Ghavami, N., Peplau, L. A., Sears, D. & Zawatsky, J. (January, 2012). *Diagnosticity of gender and ethnic stereotypes*. Society for Personality and Social Psychology, San Diego, CA.

Peplau, L. A. (August, 2010). *Marriage equality for same-sex couples: Perspectives from relationship research in the United States*. Invited Presidential Symposium presented at the annual meeting of the American Psychological Association, San Diego, CA.

Peplau, L. A. (August, 2010). *Same-sex couples: Research, law and policy*. Presented at the International Lesbian, Gay, Bisexual and Transgender Psychology Summer Institute, University of Michigan, Ann Arbor, MI.

Hill, C. T., & Peplau, L. A. (July, 2008). *Is love blind? Attractiveness ratings by self, partner, and others, and the outcome of dating relationships 25 years later*. Paper presented at the International Congress of Psychology, Berlin, Germany.

Fingerhut, A. D., deRoulhac, C., Natale, C., & Peplau, L. A. (2008, February). *Heterosexuals' attitudes toward gay men and lesbians: Predictors of positive and negative attitudes*. Poster presented at the annual meeting of the Society for Personality and Social Psychology, Albuquerque, NM.

Frederick, D.A., & Peplau, L.A. (2007, January). *The UCLA Body Matrices II: Computer-generated images of men and women varying in body fat and muscularity/breast size to assess body satisfaction and preferences*. Poster presented at the annual meeting of the Society for Personality and Social Psychology, Memphis, TN.

Mulrenan, T., Frederick, D.A., Sadeghi-Azar, L., Ha, J., Peplau, L.A., & Haselton, M.G. (2006, January). *The UCLA Body Matrices as measures of body image and body type preferences*. Poster presented at the annual meeting of the Society for Personality and Social Psychology Conference, Palm Springs, CA.

Laird, K., Mulrenan, T., Frederick, D.A., Grigorian, K., Peplau, L.A., & Haselton, M.G. (2006, January). *Sex differences in preferences for dating a taller romantic partner*. Poster presented at the annual meeting of the Society for Personality and Social Psychology Conference, Palm Springs, CA.

Sadeghi-Azar, L., Frederick, D.A., Mulrenan, T., Peplau, A., Haselton, M.G., & Fessler, D.M.T. (2006, January). *Representations of the ideal male and female bodies in popular media*. Poster presented at the annual meeting of the Society for Personality and Social Psychology Conference, Palm Springs, CA.

Fingerhut, A. W., & Peplau, L. A. (2006, January). *Symposium: Integrating social identity perspectives with research on the experiences of lesbians and gay men*. Symposium presented at the annual meeting of the Society for Social and Personality Psychology, Palm Springs, CA.

Frederick, D.A., Haselton, M., Peplau, L.A., Mansourian, A., & Allameh, S. (2005, January). *Sex differences in desires for sexual variety*. Poster presented at the annual meeting of the Society for Personality and Social Psychology Conference, New Orleans, LA.

Ghavami, N., Fingerhut, W., & Peplau, L. A. (2005, January). *A dual-identity approach to understanding stress experiences of lesbians and gay men*. Poster presented at the annual meeting of the Society for Social and Personality Psychology, New Orleans, LA.

Peplau, L.A., Frederick, D.A., Lever, J., Burklund, L., & Madrid, H. (2005, January). *Correlates of body image dissatisfaction among 52,171 online respondents*. Society for Personality and Social Psychology Conference, New Orleans, LA.

Sadeghi-Azar, L., Frederick, D.A., Allameh, S., Lever, J., & Peplau, L.A. (2005). *Attitudes toward cosmetic surgery and the body across the lifespan*. American Psychological Society Convention, Los Angeles, CA.

Peplau, L.A., Frederick, D.A., Lever, J., Kroskrity, E. (2005). *Body image satisfaction among lesbian, gay, and heterosexual adults*. American Psychological Society Convention, Los Angeles, CA.

Frederick, D.A., Lever, J., Peplau, L.A., Casey, J., & Berezovskaya, A. (2005). *Does size matter? Attitudes toward breast size and shape among heterosexual adults*. American Psychological Society Convention, Los Angeles, CA.

Fingerhut, A.W., Peplau, L.A., & Ghavami, N. (2005, February). *Gay and Lesbian Psychological Health: The Role of Identity*. Poster presented at the National Multicultural Conference and Summit, Los Angeles, CA.

Fingerhut, A. W., & Peplau, L. A. (2005, January). *Stereotypes of women in the workforce: The role of sexual orientation and parental status*. Poster presented at the annual meeting of the Society for Personality and Social Psychology, New Orleans, LA.

Peplau, L. A., Lever, J., Frederick, D., Burklund, L., & Madrid, H. (2005, January). *Correlates of body image dissatisfaction among 52,171 online respondents*. Poster presented at the annual meeting of the Society for Social and Personality Psychology, New Orleans, LA.

Peplau, L. A. (2004, November 12). *New directions in research on women's sexual orientation*. Invited colloquium, Institute for Social and Behavioral Research, Iowa State University, Ames, Iowa.

Peplau, L. A. (2004, September 29). *The development of sexual orientation in women: A social-psychological analysis*. Invited colloquium, Psychology and Women's Studies, University of Michigan, Ann Arbor, MI.

Peplau, L. A., Fingerhut, A., & Ghavami, N. (2004, July). *Individual differences in gay-related stress: A dual-identity perspective*.

Hill, C. T., & Peplau, L. A. (July, 2003). *Sources of self-esteem: A 25-year study*. Paper presented at the 29th Inter-American Congress of Psychology.

Peplau, L. A., & Impett, E. A. (2003, April 11). *Sexual compliance: Why partners make "sexual sacrifices."* Invited presentation, Society for the Scientific Study of Sexuality, Western Region Annual Conference, San Jose, CA.

Peplau, L. A. (April 11, 2003). *Gender differences in sex and relationships*. Invited address, Society for the Scientific Study of Sexuality, Western Region Annual Conference, San Jose, CA.

Hill, C. T., & Peplau, L. A. (March 28, 2003). *Romantic beliefs and marital outcomes: A 25-year study*. Paper presented at the Southeast Psychological Association, New Orleans, LA.

Peplau, L. A. (August, 2002). *Venus and Mars in the lab: New research on gender and sexuality*. Invited Master Lecture, annual meeting of the American Psychological Association, Chicago, IL.

Hill, C. T., & Peplau, L. A. (July, 2001). *Life satisfaction: A 25-year follow-up of the Boston Couples Study*. Presented at the VIIth European Congress of Psychology, London, England.

Peplau, L. A., & Garnets, L. D. (May, 2001). *A new paradigm for understanding women's sexual orientation*. Presented at the annual meeting of the Western Psychological Association, Maui, Hawaii.

Exhibit B

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
 Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
 Defendants,

and

COALITION FOR THE PROTECTION
 OF MARRIAGE,
 Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF M.V. LEE
 BADGETT, PH.D. IN SUPPORT OF
 PLAINTIFFS' MOTION FOR SUMMARY
 JUDGMENT**

1 I, M.V. Lee Badgett, Ph.D., hereby declare and state as follows:

2 1. I am a Professor of Economics at the University of Massachusetts Amherst, where
3 I have taught since 1997. I also serve as the University's Director of the Center for Public Policy
4 and Administration. I have been retained by counsel for Plaintiffs as an expert in connection with
5 the above-referenced litigation. I have actual knowledge of the matters stated in this Declaration
6 and could and would so testify if called as a witness.

7 2. I am currently the Research Director of the Williams Institute for Sexual
8 Orientation Law and Public Policy at the UCLA School of Law. From 2005 to 2007, I was a
9 visiting professor at UCLA School of Law. Prior to those positions, from 1990 to 1997 I was an
10 assistant professor of Public Affairs at the School of Public Affairs, University of Maryland,
11 College Park. I have conducted research at the Amsterdam School for Social Science Research,
12 University of Amsterdam, and conducted research and taught at the Women's Studies and
13 Lesbian and Gay Studies programs of Yale University. I received my A.B. in Economics from
14 the University of Chicago in 1982 and my Ph.D. in Economics from the University of California,
15 Berkeley, in 1990.

16 3. The primary focus of my research and teaching is in the fields of Economics,
17 including Microeconomics, Labor Economics, and Sexual Orientation and Economics; and
18 Sexual Orientation and Public Policy, including sexual orientation discrimination, family
19 structures and family policy, same-sex partner recognition in the US and Europe, domestic
20 partner health care and pension benefits, and the health insurance status of lesbians and gay men.

21 4. I am the author of two books and the co-editor of a third on sexual orientation
22 economics and public policy: *Money, Myths and Change: The Economic Lives of Lesbians and*
23 *Gay Men* (2001); *Sexual Orientation Discrimination: An International Perspective* (2007); and
24 *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*
25 (2009). I have also authored numerous published articles and book chapters, as set forth in my
26 *curriculum vitae*.

27 5. My background, experience, and list of publications from the last 10 years are
28 summarized in my *curriculum vitae*, which is attached as Exhibit A to this Declaration.

6. In the past four years, I have testified as an expert through declaration, trial, or deposition in *Bassett v. Snyder*, Case No. 2:12-cv-10038 (E.D. Mich.); *Perry v. Schwarzenegger*, Case No. 09-CV-2292 VRW (N.D. Cal.); *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, No. 10-CC00434 (Mo. Cir. Ct., Cole County) and *Diaz v. Brewer*, Case No. CV-09-2402-PHX-JWS (previously captioned *Collins v. Brewer*) (D. Ariz.).

7. In preparing this Declaration, I reviewed the Complaint in this case and the materials listed in the attached Bibliography (Exhibit B). I have also relied on my years of experience in this field, as set out in my *curriculum vitae*, and on the materials listed therein.

8. For my work in this matter, I am being compensated at the rate of \$150.00 per hour for testimony, plus reimbursement of expenses. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

II. SUMMARY OF EXPERT OPINIONS

9. I have been asked for my expert opinion concerning the economic impact of Nevada's marriage equality prohibition (which includes the amendment codified in article 1, section 21 of the Nevada Constitution and its statutory precursor codified in section 122.020 of the Nevada Revised Statutes, or collectively the "Amendment") on Nevada and its cities and counties and the economic impact of the Amendment on same-sex couples and their children. This Declaration also includes certain demographic information about same-sex couples and their children, which is based on my prior research and other scholarly research.

10. The Amendment imposes substantial costs on Nevada and its counties and cities. First, the state and local subdivisions lose significant tax and fee revenue that, but for the Amendment, would have accrued as a result of weddings of same-sex couples. Second, denial of marriage and a resulting decrease in the number of couples entering legally-recognized relationships imposes state costs for (1) additional spending on uncompensated care for uninsured people and (2) the loss of productivity generated by unequal treatment of same-sex couples in the workplace.

11. The Amendment imposes substantial economic harms on same-sex couples residing in Nevada and their children in at least two ways. First, there are many same-sex couples

1 who, due to its lesser status, have not and will not enter a registered domestic partnership in the
2 absence of the right to marry; for these couples the Amendment eliminates the economic
3 efficiencies and cost savings associated with entering a legally recognized relationship, as
4 compared to remaining single. Second, the inability to marry deprives same-sex couples and their
5 families of significant direct and indirect economic benefits that available alternatives such as
6 domestic partnership do not provide or incompletely provide, making such alternatives
7 economically inadequate or imperfect substitutes for marriage even for those same-sex couples
8 who decide to become domestic partners in the absence of the right to marry.

9 **III. BASIS AND REASONS FOR OPINIONS**

10 **A. Demographics of Same-Sex Couples and Their Families**

11 12. For purposes of the demographic information in this Declaration, I use the term
12 “same-sex couple” to mean two people of the same sex who live together and indicated on a
13 Census form or similarly reliable survey that they are either “unmarried partners” or spouses.
14 Because the U.S. Census Bureau has changed some of its data collection practices, there are three
15 different sources of information about same-sex couples used in this Declaration. The first source
16 is Census 2000. Although the Census is designed to count each person in the United States, in
17 2000 the bureau also administered a long-form survey to a sample of households. The data used
18 in this Declaration from Census 2000 is from the 5% Public Use Micro Sample that the Census
19 Bureau drew from the long-form census data (Romero, Rosky, Badgett, and Gates, 2007).¹ The
20 second source is the American Community Survey, which is a survey of about 2 million U.S.
21 households per year. The third source is the 2010 Census, which consisted of a short
22 questionnaire with minimal demographic data and no long form for any households. In its
23 analysis of the 2010 Census data, the Census Bureau made corrections to some of the questions

24 ¹ See Adam P. Romero, Clifford J. Rosky, M. V. Lee Badgett, and Gary J. Gates, “Census
25 Snapshot: Nevada,” Williams Institute, December 2007. That study is the source of findings
26 from Census 2000 reported in this section, and it adjusted the Census 2000 data by removing any
27 same-sex unmarried partner couples in which one or both partners had their marital status
28 allocated (i.e. reassigned by the Census Bureau from the original answer provided by the
respondent). That procedure was designed to remove couples that might have actually been
different-sex couples who were inadvertently counted as same-sex couples because one of the
individuals answered the sex question incorrectly. See MacCartney, Badgett, and Gates (2007)
for further details.

1 used to generate the count of same-sex unmarried partner couples, and in this Declaration I use
 2 the counts that are labeled by the Census Bureau as their “preferred estimates” of same-sex
 3 couples for the most up-to-date count of same-sex couples in Nevada (Lofquist et al., 2012).

4 13. The Census Bureau counted 7,140 same-sex couples living together in Nevada in
 5 2010 (U.S. Census Bureau, “Detailed Tables,” 2011, App Tab 6b). Same-sex couples comprised
 6 at least 0.7% of all couples living in Nevada (Lofquist, et al., 2012). Approximately 17% of these
 7 same-sex couples in Nevada are raising children under the age of 18 (U.S. Census Bureau,
 8 “Detailed Tables”).

9 14. Additional findings about same-sex couples are available from earlier research
 10 using Census 2000. According to calculations from Census 2000, people in same-sex couples are
 11 active contributors to Nevada’s economy, culture, and future: 77% are employed and 15% are
 12 veterans, compared with 62% of people in married different-sex couples who are employed and
 13 19% of whom are veterans. Just over 2.5% of adopted children in Nevada live with a lesbian or
 14 gay parent (Gates, Badgett, Chambers, and Macomber, 2007).

15 **B. The Amendment Imposes Costs on State and Local Governments**

16 15. The State of Nevada and various local counties and cities have been suffering and
 17 will continue to suffer increased costs as a direct result of the Amendment. Over the next three
 18 years, the State’s economy will lose \$23 to \$52 million in business revenue and \$1.8 to \$4.2
 19 million in tax revenue that would have accrued as a result of weddings by same-sex couples. The
 20 State’s economy will also suffer as Nevada remains a comparatively less attractive location for
 21 highly qualified workers and businesses.

22 **(i) Lost wedding-related business and tax revenue for resident couple** 23 **marriages**

24 16. To assess the amount of wedding-related business and tax revenue lost by the State
 25 of Nevada, I first estimated the number of Nevada resident same-sex couples who would marry in
 26 Nevada but cannot as a result of the Amendment. I used two different calculations to arrive at the
 27 number of couples, in order to provide both an upper-bound and a lower-bound estimate. I then
 28 multiplied the number of couples by an estimate of average spending per wedding.

17. First, for an upper-bound estimate, I use figures from Massachusetts, in which 51% of in-state same-sex couples married from 2004 to 2007.² Based on those figures, I predict that approximately half of Nevada's same-sex couples would marry in the first three years of having the option to do so. Half of the 7,140 same-sex couples in Nevada in the 2010 Census would be 3,570 couples. The upper-bound estimate assumes that all of the 3,570 couples will marry, even if they have already registered as domestic partners.³

18. Second, to arrive at a lower-bound estimate of the number of same-sex couples who would marry in the first three years of having the option to do so, I assume that none of Nevada's same-sex couples in domestic partnerships will opt to marry. I estimate that there are a total of 2,038 same-sex couples in domestic partnerships living in Nevada.⁴ I subtract 2,038 from 3,570 to get 1,532 as the lower-bound estimate.

19. It is likely that some of the same-sex couples in Nevada have married in one of the 6 states where they may currently do so (Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Vermont) or in the District of Columbia, or in California in 2008, when it briefly allowed same-sex couples to marry. In the data collected for Badgett & Herman (2011), 24 same-sex couples from Nevada had married in Massachusetts, Iowa, or Connecticut. There is no

² Numerator from Gary J. Gates, M. V. Lee Badgett, and Deborah Ho, "Marriage, Registration, and Dissolution by Same-sex Couples in the United States," Williams Institute, 2008, p. 5; denominator from U.S. Census Bureau, "Detailed Tables," 2011. Retrieved from <http://www.census.gov/hhes/samesex/files/ss-report-tables.xls> (last accessed Sept. 4, 2012).

³ As of October 1, 2009, Nevada allows both different-sex couples and same-sex couples to enter into domestic partnerships that have a package of state legal rights and obligations similar to marriage.

⁴ To calculate the number of Nevada's same-sex couples currently in domestic partnerships, in May 2012 I obtained from the Nevada Office of the Secretary of State a list of names and addresses of couples who have registered a domestic partnership in Nevada. There were 3,558 couples in domestic partnerships. Of those couples, 94%, or 3,354 couples, list addresses in Nevada ("resident partners" or "resident couples"). The state's listing did not include information on whether the couples were different-sex or same-sex couples, so we matched the first and middle names of each resident partner to data from the U.S. Census Bureau giving the probability that a name belonged to a man or to a woman. When the Census data did not predict the sex of the partner with a sufficient degree of likelihood, we used other sources to match the sex, including internet sources and other databases of names. In the end, we matched the sex of the partners for 3,273 resident couples, constituting 98% of the resident couples, and we could not identify the sex of 81 couples, constituting 2% of the resident couples. According to our sex identification, 1,989 of the resident couples (or 60.8%) were same-sex couples. If we apply the same 60.8% proportion of same-sex couples in the sex-identified couples to the 81 couples whose sex we could not identify, that would add 49 couples, for a total estimate of 2,038 same-sex couples in domestic partnerships living in Nevada.

1 current data regarding the number of same-sex couples in Nevada who traveled to California to
2 marry in 2008, when it was permissible to do so. However, because the range generated by
3 accounting for the domestic partnerships is large enough to take into account that smaller source
4 of uncertainty, I make no other adjustments to the estimates of new weddings for already-married
5 same-sex couples.

6 20. Based on wedding industry statistics, we conservatively predict that in-state
7 couples would spend 25% of the \$25,054 reportedly spent on the average wedding in Nevada,⁵ or
8 \$6,263 per wedding. This assumption is consistent with the experience in Massachusetts, in
9 which the average wedding spending by same-sex couples was approximately \$7,400 per
10 wedding (Goldberg, Steinberger, and Badgett, 2009). The range of new wedding spending, then,
11 would be \$9.6 million (for 1,532 weddings) to \$22.4 million (for 3,570 weddings).

12 21. In addition to spending by the couples who marry, those couples are likely to
13 invite guests who live in other states and would therefore be injecting new spending into the
14 state's economy. In Massachusetts, same-sex couples reported 16 out-of-state guests per
15 wedding. If same-sex couples in Nevada were to do the same and their guests spent only two
16 days in Nevada for the wedding, state tourism research suggest that those guests would spend
17 \$304 on food, lodging, and other expenses; including spending on gaming would increase total
18 spending per guest to \$750.⁶ Assuming that even half of the out-of-state guests participate in
19 gaming activities, and using the range for the number of weddings, suggests that spending by out-
20 of-state guests would generate \$12.9 to \$30.1 million.

21 22. The total lost spending by the Nevada couples and out-of-state guests would thus
22 be \$23 to \$52 million over three years. That lost spending would generate \$1.8 to \$4.2 million in
23 state and local sales tax revenue, given the Tax Foundation's calculation of an average sales tax

24 ⁵ The Wedding Report. (2012). Wedding Industry Report: Nevada (State). Retrieved from
<http://www.theweddingreport.com/wmdb/index.cfm?action=db.viewdetail&step=1>.

25 ⁶ InfoSearch International. (2008). 2007 Reno-Tahoe Visitor Profile Study. Retrieved from
<http://www.visitrenotahoe.com/docs/aboutus/2007RenoTahoeVisitorProfileStudy.pdf>;
26 HOTELS.COM. (2010). The Hotel Price Index: Overview of Hotel Prices 2009. Retrieved from
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27 Tourism, Research Department. (2011). Nevada Travel Impacts: Calendar Year 2010, 2009,
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28 from [http://travelnevada.com/uploads/nevada-commission-on-tourism/visitors-
statistics/CY10,09,08,07,06%20NV%20Travel%20Impacts%20FAQ.pdf](http://travelnevada.com/uploads/nevada-commission-on-tourism/visitors-statistics/CY10,09,08,07,06%20NV%20Travel%20Impacts%20FAQ.pdf).

rate in Nevada of 7.93% (Tax Foundation, 2011).⁷

23. After the pent-up demand for marriage is satisfied over the first few years, same-sex couples in Nevada and elsewhere would continue to generate wedding-related spending, tax, and fee revenues for businesses and state and local governments, although at a smaller level.

24. It is reasonable to expect an added boost to Nevada's economy from out-of-state couples who travel from other states to marry in Nevada. For purposes of making a conservative estimate, however, I leave out that amount. It has become increasingly difficult to predict the number of same-sex couples likely to travel to Nevada to marry, because (1) the states already allowing same-sex couples to marry will continue to absorb the pent-up demand for marriage until Nevada allows same-sex couples to marry and (2) even when Nevada allows same-sex couples to marry, the state would be competing with other states for the remaining unmarried same-sex couples.

25. Yet the economic boost due to out-of-state couples marrying in Nevada could be substantial. Since only six states and the District of Columbia allow same-sex couples to marry as of the date of this Declaration, same-sex couples who wish to marry in the other states must travel to do so. State marriage license statistics in Iowa and Connecticut show that about 60% of licenses issued to same-sex couples have been to out-of-state same-sex couples (Badgett and Herman, 2011, p. 10). Same-sex couples from nearby states form the largest groups of out-of-state marriage licenses issued in those states, and none of the states contiguous to Nevada allow same-sex couples to marry. Also, Nevada has a longstanding wedding tourism sector. The fact that Nevada's marriage rates (dividing the number of marriages in Nevada by the state's population) are many times higher than the national average (Centers for Disease Control, Marriage rates by State: 1990, 1995, and 1999-2010; CDC, National Marriage and Divorce Trends) suggests that many out-of-state couples come to Nevada to marry.

(ii) General productivity loss

26. As discussed further below, the Amendment is likely to result in additional workplace costs to individual productivity as a result of being denied the same rights as other

⁷ Tax Foundation. (2011). State and Local General Sales Tax Rates. Retrieved from <http://www.taxfoundation.org/taxdata/show/26269.html>.

employees who are married or could marry (see paragraphs 61-63 *infra*, describing costs of workplace discrimination for same-sex couples). These individual productivity losses also inflict harms upon the State. Institutionalized conditions of inequality, such as state denial of the right to marry and private denial of employment benefits associated with marriage, will likely reduce commitment to working in Nevada or to working for companies that have differential treatment of married and unmarried couples. These productivity losses will reduce business profits and individual incomes, leading to lower income and business tax revenue.

(iii) Higher costs for health care of uninsured same-sex partners

27. Because many employers do not offer health care benefits to non-registered domestic partners, and because some employers likely do not offer health care benefits even to registered domestic partners, the number of uninsured Nevadans is higher than it would be if same-sex couples could marry. This situation results in increased state expenditures on uncompensated care (Hadley, et al., 2008). Uninsured workers increase the financial burden on State and local government by requiring increased expenditures on various programs, including Nevada's Medicaid program and other state- and locally-funded programs to reimburse providers for uncompensated care. They also increase the financial burden on local governments that provide health care through county hospitals that are not fully reimbursed for the services they provide to some uninsured patients.

(iv) Creative class loss

28. As a result of the Amendment, Nevada is likely to find it more difficult to attract and retain some highly qualified members of the labor force, particularly those in the "creative class" occupations that may be central to further economic growth in high technology industries (Florida and Gates, 2001). By refusing to marry same-sex couples, Nevada is at a disadvantage in attracting highly skilled workers. In particular, heterosexual and non-heterosexual members of the "creative class," or the highly-educated, relatively young workers in creative occupations such as IT workers, engineers, scientists, teachers, artists/entertainers, banking/finance workers, managers, and medical professionals, might be deterred from moving to Nevada.

29. Two sources of data suggest that marriage equality enhanced Massachusetts'

1 ability to attract and retain workers in the creative class. First, a study of Census data found that
 2 migration patterns shifted in Massachusetts before and after same-sex couples could marry
 3 (Gates, 2009). In the three years before same-sex couples could marry, Massachusetts lost 603
 4 people in same-sex couples. In the three years after same-sex couples could marry, the state saw
 5 a net gain of 119 people in same-sex couples. Net migration to Massachusetts by people in same-
 6 sex couples who are in creative-class occupations accounted for the migration shift between the
 7 two periods. The timing suggests that the right to marry attracted same-sex couples among the
 8 creative class.

9 30. Second, a 2009 survey of 559 individual members of same-sex married couples
 10 living in Massachusetts in May 2009 found that 8% of those couples had moved to the state since
 11 the right to marriage equality was affirmed there (Gates, 2009). More than half (51%) of those
 12 couples who had recently moved to Massachusetts reported that their decision to move to
 13 Massachusetts was influenced by marriage equality or the state's lesbian, gay, bisexual, and
 14 transgender (LGBT) rights climate.

15 31. These findings suggest that, as other states allow same-sex couples to marry,
 16 Nevada will find itself in an increasingly disadvantaged situation in competing for the creative-
 17 class and other highly skilled members of the nation's workforce.

18 (v) Net magnitude of cost

19 32. The economic harm to the State and its economy discussed above are substantial.
 20 First, the State will lose approximately \$23 to \$52 million in wedding-related business spending
 21 over three years, due to the inability of same-sex couples to marry. Second, the State and its
 22 subdivisions will lose approximately \$1.8 to \$4.2 million in lost tax revenue over three years.
 23 Third, the State may suffer further significant losses due to general productivity loss, higher costs
 24 for health care of uninsured partners, and creative class loss.

25 C. Nevada's Limits on the Right To Marry Impose Substantial Costs on a 26 Significant Number of Same-Sex Couples and Their Families

27 33. The Amendment deprives same-sex couples and their children of significant
 28 economic benefits associated with marriage. Some of these benefits, including access to some

1 employer-provided health insurance coverage and avoidance of transaction costs associated with
 2 domestic partnerships, are unique to marriage, so that entering into domestic partnerships does
 3 not provide an equal economic substitute. Other benefits are technically available through
 4 domestic partnership, but other considerations deter same-sex couples from becoming domestic
 5 partners; therefore, those benefits are not realized by many same-sex couples who would avail
 6 themselves of marriage.

7 34. In this section C, I address the costs imposed on two groups of same-sex couples:
 8 (1) same-sex couples who wish to marry or have their valid marriage from another jurisdiction
 9 recognized as a marriage but cannot, and who do not register as domestic partners with the State
 10 of Nevada (“non-registered domestic partners”) and (2) same-sex couples who have legally
 11 registered as domestic partners with the State of Nevada (“registered domestic partners”).

12 35. In subsection (i) below, I show that many same-sex couples strongly prefer
 13 marriage to an alternative legal status because they view marriage as a superior status.

14 36. Subsection (ii) outlines the costs imposed on non-registered domestic partners in
 15 Nevada when they are not allowed to marry: (a) the loss of valuable employment-related
 16 benefits, such as health insurance coverage; (b) increased transaction costs; (c) costs of economic
 17 inefficiency; and (d) costs of workplace discrimination.

18 37. Subsection (iii) outlines the costs imposed on registered domestic partners in
 19 Nevada when they are not allowed to marry: (a) reduced access to employment-related benefits;
 20 and (b) increased transaction costs.

21 **(i) Domestic partnership provides only an incomplete and imperfect set of**
 22 **economic benefits compared to marriage**

23 38. Domestic partnership provides only an incomplete and imperfect set of economic
 24 benefits compared to marriage. Although same-sex couples in Nevada currently have the ability
 25 to register as domestic partners and gain many state-provided legal rights and benefits that are
 26 also given to legally married couples, empirical research demonstrates that because same-sex
 27 couples do not perceive alternative legal statuses as an adequate substitute for the right to marry
 28 in a variety of respects (non-economic as well as economic), many same-sex couples in Nevada

1 would likely marry but are unlikely to register for a domestic partnership when marriage is
2 unavailable. Those non-registered domestic partners remain vulnerable to the economic harms of
3 being denied the right to marry. As a result, the economic costs of being denied the right to marry
4 are not fully mitigated by the existence of domestic partnerships.

5 39. Marriage and domestic partnership are not equivalent, either in terms of
6 substantive rights or how they are viewed and understood. As a result, many same-sex couples
7 residing in Nevada who would marry, if permitted, will not register as domestic partners. The
8 distinction between marriage and domestic partnership means that, as a practical matter, the
9 Amendment will increase the economic harm to non-registered domestic partners and the public
10 costs to the State and local counties and cities. It is my opinion that these added costs could
11 amount to millions of dollars each year in private and public costs.

12 40. Evidence demonstrates that couples view alternative statuses, such as domestic
13 partnership, civil unions, or registered partnerships, as less desirable than marriage. Demographic
14 and qualitative data indicate two findings that support this point. First, when same-sex couples do
15 not have the option of marriage, some will opt for domestic partnership, but many others will
16 remain legally single instead. Second, when same-sex couples have a choice between marriage
17 and domestic partnership, more couples will choose to marry than to register as domestic
18 partners.

19 41. Many same-sex couples remain legally single when denied the right to marry but
20 offered an alternative status. Demographic data show that same-sex couples are much less likely
21 to enter an alternative status than to enter marriage in the first year that the status is offered
22 (Badgett and Herman, 2011). In states that allowed same-sex couples to marry (Iowa,
23 Massachusetts, and Vermont), 30% of same-sex couples did so in the first year. In states that
24 allowed couples to enter civil unions or broad domestic partnerships with rights and
25 responsibilities comparable to marriage (Connecticut, New Hampshire, New Jersey, Nevada,
26 Oregon, and Vermont), only 18% of same-sex couples entered these legal statuses in the first
27 year.

28 42. This large gap in the take-up of alternative statuses and the marriage rate suggests

1 that in the absence of the right to marry, a significant number of same-sex couples remain single,
2 even though entering into domestic partnerships or civil unions might provide some economic
3 benefits. In other words, statutory efforts to have alternative statuses mirror or match some of the
4 benefits of marriage have not resulted in alternative statuses that same-sex couples view as
5 comparable to marriage.

6 43. The lesser value of domestic partnerships is corroborated by the fact that different-
7 sex couples mostly reject alternative statuses. In California and New Jersey, older different-sex
8 couples are permitted to register as domestic partners as well as to marry. At least one partner
9 must be 62 or older for a different-sex couple to register in California. Only 5 to 6% of registered
10 domestic partners in California are different-sex partners (Cochran, 2005). Census 2000 data for
11 California suggests that this figure accounts for only about 6% of unmarried, eligible different-
12 sex couples in that age group. In sharp contrast, 98% of different-sex couples eligible for
13 domestic partnership registration are legally married. In New Jersey, both members of the
14 different-sex couple must be over 62 to be eligible for domestic partnership. Only 90 different-
15 sex couples registered as domestic partners from July 2004 to May 2006 (Badgett, Sears, and Ho,
16 2006). Comparing that figure to the estimated 3,400 age-eligible different-sex unmarried couples
17 in New Jersey gives a very low take-up rate of 2.7%. Elsewhere in the United States, another
18 study found that only about 10% of partners registering in domestic partner registries in college
19 towns were different-sex couples, which also implies that different-sex couples have a low level
20 of interest in domestic partnerships (Willetts, 2003).

21 44. In Nevada, unmarried different-sex couples, regardless of age, are also allowed to
22 enter domestic partnerships, but relatively few choose to do so. Using calculations discussed in
23 Footnote 4, in the first three years of domestic partnership availability, approximately 1,284
24 domestic partnerships registered in Nevada were for different-sex couples who lived in the state,
25 along with approximately 85 other different-sex couples from other states. In sharp contrast,
26 108,150 different-sex couples married in Nevada in 2009 alone, the most recent year with
27 available data (National Vital Statistics System, 2010). In other words, although different-sex
28 couples had both options for legal recognition of their relationship since 2009, a tiny fraction

1 chose domestic partnership.

2 45. This evidence demonstrates that one outcome of same-sex couples' exclusion from
3 marriage is that many couples who would otherwise marry will not seek to register as domestic
4 partners. Allowing these non-registered domestic partners to marry would, therefore, increase the
5 number of couples that are legally recognized by the State, which in turn leads to an improvement
6 in the economic situation of those couples, the State, and the larger economy, as developed in
7 subsequent sections of this Declaration.

8 **(ii) Nevada's marriage restrictions impose substantial costs on same-sex**
9 **couples**

10 46. The total cost to the significant number of non-registered domestic partners is
11 substantial and takes a variety of forms, including:

12 **(a) Loss of employer-provided benefits**

13 47. Many non-registered domestic partners lack health insurance as a result of the
14 Amendment. Recent studies show that people with same-sex unmarried partners are much more
15 likely to be uninsured than are married people (Ash & Badgett, 2006; Heck et al; Ponce et al). In
16 the United States, the most common source of insurance is through employment (DeNavas-Walt,
17 et al., 2009, Fig 7). Because the price of insurance on the open market for individual coverage is
18 so high, many persons without employment-based insurance are unable to purchase it (see
19 Badgett, 2010). Moreover, on the individual market, insurance that is provided often excludes
20 pre-existing conditions. One common method of obtaining insurance at group rates is as a spouse
21 or domestic partner of an employee who has insurance coverage through employment. However,
22 the Amendment makes it less likely that same-sex couples can obtain insurance coverage since
23 some employers might condition receipt of coverage on entering the lesser status of domestic
24 partnership, and other employers might only offer health care coverage to spouses of employees.

25 **(b) Increased transaction costs**

26 48. Because of the Amendment, non-registered domestic partners may face large
27 transaction costs to create legal protections through wills, durable powers of attorney, health care
28 proxies, second parent adoptions, cohabitation agreements, and other legal documents. Same-sex

1 couples must sometimes spend thousands of dollars in legal fees to create such documents
2 (Bernard and Lieber, 2009). If couples were allowed to marry, many of these protections would
3 be automatically conferred with marriage.

4 **(c) Reduced economic efficiency of the family**

5 49. Economists and other scholars have suggested several ways that marriage
6 promotes interdependence and enhances economic efficiency for couples and, therefore, for
7 society as a whole. Because they are not allowed to marry under Nevada law, same-sex couples,
8 particularly non-registered domestic partners, are deprived of this enhanced economic efficiency
9 and security.

10 50. In general, marriage provides a legal framework for living an interdependent
11 economic life. Through marriage, couples can buy property together and other household goods
12 knowing that each member of the couple has ownership rights. And if the worst should happen,
13 that is, if one spouse dies or the relationship dissolves, then the ownership rights would be clear.
14 Thus the contractual nature of marriage facilitates a more efficient use of time and money
15 resources for families than is available to unmarried couples. More specifically, marriage can
16 enhance a couple's economic efficiencies in the following ways:

17 51. *Promoting Specialization Of Labor:* Nobel Prize-winning economist Gary Becker
18 has argued that the marriage contract allows for increasing household efficiency (Becker, 1991).
19 Partners pool time and money, and then divide up their labor in ways that increase the family's
20 productivity in producing goods and services for family members. Without the presumed long-
21 term nature of the relationship that marriage implies, as well as the division of marital property
22 and the possibility of alimony if a marriage ends, specialization by either party would not
23 necessarily be efficient for individuals in the long-term. For instance, marriage gives couples the
24 economic security to make decisions about education and labor force participation knowing that
25 one spouse can provide the primary economic support if the other can contribute less cash income
26 to the family. If the relationship ends, a spouse who has sacrificed some earning potential will be
27 eligible for alimony and a share of community property to compensate him or her for those
28 financial losses.

1 52. *Reducing Transaction Costs:* Marriage also promotes economic efficiency
2 through reducing transaction costs for couples, removing the need to renegotiate the terms of the
3 legal relationship as couples experience changed circumstances (Pollak, 1985).

4 53. *Providing Social Insurance:* Marriage also facilitates wealth and income pooling
5 across individuals and within families, which provides insurance against bad times, such as a
6 disability or death or the loss of a job (Pollak, 1985).

7 54. *Taking Advantage of Economies of Scale:* By encouraging larger household sizes,
8 marriage helps families take advantage of economies of scale. In other words, doubling the
9 inputs of time and other resources in some tasks results in more than double the output of family-
10 related goods and services (Nelson, 1988).

11 55. *Signaling Commitment:* In addition, the willingness to marry is an important
12 signal of commitment to a relationship (Eskridge, 1996). Through the decision to marry, each
13 partner signals greater effort to maintain the relationship, a greater likelihood that the relationship
14 will endure, and an agreement to make a fair settlement if, despite the good intentions of the
15 parties, the relationship should end. The commitment to a long-term relationship and the rules for
16 distribution of assets and income should the relationship end underlie the specialization,
17 transaction costs, and social insurance functions of marriage.

18 56. *Promoting The Provision Of Caring Labor:* The long-term nature of the marital
19 commitment promotes reciprocity and altruism, as partners take care of one another and any
20 children they might be raising together. The unpaid work done in families is essential for the
21 survival of healthy human beings (Folbre, 1995).

22 57. According to these theories, the legal institution of marriage promotes efficiency at
23 the family level and therefore at the social level. Both individual couples and societies have an
24 incentive to seek out and utilize this relatively efficient institution.

25 58. To the extent that non-registered domestic partners and registered domestic
26 partners in Nevada are in positions that suggest a high level of interdependence, those couples
27 remain insecure relative to married couples because they cannot receive the full extent of public
28 and private support that accompanies marriage.

59. The interdependence of members of non-registered domestic partners in Nevada is also shown by the disparities between members' individual incomes. In the average same-sex couple in Census 2000, the difference in total individual incomes between the two partners was \$24,249, which is not statistically significantly different from a difference of \$27,873 for married couples. Some of the factors that result in these disparities reflect decisions that couples are likely to make together: hours worked, degree of labor force participation, time in child-rearing, etc. However, same-sex couples are making these decisions without the protections, such as community property, provided for by marriage.

60. Couples also care for each other when one partner is aging, sick or disabled. In 5.6% of same-sex couples, one or both partners are 65 or older. In 30.4% of same-sex couples (and 32.6% of married couples), at least one member of the couple has a disability. In these couples, members may be taking on responsibility to provide for or care for a senior or disabled member. However, when they do so they are not afforded the support that marriage would provide under Nevada law.

(d) Costs of perceived workplace discrimination

61. Furthermore, individuals in same-sex couples are likely to bear additional workplace costs as a result of the Amendment, most notably from the potential loss of productivity as a result of being denied the same rights as other employees who are or could marry. The differential treatment of employees with unmarried same-sex partners when compared with married heterosexual employees is likely to be viewed as workplace discrimination by lesbian, gay, and bisexual (LGB) employees (Badgett, 2001; Raeburn, 2004). That perception and reality of discrimination may have harmful effects on worker job satisfaction and lead to absenteeism and health problems (Waldo, 1999).

62. Meanwhile, the equal treatment of LGB people in the workplace tends to increase the disclosure of sexual orientation by people in same-sex couples and single LGB people (Badgett, 2001; Badgett, 2009; Ramos, Goldberg, and Badgett, 2009; Driscoll, Kelley, and Fassinger, 1996; Griffith & Hebl, 2002; Ragins & Cornwell, 2008; Rostosky & Riggle, 2002). More openness of LGB employees leads to positive workplace outcomes for those individuals

1 and their employers, such as greater job satisfaction, increased work commitment, and lower
2 turnover (Day & Schoenrade, 1997; Griffith & Hebl, 2002; Ellis & Riggle, 1995).

3 63. These studies suggest that the beneficial effects of laws and policies promoting
4 equality are likely to improve overall workplace productivity of individuals, which in turn would
5 likely have a positive effect on individual promotion opportunities and individual wage growth.
6 However, institutionalized conditions of inequality, such as state denial of the right to marry and
7 private denial of employment benefits associated with marriage, will likely have the opposite
8 effect by reducing commitment to working in Nevada or to working for companies that have
9 differential treatment of married and unmarried couples.

10 **(iii) Domestic partnership is an imperfect economic substitute even for**
11 **those same-sex couples who are willing to utilize it**

12 64. In addition to causing economic harm to same-sex couples who have not registered
13 and will not register for domestic partnership in the absence of the right to marry, the Amendment
14 causes economic harm even to couples who do register as domestic partners. These sources of
15 economic harm to couples include lost employer-provided health insurance coverage and
16 incurring private attorney costs.

17 **(a) Employment benefits**

18 65. In many cases, employer policies fail to provide health care benefits to the
19 domestic partners of employees. While providing domestic partner benefits is an increasing and
20 mainstream trend, recent national data show that most employees do not have access to coverage
21 for a domestic partner. The 2011 National Compensation Survey, conducted by the U.S. Bureau
22 of Labor Statistics, found that 33% of all employees of state and local governments have access to
23 health care benefits for a same-sex partner. In the private sector, only 29% of employees can
24 designate a same-sex partner.

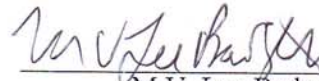
25 66. As noted earlier, if same-sex couples cannot get health care coverage through an
26 employer, the employee's partner may have to turn to the individual health insurance market for
27 insurance, in which insurance plans are generally more difficult to qualify for, more expensive
28 than employer coverage, and offer inferior coverage (Badgett, 2010).

(b) Transaction costs

67. Couples who are registered domestic partners are also likely to incur additional transaction costs because they cannot marry. For example, couples who have married in another state must incur the time and expense of forming a domestic partnership in Nevada. Couples who want to change the name of one partner after entering a domestic partnership must get a court-ordered name change, which involves time and expense to obtain.

68. In sum, the Amendment harms the State of Nevada, its cities, its counties, its businesses, and same-sex couples and their families.

Signed under penalty of perjury under the laws of the United States this 7th day of September, 2012.



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Exhibit A

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PREVIOUS POSITIONS:

Visiting Professor, UCLA School of Law (2005-2007; summer 2008)
 Visiting researcher, Amsterdam School for Social Science Research, Univ. of Amsterdam (2003-4)
 Co-founder & Research Director, Inst. for Gay and Lesbian Strategic Studies (1994-2006, merged with Williams Inst. 2006)
 Assistant & Associate Professor, Dept. of Economics, University of Massachusetts-Amherst (1997-2008)
 Assistant Professor, School of Public Affairs, University of Maryland, College Park (1990-97)
 Visiting Assistant Professor, Women's Studies and Lesbian and Gay Studies, Yale University (1995-96)
 Research Analyst, National Commission for Employment Policy, U.S. Dept. of Labor (Summer, 1994)

COURSES TAUGHT:

<i>Economics:</i>	Microeconomics (UMass)	Microeconomics and Public Policy (UMass)
	Political Economy of Sexuality (UMass)	Labor Economics--undergraduate and Ph.D. level (UMass)
	Feminist Economics (co-taught as visiting professor at University of Minnesota)	
<i>Policy:</i>	Capstone course (UMass), Second Year Policy Project Course (UMCP)	
	Sexuality and Public Policy (Yale, UMCP)	
	Affirmative Action and Civil Rights Policy (UMCP and Yale)	
	Redefining the Family: Challenges from Lesbians and Gay Men (Yale)	
	Public Policy Analysis (UMass, UMCP)	
	Labor Market Policies and Regional Economic Development (UMCP)	

CURRENT RESEARCH TOPICS:

Sexual orientation discrimination in labor markets
 Family structures and family policy, esp. same-sex partner recognition in US and Europe
 Domestic partner health care and pension benefits

BOOKS:

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“Methodological Details for Census Snapshot,” August 2007, Danielle MacCartney, M. V. Lee Badgett, and Gary Gates.

“Adoption and Foster Care by Gay and Lesbian Parents in the United States,” Williams Institute and Urban Institute, March 2007, Gary Gates, Lee Badgett, Jennifer Macomber, and Kate Chambers.

“The Financial Impact of Domestic Partner Benefits in New Hampshire,” Williams Institute, December 2006.

“Economic Benefits from Same-Sex Weddings in New Jersey,” Williams Institute, December 2006.

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“The Effect of Marriage Equality and Domestic Partnership on Business and the Economy,” M.V. Lee Badgett and Gary J. Gates, Williams Institute, October 2006.

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"Beyond Biased Samples: Challenging the Myths on the Economic Status of Lesbians and Gay Men," pamphlet published by National Organization of Gay and Lesbian Scientists and Technical Professionals and the Institute for Gay and Lesbian Strategic Studies, 1994. (Early version of book chapter of same title.)

Co-author and co-editor, *Labor and the Economy*, published by the Center for Labor Research and Education, Institute of Industrial Relations, UC Berkeley, 1989.

"Looking for the Union Label: Graduate Students at U.C.," *California Public Employee Relations*, No. 85, June 1990.

"Rusted Dreams: Documenting an Economic Tragedy," *Labor Center Reporter*, No. 219, October 1987.

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EXPERT WITNESS EXPERIENCE (LITIGATION):

Written Testimony, *Bassett v. Snyder*, No. 2:12-cv-100382012 (E.D. Mich.), 2012 (challenge to Michigan's Domestic Partner Benefit Restriction Act).

Written Testimony, *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, No. 10-CC00434 (Mo. Cir. Ct., Cole Cnty.), 2011 (challenge to denial of death benefit to state trooper's surviving same-sex partner).

Written Testimony, *Collins v. Brewer* (later *Diaz v. Brewer*), No. 2:09-cv-02402 (D. Ariz.), 2010 (challenge to Arizona's cancellation of domestic partner benefits).

Deposition and Trial Testimony, *Perry v. Schwarzenegger* (later *Perry v. Brown*), No. 3:09-cv-02292 (N.D. Cal.), 2010 (challenge to California's Proposition 8).

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Written Testimony, *In re California Marriage Cases*, Judicial Council Coordination Proceeding No. 4365 (Calif. Super. Ct., San Francisco Cnty.), 2004 (challenge to exclusion of same-sex couples from marriage in California).

Written Testimony, *Deane & Polyak v. Conaway*, (Md. Cir. Ct., Baltimore Cnty.), 2005 (challenge to exclusion of same-sex couples from marriage in Maryland)

LEGISLATIVE WITNESS EXPERIENCE (Selected):

U.S. Senate Committee on Health, Education, Labor, and Pensions, S.811, The Employment Non-Discrimination Act of 2011, June 12, 2012.

Written Testimony, S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families, M. V. Lee Badgett, Ilan H. Meyer, Gary J. Gates, Nan D. Hunter, Jennifer C. Pizer, Brad Sears. July 2011.

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SIGNIFICANT MEDIA APPEARANCES:

Featured guest, *Encounter*, Radio National, ABC (Australian Broadcasting Corp), October 9, 2011.

Featured guest, *Faith Middleton Show*, <http://www.yourpublicmedia.org/content/wnpr/faith-middleton-show-when-gay-people-get-married>, Jan. 13, 2011.

Featured guest, “Same-Sex Marriage, Five Years On,” *On Point*, National Public Radio, May 27, 2009.
<http://www.onpointradio.org/2009/05/same-sex-marriage-five-years-on>

Featured guest, “Gay Commerce,” *Talk of the Nation*, National Public Radio, 1997.

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Interviewed on *All Things Considered*, “Gay Marriage in Massachusetts, One Year Later,” May 2005.
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Featured guest, *CNN American Morning*: “The Future of Marriage,” June 2006.
http://www.law.ucla.edu/williamsinstitute/images/CNN_AmericanMorning_FutureOfMarriage_LeeBadgett_062006.mov

WORK IN PROGRESS AND PAPERS UNDER REVIEW:

“Uncovering Gay, Lesbian, and Bisexual Poverty in the United States,” Randy Albelda, M. V. Lee Badgett, and Alyssa Schneebaum.

“Are Gay People Happy?” M. V. Lee Badgett and Alyssa Schneebaum.

“Minority stress and its association with cohabitation and Domestic Partnership registration in California,” Natalya Maisel, Gary J. Gates, and M. V. Lee Badgett, August 2007, under review.

“Gay and Lesbian Families: A Research Agenda,” Gary J. Gates and M. V. Lee Badgett, August 2006.

“Breadwinner Dad, Homemaker Mom: An Interdisciplinary Analysis of Changing Gender Norms in the United States, 1977-1998.” Lee Badgett, Pamela Davidson, Nancy Folbre, and Jeannette Lim, in progress, 2000.

SELECTED PRESENTATIONS OF PAPERS:

“Waves of Change: Is Latin America Really Following Europe in Same-Sex Couples?,” at 8th Annual Update, Williams Institute, “Global Arc of Justice: Sexual Orientation Law Around the World, March 14, 2009.

“Gay poverty,” Presented at 2009 Allied Social Science Association Meeting; 2009 Association for Public Policy Analysis and Management Research Conference; 2008 IAFFE Research Conference, Torino, Italy, June 2008; Williams Institute Annual Update, February 2008.

“Registered Domestic Partnerships Among Gay Men and Lesbians: The Role of Economic Factors,” (with Gary J. Gates and Natalya Maisel), presented at 2007 APPAM Meeting, Washington, DC; 2008 Allied Social Science Associations Annual meeting, New Orleans.

“Predicting Same-Sex Marriage in Europe & the US,” Presented at 2008 IAFFE Research Conference, Torino, Italy, June 2008.

“Social Lab Outcomes: Same-Sex Couples and Legal Recognition,” Temple University Law School, “States as Social Laboratories,” Oct. 20, 2007.

“The Double-Edged Sword in Gay Economic Life: Marriage and the Market.” Washington & Lee School of Law, Feb 2008.

“Does diversity make a difference? A view from the marketplace.” *Keynote Address*, 7th annual international conference on diversity in organizations, communities, and nations, Amsterdam, The Netherlands. 7/1/2007

“Why Marry?” Presented at 2006 IAFFE Research Conference, Sydney, Australia, July 2006; New School for Social Research, October 2006; Sociology Family Working Group, UCLA, 2006.

"Not-So-Gay Divorce: A Reason for Marriage," Gay Divorce Conference, King's College London, May 20, 2006.

"An exploration of foster care and adoption among lesbians and gay men," joint work with Jennifer Macomber, Kate Chambers, Gary Gates. Family Pride conference, Philadelphia, PA, May 2006.

"Thinking for Change/Changing our Thinking: Effective Research in GLBT Policy Debates", Presidential Invited Address, Division 44, American Psychological Association Convention, August 2005.

"Survey Data on Sexual Orientation: Building a Professional Consensus," presented at 2005 Joint Statistical Association Meetings, August 2005. Also presented to Canadian Population Society, June 2005; Williams Project Annual Update, UCLA Law School, Feb. 2005.

"Alternative Legal Statuses for Same-sex couples and other families: Can Separate Be Equal Enough?" Presented at International Association for Feminist Economics, Washington DC, July 2005; APPAM, Washington, DC, November 2005; UCLA Law School 2006.

"Looking into the European Crystal Ball: What Can the U.S. Learn About Same-Sex Marriage?" Tulsa Gay and Lesbian History Project, October 2004; University of Connecticut, October 2004; Yale University, February 2005; American Psychological Association, August 2005; National Council of Family Relations (invited special session), 2005.

"Predicting Partnership Rights: Applying the European Experience to the United States," Yale University Law School, March 5, 2005.

"Asking the Right Questions: Making the Case for Sexual Orientation Data," Joint Statistical Meetings of the American Statistical Association, Toronto, August 2004; Williams Project Annual Update, UCLA, February 2005; Canadian Population Society, June 3, 2005.

"A New Gender Gap: Sex Differences in Registered Partnerships in Europe," International Association for Feminist Economics research conference, London, August 2004.

"Variations on an Equitable Theme: International Same-sex Partner Recognition Laws," Research Conference of International Association for Feminist Economics, July 2002. Stockholm University, September 2003; University of Linz, Austria, November 2003; University of Amsterdam, June 2004; American Political Science Association, Chicago, Sept. 2004.

"The Myth of Gay Affluence and Other Tale Tales: The Political Economy of Sexual Orientation," University of California, San Diego, June 2002.

"A Family Resemblance: Legal Recognition of Same-Sex Partners in the United States," Research Conference of International Association for Feminist Economics, Oslo, Norway, June 2001; University of Southern Maine, October 2001; University of Massachusetts, Feb. 2002; Washington University Political Science Department, March 2002; University of Wisconsin, LaCrosse, April 2002.

"A Movement and a Market: GLBT Economic Strategies for Social Change," University of Wisconsin, LaCrosse, April 2002; Macalester College, April 2002.

"Job Gendering: Occupational Choice and the Marriage Market," Research Conference of International Association for Feminist Economics, Ottawa, CA, June 1999.

"Tolerance, Taboos, and Gender Identity: The Occupational Distribution of Lesbians and Gay Men," Research Conference of International Association for Feminist Economics, Amsterdam, The Netherlands, June 1998.

"The Impact of Affirmative Action on Public-Sector Employment in California," ASSA Meetings, 1997.

"Tolerance or Taboos: Occupational Differences by Sexual Orientation," presented at American Economic Association Meetings, Jan. 1996, and American Psychological Association convention in Toronto, August 1996.

"A Race, Ethnicity, and Gender Analysis of the 1990-91 Recession," ASSA Meetings 1995.

"Choices and Chances: Is Coming Out at Work a Rational Choice?" The Sixth North American Lesbian, Gay, and Bisexual Studies Conference, University of Iowa, November 18, 1994.

"Civil Rights and Civilized Research: Constructing a Sexual Orientation Policy Based on the Evidence," Association for Public Policy Analysis and Management Research Conference, Oct. 27, 1994

"Where the Jobs Went in the 1990-91 Downturn," National Conference on Race Relations and Civil Rights in the Post Reagan-Bush Era, The Roy Wilkins Center, Humphrey Institute, University of Minnesota, October 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," The American Political Science Association meeting, Sept. 1994.

Panelist, "Developing Lesbian/Gay Studies in Economics," ASSA Meetings, 1994.

"The Rainbow at Work: Differences in the Economic Status of Women Workers in the United States," presented at the 5th International Interdisciplinary Congress on Women, 1993.

"The Economic Well-Being of Lesbians and Gay Men: Pride and Prejudice," December 1992, presented at 1993 ASSA Meetings.

"Affirmative Action in a Changing Legal and Economic Environment," revised, December 1992, presented at 1993 ASSA Meetings.

"The Effects of Structural Change on the Race and Gender Distribution of Employment," with Rhonda M. Williams, presented at Eastern Economic Association Meeting, 1992.

"Changes in Racial Inequality Among Women: Evidence from Unemployment Rates," presented at AEA Meetings, 1992.

"Labor Market Discrimination--Economic and Legal Issues for Gay Men and Lesbians," presented at AEA Meetings, 1992.

"Rising Black Unemployment: Changes in Job Stability or in Employability?" presented at National Economic Assoc., 1992.

"Rising Black Unemployment and the Role of Affirmative Action Policy," presented at APPAM Research Conference, Oct. 1990.

INVITED PRESENTATIONS (Selected):

IAFFE, 2011, Hangzhou China: Roundtable on Sexuality and the Economy, Roundtable on Enhancing IAFFE's Vision in the 21st Century. June, 2011.

Keynote Address on Sexual orientation and economics, University of Illinois-Chicago, Sept. 30, 2009.

Multiple talks, University of Minnesota, Duluth, April 2009.

"On the Road to Equality: Health Care for LGBT Americans," Opening address, 2007 National LGBT Health Expo, Washington, DC, November 2, 2007.

"Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men," University of Toronto, March 16-17, 2005.

Guest speaker, Womens studies and political sciences courses at Smith College and Amherst College, Spring 2003; Fall 2004.

Panelist, "Aging in the Gay Community," American Association of Retired Persons, June 2000.

"Money and Our Discontents," Keynote speech, Smart Women/Smart Money conference by the Astraea Foundation. Nov. 1999.

"Homo Economics: The Myth of Gay Affluence and Other Tall Tales," University of Connecticut, March 1999; American University, October 1999.

Same-Sex Couples and Public Policy, panel member, University of Maryland, College Park, October 1999.

"A Bridge to the Future or the Road to Nowhere? Respectability and Lesbian and Gay Think Tanks," Remarks prepared for the Politics of Respectability Conference, University of Chicago, April 1999

Panelist, Unifying Anti-Subordination Theories, DePaul University Law School, February 1999.

"Lesbians, Gays, and Bisexuals in a Gender Agenda," Roundtable on Feminism and Public Policy, 1998 ASSA Meetings, Chicago, IL.

"Economic Issues for Lesbians," Workshop on Lesbian Health Research Priorities, Institute of Medicine, Board on Neuroscience and Behavioral Health, Washington, DC, October 6, 1997.

"Lesbians, Gays, Bisexuals, and Transgenders: Who Gives, How Much, and Why," OutGiving Conference, Aspen, CO, Sept. 1997; Horizons Foundation and United Way, San Francisco, CA, Oct. 1997; NGLTF Creating Change conference, San Diego, Nov. 1997; Cream City Foundation Milwaukee, WI; Chicago, IL; Boston Foundation, February 1998.

"Lesbian and Gay Money: Is There a Gender Gap?" Towson State University, March 1997.

Panelist, "Out in the Workplace," University of Pennsylvania, Feb. 10, 1997.

"Workplace Policy Issues for Lesbian, Gay, and Bisexual People," Gender, Race, Economics, and Public Policy Conference of the New School for Social Research, April 5, 1996.

Panelist, "Compensating for Gender, Race, and Class Inequalities: Is Affirmative Action the Means to Social Justice," A Future of Equality: Feminist Rethinkings of the Affirmative Action and Welfare Debates, Yale University Women's Center, March 30, 1996.

"Equal Pay for Equal Work," University of Delaware Lavender Scholars Series, March 7, 1996.

"Lesbian and Gay Think Tanks," Center for Lesbian and Gay Studies, CUNY Graduate School, Feb. 9, 1996.

Panelist, Affirmative Action in the 21st Century, Chicago United, Feb. 15, 1996.

"The Economic Status of Lesbians and Gay Men: Discrimination, Data, and Debate," Bureau of Labor Statistics, U.S. Department of Labor, June 15, 1995; Institution for Social and Policy Studies, Yale University, Sept. 1995; University of Massachusetts, Boston, May 1996.

Panelist, "Gay Money: Power of the Purse," National Lesbian & Gay Journalists Association, Oct. 19, 1995.

Panelist, Domestic Partner Benefits and Other Gay Rights Policy Issues: Creating Change on Campus, American Association of University Professors, June 9, 1995.

Prepared testimony, Select Education and Civil Rights Subcommittee, Committee on Education and Labor, U. S. House of Representatives, Testimony on the 30th Anniversary of the Equal Pay Act, 1994. (Hearing cancelled at the last minute.)

"Economic Evidence of Sexual Orientation Discrimination," Gay, Lesbian, and Bisexual Studies Faculty Seminars, Univ. of Massachusetts, Amherst, Dept. of Economics and Program for Gay, Lesbian, and Bisexual Concerns, May 11, 1994.

"The Economics of Being Lesbian, Gay, or Bisexual: Pride, Prejudice and Politics," Brown Bag Series in Gay, Lesbian, and Bisexual Studies, University of Massachusetts, Amherst, May 11, 1994.

"Thinking Homo/Economically," conference presentation, Center for Lesbian and Gay Studies, CUNY Graduate School, May 7, 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," Annual Conference, The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, April 19, 1994. Also presented at the American Political Science Association meeting, Sept. 1994.

"The Changing Contours of Discrimination: Race, Gender, and Structural Economic Change," presented at University of Michigan, School of Social Work, Profs. Mary Corcoran and Sheldon Danziger, March, 15, 1994.

"Redefining Families: Research and Policy," American Political Science Association meetings, Washington, D.C., Sept. 3, 1993.

"Lesbian Rights in Maryland," Maryland National Organization for Women, statewide conference, May 1, 1993.

"A Cost/Benefit Analysis of Coming Out," presented at OUT Magazine press conference, broadcast on CSPAN, April 21, 1993.

"Detecting Discrimination," at 1992 NGLTF Creating Change Conference, Los Angeles.

GRANTS:

Ford Foundation, 2003-2006 (2 grants), Data on Sexual Orientation (total \$600,000)

1995 Wayne F. Placek Award, American Psychological Foundation, "The Impact of Attitudes on Lesbian and Gay Male Earnings and Occupations." (\$15,000)

The Aspen Institute, Nonprofit Sector Research Fund, "Lesbian, Gay, and Bisexual Giving and Volunteering," 1996. (\$40,000)

2002 Wayne F. Placek Award, American Psychological Foundation, "Health Insurance Inequality for Gay, Lesbian, and Bisexual People," with Michael A. Ash.

PANELS AND COMMITTEES:

Advisory Committee for "Real Families, Real Facts: Research Symposia on LGBT-headed Families," Family Pride, held May 2006.

Planning committee and facilitator for research meeting held at Out & Equal Workplace conference, Sept. 2005.

Reviewer, Wayne F. Placek Award, American Psychological Foundation

Women's Funding Network, Lesbian Donor Research Project Advisory Committee, 1997-98

Visiting Lecturer and co-designer, Traveling Feminist Economics Ph.D. Course, Univ. of Minnesota, 1997-98

FELLOWSHIPS AND HONORS:

Distinguished Book Award, American Psychological Association, Division 44, 2010

Distinguished Faculty Lecture, University of Massachusetts Amherst, Nov. 9, 2009, and Chancellor's Medal (the highest honor bestowed on individuals for exemplary and extraordinary service to the campus)

Named one of twenty most influential lesbians in academia, *Curve Magazine*, 2008

Rockwood Leadership Fellow in Lesbian, Gay, Bisexual, and Transgender Community & Advocacy, 2008-09

2005 Dukeminier Award for Best Sexual Orientation Law Review Article

College Outstanding Teacher Award, Social and Behavioral Sciences, University of Massachusetts, 2000-2001

Out 100, *Out Magazine*, 2001.

One of Our Best and Brightest Activists, *The Advocate*, 2000.

Lilly Fellow, Center for Teaching, University of Massachusetts, Amherst, 1999-2000

Certificate of Appreciation, Stonewall Center, 1999.

Certificate of Recognition, University of Maryland at College Park Diversity Initiative, 1994-95

Graduate Opportunity Fellowship, 1985-86, UC Berkeley

A.B. with General Honors, University of Chicago

Maroon Key Society, University of Chicago

Abram L. Harris Prize, 1978-79, 1979-80, University of Chicago

AFFILIATIONS

Association for Public Policy Analysis & Mgmt.

American Economic Association

Editorial Board (and past Associate Editor), *Feminist Economics*

International Association for Feminist Economics (past board member)

Editorial board, *Sexuality Research and Social Policy*; *Sexuality & the Law* (Social Science Research Network); *Law and Social Inquiry*

REFeree:

Quarterly Journal of Economics, *Industrial Relations*, *Journal of Human Resources*, *Feminist Economics*, *Journal of Policy Analysis & Mgmt.*, *Amer. Sociological Review*, *Review of Social Economy*, *Review of Economics and Statistics*, Columbia University Press, National Science Foundation, *Qualitative Sociology*, *Social Problems*, University of Wisconsin Press, *Journal of Population Economics*, Routledge Press, Princeton University Press, *Industrial and Labor Relations Review*, *Demography*,

American Journal of Sociology, Contemporary Economic Policy, Journal of Marriage and the Family, Cambridge Journal of Economics, Social Forces, Health Affairs, and others

Exhibit B

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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WHITWELL and GREG FLAMER;
MIKYLA MILLER and KATRINA
MILLER; ADELE TERRANOVA and
TARA NEWBERRY; CAREN

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF GEORGE
CHAUNCEY, PH.D. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

CAFFERATA-JENKINS and FARRELL
CAFFERATA-JENKINS; and MEGAN
LANZ and SARA GEIGER,

Plaintiffs,

v.

BRIAN SANDOVAL, in his official capacity
as Governor of the State of Nevada; DIANA
ALBA, in her official capacity as Clerk for
Clark County; AMY HARVEY, in her
official capacity as Clerk for Washoe
County; and ALAN GLOVER, in his official
capacity as Clerk-Recorder for Carson City,

Defendants

I, George Chauncey, hereby declare and state as follows:

Expert Background and Qualifications

1. I am a Professor of History and American Studies and chair of the Department of History at Yale University, where I have taught since 2006. My testimony will relate to my opinions as an expert in the history of the United States in the twentieth century and gender, homosexuality, sexuality, and civil rights in the United States, with a particular focus on the history of discrimination experienced by gay men and lesbians in the United States. I have actual knowledge of the matters stated in this declaration, and could and would so testify if called as a witness.

2. My background, experience, and publications are summarized in my curriculum vitae, which is attached as Exhibit A to this declaration. In the past four years, I have testified as an expert – either at trial or through declaration – or been deposed as an expert in *Perry v. Schwarzenegger*, No. 09-2292 (N.D. Cal.), *Gill v. Office of Pers. Mgmt.*, No. 09-10309 (D. Mass.), *Commonwealth of Mass. v. U.S. Dep’t of Health and Human Servs.*, No. 09-11156 (D. Mass.), *Windsor v. U.S.*, No. 10 Civ. 8435 (BSJ) (JCF) (S.D.N.Y.), *Pedersen v. Office of Personnel Management*, No. 3:10-cv-01750-VLB (D. Conn.), *Golinski v. Office of Personnel Management*, 3:10-cv-0257-JSW (N.D. Cal.), *Dragovich v. U.S. Dep’t of the Treasury*, CV 4:10-

1 01564-CW (N.D. Cal.), *Donaldson v. Montana*, No. 10-702 (Mont. 1st Jud. Dist. Ct.), and
2 *Jackson v. Abercrombie*, No. 11-734 (D. Haw.) – all of which involved testimony on topics
3 similar to those discussed below.

4 3. From 1991 to 2006, I was a Professor of History at the University of Chicago. I
5 am the author of *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), which won the Organization of American
6 Historians' Merle Curti Award for the best book in social history and Frederick Jackson Turner
7 Award for the best first book in any field of history, the Los Angeles Times Book Prize in
8 History, and Lambda Literary Award. I am also the author of *Why Marriage? The History*
9 *Shaping Today's Debate over Gay Equality* (New York: Basic Books, 2004); coeditor of three
10 books and special journal issues, including *Hidden From History: Reclaiming the Gay and*
11 *Lesbian Past* (NAL, 1989); and the author of numerous articles, which are listed in my
12 curriculum vitae, attached to this declaration as Exhibit A.

13
14 4. In preparing this Declaration, I reviewed the Complaint in this case. I base my
15 opinions on my own research, experience and publications, the work of other historians and
16 scholars as listed in the attached bibliography (Exhibit B), and the general statutes of a number of
17 states, including Nevada, New York, Connecticut, Vermont, and New Hampshire.

18 5. I have been retained by counsel for Plaintiffs in this litigation. I am being
19 compensated at a rate of \$400 per hour for preparation of reports or declarations; \$450 per hour
20 for time spent preparing for and giving deposition or trial testimony; and \$4,000 per day spent
21 preparing for or attending trial. My compensation does not depend on the outcome of this
22 litigation, the opinions I express, or the testimony I provide.

23 **Summary of Opinions**

24 6. It is my professional opinion that the historical record, which is outlined below,
25 demonstrates that gay and lesbian people have been subject to widespread and significant
26 discrimination and hostility in the United States.

27 7. Through much of the twentieth century, in particular, gay men and lesbians
28 suffered under the weight of medical theories that treated their desires as a disorder; penal laws

1 that condemned their consensual adult sexual behavior as a crime; police practices that
2 suppressed their ability to associate and socialize publicly; censorship codes that prohibited their
3 depiction on the stage, in the movies, and on television; and federal policies and state regulations
4 that discriminated against them on the basis of their homosexual status. These state policies and
5 ideological messages worked together to create and reinforce the belief that gay and lesbian
6 persons comprised an inferior class to be shunned by other Americans.

7 8. Despite social and legal progress in the past thirty years towards greater
8 acceptance of homosexuality, gay and lesbian people continue to live with the legacy of the anti-
9 gay measures enacted in the 1930s, 1940s, and 1950s and the attitudes that motivated those
10 measures. That legacy is evident both in laws that remain on the books and in the many legal
11 protections that have not been enacted.

12 9. Among the many products of the legacy of discrimination in the twentieth century,
13 the most conspicuous today include Congress' repeated failure to enact or even seriously consider
14 federal legislative protections for gay and lesbian people in housing, employment, and public
15 accommodations; the numerous state statutes and constitutional amendments that brand gay men
16 and lesbians as second-class citizens by denying them the right to marry the person they love; and
17 the federal Defense of Marriage Act, which prohibits the federal government from recognizing
18 such a marriage when it does occur. The legacy of discrimination is also evident in the
19 demeaning stereotypes and inflammatory rhetoric used by anti-gay organizations and public
20 officials as they campaign to enact further measures meant to erode gay people's civil rights and
21 diminish their status as full citizens of the United States – campaigns that are, to this day, very
22 often successful.

23 10. Today, the limited civil rights enjoyed by gay and lesbian Americans vary
24 substantially from region to region and are still subject to the vicissitudes of public opinion. Like
25 other minority groups, gay men and lesbians often must rely on judicial decisions to secure equal
26 rights.
27
28

History of Discrimination Against Gay and Lesbian People in the United States

I. Introduction

11. While there is ample evidence that same-sex attraction, love, and intimacy have persisted across the ages, most historians now agree that the concept of the homosexual and the heterosexual as distinct categories of people emerged only in the late nineteenth century. This concept had profound effects on the regulation of homosexuality. Early American legislators, drawing on their understanding of ancient Judeo-Christian prohibitions against sodomy and “unnatural acts,” penalized a wide range of non-procreative behavior, including many forms of what would now be called homosexual conduct. While these laws prohibited conduct, it was in the twentieth century that governments began to classify and discriminate against certain of their own citizens on the basis of their status or identity as homosexuals.

12. Official, government-sanctioned hostility and discrimination has had a profound and enduring negative impact on lesbians and gay men in American society. In the 1920s, the State of New York prohibited theaters from staging plays with lesbian or gay characters. Beginning in the 1930s and 1940s, many states prohibited gay people from being served in bars and restaurants. In the 1950s, the federal government banned the employment of homosexuals and insisted that its private contractors ferret out and dismiss their gay employees. It also prohibited gay foreigners from entering the country or securing citizenship. Until the 1960s, all states penalized sexual intimacy between men. Throughout the twentieth century, many municipalities launched police campaigns to suppress gay meeting places, and sought to purge gay civil servants from government employment.

13. Private hostility and discrimination, often encouraged by government officials, has had a similarly profound and enduring negative effect on lesbians and gay men in American society. Until the 1970s, leading physicians and medical researchers claimed that homosexuality was a pathological condition or disease. In the 1930s, the Hollywood studios enacted a censorship code that for nearly thirty years prohibited the discussion of gay issues or the appearance of gay or lesbian characters in the era’s most powerful communications medium. In the 1940s and 1950s, municipal police officials, state governmental leaders, local newspapers,

1 and national magazines justified anti-gay discrimination and the suppression of gay meeting
2 places by fostering frightening stereotypes of homosexuals as child molesters. These stereotypes
3 have had enduring consequences, and continue to inspire public fears and hostility, especially
4 concerning gay teachers and parents. In the 1980s, the early press coverage of AIDS reinforced
5 the view that homosexuals were diseased and threatened other Americans. In the 1990s, many
6 clergy condemned (and still condemn) homosexuality as sinful. The Southern Baptist
7 Convention, for example, called for a boycott of all Disney products because Disney offered
8 domestic partnership benefits to its employees and Disneyland organized gay theme nights. Also,
9 some anti-gay groups threatened to organize boycotts against the sponsors of network television
10 shows which included gay characters.

11 14. Historically, anti-gay measures often were enacted or strengthened in response to
12 periods of relative growth in the visibility or tolerance of gay people. For example, the
13 effervescence and visibility of gay life in the 1920s contributed to the backlash gay and lesbian
14 people endured during the Great Depression. The increased visibility of gay men and lesbians
15 during the Second World War helped precipitate a second wave of hostility in the late 1940s and
16 1950s. The dramatically increased visibility of gay people in the 1970s and 1980s, and their
17 success in persuading some state and local governments to include sexual orientation in their anti-
18 discrimination laws, resulted in a wave of referenda and initiatives between 1977 and the early
19 1990s that overturned such laws and/or prohibited the enactment of others.

20 15. In recent decades, and especially in the last twenty years, many (though not all) of
21 these discriminatory measures were repealed, but considerable discrimination and animosity
22 persisted. Given the long history of campaigns demonizing homosexuals as child molesters, it is
23 unsurprising that in 1977 – the year Anita Bryant launched her “Save Our Children” campaign –
24 two-thirds of Americans told pollsters they objected to lesbians or gay men being hired as
25 elementary school teachers. By 1992, after fifteen years of extensive public discussion of this and
26 other gay issues, opinion had shifted, but half of those parents polled still rejected the idea of their
27 child having a gay elementary school teacher. By 2002, about forty percent of Americans still
28

1 were unwilling to have elementary schools employ gay teachers, and one-third of them found gay
2 high school teachers unacceptable.

3 16. When marriage emerged as the new flashpoint in debates over civil rights for gay
4 men and lesbians almost two decades ago, the debate was shaped by the legacy of anti-gay
5 policies and attitudes. Many Americans initially responded to the idea that gay and lesbian
6 couples should be allowed to marry with the same misgivings and even hostility with which they
7 once greeted the idea of gay teachers or gay characters on television sitcoms. Opponents of
8 marriage equality mobilized some of the most enduring anti-gay stereotypes to heighten public
9 apprehension. For instance, during the 2008 campaign over Proposition 8 – the California ballot
10 initiative that revoked the marriage rights of gay men and lesbians that the California Supreme
11 Court had recognized under the state constitution – several television commercials aired by the
12 supporters of Proposition 8 warned that marriage equality might encourage children to become
13 homosexuals themselves. The recent campaign to repeal marriage equality in Maine used the
14 same tactics, including recycling commercials and scripts from the Proposition 8 campaign
15 because they had been so effective in California. Likewise, material from the Nevada campaign
16 to amend the state constitution to bar marriage for same-sex couples stated “Let’s not experiment
17 with Nevada’s children.” The approval of Proposition 8 in California, Question 1 in Maine,
18 Question 2 in Nevada, and similar laws and constitutional amendments in a total of forty-one
19 states indicates the enduring influence of anti-gay hostility and the persistence of ideas about the
20 inequality of gay people and their relationships. The civil rights enjoyed by gay and lesbian
21 people throughout the United States continue to be subject to the vicissitudes of public opinion in
22 an ever-changing social, political, and cultural landscape.

23 17. At several critical junctures, a handful of state and federal courts have been the
24 only authorities willing to defend the rights of gay people against the antipathy of the majority.
25 In the 1950s and 1960s, at a time when overwhelming public sentiment supported the
26 criminalization of gay bars and other meeting places, state courts in California and New York
27 ruled that gay people had the right to assemble. In 1954, the United States Supreme Court ruled
28 that the United States Post Office could not ban a gay political magazine from the mails. In the

1 1990s, when voters in cities and states across the country were voting to ban states and local
2 municipalities from enacting anti-discrimination protections for gay people, the Supreme Court,
3 in *Romer v. Evans*, struck down a Colorado constitutional amendment that withdrew from gay
4 men, lesbians, and bisexuals, but no others, specific legal protection from discrimination.
5 Sometimes quickly and sometimes more slowly, these decisions played a critical role in shifts in
6 public opinion.

7 **II. The Roots of Anti-Gay Discrimination**

8 18. The first American laws against homosexual conduct were rooted in the earliest
9 English settlers' understanding of the religious and secular traditions that prohibited sodomy, and
10 they reflected the ambiguity of those traditions. Although sodomy included some forms of what
11 today would be called homosexual conduct, medieval theologians did not use sodomy to refer
12 systematically and exclusively to such conduct; for example, they rarely understood sodomy to
13 include oral sex or sex between women.

14 19. The English Reformation Parliament of 1533 turned the religious injunction
15 against sodomy into the secular crime of buggery when it made "the detestable and abominable
16 vice of buggery committed with mankind or beast" punishable by death. The English courts
17 interpreted this to apply to sexual intercourse between a human and an animal and anal
18 intercourse between a man and woman or between two men.

19 20. Colonial American statutes drew on these religious and secular traditions and
20 shared their imprecision in the definition of the offense. Various defining the crime as (the
21 religious) sodomy or (the secular) buggery, they generally proscribed anal sex between men and
22 men, men and women, and humans and animals, but their details and their rationales varied. The
23 southern colonies generally adopted the English law against buggery, while the Puritan New
24 England colonies usually drew on religious traditions to penalize many forms of "carnall
25 knowledge," including adultery, fornication, sex with prepubescent girls, and "men lying with
26 men." Puritan clergy in the New England colonies were especially vigorous in their
27 denunciation of sodomitical sins as contrary to God's will, but their condemnation was motivated
28 by the pressing need to increase the population and to secure the stability of the family, as well as

1 their reading of scripture. In the Massachusetts Bay Colony, sodomy was prohibited in 1641 by a
2 statute taken directly from Leviticus: “If any man lyeth with mankinde as he lyeth with a
3 woeman, both of them have committed abhominaton, they both shall surely be put to death.”
4 Although several men were executed for sodomy, the colonies rarely prosecuted men for this
5 offense, for reasons that still are not entirely clear to historians.

6 **III. Modern American History: 1890-1940**

7 21. Prosecutions for sodomy and related offenses increased dramatically in the late
8 nineteenth and early twentieth centuries as a result of the emergence of the idea of the
9 homosexual as a distinct category of person, the expansion of laws penalizing homosexual
10 conduct, and the growing influence of religiously-inspired moral reform societies, which insisted
11 on criminal prosecutions. In 1914, for example, the Supreme Court of Nevada held that the
12 state’s statute criminalizing “infamous crimes against nature” encompassed oral as well as anal
13 intercourse, each being an “‘abominable crime not fit to be named among Christians.’” *In re*
14 *Benites*, 37 Nev. 145, 149 (1914).

15 22. These types of prosecutions continued to penalize people on the basis of their
16 homosexual conduct rather than their identity as homosexuals. Current historical research
17 suggests that the concept of the homosexual as a distinct category of person developed as recently
18 as the late nineteenth century. The word “homosexual” appeared for the first time in a German
19 pamphlet in 1868, and was introduced to the American lexicon only in 1892. Between the 1920s
20 and 1950s, the government, drawing on long traditions of hostility to same-sex conduct and
21 responding both to new conceptions of the homosexual as an individual and to the growing
22 visibility of those individuals, began to classify and discriminate against certain of its citizens on
23 the basis of their status or identity as homosexuals. This discrimination reached remarkable, and
24 still largely unrecognized, proportions.

25 23. The dramatic growth of American cities in the late nineteenth century permitted
26 lesbians and gay men to develop a more complex and extensive collective life than was possible
27 in small towns and rural areas. While everyone was likely to know everyone else’s business in
28 small towns, the size, complexity, and relative anonymity of cities made it easier for gay people

1 (and other nonconformists) to forge a collective life with people like themselves, away from the
2 eyes of hostile outsiders. The early history of the migration of gay people to the relative freedom
3 of the cities is little understood, but it seems to have increased in the early twentieth century, at
4 about the same time as growing numbers of African Americans fled the small towns of the Jim
5 Crow South for the relative freedom of northern cities. Like African Americans, gay people, both
6 black and white, found that the relative freedom of city life was tempered by continuing hostility
7 and discrimination.

8 24. The emergence of gay and lesbian communities described in this declaration took
9 place in varying degrees in every American city studied by historians. Because the field of
10 lesbian and gay history remains relatively young in 2012 and has been hampered by the legacy of
11 censorship described below, historians still know most about the history of such communities in
12 major metropolitan centers such as New York, Chicago, San Francisco, and Los Angeles, and
13 they will therefore loom large in the history that follows. However, recent studies of the gay
14 history of smaller cities and communities, ranging from Buffalo, New York, and Portland,
15 Oregon, to Jackson, Mississippi, and its surrounding rural areas, both confirm the broad outlines
16 of the history described here and reveal regional variations in that history. Important recent
17 historical studies of the development of federal and military policies concerning homosexuality
18 and gay citizens have documented discriminatory laws and policies that had nationwide effects.

19 25. New York City provides one of the best documented examples of the emergence
20 of a distinctive gay world in the early twentieth century. By the 1910s, New York's "gay world"
21 included gay residential and commercial enclaves in several immigrant, African American, and
22 bohemian neighborhoods; widely publicized dances and other social events; and a host of
23 commercial establishments where gay people gathered, ranging from saloons, speakeasies, and
24 bars to cheap cafeterias and elegant restaurants. In the 1920s and early 1930s, gay writers and
25 performers produced a flurry of gay literature and theater. Some gay people were involved in
26 long-term relationships they called marriages. Most remained very careful to conceal their
27 homosexuality from non-gay associates, though, for fear of losing their jobs, homes, and respect.
28

1 26. Many Americans responded to the growing visibility of gay life with fascination
2 and sympathy, regarding it as simply one more sign of the growing complexity and freedom from
3 tradition of a burgeoning metropolitan culture. Popular fascination with gay culture reached a
4 crescendo during the Prohibition Era (or Jazz Age), when lesbians ran some of the most popular
5 tearooms and cafes in bohemian neighborhoods such as New York’s Greenwich Village and
6 Chicago’s Towertown. That said, the poor, immigrant, African American, and bohemian
7 neighborhoods where gay life became most visible were regarded as the underside of city life by
8 “respectable society.”

9 **A. Hostile Religious and Medical Views Prompted the Escalation of Anti-Gay**
10 **Policing in the Early Twentieth Century**

11 27. Other Americans regarded the growing visibility of lesbian and gay life with
12 dread. Hostility to homosexuals sometimes was motivated by an underlying uneasiness about the
13 dramatic changes underway in gender roles at the turn of the last century. In this era – indeed
14 until 1973 – homosexuality was classified as a disease, defect, or disorder. Conservative
15 physicians initially argued that the homosexual (or “sexual invert”) was characterized as much by
16 his or her violation of conventional gender roles as by specifically sexual interests. At a time
17 when many doctors argued that women should be barred from most jobs because employment
18 would interfere with their ability to bear children, numerous doctors identified suffragists, women
19 entering the professions, and other women challenging the limits placed on their sex as victims of
20 a medical disorder. Thus, doctors explained that “the female possessed of masculine ideas of
21 independence” was a “degenerate” and that “a decided taste and tolerance for cigars, * * * [the]
22 dislike and incapacity for needlework * * * and some capacity for athletics” were all signs of
23 female “sexual inversion.” Similarly, another doctor thought it significant that a male “pervert”
24 “never smoked and never married; [and] was entirely averse to outdoor games.”

25 28. Such views about gender roles lost their credibility once public opinion had come
26 to accept significant changes in women’s roles in the workplace and political sphere, but doctors
27 continued for several more decades to identify homosexuality per se as a “disease,” “mental
28 defect,” “disorder,” or “degeneration.” For generations, such hostile medical pronouncements

1 provided a powerful source of legitimation to anti-homosexual sentiment, just as medical science
2 previously had legitimized widely held (and subsequently discarded) beliefs about male
3 superiority and white racial superiority. The medical profession's classification of homosexuality
4 as a defect or disorder also helped spur and legitimate anti-gay law enforcement activity
5 throughout the country.

6 29. Religiously-inspired hostility to homosexuality also inspired an escalation in anti-
7 gay policing. In the late nineteenth century, native-born Protestants organized numerous "anti-
8 vice" societies to suppress what they regarded as the sexual immorality and social disorder of the
9 nation's burgeoning Catholic and Jewish immigrant neighborhoods. Although these
10 organizations focused on female prostitution and what they regarded as the weakening of moral
11 strictures governing relations between men and women, they also opposed the growing visibility
12 of homosexuality, which they regarded as a particularly egregious sign of the loosening of social
13 controls on sexual expression under urban conditions. They encouraged the police to step up
14 harassment of gay life as one more part of their campaigns to shut down dance halls and movie
15 theaters, prohibit the consumption of alcohol and the use of contraceptives, dissuade restaurants
16 from serving an interracial mix of customers, and otherwise impose their vision of the proper
17 social order and sexual morality. In New York City in the 1910s and 1920s, for instance, the
18 Society for the Suppression of Vice (also known as the Comstock Society) worked closely with
19 the police to arrest several hundred men for homosexual conduct, and also participated in a raid
20 on a lesbian-run café and encouraged the deportation of the café's owner. In Massachusetts, the
21 Watch and Ward Society, established as the New England Society for the Suppression of Vice,
22 conducted surveillance on virtually all the popular gay bars and gathering places of the time.

23 30. As a result of the pressure from Protestant moral reform organizations, municipal
24 police forces began using misdemeanor charges, such as disorderly conduct, vagrancy, lewdness,
25 loitering, and so forth to harass homosexuals. These state misdemeanor or municipal offense
26 laws, which carried fewer procedural protections than felony sodomy charges, allowed further
27 harassment of individuals engaged in same-sex intimacy. In some cases, state officials tailored
28 these laws to strengthen the legal regulation of homosexuals. For example, in 1923, the New

1 York State legislature specified for the first time that a man’s “frequent[ing] or loiter[ing] about
2 any public place soliciting men for the purpose of committing a crime against nature or other
3 lewdness” was a form of disorderly conduct. Many more men were arrested and prosecuted
4 under this misdemeanor charge than for sodomy. Between 1923 and 1966, when Mayor John
5 Lindsay ordered the police to stop using entrapment to secure arrests of gay men, there were more
6 than 50,000 arrests on this charge in New York City alone.

7 31. The social marginalization of gay men and lesbians gave both the police and the
8 public even broader informal authority to harass them. The threat of violence and verbal
9 harassment deterred many gay people from doing anything that might reveal their homosexuality
10 in public. Gay people knew that anyone discovered to be homosexual risked the loss of
11 livelihood and social respect, so most gay people were careful to lead a double life, hiding their
12 homosexuality from their heterosexual employers and other associates.

13 **B. Censorship**

14 32. The growing visibility of lesbian and gay life in the early twentieth century
15 precipitated censorship campaigns designed to curtail gay people’s freedom of speech and the
16 freedom of all Americans to discuss gay issues.

17 33. The earliest gay activists fell victim to such campaigns. In 1924, when the police
18 learned of the country’s earliest known gay political group, which had been established by a
19 postal worker in Chicago, they raided his home and seized his group’s files and membership list.
20 After the raid, the group ceased publication of its short-lived magazine, Friendship and Freedom.
21 In the 1910s and 1920s, a handful of plays included lesbian and gay characters or addressed
22 homosexual themes. But in 1927, after “The Captive,” a serious drama exploring lesbianism,
23 opened on Broadway to critical acclaim, New York State passed a “padlock law” that threatened
24 to shut down for a year any theater that staged a play with lesbian or gay characters. Given
25 Broadway’s national importance as a staging ground for new plays, this law effectively censored
26 American theater for a generation.

27 34. Theater censorship occurred in other cities in addition to New York. In the early
28 twentieth century, Boston had a particularly strict culture of “moral purity” censorship, and the

1 phrase “Banned in Boston” was familiar to people throughout the country. In 1935, for instance,
2 Boston Mayor Frederick W. Mansfield banned Lillian Hellman’s “The Children’s Hour,” a play
3 with lesbian themes. Mansfield explained his decision to the press by asserting that the play
4 “showed moral perversion, the unnatural appetite of two women for each other.”

5 35. Such censorship had even wider-reaching effects when it spread to the movies. A
6 censorship movement led by religious leaders threatened the Hollywood studios with mass
7 boycotts and restrictive federal legislation if they did not begin censoring their films. Seeking to
8 avoid federal legislation, the studios established a production code (popularly known as “the Hays
9 Code”) that from 1934 on prohibited the inclusion of gay or lesbian characters, discussion of
10 homosexual issues, or even the “inference” of “sex perversion” in Hollywood films. This
11 censorship code remained in effect for some thirty years and effectively prohibited discussion of
12 homosexuality in a powerful communications medium. This censorship stymied and delayed
13 democratic debate about homosexuality for more than a generation.

14 **C. The Great Depression and the Curtailment of Gay People’s Freedom of**
15 **Association**

16 36. In the early years of the Great Depression, restrictions on gay life intensified. By
17 depriving millions of men of their role as breadwinners, the Depression transformed already-
18 existing anxiety over gender roles into a crisis in gender and family relations. Federal, state, and
19 local governments responded to this perceived crisis with policies that directly affected women
20 and gay people. New Deal public works projects, for instance, which offered jobs only to male
21 heads of households, were designed in part to restore men’s status in their families and larger
22 society, even when this meant limiting women’s economic opportunities.

23 37. The apparent fragility of the family and gender arrangements made the visibility of
24 gay life seem more threatening to many people, especially given the long-standing representation
25 of gay men and lesbians as gender deviants. After a generation in which gay life had been
26 relatively visible and integrated into urban public life, restrictions on gay life increased. Gay
27 people were forced into hiding by new laws that pushed gay people out of restaurants and bars, as
28 well as off the stage and silver screen.

1 38. New regulations curtailed gay people's freedom of association. In New York
2 State, for instance, the State Liquor Authority, established after the repeal of Prohibition in 1933,
3 issued regulations prohibiting bars, restaurants, cabarets, and other establishments with liquor
4 licenses from employing or serving homosexuals or even allowing them to congregate on their
5 premises. The Authority's rationale was that the mere presence of homosexuals made an
6 establishment "disorderly," and when the courts rejected that argument, the Authority began
7 using evidence of unconventional gender behavior or homosexual solicitation gathered by
8 plainclothes investigators to provide proof of a bar's disorderly character. Hundreds of bars were
9 closed for this reason in the next thirty years in New York City alone.

10 39. Similar regulations were introduced around the country in subsequent years. In
11 California in the 1950s, notes historian Nan Alamilla Boyd, the Alcoholic Beverage Control
12 Board "collapsed the difference between homosexual status (a state of being) and conduct
13 (behavior) and suggested that any behavior that signified homosexual status could be construed as
14 an illegal act. Simple acts such as random touching, mannish attire (in the case of lesbians), limp
15 wrists, high-pitched voices, and/or tight clothing (in the case of gay men) became evidence of a
16 bar's dubious character" and grounds for closing it.

17 **IV. Modern American History: World War II**

18 40. Changes in the policies of the Armed Forces of the United States during the
19 Second World War both reflected and expanded the government's growing campaign of
20 classifying and discriminating against gay citizens. The military had long made sodomy a
21 criminal offense (and, indeed, it continues to do so). But the Second World War marked the first
22 time the military moved beyond criminalizing homosexual conduct to develop policies that
23 systematically endeavored to exclude personnel on the basis of their identity as homosexuals. All
24 of the branches of the armed forces put in place screening mechanisms designed to ferret out
25 homosexuals during the induction process. Thousands of men and women were kept from
26 serving their country, and often faced public opprobrium as a result. Notwithstanding the new
27 prohibition, many gay men and lesbians served in the armed forces in the Second World War, but
28 they had to be careful to whom they disclosed their sexual orientation.

1 41. Across the country, notwithstanding legal restrictions, the number of lesbian and
2 gay bars and other meeting places increased during the war years. Military authorities responded
3 to the growth in the number of gay meeting places by collaborating with civil authorities to close
4 them or at least keep servicemen from visiting them. The Army and the Navy created a joint
5 Disciplinary Control Board that worked together with state liquor control agents and municipal
6 police forces to identify and police bars and night clubs, including almost one hundred in San
7 Francisco alone, with the intent of harassing and suspending the licenses of those that served a
8 gay clientele. Military and civilian police also cooperated in anti-vice raids against gay bars and
9 other meeting places. Servicemen who were caught in these raids risked being discharged, and
10 several thousand patriotic Americans who honorably served to defend their country were not
11 honorably discharged solely because of their gay or lesbian identity.

12 42. Following the war, the Veterans Administration denied GI Bill benefits to soldiers
13 who had received undesirable discharges. Eventually, most other groups of soldiers with
14 undesirable discharges had their benefits restored, but the Veterans Administration steadfastly
15 refused to restore them to homosexuals. This meant that gay veterans – members of the “Greatest
16 Generation” – who had risked their lives for their country before being discharged were denied
17 the educational, housing, and readjustment allowances provided to millions of their peers.

18 **V. Modern American History: Post-WWII Period**

19 **A. Government Policies in the McCarthy Era**

20 43. Even the stepped-up policing of gay life in the 1930s and 1940s did not equal the
21 scale of discrimination faced by gay men and lesbians in the generation following the Second
22 World War. The persecution of gay men and lesbians dramatically increased at every level of
23 government after the war.

24 44. In 1950, following Senator Joseph McCarthy’s denunciation of the employment of
25 gay persons in the State Department, the Senate conducted a special investigation into “the
26 employment of homosexuals and other sex perverts in government.” The Senate Committee
27 recommended excluding gay men and lesbians from all government service, civilian as well as
28 military. To support this recommendation, the Committee argued that homosexual acts violated

1 the law, and it gave its imprimatur to the prejudice that “those who engage in overt acts of
2 perversion lack the emotional stability of normal persons” and that homosexuals “constitute
3 security risks.”

4 45. The Committee also portrayed homosexuals as predators: “[T]he presence of a sex
5 pervert in a Government agency tends to have a corrosive influence on his fellow employees.
6 These perverts will frequently attempt to entice normal individuals to engage in perverted
7 practices. This is particularly true in the case of young and impressionable people who might
8 come under the influence of a pervert. Government officials have the responsibility of keeping
9 this type of corrosive influence out of the agencies under their control. . . . One homosexual can
10 pollute a Government office.”

11 46. The Senate investigation and report were only one part of a massive anti-
12 homosexual campaign launched by the federal government after the war. The Senate Committee
13 reported that “[a] spot check of the records of the Civil Service Commission indicates that
14 between January 1, 1947, and August 1, 1950, approximately 1,700 applicants for Federal
15 positions were denied employment because they had a record of homosexuality or other sex
16 perversion.” In 1953, President Eisenhower issued an executive order requiring the discharge of
17 homosexual employees from federal employment, civilian or military. Thousands of men and
18 women were discharged or forced to resign from civilian and military positions because they
19 were suspected of being gay or lesbian. At the height of the McCarthy era, the U.S. State
20 Department discharged more homosexuals than communists. The government’s purge of its gay
21 employees prompted the founding of some of the earliest gay rights organizations. Frank
22 Kameny, for one, founded the first gay rights group in Washington, D.C. after he was dismissed
23 from his job as a government astronomer for being homosexual in 1957.

24 47. President Eisenhower’s executive order prohibiting federal employment for
25 homosexuals also required defense contractors and other private corporations with federal
26 contracts to ferret out and discharge their homosexual employees. Many other private employers
27 without federal contracts adopted the federal government’s policy by refusing to hire gay people.
28 Furthermore, the FBI initiated a widespread system of surveillance to enforce the executive order.

1 As the historian John D’Emilio has noted, “The FBI sought out friendly vice squad officers who
2 supplied arrest records on morals charges, regardless of whether convictions had ensued.
3 Regional FBI officers gathered data on gay bars, compiled lists of other places frequented by
4 homosexuals, and clipped press articles that provided information about the gay world. . . .
5 Federal investigators engaged in more than fact-finding; they also exhibited considerable zeal in
6 using information they collected.”

7 48. Two years after the Senate Committee recommended that homosexuals be purged
8 from government employment, Congress signaled its conviction that homosexuals had no place in
9 American society in the most palpable way possible: by denying them entry into the country. In
10 1952, Congress prohibited homosexuals (whom it called “psychopaths”) from entering the
11 country, much as it previously had prohibited immigration from Asia and curtailed the
12 immigration of Jews and Catholics from eastern and southern Europe. In the case of
13 homosexuals, the prohibition extended beyond people seeking long-term residency or citizenship;
14 a generation of foreign visitors applying for mere tourist visas had to sign statements swearing
15 they were not homosexual before they could make even the briefest trip to the United States.

16 49. Many state and local governments followed the federal government’s lead in
17 seeking to ferret out and discharge their homosexual employees. As a result of these official
18 policies, countless state employees, teachers, hospital workers, and others lost their jobs.
19 Beginning in 1958, for instance, the Florida Legislative Investigation Committee, which had been
20 established by the legislature in 1956 to investigate and discredit civil rights activists, turned its
21 attention to homosexuals working in the state’s universities and public schools. Its initial
22 investigation of the University of Florida resulted in the dismissal of fourteen faculty and staff
23 members, and in the next five years it interrogated some 320 suspected gay men and lesbians. It
24 “pressured countless others into relinquishing their teaching positions, and had many students
25 quietly removed from state universities.” Its 1959 report to the legislature called the extent of
26 homosexual activity in the state’s school system “absolutely appalling.” In addition, in a well-
27 publicized 1949 case in Massachusetts, Dr. Miriam Van Waters, long-time superintendent of the
28 Women’s Reformatory at Framingham, was dismissed by the Commissioner of Corrections

1 because she had either not known or had known and had not prevented “an unwholesome
2 relationship” that “existed between inmates of the Reformatory,” which had “resulted in
3 ‘crushes’, ‘courtships’, and homosexual practises [sic] among the inmates.” She was then forced
4 to defend her policies in public hearings held by a Massachusetts house committee over several
5 months.

6 50. During this period, both federal and local agencies sought to curtail gay people’s
7 freedom of speech and the freedom of all people to discuss homosexuality. In 1954, postal
8 officials in Los Angeles banned an issue of the first gay political magazine, *ONE*, from the mails,
9 a ban overturned by the Supreme Court in 1958. In some cities the police continued to shut down
10 newsstands that dared to carry it. In 1957, San Francisco officials arrested Lawrence Ferlinghetti
11 and Shig Murao for publishing and selling “Howl,” a poem by Allen Ginsberg that openly
12 proclaimed his homosexuality.

13 51. Censorship, government-sanctioned discrimination, and the fear of both made it
14 difficult for gay people to organize and speak out on their own behalf. Given the severity of anti-
15 gay policing, for instance, the Mattachine Society, the most significant gay rights organization in
16 the 1950s, repeatedly had to reassure its anxious members that the police would not seize its
17 membership list. In Denver in 1959, a few weeks after Mattachine held its first press conference
18 during a national convention, the police raided the homes of three of its Denver organizers; one
19 lost his job and spent sixty days in jail.

20 **B. The Demonization of Homosexuals**

21 52. The official harassment of homosexuals received further legitimization from a
22 series of press and police campaigns in the 1940s and 1950s that fomented demonic stereotypes
23 of homosexuals as child molesters out to “recruit” the young into their way of life. In response to
24 a series of local panics over sex crimes against women and children, in which homosexuals were
25 almost never identified as the culprits, numerous local newspapers and national magazines
26 claimed that children faced a growing threat from homosexuals. The press warned that, in
27 breaking with social convention to the extent necessary to engage in homosexual behavior, a man
28 had demonstrated the refusal to adjust to social norms that was the hallmark of the psychopath.

1 In 1950, *Coronet*, a popular national magazine, asserted: “Once a man assumes the role of
2 homosexual, he often throws off all moral restraints. . . . Some male sex deviants do not stop with
3 infecting their often-innocent partners: they descend through perversions to other forms of
4 depravity, such as drug addiction, burglary, sadism, and even murder.”

5 53. The demonization of homosexuals by the press was reinforced by the statements of
6 public officials. A Special Assistant Attorney General of California claimed in 1949 that “[t]he
7 sex pervert, in his more innocuous form, is too frequently regarded as merely a queer individual
8 who never hurts anyone but himself. All too often we lose sight of the fact that the homosexual is
9 an inveterate seducer of the young of both sexes, and is ever seeking for younger victims.”
10 Detroit’s prosecuting attorney demanded the authority to arrest, examine, and possibly confine
11 indefinitely “anyone who exhibited abnormal sexual behavior, whether or not dangerous.” In
12 1957, the *Hartford Courant* reported on comments by a Connecticut judge at a criminal
13 sentencing. The judge endorsed jail terms for homosexuals because his “observation” was that
14 homosexuality “ha[d] spread much too far.”

15 54. Such press campaigns and official statements created fearsome new stereotypes of
16 homosexuals as child molesters, which continue to incite public fears about gay teachers and
17 parents as well as other gay people who come into contact with children. Between the late 1930s
18 and late 1950s, public hysteria incited by such press campaigns prompted more than half the state
19 legislatures to enact laws allowing the police to force persons convicted of certain sexual
20 offenses—or, in some states, merely suspected of being “sexual deviants”—to undergo
21 psychiatric examinations. These examinations could result in indeterminate civil confinements
22 for individuals deemed in need of a “cure” for their homosexual “pathology.”

23 C. Another Escalation of Anti-gay Policing

24 55. During the postwar era, bars became an especially important meeting place for
25 lesbians and gay men because they were often the only public spaces in which people dared to be
26 openly gay. Given their growing importance to gay people as a social center and the growing
27 pressure on the police to enforce regulations prohibiting bars from serving homosexuals, gay bars
28 became an important battleground in the postwar years. Despite the prevailing popular animosity

1 toward homosexuals, state courts in New York and California issued rulings that curtailed the
2 right of state liquor authorities and the police to discriminate against gay bar patrons. Official
3 antipathy to homosexuals was so strong, however, that police officials circumvented or simply
4 disregarded these judicial decisions.

5 56. This sharp escalation in the policing of gay life after the Second World War
6 occurred throughout the country. In 1955, for example, the government of Boise, Idaho launched
7 a fifteen-month investigation of gay men in town, interrogating fourteen hundred persons and
8 pressuring men known to be gay to reveal the names of other gay men. Police departments from
9 Seattle and Dallas to New Orleans and Baltimore stepped up their raids on bars and private
10 parties attended by gay and lesbian persons, and made thousands of arrests for “disorderly
11 conduct.” By 1950, Philadelphia had a six-man “morals squad” arresting more gay men than the
12 courts knew how to handle, some 200 a month. In the District of Columbia, there were more than
13 a thousand arrests every year. In 1965, the Boston City Council’s Committee on Urban Renewal
14 debated whether to bulldoze several downtown gay bars. A proponent of the effort, City
15 Councilor Frederick Langone, gave a speech at the meeting calling for the destruction of “these
16 incubators of homosexuality and indecency and a Bohemian way of life,” and insisting that “[w]e
17 must uproot these joints so innocent kids won’t be contaminated.” Many gay bars were razed in
18 the “revitalization” that followed. In 1969, a Councilman in Rocky Hill, Connecticut called for a
19 nightclub frequented by homosexuals (Alice’s Joker Club) to be closed as a “public nuisance”
20 because it was a “threat to the morals” of the town’s citizens. From 1933 until the mid 1960s,
21 hundreds of bars that tolerated gay customers were closed in New York City alone. Some bars in
22 New York and Los Angeles posted signs telling potential gay customers: “If You Are Gay, Please
23 Stay Away” or, more directly, “We Do Not Serve Homosexuals.”

24 **VI. The Gay Rights Movement and its Opponents in the 1970s and 1980s**

25 **A. Early Successes of the Gay and Lesbian Rights Movement**

26 57. The dramatic escalation in policing and suppression in the post-war years failed to
27 eradicate gay life. In larger cities, lesbians and gay men covertly patronized bars and restaurants,
28 which they turned into informal meeting places, took over remote sections of public beaches, and

1 held dances and parties. In many smaller towns, gay life took shape unnoticed in church choirs,
2 amateur theaters, and women's softball leagues, and was sustained by closely knit social circles.

3 58. Nonetheless, most gay men and lesbians responded to the escalation in policing
4 after the Second World War by keeping their homosexuality carefully hidden from non-gay
5 people. They developed elaborate verbal codes that allowed them to communicate with one
6 another while remaining invisible to hostile outsiders. The word "gay" is a good example of this:
7 before the 1970s few heterosexuals realized gay people had given it a distinctly homosexual
8 meaning. But the very success of such subterfuges in concealing gay life made it difficult for gay
9 people to find one another in the 1950s, and it severely limited the capacity of gay people to
10 organize on their own behalf.

11 59. The earliest gay rights organizations, the Mattachine Society, *ONE*, and the
12 Daughters of Bilitis, were founded in the early 1950s at the height of the demonization of
13 homosexuals as dangerous, irrational, and unstable pariahs who threatened the nation's children
14 as well as national security. This initial generation of activists worked to meet and educate
15 potential allies among sociologists, psychologists, criminologists, and other professionals who
16 had the credibility to speak on homosexuality that was denied to homosexuals themselves.

17 60. Gay rights organizations began to influence public policy in the mid-1960s,
18 although the pace of change varied enormously across the country. The New York Mattachine
19 Society's success in 1966 in persuading Mayor John Lindsay to end the widespread police use of
20 entrapment had a profound effect on gay male New Yorkers, who for the first time in decades did
21 not have to worry that the men who approached them in bars and elsewhere were undercover
22 policemen. New York and California state court rulings finally curtailed the policing of gay bars
23 and other meeting places in those states in the 1960s, but in some other parts of the country the
24 police continued to raid gay bars well into the 1970s and 1980s. The growing divergence in the
25 treatment of gay people in different parts of the country prompted a growing number of gay
26 people to migrate from hostile areas to New York, Boston, San Francisco, Los Angeles, Chicago,
27 and other more tolerant cities and regions. This mass migration, in turn, affected the political and
28

1 cultural climate of those cities and regions, making them more likely to enact gay rights
2 legislation and similar policies.

3 61. Major institutions that once helped legitimize anti-gay attitudes also began to
4 change their positions. Medical writers and mental health professionals whose stigmatization of
5 homosexuality as a disease or disorder had been used to justify discrimination for decades were
6 among the first to change their views. In 1973, the American Psychiatric Association voted to
7 remove homosexuality from its list of mental disorders. The American Psychological Association
8 soon followed suit. However, the American Psychiatric Association's decision was fiercely
9 opposed by prominent members of the association such as Charles Socarides and Irving Bieber.
10 They and other medical professionals who claimed homosexuality was a treatable psychological
11 disorder continued to receive considerable attention.

12 62. Censorship of gay images and speech declined. By the early 1960s, competition
13 from television led the Hollywood studios to reorganize their nearly thirty-year-old censorship
14 code, enabling the studios to make films for adult viewers which addressed "serious themes" such
15 as homosexuality. These themes remained off-limits for television. The studios initially still
16 included very few gay characters in their features, and the television networks included virtually
17 none, but ending formal censorship opened a door that resulted in significant cultural changes in
18 later years.

19 63. A small but growing number of municipalities enacted legislation protecting
20 people from certain forms of discrimination on the basis of their sexual orientation. In 1972, East
21 Lansing, Michigan, home to Michigan State University, became the first town to do so. Within
22 five years, another twenty-seven communities passed such legislation, more than half of them
23 university towns such as Ann Arbor, Austin, Berkeley, and Madison. They were joined by a
24 handful of larger cities such as San Francisco, Minneapolis, Seattle, and Detroit. During this
25 same period, however, a number of states enacted new legislation that criminalized homosexual
26 sodomy, even as they decriminalized heterosexual sodomy.

27 64. Attitudes toward homosexuals and homosexuality in some religious denominations
28 also began to change. Since the 1970s, many mainline Protestant denominations have issued

1 official statements condemning legal discrimination against homosexuals and affirming that
2 homosexuals ought to enjoy equal protection under criminal and civil law. Several of these
3 groups descended from the historically influential denominations whose religious authority had
4 been invoked to justify colonial statutes against sodomy. The Lutheran Church in America, the
5 Unitarian Universalist Association, the United Methodist Church, the United Church of Christ,
6 the Protestant Episcopal Church, the Disciples of Christ, and the United Presbyterian Church in
7 the U.S.A. all issued statements in support of civil rights for gay men and lesbians by 1980.

8 65. Those seven denominations, however, account for only 10.3 percent of the
9 American population. Many more Americans belong to faith traditions that remain strongly
10 opposed to gay civil rights, including 26.3 percent affiliated with historically white evangelical
11 Protestant churches and 23.9 percent who are Catholics. Leading clergy and laypeople from
12 those churches have played a major role in opposing gay rights measures across the country.

13 **B. Anti-Gay Discrimination in the 1970s and 1980s**

14 66. Gay men and lesbians continued to suffer discrimination at the hands of
15 government officials in the 1970s and 1980s. For example, police continued to raid gay bars in
16 some cities. In 1970, the Connecticut State Motor Vehicle Department refused to renew the
17 drivers license of a man on the grounds that he was “an admitted homosexual and that his
18 homosexuality makes him an improper person to hold an operator’s license.”

19 67. Beginning in the late 1970s, the initial success of the gay movement in securing
20 local gay rights legislation, as well as the increasing visibility of gay people in the media,
21 provoked a vigorous, negative reaction. Anti-gay rights advocates drew on pernicious stereotypes
22 developed in previous decades to argue that enacting gay rights laws, permitting gay people to
23 teach, and even simply allowing gay characters to appear on television sitcoms threatened the
24 security of children and the stability of the family.

25 68. The anti-gay rights campaign of this era was effectively launched in 1977, when
26 Anita Bryant, a prominent Baptist singer and the spokeswoman for the Florida citrus growers, led
27 a campaign to “Save Our Children” from newly enacted civil rights protections for gay men and
28 lesbians in Dade County, Florida. Her success in persuading a decisive majority of Miami voters

1 to vote against the ordinance depended heavily on her use of the still powerful postwar images of
2 homosexuals as child molesters. Her organization published a full-page advertisement the day
3 before the vote warning that the “other side of the homosexual coin is a hair-raising pattern of
4 recruitment and outright seductions and molestation.” Her victory in Miami prompted groups in
5 other cities to take up the cause, and in the next three years, laws extending civil rights
6 protections to gay men and lesbians were repealed in more than a half-dozen bitterly fought
7 referenda stretching from St. Paul, Minnesota to Eugene, Oregon. Gay rights advocates managed
8 to defeat such referenda only in two elections, in November 1978, when Seattle voted to preserve
9 its antidiscrimination ordinance and when California rejected the Briggs Initiative. The Briggs
10 Initiative was a proposal so onerous it would have prohibited public school teachers, gay or
11 straight, from saying anything that could be construed as “advocating homosexuality.”

12 69. The Save Our Children campaign had other far reaching effects. The day after the
13 Dade County gay rights ordinance was repealed, the governor of Florida signed into law a ban on
14 adoption by lesbians and gay men, the first such statewide prohibition. Thousands of children
15 who might otherwise have had loving parents were thus denied the stability of family life.
16 Similarly, in 1985, Massachusetts Governor Michael Dukakis removed two boys from their foster
17 care placement with a gay male couple and implemented a policy of preferred placement in
18 “traditional family settings.” While Massachusetts’ ban was reversed in 1990 as a result of
19 litigation, the Florida ban remained in effect until 2010.

20 70. Across the country, the unfounded fear that homosexuals posed a threat to children
21 itself threatened some children: those already being raised by lesbians and gay men. In the 1970s,
22 most children being raised by lesbian or gay parents had been born before their parents came out
23 as gay. When a parent came out, any dispute over child custody that had to be resolved in court
24 was likely to be heavily influenced by stereotypes and prejudices. A growing number of such
25 cases reached the courts in the 1970s and 1980s, and in case after case the courts took the custody
26 of children away from a mother or father whose estranged husband or wife raised the parent’s
27 lesbian or gay identity. Some courts confronting early disputes of this nature articulated a “per
28

1 se” rule against custody and visitation claims made by gay and lesbian parents, holding that
2 homosexuality was inherently inconsistent with parenthood as a matter of law.

3 71. The long-standing association of homosexuals with disease was reinforced in the
4 1980s by the media’s initial sensationalist coverage of AIDS, which frequently depicted
5 homosexuals as bearers of a deadly disease threatening others. Fear of contagion prompted a new
6 wave of discrimination against gay people in medical care, housing, and employment. Media
7 coverage and the government’s slow response to the disease also reflected and reinforced the
8 enduring conviction that homosexuals stood outside the moral boundaries of the nation. Even
9 after the name AIDS (Acquired Immune Deficiency Syndrome) replaced the moniker GRID
10 (Gay-Related Immune Deficiency), media reports initially minimized the crisis by reassuring
11 Americans that the “general public” was not at risk, since the disease only affected homosexuals
12 and a handful of other groups, as if gay people were not part of the “general public.”

13 72. The media coverage of AIDS and the numerous campaigns against local gay rights
14 laws had a dramatic effect on public opinion. In 1987, six years after the AIDS crisis unleashed a
15 new wave of fear of homosexuals, public disapproval of homosexuality reached its peak. Polling
16 data showed virtually no change through the 1970s, but the number of people who declared that
17 homosexual relations were always wrong climbed from 73 percent in 1980 to 78 percent in 1987.
18 In the 1980s, gay rights activists secured the enactment of gay rights ordinances in an additional
19 forty cities, counties, and suburbs, including Boston, New York, Chicago, and Atlanta, bringing
20 the national total to eighty. But these victories often were more difficult to achieve than they had
21 been in the 1970s. In New York City, for example, the law passed the city council only after
22 more than a decade of struggle.

23 73. National religiously-inspired organizations formed in the 1970s and 1980s, such as
24 the Moral Majority, Focus on the Family, Family Research Council, and Traditional Values
25 Coalition, provided national leadership and coordination to the movement against gay rights and
26 disseminated campaign materials, political strategies, and financial resources to local groups
27 fighting gay rights ordinances.
28

1 **VII. The Persistence of Anti-Gay Discrimination from the 1990s to the Present**

2 **A. Legal Inequality in State Law**

3 74. The spread of AIDS and the escalation of debate over gay rights at the local level
4 fueled a growing polarization of the nation over homosexuality in the 1980s and especially the
5 1990s. By the end of the 1980s, even cities and states that had managed to pass gay rights laws
6 found those laws under attack from an increasingly well-organized and well-funded opposition.
7 Beginning in 1988, and reaching a crescendo from 1992 to 1994, groups in Colorado, Oregon,
8 Maine, and six other states used anti-gay referenda and initiatives to challenge gay rights laws,
9 and built local anti-gay rights organizations. In the twenty-five years after Anita Bryant's
10 campaign in Florida, anti-gay activists introduced and campaigned for more than sixty anti-gay
11 rights referenda around the country. Nationwide, gay rights supporters lost almost three-quarters
12 of these contests. In Oregon alone, there were sixteen local anti-gay initiatives in 1993 and
13 another eleven in 1994. Oregon's gay rights supporters lost all but one.

14 75. Following Anita Bryant's lead, anti-gay rights activists frequently fomented voter
15 fear of gay people by reviving demonic stereotypes of homosexuals as perverts who threatened
16 the nation's children and moral character. Two videos that repeatedly were screened in churches
17 and on cable television, "The Gay Agenda" and "Gay Rights, Special Rights," juxtaposed
18 discussions of pedophilia with images of gay teachers and gay parents marching with their
19 children in Gay Pride parades. With little subterfuge, the videos depicted homosexuals as child
20 molesters. This message was reinforced by mass mailings and door-to-door distribution of anti-
21 gay pamphlets, which fostered a climate of hostility and fear during the referenda.

22 76. In 1992, voters in Colorado passed Amendment Two, which amended the state
23 constitution to prohibit any municipality or unit of the government from enacting anti-gay
24 discrimination ordinances or policies. This amendment repealed the ordinances already enacted
25 by Denver, Boulder, and Aspen. Moreover, it removed from the political arena any future effort
26 to secure anti-discrimination legislation for gay people. In the face of public antipathy to gay
27 people, represented by the success of this and other referenda overturning non-discrimination
28 laws, several legal groups filed a lawsuit, *Romer v. Evans*, challenging the constitutionality of

1 such constitutional amendments. Once again, the courts protected the rights of the minority
2 against the prejudice of the majority. In 1996, the Supreme Court overturned this state
3 constitutional amendment because it withdrew legal protection against discrimination for gay
4 men, lesbians, and bisexuals, but no others.

5 77. Although a number of states now have extended basic anti-discrimination
6 protections to gay men and lesbians, in twenty-nine states, there is no statutory barrier to firing,
7 refusing to hire, or demoting a person in private sector employment solely on the basis of their
8 identity as a gay man or lesbian. In approximately twenty states, there is no statutory or
9 administrative barrier to such discrimination even in state government employment. Similarly,
10 gay men and lesbians remain without statutory protection from discrimination in housing in thirty
11 states. And, despite the critical role played by harassment of gay and lesbian meeting places in
12 enforcing discrimination toward them throughout the twentieth century, gay and lesbian people in
13 twenty-nine states have no statutory protection from discrimination in public accommodations.

14 **B. Legal Inequality in Federal Law**

15 78. At the national level, employment discrimination against gay men and lesbians by
16 federal agencies remained permissible until the late 1990s. Although the outright ban on hiring
17 gay federal employees was lifted in 1975, federal agencies were free to discriminate against gay
18 men and lesbians in hiring and employment decisions until former President Clinton issued a
19 first-of-its-kind executive order forbidding such hiring discrimination in 1998.

20 79. In 1992, President Bill Clinton's proposal to end the armed forces' policy banning
21 lesbians and gay men from serving in the military sparked a firestorm in the first months of his
22 presidency and revealed how deeply divided the nation remained. The public outcry against his
23 plan (calls to Congress ran a hundred to one against lifting the ban) had been stoked by years of
24 local anti-gay organizing. Opposition to the new policy by both the Pentagon leadership and the
25 public led Congress and President Clinton to enact a new law known as "Don't Ask, Don't Tell,"
26 which allowed for the discharge of gay and lesbian soldiers if they acknowledged their sexual
27 orientation under any circumstances, even in private counseling. Discharge of gay men and
28 lesbians from the military continued after "Don't Ask, Don't Tell" became law. According to the

1 Servicemembers Legal Defense Network, an organization dedicated to assisting military
2 personnel affected by “Don’t Ask, Don’t Tell,” “more than 14,000 service members have been
3 have been fired under the law since 1993.”

4 80. The repeal of “Don’t Ask, Don’t Tell” became effective in 2011. Although the
5 repeal was an important advance for gay men and lesbians, it did not restore the careers of the
6 thousands of service members who had been discharged under the policy. Nor does it protect gay
7 men and lesbians from the significant discrimination that they continue to face in other domains.
8 After years of effort, gay and lesbian advocates and their allies still have not been able to enact
9 any federal legislation that specifically prohibits discrimination in schools, employment, housing,
10 and public accommodations on the basis of sexual orientation. The Employment Non-
11 Discrimination Act, which would extend express employment protections on the basis of sexual
12 orientation, has been introduced regularly since 1994 (and earlier versions as far back as the
13 1970s) and has never passed both houses of Congress.

14 81. Government-sanctioned discrimination against gay men and lesbians still exists
15 in federal immigration law. Federal law prohibits gay and lesbian Americans from sponsoring
16 their same-sex spouses or registered partners from other countries for immigration benefits.

17 **C. Discrimination in Adoption, Custody, and Parenting**

18 82. In the 1990s, lesbian mothers and gay fathers continued to risk their parenting
19 rights when their former different-sex spouses used their sexual orientation to try to deny them
20 custody or visitation rights in divorces. By the mid-1990s, courts in most states followed rules
21 that required individualized assessment of a parent’s fitness. But as Julie Shapiro’s 1996 study of
22 custody cases around the country demonstrated, many courts continued to infuse those
23 individualized assessments with their own prejudice against lesbians and gay men. As she
24 discovered, courts were especially disapproving of lesbians and gay men who were honest about
25 their sexual orientation with their children. In a widely publicized case, a Virginia trial court in
26 1993 granted a grandmother’s petition to take Sharon Bottoms’ two-year-old son away from her
27 because, as the trial court judge explained, her lesbian “conduct is illegal . . . a Class 6 felony in
28 the Commonwealth of Virginia.” He went on to declare “that it is the opinion of this Court that

1 her conduct is immoral” and “renders her an unfit parent.” Virginia’s Supreme Court upheld the
2 trial court’s decision terminating Sharon’s parental rights despite the presumption favoring her as
3 a natural parent. In doing so, it relied on a wider range of evidence, including the finding that
4 Bottoms’ lesbianism would subject her child to social condemnation and thus disturb the child’s
5 relationships with peers and the community at large. Some courts had used similar reasoning to
6 remove children from the homes of divorced white mothers who had married or lived with black
7 men, a practice ruled unconstitutional by the Supreme Court in 1984. In that case, *Palmore v.*
8 *Sidoti*, Chief Justice Warren Burger ruled that “private biases may be outside the reach of the law,
9 but the law cannot directly, or indirectly, give them effect.” 466 U.S. 429, 433 (1984). But
10 courts in many states continued to give legal effect to the private bias they assumed existed
11 against lesbian and gay parents by preferring heterosexual parents over gay parents, without
12 regard to other factors bearing on the child’s best interests.

13 83. Gay and lesbian parents continue to be forced by some courts to choose between
14 hiding their gay identities and losing parental rights. As one Texas attorney commented in 1988,
15 “unless [a mother] ended her open lesbian relationship I would have little chance of winning a
16 custody trial.” According to Clifford J. Rosky, in 2004, after ordering a gay father not to expose
17 his child to his “gay lover(s) and/or gay lifestyle,” a Tennessee trial court sentenced the father to
18 two days in jail for coming out to the child.

19 84. State and popular efforts that began in the 1970s to ban lesbians and gay men from
20 adopting or serving as foster parents continued throughout the 1990s and 2000s. For example, in
21 2000, Mississippi’s legislature passed a ban on adoption by same-sex couples that was
22 subsequently signed by the governor. As recently as 2008, Arkansas enacted by popular
23 referendum a ban on foster care and adoption by gay people.

24 85. Some states enacted laws that bar recognition of out-of-state adoptions by same-
25 sex couples. For example, in 2004, Oklahoma passed the “Adoption Invalidation Law,” which
26 stated that Oklahoma “shall not recognize an adoption by more than one individual of the same
27 sex from any other state or foreign jurisdiction.”
28

1 86. Some states refuse to allow a biological parent's same-sex partner to adopt the
2 children they raise together. For example, as recently as December 2010, the North Carolina
3 Supreme Court invalidated a second parent adoption by a woman's same-sex partner, holding that
4 a non-biological same-sex partner could not be recognized as a legal parent.

5 87. During the 1980s and 1990s, gay and lesbian parents continued to face significant
6 obstacles in custody and visitation disputes. Courts continued to demonstrate harsh judgments
7 toward gay and lesbian parents even when a child was conceived with two gay or two lesbian
8 parents intending to raise the child jointly. This was especially evident when the courts had to
9 decide where to place a child when the child's biological mother died and one of her relatives
10 contested the right of her surviving partner, the child's second mother, to continue to raise the
11 child. In a number of cases, courts granted custody to those relatives despite clear evidence that
12 the child wished to remain with her surviving mother.

13 **D. Depiction of Gay Men and Lesbians in the Media.**

14 87. With the decline in movie and television censorship and the growing interest in
15 gay people and issues, there was a significant increase in the coverage of gay issues in the media
16 and in the number of gay characters in movies and on television in the 1990s. By the time the
17 immensely popular *Will & Grace* premiered on NBC in 1998, gay and lesbian characters were a
18 more regular part of the television landscape. This exposure changed the dominant representation
19 of homosexuals. Gay people usually appeared in the media in the 1950s as shadowy and
20 dangerous figures, but they now appeared as a diverse and familiar group whose all-too-human
21 struggles and pleasures drew the interest of large viewing audiences.

22 88. It was not only in the media that heterosexuals began to see gay and lesbian
23 people. Dramatically increasing numbers of lesbians and gay men revealed their homosexuality
24 to their families, friends, neighbors, and co-workers in the 1990s. Polling data suggest the
25 magnitude of the shift. In 1985, only a quarter of Americans reported that a friend, relative, or
26 co-worker had personally told them that they were gay, and more than half believed they did not
27 know anyone gay. Fifteen years later, in 2000, the number of people who knew someone openly
28 gay had tripled to three-quarters of the population. Acceptance of gay men and lesbians and

1 support for civil rights protections increased as growing numbers of heterosexuals realized that
2 some of the people they most loved and respected were gay.

3 89. It is important not to overstate the results of this nationwide “coming out”
4 experience, however. In 2000, a significant majority of Americans still expressed moral
5 disapproval of homosexuality. Moreover, support for lesbian and gay civil rights and equality
6 continued to show significant regional differences. Polls showed that public opinion in
7 Massachusetts, Connecticut, and Hawaii was the most tolerant. Support for civil rights also was
8 strong in most other states in New England, in New Jersey and New York, and in other regional
9 clusters: Maryland in the mid-Atlantic, Wisconsin, Minnesota, and Illinois in the upper Midwest,
10 and California, Oregon, and Washington on the West Coast. Anti-gay sentiment was strongest in
11 southern states and in the lower Midwest and plains states. The effects of these regional
12 differences could be seen in regional variations in congressional votes on key gay rights issues, in
13 the treatment of gay couples and individuals by state laws, regulations and court rulings
14 concerning adoption and foster parenting, parental rights, and in the passage of gay rights laws.
15 Only two states—Wisconsin in 1982 and Massachusetts in 1989—enacted legislation banning
16 anti-gay discrimination before 1990. The number rose to eleven by 2000, but eight of the states
17 were in the Northeast or on the Pacific Coast. The rights of gay people continue to vary
18 enormously across the nation.

19 **E. Continued Official, Religious, and Private Condemnation of Homosexuality in**
20 **the 1990s-2000s**

21 90. Gay people also continue to face discrimination and opprobrium from highly
22 regarded institutions and officials. The Boy Scouts of America, a federally-chartered
23 organization, continues to insist that “homosexual conduct is not morally straight,” and refuses to
24 allow gay men into the organization. *Boy Scouts of America v. Dale*, 530 U.S. 640, 651 (2000).
25 Less than a decade ago, the Chief Justice of the Alabama Supreme Court referred, in a judicial
26 opinion, to homosexual conduct as “abhorrent, immoral, detestable, a crime against nature, and a
27 violation of the laws of nature and of nature’s God upon which this Nation and our laws are
28 predicated.” *Ex Parte H.H.*, 830 So. 2d 21, 26 (2002) (Moore, C.J., concurring).

1 91. Although the American Psychiatric Association (APA) removed homosexuality
2 from its list of mental disorders in 1973, dissident psychiatrists and psychologists led by Charles
3 Socarides and Joseph Nicolosi established the National Association for Research and Therapy of
4 Homosexuality (NARTH) in 1992. Disagreeing with both the APA and prevailing professional
5 opinion, NARTH continues to disseminate materials claiming a scientific basis for believing that
6 homosexuality is a psychological disorder and a “potentially deadly lifestyle,” and that
7 homosexuals can be “healed.” NARTH also lectures, partners with religious organizations,
8 supports conversion therapy activities, and files amicus briefs in court cases.

9 92. Anti-gay activists also used the appearance of AIDS in the early 1980s to rekindle
10 the historic associations between homosexuality, disease, and public danger.

11 **F. Anti-Gay Policing and Private Anti-Gay Violence**

12 93. Although police harassment of gay men and lesbians and their meeting places is
13 not as common as it was some years ago, it continues to be a problem. In 2009, for example,
14 there were highly publicized police raids of gay bars in Atlanta, Georgia, and in Ft. Worth, Texas,
15 where one patron was critically injured.

16 94. Gay people also continue to face violence motivated by anti-gay bias. A handful
17 of horrific incidents have drawn widespread media attention. In 1984, in Bangor, Maine, 23-
18 year-old Charlie Howard was targeted by three teens due to his sexual orientation. They attacked
19 him and, although he protested that he could not swim, threw him off a bridge into the
20 Kenduskeag Stream, where he drowned. Then, in 1998, Matthew Shepard, a college student in
21 Laramie, Wyoming, was bound, tied to a fence, beaten with a pistol, and left to die because he
22 was gay. Ten years later, Lawrence “Larry” Fobes King, a 15-year-old student at E.O. Green
23 Junior High School in Oxnard, California, was shot and killed in school by a fellow student
24 because of his sexual orientation. But the problem reaches far beyond these three incidents. For
25 example, in 1994, in Reno, Nevada, a gay businessman, William Metz, was stabbed more than 20
26 times by his murderer, who reputedly wanted to carve a swastika into his body. The FBI reported
27 1,260 hate crime incidents based on perceived sexual orientation in 1998 and 1,265 in 2007. In
28 2008, the year of Lawrence King’s murder, a national coalition of anti-violence social service

1 agencies identified twenty-nine murders motivated by the assailants' hatred of lesbian, gay,
2 bisexual, or transgender people. The threat of violence continues to lead many gay people to hide
3 their identities or to avoid such commonplace expressions of affection as holding hands with their
4 partners in public.

5 95. The most vulnerable victims of discrimination are youth. A national study
6 published in December 2010 found that gay and lesbian teenagers are nearly 40 percent more
7 likely than heterosexual teenagers to be punished by schools, police, and the courts. According to
8 the Gay, Lesbian and Straight Education Network's 2009 National School Climate Survey
9 published in 2010, 61.1 percent of lesbian, gay, bisexual and transgender (LGBT) students
10 surveyed felt unsafe at school because of their sexual orientation; 84.6 percent were verbally
11 harassed because of their sexual orientation; 40.1 percent were physically harassed in the past
12 year because of their sexual orientation; and 18.8 percent were physically assaulted because of
13 their sexual orientation. A recent study sponsored by the New York City Council noted the over-
14 representation of LGBT youth among the city's homeless population. And the recent spate of
15 suicides among LGBT youth has highlighted the personal consequences of the ostracism and
16 demonization of gay men and lesbians in American society.

17 96. One example of the harassment that LGBT youth may face comes was recounted
18 by Derek Henkle, a high school student in Washoe County School District, Nevada, who sued the
19 District for failing to protect him from anti-gay harassment. *Henkle v. Gregory*, 150 F. Supp. 2d
20 1067 (D. Nev. 2001). His suit contended that, on one occasion, students lassoed a rope around
21 his neck in the school parking lot and threatened to kill him by dragging him from their truck. On
22 another occasion, Henkle explained, he was punched by another student while two school security
23 guards stood by. Henkle also reported that one of his principals told him to "stop acting like a
24 fag." The case resulted in the largest pre-trial settlement of its kind in the nation at the time.

25 **G. Marriage**

26 97. Gay men and lesbians are still prohibited from marrying in the vast majority of
27 states in this country and the question of marriage rights for same-sex couples remains hotly
28 contested across-the-board. Some of the arguments made in the debate over the right of gay

1 couples to marry have echoed those made in earlier debates over the rights of disfavored minority
2 groups. Fifty years ago, for instance, segregationists often claimed that segregation and statutes
3 banning interracial marriage reflected God’s plan for humankind. In the 1960s, a Virginia judge
4 who upheld that state’s law against interracial marriage in the lower-court proceeding in *Loving v.*
5 *Virginia* claimed that “Almighty God created the races white, black, yellow, malay and red, and he
6 placed them on separate continents. And but for the interference with his arrangement there would
7 be no cause for such marriages. The fact that he separated the races shows that he did not intend for
8 the races to mix.”

9 98. Opponents of the right of gay people to marry or adopt children also have drawn on
10 their reading of scripture to justify their positions. As recently as 2002, when the Supreme Court
11 of Alabama reversed the Alabama Court of Civil Appeals’ decision to grant a lesbian mother
12 custody of her children, the Chief Justice of the Supreme Court of Alabama used language as strong
13 as that used by the trial judge in *Loving v. Virginia* in his concurring opinion: “Homosexuality is
14 strongly condemned in the common law because it violates both natural and revealed law. The law
15 of the Old Testament enforced this distinction between the genders by stating that ‘[i]f a man lies
16 with a male as he lies with a woman, both of them have committed an abomination.’ *Leviticus*
17 20:13 (King James) . . . The common law designates homosexuality as an inherent evil, and if a
18 person openly engages in such a practice, that fact alone would render him or her an unfit parent.” *Ex*
19 *parte H.H.* 830 So.2d 21, 33, 35 (Ala. 2002).

20 99. The vigorous opposition to ending discrimination against lesbian and gay couples in
21 marriage law is the latest example of this pattern. The marriage issue first reached the national
22 stage in 1993, when Hawaii’s Supreme Court ruled that the state’s ban on marriages between
23 same-sex couples presumptively violated the state’s equal rights amendment and remanded the
24 lawsuit challenging that ban to a lower court for review. *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).
25 By 1996, when a second trial began in the lower court, the prospect of gay couples winning the right
26 to marry had galvanized considerable opposition. Ultimately, while the litigation was pending,
27 Hawaii amended its constitution to give the legislature the authority to limit marriage to different-sex
28 couples, *see* Haw. Const. art. I, § 23, which it did. The Hawaii Supreme Court then dismissed the

1 case as moot. *Baehr v. Miike*, Civ. No. 20371 slip op. at 5-8 (Dec. 9, 1999) (taking notice of
2 constitutional amendment). In addition, under pressure from organizations proclaiming support for
3 “traditional family values,” the United States Senate passed the Defense of Marriage Act (DOMA) on
4 the day the Hawaii trial began. The Act provided a federal definition of marriage as the union of one
5 man and one woman and declared that no state needed to give “full faith and credit” to “same-sex
6 marriages” licensed in another state. It also denied federal benefits to such married couples.
7 Fourteen states passed state-level DOMA statutes that year, and another eleven passed such
8 statutes the following year. In 2000 and 2002, voters in Nevada approved a state constitutional
9 amendment to bar same-sex couples from marriage. In 2004, when Massachusetts became the first
10 state to permit gay couples to marry, a full *thirteen* states passed constitutional amendments banning
11 such marriages even though twelve of those states already had enacted statutory state DOMAs.

12 100. Indeed, in each state where gay men and lesbians have achieved the right to marry
13 – either through judicial decision or legislative action – there has been significant and organized
14 action by those opposed to marriage rights for same-sex couples to take that right away.
15 California provides a good – and especially contentious – example. In February 2004, San
16 Francisco mayor Gavin Newsom instructed city officials to issue marriage licenses to same-sex
17 couples. The California Supreme Court ordered the city to stop doing so the following month,
18 and it later nullified the marriages which had been performed. In 2005, and again in 2007,
19 California’s legislature approved bills that would legalize marriage for same-sex couples, but both
20 bills were vetoed by then-Governor Schwarzenegger. In May 2008, the California Supreme Court
21 decided in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008) that the privacy and due process
22 provisions of the California Constitution guaranteed the basic civil right of marriage to all
23 individuals and couples, without regard to their sexual orientation. Six months later, on
24 November 4, 2008, California voters approved Proposition 8, adding to the California Constitution
25 the provision “Only marriage between a man and a woman is valid or recognized in California.”
26 Same-sex couples immediately sued to prevent the enforcement of Proposition 8, but their efforts
27 were rebuffed by the California Supreme Court in *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009). The
28 court held that the amendment was lawfully enacted, but that it did not invalidate marriages of

1 same-sex couples performed in California prior to its effective date. Federal litigation concerning
2 the constitutionality of Proposition 8 is ongoing, with the Ninth Circuit overturning Proposition 8
3 on equal protection grounds.

4 101. Opponents of marriage equality who supported Proposition 8 mobilized some of
5 the most enduring anti-gay stereotypes to heighten public apprehension. Several television
6 commercials aired by the supporters of Proposition 8, for instance, warned that marriage equality
7 might encourage children to become homosexuals themselves. The approval of California's
8 Proposition 8 along with similar laws and constitutional amendments in forty other states indicates
9 the enduring influence of anti-gay hostility and the persistence of ideas about the inequality of gay
10 people and their relationships.

11 102. Iowa provides another example. In April 2009, a unanimous Iowa Supreme Court
12 struck down the exclusion of qualified same-sex couples from civil marriage. In response,
13 national organizations opposed to marriage for same-sex couples, such as the National
14 Organization for Marriage and the American Family Association, initiated a campaign for the
15 removal of three of the judges involved in that decision who were subject to retention elections.
16 The campaign was successful, and all three judges were ousted from their position on the bench.
17 Efforts to legislatively repeal marriage for same-sex couples now are underway in Iowa.

18 CONCLUSION

19 Today the civil rights enjoyed by gay and lesbian Americans vary substantially from
20 region to region and are still subject to the vicissitudes of public opinion. Like other minority
21 groups, they often must rely on judicial decisions to secure equal rights. The role of the courts in
22 this dispute is reminiscent of earlier disputes in which courts had to confront public opposition to
23 minority rights. In 1948, when the California Supreme Court became the first state supreme court
24 in the nation to overturn a state law banning interracial marriage, it bucked the tide of white
25 public opposition to such marriages. While the United States Supreme Court overturned the
26 remaining state bans on interracial marriage in 1967 in *Loving v. Virginia*, it was not until 2001
27 that more Americans approved of interracial marriage than disapproved of it. History has
28 vindicated the judges who had the courage and foresight to uphold the constitutional rights of

1 disfavored minorities in the face of majoritarian hostility.

2 Signed under penalty of perjury under the laws of the United States this 27th day of

3 June, 2012.

4
5 
George Chauncey, Ph.D.

Exhibit A

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CURRENT POSITION

Professor of History and American Studies; Chair, Department of History, Yale University
Co-director, Yale Research Initiative on the History of Sexualities

PREVIOUS POSITIONS

Professor of History, University of Chicago, 1997-2006.
Visiting Professor of History, École Normale Supérieure, Paris, May 2001.
Associate Professor of History, University of Chicago, 1995-97.
Assistant Professor of History, University of Chicago, 1991-95.
Assistant Professor of History, New York University, 1990-91.
Postdoctoral Fellow, Rutgers Center for Historical Analysis, 1989-90.

DEGREES

Ph.D., Yale University, 1989.
M.Phil., Yale University, 1983.
M.A., Yale University, 1981.
B.A., Yale University, *magna cum laude*, 1977.

AWARDS

Gay New York was awarded the:

Frederick Jackson Turner Award for the best first book on any topic in American history in 1994
Merle Curti Award for the best book in American social history in 1994 or 1995
(both from the Organization of American Historians),
Los Angeles Times Book Prize for History (1994),
Lambda Literary Award for Gay Men's Studies (1994),
John Boswell Award of the Committee on Lesbian and
Gay History of the American Historical Association (1995).
Named a New York Times Notable Book of 1994.
Village Voice List: one of the Best Books of 1994.
Lingua Franca List: one of the two best academic books of the 1990s.
Subject of a panel discussion, "Charting Chauncey's Gay Male World: Reflections on the
Tenth Anniversary of *Gay New York*," at the 2004 meeting of the OAH.

As a dissertation, Gay New York received the following prizes from Yale University:

George Washington Egleston Prize in American history (1990),
John Addison Porter Prize, Yale's highest university-wide dissertation award (1990),
Andrew Gaylord Bourne Gold Medal, the Yale History Department's
triennial award for a "pioneering work of scholarship" (1992).

Other Honors:

New York Academy of History, elected to membership in 2007.
Society of American Historians, elected to membership in 2005.
Community Service Award from the Lesbian Community Cancer Project, Chicago, 2004.

Freedom Award from Equality Illinois, the state's largest gay rights group, 2001.
First James Brudner Memorial Award in Lesbian and Gay Studies, Yale University, 2000.
Centennial Historian of the City of New York, 1998.
Sprague-Todes Literary Award, Gerber-Hart Library, 1997.

BOOKS AND EDITED COLLECTIONS

Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940

Basic Books, 1994; paperback, 1995.
British edition published by HarperCollins/U.K., 1995.
French translation by Didier Eribon published by Fayard, 2003.
Chapters reprinted in:
The Columbia Reader on Lesbians and Gay Men in Media, Society, and Politics, eds. Larry Gross and James C. Woods (Columbia, 1999)
The Gender and Consumer Culture Reader, ed. Jennifer Scanlon (NYU, 2000)
Major Problems in the History of American Sexuality: Documents and Essays, ed. Kathy Peiss (Heath, 2001)
Sexualities in History, eds. Kim M. Phillips and Barry Reay (Routledge, 2002).
American Queer: Now and Then, ed. David Shneer and Caryn Aviv (Paradigm, 2006).

The Strange Career of the Closet: Gay Culture, Consciousness, and Politics from the Second World War to the Gay Liberation Era

(in progress, to be published by Basic Books).

Why Marriage? The History Shaping Today's Debate Over Gay Equality (Basic Books, 2004; paperback, 2005).

Japanese translation published by Akashi Shoten, 2006.

Hidden From History: Reclaiming the Gay and Lesbian Past

(Co-editor, with Martin Duberman and Martha Vicinus; a collection of thirty essays published by New American Library in 1989).
Turkish translation published by Siyasal, 2002.

Thinking Sexuality Transnationally

(= special issue of GLQ: A Journal of Lesbian and Gay Studies, 5:4 (1999), co-editor with Elizabeth Povinelli).

Gender Histories and Heresies

(= special issue of Radical History Review, 52 (1992), co-editor with Barbara Melosh).

ARTICLES IN SCHOLARLY JOURNALS AND COLLECTIONS

"The Trouble with Shame," in Gay Shame, ed. David Halperin and Valerie Traub (University of Chicago Press, 2010).

"How History Mattered: Sodomy Law and Marriage Reform in the United States," Public Culture 20:1 (2008): 27-38.

"Homosexuality, Family, and Society: Historical Perspectives from the United States," in Homosexuality and the Law: Essays and Materials from an International Workshop on Sexuality, Policy, and Law (Guangxi Normal University Press, 2007 [in Chinese and English]), 12-18, 115-23.

"Après Stonewall, le déplacement de la frontière entre le 'soi' public et le 'soi' privé," Histoire et Sociétés: revue européenne d'histoire sociale 3 (2002): 45-59.

"Skapets historie," Kvinneforskning 24 (2000): 56-71 ["The History of the Closet," in the Norwegian journal Women's Studies].

"Introduction: Thinking Sexuality Transnationally," with Elizabeth A. Povinelli, in Povinelli and Chauncey, eds., "Thinking Sexuality Transnationally," special issue of GLQ: A Journal of Lesbian and Gay Studies 5:4 (Autumn 1999): 439-49.

“Gay New York,” Actes de la recherche en sciences sociales 125 (December 1998): 9-14.

[This article and the rest of the special issue on *Homosexualités* are introduced by Éric Fassin, “Politiques de l’histoire: *Gay New York* et l’historiographie homosexuelle aux États-Unis,” 3-9.]

“Genres, identités sexuelles et conscience homosexuelle dans l’Amérique du xx^e siècle,” in Les études gay et lesbiennes, ed. Didier Eribon (Paris: Éditions du Centre Pompidou, 1998), 97-108.

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“The Policed: Gay Men’s Strategies of Everyday Resistance,” Inventing Times Square: Commerce and Culture at the Crossroads of the World, 1880-1939, ed. William R. Taylor (Russell Sage, 1991), 315-28.

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“The National Panic Over Sex Crimes and the Construction of Cold War Sexual Ideology, 1947-1953,” Sociologische Gids [Amsterdam] 32 (1985): 371-93. [In Dutch; title translated.]

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"Last Ban Standing," New York Times, December 21, 2010, A35.

"Gay at Yale: How Things Changed," Yale Alumni Magazine (July/August 2009), 32-43.

"George Chauncey: de l'autre côté du placard," interview conducted by Philippe Mangeot for Vacarme, no. 26 (Winter 2004), 4-12.

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Amici Curiae Brief of Professors of History to the Supreme Court in the case of Lawrence v. Texas (organizer and primary author; co-signed by nine other historians). Sections reprinted as "Educating the Court: In Changing the Law of the Land, Six Justices Turned to Its History," Word for Word column, Week in Review, New York Times, July 20, 2003, and discussed in "What Gay Studies Taught the Court," Washington Post, July 13, 2003. Reprinted in full, with my introduction, in GLQ: A Journal of Lesbian and Gay Studies 10.3 (2004): 509-38.

"Introduction," Homosexuality in the City: A Century of Research at the University of Chicago (University of Chicago Library, 2000).

"Who is Welcome at Ellis Island? AIDS Activism and the Expanding National Community," Honoring With Pride: An Evening Benefit for the American Foundation for AIDS Research on Ellis Island, program book, June 21, 2000.

"The Ridicule of Lesbian and Gay Studies Threatens All Academic Inquiry," back page "Point of View" column, Chronicle of Higher Education, July 3, 1998.

Review of Charles Kaiser, "The Gay Metropolis, 1940-1996," New York Times, December 30, 1997.

Review of Daniel Harris, "The Rise and Fall of Gay Culture," New York Times Book Review, September 7, 1997.

"The Joy of No Sex," part of a Talk-of-the-Town roundtable on the Heaven's Gate mass suicide, The New Yorker, April 14, 1997, 31-32.

"The Present as History," Out Magazine, February 1997, 69.

"Tea and Sympathy," Past Imperfect: History According to Hollywood, ed. Mark Carnes (Henry Holt, 1995), 258-61.

"Gay male community," in The Encyclopedia of New York City, ed. Kenneth Jackson (Yale, 1995).

"A Gay World, Vibrant and Forgotten," New York Times Op-Ed Page, Sunday, June 26, 1994.

"Queer Old New York: A Historic Walking Tour," Village Voice, June 21, 1994, 25-27.

"Homosexuality," The Encyclopedia of Social History, ed. Peter N. Stearns (Garland, 1993), 323-25.

"Time on Two Crosses: An Interview with Bayard Rustin" (with Lisa Kennedy), Village Voice, June 30, 1987, 27-29.

"Gay Male Society in the Jazz Age," Village Voice, July 1, 1986, 29-34.

FELLOWSHIP AWARDS

New York Public Library Dorothy and Lewis B. Cullman Center for Scholars and Writers Residential Fellowship, 2004-5.

Princeton University Shelby Cullom Davis Center for Historical Studies Fellowship, 2004-5 [declined].

Institute for Advanced Study School of Social Science Membership, 2004-5 [declined].

Social Science Research Council Sexuality Research Fellowship, two Faculty Advisor Awards, 2002-3.
Social Science Research Council Sexuality Research Fellowship, Faculty Advisor Award, 1999-2000.
Fellow, Institute for Advanced Study, Indiana University, September 1998.
Social Science Research Council Sexuality Research Fellowship, two Faculty Advisor Awards, 1997-98.
John Simon Guggenheim Memorial Foundation Fellowship, 1996-97.
National Humanities Center Rockefeller Fellowship and Residency, 1996-97.
American Council of Learned Societies Fellowship for Recent Recipients of the Ph.D., 1992-93.
Cornell University Society for the Humanities Postdoctoral Fellowship, 1991-92
[declined in order to accept new position at Chicago].
Rutgers Center for Historical Analysis Postdoctoral Fellowship, 1989-90.
New York University School of Law Samuel Golieb Fellowship in Legal History, 1987-88.
Mrs. G. Whiting Foundation Fellowship in the Humanities, 1986-87.
Woodrow Wilson Foundation Research Grant in Women's Studies, 1984.
Bush Center in Child Development and Social Policy History Fellowship, 1983-84.
Yale College Prize Teaching Fellowship, 1982-83.
Danforth Foundation Graduate Fellowship, 1979-82.
John Courtney Murray Travelling Fellowship, 1977-78 [supported research in Zambia].

PRIMARY INVESTIGATOR, INSTITUTIONAL GRANTS

Ford Foundation, grant in support of "The Future of the Queer Past: A Transnational History Conference,"
University of Chicago, 2000.
Rockefeller Foundation, grant in support of "The Future of the Queer Past: A Transnational History
Conference," University of Chicago, 2000.
Illinois Humanities Council, grant in support of "The Future of the Queer Past: A Transnational History
Conference," University of Chicago, 2000.
Mellon Foundation, grant in support of the Sawyer Seminar on Sexual Identities and Identity Politics in
Transnational Perspective, University of Chicago, 1997-98.

NAMED LECTURES, PLENARY LECTURES, AND SELECTED FOREIGN LECTURES

"From Sodomy Laws to Marriage Amendments: The History Shaping Today's Debate over LGBT Equality,"
keynote address at Toward a More Perfect Union: Civil Rights, Human Rights, and Creating a New Age of
Social Responsibility, Benjamin Hooks Conference for Social Change, University of Memphis, April 2012
"Single Men, Urban Decline, and the Cultural Logic of Postwar American Antigay Politics," Rutgers Center
for Historical Analysis Twentieth Anniversary Celebration Conference, Rutgers University, May 2010
"Homosexuality and the Postwar City," Center for Interdisciplinary Research in the Arts, University of
Manchester, England, March 2009.
"Homosexuality and the Postwar City," keynote lecture, Australia-New Zealand American Studies
Association, Sydney, July 2008.
"From Sodomy Laws to Marriage Amendments: A History of Sexual Identity/Politics," Provost's Lecture,
University of Maryland, College Park, February 2008.
"Revisiting the Postwar Politics of Sexuality," keynote lecture (with Joanne Meyerowitz), New England
American Studies Association, Brown University, November 2007.
"From Sodomy Laws to Marriage Amendments: A History of Sexual Identity/Politics," Presidential Lecture,
Columbia University, April 2007.
"Why 'Come Out of the Closet'? Secrecy, Authenticity, and the Shifting Boundaries of the Public and Private
Self in the 1950s and 60s," Vern and Bonnie Bullough Lecture in the History of Sexuality and Gender,
University of Utah, April 2007.

“The Future of Sexuality Studies,” at the plenary session of the Sexuality Research Fellowship Program’s Capstone Conference (commemorating the conclusion of a ten-year-long fellowship program funded by the Ford Foundation and administered by the Social Science Research Council), Tamayo Resort, New Mexico, April 2006.

“Homosexuality, State, and Society: Historical Perspectives from the United States,” at the symposium “Diversity, Equality and Harmony: International Workshop on Sexuality, Policy and Law,” School of Social Development and Public Policy, Fudan University, Shanghai, China, January 2006.

“How History Mattered: Sodomy Law and Marriage Reform in the United States,” at the conference “Partisan Histories: Conflicted Pasts and Public Life,” The Australian National University, Canberra, September 2005.

“From Sodomy Laws to Marriage Amendments: Sexual Identity/Politics Since 1900,” Kaplan Lecture, University of Pennsylvania, March 2004.

“Reflections on Gay New York and Beyond,” at the symposium “Histoire sexuelle et histoire sociale, à l’occasion de la traduction française de Gay New York 1890-1940 de George Chauncey,” École normale supérieure, Paris, December 2003.

“Civil Rights, Gay Rights, Human Rights,” dual keynote address given with Mrs. Coretta Scott King at the beginning of Outgiving, a conference on gay philanthropy organized by the Gill Foundation, Atlanta, September 2003.

“Drag Balls as Society Balls: Phil Black’s Funmakers’ Ball and the Changing Rituals of Belonging in African American Society, 1940-1973,” Mark Ouderkirk Memorial Lecture, Museum of the City of New York, September 2003.

“A Different West Side Story: Latino Gay Culture and Antigay Politics in Postwar New York City,” Nicholas Papadopoulos Endowed Lecture in Lesbian and Gay Studies, University of California, San Diego, February 2003.

“Why ‘Come Out of the Closet’? Secrecy, Authenticity, and the Shifting Boundaries of the Public and Private Self in the 1950s and 60s,” The Rahv, Hughes, Manuel and Marcuse Memorial Lecture, Brandeis University, February 2003.

“Sexual Identity in the Twentieth Century,” Women’s Breakfast, American Historical Association, January 2003.

“Sexuality, Intimacy, and History,” Commencement Address, University of Chicago, June 2002.

“Why ‘Come Out of the Closet’? Authenticity, Post/Modernity, and the Shifting Boundaries of the Public and Private Self in the 1950s and 60s,” at “Histoire de la sexualité: échanges transatlantiques,” at the École normale supérieure, Paris, May 2001.

“The History of the Closet,” Inaugural George Mosse Memorial Lecture, University of Wisconsin, April 2001.

“The History of the Closet,” at the Sexuality 2000 Symposium, Oslo, Norway, August 2000.

“Why ‘Come Out of the Closet’? Authenticity, Post/Modernity, and the Shifting Boundaries of the Public and Private Self in the 1950s and 60s,” Inaugural Brudner Prize Lecture, Yale University, February 2000.

“Rethinking the History of Homosexuality and the Category of the Homosexual” and “A Research Program for Lesbian and Gay Studies,” at the First Swedish Conference on Research on Homosexuality and Lesbianism, University of Gothenburg, Sweden, November 1995.

“The National Panic over Sex Crimes in Cold War America,” Inaugural Mark Ouderkirk Memorial Lecture, Museum of the City of New York, June 1995.

“Gay Studies on Trial: Queer History/Politics/Studies,” at the Fifth National Graduate Student Conference on Lesbian and Gay Studies, University of Southern California, Los Angeles, March 1995.

“The Kinsey Scale and the Consolidation of the Hetero-Homosexual Binarism in the Twentieth Century,” at the Second International Conference on the History of Marriage and the Family, Carleton University, Ottawa, Canada, 1994.

“European Sexual Cultures in the Immigrant Neighborhoods of New York City, 1890-1940,” at the International Conference on European Sexual Cultures, University of Amsterdam, The Netherlands, June 1992.

“Publish *and* Perish? Lesbian/Gay Studies, Publishing, and the Academy,” at the plenary session on “New Directions in Scholarship,” Association of American University Presses, Chicago, June 1992.

OTHER INVITED LECTURES SINCE 1989

Chicago History Museum, April 14, 2011.
Columbia University, February 19, 2011.
Rutgers University, May 7, 2010.
University of Antwerp, Belgium, March 20, 2010
University of Amsterdam, March 15, 2010
Middlebury College, October 17, 2008.
The Rothmere American Institute, Oxford University, April 30, 2008.
University of Texas, Austin, April 11, 2008.
University of Amsterdam, The Netherlands, May 3, 2006.
Facultad de Filosofía y Letras, University of Buenos Aires, Argentina, March 20, 2006.
Kansas State University, March 10, 2006.
University of Miami, February 27, 2006.
DePaul University, Chicago, February 20, 2006.
Harvard University, February 3, 2006.
University of Massachusetts, Boston, February 3, 2006.
Boston University, February 2, 2006.
Yale University, January 17, 2006.
University of Melbourne, Australia, September 21, 2005.
University of Sydney, Australia, September 7, 2005.
New York University, April 19, 2005.
Chicago Historical Society, May 27, 2004.
University of North Texas, April 17, 2004.
University of Maryland, February 23, 2004.
University of California, Berkeley, September 25, 2003.
University of California, Los Angeles, February 20, 2003.
University of Minnesota, February 15, 2002.
Texas A&M University, April 25, 2001.
William and Mary College, April 18, 2001.
Northwestern University, April 5, 2001.
Harvard University, November 16, 2000.
Trinity College, November 15, 2000.
University of Michigan, April 15, 2000.
University of Connecticut, Storrs, February 17, 2000.
Hobart and William Smith Colleges, February 13, 2000.
Chicago Humanities Festival, November 8, 1998.
Indiana University, September 17, 1998.
University of Minnesota, May 22, 1998.
Institute for the Humanities, University of Illinois, Chicago, February 13, 1998.
Pompidou Center, Paris, June 27, 1997.
Colby College, April 10, 1997.
Cornell University, April 8, 1997.
University of California, Los Angeles, February 5, 1997.
University of California, Irvine, February 3-4, 1997.
Northwestern University, December 6, 1996.

Yale University, American Studies and History Departments, November 7, 1996.
Yale School of Architecture Urbanism Series, November 7, 1996.
University of Copenhagen, Denmark, November 3, 1995.
National Danish Lesbian and Gay Organization, Copenhagen, November 3, 1995.
University of Illinois, Champaign-Urbana, MillerComm Lectures, October 23, 24, 1995.
University of Notre Dame, September 9, 10, 1995.
Princeton University, March 9, 1995.
Chicago Teacher's Institute, December 7, 1994.
New York Academy of Medicine, New York City, November 10, 1994.
University of Chicago New York City Club, Distinguished Faculty Lecture Series, October 13, 1994.
Northwestern University, May 17, 1994.
New York Public Library, Celeste Bartos Forum, May 3, 1994.
[This lecture was later broadcast on public television.]
New York University, April 29, 1994.
Rutgers University, December 6, 1993.
Newberry Library Social History Seminar, June 8, 1993.
University of Wisconsin, Milwaukee, Center for Twentieth Century Studies, March 25, 1993.
Urban History Seminar of the Chicago Historical Society, January 12, 1993.
University of Illinois at Chicago, November 11, 1992.
New York City Lesbian and Gay Community Services Center, Gregory Kolovakas Memorial Lecture Series,
November 19, 1992.
University of Oregon, April 24, 1992.
Cornell University, February 24, 1992.
University of Chicago Centennial Symposium, Canons in the Age of Mass Culture, February 10, 1992.
Northwestern University, May 30, 1991.
Johns Hopkins University, March 28, 1991.
Sarah Lawrence College, November 27, 1990.
Carleton College, April 5, 1990.
Museum of the City of New York, November 5, 1989.
Rutgers Center for Historical Analysis, October 3, 1989.
Rutgers University, Camden, April 6, 1989.

Exhibit B

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Question 2 Campaign Material, available at <http://outhistory.org/wiki/File:Pro2mailer2002.jpg>, 2002.

Amy Ronner, “*Bottoms v. Bottoms*: The Lesbian Mother and the Judicial Perpetuation of Damaging Stereotypes,” 7 *Yale J. L. & Feminism*, 1995.

Clifford J. Rosky, “Like Father Like Son: Homosexuality, Parenthood and the Gender of Homophobia,” 20 *Yale J. L. & Feminism*, 2009.

Teemu Ruskola, “Minor Disregard: The Legal Construction of the Fantasy that Gay and Lesbian Youth Do Not Exist,” 8 *Yale J. L. & Feminism* 269, 1996.

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Stan Simon, *Homosexual Fights Driving Ban*, The Hartford Courant, Nov. 6, 1970 at 17.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on September 10, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

By: /s/ Sklar Toy
Sklar Toy
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010

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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court

for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME 4 OF 5**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
 Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
 Defendants,

and

COALITION FOR THE PROTECTION
 OF MARRIAGE,
 Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

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 FOR SUMMARY JUDGMENT,
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No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF GARY M. SEGURA,
PH.D. IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

I, Gary M. Segura, Ph.D., hereby declare and state as follows:

PRELIMINARY STATEMENT

I. Expert Background and Qualifications

1. I am a Professor of American Politics in the Department of Political Science at Stanford University. I have been retained by counsel for Plaintiffs as an expert in connection with the above-referenced litigation. I have actual knowledge of the matters stated in this declaration and could and would so testify if called as a witness. My background, experience and list of publications from the last 10 years are summarized in my curriculum vitae, which is attached as Exhibit A to this Declaration.

2. In the past four years, I have testified as an expert—either at trial or through declaration—or been deposed as an expert in *Windsor v. U.S.*, No. 10 Civ. 8435 (BSJ) (JCF) (S.D.N.Y.), *Dragovich v. U.S. Dep’t of the Treasury*, CV 4:10-01564-CW (N.D. Cal.), *Golinski v. Office of Personnel Management*, 824 F. Supp. 2d 968 (N.D. Cal. 2012), *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *Gill v. Office of Pers. Mgmt.*, 699 F. Supp. 2d 374 (D. Mass. 2010), *Massachusetts v. United States HHS*, 698 F. Supp. 2d 234 (D. Mass. 2010), *Pedersen v. Office of Personnel Management*, No. 3:10-cv-01750-VLB (D. Conn.), and *Jackson v. Abercrombie*, Civ. No. 11-00734 ACK-KSC (D. Haw.).

3. I received a Ph.D. in American Politics and Political Philosophy from the Department of Political Science at the University of Illinois in Urbana-Champaign in 1992. My tertiary field of emphasis was political methodology. My MA was also from the University of Illinois in 1990, and I earned my undergraduate degree from Loyola University of New Orleans in 1985.

4. I am also the founding Director of the Institute on the Politics of Inequality, Race and Ethnicity at Stanford, and the founding co-Director of the Stanford Center for American Democracy. In the latter role, I am one of the Principal Investigators of the American National Election Studies for 2009-2013, the premier data-gathering project for scholars of American elections.

5. My primary emphases in my scholarly research and writing are on public

1 attitudes, opinion, and behavior with respect to politics, and minority group politics. I have
2 taught classes on elections, public opinion, representation, Congress, Latino politics, gay and
3 lesbian politics, race and racism, the Voting Rights Act, inequality and American democracy,
4 interest group politics, philosophy of science, research design, and statistical analysis
5 (introductory and advanced).

6 6. To date, I have authored 44 article-length publications in professional journals
7 and edited volumes. Those journals include the *American Political Science Review*, the *American*
8 *Journal of Political Science*, *Political Research Quarterly*, *Political Behavior*, and the *Journal of*
9 *Politics*. I edited *Diversity in Democracy: Minority Representation in the United States*, published
10 by the University of Virginia Press in 2005. I am also the co-author of *Latino Lives in America:*
11 *Making It Home*, addressing new patterns of Latino life and politics in the U.S., published by
12 Temple University Press in 2010. I have a third book that was published in 2011 with
13 Congressional Quarterly Press, entitled “*The Future is Ours: Minority Politics, Political*
14 *Behavior, and the Multiracial Era of American Politics*, a comparative exploration of political
15 behavior across American racial and ethnic minority groups and how such behaviors will shape
16 American party coalitions in the coming decades. I am the co-author of a fourth book, *Latinos in*
17 *the New Millennium: An Almanac of Opinion, Behavior, and Policy Preferences*, which was
18 published earlier this year.

19 7. I am the former President of the Midwest Political Science Association
20 (MPSA), the second-largest organization of American political scientists. In 2006, I was the
21 General Program Chair of the MPSA Annual Meeting. In 2011, I was elected Vice-President and
22 Program Chair of the Western Political Science Association for 2012-2013, and will serve as
23 President in 2013-14. In addition, I am a member and former Executive Council Member of the
24 American Political Science Association, member and former Executive Council Member of the
25 Western Political Science Association, and member of the Southern Political Science
26 Association. I serve or have served on the editorial boards of the *American Journal of Political*
27 *Science*, *Journal of Politics*, and *Political Research Quarterly*. I am a member of the Sexuality
28 and Politics organized section of the American Political Science Association, have served on the

1 Southern Political Science Association's Committee on the Status of Gays and Lesbians, and was
2 part of the Executive Committee of the Sexuality Studies Program at the University of Iowa.

3 8. In preparing this declaration, I reviewed the Complaint in this case and the
4 materials listed in the attached list of sources (Exhibit B). I rely on those documents, in addition
5 to the documents specifically cited as supportive examples in particular sections of this
6 declaration, as support for my opinions. I have also relied on my years of experience in the field
7 of political science, as set out in my curriculum vitae (Exhibit A), and on the materials listed
8 therein.

9 9. I am being compensated for this effort at a rate of \$250.00 per hour. I will be
10 compensated at \$350.00 per hour for work performed while traveling, and I will be reimbursed
11 for expenses incurred while traveling in connection with my services. My compensation does not
12 depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

13 **II. Summary of Conclusions**

14 10. Gay men and lesbians do not possess a meaningful degree of political power and
15 are politically vulnerable, relying almost exclusively on allies who are regularly shown to be
16 insufficiently strong or reliable to achieve their goals or protect their interests. The powerlessness
17 of gay men and lesbians is evidenced in numerous ways, and they are subject to political
18 exclusion and suffer political disabilities greater than other groups that have received suspect
19 classification protection from the courts.

20 **III. Political Powerlessness in General**

21 11. Any evaluation of the political power of a particular group in the United States
22 takes place in the context of a general understanding of the role that groups play in American
23 politics. From James Madison onward, American democracy frequently has been understood as a
24 pluralist system, in which competition among groups should ideally ensure that no one interest
25 becomes permanently dominant, or determines outcomes over a large number of decisions over a
26 long time. Madison believed that in an "extended" republic, coalitions commanding the day on
27 one issue would dissolve and be replaced by a different majority coalition on the next issue.

28 12. Modern political scientists generally approach pluralism through the concept of

1 group interests. In what David Truman calls “disturbance” theory, the action of one group raises
2 challenges to the interests of another, causing the latter to react, and preventing a single interest
3 from dominating the political process. However, scholarly work on collective action (including
4 Mancur Olson among others) has found that not all groups have an equal opportunity to form and
5 act successfully to stave off threats to their interests. Differences in group size, resources, and
6 position in the class structure mean that some groups are inherently better positioned to act on
7 their own behalf than others, and some groups suffer a permanent disadvantage that places them
8 at the mercy of others. Reflecting this concern, eminent political scientist Elmer Eric
9 Schattschneider famously wrote, “The flaw in the pluralist heaven is that the heavenly chorus
10 sings with a strong upper-class accent.” Those with greater resources—time, money, and
11 numbers—exert greater influence on the political process. Minorities, by definition, are less
12 numerous than the majority.

13 13. The existence of societal prejudice against a particular group makes the
14 accumulation of resources, including finances and allies, more difficult. Moreover, that same
15 prejudice imposes an additional systematic burden because it tends to prevent that group’s
16 interests or policy preferences from receiving due consideration by other actors in the political
17 process, or causes that consideration to be sacrificed for the sake of political expediency.
18 Relative to minority groups that are otherwise similarly situated, a group that suffers such
19 prejudice does not receive an equivalent hearing in political contestation and debate.
20 Constitutions (and courts, through judicial review) play the role of the Madisonian corrective in
21 the pluralist system by protecting disadvantaged minorities from majoritarian excesses and from
22 effective exclusion from the political process.

23 14. Political power refers to a person’s or group’s demonstrated ability to extract
24 favorable (or prevent unfavorable) policy outcomes from the political system. In a well-
25 established and commonly cited definition, Robert Dahl wrote that A has power over B when A is
26 able to compel B to do something that B otherwise would not do. Thus, simple meetings of the
27 mind are insufficient to demonstrate the exercise of power. One does not have power over those
28

1 who, for other reasons, already agree. For example, in the last national election, millions voted
2 for the same candidate I did, but this is not evidence of my electoral influence.

3 15. Power may also be reflected in the content of the political agenda, the issues that
4 are considered for legislative action. More powerful political actors face fewer legislative threats
5 to their interests than less powerful actors. The very circumstance of being forced to defend
6 interests against potential legislative action is a reflection of weakness rather than strength.

7 16. Groups that lack political power may, on occasion, receive pledges of support, or
8 even desirable legislative outcomes, that they themselves lack the power to *compel* through the
9 political process. An elected official may arrive at a position on a policy or proposal for their
10 own reasons unrelated to the specific communicated preferences of the minority group's
11 constituents.

12 17. In some instances, the minority preferences may be entirely beside the point. For
13 example, an elected official may choose not to support a bill or policy proposal because he or she
14 may determine that the policy has implications adverse to *other* interests or because the costs of
15 implementation or enforcement of the policy are too great.

16 18. Positive legislative outcomes may also be the result of "affinity" or sympathy from
17 legislators in a position to bestow them. An elected official may decide not to support a bill or
18 policy proposal that discriminates against, singles out, or mistreats a minority group because he or
19 she independently believes that discriminating against, singling out, or mistreating the minority
20 group is wrong. But since these pledges or outcomes are not the result of an exercise of political
21 power *by the minority group*, they are not necessarily indicative of a group's actual political
22 power. Moreover, they are significantly more vulnerable to reversal than those achieved through
23 the exercise of actual power. The affinity or sympathy that gave rise to the support could
24 dissipate or flatten, and is likely to be abandoned in the face of subsequent opposition, and in the
25 absence of sufficient power and influence of the minority group to counter opposition.

26 19. For example, in the 2011 legislative debate over the legalization of marriage for
27 same-sex couples in the Maryland House of Delegates, several members of the chamber who had
28 *co-sponsored* the legislation—and even some who had solicited endorsements and donations

1 during the election cycle on this basis—ultimately voted against it in committee, publicly
2 announced their intention to vote against it on the floor, and subsequently did so. These
3 legislators’ apparent support in the earlier stage of the legislative process was costless, and
4 withered in the face of mobilized opposition and as an actual roll-call vote approached.

5 20. Following Dahl’s understanding, power can be illustrated only in comparison to a
6 baseline understanding of the decision-makers’ preferred actions. That is, to demonstrate that
7 power had been at work, one would need to observe successful instances of opinion change on the
8 part of a legislator in the face of positive or negative sanction or, alternatively, electoral change
9 precipitated by the ire of the dissatisfied constituency.

10 21. Apparent policy “agreement” is a particularly erroneous measure of power when
11 mere “agreement” requires no action on the part of the policy-maker. Again, the example of
12 candidates and officials endorsing a policy position, only to recant that support when an actual
13 vote approaches, illustrates the illusory nature of this form of support.

14 22. My opinion does not rest on the extreme assumption that in no place, at no time,
15 under any circumstances, have gay men and lesbians won any outcome.

16 23. Rather, my view is that one must weigh the relative impact of positive and
17 negative outcomes against the numerosity of moments of contestation and the insecure nature of
18 legislative gains. Policy “successes” should not be considered in isolation. While legislative
19 gains have occurred in some states and localities, numerous jurisdictions have adopted statutes
20 and constitutional amendments expressly in opposition to the interests of gay men and lesbians.
21 Even an assessment of “trend” requires consideration of the relative frequency of positive and
22 negative outcomes and the stakes involved in each of the policy debates.

23 24. Policy successes—whether at the state or federal level—are insecure so long as
24 the rights and legal status of lesbians and gays remains a subject of legislative action. We must
25 consider the frequency with which legislative gains have been repealed, turned back by the
26 voters, or foregone altogether, as well as the serious risk of repeal of legislative gains after each
27 election cycle in which political power shifts to a different political party. Recent policy
28 modifications, such as the adoption of a mechanism that led to the end of the “Don’t Ask, Don’t

1 Tell” policy, illustrate precisely this dynamic. Several prospective Republican presidential
2 candidates who ran for office in the 2012 Republican primary expressed support for a repeal of
3 this legislation and the reinstatement of “Don’t Ask, Don’t Tell,” a view also shared by members
4 of the new House majority and Republican members of the Armed Services Committee.
5 Similarly, after the Maine legislature passed legislation in 2009 to provide same-sex couples
6 access to marriage, voters overturned the law a few months later by referendum. The Washington
7 and Maryland legislatures also enacted legislation this year to allow same-sex couples to marry,
8 but opponents of the legislation appear to have gathered sufficient signatures to subject both
9 measures to a referendum by popular vote in November 2012.

10 25. Even positive outcomes for gay men and lesbians that are secured through court
11 rulings are vulnerable to popular or legislative rollback. For example, in response to the Iowa
12 Supreme Court’s ruling that lesbians and gay men could not be excluded from the institution of
13 civil marriage, anti-gay forces like the National Organization for Marriage organized a nationally
14 funded campaign to defeat three of the members of that court in judicial retention elections in
15 November 2010, and were ultimately successful in defeating all three. The defeat of state jurists
16 facing retention elections has the dual effect of weakening that court’s majority—raising the
17 possibility of their reversing the previous decision—as well as chilling similar action by jurists in
18 other states whose judicial views might otherwise lead them to similar conclusions.

19 26. Furthermore, many of the policy “successes” that have benefitted gay men and
20 lesbians are measures that remediate or repeal express, *de jure* discrimination against the group.
21 Remediation of existing discrimination and disadvantage should be distinguished
22 from affirmative political power. For example, the adoption of hate crimes statutes inclusive of
23 sexual orientation, while a “success” for gay men and lesbians, was necessary only because there
24 is such prevalent bias-related violence against gay men and lesbians. While a fair assessment of
25 the relative political “power” of gay men and lesbians would include the adoption of such
26 legislation, it must also include a consideration of the underlying behavior and bias that gave rise
27 to the need for the legislation, which is an indicator of political powerlessness, not strength.

28 27. In light of the political disadvantages still faced by a small, targeted, and disliked

group, I conclude that gay men and lesbians are powerless to secure basic rights within the normal political processes.

28. Traditional markers of political powerlessness include systematic disadvantages in the political process; the existence of significant prejudice, stigmatization, or *de facto* or *de jure* second-class status; or an inability, alone or in concert with reliable coalition partners, to secure basic rights or equal treatment from and within the political process. Here, I organize traditional markers of political powerlessness into two categories: (1) manifestations of power and powerlessness, on which gays and lesbians score poorly; and (2) factors that contribute to political disadvantage, on which gays and lesbians—to their detriment—score high.

IV. Political Powerlessness of Gays and Lesbians

A. Manifestations of Political Powerlessness

29. Although an exhaustive catalog is impossible, the lack of meaningful political power possessed by gay men and lesbians is reflected in numerous features of the nation's laws, institutions, and political history that are adverse to policy outcomes favored by and important to gay men and lesbians. Some examples are discussed below. The political powerlessness of gay men and lesbians is evidenced by their inability to bring an end to pervasive prejudice and discrimination, and to secure desired policy outcomes and prevent undesirable outcomes on fundamental matters that closely and directly impact their lives. Furthermore, the demonstrated vulnerability of occasional and geographically confined policy gains to reversal or repeal is indicative of a role played by "affinity" or sympathy, rather than the exercise of meaningful political power by gays and lesbians.

(1) Absence of Statutory Protection/Presence of *De Jure* Statutory Inequality

30. To date, there is no federal legislation prohibiting discrimination against gay men and lesbians in employment, education, access to public accommodations, or housing. Indeed, the history of the Employment Non-Discrimination Act (ENDA) provides a good example of gay men and lesbians' inability to compel policy outcomes for which they actively advocate. ENDA, which would extend employment protections on the basis of sexual orientation (and in some

versions, gender identity) has been introduced regularly since 1994 (with earlier versions existing as far back as the 1970s), but has never passed both houses of Congress. It has failed to win passage in both Republican- and Democratic-controlled Congresses. While the legislation attracts many “co-sponsors,” one cannot test the reliability or strength of this support in the absence of a recent and meaningful vote, or any realistic chance of its passage. The almost complete absence of legislative progress on the issue suggests that, at the very least, it is not a legislative priority for most legislators or the leadership of either party and, at worst, that the “support” is rhetorical and without substance.

31. In 1996, Congress adopted the “Defense of Marriage Act,” or DOMA, which, among other things, prevented even legally married same-sex couples from filing joint tax returns, inheriting social security benefits, and obtaining all of the other rights afforded to married individuals by federal law. This preclusion of rights acquisition was signed into law by a Democratic president. Until recently, litigation against DOMA was actively resisted by both Democratic and Republican administrations. Indeed, until February 2011, the Obama Justice Department defended the constitutionality of DOMA despite the administration’s public support for its legislative repeal. And the recent decision by the Department of Justice to cease its defense of DOMA in court came only after one house of Congress passed into the control of the opposite party, thus allowing that body the opportunity to intervene in the litigation. In short, it was a change of course without immediate practical effect. The same is true for President Obama’s and Vice President Biden’s recently announced personal support for the freedom to marry for same-sex couples, and the addition of this position to the Democratic platform in 2012. Their personal views and the platform have no practical effect on the exclusion from marriage faced by same-sex couples across the country. More to the point, in no instance can we identify an effect of lesbian and gay political power at work, here. Gay and lesbian voters were in no position to insist on these changes, nor are they able to compel candidates across the party to abide by them. Properly understood, they reflect affinity of the current President and the platform committee, but not power.

32. Despite a long-documented record of violence against gay men and lesbians, attempts to extend existing federal hate crimes to include violent crimes based on the perceived sexual orientation of the victim reached fruition only in 2009, after more than a decade of advocacy by civil rights groups and supporters. Previously, gays and lesbians enjoyed virtually no such federal protection. The legislative process that produced even this positive outcome is illustrative of the political powerlessness of gay men and lesbians. To provide political cover, the bill extending hate crimes protections to gays and lesbians was attached to and adopted as part of a Defense Appropriations Bill. Even under these circumstances, 75% of Republican members of the Senate voted against it. In the House of Representatives, 131 of 175 Republican members voting (again, 75%) also opposed the hate crimes provision, illustrating at once the depth of opposition to even ameliorative measures that benefit gay men and lesbians, as well as the fragility of the institutional support for such outcomes. It is again worth noting that the impetus for this legislation was the pattern of violence directed at gay men and lesbians, a circumstance that provides important context for why the adoption of such a provision need not represent an exercise of “power.”

33. In 1993, Congress codified the military’s “Don’t Ask, Don’t Tell” (DADT) policy, under which lesbians and gay men were required to conceal their sexual orientation in order to serve in the military, were investigated if suspected to be gay, and were discharged if they disclosed or were found to be gay. Like the “Defense of Marriage Act,” this legislation was signed by a Democratic president. In December 2010, Congress adopted a provision with an administrative mechanism that led to the end of this policy. But the circumstances under which even this positive outcome was achieved highlight the ultimate political powerlessness of gays and lesbians. The DADT policy was in effect for over 17 years and, despite significant evidence of abuse—including discharges initiated based on unsubstantiated allegations and third-party accusations, and aggressive investigations beyond the bounds of the policy—and its cost to the military, repeal had not seriously been considered. Both Republican and Democratic administrations defended DADT in court. The current Democratic administration discouraged legislative attempts to attach legislation repealing DADT to the Defense Authorization bill in the

1 summer of 2010, or indeed at any point prior to the November 2010 election. There was no
2 legislative action on the policy for most of the 111th Congress, beyond committee hearings, and
3 despite widespread shifts in public opinion on this issue, no final action was taken prior to the
4 general election. When the matter was finally taken up during the lame-duck session, Republican
5 members offered fierce opposition in both legislative chambers. Of 175 votes cast in the House
6 by Republican Party members, 160 (or 91.4%) were against the provision to repeal DADT. In the
7 Senate, 31 of 39 Republican senators (79.5%) opposed the repeal. Like the hate crimes
8 legislation, the DADT repeal illustrates the limited access gay men and lesbians have to the
9 legislative process because of such stalwart opposition.

10 34. On the state level, there is no statutory protection against discrimination in
11 employment or public accommodations based on sexual orientation in twenty-nine states.

12 35. *De jure* inequality also exists in state constitutional law. In 1990, there was not a
13 single state constitutional provision that targeted gay men and lesbians for unequal treatment.
14 Today, in over three-fifths of the states there is now constitutionally-established inequality—that
15 is, the exclusion of gay men and lesbians from the civil institution of marriage is formally written
16 into the framework of government. Indeed, in many states, including Nevada, voters passed
17 ballot initiatives to amend their state constitutions to prohibit same-sex couples from marrying
18 even *after* the state legislature had already passed statutes barring same sex couples from
19 marrying. At least 10 additional states affirmatively exclude gay men and lesbians from civil
20 marriage by statute but have not yet amended their constitutions.

21 36. The presence of domestic partnership and civil union laws adopted in various
22 states, rather than viewed as an “accomplishment,” is best understood as an illustration of the
23 political weakness of gay and lesbian political efforts. These laws are enacted for one of two
24 reasons: either (1) civil marriage equality is politically unattainable in a state, either through the
25 array of existing political forces or the presence of a constitutional bar—which also illustrates the
26 weakness of lesbian and gay politics—or (2) the enactment of a domestic partnership or civil
27 union law would have the effect of complying with a court order to address gay and lesbian
28 exclusion, as was the case when Vermont originally adopted civil unions. Notably, in Vermont,

1 the civil union law was the legislature's way of *not* granting civil equality to lesbian and gay
 2 citizens, despite a court order.

3 **(2) Repeal or Pre-Emption of Legislative or Judicial Protections Through**
 4 **Ballot Initiatives**

5 37. Evidence from the past two decades in particular has demonstrated that gay men
 6 and lesbians are especially vulnerable in the context of direct democracy. That is, positive
 7 legislative outcomes achieved at the state and local levels are often insecure. Initiatives and
 8 referenda frequently and effectively have been used to reverse or pre-empt the legislative grant at
 9 the state or local levels of policies benefiting or protecting gays and lesbians. These ballot
 10 initiatives can be broken into three groups: (1) those which overturn anti-discrimination policies,
 11 (2) anti-marriage initiatives, and (3) restrictions on adoption.

12 38. *Overturning anti-discrimination policies*—The first wave of ballot actions on gay
 13 and lesbian rights began in the early 1970s, but reached its peak in the 1990s. The most common
 14 form was citizen initiatives to overturn municipal, county, or state extensions of anti-
 15 discrimination policies to sexual orientation. These ballot actions were generally successful.
 16 Legislative enactments were overturned in cities and counties across the country, including Santa
 17 Clara County and the City of San Jose, California; Tacoma, Washington; Lewiston, Maine;
 18 Lansing, Michigan; St. Paul, Minnesota; Wichita, Kansas; and perhaps most famously, Miami-
 19 Dade County, Florida. A very small number of pro-gay votes also occurred and, not surprisingly,
 20 did not fare as well, including the defeat of a voter attempt to compel the Davis, California City
 21 Council to enact a gay rights ordinance. Haider-Markel and colleagues (2007) identified 143
 22 votes from the 1970s through 2005, and found that gay and lesbian rights were defeated or
 23 overturned in more than 70% of the cases—with the opponents of those rights prevailing at about
 24 the same rate for local and state elections. The frequency of electoral and policy conflict over
 25 non-discrimination statutes declined once the focus of the struggle increasingly centered on
 26 preventing legal recognition of same-sex couples' relationships. It is worth noting that many
 27 anti-gay measures amended city charters or state constitutions to increase the burden on gays and
 28 lesbians and their supporters for accomplishing policy change, such as Colorado's Amendment 2,

1 struck down by the Supreme Court in *Romer v. Evans*, 517 U.S. 620 (1996). The general
2 approach of such measures was to prohibit legislative action preemptively, and require that any
3 change be through popular, majority vote (with all of the disadvantages for minority rights this
4 carries). Most recently, the state of Tennessee adopted a new “anti-discrimination” law in May of
5 last year that specifically forbid any jurisdiction from enacting any anti-discrimination measures
6 that went beyond the protections in state law (which currently excludes lesbians, gay men,
7 bisexual and transgender people from all anti-discrimination protections). As a result, Nashville’s
8 two ordinances protecting gay men and lesbians from workplace discrimination were rendered
9 unenforceable. Similar measures are being advocated in other state legislatures.

10 39. *Anti-marriage initiatives*—In 2004 alone, anti-marriage equality ballot initiatives
11 passed in 13 states. To date, gay and lesbian marriage rights have been voted on at the state level
12 35 times, most recently in North Carolina on May 8, 2012. In only one instance did the pro-gay
13 position win, when Arizona’s Proposition 107, which also would have affected unmarried
14 heterosexual couples, failed in 2006; the constitutional amendment passed handily in 2008 when
15 it was narrowed to affect only gay men and lesbians. (Colorado, likewise, had two competing
16 anti-marriage initiatives, only one of which failed. The two appeared simultaneously on the
17 ballot, and although the harsher initiative failed, a more narrowly tailored effort passed on the
18 same day.)

19 40. In Maine, the state legislature managed to adopt marriage equality for same-sex
20 couples through statute. That policy success was short lived, as a popular majority was able to
21 overturn legislative action and reinstate the ban on marriage between same-sex couples through
22 statewide ballot on “Question 1.” This outcome was secured with massive intervention from
23 national anti-gay organizations, such as the National Organization for Marriage, as well as
24 substantial investment by religious organizations, including the Roman Catholic Church, whose
25 role was documented and touted in Catholic media sources. Campaign materials used by interests
26 opposing marriage equality were, in some instances, identical to those used in the campaign to
27 repeal marriage equality in California via Proposition 8, illustrating the vast and national reach of
28 those interests working against the interests of gay men and lesbians.

1 41. *Adoption*—In five states, gay men and lesbians are prohibited from adopting
2 children. Some of these bans were adopted recently. For example, in 2008, Arkansas voters
3 adopted Arkansas’ Act One, which prohibited adoption by unmarried cohabitating couples, an act
4 conceived with regard to—and targeted at—same-sex couples. Act One was struck down in April
5 2011 as an unconstitutional infringement on the right to privacy by the Arkansas Supreme Court.
6 That decision notwithstanding, it is possible, and I think likely, that these initiatives or legislative
7 actions will appear elsewhere in the future. Indeed, Arizona recently enacted a statutory
8 preference for heterosexuals in the state’s foster and adoption programs. In the 2008 American
9 National Election Study, 47.6% of respondents nationwide felt that gay men and lesbians should
10 be prohibited from adopting. Since that percentage varies widely across states, I and others
11 expect initiatives to prohibit same-sex couples from adopting to start appearing in states where
12 the level of opposition exceeds 50%.

13 42. Thus, beyond the obstacles gay men and lesbians face in the traditional legislative
14 process, ballot initiatives further disadvantage them politically and have undone many of the
15 benefits they have obtained through legislative action. The success of anti-gay ballot initiatives,
16 moreover, makes it less likely that legislatures will enact pro-gay policies in the first place (Lax
17 and Phillips 2009), because elected officials will fear having their actions overturned by angry
18 constituents. Moreover, many gay and lesbian activists fear that the reactive post-initiative
19 policies will be worse than the status quo, thereby forcing them to consider whether foregoing
20 legislative policy change in the first instance is actually in the best interests of the group. For
21 example, several successful anti-marriage ballot initiatives also prohibited civil unions and
22 domestic partnerships, removing benefits that had existed prior to the enactment of the anti-gay
23 ballot initiatives.

24 43. Ballot initiative campaigns are frequently polarizing, are built on enormous sums
25 of money, and are waged primarily in the non-deliberative media of mass advertising. Small
26 minorities are even less able to protect their interests in these kinds of contests than they are in the
27 legislative process, which—as a result of legislative districts, institutional rules, coalitional
28 politics, and other factors—tends to give smaller minorities more of an opportunity to prevent

1 undesirable outcomes. The passage of Proposition 8 in California and Question 1 in Maine both
2 illustrate that coalition politics are more easily broken down in popular vote situations where
3 misleading messages can circumvent community leaders and office holders.

4 44. Although the use of the initiative process against gay and lesbian policy goals is a
5 comparatively recent phenomenon, in the past, ballot initiatives were used to undo legislative
6 gains by immigrants, non-English speakers, African Americans, and minorities generally,
7 including overturning fair housing statutes, affirmative action programs, bilingual education, and
8 establishing English as an official language. Historians of the turn-of-the-century progressive
9 movement, when these direct democracy processes were established and written into the laws of
10 the western states, note the association of progressive reforms with anti-immigrant sentiment
11 (among other factors). Indeed, the progressive movement created the initiative process in order to
12 allow the majority to overturn decisions made by legislatures, which allow a greater role for
13 bargaining and coalitional politics. But the initiative process has now been used specifically
14 against gay men and lesbians more than against any other social group.

15 45. While there has been an increase in state and local jurisdictions with statutory anti-
16 discrimination protections for gay men and lesbians over the last two decades, these legislative
17 successes have been resisted strongly at the ballot box. Again, in three-fifths of the 50 states,
18 voters have amended their state constitutions to establish formal political and social inequality for
19 gays and lesbians. Similar proposals to amend the federal constitution have also been considered.

20 (3) Underrepresentation in Political Office

21 46. Gay elected officials have risen to various offices around the country. These
22 representatives may strive to advocate for gay and lesbian rights, but their numbers and limited
23 legislative impact on issues concerning those rights continue to demonstrate significant under-
24 representation and reliance on friendly, heterosexual representatives, over whom gay men and
25 lesbians hold no direct political power. For example, 85 state legislators nationwide are openly
26 gay, but the total number of state legislators nationwide is 7,382, so those 85 legislators represent
27 only 1.2% of the total. A recent study by the Williams Institute estimated the gay, lesbian and
28 bisexual population of the U.S. to be approximately 3.5%. Under even the most conservative

1 estimates of gay and lesbian population share, this number indicates that gays and lesbians are
2 substantially under-represented. Prior to 1990, only four openly gay men or lesbians were
3 members of state legislatures.

4 47. There have been only seven openly gay members of Congress in history, and
5 only four—considerably less than one percent of all members—serve today (.9% of the House,
6 .75% of the entire Congress). Four of those seven were initially elected to the House with their
7 sexual orientation not publicly known. Only three members were first elected to the House
8 without the benefits of incumbency and with widespread public familiarity with their sexual
9 orientation, Jared Polis (D-CO), Tammy Baldwin (D-WI), and David Cicilline (D-RI). The first
10 two represent districts that are home to the flagship campus of their state universities—districts
11 that are typically more tolerant than others in the state. Gay and lesbian politicians are largely
12 confined to a single political party. Gay Republicans face an extremely difficult time, and the
13 few gay GOP elected officials who have emerged seldom last, most leaving power either through
14 primary challenges or retirement in the face of pressure. There has never been an openly gay
15 President, U.S. Senator, Cabinet level appointee, or Justice of the United States Supreme Court.

16 48. The percentages of gay and lesbian representation at the local level are lower still.
17 In 2010, the Gay and Lesbian Leadership Institute identified 288 local elected gay or lesbian
18 political officials serving on city councils, county commissions, school boards, and other local
19 offices (http://www.glli.org/out_officials), which is an insignificant fraction of the total number
20 of elected local officials. Over a decade ago, the Census Bureau reported that the number of
21 elected officials nationwide was slightly over 511,000. Subtracting members of Congress and
22 state legislatures, about whom I just reported, that leaves somewhat over 500,000 city, county,
23 school, and local board officials, and only 288 (or .05%) were identified as openly gay. These
24 officials are also concentrated in the coastal states and in Illinois. Some states have no openly-
25 gay elected officials at all, and many more, including Nevada, have just a very small handful.

26 **B. Factors Contributing to Political Powerlessness**

27 49. Numerous factors, often working in combination or in mutually reinforcing ways,
28 contribute to the political powerlessness of gay men and lesbians. Furthermore, many of these

1 factors—including public and political hostility, prejudice, censorship, and religious and moral
2 condemnation—impose a political disability on gays and lesbians not suffered by groups of
3 comparable size and geographic dispersion. I begin this section with demographic considerations
4 and then discuss other, relational factors pointing to a degree of powerlessness that today is
5 unique to gays and lesbians.

6 (1) Small Population Size and Geographic Dispersion

7 50. The simplest way to secure political representation and exercise some degree of
8 influence over the political process is through numerical strength. The population strength of gay
9 men and lesbians is not close to being sufficient to obtain electoral predominance in a single
10 jurisdiction, let alone change the composition of a legislature or Congress. There are no
11 congressional districts with a majority population of gay and lesbian Americans. There are no
12 municipalities of any size with a majority gay and lesbian population. Even in broadly identified
13 gay-friendly communities, often places where migration to established lesbian and gay
14 communities has significantly increased the gay population above the national average, gays and
15 lesbians fail to reach majority status. A fair estimation of population suggests that gay men and
16 lesbians have sufficient numbers to determine (or substantially influence) the outcome of only a
17 few city council or county board seats, or state legislative districts, nationwide. At any level of
18 aggregation above the precinct or neighborhood, there is no place with a gay majority.

19 (2) Effect of HIV/AIDS Epidemic

20 51. The AIDS epidemic has set back the gay community's potential for political
21 action, in ways that are both obvious and not obvious. Through 2005, the Centers for Disease
22 Control reported that just over 300,000 MSMs (a CDC term for men who have sex with men) had
23 died of HIV/AIDS. Another 217,000 were living with AIDS. The loss of 300,000 potential
24 voters, organizers, and leaders is a profound setback to a community whose population starts as a
25 fairly small share of the society. Harder to calculate are the lost financial contributions to the
26 political efforts of gay men and lesbians as a consequence of this epidemic. Gay men and
27 lesbians have both raised substantial amounts of money for HIV-related research and social
28 services, diverting resources that could otherwise be used to fight discrimination. Further, gay net

1 wealth is negatively impacted by the loss of income on the part of those who have died, and the
2 partial loss of income and expenditures on healthcare from those still living with the disease.
3 Some political observers suggest that a decade or more of gay activism was lost to the cause of
4 gay equality as gay men and lesbians turned their attention to the more immediate threat of the
5 epidemic. While gay men and lesbians do not have the resources—reliable allies, elected
6 officials, votes, dollars, and organizational capacity—to be politically powerful, they have been
7 further disadvantaged by the fact that HIV destroyed such a large segment of the community and
8 consumed such a large portion of its resources. In addition to the direct resource and political
9 costs, AIDS offered heterosexuals a new reason to stigmatize gay people and same-sex relations,
10 and to resist political change that would have advanced gay equality.

11 (3) Violence

12 52. A crime can be classified as a hate crime when the victim is targeted because of
13 his or her identity—generally race, ethnicity, religious identity, gender, sexual orientation, or
14 disability status. Hate crimes are unique in that the effects of the crime are understood—indeed
15 intended—to reach beyond the person of the actual victim. The crime is best understood as an
16 expression of animus toward an entire group, and is an attempt to intimidate other members of
17 that group or otherwise constrain their future behavior. For example, racially motivated hate
18 crimes against individual target-group-members can simultaneously express racial prejudice
19 toward the individual, an entire group, and intimidate other group members from patronizing
20 businesses, moving to neighborhoods, enrolling in schools, or otherwise exercising their personal
21 liberties.

22 53. Though broad federal hate crimes protections for gays and lesbians came into
23 existence only recently, the FBI has collected data on hate crimes committed on the basis of
24 perceived sexual orientation for a number of years, at least from jurisdictions that have chosen to
25 report them, and the numbers are substantial. In the last year for which statistics have been
26 published, 2009, the total number of hate crime incidents was 6,604, and 1,482 (17.8%) of those
27 were on the basis of sexual orientation. In terms of single groups, only African Americans
28 endured more incidents, and since they are roughly three times the population share as gays and

1 lesbians, the likelihood that any given gay or lesbian citizen experiences an attack (that is, the per
2 capita number of attacks) is considerably higher.

3 54. Reported hate crime incidents range from simple assault to murder. According
4 to the FBI's statistics, in 2008, 73 percent of all hate crimes committed against gays and lesbians
5 included an act of violence; 71 percent of all hate-motivated murders in the United States were of
6 gay men and lesbians; and 55 percent of all hate-motivated rapes were against gays and lesbians.

7 55. FBI Hate Crimes reports for 2009 show that gay men, along with Jewish
8 Americans, are the most likely to be victimized by a bias crime. The Southern Poverty Law
9 Center ("SPLC") also suggests that steps forward in the cause of gay and lesbian equality seem
10 to be associated with a subsequent surge in antigay violence, pointing to data immediately in the
11 wake of the Supreme Court's ruling in *Lawrence v. Texas*, 539 U.S. 558 (2003), in which the
12 Court struck down Texas' sodomy law. The intimidation effect of hate crimes serves to
13 undermine the mobilization of gays and lesbians and their allies and to limit their free exercise of
14 simple economic and social liberties.

15 56. Recent years show no discernible decline in bias crimes against gays and lesbians.
16 FBI statistics reporting the number of hate crimes against specific groups shows that anti-gay acts
17 were as frequent in 2009 as they were in 2003.

18 (4) Invisibility

19 57. A unique aspect of gay and lesbian identity that distinguishes gays and lesbians
20 from other minority groups—to their political disadvantage—is their relative invisibility. The
21 scholarship on passing and self-identification suggests that members of repressed or targeted
22 groups who have the ability to pass unobserved in the majority population may choose to do so if
23 the costs of self-identification, in the form of family disapproval, physical threat, discrimination,
24 and their consequences, can be avoided. While this strategy avoids some risks of identification,
25 passing itself has a personal and a political cost.

26 58. The unwillingness to identify has several important implications for the question
27 of whether gay men and lesbians can meaningfully or effectively act on their own behalf
28

1 politically. While not a panacea, social contact with gay men and lesbians is generally associated
2 with more sympathetic policy preferences. Invisibility undermines community support.

3 59. Mobilization levels among gay men and lesbians is lower than other groups but
4 is erroneously perceived to be higher. Mobilization can reasonably be understood to be an act of
5 self-identification, so those choosing to pass have foreclosed visible political action.

6 60. Since not all gay men and lesbians come out, the percentage of the gay and
7 lesbian population that is mobilized seems higher than it really is. Likewise, since those gay and
8 lesbian citizens who choose to self-identify are those whose economic and social position in
9 society is more secure—thereby lessening the risks of coming out—the resulting self-selection
10 bias results in a misperception of gays and lesbians as better educated, of higher income, and
11 otherwise “privileged.” This leads the public to believe—mistakenly—that gay men and lesbians
12 do not need of certain protections.

13 61. The public perception that gay men and lesbians are better educated or have
14 higher incomes is not accurate. Statistically, gays and lesbians do not have higher levels of
15 income and, when all gay men and lesbians are considered rather than only the self-identified, are
16 no better educated than the public at-large. My analysis of the 2004 National Exit Polls
17 demonstrates no difference between heterosexual voters and gay and lesbian voters on income
18 and education.

19 62. Opponents characterize the efforts of gay men and lesbians to gain statutory
20 protection as both unjustified and transgressive. Moreover, the public incorrectly perceives that
21 gay men and lesbians are more privileged than they actually are. This misperception both
22 mobilizes opponents and encourages complacency by potential allies.

23 63. In addition, the fact that sexual orientation is not directly visible may reduce the
24 group’s ability to attract allies. Potential heterosexual allies may reasonably fear being
25 misidentified as gay or lesbian, reducing the chance that they will mobilize on behalf of gays and
26 lesbians. The National Coalition of Anti-Violence Programs reported in 2008 that 9% of hate-
27 crimes reported to their participating agencies on the basis of perceived sexual orientation
28 victimize heterosexuals misidentified as gay or lesbian.

64. Finally, invisibility exacerbates the problem of geographic and social dispersion, making it more difficult for gay men and lesbians to find each other and mobilize politically.

(5) Censorship

65. In a variety of ways, gay men and lesbians are pressured to remain invisible, and in several contexts, discussion of gay people and their relationships is prohibited or regulated. Examples include the military's long-standing and only recently repealed "Don't Ask, Don't Tell" policy; legislation that prevented the National Endowment of the Arts from funding any art depicting homoeroticism; rules that have prohibited federally funded AIDS education materials from "promoting" homosexuality and requiring educators to advocate for abstinence from extramarital sex, including same-sex couples' intimacy; and efforts in several states to forbid the mention of homosexuality in school health classes, or mandate the association of the term with descriptors suggesting that it is not acceptable. This year, Tennessee considered legislation banning the mention or discussion of homosexuality in primary grades, and Missouri has considered a similar bill. And, Arizona, for example, prohibits any mention that same-sex intimacy could be made "safe."

(6) Public Hostility and Prejudice

66. Gay men and lesbians face severe hostility from non-gay citizens in many parts of the country, and opinion data suggest that they are held in considerably lower regard than many groups currently receiving the protection of heightened scrutiny from the courts. Such low public regard makes it difficult for gay people to achieve significant political progress, implicitly justifies legislative and electoral actions against gay men and lesbians, and severely hampers their ability to attract donors, allies, coalition partners, or even public sympathy.

67. In each national election year, the American National Election Study (available at electionstudies.org or the Inter-university Consortium for Political and Social Research website) asks a representative sample of American citizens to gauge their "warmness" toward a particular group. Political scientists call this instrument a "feeling thermometer" and the scale of each ranges from 0 to 100, with 100 indicating strong warmness/fondness/positive views.

68. For Hispanics, approximately 40% of respondents rated their warmness at 50

(midpoint) or less, and the average temperature was 65.2 (std.dev.21.0). For African Americans, only 33% of respondents were at or below 50, and the mean temperature was 68.76 (std.dev. 20.2). For Catholics, 37% were at or below the mid-point and the mean temperature was 67.3 (std.dev 19.9), and for Jews, 43.9% of respondents were at or below the mid-point and the mean warmth was 65.0 (std.dev.19.3). What is revealing about these summary numbers is their similarity. They do vary, of course, but the percentage below the mid-point all group between 33 and 43.9%, the means of each group is between 65 and 69 degrees on the “thermometer,” and the standard deviations (a statistical score that calculates how spread apart the responses are around the mean) are between 19 and 20, indicating majority positive perception of each of these groups.

69. By contrast, gay men and lesbians fare far worse. Fully 65.4% of respondents rated gays at or below the mid-point of 50 and the mean temperature response was 49.4 (std.dev 27.7), indicating that a majority of respondents do not perceive gay men and lesbians positively. Almost two thirds of the respondents rate gays and lesbians at or below the mid-point, which is almost twice that for African Americans and substantially higher than for the other groups. The mean sentiment towards gay men and lesbians is 16 points lower than for Jews and Hispanics, and 19 points lower than for African Americans. The standard deviation is also instructive, since its size (almost half again larger than for the other groups) illustrates the level of polarization in sentiment about gay men and lesbians.

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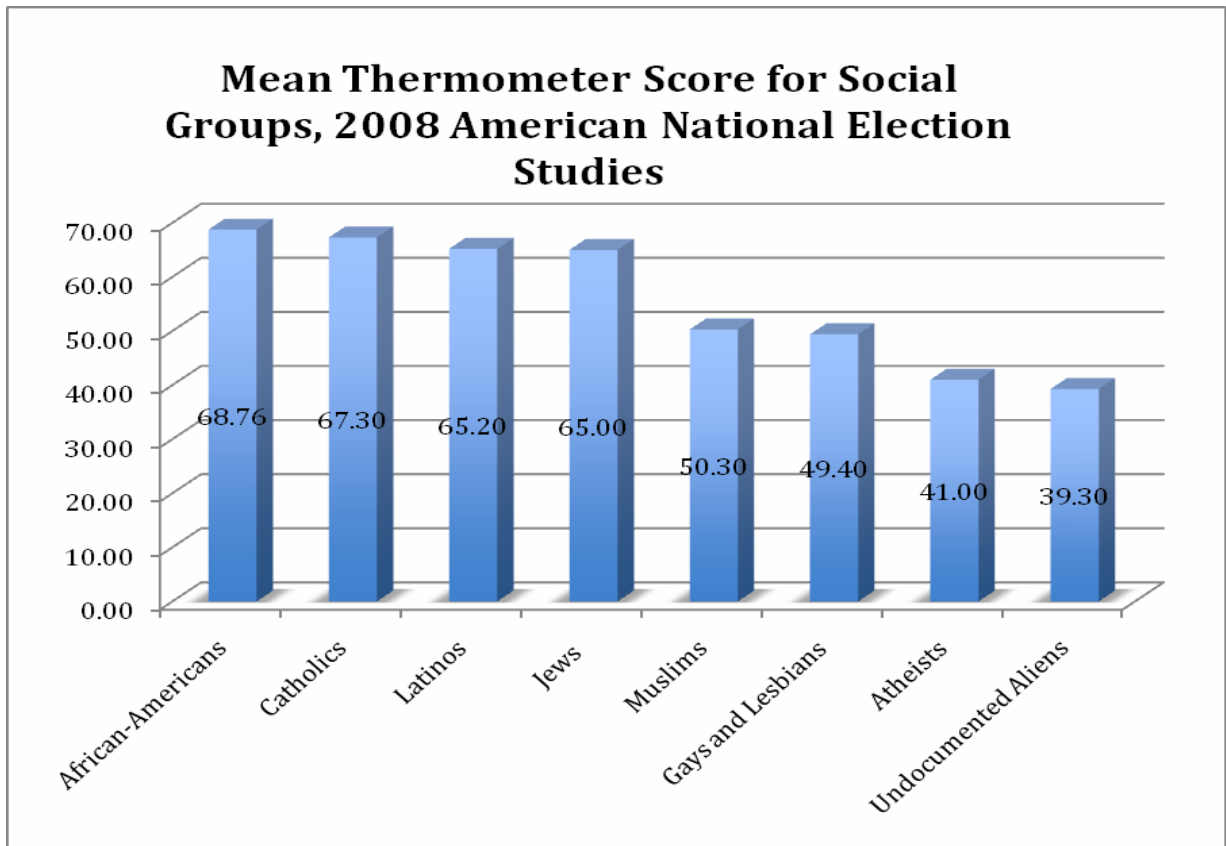
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70. The following chart is illustrative of this point:



71. The trend in “warmness” toward gay men and lesbians has been positive over the last several decades (as it has, in fact, for many groups in society). Notwithstanding that trend, the relative placement of gay men and lesbians vis-à-vis other “out-groups” in society suggest that public esteem remains a significant obstacle to political progress. By any estimation, the public is less fond of gay and lesbian Americans than racial and ethnic minorities and religious groups. In fact, the other groups with comparable levels of coolness include Muslims (mean=50.3), atheists (mean=41), and undocumented aliens (mean=39.3). It is revealing that 13.4% of respondents gave gay men and lesbians a score of zero, a percentage exceeded only by scores for undocumented immigrants (15.4%) and atheists (18.6%).

(7) Political and Social Hostility

72. Gay men and lesbians face outspoken denunciation by elected officials in a manner that would be unthinkable if directed toward almost any other social group. Hostility by

1 public officials is often directly mirrored in the population. Furthermore, its public nature, even
2 when articulated by only a small segment of office-holders and officials, serves as a signal to the
3 broader population that these discriminatory attitudes are “acceptable” or reasonable within the
4 bounds of mainstream political discourse.

5 73. Gay men and lesbians have been described by a sitting U.S. Senator as “the
6 greatest threat to our freedom that we face today.” Another sitting senator, during his successful
7 campaign, openly called for gay men and lesbians to be banned from the classroom, a claim he
8 repeated last year at a public rally. A third senator compared same-sex marriage to marrying “a
9 box turtle.” He was subsequently reelected with a large margin. Same-sex intimacy has been
10 described by a sitting senator as morally equivalent to incest and bestiality. In 2010, the GOP
11 nominee for governor of New York responded to a question about marriage equality for same-sex
12 couples by saying that “we should stop pandering to pornographers and perverts....” The social
13 and political disadvantage that flows from these very public and derisive comments is palpable.

14 74. While there may be pockets of tolerance here or there at the state and local levels,
15 and occasionally successful gay or lesbian candidates, in large swaths of the nation, political
16 condemnations of gay men and lesbians are not electorally costly and may even be used to gain
17 electoral support. It is difficult to identify many cases where an elected official was so damaged
18 by holding anti-gay positions that he or she lost public office on this basis, but there are countless
19 cases across the country where candidates felt advantaged by taking a particularly harsh anti-gay
20 viewpoint. In part, this is a consequence of the partisan and geographic distribution of views and
21 the nature of our legislative representation regime, but in part this is also a reflection of the fact
22 that pro-gay policies are a very low priority even among “allies” in the population who hold
23 generally positive views. Public contempt extends beyond elected officials to prominent national
24 religious leaders, who command the attention of political leaders as well as significant numbers of
25 the electorate.

26 (8) Unreliable Allies

27 75. The structure of the American party system is such that the path to pro-LGBT
28 equality policy change lies almost exclusively through the actions of one party. The increasing

1 power of evangelical Christians and self-styled “Tea Party” advocates in the GOP has shifted this
2 party’s social policy further to the right and all but eliminated its once sizable tradition of
3 libertarianism. Many within the Republican Party in office (and the national Republican platform)
4 are openly hostile to gay and lesbian rights. The nearly complete disinterest of one party severely
5 disadvantages gay men and lesbians, since gay men and lesbians can thus be understood as
6 “captured” by the Democratic Party, that is, unlikely to bolt from the party or abstain from voting
7 for it in large numbers. Under these circumstances, the capturing party can take the political
8 support of the group for granted.

9 76. Although the Democratic Party is more supportive in its rhetoric, and the
10 Democratic platform speaks favorably regarding equality for lesbians and gay men, Democrats
11 have repeatedly shrunk from any extension of rights to gay men and lesbians at the federal level.
12 Democrats controlled the White House from 1993 to 2001, and the Congress until 1994 and from
13 2006 to 2010. Nevertheless, nondiscrimination statutes and federal recognition of state-
14 sanctioned marriages between same-sex couples remain undelivered. Again, “Don’t Ask, Don’t
15 Tell” was passed in a Democratically controlled Congress, and both it and the federal “Defense of
16 Marriage Act” were signed into law by a Democratic president.

17 77. This is not to say that gay men and lesbians have no allies at all. In recent months,
18 the governors of New York, Maryland and Washington signed marriage equality bills into law.
19 In the case of Washington State, the governor was not seeking reelection, but both other
20 governors have future political aspirations. Their assistance weighs positively on my assessment
21 of political resources of gays and lesbians. Their support, however, must be weighed against the
22 vast majority of state governors, however, who offer no such support—costly or cost-free—or
23 offer direct opposition to the political and social aspirations of gays and lesbians.

24 78. Gay men and lesbians are disadvantaged by the circumstance of party capture.
25 The almost complete indifference or hostility of Republican elected officials to the political
26 interest of gay men and lesbians largely confines their political opportunities for support and
27 public office to a single party, the Democrats. Democratic leaders, mindful of this complete
28 exclusion, are thus free to neglect and even occasionally set back gay and lesbian interests, secure

1 in the knowledge that the other party does not represent a credible threat for peeling away voters.
 2 Gay men and lesbians may be disenchanted with the quality and intensity of representation they
 3 appear to receive from Democratic office-holders but, in a practical sense, have no alternative.
 4 Taken together, Republican hostility and Democratic capture significantly weaken the political
 5 voice of lesbians and gay men.

6 (9) Moral and Political Condemnation

7 79. While the pluralist framework envisions shifting majorities and rotation in office,
 8 perceived Old Testament prohibitions of homosexuality serve to create, in many of America's
 9 religious communities, a permanent majority that believes same-sex intimacy is sinful and
 10 immoral, and that it should be condemned and discouraged. The General Social Survey
 11 (<http://www.norc.org/GSS+Website/>) regularly asks a representative sample of Americans to
 12 evaluate whether homosexual relations are "wrong." In 2008, those data show that 51.5% of
 13 Americans still report that sex between two persons of the same sex is "always wrong," while
 14 another 10.3% agree that it is "sometimes" or "almost always" wrong. Moreover, the shift in the
 15 direction of tolerance is neither large nor rapid. A decade ago, a module from the same survey
 16 showed comparable numbers, at 56% and 11.8% respectively.

17 (10) Powerful, Numerous, and Well-Funded Opposition

18 80. The moral condemnation of homosexual acts fuels and supports political
 19 opposition to protections and benefits for gays and lesbians. Campbell and Robinson (2007)
 20 found that opposition to marriages between same-sex couples united leadership and core believers
 21 across religious traditions. Similarly, the *San Francisco Chronicle* reported that the campaign in
 22 favor of Proposition 8 was conceived and funded by a cooperative effort of the Roman Catholic
 23 Archbishop of San Francisco and the senior leadership of the Mormon Church. These reports
 24 were supported by documentary evidence and testimony introduced in the *Perry v.*
 25 *Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), trial in the Northern District of
 26 California, in particular evidence of interstate coordination and fundraising within and between
 27 global religious organizations. The biennial campaigns to pass Nevada's constitutional
 28 amendment prohibiting marriage for same-sex couples also received significant support from a

1 number of churches, including the Mormon Church, which used its infrastructure to organize
2 voters and solicit campaign donations from church members. Churches provide a well-funded,
3 widely spread, untaxed medium in which individuals opposed to gay and lesbian policy goals can
4 disseminate political messages and campaign materials, as well as engage in fundraising.
5 Moreover, national religious organizations like Focus on the Family, the Traditional Values
6 Coalition, the Family Research Council, the National Organization for Marriage and other groups
7 provide a national network for pressuring elected officials, fundraising, message testing, media
8 dissemination and publication, mobilization, and coordination across states and jurisdictions.
9 This nationwide coordination, for example, explains how 13 statewide initiatives concerning
10 marriage for people in same-sex relationships appeared in a single year, 2004. Similarly, the
11 coordination of campaigns from California to Maine illustrates the national nature of these
12 efforts. Cahill (2007) documents the vast economic resources of these organizations and their
13 willingness to provide them to political efforts to prevent or reverse rights, benefits, or protections
14 for gay men and lesbians. Gay men and lesbians lack the political resources—including voting
15 numbers, cash, elected officials from the group, reliable allies, reach, or a favorable political
16 opportunity structure—to counter this kind of committed, organized opposition to their interests.

17 81. When scientific and learned societies have concluded that there is no evidentiary
18 or scientific bases to justify anti-gay biases or policies—whether with respect to same-sex
19 relationships or in evaluating gay men and lesbians as parents, as healthy, productive members of
20 society, and so forth—forces opposed to their political and social incorporation have formed
21 splinter or shadow organizations designed to give the appearance of scientific approval to
22 positions without broad scientific and professional support. For example, the American
23 Psychological Association long ago removed homosexuality from their diagnostic manual as a
24 psychologically disordered behavior, as the consensus in psychological research is that there is
25 little or no psycho-pathology associated with homosexual identity. Nevertheless, anti-gay forces
26 have founded the National Association of Research and Therapy for Homosexuality (NARTH),
27 which promotes efforts to change sexual orientation even though virtually all major mental health
28 professional organizations have adopted policy statements warning professionals and the public

1 about these treatments. Likewise, the American Academy of Pediatrics has been publicly
2 supportive of gay and lesbian parenting, and states on their website that “A growing body of
3 scientific literature reveals that children who grow up with one or two gay and/or lesbian parents
4 will develop emotionally, cognitively, socially, and sexually as well as children whose parents are
5 heterosexual.” In response, anti-gay activists have established the “American College of
6 Pediatricians” which, despite their name, is actually an anti-gay organization with a fraction of
7 the Academy’s membership and no scientific or professional standing. These non-mainstream
8 organizations, with names designed to evoke a false sense of scientific authority, exist principally
9 to discredit the scientific consensus regarding gay people, unquestionably weakening their
10 political power.

11 **V. Comparative Political Powerlessness**

12 82. Gays and lesbians suffer an extreme degree of political vulnerability and
13 powerlessness compared to most other groups in society. Even groups that have obtained the
14 protection of heightened scrutiny from the Supreme Court possessed greater political power at the
15 time those decisions were handed down than gays and lesbians do today.

16 **A. Gender**

17 83. When the Supreme Court held that sex was a quasi-suspect classification in the
18 1970s, they were in a far superior political position compared to that held by lesbians and gays
19 today. Women are and were a majority of the population and, if they so choose, could
20 theoretically determine most political outcomes. While women do not have the same level of
21 political cohesion as many other groups, so that in many cases their majority status has not
22 proved decisive, the magnitude of their numbers is a source of potential power that politicians
23 cannot ignore. And in fact, by the time of the recognition of sex as a quasi-suspect classification
24 by the Court, women had achieved important victories in the political process, including the 1963
25 Equal Pay Act, coverage in the 1964 Civil Rights Act and its subsequent amendments, and
26 specific statutory and constitutional protection in several states.

27 84. Women have a number of other characteristics that enhanced their ability to
28 organize and act politically when compared with gays and lesbians. While sexism certainly

1 existed (and still exists), and political activism could be costly, identity as a woman was not
2 socially controversial, did not attract familial scorn, and did not bar one from such a large range
3 of social institutions, though some institutions were exclusively male. Women could freely
4 identify one another, gather, coordinate, and act largely free of fear of repressive tactics. Both
5 political parties sought the support of women.

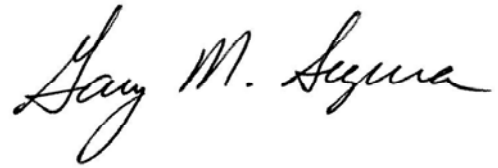
6 **B. Race**

7 85. Immediately in the wake of the Civil War, three amendments to the federal
8 constitution established *de jure* legal equality for African-Americans and officially barred states
9 from violating equal protection. Though this guarantee of equality had seldom been meaningfully
10 enforced, it was nonetheless a *de jure* status superior to that now held by lesbians and gay men.
11 In addition, as early as 1941, President Roosevelt issued Executive Order 8802 prohibiting race
12 discrimination in contracting and employment in companies doing business with the U.S. In
13 April of this year, President Obama declined to sign an executive order barring sexual orientation
14 discrimination among federal contractors. Through court action and the social movement of the
15 1950s and 1960s, African Americans (and later Latinos) achieved a rollback of Jim Crow
16 segregation laws and established a statutory regime of equality in employment, education, and
17 housing. Again, this was more promise than practice, but it was a statutory circumstance superior
18 to that of lesbians and gay men today.

19 86. In the 1940s and 1950s, African Americans and other racial and ethnic minorities
20 had similar disadvantages to gays in terms of resources and social sanction, but with far greater
21 numbers (and in some instances majorities), they have been able to claim a more meaningful
22 share of political representation and policy responsiveness. Even before the passage of the Civil
23 Rights Act of 1964 and Voting Rights Act of 1965, there were 5 black members of Congress and
24 over 100 elected officials nationwide. Today, 73 people of color serve in the House of
25 Representatives. African Americans, Latinos, and Asian Americans have been elected governors
26 and big city mayors. They form outright majorities in dozens of jurisdictions and approximately
27 60 House districts through the last census. Rather than serve as an impediment, most (though
28 admittedly not all) religious institutions express support for the principle of racial equality and the

1 church in minority communities, rather than serving as an impediment to political progress, is a
2 locus for identification and mobilization.

3
4 Signed under penalty of perjury under the laws of the United States this 5th day of
5 September, 2012.

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11 Gary M. Segura, Ph.D.
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Exhibit A

Curriculum Vitae
Gary Michael Segura

Department of Political Science, Stanford University
100 Encina Hall West
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650-723-3583
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EDUCATIONAL AND PROFESSIONAL HISTORY

1/8/12

Education:

1985-1986 & 1988-1992	University of Illinois at Urbana-Champaign Ph.D., Department of Political Science, 1992. A.M., Department of Political Science, 1989.
1981-1985	Loyola University of the South, New Orleans, LA B.A., Magna Cum Laude, Presidential Scholar Department of Political Science, 1985.

Academic Experience:

2008-present	Professor, Department of Political Science, and Chair of Chicana/o Studies, Center for Comparative Studies in Race and Ethnicity, Stanford University
2007-2008	Professor, Department of Political Science, and since 2006, Director, University of Washington Institute for the Study of Ethnicity, Race and Sexuality, University of Washington.
2005-2007	Associate Professor, Department of Political Science, University of Washington.
2001-2005	Associate Professor, Department of Political Science, University of Iowa.
1999-2001	Associate Professor, School Politics and Economics, Claremont Graduate University.
1996-1999	Assistant Professor, School Politics and Economics, Claremont Graduate University.
1992-1996	Assistant Professor, Department of Political Science, University of California, Davis.
1991-1992	Acting Assistant Professor, Department of Political Science, University of California, Davis.

SCHOLARSHIP

Publications

Books:

Latinos in the New Millennium: An Almanac of Opinion, Behavior, and Policy Preferences. 2012. Cambridge: Cambridge University Press. With Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa and Valerie Martinez-Ebers.

"The Future is Ours:" Minority Politics, Political Behavior, and the Multiracial Era of American Politics. 2011. Washington, DC: Congressional Quarterly Press. With Shaun Bowler.

Latino Lives in America: Making It Home. 2010. Philadelphia: Temple University Press. With Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa and Valerie Martinez-Ebers.

Diversity In Democracy: Minority Representation in the United States. 2005. Charlottesville: University of Virginia Press. Edited with Shaun Bowler.

Refereed Articles:

"Latino Public Opinion and Realigning the American Electorate." 2012. *Dadalus*. Forthcoming.

"Who's the Party of the Working Class? Economic Populism and the Public's Beliefs about American Political Parties." Forthcoming, June, 2012. *Political Behavior*. With Stephen P. Nicholson.

"Assimilation, Incorporation, and Ethnic Identity in Understanding Latino Electoral and Non-Electoral Political Participation." 2011. *Political Research Quarterly*, 64, (1): 172-184. With Wayne Santoro.

"Hope, Tropes, and Dopes: Hispanic and White Racial Animus in the 2008 Election." 2010. *Presidential Studies Quarterly*, 40 (3): 497- 514. With Ali Valenzuela.

"Should They 'Dance with the One Who Brung 'Em?' Latinos and the 2008 Presidential Election." 2008. *PS: Political Science and Politics*, 41 (4):753-760. With Matt A. Barreto, Luis R. Fraga, Sylvia Manzano, and Valerie Martinez-Ebers.

"Race and the Recall: Racial Polarization in the California Recall Election." 2008. With Luis R. Fraga. *American Journal of Political Science* 52 (2): 421-435.

- “Commentary on ‘Citizens by Choice Voters by Necessity: Long Term Patterns in Political Mobilization by Naturalized Latino Voters’.” With Adrian D. Pantoja and Ricardo Ramirez. 2008. *Political Research Quarterly*, 61 (1): 50-52
- “All Politics are Still Local: the Iraq War and the 2006 Midterm Election.” 2008. With Scott S. Gartner. *PS: Political Science and Politics*, 41(1): 95-100.
- “What Goes Around, Comes Around: Race, Blowback, and the Louisiana Elections of 2002 and 2003.” 2006. With Christina Bejarano, graduate student. *Political Research Quarterly*, 60(2): 328-337.
- “Su Casa Es Nuestra Casa: Latino Politics Research and the Development of American Political Science.” *American Political Science Review*, 100(4): 515-522. 2006. With Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa and Valerie Martinez-Ebers.
- “Comparative Ethnic Politics in the United States: Beyond Black and White.” *Annual Review of Political Science*, 9: 375-395. 2006. With Helena Alves Rodrigues.
- “Immigration and National Identity: An Introduction to a Symposium on Immigration and National Identity.” *Perspectives on Politics*, 4(2): 277-278. 2006.
- “Culture Clash? Contesting Notions of American Identity and the Effects of Latin American Immigration.” *Perspectives on Politics*, 4(2): 279-287. 2006. With Luis Fraga.
- “Explaining the Latino Vote: Issue Voting among Latinos in the 2000 Presidential Election.” *Political Research Quarterly*, 59(2): 259-271. 2006. With Stephen P. Nicholson and Adrian D. Pantoja.
- “Earthquakes and Aftershocks: Tracking Partisan Identification amid California's Changing Political Environment.” *American Journal of Political Science*, 50(1): 146-159. 2006. With Stephen P. Nicholson and Shaun Bowler.
- “A Symposium on the Politics of Same-Sex Marriage: An Introduction and Commentary.” *PS: Political Science and Politics*, 38 (2). April 2005. Served as Symposium Editor.
- “Racial/Ethnic Group Attitudes Toward Environmental Protection in California: Is ‘Environmentalism’ Still a White Phenomenon?” *Political Research Quarterly* 58(3):435-448. 2005. With Matthew Whittaker (graduate student) and Shaun Bowler.
- “War and the Fate of Legislators: War Casualties, Policy Positions, and U.S. Senate Elections During Vietnam.” *Political Research Quarterly*, 53 (3):467-477. 2004. With Scott S. Gartner and Bethany A. Barratt.
- “The Mobilizing Effect of Majority-Minority Districts on Latino Turnout.” *American Political Science Review*, 98(1): 65-76. 2004. With Matt Barreto and Nathan D. Woods.
- “Fear and Loathing in California: Contextual Threat and Political Sophistication Among Latino Voters.” *Political Behavior*, 25 (3): 265-286. 2003. With Adrian D. Pantoja.

- “Does Ethnicity Matter? Descriptive Representation in the Statehouse and Political Alienation Among Latinos.” *Social Science Quarterly*, 84(2): 441-460. 2003. With Adrian D. Pantoja.
- “The Paradox of Presidential Approval: The Mixed Blessing of Divided Government to Presidential Popularity.” *Journal of Politics*, 64 (3): 701-720. 2002. With Stephen P. Nicholson and Nathan D. Woods, graduate student.
- “Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos.” *Political Research Quarterly*, 54 (4): 729-750. 2001. With Adrian D. Pantoja and Ricardo Ramirez.
- “Race, Casualties and Opinion in the Vietnam War.” *Journal of Politics*, 62 (1): 115-146. 2000. With Scott S. Gartner.
- “Midterm Elections and Divided Government: An Information-Driven Theory of Electoral Volatility.” *Political Research Quarterly*, 52 (3): 609-630. 1999. With Stephen P. Nicholson.
- “War, Casualties, and Public Opinion.” *Journal of Conflict Resolution*, 42: 278-300, 1998. With Scott S. Gartner.
- “Dynamics of Latino Partisanship in California: Immigration, Issue Salience, and Their Implications.” *Harvard Journal of Hispanic Politics*, 10: 62-80, 1997. With Dennis Falcon, graduate student, and Harry Pachon.
- “All Politics are Local: The Effects of Local Losses on Individual Attitudes Towards War.” *Journal of Conflict Resolution*, 41: 669-694, 1997. With Scott S. Gartner and Michael Wilkening, graduate student.
- “Appearances Can Be Deceptive: Self-Selection, Social Group Identification, and Political Mobilization.” *Rationality and Society*, 9 (2): 131-161, 1997. With Scott S. Gartner.
- “Cross National Variation in Political Sophistication of Individuals: Capability or Choice?” *Journal of Politics*, 59 (1): 126-147, 1997. With Stacy B. Gordon, graduate student.
- “Sequential Choices and Partisan Transitions in U.S. Senate Delegations: 1972-1988.” *Journal of Politics*, 57(1):86-100, 1995. With Stephen P. Nicholson, graduate student.
- “Endogeneity, Exogeneity, Time, and Space in Political Representation.” *Legislative Studies Quarterly*, 20(1): 3-22, 1995. With James H. Kuklinski.

Book Chapters and Invited Articles:

- “The Browning of America.” *Democracy Journal*, June 2012.
- “Restarting History.” In Grusky, David et al., editors, *Occupy the Future*. Cambridge MA: MIT Press. 2012.

- “Latino Electoral Participation.” With Jeanette Carmen Bustamante. For the *Encyclopedia of Latinos and Latinas in the United States*, 2nd Edition, Oxford University Press. 2012.
- “The Efficacy and Alienation of Juan Q. Public: The Immigration Marches and Orientations Toward American Political Institutions.” In Bloemraad, Irene and Kim Voss, (eds.), *Rallying for Immigrant Rights*. Berkeley: University of California Press, 2011. With Francisco Pedraza and Shaun Bowler.
- “The Immigration Aftermath: Latinos, Latino Immigrants, and American National Identity.” Forthcoming in David Coates and Peter Siavelis (eds), *Getting Immigration Right: What Every American Needs to Know*. 2009. Dulles VA: Potomac Books. With Luis R. Fraga.
- “Hearing Footsteps: Latino Population Growth and Anticipated—but not Quite Present—Political Effects in Emerging Communities.” In de la Garza, Rodolfo O., Louis DeSipio, and David L. Leal (eds.). *Beyond the Barrio: Latinos in the 2004 Elections*. 2008. South Bend, IN: University of Notre Dame Press. With Christina Bejarano.
- “An Evaluation of the Electoral and Behavioral Impacts of Majority-Minority Districts.” In Levi, Margaret, Jack Knight, James Johnson, and Susan Stokes, eds. *Designing Democratic Government*. 2008. New York: Russell Sage Foundation. With David I. Lublin.
- “Majority-Minority Districts, Co-ethnic Candidates, and Mobilization Effects.” In Henderson, Ana, *Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power*. 2007. Berkeley: Institute for Governmental Studies Public Policy Press. With Nathan D. Woods.
- “A Place at the Lunch Counter: Latinos, African-Americans, and the Dynamics of American Race Politics.” In Meier, Kenneth, Rodolfo Espino, and David Leal, eds., *Latino Politics: Identity, Mobilization, and Representation*. 2007. Charlottesville: University of Virginia Press. With Helena A. Rodrigues.
- “Latino Political Participation.” With Helena A. Rodrigues. For the *Encyclopedia of Latinos and Latinas in the United States*, Oxford University Press. 2005.
- “Social, Political and Institutional Context and the Representation of Minority Americans.” In Segura, Gary M. and Shaun Bowler, eds. *Diversity In Democracy: Minority Representation in the United States*. 2005. Charlottesville: University of Virginia Press. With Shaun Bowler.
- “Agenda Change and the Politics of Latino Partisan Identification.” In Segura, Gary M. and Shaun Bowler, eds. *Diversity In Democracy: Minority Representation in the United States*. 2005. Charlottesville: University of Virginia Press. With Stephen P. Nicholson.
- “Unquestioned Influence: Latinos and the 2000 Election in California.” In Rodolfo de la Garza and Louis Desipio, eds., *Muted Voices: Latino Politics in the 2000 Election*, New York: Rowman and Littlefield. 2004. With Luis Fraga and Ricardo Ramirez.
- “Targets of Opportunity: California's Blanket Primary and the Political Representation of Latinos.” In Cain, Bruce E. and Elisabeth R. Gerber, eds., *Voting at the Political Fault Line: California's*

Experiment with the Blanket Primary, 248-269. 2002. Berkeley: University of California Press.
With Nathan D. Woods, graduate student.

“Hispanics, Social Capital and Civic Engagement.” *National Civic Review* 90 (1): 85-96. 2001. With
Harry Pachon and Nathan D. Woods, graduate student.

“Institutions Matter: Local Electoral Laws, Gay and Lesbian Representation, and Coalition Building
Across Minority Communities.” In Ellen Riggle and Barry Tadlock, eds., *Gays and Lesbians in
the Democratic Process*, 220-241. 1999. New York: Columbia University Press

Book Review:

Review. *Who Are We?* By Samuel Huntington. *Perspectives on Politics*, 3(3): 640-642.

Review. *Congress and the Rent Seeking Society*, by Glenn Parker, *Journal of Politics*, 59: 591-593, 1997.

Other Publications:

“An Update on the Status of Latinos y Latinas in Political Science: What the Profession Should be
Doing.” *PS: Political Science and Politics*, XXXIII (4): 899-903, December, 2000. With Valerie
Martinez-Ebers, Manuel Avalos, Carol Hardy-Fanta, Linda Lopez, and Ronald Schmidt, Sr.

Under Review:

“Behavioral and Attitudinal Components of Immigrant Political Incorporation.”

“Democratic Accountability, the Separation of Powers, and Government Approval: How Party
Government Shapes Approval of American National Institutions.” With Stephen P.
Nicholson.

“Race Matters: Latino Racial Identities and Political Beliefs.” With Stephen P. Nicholson and
Adrian Pantoja.

Awards:

2010 Elected Fellow, American Academy of Arts and Sciences

2007 Midwest Latino Caucus Best Paper Award for the Best Paper Presented at the Annual
Meeting, Midwest Political Science Association

2005 Adaljiza Sosa-Riddell Award for Exemplary Mentoring of Latino/a Faculty, American
Political Science Association, Committee on the Status of Latinos y Latinas.

2004 Charles Redd Award for Best Paper on the Politics of the American West presented at the
2003 Annual Meeting, Western Political Science Association.

External Grants and Fellowships:

- 2009 National Science Foundation. "American National Election Studies, 2009-2013." \$10,000,000 with Simon Jackman and Vincent Hutchings (Jointly with the University of Michigan).
- 2007 National Science Foundation. "Spanish Translation and Hispanic Over-sample: American National Election Study." \$722,657 with Matt A. Barreto.
- 2006 National Science Foundation. "Supplemental Grant: Contextual Variation and Latino Political Life." \$33,754.
- 2006 Latino Policy Coalition. "Understanding Latino Policy Challenges in 21st Century America." \$40,000 with Matt A. Barreto.
- 2005 National Science Foundation. "Contextual Variation in Latino Political Life." \$173,600, With Michael Jones-Correa, on behalf of the *Latino National Survey* team. Divided between University of Washington and Cornell University.
- 2002-2005 Private Foundation Grants for the *Latino National Survey*.
The Latino National Survey is a collaborative project with Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa and Valerie Martinez. The project combines a 40-minute survey of 8600 Latino residents of the United States with an extensive array of contextual and demographic data on place of residence.
- 2005 Wm. K. Kellogg Foundation. "Latino National Survey." \$100,000
- 2005 Carnegie Corporation. "Latino Incorporation in a Changing America: The Latino National Survey." \$100,000.
- 2004 Joyce Foundation. "Latino Survey in Illinois and Iowa." \$100,000.
- 2004 Russell Sage Foundation. "Latinos Immigrants in New Receiving Areas." \$150,000.
- 2004 Irvine Foundation. "Latinos in California Survey." \$150,000.
- 2004 Ford Foundation. "Latino National Survey." \$200,000.
- 2003 Ford Foundation. "Public Policy Advocate Outreach for the Latino National Survey." \$30,000.
- 2002 William and Flora Hewlett Foundation. "Latino National Survey Planning Grant." \$125,000.
- 2002 Annie E. Casey Foundation. "Latino National Survey Working Group," under the auspices of the Inter-University Program in Latino Research. \$20,000.

- 2000 National Science Foundation, SES-0079056. "The Demographics of Pandora's Box: An Empirical Investigation of the Determinants of Who Dies in War." With Scott S. Gartner. Total Grant, \$215,750, divided between the two institutions.
- 2000 Haynes Foundation Faculty Fellowship. "The Blanket Primary and Latino Influence in California's Republican Party." \$10,000
- 1999 Haynes Foundation Faculty Fellowship. "Demography, Representation, and Institutions in Southern California Governments." \$8000
- 1997 Public Policy Institute of California. "Latino Representation and Local Electoral Laws in California." \$25,000
- 1996 Pew Charitable Trusts. "Social Capital, Civic Engagement and Political Participation in Latino Neighborhoods." With Rodolfo de la Garza and Harry Pachon. \$165,000.
- 1995 National Science Foundation, SBR-9511527. "Casualties of War and Politics: American Electoral Politics and the Korean and Vietnam Wars." With Scott S. Gartner. \$72,000.
- 1989 National Hispanic Scholar Fellowship
- 1988 National Hispanic Scholar Fellowship
- 1983 Harry S. Truman Foundation Fellowship

Recent Internal Grants and Fellowships:

- 2005 University of Washington's President's Diversity Appraisal Implementation Fund. Grant to establish the "Washington Institute for the Study of Ethnicity and Race," on behalf of the Department of Political Science. March.
- 2003 Obermann Summer Interdisciplinary Research Grant. "Assimilation and Political Incorporation: An Examination of Mexicans, Puerto Ricans, and Cuban Americans." With Wayne Santoro, Assistant Professor of Sociology, UI, Summer.
- 2002 UI Faculty Scholar Award.
- 2002 Obermann Interdisciplinary Research Semester, "Sex, Politics and Economics." Fall.
- 2002 UI Career Development Award, awarded for Spring, 2003.
- 1994 Undergraduate Instructional Improvement Grant, "Politics and Homosexuality."

Conference Presentations (10 years):

- “Partisan Deviation, Economic Self-Interest, and the Behavior of High Income Voters.” With Shaun Bowler. Presented at the Annual Meeting of the American Political Science Association, Seattle, WA, September 1-4, 2011.
- “What They Think Depends on Who You Ask: Methodological Errors in Survey Estimates of Latino Two-Party Vote.” With Matt A. Barreto. Presented at the Annual Meeting of the American Political Science Association, Seattle, WA, September 1-4, 2011.
- “Minority Political Orientations, Policy Opinions, and American Values.” With Shaun Bowler. Presented at the Annual Meeting of the Western Political Science Association, San Antonio, TX, April 21-23, 2011.
- “Race Matters: Racial Identity and Party Identification among Latinos.” With Stephen P. Nicholson and Adrian Pantoja. Presented at the Annual Meeting of the Western Political Science Association, San Antonio, TX, April 21-23, 2011.
- “The Problem with Palo Alto: Partisan Deviation, Economic Self-Interest, and the Behavior of High Income Voters.” With Shaun Bowler. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, March 31-April 3, 2011.
- “In-Group Identification and Out-Group Attitudes: Latinidad and Relations with Whites and African Americans.” Presented at the Annual Meeting of the Southern Political Science Association, New Orleans, LA, January 6-8, 2011.
- “Race and the Obama Presidency.” With Matt A. Barreto and Ali Valenzuela. Presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 1-5, 2010.
- “Everything Jim Crow is New Again: Arizona, Racial Construction, and the Political Ramifications of Immigrant-Bashing for Short-Term Political Gain.” Presented at the Workshop on Inequality, United States Study Centre at the University of Sydney, Australia, June 2010.
- “Gender Attitudes, Race Differences and Gay Rights: Is Race Really a Key Predictor of Attitudes Towards Homosexuals.” Presented at the Annual Meeting of the Midwest Political Science Association, Chicago IL, April 21-25, 2010.
- “Do NES Models of Voting Apply to Blacks and Latinos? Results from the 2008 NES Oversamples.” Presented at the Annual Meeting of the Western Political Science Association, San Francisco, CA, March 30-April 3, 2010. With Matt A. Barreto.
- “Latino Identification in the American Polity: Characteristics and Consequences of Multiple Political Selves.” Presented at the National Conference on Latino Politics, Power, and Policy: Findings from the Latino National Survey. Brown University, Providence, RI, October 24, 2009.
- “The Black-Brown Divide that Wasn’t: Comparing Latino, Black, and White Voters in the 2008 Election.” With Matt A. Barreto. Presented at the Mershon Center, Ohio State Conference

on the 2008 Election, Columbus, OH, October 2-3, 2009.

“Identity Research in Latino Politics.” Presented as part of the APSA Short Course on Latino Politics at the Annual Meeting of the American Political Science Association, Toronto, ON, September 2-6, 2009.

“Who’s the Party of the Working Class? Economic Populism and the Public’s Beliefs about American Political Parties.” With Stephen P. Nicholson. Presented at the Annual Meeting of the American Political Science Association, Boston, MA, August 28-31, 2008.

“Revisiting the Politics of Economic Populism: Class, Faith, and Party Images in the United States.” With Stephen P. Nicholson. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 3-6, 2008.

“Evaluating a Cost-Driven Theory of Wartime Public Opinion.” With Scott S. Gartner. Presented at the Annual Meeting of the Western Political Science Association, San Diego, CA, March 20-22, 2008.

“Calculated Support: Hawks, Doves, Evaluators, and the War in Iraq.” With Scott S. Gartner. Presented at the Annual Meeting of the American Political Science Association, Chicago, IL, Aug 30-Sep. 2, 2007.

“Transnational Linkages, Generational Change, and Latino Political Engagement.” Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 12-15, 2007.

Winner of the Midwest Latino Caucus’ Best Paper Award for the Best Paper on Latino Politics presented at the Annual Meeting.

“The Efficacy and Trust of Juan Q. Public: How the Immigration Marches Reflect Surprising Support for American Institutions of Governance.” With Shaun Bowler and Francisco Pedraza. Presented at the Annual Meeting of the Western Political Science Association, Las Vegas, NV, March 8-10, 2007.

“LATINO NATIONAL SURVEY: Rollout Presentation: Coming to Grips with Latino Identity.” Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA, Aug 31- Sep 3, 2006.

“Majority-Minority Districts, Co-ethnic Candidates, and Mobilization Effects.” With Nathan D. Woods. Presented at the University of California, Berkeley, Warren Institute on Civil Rights, Conference, February 9, 2006, Washington, DC.

“Divided Government and Public Attitudes Towards Institutions.” With Stephen P. Nicholson. Paper presented at the Annual Meeting of the Southern Political Science Association, Atlanta, GA, January 5-7, 2006.

“An Evaluation of the Electoral and Behavioral Impacts of Majority-Minority Districts.” With David I. Lublin. Presented at the Annual Meeting of the American Political Science Association, Washington, DC, August 31-September 4, 2005.

- “Race Matters: Latino Racial Identities and Political Beliefs.” With Stephen P. Nicholson and Adrian Pantoja. Presented at the Annual Meeting of the American Political Science Association, Washington, DC, August 31-September 4, 2005.
- “Approval of Governmental Institutions and Party Government.” With Stephen P. Nicholson. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 7-10, 2005.
- “From Radical to Conservative: Civil Unions, Same-sex Marriage, and the Structure of Public Attitudes.” With Ken Cimino. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 7-10, 2005.
- “A General Theory of War Casualties and Public Opinion.” With Scott S. Gartner. Presented at the Annual Meeting of the Western Political Science Association, Oakland, CA, March 16-19, 2005.
- “Hearing Footsteps: Latino Population Growth and Anticipated—but not Quite Present—Political Effects in Emerging Communities.” With Christina Bejarano, graduate student. Presented at the University of Texas conference on Latinos in the 2004 Election, February 11-12, 2005.
- “What Goes Around, Comes Around: Race, Blowback, and the Louisiana Elections of 2002 and 2003.” With Christina Bejarano, graduate student. Presented at the Annual Meeting of the Southern Political Science Association, New Orleans, LA, January 6-8, 2005.
- “Democratic Accountability, the Separation of Powers, and Divided Government: Explaining Presidential and Congressional Approval.” With Stephen P. Nicholson. Presented at the Annual Meeting of the Southern Political Science Association, New Orleans, LA, January 6-8, 2005.
- “Race and the Recall: The Role of Race in the California Recall Election.” With Luis R. Fraga. Presented at the Annual Meeting of the American Political Science Association, Chicago, IL, September 1-5, 2004.
- “A Place at the Lunch Counter: Latinos, African-Americans, and the Dynamics of American Race Politics.” With Helena A. Rodrigues. Presented at the conference “Latino Politics: The State of the Discipline,” Texas A&M University, College Station, TX, April 30-May1, 2004.
- “Assimilation, Incorporation, and Ethnic Identity in Understanding Latino Electoral and Non-Electoral Political Participation.” With Wayne Santoro. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 15-18, 2004.
- “Partisan Gerrymandering and Its Influence on Voter Turnout.” With Matt Barreto and Nathan D. Woods. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 15-18, 2004.
- “A New Generation of Latino Voices: Identity, Attitudes, and Participation.” With Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa and Valerie Martinez. Presented at the Annual Meeting of the Western Political Science Association, Portland, OR, March 11-14, 2004.

- “Earthquakes and Aftershocks: Tracking the Macro-partisan Implications of California's Recent Political Environment.” With Stephen P. Nicholson and Shaun Bowler. Presented at the Annual Meeting of the Western Political Science Association, Portland, OR, March 11-14, 2004.
- “Environmental Racism and the ‘Action Gap’: Assessing White and Minority Commitment to Environmental Causes.” With Shaun Bowler and Matthew Whittaker. Presented at the Annual Meeting of the Southern Political Science Association, January 8-10, 2004.
- “Perceptions of Commonality and Shared Interests: Assessing Latino Support for Black-Brown Coalitions.” With Helena Alves Rodrigues. Presented at the Color Lines Conference, Harvard Civil Rights Project, Harvard University, Cambridge, MA, August 31-Sep. 2, 2003.
- “Attitudinal Underpinnings of Black-Brown Coalitions: Latino Perceptions of Commonality With African-Americans and Anglos,” with Helena Rodrigues. Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 3-6, 2003.
- “Racial/Ethnic Group Attitudes Toward Environmental Protection in California: Is ‘Environmentalism’ Still a White Phenomenon?” With Matthew Whittaker and Shaun Bowler, presented at the Annual Meeting of the Western Political Science Association, Denver, CO, March 27-30, 2003.
Winner of the 2003 Charles Redd Award for Best Paper on the Politics of the American West, Western Political Science Association, March 2004.
- “Ich bin ein Latino! Sophistication, Symbolism, Heuristics, and Latino Preferences in the 2000 Presidential Election,” with Stephen P. Nicholson and Adrian D. Pantoja, presented at the Annual Meeting of the American Political Science Association, Boston, MA, August 29 – September 1, 2002.
- “Looking Good...Feeling Good! Assessing Whether Dyadic and Collective Descriptive Representation Enhances Latino Efficacy,” with Stacy Burnett Gordon, prepared for presentation at the Annual Meeting of the American Political Science Association, Boston, MA, August 29 – September 1, 2002.
- “Descriptive Representation and Political Alienation Among Latino Citizens” with Adrian D. Pantoja, presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 25-27, 2002.
- “Rest Assured? Estimating the Potential Demobilization Effects of Overlapping Majority-Minority Districts,” with Matt Barreto and Nathan D. Woods, presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 25-27, 2002.
- “Estimating and Understanding Social Capital and its Political Effects Among Latinos in the United States,” with F. Chris Garcia and Harry Pachon, presented at the Annual Meeting of the Western Political Science Association, Long Beach, CA, March 22-24, 2002.
- “A Quasi-experimental Estimation of the Effects of Overlapping Majority-Minority Districts on Turnout,” with Matt Barreto and Nathan D. Woods, presented at the Annual Meeting of the Western Political Science Association, Long Beach, CA, March 22-24, 2002.

TEACHING ACTIVITIES

Graduate Courses Taught

Seminar in Political Behavior	Research Design in Political Science
Seminar in Congress	Seminar on Representation & Electoral Systems
Seminar in Interest Groups	Nature of Political Science Inquiry
Quantitative Methods I	Seminar on Racial, Ethnic, and Social Minorities
Core Seminar in American Politics	Seminar on Race and Racism in Contemporary American Politics

Undergraduate Courses Taught

Elections and Voting Behavior	Introduction to American Politics
Legislative Process	Introduction to Political Philosophy
Societal Responses to AIDS	Politics and Homosexuality
Quantitative Analysis	Minority Representation and the VRA
Latino Politics	Minority and Group Mobilization
Understanding Political Research	Seminar on Race and Racism
Inequality and American Democracy	Parties, Voting, Media, and Elections

Doctoral Students Supervised (Chair)

Christina Bejarano, Assistant Professor, Department of Political Science, University of Kansas, 2007.

Ken Cimino, Deceased, 2004.

Stacy B. Gordon, Associate Professor, Department of Political Science, University of Nevada, 1997.

Daryl Liskey, Senior Computational Social Scientist, Booz Allen Hamilton Corporation (Strategy and Technology Consulting), 2002.

Stephen P. Nicholson, Assistant Professor, School of Social and Behavioral Sciences, University of California, Merced, 1998. Recipient of the APSA's E.E. Schattschneider Award for the Best Dissertation in American Politics, 1999.

Adrian D. Pantoja, Associate Professor, Department of Politics, Pitzer College, 2001.

Francisco Pedraza, Assistant Professor, Department of Political Science, Texas A&M University 2010.

Helena Rodrigues, Direct, Project ADVANCE, University of Arizona, 2005.

Roger P. Rose, Associate Professor, Department of Political Science, University of Minnesota, Morris, 1997. (Co-directed)

Gregory Saxton, Assistant Professor, Department of Communication, University at Buffalo-SUNY, 2000. (Co-directed)

Ali Valenzuela, Assistant Professor, Department of Politics, Princeton University, 2011.

Jacqueline White, Deputy Chief Administrative Officer, County of Los Angeles, 2004.

Nathan D. Woods, Director, Welch Consulting, Washington, DC, 2004.

Doctoral Committee Memberships

Elizabeth Bergman, Assistant Professor, California State University East Bay, 2001.

Jeff Cummins, Assistant Professor, California State University, Fresno, 2003.

Elizabeth DeSouza, Visiting Assistant Professor, Claremont Graduate University, 1999.

Rose Ernst, Assistant Professor, Seattle University, 2004.

Scott Frisch, Associate Professor, Department of Political Science, California State University, Channel Islands, 1997.

Marcia Godwin, Assistant Professor, Public Administration, University of LaVerne, 2000.

Christopher Hoene, Director, Center for Policy and Research, National League of Cities, 1999.

William Julius, Visiting Assistant Professor, Department of Political Science, California State University, Fullerton, 2002.

George Monsavais, Executive Director, “Two Minute Briefing,” Provo, Utah, 2001.

Deidre Sanders, Environmental Justice Program Manager, Pacific Gas and Electric, 2009.

Nancy Shulock, Associate Professor of Public Policy and Administration, California State University, Sacramento, 1996. Recipient of the APSA’s Harold Lasswell Award for the Best Dissertation in Policy Studies, 1997.

Charles Turner, Associate Professor and Chair, Department of Political Science, California State University, Chico, 2000.

Whittaker, Matthew. Staff Researcher, College of Education, University of Iowa. June 2006.

Doctoral Dissertations in Progress

Wendy Gross, (Co-chair)
Mackenzie Israel-Trummel, (Chair)
Rachel Stein, (Member)

Lucila Figueroa, (Member)
Jeanette Carmen Bustamante, (Chair)
Rachel Gillum, (Member)

SERVICE

Professional Service and Memberships:

Vice-President-Elect and Program Chair-Elect, Western Political Science Association, 2011-2012.

Chair, Nominations Committee, Class III Section 3, American Academy of Arts and Sciences, 2011-14.

Member, International Academic Advisory Board, the United States Studies Centre at the University of Sydney, NSW, Australia, 2011-present.

Academic and Research Program Review Subcommittee—2011-2012.

Member, APSA Standing Committee on Conference Siting, 2011-present.

Guest Co-Editor: *Annual Review of Political Science*, 2011.

APSR Editorial Search Committee, American Political Science Association, 2010-2011.

Nominations Committee, Class III Section 3, American Academy of Arts and Sciences, 2010-11.

Executive Board, Consortium of Social Science Associations (COSSA), 2010.

President, Midwest Political Science Association, 2009-2010.

President-elect, Midwest Political Science Association, 2008-2009.

Southern Political Science Association, Committee on the Status of Gays, Lesbians and Bisexuals, 2008-2009.

Western Political Science Association *PRQ* Best Paper Award Committee, 2008-2009.

NSF IGERT Panelist, 2007

Vice-President, Midwest Political Science Association, 2006-2007.

Member, APSA Pi Sigma Alpha Award Committee, 2006-2007.

General Program Chair, 2006 Annual Meeting of the Midwest Political Science Association.

Board of Overseers, American National Election Study, 2006-2009

Member, WPSA Best Paper on Latino/a Politics Committee, 2005-2006.

President, Latino Caucus of the American Political Science Association, 2004-2005.

Member, Executive Council of the American Political Science Association, 2002-2004.

Member of the Council's Administrative Committee, 2003-2004;

Member of the Council's Sub-committee on Public Presence, 2003-2004.

Member, Nominations Committee, American Political Science Association, 2005-2006.

Section Program Co-Chair, Organized Section on Race, Ethnicity, and Politics, 2005 Annual Meeting of the American Political Science Association.

Member, Executive Council of the Western Political Science Association, 2005-2008.

Member, Executive Council of the Organized Section on Elections, Voting Behavior, and Public Opinion of the APSA, 2002-2004.

Member, Editorial Board, *American Journal of Political Science*, January, 2002-2009.

Member, Editorial Board, *Journal of Politics*, January, 2005-2007; 2009-present.

Member, Editorial Board, *Political Research Quarterly*, June 2006-present.

Member, Editorial Board, *PS: Political Science & Politics*, January, 2002-2004.

Member, Executive Council of the Midwest Political Science Association, 2000-2003.

Member, Latino Scholarship Fund Award Committee, American Political Science Association, 2003-2005.

Member, Midwest Political Science Association Ad Hoc Committee on Short Courses.

Chair, Western Political Science Association's Committee on the Status of Chicanos, 2001-2003.

Member, American Political Science Association's Committee on the Status of Latinos y Latinas in the Profession, 1999-2001.

Member, Western Political Science Association's Committee on the Status of Chicanos, 2000-2001.

Member, Steering Committee, Latino Scholarship Fund, APSA Centennial Campaign

Invited Lecture, the Joseph Serna Center, California State University, Sacramento, October 2008.

Invited Presentation, University of Illinois at Urbana, La Casa Cultural Latina and Department of Political Science, November 2007

Invited Presentation, Immigrant Political Incorporation Workshop, Harvard, September 2007

Invited Presentation, Democratic Caucus of the House of Representatives, February 2007

Invited Presentation, Center for American Progress, Washington, DC, February 2007

Invited Presentation, Latino Issues Forum and San Francisco Foundation, February 2007

Invited Lecture, University of California, Davis, February, 2007

Invited Lecture, Texas Tech University, Lubbock, April 2006

Invited Lecture, Texas State University, San Marcos, April 2006

Invited Lecture, University of California, Berkeley, October 2005

Invited Panelist, American Anthropological Society Conference on Race and Human Variation, Arlington, VA, September 2004

Invited Lecture, Texas A&M University, College Station, November 2004

Invited Lecture, University of California, San Diego, May 2004

Invited Lecture, Washington University in St. Louis, February, 2004

Invited Lecture, University of Wisconsin, Madison, April, 2003

Invited Lecture, University of Washington, November, 2003

Invited Lecture, Hunter College-CUNY, October, 2002

Invited Lectures, Ralph Bunche Institute, 2000, 2004

Invited Discussant, Conference on Migration, UC-San Diego, Fall 2000

Invited Lecture, University of California, Irvine, April, 1999

Invited Panelist, Conference on the "New Californios" UC-Irvine, April 1997.

Invited Panelist, Conference on "The 1996 elections and the Latino Community," School of Public Policy, University of California, Berkeley, November 1996.

Section Program Chair, Voting and Elections, 2001 Meeting of the WPSA

Manuscript Reviewer: APSR, AJPS, JOP, LSQ, PRQ, SSQ, JCR, Political Behavior, Political Psychology, El Centro, APR, NSF, PS, International Migration Review

University and College Service:

Stanford University

Chair, Program in Chicano/a Studies, Center for Comparative Studies in Race and Ethnicity. 2008-2014.

Faculty Senate, 2010-2013.

Editorial Board, Series in the Comparative Studies in Race and Ethnicity, Stanford University Press, 2010-present.

Leading Matters Lecturer, November 13, 2010.

IRISS Executive Committee, 2009-present.
 Founding Co-Director, Stanford Center for American Democracy, within the Institute for Research in the Social Sciences, 2008-present.
 Founding Director, Institute on the Politics of Inequality, Race and Ethnicity at Stanford. 2009-present.
 Member, Guiding Concilio, El Centro Chicano, 2009-2011.
 Invited Speaker, Sophomore Seminar, Stanford University, 2008, 2009.

University of Washington

Departmental Review Committee, Department of Communication, 2007-8
 Founder and Director, University of Washington Institute for the Study of Ethnicity, Race, and Sexuality, 2006-present.

University of Iowa

Faculty Senate, 2003-2004.
 Member, Faculty Senate Committee on Government Relations, 2002-2004.
 Member, University of Iowa Council on the Status of Latinos, 2001 to present.
 Member, Board in Control of Athletics, 2003-2004; Subcommittees on Academic Achievement and Equity.
 Member, Sexuality Studies Program Advisory Committee, 2003-2004.
 Member, Obermann Center Advisory Committee, 2003-2005.
 Member, Interdisciplinary Research Grant Review Committee, Obermann Center, December 2003.
 Faculty Host, Provost Candidate Forum, December 2003.
 Member, Faculty Assembly Nominations Committee, April 2003.
 Presentation to the Latino Youth Summit, Sponsored by Opportunity at Iowa, October 31, 2003.
 Visiting Lecture, Hispanic Student Association, Cornell College, November, 2002.
 Paper Presentation, "Changes in Latitudes, Changes in Attitudes: How Latino Immigration and Political Incorporation are Changing the Face of American Politics," at the public forum, "Latinos-Ignored No Longer," sponsored by the UI Council on the Status of Latinos in Commemoration of Latino Heritage Month, October 15, 2002.
 Key Note Speaker, UI Latino Commencement Celebration, May 2002.
 Conference Presentation, Western Hemispheric Integration, Democracy and the Rule of Law, organized by the UI College of Law and International Programs, April, 2002.

Claremont Graduate University

Member, Affirmative Action and Diversity Committee,
 Serving on the Information Science Search Committee as part of these duties;
 Member, Campus Master Planning Committee;
 Member, Commencement Speaker Committee;
 Member, Lambda Faculty and Staff Association, Curriculum sub-committee, 1997-2001;
 Committee for an Undergraduate Major in Political Psychology, April 1999 to 2000;
 Panel Speaker, Inauguration of Steadman Upham as President of the University;
 Faculty Executive Committee, July 1, 1997 to June 30, 1999;
 Space Allocation and Facilities Review Committee, March 1997-2001;

Diversity Task Force, January 1997 to May 1998;
 Chair, Campus-wide Working Group on Financial Aid and Fellowship Allocation Policy,
 Spring 1998;
 Community Fellows Selection Committee, October, 1998;

UC-Davis

Member, Central Valley Initiative Planning Committee, Vice-Provost's Office, Spring 1994;
 Member, Chancellor's Committee on Lesbian, Gay and Bisexual Issues, April 1994-1996;
 Member, Institute of Governmental Affairs--SSDS Statistical Consultant Search Committee,
 Summer 1994;
 Chair, Institute of Governmental Affairs-ICPSR Committee and UCD Faculty ICPSR Liason,
 1994-95;

Departmental Service:

Stanford University

Member, Political Science Omnibus Search Committee, 2011-2012.
 Member, CCSRE Strategic Planning Committee, 2011-2012.
 Member, Political Science Graduate Admissions, 2010-2011.
 Member, African-American Politics Search Committee, 2009-2010.
 American Politics Field Chair, 2008-09.
 Member, Graduate Admissions, 2008-09.
 Member, American Politics Search Committee, 2008-09.
 Member, CCSRE Curriculum Committee, 2008-present.
 Chair, Ernesto Galarza Memorial Lecture Committee, 2008-present.
 Director, CCSRE Public Policy Institute, 2009-present.

University of Washington

Member, Lev Award Committee, 2007
 Member, Third-year Review Committee for Matt Barreto, 2007
 Member, Graduate Admissions Committee, 2006-08
 Chair, Tenure and Promotion Review for Luis Ricardo Fraga, 2006
 Chair, African-American Politics Target of Opportunity Search, 2005-06.
 Member, Graduate Program Committee, 2005-07.
 Member, Honors Program Interview Committee, 2005-06.

University of Iowa

Member, Department Executive Committee, 2003-04.
 Member, Department Bose Speaker Series Committee, 2003-04.
 Member, Tenure Review Committee for Sara M. Mitchell, December 2003.
 Chair, American Politics Doctoral Examination Field Committee, November 2003.
 Chair, Third-year Review Committee, Fred Boehmke, 2002-2003.
 Chinese Politics Search Committee, 2002

Computer Committee, 2001-2002

Claremont Graduate University

Coordinator of the MA program in American Politics, 1999-2001;
American Politics Field Committee;
Admissions and Awards Committee, Chair: July 1997-June 1999;
Political Economy Search Committee 1996-1997;

UC-Davis

American Politics Search Committee, 1995-96;
MA Graduate Program Advisor (American, Public Law, and Theory), 1994-95;
Member, Graduate Affairs Committee, 1994-96;
Coordinator, Political Science Research Colloquium, 1992-1994;
Law and Politics Search Committee, 1993-94;
Director, Public Affairs Internship Program, 1993-94;
Co-Director, Public Affairs Internship Program, 1992-93;
Member, Undergraduate Affairs Committee 1991-92;

Exhibit B

Sources

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- Campbell, David C. and Carin Robinson. 2007. "Religious Coalitions For and Against Gay Marriage." In Rimmerman, Craig A., and Clyde Wilcox, eds., *The Politics of Same Sex Marriage*. Chicago: University of Chicago Press.
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- Haider-Markel, Donald P., Mark R. Joslyn and Chad J. Kniss. 2000. "Minority Group Interests and Political Representation: Gay Elected Officials in the Policy Process." *The Journal of Politics*, 62 (2): 568-577.
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Haider-Markel, Donald P., Alana Querze, Kara Lindaman. 2007. "Lose, Win, or Draw?: A Reexamination of Direct Democracy and Minority Rights." *Political Research Quarterly*, 60 (2): 304-314.

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Lax, Jeffrey, and Justin H. Phillips. 2009. "Gay Rights in the States: Public Opinion and Policy Responsiveness." *American Political Science Review*, 103 (3): 367-386.

Lupia, Arthur, Yanna Krupnikov, Adam Seth Levine, Spencer and Alexander Von Hagen-Jamar. 2009. "Why State Constitutions Differ in their Treatment of Same-Sex Marriage." Presented at the Annual Meeting of the American Political Science Association, Toronto, ON, September 2-5.

Madison, James, Alexander Hamilton, and John Jay. 1988 ed. (originally published 1787-88). *The Federalist Papers*. Edited by Garry Wills. New York: Bantam Books.

National Coalition of Anti-Violence Programs. 2009. "Hate Violence Against Lesbian, Gay, Bisexual and Transgender People in the United States, 2008."

National Election Pool, Edison Media Research, and Mitofsky International. 2004. NATIONAL ELECTION POOL GENERAL ELECTION EXIT POLLS, 2004.[Computer file]. ICPSR version. Somerville, NJ: Edison Media Research/New York, NY: Mitofsky International [producers], 2004. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2005.

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 TARA L. BORELLI (*pro hac vice*)
 PETER C. RENN (*pro hac vice*)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.,
 Plaintiffs,

v.

BRIAN SANDOVAL, et al.,
 Defendants,

and

COALITION FOR THE PROTECTION
 OF MARRIAGE,
 Defendant-Intervenor.

No. 2:12-CV-00578-RCJ-PAL

**DECLARATION OF MICHAEL LAMB,
 PH.D. IN SUPPORT OF PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT**

1 I, Michael Lamb, Ph.D., hereby declare and state as follows:

2 **PRELIMINARY STATEMENT**

3 1. I am a Professor of Psychology in the Department of Psychology at the University
4 of Cambridge in the United Kingdom. I have actual knowledge of the matters stated in this
5 declaration and could and would so testify if called as a witness.

6 2. My background, experience, and list of publications from the last 10 years are
7 summarized in my curriculum vitae, which is attached as Exhibit A to this report.

8 3. I hold a Bachelor's degree in psychology and economics from the University of
9 Natal in Durban, South Africa (1972), Master's degrees in psychology from Johns Hopkins
10 University (1974) and Yale University (1975), and a Ph.D. in psychology from Yale University
11 (1976).

12 4. I have held academic positions as Assistant Professor of Psychology at the
13 University of Wisconsin, Assistant Professor of Psychology at the University of Michigan, and
14 Professor of Psychology, Psychiatry, and Pediatrics at the University of Utah. In 2004, I took a
15 position as Professor and Head of the Department of Social and Developmental Psychology at
16 Cambridge University in the United Kingdom.

17 5. From 1987 until 2004, I was head of the Section on Social and Emotional
18 Development and a Senior Research Psychologist at the United States National Institute of Child
19 Health and Human Development (NICHD), an institute within the National Institutes of Health
20 (NIH).

21 6. I have authored more than 600 publications that have appeared either in peer-
22 reviewed professional journals or in professional books published by academic presses primarily
23 for the readership of other professionals. I have written or edited about 45 books in the field of
24 developmental psychology, development in infancy, mother-child relationships, father-child
25 relationships, the role of the father, sibling relationships, the effects of nontraditional rearing
26 circumstances, the effects of daycare, child abuse, and forensic interview practices. A number of
27 my books, including my books on nontraditional families, are used widely as texts in graduate
28 courses.

1 7. I have been a peer-reviewer for various professional journals regularly for more
2 than 35 years, and I edit the journal, *Psychology, Public Policy, and Law*, for the American
3 Psychological Association. I currently average five to ten reviews of other professionals' work
4 per week. In connection with my work as a peer-reviewer, I have peer-reviewed dozens of
5 articles that address the parenting abilities of gay men and/or lesbians and/or their children's
6 adjustment.

7 8. Over the past 40 years, I have pursued two broad areas of research. One line of
8 research has focused on forensic issues such as the credibility of children and the best ways of
9 eliciting accurate information from victims of child abuse. This work is not directly relevant to
10 the present litigation. The other line of research is concerned with children's development and
11 adjustment, especially the formative effects of the relationships that children establish with their
12 parents and the ways in which these relationships shape children's development over time. In this
13 context, I have also examined factors that are likely to have an adverse effect on development,
14 such as child abuse, and I have explored variations in rearing experiences and the effects, if any,
15 they have on child development, such as the effects, if any, of various types of nontraditional
16 family forms. I am very familiar with the research on families headed by gay and lesbian
17 individuals and couples.

18 9. My initial research in the United States was about the formation of relationships
19 between babies and their parents in households with a mother and a father. When I began my
20 research, I focused on the role played by fathers in children's development. I later expanded my
21 research in order to understand better the role that fathers play in children's lives—when they live
22 with their children and when they do not, in both divorced and married families, and when they
23 are highly involved or uninvolved in childcare.

24 10. I have been retained by counsel for Plaintiffs as an expert in connection with the
25 above-referenced litigation. I am being compensated for this effort at a rate of \$350.00 per hour.
26 I will be reimbursed for expenses in the event that I have to travel in connection with my services.
27 My compensation does not depend on the outcome of this litigation, the opinions I express, or the
28 testimony I provide.

11. In the past four years, I have provided expert testimony at trial in two matters, *In the Matter of the Adoption of X.X.G. and N.R.G.* in the Circuit Court of the 11th Judicial Circuit and in Miami-Dade County, Florida, Case No. 06-43881 FC 04, which concerned Florida's ban on adoption by lesbians and gay men, and in *Perry v. Schwarzenegger*, Case No. 09-CV-2292 VRW, which concerned California's ban on marriage by same-sex couples. I was also deposed in those cases. Additionally, I was deposed as an expert on December 11, 2009, in *Cole v. Arkansas Department of Human Services*, Case No. CV2008-14824, in the Circuit Court of Pulaski County, Arkansas, which concerned Arkansas's ban on adoption or foster parenting by unmarried individuals who live with a partner. I also served as an expert witnesses in a number of cases addressing the constitutionality of the federal "Defense of Marriage Act." I testified as an expert by affidavit in both *Windsor v. U.S.*, No. 10 Civ. 8435 (BSJ) (JCF) (S.D.N.Y. May 19, 2011 and Sept. 13, 2011), and *Pedersen v. Office of Personnel Management*, No. 3:10-cv-01750-VLB (D. Conn. May 19, 2011 and Sept. 9, 2011); and was deposed in a joint deposition for both cases on June 24, 2011. I submitted expert testimony by affidavit in *Dragovich v. U.S. Dep't of the Treasury*, CV 4:10-01564-CW (N.D. Cal. Jan. 20, 2012); *Golinski v. Office of Personnel Management*, 3:10-cv-0257-JSW (N.D. Cal. June 24, 2011 and Nov. 1, 2011); *Commonwealth of Mass. v. U.S. Dep't of Health and Human Servs.*, No. 09-11156 (D. Mass. Feb. 18, 2010); and *Gill v. Office of Pers. Mgmt.*, No. 09-10309 (D. Mass. Nov. 11, 2009). I also submitted expert testimony by affidavit in *Jackson v. Abercrombie*, Civ. No. 11-00734 ACK-KSC (D. Haw. June 29, 2012), which involves Hawaii's ban on marriage by same-sex couples.

12. In preparing this Declaration, I reviewed the Complaint in this case, and the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this Declaration, as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein.

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I. Summary Of Ultimate Conclusions.

13. Children and adolescents raised by same-sex parents are as likely to be well-adjusted as children raised by different-sex parents, including “biological” parents. Numerous studies of youths raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that children and adolescents raised by same-sex parents are as successful psychologically, emotionally, and socially as children and adolescents raised by different-sex parents, including “biological” parents. Furthermore, the research makes clear that the same factors, as elaborated below, affect the adjustment of youths, whatever the sexual orientation of their parents.

14. It is beyond scientific dispute that the factors that account for the adjustment of children and adolescents are the quality of the youths’ relationships with their parents, the quality of the relationship between the parents or significant adults in the youths’ lives, and the availability of economic and socio-emotional resources. These factors affect adjustment in both traditional and nontraditional families. The parents’ sex or sexual orientation does not affect the capacity to be good parents or their children’s healthy development. There also is no empirical support for the notion that the presence of both male and female role models in the home promotes children’s adjustment or well-being.

II. The Factors That Determine Children’s And Adolescents’ Adjustment.

15. Psychologists use the term “adjustment” to refer to psychological well-being. “Adjustment” refers to characteristics (including the absence of psychological or psychiatric symptoms and the absence of behavior problems) that allow children or adolescents to function well in their everyday life. Well-adjusted youths have sufficient social skills to get along with others, to get along and comply with adults, to function well in school, to function effectively in the workplace, and to establish meaningful intimate relationships later in life. In contrast, maladjustment might be manifested by behavior problems, such as bullying and acting aggressively with others, or deficient social skills making it difficult for individuals to establish relationships with others, thus leaving them socially isolated.

1 16. Over the last 50 years, more than 1,000 studies have examined the factors that
2 predict healthy adjustment in children and adolescents. As a result of this significant body of
3 research, psychologists have reached consensus on the factors that predict healthy development
4 and adjustment. Among these are:

- 5 a) the quality of children's or adolescents' relationships with their parents or parent
6 figures;
7 b) the quality of the relationship between the parents and other significant adults;
8 conflict between them is associated with maladjustment while harmonious relationships
9 between the adults support healthy adjustment;
10 c) the availability of adequate economic and social resources, with poverty and social
11 isolation being associated with maladjustment, and adequate resources supporting healthy
12 adjustment.

13 17. The quality of parent-offspring relationships is determined by the degree to which
14 parents offer love and affection, emotional commitment, reliability and consistency, as well as the
15 extent to which the parents "read" their children or adolescents effectively and provide
16 appropriate stimulation, guidance, and limit-setting. The better the quality of parent-child
17 relationships, the better the children's or adolescents' adjustment is likely to be, whether the
18 parents have same- or different-sex orientations.

19 18. Not all differences among youths are differences in adjustment. Many ways in
20 which children or adolescents differ from each other are simply normal variations among people,
21 and are unrelated to adjustment. For example, there has been considerable research on
22 intelligence, but individual differences in intelligence are not viewed as markers of adjustment or
23 maladjustment. Other normal variations can result from cultural differences (such as in
24 assertiveness or individualism) or differences in personality (e.g., some children are extroverted
25 while others are introverted).

26 ///

27 ///

28 ///

III. The Factors Predicting Healthy Adjustment Are The Same For Traditional And Nontraditional Families, And Children Or Adolescents In Nontraditional Families Are Just As Capable Of Healthy Adjustment As Those In Traditional Settings.

19. In the social sciences, the term “traditional family” refers to the childrearing environment that social scientists formerly considered the norm—a middle-class family with a bread-winning father and a stay-at-home mother, married to each other and raising their biological children. “Nontraditional” family forms, by definition, involve any kind of variation from this pattern. Thus, families with fathers who assume responsibility for childcare would qualify as nontraditional, as would families with employed mothers, with two employed parents, with one parent, or that rely on childcare centers instead of performing childcare exclusively within the home. Nontraditional families constitute the vast majority of families in the United States today.

20. Society’s early assumptions about the superiority of the traditional family form have been challenged by the results of empirical research. Early in the Twentieth Century, it was widely believed that traditional family settings were necessary in order for children to adjust well. This view derived directly from psychoanalytic thinking that was based on clinical observations, but not on empirical research. As psychoanalysis yielded to more empirically-based psychology over the early parts of the last century, it became clear that this notion was unsupported. Research beginning in the late 1940’s and continuing until the present has tested many of the hypotheses that flowed from the assumption that children and adolescents need to be raised in traditional families in order to develop healthily. Specifically, there have been over 50 years of research into the effects on children or adolescents of having one parent, of divorce, and of maternal employment. Intense interest in the effects of daycare began in the 1970’s, as did interest in highly involved fathers (stay-at-home fathers or families in which mothers and fathers share childcare responsibilities) and in families and households formed by same-sex couples.

21. This research has demonstrated that the correlates of children’s or adolescents’ adjustment listed above are important regardless of whether children and adolescents are raised in traditional family settings or in nontraditional families. Children’s or adolescents’ adjustment

1 depends overwhelmingly upon such qualities as the parents' affection, consistency, reliability,
2 responsiveness, and emotional commitment, as well as on the quality and character of the
3 relationships between the parents and their intimates, and on the availability of sufficient
4 economic and social resources. Since the end of the 1980's, as a result, it has been well
5 established that children and adolescents can adjust just as well in nontraditional settings as in
6 traditional settings.

7 **A. Difficulties in one-parent families have nothing to do with parental gender or**
8 **sexual orientation; the absence of a father or of a mother, by itself, is not a**
9 **predictor of healthy adjustment.**

10 22. Numerous large-scale studies show that most of the children and adolescents who
11 grow up in one-parent families are well adjusted. However, there is a significant body of research
12 on the impact of father absence, divorce, and one-parent family life demonstrating that children
13 and adolescents in one-parent families are more likely to have adjustment difficulties than
14 children and adolescents in two-parent families. Research shows that the reasons for this
15 disparity are consistent with the predictors of adjustment generally. The primary causes of
16 increased risk of maladjustment among children or adolescents in one-parent families are the
17 reduced resources available when there is one parent, and the disruptive effects of and conflict
18 associated with parental separation.

19 23. Many children and adolescents of parents whose relationships dissolve lose one of
20 their supportive parental relationships, and do not get the benefit of both psychological and
21 financial support from their non-resident parents. Additionally, many divorces expose children
22 and adolescents to parental conflict both preceding and following the separation, may also
23 involve rejection by or separation from one of the parents, and possible dislocations, such as
24 moving to a new neighborhood and school. Finally, families headed by single mothers, in
25 particular, often suffer considerable degrees of financial hardship because of a combination of
26 factors including the continuing disparity in pay received by men and by women, and because
27 many women, whether or not they were once married, have taken time out from the workforce to
28 raise children.

B. Male and female parents can be equally competent; the absence of male or female parents in the home does not impair development.

24. Fifty years ago, it was widely assumed that the absence of a male parent figure accounted for the problems in adjustment encountered by some children and adolescents in single-parent families. However, extensive empirical research on nontraditional families has demonstrated that father absence is not itself important to adjustment; instead, it is the quality of the children's experiences more broadly and, specifically the quality of the parent-child relationships, the quality of the relationship between the parents, and the adequacy of resources that explain the higher levels of maladjustment on the part of children and adolescents in one-parent families. It is well-established that both men and women have the capacity to be good parents, and that having parents of both genders does not enhance adjustment.

25. Studies have shown that, at the time that parents first receive their children, whether by birth or adoption, men and women are equivalently competent (or incompetent) at parenting. Most parenting skills are learned "on the job." Because women in this society on average spend more time on the job, they often become more skillful at it over time. However, this disparity in parenting skills simply reflects women's greater experience and greater opportunities to learn rather than a biologically given capacity. When men actively care for their children, they become more skillful, too. Nothing about a person's sex determines the capacity to be a good parent.

26. Many studies have pointed to differences between the ways in which mothers and fathers interact with their children, but this is not significant to adjustment. These studies suggest that, on average, men's patterns of interaction are dominated by a more boisterous, playful, unpredictable interaction, while women's patterns are more soothing, containing, and restrictive. However, these differences do not apply across the board to all men or to all women, nor is it harmful when parents do not assume traditional gender roles when interacting with their children.

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27. Male and female adults can adopt sensitive or authoritative parenting styles. When fathers are the primary caregivers, for example, the style of interaction between fathers and children often becomes more like typical mother-child interaction. The observed differences in parenting style appear to reflect, in large part, differences in the type of responsibility that the parent has within the home (i.e., differences between being the primary or secondary parent). Many children do not have parents who offer both of these parenting styles and this does not appear to affect their adjustment adversely.

28. There also is no empirical support for the notion that the presence of both male and female role models in the home enhances the adjustment of children and adolescents. Society is replete with role models from whom children and adolescents can learn about socially prescribed male and female roles. Some normal variations do characterize children and adolescents raised in some nontraditional settings, however. For example, such children often have distinctive attitudes about sex-role norms. Within the field, sex-role norms refer to the awareness of and beliefs in behavioral differences between boys and girls or men and women. In nontraditional families, children may have more flexible sex-role standards. This means, for example, that the children are more likely to think that both boys and girls can be astronauts or doctors, and that it is acceptable for both girls and boys to play with both trucks and dolls. By contrast, children raised in traditional family settings tend to have more sex-stereotypical notions about appropriate gender roles. Again, this variation with respect to sex-role norms is a normal variation, and has nothing to do with adjustment.¹

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¹ A Hawaii federal court recently cited a book by David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood and Marriage are Indispensable for the Good of Children and Society* (1996) when claiming that some researchers believe that “gender differentiated parenting” is important for human development. See *Jackson v. Abercrombie*, Civ. No. 11-00734 ACK-KSC, 2012 U.S. Dist. LEXIS 111376, *139 (D. Haw. Aug. 8, 2012). This claim, which was widely assumed to be true many years ago, has been shown to be unfounded, and conflicts with the extensive body of empirical research described above. Additionally, Popenoe is neither a psychologist nor child development expert. It is beyond any credible debate among child development experts today that male and female parents can be equally competent and that the absence of a male or female parent in the home does not impair adjustment.

1 **IV. Research Specific To Parenting By Same-Sex Couples Demonstrates That The**
2 **Children And Adolescents of Same-Sex Parents Are Just As Well-Adjusted As Those**
3 **With Different-Sex Parents.**

4 **A. Based on a significant and well-respected body of research, the scientific**
5 **community has reached consensus that parental sexual orientation does not**
6 **affect adjustment.**

7 29. The body of research that has examined children's and adolescents' adjustment in
8 the specific context of parenting by same-sex couples represents approximately 30 years of
9 scholarship and includes more than 50 peer-reviewed empirical reports. The earliest reports from
10 studies of same-sex parents were published in the late 1970's, and research has continued to the
11 present. More than 100 articles about same-sex parents and/or their offspring have been
12 published in respected academic journals or as chapters in books for use by other professionals.
13 These present both qualitative research (relying primarily on interviews and discussions with
14 either the youths or with the parents) and quantitative research.

15 30. The results of these studies support and are consistent with the results of the
16 broader body of research on socialization in both traditional and nontraditional families. They
17 demonstrate that the adjustment of children and adolescents of same-sex parents is determined by
18 the quality of the youths' relationships with the parents, the quality of the relationship between
19 the parents, and the resources available to the families.

20 31. The results of these studies further demonstrate that adjustment is not affected by
21 the gender or sexual orientation of the parent(s). Research comparing the adjustment of children
22 and adolescents of same-sex parents with the children and adolescents of different-sex parents
23 consistently shows that the children or adolescents in both groups are equivalently adjusted. The
24 children and adolescents of same-sex parents are as emotionally healthy, and as educationally and
25 socially successful, as children and adolescents raised by different-sex parents. The social
26 science literature overwhelmingly rejects the notion that there is an optimal gender mix of parents
27 or that children and adolescents with same-sex parents suffer any developmental disadvantages
28 compared with those with two different-sex parents.

32. In *Jackson v. Abercrombie*, a Hawaii district court described a recent article by
Mark Regnerus as providing evidence that contradicts the social science consensus summarized

above, 2012 U.S. Dist. LEXIS 111376, at *138-39. However, this article allows for no such conclusion. Regnerus' study did not actually assess individuals raised by same-sex partners. The majority of the respondents who were described as having either "lesbian mothers" or "gay fathers" were children of failed heterosexual unions whose parents reportedly had same-sex relationships at some point.² Most of the children identified as having lesbian or gay parents spent very little – if any – time living in households headed by same-sex couples.³ Indeed, the Social Science Research journal that published the article has since conducted an audit, which will be published in its November edition, finding that this fact alone should have disqualified the study from being considered for publication.⁴ See <http://chronicle.com/blogs/percolator/controversial-gay-parenting-study-is-severely-flawed-journals-audit-finds/30255>.

33. Moreover, most of Regnerus' "gay father" and "lesbian mother" participants were in families that went through divorces and transitions to single-parent or step-family life, which, as I have discussed above, are known correlates of poorer child outcomes. In contrast, Regnerus excluded all the heterosexual families that went through divorce, including only those that remained intact throughout the respondents' childhoods. Thus, the study merely demonstrated the well-established fact that children tend to do better in stable, intact families than they do after experiencing their parents' divorce. Regnerus himself recognizes that "[c]hild outcomes in stable, 'planned' [gay, lesbian or bisexual] families and those that are the product of previous heterosexuals unions are quite likely distinctive, as previous studies' conclusions would

² An individual was deemed to have a "gay father" or "lesbian mother" if s/he affirmatively answered the following question: "From when you were born until age 18 (or until you left home to be on your own), did either of your parents ever have a romantic relationship with someone of the same sex?"

³ Just over half of the respondents in the "lesbian mother" group lived with their mothers and their partners for at least 4 months; under a quarter did so for more than 3 years. Among those in the "gay father group," fewer than a quarter lived with their fathers and their same-sex partners for at least 4 months; under 2% did so for more than 3 years.

⁴ National mainstream medical and child welfare organizations have also recognized these problems with Regnerus' study. See Amici Curiae Brief of, *inter alia*, the American Psychological Association, American Psychiatric Association, National Association of Social Workers, American Medical Association, and American Academy of Pediatrics in *Golinski v. Office of Personnel Management*, Case Nos. 12-15388 & 12-15409 (9th Cir. 2012), available at www.apa.org/about/offices/ogc/amicus/golinski.aspx (addressing Regnerus' article on pages 22-23).

1 suggest.”⁵ Simply put, Regnerus did not study the adjustment of children raised by same-sex
 2 parents at all.

3 34. There is consensus within the scientific community that parental sexual orientation
 4 has no effect on children’s and adolescents’ adjustment. Numerous organizations representing
 5 mental health and child welfare professionals have issued statements confirming that same-sex
 6 parents are as effective as different-sex parents in raising well-adjusted children and adolescents
 7 and should not face discrimination. See Exhibit B. These organizations include the American
 8 Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the
 9 American Psychiatric Association, the American Psychological Association, the American
 10 Psychoanalytic Association, the National Association of Social Workers, the Child Welfare
 11 League of America, and the North American Council on Adoptable Children.

12 **B. Studies identifying differences in the children or adolescents of same-sex**
 13 **parents have identified only normal variations, and not differences in**
 14 **adjustment.**

15 35. Like children and adolescents in other nontraditional families, children and
 16 adolescents with same-sex parents have sometimes been found to have less sex-stereotyped
 17 beliefs, and to be more open in their views of societal norms and standards about appropriate
 18 behavior for males and females. For example, some studies of young children suggest that girls
 19 raised by lesbian mothers may play with both dolls and trucks, and be more willing to think that
 20 being an astronaut or being a doctor are appropriate aspirations for girls as well as boys, than girls
 21 raised by heterosexual mothers. Although there was a time when some developmental
 22 psychologists believed that conformance to sex-based stereotypes was a component of healthy
 23 adjustment, this view has been discredited and abandoned. The differences seen in sex-
 24 stereotyped beliefs and behavior between children of lesbian and heterosexual parents are not
 25 differences in adjustment. Children and adolescents raised by same-sex parents do not differ

26 ⁵ Regnerus acknowledges that the vast majority of his respondents did not come from planned
 27 families with lesbian or gay parents. Moreover, his inference that even 17-26% of the
 28 respondents in the “lesbian mother” group and under 2% of those from the “gay father” group
 might be from planned families with lesbian or gay parents is highly dubious. This inference was
 based only on those respondents’ reports that their biological parents never married or lived
 together and that they never lived with their parents and **different**-sex partners. However, since
 this is true of families in which the parents lived alone, with no partners of either sex, it is not
 clear if there were **any** planned families with lesbian or gay parents in this study.

1 from those raised by different-sex parents with respect to how they identify their sexual
 2 orientation later in life. Neither do they differ with respect to gender identity, which is an aspect
 3 of psychological adjustment.

4 **C. The methodology of the research examining same-sex parents is standard,**
 5 **reliable, and accepted in the field.**

6 36. Social scientists use and value diverse methodologies, research designs, and types
 7 of data that vary depending on the discipline involved, the specific area of research, the questions
 8 being raised, and the theories being applied and evaluated. Developmental psychologists (and
 9 psychologists more generally) tend to emphasize intensive examination of relatively small
 10 numbers of individuals, often studied in the context of social relationships and influences.
 11 Developmental psychologists rarely use research methods based on statistically representative
 12 national samples. Such large-scale survey research methods, which are typically used by
 13 sociologists and demographers, are often too blunt to address adequately the complex and
 14 nuanced questions that generally are at issue when scholars attempt to assess and compare the
 15 course of development in different circumstances. It is common for researchers to use what
 16 might be called “convenience” samples, and to explore those samples intensively, rather than to
 17 study large samples more superficially.⁶

18 37. The methodologies used in the major studies of same-sex parents meet the
 19 standards for research in the field of developmental psychology and psychology generally.
 20 Proper research methods and standards in social sciences are determined through a rigorous peer
 21 review process that is conducted by established scholars in individual disciplines and sub-fields.
 22 When scholarly papers are submitted for publication, the research methods used, the analyses

23 ⁶ In *Jackson*, the court cited an article claiming to show flaws in the literature underlying the
 24 scientific consensus that the children of same-sex parents are equally well-adjusted. 2012 U.S.
 25 Dist. LEXIS 111376, at *140 (citing Loren D. Marks, *Same-Sex Parenting and Children's*
 26 *Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian*
 27 *and Gay Parenting*, 41 Soc. Sci. Research 735, 748 (2012).) Marks’ selective critique, however,
 28 is baseless. Although published in 2012, it curiously addressed a 2005 briefing paper, ignoring
 all research published since 2004. Marks failed to recognize the repeated demonstration, by
 researchers using a variety of methods (including the survey research methodology he favors in
 the critique), that parental sexual orientation is unrelated to children’s outcomes (as detailed
 above). This is why mainstream medical and child welfare organizations have acknowledged
 expressly that Marks’ critique has no merit. See Amici Curiae Brief of, American Psychological
 Association, et al., *supra* (addressing Marks’ article on pages 23-24 n.42).

1 conducted, and the findings drawn are critically reviewed. In order to be published, an
2 academic's work must satisfy the scrutiny and standards of scholars considered to be experts in
3 the field of research under review.

4 38. The studies specific to same-sex parents from which I draw my conclusions were
5 published in leading journals in the field of child and adolescent development, such as *Child*
6 *Development*, *Developmental Psychology*, and *The Journal of Child Psychology and Psychiatry*.
7 The journals *Child Development*, published by the Society for Research in Child Development,
8 *Developmental Psychology*, published by the American Psychological Association, and *The*
9 *Journal of Child Psychology and Psychiatry* are the flagship peer-reviewed journals in the field of
10 child development. Most of the studies on which I rely appeared in these (or similar) rigorously
11 peer-reviewed and highly selective journals, whose standards represent expert consensus on
12 generally accepted social scientific standards for research on child and adolescent development.
13 Prior to publication in these journals, these studies were required to go through a rigorous peer-
14 review process, and as a result, they constitute the type of research that members of the respective
15 professions consider reliable. The body of research on families formed by same-sex couples is
16 consistent with standards in the relevant fields and produces reliable conclusions.

17 **D. Data concerning one-parent families does not support conclusions about the**
18 **preferred gender of parents.**

19 39. Advocacy groups that oppose parenting by same-sex couples sometimes use
20 research showing that children and adolescents in **one**-parent families are at greater risk of
21 maladjustment than those raised by **two** parents to support the view that youths need both mothers
22 and fathers, and therefore that heterosexual couples make the best parents. This mischaracterizes
23 the research into one-parent families, which typically does not explore the effects of parental
24 sexual orientation or gender.

25 40. Studies on the impact of one-parent family life generally compare **one**-parent and
26 married-**couple** *heterosexual* parents; I am aware of no study that includes same-sex couples.
27 Consequently, it is inappropriate to attribute the differences resulting from the number of parents
28 and resources in a household to parental gender or sexual orientation, or to draw conclusions

about the children of same-sex parents from these studies.⁷ The relevant studies do suggest, however, that, all other things being equal, children and adolescents tend to do better with two parents than one, and therefore, that children and adolescents with same-sex parents, like their peers, likely would benefit if their parents could choose to marry and solidify their family and parentalties.

V. Research Concerning The Benefits Of Being Raised By “Biological” Parents Does Not Support Arguments That Same-Sex Couples Are Inferior Parents.

41. Others claim that children thrive in families with “biological” parents and, by implication, claim that same-sex parents are bad for children because same-sex parents cannot provide children with the advantages of being raised by their two biological parents. This argument is misleading. In many of the relevant studies, the term “biological parents” includes adoptive parents, because the term is used to distinguish between ‘parents’ (whether biological or adoptive) and ‘step-parents’.⁸ Children adopted early in life and biological children have similar outcomes. These studies thus provide no evidence in support of the argument that the children and adolescents raised by same-sex parents would be at psychological risk.

42. While some studies show that children do better when raised by their “biological” parents than when raised by one “biological” parent and the parent’s new partner, these studies do not examine children being raised by same-sex couples, including the many who jointly planned to bring children into their families either by birth or adoption, and are jointly raising the children. Children in one-parent families or step-families are at a higher risk for adverse outcomes for reasons explained earlier (i.e., these children may have endured their parents’ separations, exposing the children to parental conflict and related dislocations, the children may have experienced separation from or abandonment by parents, and the step-parents may have entered their lives relatively late in their development, affecting the quality of the parent-child

⁷ The *Jackson* court’s reliance on such documents is an example of this type of error. (See 2012 U.S. Dist. LEXIS 111376, at *138, citing Kristen Anderson Moore, et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do about It*, Child Trends Research Br. (June 2002).) Moore’s document discusses the impact of these types of factors on families headed by heterosexual parents, and does not even discuss or mention families headed by lesbian or gay parents.

⁸ Indeed, Moore’s article, discussed above, does just that.

relationships). One would not expect to see these difficulties in families formed by same-sex couples who jointly plan to marry and have children. As explained above, the research comparing children with same-sex and different-sex parents shows no differences in outcome.

43. There is a substantial body of research on parents who have chosen to raise biologically unrelated children rather than remain childless. These studies show that such parents are at least as competent as parents raising their biological children; indeed, many studies show that these parents are more competent or committed in some respects.

VI. Children And Adolescents With Same-Sex Parents Would Benefit If Their Parents Were Permitted To Marry.

44. Marriage can yield important benefits for children and families, including legal protections, economic benefits and social legitimacy. These benefits are equally advantageous for children and adolescents in families formed by same-sex couples and different-sex couples. Many lesbians and gay men already are parents, and it is in the best interests of their children for their parents to have equal access to marriage and the protections, social legitimacy and status it provides. A state's restriction on marriage for same-sex couples may convey to their children that their parents' relationships are less valid or legitimate than different-sex couples who may marry.

Signed under penalty of perjury under the laws of the United States this 27th day of August, 2012.



Michael Lamb, Ph.D.

Exhibit A

Curriculum Vitae

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Education:

BA	University of Natal, Durban (South Africa)	1972
MA	Johns Hopkins University	1974
MS	Yale University	1975
M. Phil.	Yale University	1975
Ph.D.	Yale University (degree completed 10/75)	1976

Employment History:

Assistant Professor of Psychology, University of Wisconsin-Madison: June 1976 to August 1978

Assistant Professor of Psychology, University of Michigan: January 1978 to December 1980

Professor of Psychology, Psychiatry, and Pediatrics, University of Utah: January 1981 to June 1987

Visiting Professor, School of Social Work, University of Haifa (Israel): Spring 1981.

Visiting Professor, School of Education, University of Hokkaido, Sapporo (Japan): Summer 1985.

Senior Research Scientist and Chief, Section on Social and Emotional Development, National Institute of Child Health and Human Development: July 1987 to August 2004.

Visiting Professor, Department of Psychology, University of Osnabrück (Germany), Fall 1995.

Visiting Professor, Department of Psychology, Martin-Luther University of Halle-Wittenberg (Germany), Fall 1996.

Professor of Psychology in the Social Sciences, Faculty of Social and Political Sciences, University of Cambridge, September 2004 to present.

Weiswasser Visiting Professor of Pediatrics, Yale University School of Medicine, Spring 2007.

Distinctions and Honors:

Certificates of Merit for Outstandingly Good Work in Psychology and Economics, University of Natal.....	1971, 1972
Economics Society of South Africa Annual Essay Prize	1972
Prize Fellowship in the Social Sciences, Yale University.....	1975/76
Young Psychologist Award, American Psychological Association.....	1976
Boyd R. McCandless Young Scientist Award (American Psychological Association).....	1978
Superior Research Award, College of Social and Behavioral Sciences, University of Utah.....	1985
Distinguished Research Award, University of Utah	1986
Distinguished Speaker Award, American Family Therapy Association.....	1987
Ph.D. (Honoris Causa), University of Goteborg, Sweden.....	1995
‘Hammer Award’ for ‘Helping to build a better government’ (Co-recipient), Vice-President Albert Gore.....	1998
James McKeen Cattell Fellow Award for Lifetime Achievement, American Psychological Society.....	2003
Doctor of Civil Law (Honoris Causa), University of East Anglia, UK.....	2006
Salt Lake County Children’s Justice Award.....	2011

Professional Committee Membership and Services:

American Psychological Association, Boyd R. McCandless Award Selection Committee, 1979 and 1980	
Society for Research in Child Development, Committee on Study Groups and Institutes, 1983-1987	
Social Science Research Council Committee: Biosocial perspectives on parental behavior, 1983-1991	
Consultant, Municipality of Jerusalem (Israel), Department of Community and Family Services (1987-1994)	
Advisory Working Group, U. S. Department of Education, Observational Study of Early Childhood Programs (1990-1993)	
International Advisory Committee, <i>Interdisziplinäres Zentrum für Angewandte Sozialisationsforschung</i> , Berlin (1991-1996)	
External Advisory (Visiting) Committee, Michigan State University, Institute for Children, Youth and Families (1992-1999)	
Advisory Panel, American Enterprise Institute, Project on Disconnected Youth (1992-1995)	
International Committee, Division 7 (Developmental Psychology), American Psychological Association (1993-1996)	
National Advisory Board, Men’s Health Network (1993-1997)	
National Advisory Board, Program in Teacher Preparation and Special Education, George Washington University (1994-1997)	
National Advisory Council, SOS Children’s Villages-USA (1994-1997)	
National Advisory Board, National Fatherhood Initiative (1994-2004)	
International Advisory Committee, Human Development Resource Centre, Bamenda, Cameroon (1995-present)	

American Professional Society on the Abuse of Children (National Research Committee member, 1999-2004; Maryland State Board, 1998-2001; Executive Committee, Maryland Chapter, 1998-2000; Chair, Maryland Training and Education Committee, 1998-2000)

Board of Directors, National Center for Policy Research for Women and Families (1999-2003)

National Advisory Committee on Early Care and Education, Institute for Women's Policy Research (2001-2003)

Steering Committee, Center for Substance Abuse Prevention's FAS (Fetal Alcohol Syndrome) Center for Excellence (2001-2002)

Board of Trustees, Fatherhood Institute [formerly Fathers Direct] (2005 – 2009)

Advisory Board, Center for the International Study of Youth and Political Violence, University of Tennessee (2005- present)

Joseph Rowntree Foundation Advisory Group for research on "Fathering in early-middle childhood in UK South Asian families" (2006- 2009)

Joseph Rowntree Foundation Advisory Group for research on "Understanding fatherhood: Masculinity, diversity and change" (2006- 2008)

U. K. Economic and Social Science Research Council (2006 – 2011; Chair, International Advisory Committee, 2007-2011; Member, Audit Committee, 2006-2011)

British Council Science and Engineering Advisory Group and Council Member (2007-present)

Association for Psychological Science Cattell Award Selection Committee (2009-present)

Wissenschaftlichen Beirat, Niedersachsische Instituts für frühkindliche Bildung und Entwicklung [Scientific Advisory Committee, Lower Saxony Institute for Child Development and Education] (2009-2011)

Wissenschaftlichen Beirat, Fakultät für Psychologie, Universität Wien [Scientific Advisory Board, Faculty of Psychology, University of Vienna] (2011-2015)

U. K. Higher Education Funding Councils' Research Excellence Framework 2014: Member of sub-panel 4: Psychology, Psychiatry, and Neuroscience (2011-2015)

Grant Proposal Review Committees:

National Science Foundation Experimental Program Review and Study Committee (1980)

National Institute of Mental Health, Study Committee for Review of Proposed Research on the Effects of Divorce (1980)

National Institute on Child Health and Human Development, Study Panel on Human Development and Aging (1981)

National Institute of Mental Health, Panel on Cognition, Emotion and Personality (1985-1989)

Ad-hoc Grant Proposal Review:

Australian Research Grants Committee, Big Lottery Fund, Carnegie Foundation, Economic and Social Research Council, Grant Foundation, National Institute of Child Health and Human Development, National Institute of Education, National Institute of Mental Health, National Science Foundation, New Zealand Research Grants Committee, Research Council of Canada, Social Science and Humanities Research Council of Canada, Spencer Foundation, Thrasher Foundation

Editorial Board Memberships:

Apprentissage et Socialisation (1992-1994)
Applied Cognitive Psychology (2007-present)
Applied Developmental Science (2005-present)
Archives of Scientific Psychology (Associate Editor, 2012-present)
Behavioral Assessment (1982-1983)
The Behavioral and Brain Sciences (1979-1990)
Child Abuse and Neglect (2002-present; Associate Editor: 2005-present)
Child Development (1979-1984; 1993-1996)
Childbirth Educator (1982-1989)
Developmental Psychology (1981-1986; 1992-1994)
Developmental Review (2000-present)
Early Education and Development (1989-1993)
Family Court Review (2002-2008)
Fathering (2002-present)
Human Nature (1989-1996)
Infant Behavior and Development (1980-present)
Infant Mental Health Journal (1984-1987)
International Journal of Behavioral Development (1993-2001)
Journal of Adolescent Research (1986-present)
Journal of Aggression, Maltreatment, and Trauma (1997-2005)
Journal of Child Custody (2002-present)
Journal of Credibility Assessment and Witness Psychology (1996-2000)
Journal of Marriage and the Family (1992-1999; 2001-2002)
Journal of Social and Personal Relations (1983-1987)
Psychology, Public Policy, and Law (2010-present; Editor-Elect, 2012; Editor, 2013-2017)
Social Development (1990-present)

Editorial Consultant:

American Psychologist, American Scientist, Canadian Journal of Behavioural Science, Child Maltreatment, Current Directions in Psychological Science, Developmental Psychobiology, Early Childhood Research Quarterly, Family Coordinator, Family Relations, Human Development, Human Organization, Human Relations, Journal of Applied Developmental Psychology, Journal of Child Psychology and Psychiatry, Journal of Consulting and Clinical Psychology, Journal of Developmental and Behavioral Pediatrics, Journal of Experimental Child Psychology, Journal of Family Psychology, Journal of Personality and Social Psychology, Law and Human Behavior, Legal and Criminological Psychology, Merrill-Palmer Quarterly, Pediatrics, Personality and Individual Differences, Psychological Bulletin, Psychological Science, Science

Conference Review Panels:

American Psychological Association, 1983, 1984
 American Psychology-Law Society Convention, 1996, 2000, 2006, 2008, 2009

European Conference on Traumatic Stress, 2009
 Head Start National Research Conference, 1992, 1994, 1996, 1998, 1999, 2000,
 2002, 2004 (Program Committee)
 International Conference on Infant Studies, 1982, 1984 (panel chair), 1986, 1990
 International Society for the Study of Behavioural Development, 2002, 2004
 Society for Research in Child Development, 1979, 1981, 1989, 2001, 2007, 2009
 World Congress on Infant Psychiatry and Allied Disciplines, 1986

Publication Review:

Academic Press, Blackwell Press, Cambridge University Press, Cummings Publishing Co.,
 Harvard University Press, Holt, Rinehart, & Winston, Lawrence Erlbaum Associates, McGraw
 Hill, Michigan State University Press, Pergamon, Psychology Press, Random House, Sage,
 University of Chicago Press, University of Wisconsin Press, Wiley Interscience.

Society Memberships:

American Psychological Association
 American Psychology-Law Society
 Association for Psychological Science (Fellow)
 British Psychological Association (Fellow)
 Society for Research in Child Development
 International Investigative Interviewing Research Group (member, Scientific Committee)

University, Institutional, and Community Service:

Chair, Colloquium Committee, Department of Psychology, University of Michigan, 1978-1980
 Graduate Committee, Department of Psychology, University of Michigan, 1978-1980
 Chair, Admissions Committee, Developmental Psychology Area, University of Michigan,
 1978-1979
 Executive Committee, Center for Human Growth and Development, University of Michigan,
 1980
 Member, Dean's Steering Committee to Develop and Establish a Graduate Program in the
 Neurosciences, University of Utah School of Medicine, 1982-1985
 Academic Freedom and Tenure Committee, University of Utah, 1982-1985
 Executive Committee, Department of Psychology, University of Utah, 1982-1986
 Personnel Committee, Department of Psychology, University of Utah, 1981-1984
 Coordinator, Developmental Area, Department of Psychology, University of Utah, 1982- 1986
 University Promotion and Tenure Advisory Committee, University of Utah, 1985-1987
 University of Utah Campus representative, nationwide TIAA Divestment Campaign (1985-87)
 College of Social and Behavioral Sciences, Superior Research Award Committee, University of
 Utah, 1986
 National Institute of Child Health and Human Development, Equal Employment Opportunity
 Committee, 1988-1990; 1993-1995 (Co-chair, 1994-1995)
 National Institutes of Health Day Care Oversight Board, 1995-1997 (Chair, Evaluation
 Subcommittee, 1997)
 National Institutes of Health, Office of Behavioral and Social Sciences Research Working Group
 on Intramural Activities, Committee member, 1996.
 International Advisory Board, Center for Global Law and Human Rights, University of Natal,
 South Africa, 2003-2005.

Membre d'Honneur Fondateur: Association Poesie, Arts, et Vie, 2004 – present.
 Management Committee, Centre for Family Research, University of Cambridge, 2004 - present.
 Board of Electors (Convenor), Professorship of Family Research, University of Cambridge, 2004-2005.
 Faculty Board, Faculty of Social and Political Sciences, University of Cambridge, 2004 - 2009.
 Psychology Research Ethics Committee, University of Cambridge, 2004 – present.
 General Purposes Committee, Faculty of Social and Political Sciences, University of Cambridge, 2005 – 2010 (Chair, 2007-2008).
 Board of Electors, Professorship of Evidence-Based Intervention, University of Oxford, 2006.
 Research Policy Committee, University of Cambridge, 2007- present.
 Deputy Chair, Faculty of Social and Political Sciences, University of Cambridge, 2007-2008.
 Faculty Board, Faculty of Politics, Psychology, Sociology, and International Studies, 2009-2011.
 Faculty board, Faculty of Human, Social, and Political Science, 2012.
 Cambridge University Research Ethics Committee, 2012-2015.

Memberships in Community Organizations

American Civil Liberties Union, Amnesty International, Cambridge: Past, Present, & Future, Human Rights Watch.

Research Grant Support History

“The development of father-infant and mother-infant relationships in the first year of life.” (7/1/74 to 6/30/75: \$5,200). Ecology of Human Development Program of the Foundation for Child Development (Principal Investigator).

“The development of parent-infant relationships in the second year of life” (7/1/75 to 6/30/76: \$5,200). Ecology of Human Development Program of the Foundation for Child Development (Principal Investigator).

“Mother-, father-, and sibling-infant relationships in the first two years of life” (7/1/76 to 6/30/77: \$10,000). Graduate School Research Committee of the University of Wisconsin-Madison (Principal Investigator).

“Familial antecedents of achievement orientation in preschool-aged children.” (7/1/76 to 6/30/77: \$5,000). Spencer Foundation of Chicago (Principal Investigator).

“The effects of infant signals and characteristics on parental physiological responses” (9/1/76 to 8/31/77: \$2,000). National Institutes of Health Biomedical Research Support Grant (Principal Investigator).

Study group to explore “Methodological problems in the study of social interaction” (July 1977: \$7,000). Society for Research in Child Development (Principal Organizer; co-organizers—Stephen J. Suomi, Gordon R. Stephenson).

“The development of social relationships within and beyond the family in infancy” (7/1/77 to 6/30/78: \$9,000). Graduate School Research Committee of the University of Wisconsin-Madison (Principal Investigator).

“The determinants and consequences of security of parent-infant attachments” (5/1/78 to 4/30/79: \$5,000). Faculty Research Grant from the Rackham School of Graduate Studies at the University of Michigan.

“Determinants of early cognitive development in preterm infants” (3/1/78 to 2/28/80: \$26,000). The National Foundation/March of Dimes (Co-Investigator; Principal Investigator was Gary M. Olson).

“Infant social development in traditional and nontraditional families” (7/1/78 to 6/30/81: \$201,000). Riksbankens Jubileumsfond of Sweden (Principal Investigator).

“Maternal employment and infant social development” (1/1/79 to 12/31/81: \$45,000). Spencer Foundation of Chicago (Principal Investigator; Co-investigators were Margaret Owen and Lindsay Chase-Lansdale).

Study group to explore “The role of the father in child development, social policy, and the law” (July 1980: approx. \$6,000). Society for Research in Child Development (Co-organizer; Principal organizer, Abraham Sagi).

“Infant social and emotional development” (7/1/80 to 6/30/81: \$8000). University of Utah Research Committee (Principal Investigator).

“Infant social and emotional development” (7/1/80 to 6/30/81: \$6000). National Institute of Mental Health Biomedical Research Support Grant (Principal Investigator).

“Developing expectations in infancy: A longitudinal study of behavior in two social contexts” (4/1/81 to 3/31/83: \$100,000). National Science Foundation (Principal Investigator).

“The Fatherhood Project” (9/1/81 to 8/31/83: \$425,000). The Ford Foundation, The Levi Strauss Foundation, The Ittelson Foundation, and The Rockefeller Family Foundation (Co-Principal Investigator with James A. Levine and Joseph H. Pleck).

“Effects of center day care, family day care, and home care on socioemotional development” (7/1/82 to 6/30/86: 1,405,000 Skr Riksbankens Jubileumsfond of Sweden (Co-Principal Investigator with Carl-Philip Hwang).

“Training program in developmental psychology” (7/1/82 to 6/30/87: \$215,940). National Institute of Mental Health (Director of Training Program, University of Utah).

Study group to explore “Adolescent Fatherhood” (May 1984: approx. \$6,000). Society for Research in Child Development (Co-organizer: Principal organizer, Arthur Elster).

“Quality of care and children’s adjustment to out-of-home care” (12/1/83 to 11/30/84: \$5000). University of Utah Research Committee (Principal Investigator).

“Study group to explore “The interface between social scientists and the “the real world”. (September 1984: \$8,000). The Harris Foundation (Co-Principal Organizer with Abraham Sagi).

“Fathers of infants with adolescent mothers” (10/1/84 to 9/30/88: \$236,967 in direct costs). Office of Adolescent Pregnancy Programs (Co-Principal Investigator with Arthur B. Elster).

Section on Social and Emotional Development, Intramural Research Program, National Institute of Child Health and Human Development (4/1987 to 9/2004: research costs averaging \$850,000 per annum; 10/2004 to 9/2006: research costs averaging \$500,000 per annum).

“Long term effects of varying early life experiences” (3/1988 to 2/1991: 950,000 Skr).. Riksbanken Jubileumsfond of Sweden (Co-Principal Investigator with Carl-Philip Hwang).

“Mother-son attributions and aggressive interactions” (8/1990 to 7/1993: \$338,599). National Institute of Mental Health (Co-Investigator with Carol MacKinnon)

“The relation between mother-son attributions and the aggressiveness of their interactions” (10/1989 to 9/1992: \$250,000). National Science Foundation (Co-Investigator with Carol MacKinnon).

“Long term effects of varying early life experiences” (3/1997 to 2/1999: 1,000,000 Skr). Riksbanken Jubileumsfond of Sweden (Co-Principal Investigator with Carl-Philip Hwang).

“Long term effects of varying early life experiences” (7/2002 to 7/2005: 1,950,000 Skr). Riksbanken Jubileumsfond of Sweden (Co-Principal Investigator with Carl-Philip Hwang).

“The development of living conditions of children” (6/2005 to 5/2011: 1,350,000 Skr per annum). Swedish Council for Working Life and Social Research (Co-Organizer; Principal Organizer is Carl-Philip Hwang).

“Facilitating eyewitness testimony in children with learning disabilities.” (7/2004 to 6/2006: £149,842). Economic and Social Research Council (Co-investigator with Deidre Brown and Charlie Lewis).

“Do best practice forensic interviews with child abuse victims influence case outcomes?” (10/2006 to 3/2008: \$173,089). US National Institute of Justice (Co-investigator with Margaret- Ellen Pipe and Yael Orbach).

“Strategies for interviewing children who are reluctant to disclose abuse” (7/2007 to 6/2010: £199,529). The Nuffield Foundation (Principal Investigator).

“Strategies for interviewing children who are reluctant to disclose abuse” (7/2007 to 6/2010: £50,589). The Isaac Newton Trust (Principal Investigator).

“Parenting and the psychological development of children in gay father families.” (10/2009 to 9/2012: £351,863). The Economic and Social Research Council (Co-Investigator; Principal Investigator is Susan Golombok).

“Children’s evidence in criminal proceedings.” (April 2011: £6000). Nuffield Foundation Conference Grant (Co-Investigator is John Spencer).

“Gay father families: The development of early parent-child relationships.” (1/2013 to 12/2015: £871,000, including £516,251 for British arm of study). U. K. Economic and Social Research Council, French Agence Nationale de la Recherche, and Nederlands Organisatie voor Wetenschappelijk Onderzoek (Principal Investigator; Co-Investigators are Hennie Bos (Netherlands), Susan Golombok (UK), Martine Gross (France), and Olivier Vecho (France)).

Publications

- Lamb, M. E. The effects of maternal deprivation on the development of the concepts of object and person. *Journal of Behavioural Science*, 1973, 1, 355-364.
- Lamb, M. E. Review of Separation: Anxiety and anger by John Bowlby. *Journal of Behavioural Science*, 1973, 1, 372-373.
- Lamb, M. E. A defense of the concept of attachment. *Human Development*, 1974, 17, 376- 385.
- Lamb, M. E. Physiological mechanisms in the control of maternal behavior in rats: A review. *Psychological Bulletin*, 1975, 82, 104-119.
- Lamb, M. E. The sociability of two-year-olds with their mothers and fathers. *Child Psychiatry and Human Development*, 1975, 5, 182-188.
- Lamb, M. E. Fathers: Forgotten contributors to child development. *Human Development*, 1975, 18, 245-266.
- Lamb, M. E. The relationships between infants and their mothers and fathers. *Dissertation Abstracts International*, 1976, 37 (6B), 3153.
- Lamb, M. E. (Ed.) *The role of the father in child development*. New York: Wiley, 1976.
Japanese translation published in 1981 by Kasei Publishers.
- Lamb, M. E. The role of the father: An overview. In M. E. Lamb (Ed.), *The role of the father in child development* (pp. 1-63). New York: Wiley, 1976 .
- Lamb, M. E. Interactions between eight-month-old children and their fathers and mothers. In M. E. Lamb (Ed.), *The role of the father in child development* (pp. 307-327). New York: Wiley, 1976.
- Lamb, M. E. Proximity seeking attachment behaviors: A critical review of the literature. *Genetic Psychology Monographs*, 1976, 93, 63-89.
- Lamb, M. E. Interactions between two-year-olds and their mothers and fathers. *Psychological Reports*, 1976, 38, 447-450.
- Lamb, M. E. Twelve-month-olds and their parents: Interaction in a laboratory playroom. *Developmental Psychology*, 1976, 12, 237-244.
- Lamb, M. E. Effects of stress and cohort on mother-and father-infant interaction. *Developmental Psychology*, 1976, 12, 435-443.
- Lamb, M. E. Parent-infant interaction in eight-month-olds. *Child Psychiatry and Human Development*, 1976, 7, 56-63.

- Tracy, R. L., Lamb, M. E., & Ainsworth, M. D. S. Infant approach behavior as related to attachment. *Child Development*, 1976, 47, 571-578.
- Lamb, M. E., & Lamb, J. E. The nature and importance of the father-infant relationship. *The Family Coordinator*, 1976, 25, 379-385.
- Reprinted in E. Murray (Ed.), *The child's first learning environment: Selected readings in home economics* (pp. 45-47). Paris: UNESCO, 1980.
- Lamb, M. E. A re-examination of the infant social world. *Human Development*, 1977, 20, 65-85.
- Lamb, M. E. Father-infant and mother-infant interaction in the first year of life. *Child Development*, 1977, 48, 167-181.
- Reprinted in Gladys K. Phelan (Ed.), *Family relationship: Selected readings* (pp. 171-183). Minneapolis: Burgess, 1979.
- Lamb, M. E. Infant attachment to mothers and fathers. In S. Cohen & T.J. Comiskey (Eds.) *Child development: A study of growth processes* (pp. 167-180). Itasca, Ill.: Peacock, 1977.
- Lamb, M. E. The development of parental preferences in the first two years of life. *Sex Roles*, 1977, 3, 495-497.
- Reprinted in Roger C. Bailey (Ed.), *New horizons in applying psychology*. Monterey CA: Brooks/Cole, 1980.
- Lamb, M. E. The development of mother-infant and father-infant attachments in the second year of life. *Developmental Psychology*, 1977, 13, 637-648.
- Lamb, M. E. The effects of divorce on children's personality development. *Journal of Divorce*, 1977, 1, 163-174.
- Lamb, M. E. Infant social cognition and 'second-order' effects. *Infant Behavior and Development*, 1978, 1, 1-10.
- Lamb, M. E. (Ed.) *Social and personality development*. New York: Holt, Rinehart & Winston, Inc., 1978.
- Lamb, M. E. Sociopersonality development: Introduction to a burgeoning field. In M. E. Lamb (Ed.), *Social and personality development* (pp. 1-21). New York: Holt, Rinehart & Winston, Inc., 1978.
- Lamb, M. E. Social interaction in infancy and the development of personality. In M. E. Lamb (Ed.), *Social and personality development* (pp. 26-49). New York: Holt, Rinehart & Winston, Inc., 1978.

- Lamb, M. E., & Baumrind, D. Socialization and personality development in the preschool years. In M. E. Lamb (Ed.), *Social and personality development* (pp. 50-69). New York: Holt, Rinehart & Winston, Inc., 1978.
- Lamb, M. E., & Urberg, K. A. The development of gender role and gender identity. In M. E. Lamb (Ed.), *Social and personality development* (pp. 178-199). New York: Holt, Rinehart & Winston, Inc., 1978.
- Lamb, M. E. Psychosocial development: A theoretical overview and a look into the future. In M. E. Lamb (Ed.), *Social and personality development* (pp. 307-317). New York: Holt, Rinehart & Winston, Inc., 1978.
- Lamb, M. E. The influence of the child on marital quality and family interaction during the prenatal, paranatal, and infancy periods. In R. M. Lerner & G. B. Spanier (Eds.), *Child influences on marital and family interaction: A lifespan perspective* (pp. 137-163). New York: Academic Press, 1978.
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- Lamb, M. E. & Stevenson, M. D. Father-infant relationships: Their nature and importance. *Youth and Society*, 1978, 9, 277-298.
- Lamb, M. E. Interactions between eighteen-month-olds and their preschool-aged siblings. *Child Development*, 1978, 49, 51-59.
- Reprinted in J. Belsky (Ed.), *In the beginning: Readings in infancy* (pp. 227-232). New York: Columbia University Press, 1982.
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- Roopnarine, J. L., & Lamb, M. E. The effects of day care on attachment and exploratory behavior in a strange situation. *Merrill-Palmer Quarterly*, 1978, 24, 85-95.
- Reprinted in J. G. Howells (Ed.), *Advances in family psychiatry*. (Vol. 4, pp. 473-483). New York: International Universities Press, 1981.
- Lamb, M. E. Review of *Part-time father* by E. Atkin & E. Rubin. *The Family Coordinator*, 1978, 27, 477-478.

- Frodi, A. M., Lamb, M. E., Leavitt, L. A., Donovan, W. L., Neff, C., & Sherry, D. Fathers' and mothers' responses to the faces and cries of normal and premature infants. *Developmental Psychology*, 1978, 14, 490-498.
- Frodi, A. M., & Lamb, M. E. Sex differences in physiological and behavioral responses to infant signals: A developmental study. *Proceedings of the Iowa Academy of Science* (Ames), 1978.
- Lamb, M. E. The development of sibling relationships in infancy: A short-term longitudinal study. *Child Development*, 1978, 49, 1189-1196.
- Frodi, A. M., & Lamb, M. E. Sex differences in responsiveness to infants: A developmental study of psychophysiological and behavioral responses. *Child Development*, 1978, 49, 1182-1188.
- Frodi, A. M., Lamb, M. E., Leavitt, L. A., & Donovan, W. L. Fathers' and mothers responses to infant smiles and cries. *Psychophysiology*, 1978, 15, 276. (Abstract)
- Lamb, M. E. I rapporti fra madri, padri, bambini e fratelli nei prima due anni di vita (The relationship between mothers, fathers, infants, and siblings in the first two years of life.) In M. Cesa-Bianchi & M. Poli (Eds.), *Aspetti biosociali dello sviluppo*. Vol. 1. *Aspetti medico-biologici (Atti del IV congresso biennale della ISSDB)*. Milan, Italy: Franco Angeli, 1979.
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- Lamb, M. E. Issues in the study of social interaction: An introduction. In M. E. Lamb, S. J. Suomi & G. R. Stephenson (Eds.), *Social interaction analysis: Methodological issues* (pp. 1-10). Madison: University of Wisconsin Press, 1979.
- Lamb, M. E. The effects of the social context on dyadic social interaction. In M. E. Lamb, S. J. Suomi & G. R. Stephenson (Eds.), *Social interaction analysis: Methodological issues* (pp. 253-268). Madison: University of Wisconsin Press, 1979.
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- Rajecki, D.W., & Lamb, M. E. Interpretations, reinterpretations, and alleged misinterpretations of theory and data concerning attachment. *Behavioral and Brain Sciences*, 1979, 1, 461-464.
- Lamb, M. E. Review of *Fathers, mothers and society* by Rappoport, Rappoport, and Strelitz. *American Scientist*, 1979, 67, 112-113.
- Lamb, M. E. Paternal effects and the father's role: A personal perspective. *American Psychologist*, 1979, 34, 938-943.

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Reprinted in J. K. Gardner (Ed.), *Readings in developmental psychology* (Second edition). Boston: Little, Brown, 1982.

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Stevenson, M. B., & Lamb, M. E. The effects of sociability and the caretaking environment on infant cognitive performance. *Child Development*, 1979, 50, 340-349.

Lamb, M. E., Chase-Lansdale, P. L. & Owen, M. T. The changing American family and its implications for infant social development: The sample case of maternal employment. In M. Lewis & L. A. Rosenblum (Eds.) *The child and its family* (pp. 267-291). New York: Plenum, 1979.

Lamb, M. E., Owen, M. T., & Chase-Lansdale, L. The father-daughter relationship: Past, present and future. In C. B. Kopp & M. Kirkpatrick (Eds.), *Becoming female: Perspectives on development* (pp. 89-112). New York: Plenum, 1979.

Lamb, M. E. Infant social development: Reflections on a theme. *Human Development*, 1979, 22, 68-72.

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Frodi, A. M., & Lamb, M. E. Psychophysiological responses to infant signals in abusive mothers and mothers of premature infants. *Psychophysiology*, 1979, 16, 183. (Abstract)

Lamb, M. E., & Roopnarine, J. L. Peer influences on sex-role development in preschoolers. *Child Development*, 1979, 50, 1219-1222.

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- Lamb, M. E., Owen, M. T., & Chase-Lansdale, L. The working mother in the intact family: A process model. In R. R. Abidin (Ed.), *Parent education and intervention handbook*. Springfield, Ill.: Charles C. Thomas, 1980 (pp. 59-81).
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- Lamb, M. E., Easterbrooks, M. A., & Holden, G. W. Reinforcement and punishment among preschoolers: Characteristics, effects and correlates. *Child Development*, 1980, 51, 1230-1236.
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- Lamb, M. E. On the origins and implications of sex differences in human sexuality. *Behavioral and Brain Sciences*, 1980, 3, 192-193.
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- Lamb, M. E. A wasted opportunity to engage with the literature on the implications of attachment research for family court professionals. *Family Court Review*, 2012, 50, 481-485.
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- Lamb, M. E. Early experience, neurobiology, plasticity, vulnerability, and resilience. In D. Narvaez, J. Panksepp, & A. Schore (Eds.), *Human nature, early experience and the environment of evolutionary adaptedness* (pp. 68-73). New York: Oxford University Press, in press.
- Shwalb, D. W., Shwalb, B. J., & Lamb, M. E. (Eds.) *Fathers in cultural context*. New York: Routledge/Taylor & Francis, 2013.
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- Lamb, M. E. Non-parental care and emotional development. In S. Pauen & M. H. Bornstein (Eds.), *Early childhood development and later achievement*. New York and Cambridge: Cambridge University Press, in press.
- La Rooy, D. J., Brown, D. & Lamb, M. E. Suggestibility and witness interviewing. In A. Ridley, F. Gabbert, & D. J. La Rooy (Eds.), *Investigative suggestibility: Theory, research and applications*. Oxford UK: Wiley-Blackwell, in press.
- Lamb, M. E. Inaugural editorial. *Psychology, Public Policy, and Law*, in press.
- Brown, D. A., Lewis, C. N., Lamb, M. E., & Stephens, E. The influences of delay and severity of intellectual disability on event memory in children. *Journal of Consulting and Clinical Psychology*, in press.
- Cederborg, A.-C., Alm, C., Da Silva Nises, D. L., & Lamb, M. E. Investigative interviewing of alleged child abuse victims: An evaluation of a new training program for investigative interviewers. *Police Practice and Research*, in press.
- Pipe, M. E., Orbach, Y., Lamb, M. E., Abbott, C. B., Stewart, H. L. Do case outcomes change when investigative interviewing practices change? *Psychology, Public Policy, & Law*, in press.

La Rooy, D., Nicol, A., Halley, J., & Lamb, M. E. Joint investigative interviews with children in Scotland. *The Scots Law Times*, in press.

Papers Presented to Scientific and Professional Conventions or Conferences

Tracy, R. L., Lamb, M. E., & Ainsworth, M. E. Proximity seeking in the first year as related to attachment. Paper presented to the Southeastern Division of the Society for Research in Child Development, Chapel Hill, NC, March 1974.

Lamb, M. E. Infants, fathers, and mothers: Interaction at eight-months-of-age in the home and in the laboratory. Paper presented to the Eastern Psychological Association, New York, April 1975.

Lamb, M. E. Infant attachment to mothers and fathers. Paper presented to the Society for Research in Child Development, Denver, CO, April 1975.

Lamb, M. E. The one-year-old's interaction with its parents. Paper presented to the Eastern Psychological Association, New York, April 1976.

Lamb, M. E. The effects of stress on the parental preferences of one-year-olds. Paper presented to the XXIst International Congress of Psychology, Paris, July 1976.

Lamb, M. E. The effects of ecological variables on parent-infant interaction. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1977.

Lamb, M. E. Development and function of parent-infant relationships in the first two years of life. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1977.

Lamb, M. E. Effective parenting in contemporary America: Some cautions and some prescriptions. Paper presented to a Conference on Effective Parenting, New Orleans, LA, April 1977.

Lamb, M. E. The influence of the infant on marital quality and family interaction during the prenatal, paranatal, and infancy period. Paper presented to the Conference on Contributions of the Child to Marital Quality and Family Interaction Across the Lifespan, University Park, PA, April 1977.

Lamb, M. E., Suomi, S. J., & Stephenson, G. R. (Co-organizers) Methodological problems in the study of social interaction. Study group that met in Madison, WI, July 1977, under the auspices of the Society for Research in Child Development, and the financial support of the Foundation for Child Development.

Lamb, M. E. Social interaction in triads: Mother, father, and infant. Paper presented to the study group on Methodological Problems in the Study of Social Interaction, Madison, WI, July 1977.

- Lamb, M. E. The relationships between mothers, fathers, infants, and siblings in the first two years of life. Paper presented to the International Society for the Study of Behavioral Development, Pavia (Italy), September 1977.
- Frodi, A. M. Lamb, M. E., Leavitt, L. A., & Donovan, W. L. Fathers' and mothers' responses to infant smiles and cries. "Poster" presentation to the Society for Psychophysiological Research, Philadelphia, PA, October 1977.
- Lamb, M. E. Moderator of workshop on "The problems of single parents' and working mothers' families" at the General Mills American Family Forum on "Parenting -The Crucial years", Washington, DC, October 1977.
- Lamb, M. E. Family boundary and stress issues in child/human development, psychiatry, sociology, and family studies: What are the shared issues and problems? Invited address to a Conference on family boundaries: Research and therapy, Madison, WI, October 1977.
- Lamb, M. E., Chase-Lansdale, P. L., & Owen, M. T. The changing American family and its implications for infant social development. Paper presented to the ETS Conference on The Social Network of the Developing Infant, Princeton, NJ, December 1977.
- Lamb, M. E. The father's role in the attainment and maintenance of infant mental health. Invited address to the Michigan Infant Mental Health Association, Ann Arbor, MI, March 1978.
- Lamb, M. E. Parent-infant bonding. Invited address to the Michigan State Medical Society Conference on Maternal and Perinatal Health, Dearborn, MI, March 1978.
- Stevenson, M. B., & Lamb, M. E. Effects of the caretaking environment on infant cognitive competence. Paper presented to the International Conference on Infant Studies, Providence, RI, March 1978.
- Lamb, M. E. Observational analyses of sibling relationships in infancy. Paper presented to the International Conference on Infant Studies, Providence, RI, March 1978.
- Frodi, A. M., Lamb, M. E., Leavitt, L. A., & Donovan, W. L. Fathers' and mothers' responses to the signals and characteristics of young infants. Paper presented to the International Conference on Infant Studies, Providence, RI, March 1978.
- Maurer, G. F., & Lamb, M. E. Personality characteristics of early-treated children with PKU and the personality characteristics of their parents. Paper presented to the fourteenth General Medical Conference, PKU Collaborative Study, Stateline, NV, March 1978.
- Frodi, A. M., & Lamb, M. E. Baby responsiveness in eight-and fourteen-year-olds as assessed by observational and psychophysiological measures. Paper presented to the Iowa Academy of Sciences, Cedar Falls, Iowa, April 1978.
- Lamb, M. E. Invited consultant at an interdisciplinary workshop on the observational study of social interaction, Munich (Germany), July 1978.

- Lamb, M. E., Frodi, A. M., Chase-Lansdale, P. L., & Owen, M. T. The father's role in nontraditional family contexts: Direct and indirect effects. Paper presented to the American Psychological Association, Toronto, September 1978.
- Frodi, A. M., & Lamb, M. E. Psychophysiological responses to infant signals in abusive mothers and mothers of premature infants. Paper presented to the Society for Psychophysiological Research, Madison, WI, September 1978.
- Lamb, M. E. The effects of nontraditional family styles on infant social development: Implications for social policy. Invited address to the National Council of Family Relations Convention, Philadelphia, PA, October 1978.
- Lamb, M. E., & Bronson, S. K. Paternal influences on development in traditional and nontraditional families. Invited address to a conference on Fatherhood and the Male Single Parent, Nebraska Psychiatric Institute, Omaha, NE, November/December 1978.
- Lamb, M. E. Infant social development: A personal perspective. Guest lecture series, University of Goteborg (Sweden), February 1979.
- Lamb, M. E. The father-child relationship: Changing conceptions of its nature and potential importance. Invited address to the Merrill-Palmer Institute, Detroit, MI, February 1979.
- Frodi, A. M., & Lamb, M. E. Sex differences in behavioral and psychophysiological responsiveness to infants: A developmental study. Paper presented (on invitation) to the Association for Women in Psychology, Dallas, TX, March 1979.
- Lamb, M. E. Participant in "Peer Interaction Conversation Hour" at the Biennial Meeting of the Society for Research in Child Development, San Francisco, March 1979.
- Frodi, A. M., Wille, D., & Lamb, M. E. Parents' responses to normal and premature infants. Paper presented to the Society for Research in Child Development, San Francisco, March 1979.
- Frodi, A. M., Schima, J., Ohman, R., & Lamb, M. E. Child abusers' responses to infant smiles and cries. Paper presented to the Society for Research in Child Development, San Francisco, March 1979.
- Olson, G. M., & Lamb, M. E. Premature infants: Cognitive and social development in the first year of life. Workshop presentation to the Annual Convention of the Michigan Association for Infant Mental Health, Ann Arbor, MI, April 1979.
- Lamb, M. E., & Goldberg, W. A. The father child relationship: Biological, evolutionary, and social perspectives. Paper presented to an invitational conference on Parental Behavior, Rutgers University, New Brunswick, NJ, April 1979.
- Lamb, M. E. Biological and social contributions to the development of social behavior. Guest lecture series, University of Goteborg (Sweden), October 1979.

- Lamb, M. C. On the origins of personality and social style. Invited presentation at the ETS Conference on the Family, Princeton, N.J., November/December 1979.
- Lamb, M. E. The development of social understanding and social attachments in infancy. Invited presentation to the Seminar on the Development of Infants and Parents, Boston, MA, November 1979.
- Lamb, M. E. Children in a changing culture: The effects of nontraditional family styles and paternal roles in child development. Invited address to a Conference on Parenthood and Families in the 1980s, Wheelock College, Boston, MA, March 1980.
- Frodi, A. M., Lamb, M. E., Hwang, C.-P., & Frodi, M. Father-infant and mother-infant interaction in traditional and nontraditional families. Paper presented to the International Conference on Infant Studies, New Haven, CT, April 1980.
- Lamb, M. E. Infant social cognition: The origins of early expectations. Paper presented to the Denver Psychobiology Research Group Retreat, Estes Park, CO, May 1980.
- Lamb, M. E., Frodi, A. M., Frodi, M., & Hwang, P. Effects of gender and caretaking role on parent-infant interaction. Paper presented to the Denver Psychobiology Research Group Retreat, Estes Park, CO, May 1980.
- Lamb, M. E. The role of the father in child development: An overview. Invited public address, School of Social Work, University of Haifa, Haifa, Israel, July 1980.
- Lamb, M. E. Co-organizer of and participant in SRCD-sponsored study group on Social Policy, Law, and the Father, held at the University of Haifa, Haifa, Israel, July 1980.
- Lamb, M. E. The development of parent-child relationships in infancy. Invited presentation to the International Congress of Psychology, Leipzig (East Germany), July 1980.
- Lamb, M. E. The role of the father in child development. Invited address to the Board of Jewish Education, Chicago, June 1980.
- Lamb, M. E. The meaning and measurement of family interaction. Invited address to the National Council on Family Relations, Portland, OR, October 1980.
- Lamb, M. E. Child abuse: Causes and intervention. Workshop presentation at the School of Social Work, University of Haifa (Israel), November 1980.
- Lamb, M. E. Attachment, institutionalization, and child custody. Workshop presentation at the School of Social Work, University of Haifa (Israel), November 1980.
- Estes, D. E., Lamb, M. E., Thompson, R. A., & Dickstein, S. Maternal affective quality and security of attachment at 12 and 19 months. Paper presented to the Society for Research in Child Development, Boston, April 1981.

- Frodi, A. M., Murraray, A. D., Lamb, M. E., & Steinberg, J. Behavioral responsiveness to infants in pre-and post-menarcheal girls. Paper presented to the Society for Research in Child Development, Boston, April 1981.
- Lamb, M. E. Child development and social policy. Minicourse offering, School of Social Work, University of Haifa (Israel), June 1981.
- Thompson, R. A., & Lamb, M. E. The relationship between stranger sociability, temperament, and social experiences at 12 1/2 and 19 1/2 months of age. Paper presented to the Midwestern Psychological Association, Detroit, MI, April 1981.
- Thompson, R. A., & Lamb, M. E. Changes in family circumstances and their relationships to the quality of infant-mother attachment: A short-term longitudinal study. Paper presented to the Midwestern Psychological Association, Detroit, MI, April 1981.
- Lamb, M. E. Fathers, mothers, and childcare in the 1980s. Invited presentation to a conference on "Families in transition: Children, work and housework", Cincinnati, Ohio, May 1981.
- Thompson, R. A., & Lamb, M. E. Socioemotional development in a family context. Invited address to a conference on "Social connectedness beyond the dyad", Educational Testing Service, Princeton, NJ, May 1981.
- Lamb, M. E. Family bonds, springboards to..... Invited address to the Family Education Conference on "Families Alive: Roots and Wings of Relationships", Weber State College, Ogden, UT, September 1981.
- Sagi, A., Lamb, M. E., Estes, D., Shoham, R., Lewkowicz, K., & Dvir, R. Security of infant-adult attachment among kibbutz-reared infants. Paper presented to the International Conference on Infant Studies, Austin, TX, March 1982.
- Frodi, A. M., Lamb, M. E., Hwang, C.-P., & Frodi, M. Increased paternal involvement and family relationships. Paper presented to the International Conference on Infant Studies, Austin, TX, March 1982.
- Dickstein, S., Thompson, R. A., Estes, D., Malkin, C. M., & Lamb, M. E. Social referencing and maternal contributions. Paper presented to the International Conference on Infant Studies, Austin, TX, March 1982.
- Lamb, M. E. The changing ecology of childhood: Fathers, mothers, and childcare in the 1980's. Invited address to the National Association of School Psychologists, Toronto, March 1982.
- Lamb, M. E., Sagi, A., Lewkowicz, K., Shoham, R., & Estes, D. Security of infant-mother, -father, and -metapelet attachments in kibbutz-reared infants. Paper presented to the Denver Psychobiology Research Group Retreat, Estes Park, CO, June 1982.

- Lamb, M. E., Malkin, C. M., & Gaensbauer, T. J. Effects of child abuse on the security of infant-mother attachment. Paper presented to the Denver Psychobiology Research Group Retreat, Estes Park, CO, June 1982.
- Thompson, R. A., & Lamb, M. E. Continuity and change in socioemotional development in the second year. Paper presented to the Denver Psychobiology Research Group Retreat, Estes Park, CO, June 1982.
- Lamb, M. E., Sagi, A., Lewkowicz, K., Shoham, R., & Estes, D. The effects of kibbutz-rearing on the security of infant-mother, -father, and -metapelet attachments in kibbutz-reared infants. Paper presented to the Second International Conference on Kibbutz Studies, New York, June 1982.
- Elster, A. B., & Lamb, M. E. Teenaged fathers and child development. Presentation to the Social Science Research Council Study Group on School-aged Parenthood, Baltimore, June 1982.
- Thompson, R. A., & Lamb, M. E. Temperamental influences on stranger sociability and the security of attachment. Paper presented to the American Psychological Association, Washington, DC, August 1982.
- Thompson, R. A., & Lamb, M. E. Security of attachment and stranger sociability in infancy. Paper presented to the American Psychological Association, Washington, DC, August 1982.
- Lamb, M. E. The changing role of fathers: Impact on families and children. Invited address to a Special Institute on Family Changes that Affect Children, Kent State University, Kent, OH, September 1982.
- Lamb, M. E. Mothers, fathers, and children in the 1980's. Address to a Conference on Childcare arrangements in the 1980s, Ministry of Social Affairs, Singapore, January 1983.
- Lamb, M. E. Effective parenting: Some cautions and some prescriptions. Public lecture organized by the Ministry of Social Affairs, Singapore, February 1983.
- Lamb, M. E. Parental influences on child development. Public lecture organized by the Ministry of Social Affairs, Singapore, February 1983.
- Lamb, M. E. Workshop on Attachment and bonding: Conceptual and assessment issues. Child Psychiatric Clinic, Singapore, February 1983.
- Lamb, M. E. Consultant to workshop on The development of parent education programs. Ministry of Social Affairs, Singapore, February 1983.
- Lamb, M. E. Consultant to workshop on The longitudinal study on the effects of childcare arrangements on child development. Ministry of Social Affairs, Singapore, February 1983.

- Lamb, M. E. Mothers, fathers, and childcare in a changing world. Invited Plenary Address to the Second World Congress on Infant Psychiatry, Cannes (France), March/April 1983.
- Lamb, M. E. (Chair) Symposium on “The origins of nurturance” at the biennial convention of the Society for Research in Child Development, Detroit, April 1983.
- Adams, G. R., Hetherington, E. M., Lamb, M. E., & Parish, T. S. Divorce and changing familial configurations: What effects might they have on children and how can they be ameliorated? Discussion session at the biennial convention of the Society for Research in Child Development, Detroit, April 1983.
- Malkin, C. M., Lamb, M. E., & Burke, M. The development of social expectations in distress-relief contexts. Paper presented to the Society for Research in Child Development, Detroit, April 1983.
- Zarbatany, L., & Lamb, M. E. Social referencing as a function of information source: Mothers versus strangers. Paper presented to the Society for Research in Child Development, Detroit, April 1983.
- Lamb, M. E. Changing patterns of childcare: Effects on children and families. Invited address to the Rocky Mountain Psychological Association, Snowbird (UT), April 1983.
- Lamb, M. E. Invited participant in Social Science Research Council Conference on Parenting across the lifespan, Belmont Conference Center, Belmont, MD, May 1983.
- Lamb, M. E. The role of the father in child development. Invited address to The Fatherhood Forum, New York City, June 1983.
- Lamb, M. E. Assessing the quality of infant-parent relationships: Paper presented to the International Society for the Study of Behavioral Development, Munich (West Germany), July/August 1983.
- Sagi, A., Lamb, M. E., Shoham, R., Lewkowicz, K., & Dvir, R. Development of parent- infant interaction in Israeli kibbutzim. Paper presented to the International Society for the Study of Behavioral Development, Munich (West Germany), August 1983.
- Lamb, M. E. Bonding: Critical time or critical process? Invited presentation to the Utah Perinatal Association, Park City, September 1983.
- Lamb, M. E. Parents and children in a changing world. Invited plenary address to a joint meeting of the American Academy of Pediatrics and the American Academy of Child Psychiatry, San Francisco, October 1983.
- Lamb, M. E. Workshop on Parent-child relationships: Key issues for Pediatricians. American Academy of Pediatrics, San Francisco, October 1983.

- Lamb, M. E. Assessing the security of attachment using the Strange Situation: Approaches, problems and prospects. Workshop presentation to the American Academy of Child Psychiatry, San Francisco, October 1983.
- Lamb, M. E. The role of the father in child development. Invited presentation to the Select Committee on Families and Children, US House of Representatives, November 1983.
- Lamb, M. E., Pleck, J. H., & Charnov, E. L. Paternal behavior in humans. Paper presented to the American Society for Zoologists and the Animal Behavior Society, Philadelphia, December 1983.
- Lamb, M. E. Fathers and children. Workshops offered to staff of the Arizona Department of Economic Security in Phoenix and Tucson, January 1984.
- Lamb, M. E. Helping parents and children grow together. Invited presentation to the Intermountain Pediatric Society, Salt Lake City, February 1984.
- Hwang, C.-P., Broberg, A., Frodi, M., & Lamb, M. E. Relationships between quality of childcare and quality of peer play in Swedish infants. Presentation to the International Conference on Infant Studies, New York City, April 1984.
- Lamb, M. E., & Sagi, A. Fathering in the 1980's and beyond. Invited address to a Conference on The Father/Family Connection: Theory, Research, and Implications for Policy, Practice, and Life, University of Utah School of Social Work, Salt Lake City, April 1984.
- Lamb, M. E. The role of the father in child development. Workshop presentation to Pediatric Associates of Atlanta, Atlanta, GA, May 1984.
- Lamb, M. E. Invited participant in Social Science Research Council Conference on Child abuse and neglect: Biosocial perspectives, Boston, MA, May 1984.
- Elster, A. B., & Lamb, M. E. (Co-organizers) Study group on Adolescent Fatherhood, funded by the Society for Research in Child Development, Heber (Utah), May 1984.
- Lamb, M. E. The role of the father in child development: An overview. Presentation to the Study group on Adolescent Fatherhood, Heber (UT), May 1984.
- Elster, A. B., & Lamb, M. E. Adolescent mother-infant-father relationships. Paper presented to the Society for Pediatric Research, San Francisco, May 1984.
- Lamb, M. E. The father-child relationship in a changing world. Invited address to the Chicago area Fatherhood Forum, Chicago, June 1984.
- Lamb, M. E. Fatherhood and institutional policy. Workshop at the Chicago area Fatherhood Forum, Chicago, June 1984.

- Lamb, M. E. The role of the father in child development. Invited presentation to the conference, Advances in Child Development for Parent Educators, Dominican College, San Rafael, CA, July 1984.
- Lamb, M. E. Changing patterns of childcare: Effects on children and families. Invited presentation to a conference on The Child in Social Context, University of Manitoba, Winnipeg (Canada), October 1984.
- Lamb, M. E. The father-child relationship. Invited workshops at the Arizona Psychological Association Convention, Flagstaff, AZ, October 1984.
- Lamb, M. E. The changing role of fathers. Keynote address, Ninth Annual Regional Intervention Program Conference, Nashville, TN, October 1984.
- Lamb, M. E. Child care in a changing world. Keynote address to a conference on Diversity in Family Style: Effects on children, Buffalo, October 1984.
- Lamb, M. E. Changing patterns of child care and its effects on families and children. Nebraska Wesleyan University Forum, Lincoln, NE, November 1984.
- Lamb, M. E. The changing role of fathers. Carol Shigetomi Memorial Lecture, University of Oregon Health Sciences Center, Portland, OR, January 1985.
- Lamb, M. E. The changing roles of fathers. Invited presentation to a conference on The Future of Parenting, University of California, Chico, CA, February 1985.
- Lamb, M. E. Single fathers and their children. Invited presentation to the Child Psychology Forum, Goteborg (Sweden), February 1985.
- Sagi, A., & Lamb, M. E. Relationships between Strange Situation behaviors and stranger sociability among infants on Israeli kibbutzim. Paper presented to the Society for Research in Child Development, Toronto, April 1985.
- Hwang, C.-P., Lamb, M. E., Broberg, A., Frodi, A., & Hult, G. Effects of early father participation on later paternal involvement and responsibility. Paper presented to the Society for Research in Child Development, Toronto, April 1985.
- Lamb, M. E. Adolescent fatherhood. Invited presentation at the biennial meeting of the Society for Research in Child Development, Toronto, April 1985.
- Lamb, M. E. Fatherhood and father-child relationships in a changing world. Keynote address, Fourth Interdisciplinary Symposium on Human Development, "The Father in Human Development", University of California-Davis, May 1985.
- Lamb, M. E., Teti, D. M., Lewkowicz, K. S., & Malkin, C. M. Child maltreatment and the child welfare system. Presentation to Study Group: "Rethinking Child Welfare: International Perspectives", Minneapolis, June 1985.

- Elster, A. B., Lamb, M. E., & Ralston, C. Evaluation of a comprehensive adolescent pregnancy program. Presentation to meeting of Program and Evaluation Directors, Office of Adolescent Pregnancy Programs, Washington, DC, June 1985.
- Lewkowicz, K. S., & Lamb, M. E. Naive Israelis' evaluations of Strange Situation behavior. Paper presented to the International Society for the Study of Behavioral Development, Tours (France), July 1985.
- Sagi, A. & Lamb, M. E. Is there a congruence between Strange Situation assessments made by trained vs. naive observers: A test of external validity. Paper presented to the International Society for the Study of Behavioral Development, Tours (France), July 1985.
- Lamb, M. E. The emergence of a new American father. Keynote address to the Seattle area Fatherhood Forum, Seattle, WA, September 1985.
- Lamb, M. E. Adolescent fatherhood. Invited presentation to the Convention of The American Academy of Child Psychiatry, San Antonio, TX, October 1985.
- Lamb, M. E. The long term effects of beneficial or adverse early life experiences. Invited address to the Fifth ASEAN Forum on Child and Adolescent Psychiatry, Singapore, November 1985.
- Lamb, M. E. Psychosocial aspects of adolescent fatherhood. Invited address to the Fifth ASEAN Forum on Child and Adolescent Psychiatry, Singapore, November 1985.
- Lamb, M. E. The ecology of adolescent parenthood. Invited presentation to a symposium on "Ecological approaches to the study of children and families," University of Victoria, Vancouver, March 1986.
- Lamb, M. E. The changing roles of fathers. Lansdowne Memorial Lecture, University of Victoria, Vancouver, March 1986.
- Teti, D. M., Lamb, M. E., & Elster, A. B. Long-range educational, financial, and marital consequences of teen marriage in three cohorts of adult males. Paper presented to the Society for Research in Adolescence, Madison, WI, March 1986.
- Lamb, M. E. Family relations: The changing roles of fathers. Keynote address to the Tulsa Coalition for Parenting Education Annual Spring Event, Tulsa, OK, April 1986.
- Teti, D. M., & Lamb, M. E. Attachment and caregiving between infants and older siblings. Paper presented to the International Conference on Infant Studies, Los Angeles, April 1986.
- Malkin, C. M., Lamb, M. E., & Gaensbauer, T. Mother-child interaction: Correlates of maltreatment. Paper presented to the International Conference on Infant Studies, Los Angeles, April 1986.

- Lamb, M. E. Invited participant, Symposium on Young Unwed Fatherhood, Catholic University, Washington, D.C., October 1986.
- Lamb, M. E. The formative role of mother-infant interaction. Invited presentation to the International Conference on Infant Studies, Los Angeles, April 1986.
- Oppenheim, D., Sagi, A., & Lamb, M. E. Classifications of infant-adult attachment on Israeli kibbutzim in the first year of life and their relation to socio-emotional development four years later. Paper presented to the International Conference on Infant Studies, Los Angeles, April 1986.
- Lamb, M. E. The determinants of social competence. Invited presentation to the International Conference on "The Family in Lifespan Perspective," Berlin, December 1986.
- Elster, A. B., Lamb, M. E., Tavare, J., & Ralston, C. W. The effect of intervention on the health, psychosocial, and parenting outcomes of adolescent mothers and their infants at one year. Paper presented to the Society for Adolescent Medicine, Seattle, WA, March 1987.
- Elster, A. B., Lamb, M. E., Tavare, J., & Ralston, C. W. The effect of intervention on the public costs associated with adolescent parenthood. Paper presented to the Society for Adolescent Medicine, Seattle, WA, March 1987.
- Lamb, M. E. Contemporary fatherhood. Invited presentation to the Annual Parenting Symposium, Los Angeles, March 1987.
- Lamb, M. E., Hwang, C.-P., Bookstein, F. L., & Broberg, A. Determinants of social competence in Swedish preschoolers. Paper presented to the Society for Research in Child Development, Baltimore, MD, April 1987.
- Nash, A., & Lamb, M. E. Becoming acquainted with unfamiliar adults and peers in infancy. Paper presented to the Society for Research in Child Development, Baltimore, MD, April 1987.
- Lamb, M. E. The changing roles of fathers. Keynote address, American Family Therapy Association, Chicago, June 1987.
- Lamb, M. E. Invited participant, Workshop on Biobehavioral concepts in development, Bethesda, MD, June/July 1987.
- Lamb, M. E. & Hwang, C.-P. Co-organizers: Symposium on Day care and its effects on families and children. International Society for the Study of Behavioral Development, Tokyo, July 1987.
- Hwang, C.-P., Lamb, M. E., & Broberg, A. Day care in Sweden. Paper presented to the International Society for the study of Behavioral Development, Tokyo, July 1987.

- Teti, D. M., & Lamb, M. E. Socioemotional/marital outcomes associated with adolescent marriage, childbirth, or both. Paper presented to the American Psychological Association, New York City, August 1987.
- Lamb, M. E. Home and out-of-home influences on the development of social, personality and intellectual competence in Swedish preschoolers. Opening address to the Developmental Section, British Psychological Association, York (England), September 1987.
- Lamb, M. E. Discussant at Society for Research in Child Development Study Group on "The history of child development." Belmont Conference Center, Belmont, MD, October 1987.
- Lamb, M. E. Invited participant in workshop on The effects of day care. National Center for Clinical Infant programs/National Academy of Science, Washington, DC, October 1987.
- Lamb, M. E. Child care and the development of social and intellectual competence. Invited address to the Symposium on the Future of Child Care in the United States, University of Virginia, Charlottesville, VA, November 1987.
- Lamb, M. E. The changing role of fathers. Invited presentation at Center for Early Education and Development Symposium, Omaha, NE, November 1987.
- Lamb, M. E. Social policy and father involvement. Invited address to Center for Early Education and Development Symposium, Omaha NE, November 1987.
- Lamb, M. E. Policy implications of Child Care Research. Panelist, National Research Council, Washington, DC, February 1988.
- Lamb, M. E. Quality of day care in Sweden and its effects on child development. Paper presented to the International Child and Youth Care Conference, Washington, DC, March 1988.
- Lamb, M. E., & Sternberg, K. J. Some thoughts about infant daycare. Paper presented to the American Orthopsychiatric Association, San Francisco, March 1988.
- Ralston, C. W., Elster, A. B., Lamb, M. E. & Dodd, D. H. Behavior patterns in infants of teen mothers. Western Society for Pediatric Research, Carmel, CA, March 1988.
- Hwang, C.-P., Broberg, A., & Lamb, M. E. Effects of setting on social competence with peers among Swedish children receiving out-of-home care. Paper presented to the International Conference on Infant Studies, Washington, DC, April 1988.
- Lamb, M. E. The changing faces of fatherhood. Invited presentation to the Symposium on Effective Parenting, Syracuse University, Syracuse, NY, June 1988.
- Lamb, M. E. Fathers, mothers, and child care. NICHD Child Health Day Symposium, Washington, D.C., October 1988.

- Lamb, M. E. Quality variations in family and center day care. National Conference on Early Childhood Issues, Washington, DC, November 1988.
- Lamb, M. E. The changing roles of fathers. Jing Lyman Lecture Series, Stanford University, Palo Alto, CA, February 1989.
- Lamb, M. E. High quality childcare inside and outside the family. Keynote address, Durham Day Care Council, Durham, NC, March 1989.
- Lamb, M. E., & Sternberg, K. J. The effects of out-of-home care on the development of Swedish preschoolers. Invited Workshop, Durham Day Care Council, Durham, NC, March 1989.
- Lamb, M. E., & Sternberg, K. J. Day care and parent-child attachment. Invited Workshop, Durham Day Care Council, Durham, NC, March 1989.
- Lamb, M. E. Out-of-home care and child development. D. O. Hebb Lecture, McGill University, Montreal (Canada), April 1989.
- Lamb, M. E. The interface between cognition and emotion in early childhood. Keynote address to a conference on Emotion, Cognition, and Behavior, Greensboro, NC, April 1989.
- Elster, A. B., Ketterlinus, R. D., & Lamb, M. E. The association between parental status and problem behavior among female adolescents. Paper presented to the Society for Research in Child Development, Kansas City, MO, April 1989.
- Sternberg, K. J., Lamb, M. E., Broberg, A., Hwang, C.-P., & Prodromidis, M. Out-of-home care history and compliance in Swedish preschoolers. Paper presented to the Society for Research in Child Development, Kansas City, MO, April 1989.
- Nakagawa, M., Lamb, M. E., & Miyake, K. The validity of the Strange Situation with Japanese infants: Antecedents and correlates. Paper presented to the Society for Research in Child Development, Kansas City, MO, April 1989.
- Lamb, M. E., Sternberg, K. J., & Knuth, N. Quality of family daycare and the development of peer social skills. Paper presented to the Society for Research in Child Development, Kansas City, MO, April 1989.
- Lamb, M. E., & Sternberg, K. J. The development of attachment relationships. Training Seminar, Jerusalem Municipality—Department of Community and Family Services, Jerusalem (Israel), June 1989.
- Broberg, A., Hwang, P., & Lamb, M. E. Sociability, play and out-of-home care experiences. Paper presented to the International Society for the Study of Behavioral Development, Jyväskylä (Finland), July 1989.
- Hwang, C-P, Broberg, A., & Lamb, M. E. The Gothenburg child care project. Paper presented to the International Society for the Study of Behavioral Development, Jyväskylä (Finland), July 1989.

- Lamb, M. E. & Sternberg, K. J. (Co-organizers) Invitational conference on Nonparental Childcare in Historical and Cultural Perspective, Coolfont Conference Center, Berkely Springs, W VA, August 1989.
- Lamb, M.E. The changing roles of fathers. Gender Studies Lecture Series, University of Notre Dame, South Bend, IN, November 1989.
- Sternberg, K. J., Lamb, M. E., Dawud, S., Lorey, F., Greenbaum, C., Krispin, O., Lowen, L., Sandler, L., Limor, D., & Musseri, S. The effects of domestic violence on children's perceptions of their parents. Paper presented to the National Council on Family Relations, New Orleans, LA, November 1989.
- Lamb, M. E., Sternberg, K. J., Hwang, C.-P., Broberg, A., Prodromidis, M., Ketterlinus, R., & Bookstein, F. L. Families, day care, and the emergence of compliance in Swedish preschoolers. Paper presented to the National Council on Family Relations, New Orleans, LA, November 1989.
- Lamb, M. E. Discussant: Symposium on "The father-child relationship: Anthropological perspectives." Symposium presented to the American Anthropological Association, Washington, DC, November 1989.
- Fracasso, M. P., Kimmerly, N., Nakagawa, M. & Lamb, M. E. Cultural and biological influences on infant behavior in the Strange Situation. Paper presented to the Southeastern Conference on Human Development, Richmond, VA, March 1990.
- Sternberg, K. J., Lamb, M. E., Prodromidis, M., & Ketterlinus, R. D. Effects of nonparental care on children's development. Paper presented to the Southeastern Conference on Human Development, Richmond, VA, March 1990.
- Ketterlinus, R. D., Lamb, M. E., Henderson, S. H., Das, R. , & Nitz, K. The adolescent parenthood project: Findings and future directions. Paper presented to the Southeastern Conference on Human Development, Richmond, VA, March 1990.
- Sternberg, K. J., Lamb, M. E., Dawud, S., Sandler, L., Krispin, O., & Cortez, R. M. The effects of domestic violence on children's development in Israel. Paper presented to the Southeastern Conference on Human Development, Richmond, VA, March 1990.
- Ketterlinus, R. D., Henderson, S. H., & Lamb, M. E. The relative effects of young maternal age, intelligence, and sociodemographics on children's math and reading achievement. Paper presented to the Society for Research on Adolescence, Atlanta, GA, March 1990.
- Ketterlinus, R. D., Das, R., Lamb, M. E., & Elster, A. B. The association between problem behaviors and sexual behavior in a national sample of adolescent males and females. Paper presented to the Society for Research in Adolescence, Atlanta, GA, March 1990.
- Lamb, M. E. Risk factors and the future of families. Keynote address to the Association of Oregon Community Mental Health Program Directors, Salishan, OR, April 1990.

- Lamb, M. E. The changing roles of fathers. Invited address to the Association of Oregon Community Mental Health Program Directors, Salishan, OR, April 1990.
- Lamb, M. E. The effects of daycare on child development. Invited speaker, Early Education and Child Development Interest Group, American Educational Research Association, Boston, April 1990.
- Rosenberg, A., Haynie, D., Scaramella, L., Lamb, M. E. Porges, S., & Fracasso, M. Individual differences in physical and affective functioning in infancy. Paper presented to the International Conference on Infant Studies, Montreal (Canada), April 1990.
- Lamb, M. E., Sternberg, K. J., & Prodromidis, M. On the association between daycare and attachment. Paper presented to the International Conference on Infant Studies, Montreal (Canada), April 1990.
- Lamb, M. E. & Lancaster, J. B. (Co-organizers) Invitational conference on Birth Management: Cross-cultural and Historical Perspectives. Coolfont Conference Center, Berkely Springs, W VA, May 1990.
- Sternberg, K. J., Lamb, M. E., Hwang, C.-P., & Broberg, A. Long-term effects of contrasting early childcare arrangements: The Goteborg childcare project. Paper presented to the International Symposium on Child Care in the Early Years, Lausanne (Switzerland), September 1990.
- Ketterlinus, R. D., Henderson, S. H., & Lamb, M. E. Non-parental care in the first three years of life and its association with academic achievement and behavior problems in later childhood: Evidence from a national (US) sample. Paper presented to the International Symposium on Childcare in the Early Years, Lausanne (Switzerland), September 1990.
- Lamb, M. E., & Sternberg, K. J. Nonparental childcare: Cross cultural issues and perspectives. Paper presented to the International Symposium on Childcare in the Early Years, Lausanne (Switzerland), September 1990.
- Sternberg, K. J., Lamb, M. E. & Prodromidis, M. Association between nonparental care and the security of infant-mother attachment. Paper presented to the International Symposium on Childcare in the Early Years, Lausanne (Switzerland), September 1990.
- Lamb, M.E. Overview and future prospects. Closing address to the International Symposium on Childcare in the Early Years, Lausanne (Switzerland), September 1990.
- Lamb, M. E. Interviewing young victims of sexual maltreatment: An introduction., Division of Youth Investigation, Israeli Ministry of Labour and Social Affairs, Jerusalem, Israel, December 1990.
- Lamb, M. E. Evaluating the effectiveness of intensive home-based intervention relative to foster care. Paper presented to an invitational conference on The Evaluation of Child Welfare Reform, American Enterprise Institute for Public Policy Research, Washington DC, February 1991.

- Lamb, M. E. Successful parenting in the 1990s. Invited public lecture, Centre for Effective Living, Singapore, March 1991.
- Lamb, M. E. What research can tell us about effective parenting. Keynote address to the International Seminar on Family Education, National Women's Education Centre, Saitama, Japan, March 1991.
- Ketterlinus, R. D., & Lamb, M. E. (Co-organizers) Conference on Problem Behavior in Adolescence. Coolfont Conference Center, Berkeley Springs, WVA, April 1991.
- Sternberg, K. J., Cortes, R. M., Dawud, S., Lamb, M. E., Greenbaum, C., & Krispin, O. Effects of domestic violence on children's behavior problems. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Dawud, S., Lewensohn, O., Hart, J., Posner, S., Cortes, R. M., Cohen, E., & Lamb, M. E. Effects of domestic violence on children's adjustment in school. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Scaramella, L. V., Lamb, M. E., Rosenberg, A. A., Haynie, D., & Ducrey, R. A longitudinal assessment of adrenocortical activity in infancy. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Ketterlinus, R. D., Nitz, K., & Lamb, M. E. Adolescent deviance: Stability over time and generations. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Nitz, K., Ketterlinus, R. D., & Lamb, M. E. Children of adolescent and young adult mothers: Gender differences in the transmission of problem behavior. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Ketterlinus, R. D., Lamb, M. E., & Nitz, K. Sexual and nonsexual risk-taking in a national sample of adolescent males. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Prodromidis, M., Hwang, C. P., Broberg, A., Lamb, M. E., & Sternberg, K. J. A composite measure of aggression for children with and without out-of-home care experiences. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Henderson, S. H., Ketterlinus, R. D., & Lamb, M. E. The association among children's behavioral adjustment, maternal employment and attitudes, and childcare arrangements. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Nakagawa, M., Teti, D. M., Lamb, M. E., & Sugaya, S. Japanese mothers and children in the United States: Life stress, parenting, and the security of attachment. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.

- Krispin, O., Sternberg, K. J., Lewensohn, O., Cohen E., & Lamb, M. E. The dimensions of peer evaluation: A cross-cultural perspective. Paper presented to the Society for Research in Child Development, Seattle, WA, April 1991.
- Nsamenang, A. B., & Lamb, M. E. Socialization values in two generations of Bamenda (Cameroon) Grassfields families. Paper presented to a Workshop on Continuities and Discontinuities in the Cognitive Socialization of Minority Children, Washington, DC, June/July 1991.
- Sternberg, K. J., & Lamb, M. E. Physical child abuse: Assessment, research, and intervention. Workshop for the Department of Community and Family Services, Municipality of Jerusalem, Jerusalem, Israel, June 1991.
- Esplin, P. W., Sternberg, K. J., & Lamb, M. E. Interviewing young victims of sexual abuse. Workshop for the staff of the Israeli National Bureau of Youth Investigation, Herzaliya, Israel, June 1991.
- Scholmerich, A., Fracasso, M., & Lamb, M. E. Person, Dyade, Situation und Zeit: Zur methodischen Problematik von Interaktionsbeobachtungen. Paper presented to the Fachgruppe Entwicklungspsychologie, Deutsche Gesellschaft für Psychologie, Köln (Germany), September 1991.
- Scholmerich, A., Genovese, S., & Lamb, M. E. Mütterliche Sensibilität: Vergleich mikroanalytischer Verhaltensbeobachtung mit globalen Ratings bei 8-monatigen Kindern. Paper presented to the Fachgruppe Entwicklungspsychologie, Deutsche Gesellschaft für Psychologie, Köln (Germany), September 1991.
- Lamb, M. E. Individual differences in infant behavior and development: Dimensions of temperament. Keynote address to the Virginia Developmental Forum, Washington, DC, November 1991.
- Lamb, M. E. Childcare in cultural context. Keynote address to a conference on Childcare for children under three: Theories and practices, Berlin, December 18, 1991.
- Lamb, M. E., Sternberg, K. J., & Esplin, P. W. Techniques for interviewing young victims of sexual abuse. Presentation to the Family Advocacy Model Program Directors' Meeting, San Antonio, TX, February 1992.
- Ketterlinus, R. D., Lamb, M. E., Chace, S., & Barber, B. K. Factors associated with knowledge of AIDS among pre-and early-adolescents. Paper presented to the Society for Research in Adolescence, Washington, DC, March 1992.
- Lamb, M. E., & Fracasso, M. P. The dimensions of temperament in infancy: Physiology, behavior, and maternal perceptions. Invited address to the Quebec Symposium on Childhood and the Family, Quebec City, March 1992.

- Estrada, M. T., & Lamb, M. E. Maternal sensitivity in Central American immigrants: Stability and security of attachment. Paper presented to the International Conference on Infant Studies, Miami, May 1992.
- Broberg, A., Lamb, M. E., Fracasso, M., Scholmerich, A., & Rosenberg, A. A. Social inhibition in infancy: Correspondence between laboratory measures and maternal reports. Paper presented to the International Conference on Infant Studies, Miami, May 1992.
- Horowitz, S. W., Lamb, M. E., Esplin, P. W., Boychuk, T. B., Krispin, O., & Reiter-Lavery, L. Reliability of criteria-based content analysis of child witness statements. Paper presented to the American Psychological Society, San Diego, June 1992.
- Broberg, A., Hwang, C. P., & Lamb, M. E. Inhibition and out-of-home care. Paper presented to the Vth European Conference on Developmental Psychology, Seville (Spain), September 1992.
- Lamb, M. E., Hwang, C. P., & Sigel, I. (Conference co-organizers) Images of childhood: Their historical and cultural origins and implications. Satra Bruk, Sweden, September 1992.
- Lamb, M. E., Sternberg, K. J., & Esplin, P. W. Interviewing victims of child sexual abuse. Workshop presented to the Family Advocacy Office, United States Air Force, San Antonio, TX, November/December 1992.
- Scholmerich, A., Shelley, L., Fracasso, M. P., & Lamb, M. E. Behavioral inhibition: Type or continuum? Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1993.
- Fracasso, M. P., Lamb, M. E., & Scholmerich, A. The relationship between behavioral inhibition and maternal reports of security and dependency in infancy. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1993.
- Chace, S. V., & Lamb, M. E. Patterns of cross-informant ratings of child behavior problems. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1993.
- White, K., & Lamb, M. E. Drinking patterns of young women before, during, and after pregnancy: Perinatal and early childhood outcomes. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1993.
- MacKinnon-Lewis, C., Lamb, M. E., Dechman, K. K., & Baradaran, L. A longitudinal investigation of the relation between biased maternal and filial attributions and interaction aggressiveness. Paper presented to the Society for Research in Child Development, New Orleans, LA, March 1993.
- Lamb, M. E. Inhibition, reactivity, and individuality in infancy: Antecedents and correlates.. Invited address to the Eastern Psychological Association, Arlington, VA, March 1993.

- Lamb, M. E. The effects of nonparental care: What do we really know? 1992/93 Diversity and Context Colloquium, Michigan State University, April 1993.
- Lamb, M. E. The origins and correlates of individual differences in behavioral inhibition. Invited address to the American Psychological Society Convention, Chicago, June 1993.
- Lamb, M. E., & Keller, H. Patterns of early experience in divergent sociocultural contexts. Symposium presented to the International Society for the Study of Behavioral Development, Recife, Brazil, July 1993.
- Lamb, M. E., & Fracasso, M. P. Antecedents and correlates of behavioural inhibition in infancy. Paper presented to the International Society for the Study of Behavioural Development, Recife, Brazil, July 1993.
- Lamb, M. E., Sternberg, K. J., Hwang, C. P., & Esplin, P. W. (Conference Co-organizers) The investigation of child sexual abuse: An international, interdisciplinary conference. Satra Bruk, Sweden, September 1993.
- Leyendecker, B., Scholmerich, A., Larson, C., Fracasso, M. P., & Lamb, M. E. Vokalisation von Säuglingen und ihre Mutternein Vergleich von Base und Responserates in zwei subkulturellen Stichproben. Paper presented to the Deutsche Tagung für Entwicklungspsychologie, Osnabrück, September 1993.
- Leyendecker, B., Fracasso, M. P., & Lamb, M. E. Alltag in Familien mit Säuglingen-wieviel Zeit bleibt zur Eltern-Kind Interaktion. Paper presented to the Deutsche Tagung für Entwicklungspsychologie, Osnabrück, September 1993.
- Lamb, M. E. Nonparental childcare: Its contexts and effects. Invited presentation, American Anthropological Association, Washington, DC, November 1993.
- Lamb, M. E. Interviewing young victims of sexual maltreatment: Advanced training workshop, Division of Youth Investigation, Israeli Ministry of Labour and Social Affairs, Ma'ale H'amisha, Israel, December 14 -15, 1993.
- Sternberg, K. J. & Lamb, M. E. Child witnesses and victims. Presentation to the annual meeting of the U.S. Air Force Area Defense Counsel, Andrews Air Force Base, Landover, Maryland, January 1994.
- Lamb, M. E., Hershkowitz, I., Sternberg, K. J., Esplin, P. W., Hovav, M., Manor, T., & Yudilevitch, L. Effects of investigative style on Israeli children's responses. Paper presented to the American Psychology-Law Society Meeting, Santa Fe, NM, March 1994.
- Lamb, M. E. The effects of custody arrangements on children's development. Testimony presented to the Judiciary Committee of the District of Columbia, Washington, DC, April 1994.

- Lamb, M. E.. Techniques for distinguishing between real and false child sexual abuse allegations. Plenary session presented to the National Conference of the Children's Rights Council, Bethesda, MD, April 15, 1994.
- Lamb, M. E. Paternal influences on child development. Paper presented to an international invitational conference on Changing Fatherhood, Tilburg, The Netherlands, May 23-26, 1994.
- Lamb, M. E. Foster care and its alternatives in the United States. Presentation to the Biennial Conference of Social Pediatrics, Benesov, Czech Republic, May 1994.
- Lamb, M. E. Nonparental child care in cultural and historical context. Keynote address to interdisciplinary conference on The Family in a Democratic Society, Prague, Czech Republic, May 1994.
- Sternberg, K. J., & Lamb, M. E. The evaluation of children's testimony regarding child abuse. Keynote address to interdisciplinary conference on The Family in a Democratic Society, Prague, Czech Republic, May 1994.
- Fracasso, M. P., Lamb, M. E., & Miranda Fricke, D. Ecologies of Euro-and Central- American families living in the United States and middle-and lower-middle class families living in Costa Rica. Paper presented to the International Conference on Infant Studies, Paris, June 1994.
- Wessels, H., Lamb, M. E., Hwang, C. P., & Broberg, A. G. Long term effects of contrasting forms of early childcare. Paper presented to the International Conference on Infant Studies, Paris, June 1994.
- Lamb, M. E. (Symposium organizer) Early social experiences in Euro-American, Central American, and German families. Symposium presented to the International Conference on Infant Studies, Paris, June 1994.
- Broberg, A., Hwang, C. P., Wessels, H., & Lamb, M. E. Determinants of verbal abilities: A longitudinal perspective. Paper presented to the International Society for the Study of Behavioral Development, Amsterdam, July 1994.
- Nsamenang, A. B., & Lamb, M. E. Beliefs and practices regarding pregnancy and childbirth among the Nso of Northwest Cameroon. Paper presented to the International Society for the Study of Behavioral Development, Amsterdam, July 1994.
- Lamb, M. E. The development of mother-infant relationships. Keynote address to a symposium on Contemporary Themes in European Psychiatry, Birmingham, England, September 1994.
- Lamb, M. E. The role of the father in child development. Keynote address to a symposium on Contemporary Themes in European Psychiatry, Birmingham, England, September 1994.

- Lamb, M. E. Fathers are parents too. Paper presented to the National Summit on Fatherhood, Dallas-Fort Worth, October 1994.
- Lamb, M. E., & Sternberg, K. J. (Co-organizers) Consensus conference on the effects of divorce and custody arrangements on children's development. Middleburg, Virginia, December 1994.
- Sternberg, K. J., & Lamb, M. E. Child witnesses and victims. Presentation to the annual meeting of the U.S. Air Force Area Defense Counsel, Andrews Air Force Base, Landover, Maryland, January 1995.
- Wessels, H., Lamb, M. E., Broberg, A. G., & Hwang, C. P. Antecedents of the "Little Five" in early childhood: The validity of the Five Factor Model in Swedish preschool and elementary children. Paper presented to the Society for Research in Child Development, Indianapolis, IN, March 1995.
- Sternberg, K. J., Lamb, M. E., Dawud-Noursi, S., & Greenbaum, C. The effects of domestic violence on children's perceptions of their parents. Paper presented to the Society for Research in Child Development, Indianapolis, IN, March 1995.
- Sternberg, K. J., Lamb, M. E., & Dawud-Noursi, S. Domestic violence in family context. Paper presented to the Fifth Annual Conference of the Center for Human Development and Developmental Disabilities, New Brunswick, New Jersey, May 1995.
- Wessels, H., Lamb, M. E., Broberg, A. G., & Hwang, C. P. Der Einfluss väterlicher Erziehungsbeteiligung auf die Persönlichkeitsentwicklung von Kindern im Vorschulalter: Ergebnisse eines Längsschnitts. [The influence of paternal child-rearing involvement on the personality development of preschool children: Some longitudinal results.] Paper presented to the German Sociological Society, April 1995.
- Leyendecker, B., Lamb, M. E., & Scholmerich, A. Synchrony of mother-infant interaction: The effects of context, subcultural group, and length of observation. Paper presented to the Applied Behavioral Analysis Association, Washington DC, May 1995.
- Shelley-Sirici, L., Fracasso, M. P., Busch-Rossnagel, N. A., & Lamb, M. E. Mother-infant social and instructional interaction in culturally diverse populations. Poster presented to the American Psychological Society Convention, New York City, June 1995.
- Wessels, H., Lamb, M. E., & Broberg, A. G. Antecedents of the five factor model in early childhood: The validity of the five factor model in Swedish preschool and elementary school children. Paper presented to the International Society on Social Relations, Williamsburg VA, June 1995.
- Sternberg, K. J., & Lamb, M. E. Effects of interview style on the informativeness of child witnesses. Paper presented to the Annual Convention of the American Professional Society on the Abuse of Children, Tucson AZ, June 1995.

- Shelley-Sirici, L., Fracasso, M. P., Busch-Rossnagel, N. A., & Lamb, M. E. A longitudinal study of mother-infant social and instrumental interaction. Poster presented to the American Psychological Association Convention, Washington DC, August 1995.
- Leyendecker, B., Scholmerich, A., Lamb, M. E., & Miranda Fricke, D. Interaktionsbeobachtungen im Kontext: Der Einfluss sozialer Schicht. Paper presented to the Deutsche Tagung für Entwicklungspsychologie, Leipzig, September 1995.
- Sternberg, K. J., Lamb, M. E., & Dalenberg, C. Enhancing children's competency as witnesses: A research-based approach. Invited workshop presented to the annual San Diego Conference on Responding to Child Maltreatment, San Diego, January 1996.
- Lamb, M. E., Sternberg, K. J., Esplin, P. W., Hershkowitz, I., Orbach, Y., & Hovav, M. Validation of criterion-based content analysis in a field study. Paper presented to the American Psychology-Law Society Convention, Hilton Head, N.C., February/March 1996.
- Lamb, M. E., Hershkowitz, I., Sternberg, K. J., Boat, B., & Everson, M. Informativeness of children's accounts in interviews with and without anatomical dolls. Paper presented to the American Psychology-Law Society Convention, Hilton Head, N.C., February/March 1996.
- Hershkowitz, I., Lamb, M. E., Sternberg, K. J., & Esplin, P. W. The relationships among interviewer utterance type, CBCA scores, and the richness of children's responses. Paper presented to the American Psychology-Law Society Convention, Hilton Head, N.C., February/March 1996.
- Sternberg, K. J., Lamb, M. E., Hershkowitz, I., Orbach, Y., Hovav, M., & Esplin, P. W. Effects of introductory style on children's accounts of sexual abuse. Paper presented to the American Psychology-Law Society Convention, Hilton Head, N.C., February/March 1996.
- Orbach, Y., Lamb, M. E., Sternberg, K. J., & Williams, J. M. G. The effect of domestic violence on children's retrieval of autobiographical memory. Paper presented to the American Psychology-Law Society Convention, Hilton Head, N.C., February/March 1996.
- Dawud-Noursi, S., Sternberg, K. J., Lamb, M. E., Kaufman, A., & Larson, C. The effects of domestic violence on adolescents' relationships and conflicts. Paper presented to the Society for Research on Adolescence, Boston, March 1996.
- Lamb, M. E. The long term effects of nonparental care arrangements on the development of Swedish children. Paper presented by invitation to the International Conference on Infant Studies, Providence, Rhode Island, April 1996.
- Leyendecker, B., Scholmerich, A., Lamb, M. E., & Harwood, R. Central-and Euro- American mothers' evaluation of infant behavior in everyday contexts. Paper presented to the International Conference on Infant Studies, Providence, Rhode Island, April 1996.

- Lamb, M. E. What's a father for? Keynote address to an invitational conference on British Fatherhood, London, April 30, 1996.
- Lamb, M. E. What are fathers for? Invited presentation to the Conference on Developmental, Ethnographic, and Demographic Perspectives on Fatherhood, National Institutes of Health, Bethesda MD, June 1996.
- Lamb, M. E. Infancy and childhood: The challenges and the opportunities. Visiting Faculty at the Thirteenth Annual Conference on Infancy and Childhood: Current Directions in Theory, Research, and Application. Utah State University, Ogden UT, June 1996.
- Orbach, Y., Lamb, M.E., Sternberg, K.J., Williams, J.M.G., & Dawud-Noursi, S. The effect of domestic violence on children's retrieval of autobiographical memory. Paper presented to the International Research Conference on Trauma and Memory, University of New Hampshire, Durham, NH, July 1996.
- Nsamenang, A. B., & Lamb, M. E. The environment of the infant among Nso of Northwest Cameroon: Some theoretical issues and research implications. Paper presented to the 26th International Congress of Psychology, Montreal, August 1996.
- Leyendecker, B., Lamb, M. E., Scholmerich, A., & Fricke, D. M. Observing mother-infant interaction: Minimizing and maximizing the effects of SES. Paper presented to the International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.
- Leyendecker, B., Lamb, M. E., Harwood, R., & Scholmerich, A. The child or the circumstances: Who is responsible? Parental evaluations of everyday situations in two diverse cultural niches. Paper presented to the International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.
- Ahnert, L., Freytag, R., Hermsdorf, C., Kuchler, E., Lamb, M. E., Sternberg, K. J., & Porges, S. W. The impact of stress and coping on adaptation to day care in infancy. Paper presented to the International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.
- Eckensberger, L. & Lamb, M. E. (Co-organizers) Nature, culture, and the question, "why?" Invited symposium at International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.
- Lamb, M. E. The long term effects of nonparental care arrangements on the development of Swedish children. Paper presented to the International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.
- MacKinnon-Lewis, C., Lamb, M. E., Campbell, J., & Hattie, J. Antecedents and consequences of boys' aggression in the family and school. Paper presented to the International Society for the Study of Behavioral Development, Quebec (Canada), August 1996.

- Dawud-Noursi, S., Sternberg, K. J., & Lamb, M. E. Children's maltreatment experiences: Perspectives of multiple informants. Paper presented to the 11th National Conference on Child Abuse and Neglect, Washington, DC, September 1996.
- Leyendecker, B., Scholmerich, A., Lamb, M. E., & Harwood, R. Langfristige Sozialisationsziele und die Bewertung von Alltagsverhalten von Säuglingen: ein Vergleich zentralamerikanischer und U.S.-amerikanischer Mutter. Paper presented to the German Psychology Association, Munich, September 1996.
- Lamb, M. E. The development of father-infant relationships. Paper presented to the National Center on Fathers and Families, Roundtable on Role Transitions, Philadelphia, October 8, 1996.
- Lamb, M. E. Research on father involvement: An historical overview. Keynote address to the NICHD Conference on Father's Involvement, Bethesda MD, October 1996.
- Lamb, M. E. Commentary on "Men's roles in families: A look back, a look forward". Paper presented to the Pennsylvania State University National Symposium on Men in Families, University Park PA, October/November 1996.
- Lamb, M. E. When we were very young.....Invited address to a symposium in honor of Professor Michael Lewis, Institute for the Study of Child Development, New Brunswick NJ, January 1997.
- Lamb, M. E. Fathers, children, and nontraditional families: Characteristics, consequences, and strategies for change. Invited presentation to the American Association for the Advancement of Science Annual Meeting, Seattle WA, February 1997.
- Dawud-Noursi, S., Sternberg, K. J., & Lamb, M. E. Effects of family violence on Israeli children's adjustment at school. Paper presented to the Society for Research in Child Development, Washington DC, April 1997.
- Bassen, C., Braveman, J., Pearlman, J., & Lamb, M. E. Gender differences in normal adolescents: Guilt, reparation, and shame. Poster presented to the Society for Research in Child Development, Washington DC, April 1997.
- Roberts, K. P., Lamb, M. E., Sternberg, K. J., Beresford, J., Domenici-Lake, P. L., & Heiges, K. The effect of a delay on the incorporation of post event information into children's eyewitness memory. Poster presented to the Society for Research in Child Development, Washington DC, April 1997.
- Bassen, C., Braveman, J., Pearlman, J., & Lamb, M. E. Gender differences in normal adolescents: Self assessment of traits according to role. Poster presented to the Society for Research in Child Development, Washington DC, April 1997.
- Lamb, M. E. Noncustodial fatherhood and its effects on child development. Plenary address to a conference on "The post-divorce family: research and policy issues," University of Nebraska, Lincoln, May 1997.

- Weise, P., Hermsdorf, C., Barthel, M., Ahnert, L., & Lamb, M. E. The impact of infant temperament on the adjustment to daycare. Poster presentation to the American Psychological Society, Washington DC, May 1997.
- Bressler, Y., Ahnert, L. & Lamb, M. E. Effects of maternal and infant age on German mothers' perceptions of stress. Poster presentation to the American Psychological Society, Washington DC, May 1997.
- Bressler, Y., Ahnert, L. & Lamb, M. E. Effects of enrollment in daycare on everyday experiences of German toddlers. Poster presentation to the American Psychological Society, Washington DC, May 1997.
- Seltenheim, K., Ahnert, L. & Lamb, M. E. The formation of attachments between infants and care providers in German daycare centers. Poster presentation to the American Psychological Society, Washington DC, May 1997.
- Roberts, K., Lamb, M. E., & Randall, D. W. Children's responses to interviewers' mistakes. Paper presented to the International Family Violence Research Conference, Durham NH, June/July 1997.
- Scholmerich, A., & Lamb, M. E. Infant temperament, fear of novelty and behavioural inhibition: A longitudinal study over the first year of life. Paper presented to an International conference on shyness and self-consciousness, University of Wales, Cardiff, June 1997.
- Roberts, K., Lamb, M. E., & Randall, D. W. Assessing the plausibility of allegations of sexual abuse from children's accounts. Paper presented to the Society for Applied Research in Memory and Cognition, Toronto, July 1997.
- Lamb, M. E. What psychology tells us about interviewing children. Keynote presentation to a conference on Cleveland ten years on: Child protection—What really matters?", London, England, September 10, 1997.
- Lamb, M. E. Fatherhood and father-child relationships. Keynote address to the annual Mental Health Association Conference of Northern Indiana, South Bend IN, October 17, 1997.
- Marsiglio, W., Day, R., & Lamb, M. E. Social fatherhood and paternal involvement: Conceptual, data, and policymaking issues. Paper presented to the Theory Construction and Research Methods Workshop, National Council on Family Relations, Crystal City, VA, November 5, 1997.
- Lamb, M. E. Discussant in Symposium, "Towards a maturing conceptualization of father involvement", National Council on Family Relations, Crystal City, VA, November 9, 1997.
- Lamb, M. E. Discussant in Symposium, "Working with young fathers", National Council on Family Relations, Crystal City, VA, November 10, 1997.

- Roberts, K. P., Lamb, M. E., & Randall, D. W. "Bill touched me" "Bob touched you?": Interviewers' 'mistakes' during investigative interviews. Poster presented to the American Psychology-Law Society conference, Redondo Beach CA, March 1998.
- Roberts, K. P., Lamb, M. E., Zale, J. L., & Randall, D. W. Qualitative differences in children's accounts of confirmed and unconfirmed incidents of sexual abuse. Poster presented to the American Psychology-Law Society conference, Redondo Beach CA, March 1998.
- Roberts, K. P., Sternberg, K. J., Lamb, M. E., & Zale, J. L. Effects of introductory style on children's accounts of a staged event. Poster presented to the American Psychology-Law Society conference, Redondo Beach CA, March 1998.
- Hershkowitz, I., Orbach, Y., Lamb, M. E., Sternberg, K. J., Fauchier, A., Horowitz, D., & Hovav, M. Visiting the scene of the crime: Effects on children's recall of alleged abuse. Poster presented to the American Psychology-Law Society conference, Redondo Beach CA, March 1998.
- Scholmerich, A., & Lamb, M. E. (Co-chairs) Adult-infant interaction: Observations of everyday behavior in diverse cultural settings. Symposium presented to the International Conference on Infant Studies, Atlanta, April 1998.
- Lamb, M. E. Discussant on "The role of fathers in early affective development". Symposium presented to the International Conference on Infant Studies, Atlanta, April 1998.
- Lamb, M. E. Discussant on "Studying the role of fathers in the lives of low-income infants and toddlers". Symposium presented to the International Conference on Infant Studies, Atlanta, April 1998.
- Lamb, M. E., Hwang, C. P., & Sternberg, K. J. (Co-organizers) International conference on investigative interviewing procedures. Satra Bruk, Sweden, April 25-29, 1998.
- Lamb, M. E. The influence of father love on child development: A commentary. Presentation to the American Psychological Society Annual Convention, Washington, DC, May 23, 1998.
- Lamb, M. E. The role of fathers in low-income families. Invited presentation to Head Start's Fourth National Research Conference, Washington, DC, July 10, 1998.
- Lamb, M. E. Patterns of parent-child interaction across cultures and contexts. Paper presented in a symposium on "A baby and somebody: Effects of parental contact and proximity, day and night, on human infant development" at the University of Notre Dame, South Bend IN, September 28, 1998.
- Lamb, M. E., & Sternberg, K. A. Eliciting and evaluating children's accounts of sexual abuse. Invited presentation to the National Child Abuse Defense and Resource Center Annual Convention, Las Vegas NV, October 23, 1998.

- Hewlett, B. S., Lamb, M. E., Leyendecker, B., & Scholmerich, A. Internal working models, trust, and sharing among foragers. Paper presented to the International Conference on Hunting and Gathering Societies, Osaka, Japan, October 25, 1998.
- Lamb, M. E., & Sternberg, K. J. Eliciting accurate investigative statements from children. Invited workshop presentation to the Fifteenth National Symposium on Child Sexual Abuse, Huntsville, AL, March 12, 1999.
- Orbach, Y., Hershkowitz, I., Lamb, M. E., Sternberg, K. J., Fauchier, A., Shiloah, H., Horowitz, D., & Hovav, M. Interviewing at the scene of the crime: Effects on children's recall of alleged abuse. Poster presented to the biennial meeting of the Society for Research in Child Development, Albuquerque, NM, April 1999.
- Cabrera, N., Boller, K., & Lamb, M. E. The demography and study of low income fathers. Paper presented to the biennial meeting of the Society for Research in Child Development, Albuquerque, NM, April 1999.
- Lamb, M. E., & Sternberg, K. J. Effective interviewing techniques: Eliciting narrative accounts from alleged victims. Invited workshop presentation to the American Professional Society on Child Abuse and Neglect Annual Colloquium, San Antonio TX, June 5, 1999.
- Roberts, K. P., Sternberg, K. J., Lamb, M. E., Zale, J. L., & Sirrine, N. K. The effectiveness of open-ended and direct rapport-building styles on children's reports of a staged event. Paper presented to the biennial meeting of the Society for Applied Research into Memory and Cognition, Boulder CO, July 1999.
- Cabrera, N. J., Tamis-LeMonda, C. S., Lamb, M. E., & Boller, K. Measuring father involvement in Early Head Start: A multidimensional conceptualization. Paper presented to the National Conference on Health Statistics, Washington, DC, August 1999.
- Orbach, Y., Lamb, M. E., Sternberg, K. J., Esplin, P. W., & Hershkowitz, I. Enhancing the quality of forensic interviews in field settings by implementing interview protocols. Invited presentation to the American Psychological Association Convention, Boston, August 1999.
- Lamb, M. E., & Sternberg, K. J. L'entrevue d'investigation des jeunes victimes d'abus sexuel. [Investigative interviews of young victims of sexual abuse.] Forum sur les abus sexuels de l'Association des centres jeunesse du Québec/Partenariat de recherche et d'intervention en matière d'abus sexuel a l'endroit des enfants, Montréal, Québec, September 1999.
- Scholmerich, A., Lamb, M. E., & Leyendecker, B. (Co-organizers) Infants in cultural context. International workshop on early infant experiences in diverse cultural contexts. Bochum, Germany, October 1999.

- Lamb, M.E., Sternberg, K.J., Orbach, Y., Hershkowitz, I. The development of the NICHD Investigative Protocol. Presentation at a symposium on 'Training child investigators in developmentally adapted interviews', Regional European Conference of International Society for the Prevention of Child Abuse and Neglect, Jerusalem, Israel, October 1999.
- Orbach, Y., Hershkowitz, I., Lamb, M.E., Sternberg, K.J. Implementing interview protocols in forensic investigations of child witnesses. Presentation at a seminar on 'Interviewing child-witnesses in legal settings', sponsored by the Youth Probation Service, Ministry of Labour and Social Welfare, and The League for Children, School of Social Work, Tel-Aviv University, Tel Aviv, Israel, October 1999.
- Lamb, M. E. Post-divorce parent-child relationships and recommendations for policy. Presentation to the Ohio Task Force on Family Law and Children, Columbus, January 2000.
- Lamb, M. E., & Sternberg, K. J. Investigative interviews of alleged child abuse victims. Invited workshop for 16th National Symposium on Child Sexual Abuse, Huntsville, AL, March 2000.
- Lamb, M. E., Sternberg, K. J., Orbach, Y., Esplin, P. W., Hershkowitz, I., Horowitz, D. Eliciting information about alleged abuse using open-ended prompts: An analysis of field demonstration studies. Paper presented to the biennial American Psychology Law Society meetings, New Orleans, March 2000.
- Orbach, Y., Lamb, M. E., Sternberg, K. J., Esplin, P. W., Hershkowitz, I., Horowitz, D. Assessing the value of scripted protocols for forensic interviews of alleged abuse victims. Paper presented to the biennial American Psychology Law Society meetings, New Orleans, March 2000.
- Hershkowitz, I., Orbach, Y., Lamb, M. E., Sternberg, K. J., Horowitz, D. A comparison of mental and physical context reinstatement in forensic interviews with alleged victims of sexual abuse. Poster presented to the biennial American Psychology Law Society meetings, New Orleans, March 2000.
- Roberts, K. P., Sternberg, K. J., Lamb, M. E., & Sirrine, N. The effects of rapport building on the quality of information reported by children about a staged event. Paper presented to the biennial American Psychology Law Society meetings, New Orleans, March 2000.
- Lamb, M. E. Post-divorce parent-child relationships. Keynote address to the 24th Annual Colorado Conference on Children and Divorce, Denver, April 2000.
- Lamb, M. E. Why are fathers important? Keynote address to the Delaware Governor's Conference on Fatherhood, Dover, Delaware, June 2000.
- Campbell, J., Lamb, M. E., & Hwang, C. P. Early child care experiences and children's social competence between 1.5 and 15 years of age. Paper presented to the National Head Start Research Conference, Washington, June 2000.

- Ahnert L., Rickert H., Porges S. W., Lamb M. E. Infant cardiac activity during adjustment to child care and relations with attachment security. Paper presented to the International Conference on Infant Studies, Brighton, England, July 2000.
- Lamb, M. E., & Sternberg, K. J. Eliciting narrative accounts from alleged victims of child sexual abuse. Invited workshop to the XXVII International Congress of Psychology, Stockholm, Sweden, July 2000.
- Lamb, M. E., Orbach, Y., Sternberg, K. J., & Esplin, P. W. (Organizers) Improving investigative interview techniques. International Interdisciplinary Workshop, Salt Lake City, August 27 to September 1, 2000.
- Lamb, M. E. Overview of recent research on the effectiveness of structured investigative interview guides. Presentation to International Interdisciplinary Workshop on Improving Investigative Interview Techniques. Salt Lake City, August 28 2000.
- Lamb, M. E. Investigative interviews of alleged child abuse victims. Satellite Video presentation, The National Children's Advocacy Center, Huntsville AL, September 5, 2000.
- Lamb, M. E. Forensic interview techniques that maximize the competence of child witnesses. Invited workshop, 16th Annual Midwest Conference on Child Sexual Abuse and Incest, Madison, WI, October 25, 2000.
- Lamb, M. E., & Holliday, K. Parental relocation: Trying the 'out of state move' case. National Association of Counsel for Children Children's Law Conference, Washington DC, November 5, 2000.
- Lamb, M. E. Male familial involvement: An update. Symposium on the Diverse experiences of males in families, National Council on Family Relations Annual Conference, Minneapolis, November 9, 2000.
- Lamb, M. E. Cross-cultural perspectives on the role and importance of fathers in child development. Keynote address to national conference on 'The Role and Importance of Fathers in the Child's Life', Istanbul, Turkey, December 20, 2000.
- Sternberg, K. J., & Lamb, M. E. Structured interview format for forensic interviewers. Advanced workshop, San Diego Conference on Responding to Child Maltreatment, San Diego, January 22 to 26, 2001.
- Lamb, M. E., Chuang, S. S., & Hwang, C. P. Father involvement in Sweden: Exploring its components and stability over time. Paper presented to an interdisciplinary workshop on Measuring father involvement, Natcher Conference Center, National Institutes of Health, Bethesda MD, February 2001.
- Lamb, M. E. Developmental theory and public policy: A cross-national perspective. Green College Lecture, University of British Columbia, Vancouver, Canada, February 5, 2001.

- Lamb, M. E. Eliciting information from child sexual abuse victims. Tanner Lecture Series, University of Utah, Salt Lake City, February 27, 2001.
- Lamb, M. E. Commentary on a lecture by Sarah Blaffer Hrdy, “The past, present, and future of the human family.” Tanner Lectures in Human Values, University of Utah, Salt Lake City, February 28, 2001.
- Kelly, J. B., & Lamb, M. E. Using child development research to make appropriate custody and access decisions for young children. Workshop presentation to the Judicial Council of California’s and Family Court Services’ Statewide Educational Institute, Costa Mesa CA, March 23, 2001.
- Lamb, M. E. Alleged child sexual abuse: The expert witness and the court. Fakultetsopponent (Clara H. Gumpert), Institutionen for Forkhalsovetenskap—Avdelning for stressforskning, Karolinska Institutet, Stockholm (Sweden), March 30, 2001.
- Lamb, M. E. Fathers, mothers, and families: Shaping child development. Invited address, VIII Congress of the Association Internationale pour la Formation et la Recherche en Education Familiale, Saint-Sauveur-des-Monts, Québec, April 18, 2001.
- Sternberg, K. J., Lamb, M. E., Orbach, Y., Esplin, P. W., & Mitchell, S. Can young children respond informatively to open-ended questions posed by forensic interviewers? Paper presented to the biennial conference of the Society for Research in Child Development, Minneapolis, April 21, 2001.
- Lamb, M. E., Orbach, Y., Sternberg, K. J., Hershkowitz, I., & Horowitz, D. The accuracy of investigators’ verbatim notes of their forensic interviews with alleged child abuse victims. Paper presented to the biennial conference of the Society for Research in Child Development, Minneapolis, April 20, 2001.
- Ahnert, L., & Lamb, M. E. Infant-care provider attachments in contrasting German child care settings. Poster presented to the biennial conference of the Society for Research in Child Development, Minneapolis, April 20, 2001.
- Lamb, M. E. Developmentally appropriate visitation. Invited Workshop, Custody and Visitation Symposium, National Council of Juvenile and Family Court Judges, Charlotte NC, June 5, 2001.
- Lamb, M. E. Developmentally appropriate forensic interview techniques. Presentation to National Children’s Law Conference, San Diego CA, October 2, 2001.
- Lamb, M. E. Psychological issues in child custody. Invited presentation to the conference on Advanced Family Law, National Council of Juvenile and Family Court Judges, Reno NV, October 24, 2001.
- Lamb, M. E. Psychological issues and custody. Invited presentation to the conference on Recent Developments in Juvenile and Family Law: An Update for Appellate Judges, National Council of Juvenile and Family Court Judges, Reno NV, October 25, 2001.

- Lamb, M. E. Using child development research to make appropriate custody and access decisions for young children. Workshop presentation to the Judicial Council of California's and Family Court Services' Statewide Educational Institute, Palm Springs CA, October 26, 2001.
- Lamb, M. E. Father-child relationships and developmentally appropriate parenting plans. Keynote address to the annual conference of the Massachusetts Association of Guardians ad Litem, Waltham MA, November 9, 2001.
- Lamb, M. E. Maximizing the quality of information elicited from alleged victims of child abuse. Invited address to 'Child witnessing: Current themes', University of Portsmouth, Portsmouth, England, December 7, 2001.
- Lamb, M. E. Parent-child relationships before and after divorce. Invited presentation in Symposium on 'Custody in a mobile society', Pennsylvania Trial Courts Annual Conference, Philadelphia, February 23, 2002.
- Lamb, M. E. Placing children's interests first: Developmentally appropriate parenting plans. Invited address, Center for Children Families, and the Law, University of Virginia, Charlottesville, February 28, 2002.
- Lamb, M. E., Sternberg, K. J., Orbach, Y., Esplin, P. W., Stewart, H., & Mitchell, S. Age differences in young children's responses to open-ended invitations in the course of forensic interviews. Paper presented to the American Psychology-Law Society Conference, Austin TX, March 7-10, 2002.
- Thierry, K. L., Lamb, M. E., & Orbach, Y. Relation between source monitoring and child witness responses to open-ended questions about alleged abuse. Poster presented to the American Psychology-Law Society Conference, Austin TX, March 7-10, 2002.
- Lamb, M. E., & Sternberg, K. J. Developmentally sensitive interview practices. Invited workshop, Eighteenth National Symposium on Child Sexual Abuse, Huntsville AL, March 19-22, 2002.
- Chuang, S. S., Lamb, M. E., & Hwang, C. P. The emergence of personality development in early childhood: A longitudinal investigation of ego-resiliency and ego-control in Sweden. Poster presentation to the Conference on Human Development, Charlotte NC, April 4-7, 2002.
- Lamb, M. E. Using child development research to make developmentally appropriate parenting plans following divorce. Keynote address, Annual Meeting of the Interdisciplinary Forum on Mental Health and Family Law, New York City, April 16, 2002.
- Ahnert, L., Lamb, M. E., Porges, S. W., & Rickert, H. Infant emotions and cardiac reactivity during adjustment to child care I: Perspectives from infant-mother attachment. Poster presented at the International Conference on Infant Studies, Toronto, Canada, April 19, 2002.

- Ahnert, L., Lamb, M. E., Porges, S. W., & Rickert, H. Infant emotions and cardiac reactivity during adjustment to child care II: The emerging infant-care provider attachment. Poster presented at the International Conference on Infant Studies, Toronto, Canada, April 19, 2002.
- Lamb, M. E. Assessing the strengths of child witness statements. Invited workshop for the 28th Annual Interservice Military Judges' Seminar, Montgomery AL, April 23, 2002.
- Lamb, M. E. Special developmental needs of children under five years old. Invited workshop for the Custody and Visitation Symposium, National Council of Juvenile and Family Court Judges, Charleston SC, May 6, 2002.
- Orbach, Y., Lamb, M. E., Sternberg, K. J., Esplin, P. W., Stewart, H. L., & Mitchell, S. Age differences in young children's reports of temporal information in the course of forensic interviews. Paper presented to the Jean Piaget Society, Philadelphia, June 7, 2002.
- Hershkowitz, I., Orbach, Y., Lamb, M. E., Sternberg, K. J., Horowitz, D., & Esplin, P. W. Improving credibility assessment in child sexual abuse investigations: The role of the NICHD investigative interview protocol. Paper presented to the XXV International Congress on Applied Psychology, Singapore, July 9, 2002.
- Lamb, M. E. Developmentally appropriate visitation and access decisions. Invited presentation to the Judicial Conference of Virginia for District Court Judges, Virginia Beach, August 12-13, 2002.
- Hewlett, B. S., & Lamb, M. E. (Co-organizers) Culture and ecology of forager children. Pre-conference workshop, Conference on the Hunters and Gatherers Society, Edinburgh (Scotland), September 7-8, 2002.
- Lamb, M. E. The role of non-parental child care in child development. Address and discussion with Netherlands Delegation on Child Care, Washington DC, October 7, 2002.
- Lewis, C., & Lamb, M. E. Research on fatherhood and father-child relationships. International Fatherhood Summit. Christ Church College, Oxford, England, March 24-30, 2003.
- Lamb, M. E. Promoting child well-being through mother- and father-child relationships. Berger Institute Invited Lecture, Claremont-McKenna College, Pomona CA, March 31, 2003.
- Chuang, S. S., Hwang, C., P., & Lamb, M. E. Paternal leave and paternal involvement in Sweden. Paper presented to the biennial meeting of the Society for Research in Child Development, Tampa FL, April 24-27, 2003.
- Shannon, J. D., Tamis-LeMonda, C. S., Cabrera, N., & Lamb, M. E. Determinants of father involvement: Presence/absence and quality of engagement. Paper presented to the biennial meeting of the Society for Research in Child Development, Tampa FL, April 24-27, 2003.

- Lamb, M. E. Developmentally appropriate parenting plans. Invited workshop for the Custody and Visitation Symposium, National Council of Juvenile and Family Court Judges, San Diego, May 5, 2003.
- Lamb, M. E. Participant in workshop on The American Law Institute's Principles of Family Dissolution, Woodrow Wilson International Center for Scholars, Washington DC, May 20, 2003.
- Lamb, M. E., Tamis-LeMonda, C. S., Shannon, J., & Cabrera, N. Low-income fathers in the USA: A closer look at the children in the Early Head Start Evaluation Study. Presentation to the European Social Research Council Research Seminar Series seminar on Fathers and Fatherhood: New Directions for Research and Policy, London, England, June 9, 2003.
- Pipe, M. E., Cederborg, A-C., Orbach, Y., & Lamb, M. E. (Co-organizers). Conference on resistance to disclosure by alleged victims of sexual abuse. Satra Bruk, Sweden, August 11-15, 2003.
- Lamb, M. E. Developpement socio-emotionnel du jeune enfant et scolarisation precoce [Socio-emotional development in the context of early childhood education]. Keynote address to Colloque du Service de la Recherche en Education 2003: 2eme Colloque Constructivisme et Education: Scolariser la petite enfance? [Educational Research Unit Colloquium 2003: Second Colloquium on Constructivism and Education: Educationalizing infancy?], University of Geneva, Geneva (Switzerland), September 15-17, 2003.
- Ahnert, L., Carter, S. C., Porges, S. W., & Lamb, M. E. (Co-organizers). Attachment and bonding: A new synthesis. Dahlem Palace, Berlin, September 28 - October 3, 2003.
- Lamb, M. E. Custody issues. North Carolina Association of District Court Judges, Boone NC, October 9, 2003.
- Lamb, M. E. Developmentally appropriate parenting plans. Annual conference, Harford County Office of Family Court Services, Bel-Air MD, November 18, 2003.
- Lamb, M. E., & Pipe, M. E. Repeated interviewing in forensic contexts: Is there a baby in the bathwater? Paper presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- Orbach, Y., Hershkowitz, I., Pipe, M. E., Lamb, M. E., & Sternberg, K. J. Effects of repeated interviews on the information retrieved by child-witnesses in forensic interviews. Paper presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- Pipe, M. E., Sternberg, K. J., Lamb, M. E., Orbach, Y., & Stewart, H. Non-disclosures and alleged abuse in forensic interviews. Paper presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 4 – 7, 2004.

- Hershkowitz, I., Orbach, Y., Lamb, M. E., Sternberg, K. J., & Pipe, M. E. Dynamics of forensic interviews with children who do not disclose abuse. Paper presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- Cederborg, A. C., & Lamb, M. E. Delay of disclosure, minimization, and denial of abuse in a multi-victim case. Paper presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- DeBoard, R., Orbach, Y., Mendoza, M., Jensen, S., & Lamb, M. E. An analysis of interviews in which children did not make allegations of suspected sexual abuse. Poster presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- Chavez, V., Sullivan, K., Pipe, M. E., Orbach, Y., & Lamb, M. E. Spontaneous disclosure in forensic interviews. Poster presented to the biennial American Psychology-Law Society Conference, Scottsdale AZ, March 5, 2004.
- Fouts, H. N., Hewlett, B. S., & Lamb, M. E. Developmental and cultural differences in the breastfeeding context among four small-scale societies in Central Africa. Paper presented to the International Conference on Infant Studies, Chicago, May 6, 2004.
- Brown, D., Lamb, M. E., Aldridge, J., Sternberg, K. J., & Orbach, Y. Improving the quality of forensic interviews of children. Poster presented to the Forensic Psychology Research Group conference on Eliciting information from eye witnesses and victims of crime: Interviewing and identification, Open University, Milton Keynes, U.K., May 6, 2004.
- Lamb, M. E. Children are competent witnesses when competently interviewed. Cattell Award Address to the American Psychological Society Annual Convention, Chicago, May 28, 2004.
- Sternberg, K. J., Abbott, C., Baradaran, L. P., Guterman, E., & Lamb, M. E. Effects of different types and frequencies of family violence on children's adjustment. Poster presented to the American Psychological Society Annual Convention, Chicago, May 28, 2004.
- Chuang, S. S., Lamb, M. E., & Hwang, C. P. Swedish adolescents' relational and assertive self-concepts across social contexts and relationships. Poster presented to the American Psychological Society Annual Convention, Chicago, May 28, 2004.
- Gernsbacher, M. A., Lamb, M. E., Levenson, R., Levitin, T., Schnur, P., Snyder, M., & Steinberg, J. Show me the money: Grant-getting for graduate student and new faculty. Workshop at the American Psychological Society Annual Convention, Chicago, May 27, 2004.
- Lamb, M. E., LaRooy, D., Orbach, Y., & Pipe, M. E. Children's recall of real world experiences. Symposium presented at the American Psychological Society Annual Convention, Chicago, May 28, 2004.

- Orbach, Y., Lamb, M. E., & Sternberg, K. J. Developmental differences in young children's reports of temporal sequencing information in the course of forensic interviews. Paper presented to the American Psychological Society Annual Convention, Chicago, May 28, 2004.
- Cederborg, A.C., & Lamb, M. E. Disabled children exposed to crime: How does the legal system respond when they are victimized? Paper presented to the American Psychological Society Annual Convention, Chicago, May 29, 2004.
- Lamb, M. E. Structured assessment in child interviewing. Invited workshop, American Bar Association-American Psychological Association National Conference on Children and the Law, Washington, June 4, 2004.
- Lamb, M. E. Suggestibility and children's recollections. Invited workshop, American Bar Association-American Psychological Association National Conference on Children and the Law, Washington, June 4, 2004.
- Lamb, M. E. (Discussant) Symposium on 'Fathers in context: Family structure, socio-economics, and cultural prescriptions,' Head Start's 7th National Research Conference, Washington, June 28, 2004.
- Pipe, M.-E., Sternberg, K. J., Orbach, Y., & Lamb, M. E. Characteristics associated with non-disclosure of suspected abuse. Paper presented to the American Psychological Association Convention, August 2004.
- Hershkowitz, I., Orbach, Y., Lamb, M. E., Horowitz, D., & Sternberg, K. J. Dynamics of forensic interviews with children who do not disclose abuse. Paper presented to the American Psychological Association Convention, August 2004.
- Lamb, M. E. Helping children become informative conversationalists about their experiences of abuse. Paper presented to "Conversations and childhood: The impact of conversations on early social, emotional and cognitive development," Cambridge UK, October 14, 2004.
- Brown, D., Lamb, M. E., Pipe, M.-E., Orbach, Y., & Lewis, C. Children's use of drawings to report touch: Implications for forensic interviews. Paper presented to the 2nd International Workshop for Young Psychologists on Evolution and Development of Cognition, Kyoto, Japan, November 12, 2004.
- Lamb, M. E. Is parental leave good for gender equality? Discussion session at the GeNet ESRC Gender Equalities Network Introductory Conference, Cambridge, December 16, 2004.
- Brown, D., Lamb, M. E., Pipe, M. E., Orbach, Y., & Lewis, C. "Show me on the drawing where she touched you": Exploring children's use of human figure drawings to report touch. Paper presented to the Society for Applied Research on Memory and Cognition, Victoria, New Zealand, January 7, 2005.

- Darvish, T., Hershkowitz, I., Lamb, M. E., & Orbach, Y. The production of investigative leads in child sexual abuse interviews using the NICHD protocol. Paper presented to the Society for Applied Research on Memory and Cognition, Victoria, New Zealand, January 7, 2005.
- Brown, D., Lamb, M. E., Pipe, M. E., Orbach, Y., & Lewis, C. Using drawings with children to elicit reports of touch after short and long delays. Paper presented to the American Psychology-Law Society conference, La Jolla CA, March 4, 2005.
- Thierry, K. S., Lamb, M. E., Orbach, Y. & Pipe, M. E. Developmental differences in the use of anatomical dolls during interviews of alleged sexual abuse victims. Paper presented to the American Psychology-Law Society conference, La Jolla CA, March 4, 2005.
- Pipe, M. E., Lamb, M. E., & Orbach, Y. Disclosures and nondisclosures of abuse in forensic interviews. Paper presented to the American Psychology-Law Society conference, La Jolla CA, March 4, 2005.
- Orbach, Y., Lamb, M. E., & Sternberg, K. J. Enhancing children's recall using contextual cues in forensic interviews. Paper presented to the American Psychology-Law Society conference, La Jolla CA, March 4, 2005.
- Trinder, L., & Lamb, M. E. Measuring up? The relationship between correlates of children's adjustment and both family law and policy in England. Invited presentation to the Louisiana Law Review Symposium on 'Divorce reform for the protection of children,' Baton Rouge, Louisiana, March 16-18, 2005.
- Sternberg, K. J., Guterman, E., Abbott, C. B., Baradaran, L. P., & Lamb, M. E. Effects of domestic violence on children's behavior problems and depression: A longitudinal, multi-informant perspective. Poster presented to the Society for Research in Child Development Biennial Convention, Atlanta GA, April 8, 2005.
- Sternberg, K. J., Lamb, M. E., Baradaran, L. B., Abbott, C. B., & Guterman, E. Age, gender, and type of abuse differences in the effects of family violence on children's behavior problems: A mega-analysis. Poster presented to the Society for Research in Child Development Biennial Convention, Atlanta GA, April 9, 2005.
- Sternberg, K. J., Guterman, E., Abbott, C. B., Lamb, M. E., & Baradaran, L. B. Contrasts between children's and mothers' reports of abuse and of the children's behavior problems. Poster presentation to the American Psychological Society Annual Convention, Los Angeles, May 27, 2005.
- Elischberger, H., Pipe, M. E., Orbach, Y., & Lamb, M. E. Do young children rely on scripts in recounting multiple instances of abuse? Poster presentation to the American Psychological Society Annual Convention, Los Angeles, May 26, 2005.

- La Rooy, D., Pipe, M. E., & Lamb, M. E. Do repeated suggestive interviews with young children increase suggestibility? Poster presentation to the American Psychological Society Annual Convention, Los Angeles, May 26, 2005.
- Mendoza, M. M., Jensen, S. A., Daniels, I. M., Orbach, Y., & Lamb, M. E., Exploring children's responses to yes/no and forced choice prompts in forensic interviews. Poster presentation to the American Psychological Society Annual Convention, Los Angeles, May 26, 2005.
- Pipe, M. E., Lamb, M. E., & Orbach, Y. Factors affecting children's disclosure: Developmental differences in secrecy and concealment in a field study. Paper presented to the American Psychological Society Annual Convention, Los Angeles, May 28, 2005.
- Pipe, M. E., Lamb, M. E., & Orbach, Y. Abuse severity, threats, fears, and children's disclosure of child sexual abuse. Paper presented to the American Psychological Society Annual Convention, Los Angeles, May 27, 2005.
- Lamb, M. E. Developmentally appropriate forensic interviewing techniques. Paper presented to the Ninth International Interdisciplinary Colloquium on Law and Psychology, London, July 11-12, 2005.
- Lamb, M. E. Techniques for improving the quality of information elicited in forensic interviews. Keynote address to a conference on "Investigative Interviewing of Child Witnesses—Taking Stock and Moving Forward," Murrayfield Stadium, Edinburgh, September 6, 2005.
- Lamb, M. E. Improving the quality of parent-child contact in separating families. International Institute for the Sociology of Law Workshop on "Contact Between Children and Separated Parents", Onati (Spain), 15 September, 2005.
- Lewis, C., & Lamb, M. E. Father-child relationships and children's development: A key to durable solutions? Presentation to the Family Justice Council's Conference on "Durable Solutions in Family Law", Dartington Hall, Devon, September 30 to October 2, 2005.
- Lamb, M. E. The many faces of fatherhood: Some thoughts about fatherhood and immigration. Paper presented to a conference entitled "On new shores: Understanding immigrant fathers in North America," Syracuse, New York October 27-28, 2005.
- Fouts, H. N., Lamb, M. E., & Hewlett, B. S. Developmental, cultural, and ecological features of breastfeeding among four cultures in Central Africa. Paper presented to a conference on Self, Dyad, and Group: Autonomy and Relatedness over the Lifespan, Bochum (Germany), January 5 – 7, 2006.
- Lamb, M. E. The needs of children. Presentation to Ministerial conference on Fatherhood—The child's perspective, London, January 24, 2006.

- Hershkowitz, I., & Lamb, M. E. Forensic investigations of alleged victims of abuse who have learning and mental difficulties. Paper presented to the American Psychology-Law Society conference, St. Petersburg FL, 4 March, 2006.
- Cederborg, A. C., & Lamb, M. E. How does the legal system respond when children with learning difficulties are victimized? Paper presented to the American Psychology-Law Society conference, St. Petersburg FL, 4 March, 2006.
- Cederborg, A. C., La Rooy, D., & Lamb, M. E. Repeated interviews about alleged abuse with children who have intellectual disabilities. Paper presented to the American Psychology-Law Society conference, St. Petersburg FL, 4 March, 2006.
- Brown, D. A., Lewis, C., Lamb, M. E., Stephens, E., & Lunn, J. Facilitating eyewitness testimony in children with learning disabilities. Paper presented to the American Psychology-Law Society conference, St. Petersburg FL, 4 March, 2006.
- Brown, D.A., Lewis, C., Stephens, E., Lunn, J., & Lamb, M.E. Facilitating eyewitness testimony in children with learning disabilities. Invited presentation to the Psychology Department Seminar Series, May 2006, University of Central Lancashire, Preston, UK.
- Lamb, M. E. Fathers matter! Keynote address to Family Rights Group, London, June 29, 2006.
- Orbach, Y., Lamb, M. E., Sternberg, K. J., Hershkowitz, I., & Esplin, P. W. The NICHD Investigative Interview Protocol: An introduction. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- Lamb, M. E., Sternberg, K. J., Orbach, Y., Aldridge, J., Bowler, L., Pearson, S., & Esplin, P. W. Enhancing the quality of investigative interviews by British police officers. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- Cyr, M., Lamb, M. E., Pelletier, J., Leduc, P., & Perron, A. Assessing the effectiveness of the NICHD Investigative Interview Protocol in Francophone Quebec. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- Larsson, A., Teoh, Y. S., Lamb, M. E., Orbach, Y., & Hershkowitz, I. Effects of physical and mental context reinstatement and cueing on children's reports about extra-familial child abuse. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- LaRooy, D., Lamb, M. E., & Pipe, M. E. Is skepticism about repeated interviewing justified? What does the research say? Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.

- Orbach, Y., Lamb, M. E., LaRooy, D., Pipe, M. E., & Stewart, H. L. A witness to abduction: A case study of repeated interviewing. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- Stephens, E., Brown, D. A., Lunn, J. F., Lewis, C., & Lamb, M. E. Repeated interviewing of children with learning disabilities. Paper presented to the Second International Investigative Interviewing Conference, Portsmouth UK, July 5-7, 2006.
- Brown, D.A., Lewis, C., Stephens, E., Lunn, J., & Lamb, M.E. Interviewing children with learning disabilities about their experiences. Poster presented at the 26th International Congress of Applied Psychology, 16-21 July, 2006, Athens, Greece.
- Lewis, C., Brown, D.A., Stephens, E., Lunn, J., & Lamb, M.E. Interviewing children with learning disabilities about their experiences. Paper presented at the 4th International Conference on Memory (ICOM-4), Sydney, 16 - 21 July, 2006.
- Orbach, Y., Lamb, M. E., & Pipe, M. E. Input-free cueing techniques in forensic interviews with children. Paper presented to the 4th International Conference on Memory (ICOM-4), Sydney, July 16-21, 2006.
- Kiernan, K., & Lamb, M. E. 'Separated' parents and child well-being. Paper presented to the International Conference on Children and Divorce, Norwich, July 24-27, 2006.
- Lamb, M.E. Factors affecting children's adjustment following parental separation. Keynote address to the International Conference on Children and Divorce, Norwich, July 24-27, 2006.
- Lamb, M. E. Can children be competent informants about their experiences of abuse? Invited address to the 50th Anniversary Celebration for the Institute of Psychology, University of Goteborg, September 2006.
- Lamb, M. E. Fathers matter? Keynote speaker, Greater London Family Panel Conference, Harrington Hall, London, November 18, 2006.
- Brown, D. B., Lamb, M. E., Lewis, C., Pipe, M. E., & Orbach, Y. Promoting best practice in forensic interviews with children: Lab-based validations of field-based techniques. Presentation to a conference 'Memory on Trial: The Role of Memory in the Courtroom,' University of Otago, Dunedin, NZ, November 29 2006.
- Lamb, M. E. Non-parental care and emotional development. Invited contribution to a Conference on 'Early development, attachment, and social policy,' University of Cambridge, December 2006.
- Lamb, M. E. The first three years: Building the basis for a better life. Keynote address, What About the Children? Conference, London, March 6, 2007.

- Lamb, M. E. Can children be competent witnesses? Fifteenth Annual Warren Weiswasser Lecture, Yale University Medical Center, New Haven CT, April 25, 2007.
- Lamb, M. E., Guterman, E., Abbott, C. B., & Baradaran, L. Effects of supportive and risk factors including family violence on children's adjustment. Poster presentation to the 2007 Association for Psychological Science Annual Convention, Washington DC, May 26, 2007.
- La Rooy, D., & Lamb, M. E. The effects of repeating questions in forensic interviews with children. Presentation to the British Psychological Society Cognitive Section Conference, Aberdeen, August 21, 2007.
- Lamb, M. E. How does early out-of-home care affect child development? Keynote address, Fachgruppe Entwicklungspsychologie (German Society for Developmental Psychology), Heidelberg, 24 September 2007.
- Brown, D. A., Lewis, C., Lamb, M. E., Pipe, M.-E., & Orbach, Y. "Show me on the drawing where she touched you": The impact of interview technique and delay on children's recall of bodily touch. Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- Teoh, Y.-S., Yang, P.-J., Lamb, M. E., & Larsson, A. Do human figure drawings help alleged victims of sexual abuse provide clearer accounts of physical contact with alleged perpetrators? Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- La Rooy, D. A., & Lamb, M. E. The effects of repeating questions in forensic interviews with children. Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- Hershkowitz, I., & Lamb, M. E. Abuse disclosure by children with mental and physical disabilities. Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- Hershkowitz, I., Lamb, M. E., & Orbach, Y. The effects of the NICHD Investigative Interview Protocol on assessment of credibility in child sexual abuse investigations. Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- Pipe, M.-E., Orbach, Y., Lamb, M. E., Abbott, C. B., Stewart, H. L., & Schindler, S. Does the introduction of an evidence-based investigative interview protocol affect case outcomes? Paper presented to the American Psychology-Law Society Convention, Jacksonville FL, March 6-8, 2008.
- Lamb, M. E. Invited participant to the symposium "Big Books: selection of personal favourites from social scientists interested in policy-making for children and families." Roundtable discussion at the British Psychological Society Annual Conference, Dublin, April 2, 2008.

- Lamb, M. E. How does early non-parental care affect child development? Invited address, Jacobs Foundation Conference on 'Early child development and its implications for later achievement,' Marbach Castle (Germany), April 2-4, 2008.
- Yang, P. J., Kloss, A.-K., Ahnert, L. & Lamb, M. E. (2008). Learning how to read, write and calculate: Links between prerequisites and acquired skills. Paper presented to the International Society for the Study of Behavioural Development Conference, Wurzburg, July 2008.
- Lamb, M. E. Helping children be competent witnesses in forensic contexts. Keynote address to the Japanese Psychological Association Annual Convention, Hokkaido, September 19-21, 2008.
- Lamb, M. E. Fatherhood and father-child relationships. Keynote address to Mothers, Fathers, and Caregivers: Addressing Issues of Attachment, Aggression, Foster Care and Trauma, Philadelphia Compact, Philadelphia, November 7, 2008.
- Lamb, M. E. The role of fathers in child development. Interdisciplinary symposium, Centre for Psychosocial Medicine at the University of Heidelberg, Heidelberg, February 11, 2009.
- Cederborg, A.-C., La Rooy, D., Danielsson, H., & Lamb, M. E. Repetition of contaminating question types when children and youths with learning disabilities are interviewed. Paper presented to the American Psychology-Law Society Convention, San Antonio TX, March 6-8, 2009.
- Lamb, M. E. Fathers, mothers, and child development. Parents Matter International Conference, London March 26, 2009.
- Lamb, M. E. Mothers, fathers, or parents at home and at work. Conference on Gender Inequalities in the 21st Century, Queens College, Cambridge, March 27, 2009.
- Lamb, M. E. Conducting developmentally appropriate interviews of young witnesses. Plenary address, International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- Yang, P. J., Teoh, Y. S., & Lamb, M. E. The usefulness of human figure diagrams in clarifying children's descriptive accounts of touches. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- La Rooy, D., Katz, C., Malloy, L. C., & Lamb, M. E. The effectiveness of using multiple interviews. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- Katz, C., Hershkowitz, I., & Lamb, M. E. Draw me what happened: Integrating drawing while interviewing alleged victims of child sexual abuse. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.

- Hershkowitz, I., & Lamb, M. E., Orbach, Y., Katz, C., & Horowitz, D. The effect of the relationship to the suspect on children's reports of abuse. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- Malloy, L. C., Katz, C., Quas, J. A., Lyon, T. D., & Lamb, M. E. When lack of motivation leads to denial: Recantation in investigative interviews with children. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- Katz, C., Hershkowitz, I., Malloy, L. C., Atabaki, A., Spindler, S. A. K., & Lamb, M. E. "The body talks": Trying to understand reluctant children through their body language during investigative interviews. Paper presented to the International Investigative Interviewing Research Group Annual Conference, Teeside, April 15, 2009.
- Lamb, M. E. Exploring the effects of attachment relationships on reactions to transitions. Paper presented to the US National Institute of Aging workshop on Advancing integrative Psychological Research on Adaptive and Healthy Aging, Berkeley CA, May 21, 2009.
- Lamb, M. E. [Discussant and Chair]. Children's memories and reports of touching events. Symposium presented at the Association for Psychological Science Annual Convention, San Francisco, May 23, 2009.
- Pipe, M. E., Orbach, Y., Lamb, M. E., Abbott, C. B., & Stewart, H. L. Do best practice interviews with child abuse victims influence case outcomes? Poster presentation to the National Institute of Justice Research Conference, Washington DC, June 16, 2009.
- Lamb, M. E. Mothers, fathers, and infants. Paper presented in honour of Rudolph Schaffer to the British Psychological Society Developmental Section Conference, Nottingham, September 9, 2009.
- Yang, P. J., & Lamb, M. E. Factors affecting children's transition to school: An ecological model. Paper presented to the British Psychological Society Developmental Section Conference, Nottingham, September 9, 2009.
- Lamb, M. E. Fathers, mothers, and child development. Colloquium on Strengthening Marriage and Supporting Families, Valletta (Malta), October 6-7, 2009.
- Yang, P. J., Kappler, G., Lamb, M. E. & Ahnert, L. Factors affecting children's transition to school: An ecological model. Paper presented to the British Psychological Society Education Section Conference, Lancaster, November 1, 2009.
- Lamb, M. E. Questioning child victims. Presentation to the CURE Conference on Children as Victims of Crime in the European Union, Stockholm, December 3-4, 2009.

- Lamb, M. E. Developmentally appropriate inter viewing: The NICHD Investigative Interview Protocol. 24th Annual San Diego International Conference on Child and Family Maltreatment, San Diego, January 26, 2010.
- Lamb, M. E. The importance of parent-child relationships. Presentation to the Arizona Association of Family and Conciliation Courts, Phoenix (AZ), January 27, 2010.
- Lamb, M. E. Attachment issues in family law matters. Presentation to the Bay Area Association of Family and Conciliation Courts, San Jose (CA), January 29, 2010.
- Lamb, M. E. Confessions of a wondering wanderer (or wandering wonderer?). Keynote address to the Society for Cross-Cultural Research, Albuquerque (NM), February 19, 2010.
- Lamb, M. E. Children's developmental needs in the context of family break-up. London Family Justice Conference, London, March 8, 2010.
- Malloy, L. C., Pipe, M. E., Lamb, M. E., Orbach, Y., & Rothenberg, D. Discussion of secrets, threats, and fears in investigative interviews with children. Paper presented to the American Psychology-Law Society Conference, Vancouver (BC), March 18-20, 2010.
- Katz, C., Malloy, L. C., & Lamb, M. E. Different ways to communicate resistance: Exploring verbal and non verbal cues within investigative interviews of abused children. Paper presented to the American Psychology-Law Society Conference, Vancouver (BC), March 18-20, 2010.
- Hershkowitz, I., Lamb, M. E., Orbach, Y., Katz, C., & Horowitz, D. The effect of motivational factors on the richness of children's testimonies. Paper presented to the American Psychology-Law Society Conference, Vancouver (BC), March 18-20, 2010.
- Katz, C., Lamb, M. E., & Hershkowitz, I. The Revised NICHD Protocol and its effect on the way children disclose the allegation for the first time in investigative interviews. Paper presented to the American Psychology-Law Society Conference, Vancouver (BC), March 18-20, 2010.
- Malloy, L. C., Lamb, M. E., Orbach, Y., & Walker, A. G. How do interviewers use and young children respond to How/Why/How Come in investigative interviews with suspected victims of child sexual abuse? Paper presented to the American Psychology-Law Society Conference, Vancouver (BC), March 18-20, 2010.
- Lamb, M. E. Forensic interview protocols. Canadian Society for the Investigation of Child Abuse, Calgary, Canada, May 3-5, 2010.
- Lamb, M. E. Developmentally appropriate forensic interviewing: The NICHD Investigative Interview Protocol. Master Class to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 20-21, 2010.

- Hershkowitz, I., Lamb, M. E., & Katz, C. Enhancing abuse disclosure by reluctant children: A test of the revised NICHD Protocol. Paper presented to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 22, 2010.
- Malloy, L. C., Brubacher, S., & Lamb, M. E. Exploring the dynamics of forensic interviews in which children mention difficulties and worries. Paper presented to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 22, 2010.
- Sim, M., Katz, C., Hershkowitz, I., & Lamb, M. E. Credibility assessment in credible and doubtful cases of child sexual abuse. Paper presented to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 22, 2010.
- van Gijn, E., Berridge, Z., Katz, C., & Lamb, M. E. Characteristics of perpetrators as portrayed by alleged victims of child sexual abuse. Paper presented to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 22, 2010.
- LaRooy, D., Lamb, M. E., & Memon, A. Forensic interviews with children in Scotland: A survey of interview practices among police. Paper presented to the International Investigative Interview Research Group Annual Conference, Stavern (Norway), June 22, 2010.
- Lamb, M. E. How much can young victims tell us about sexual abuse? Keynote address to the International Academy of Sex Research, Prague, July 25, 2010.
- Huang, C. Y. S., & Lamb, M. E. Acculturation and parenting styles in Chinese immigrants to the UK. Poster presentation to the British Psychological Association (Developmental Section) Annual meeting, London, September 2010.
- Yang, P. J., & Lamb, M. E. Regulatory functions during the transition to new school environments. Paper presented to the British Psychological Association (Developmental Section) Annual meeting, London, September 2010.
- Lamb, M. E. How much can young victims tell us about sexual abuse? Seminar on child victim interviewing, Institute for Psychology and Law at Hallym University and Korean Victimology Association, Seoul (Korea), September 8, 2010.
- Lamb, M. E. Developmentally appropriate investigative interviews. Masterclass, Institute for Psychology and Law at Hallym University, Seoul (Korea), September 9, 2010.
- Lamb, M. E. How much information can young children provide in forensic interviews. Public Family Law Seminars, Judicial Studies Board, Northampton, November 9, 2010 and January 11, 2011.

- Lamb, M. E. Developmentally appropriate interviews of alleged child victims. Ministry of Women and Family, Seoul (Korea), December 7-8, 2010.
- Li, X., & Lamb, M. E. Bridging tradition and modernity: Father-child affection in Chinese families. Paper presented to the Society for Cross-Cultural Research Conference, Charleston (SC), February 2011.
- Lamb, M. E., Hershkowitz, I., & Katz, C. The effects of enhanced support during investigative interviews on the behaviour and informativeness of reluctant children. Paper presented to the American Psychology-Law Society Conference, Miami, March 2011.
- Malloy, L. C., Brubacher, S. P., & Lamb, M. E. Do expected consequences of disclosure provide insight into delayed disclosure of child sexual abuse? Paper presented to the American Psychology-Law Society Conference, Miami, March 2011.
- Cederborg, A-C., Alm, C., da Silva Nises, D. L., & Lamb, M. E. Investigative interviewing of allegedly abused children: An evaluation of a new training programme for police officers in Sweden. Paper presented to the American Psychology-Law Society Conference, Miami, March 2011.
- Sim, M. P. Y., & Lamb, M. E. Children's statements about alleged sexual abuse: A linguistic profile. Paper presented to the American Psychology-Law Society Conference, Miami, March 2011.
- Wachi, T., Watanabi, K., Sano, ., Otsuka, Y., Kuraishi, ., & Lamb, M. E. Police interviewing styles and confessions in Japan. Poster presentation to the American Psychology-Law Society Conference, Miami, March 2011.
- Yang, P. J. & Lamb, M. E. Is school stressful? Young children's cortisol responses to their first school environments. Poster presentation to the Society for Research in Child Development Biennial Conference, Montreal, April 2, 2011.
- Huang, C-Y. S. & Lamb, M. E. What do mothers say about their parenting style? A comparison of the attitudes and behaviour of Chinese and English mothers. Poster presentation to the Society for Research in Child Development Biennial Conference, Montreal, April 1, 2011.
- Lamb, M. E. The need for developmentally appropriate interviewing. Paper presented to the Second International Conference on Child Abuse and Neglect, Porto, 13 May, 2011.
- Lamb, M. E. Angels, demons, dunces: Our inconsistent views of children in the legal system. Hay Festival, May 28, 2011.
- Van Gijn, E., & Lamb, M. E. The modus operandi of offenders of child sexual abuse as described by police officers. Paper presented to the International Investigative Interview Research Group Annual Conference, Dundee (Scotland), June 1, 2011.

- Sim, M., & Lamb, M. E. Police interviews with juvenile suspects: Self-reported practices and beliefs. Paper presented to the International Investigative Interview Research Group Annual Conference, Dundee (Scotland), June 2, 2011.
- Wachi, T., Yokota, K., Otsuka, Y., Kuraishi, H., Watanabe, K., & Lamb, M. E. Japanese police officers' feelings and beliefs after interrogation. Paper presented to the International Investigative Interview Research Group Annual Conference, Dundee (Scotland), June 2, 2011.
- Cherson, M. J., & Lamb, M. E. Rapport-building: Understanding the first eight minutes. Paper presented to the International Investigative Interview Research Group Annual Conference, Dundee (Scotland), June 2, 2011.
- Malloy, L. C., Brubacher, S., & Lamb, M. E. Children discuss disclosure recipients in forensic interviews about suspected abuse. Paper presented to the International Investigative Interview Research Group Annual Conference, Dundee (Scotland), June 2, 2011.
- Brubacher, S., Malloy, L. C., Roberts, K., & Lamb, M. E. Talking about repeated events: How interviewers and children organize memories of alleged multiple incidents of abuse. Paper presented to the Society for Applied Research on Memory and Cognition, New York City, June 2011.
- Lamb, M. E. Advanced workshop on developmentally appropriate forensic interviewing. National Center for Children's Advocacy Centers, Huntsville (AL), August 30, 2011.
- Lamb, M. E. Child forensic interviewing. Presentation to Salt Lake County Children's Justice Center Annual Multi-Disciplinary Team Conference, Sandy (UT), August 31, 2011.
- Yang, P. J., & Lamb, M. E. Effects of temperament and attachment on young children's first school experiences. 15th European Conference on Developmental Psychology, Bergen (Norway), 24 August 2011.
- Huang, C.-Y. S., & Lamb, M. E. Chinese Immigrant mothers' acculturation, parenting beliefs and parenting behaviours. Poster presented to the BPS Developmental Psychology Section Conference, Newcastle, 7 September 2011.
- Lamb, M. E. Developmentally appropriate forensic interviewing. Expert Lecture, 8th International Conference 'Helping children-victims of crime', Warsaw, October 25, 2011.
- Lamb, M. E. Interviewing children who are reluctant to disclose abuse. 8th International Conference 'Helping children-victims of crime', Warsaw, October 25, 2011.
- Lamb, M. E. How much can young victims tell us about sexual abuse? Public Family Law Seminars, Judicial College, Northampton, November 15, 2011, January 31, 2012, and February 28, 2012.

- Lamb, M. E. Conducting developmentally appropriate forensic interviews. Masterclass, University of Abertay Dundee and Scotland's Child and Family Assessment Centre, Dundee, January 11-12, 2012.
- Spencer, J. R., Lamb, M. E., Rook, P., Pathak, M., & Monaghan, G. (Panel). Witnesses: Trials and tribulations. Inner Temple Education and Training, Northampton, February 11, 2012.
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- Sim, P.-Y. M., & Lamb, M. E. Police perceptions of interviews with juvenile suspects. Poster presented to the American Psychology-Law Society Conference, Puerto Rico, March 2012.
- Malloy, L. C., & Lamb, M. E. Reluctance and rapport building in forensic interviews with children. Poster presented to the American Psychology-Law Society Conference, Puerto Rico, March 2012.
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- Wachi, T., & Lamb, M. E. Public opinion on Japanese interrogation techniques. Paper presented to the International Investigative Interview Research Group Annual Conference, Toronto, May 23, 2012.
- Malloy, L. C., Katz, C., & Lamb, M. E. Children's requests for clarification in investigative interviews about suspected child sexual abuse. Paper presented to the American Psychological Association Annual Convention, Orlando FL, August 3, 2012.
- Arseneau, C., Brubacher, S. P., Malloy, L. C., Lamb, M. E., & Roberts, K. P. Particularization of multiple incidents in forensic interviews with alleged child sex abuse victims. Poster presented at the 5e Colloque International sur les Entrevues d'Enquête/5th International Conference on Investigative Interviewing, Nicolet, QC, Canada, September 2012.

Departmental Colloquia

Department of Psychology, University of Wisconsin-Madison, September 1975.

Department of Child & Family Studies, University of Wisconsin-Madison, October 1976.

Department of Educational Psychology, University of Wisconsin-Madison, March 1977.

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Department of Psychology, Australian National University, Canberra (Australia), July 1979.

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Department of Psychology, University of Utah, Salt Lake City, February 1980.

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Department of Psychology and Social Relations, Harvard University, April 1980.

Department of Psychology, Michigan State University, East Lansing, MI, October 1980.

Department of Psychology (Clinical), City University of New York, New York City, December 1980.

Department of Psychology, University of California at Riverside, April 1981.

Department of Psychiatry, University of Utah, Salt Lake City, November 1981.

Oranim, Center for Research on Kibbutz Education, Elroi Tivon, Israel, January 1982.

School of Social Work, University of Haifa, Haifa, Israel, February 1982.

Department of Pediatrics, University of Utah, Salt Lake City, September 1983.

Department of Psychology (Developmental Area), Stanford University, October 1983.

Department of Pediatrics, Children's Hospital, Buffalo, NY, October 1984.

Department of Psychology, University of Göteborg, Göteborg (Sweden), February 1985.

Research and Clinical Center for Child Development, Hokkaido University, Sapporo (Japan), June 1985.

Department of Child Development and Family Studies, University of North Carolina-Greensboro, March 1986.

Department of Applied Behavior Sciences, University of California-Davis, April 1986.

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Department of Psychology, University of California-Berkeley, February 1987.

Institute of Education, University of London (England), September 1987.

Department of Psychology, University of Maryland, Baltimore County, October 1987.

Department of Pediatrics (Division of Adolescent Medicine), University of Maryland, February 1988

Department of Psychology, University of Virginia, Charlottesville, October 1988.

Institute of Psychology, University of Göteborg, Göteborg (Sweden), January 1989.

Department of Psychology, Stanford University, Stanford, February 1989.

Department of Applied Behavioral Sciences, University of California-Davis, February 1989.

Life Cycle Research Institute, Catholic University, Washington, February 1989.

Department of Theology, University of Notre Dame, South Bend, November 1989.

Institute of Education, University of London (England), January 1990.

Department of Psychology, Hebrew University of Jerusalem, Jerusalem (Israel), January 1990.

Department of Human Development and Family Studies, Pennsylvania State University,
February 1990.

School of Social Work, Hebrew University of Jerusalem, Jerusalem (Israel), March 1990.

Department of Psychology, University of Padova, Padua (Italy), September 1990.

Frank Porter Graham Child Development Center, University of North Carolina at Chapel Hill,
April 1991.

Department of Psychology, Laval University, Québec City (Canada), March 1992.

Department of Applied Behavioral Sciences, University of California, Davis, July 1992.

Center for Family in Society, University of South Carolina, Columbia, November 1992.

Department of Psychology, University of Maryland at Baltimore County, February 1993.

Department of Psychology, University College of North Wales, Bangor (United Kingdom), April
1994.

Department of Psychology, Laval University, Québec City (Canada), December 1994.

Department of Psychology, University of (Sweden), September 1995.

Laboratoire de recherche en écologie humaine et sociale, Université de Québec à Montréal,
Montréal (Canada), October 1995.

Department of Psychology, University of Göteborg, Göteborg (Sweden), October 1995.

Fachgebiet Entwicklungspsychologie (Department of Developmental Psychology), Universität
Osnabrück, Osnabrück (Germany), November 1995.

Department of Psychology and School of Social Work, University of Utah, February 1996.

Institute for Behavioral Research, University of Georgia, Athens, February 1996.

Institute of Psychology, Martin-Luther Universität-Halle, Halle (Germany), October 1996.

Department of Pediatrics, Georgetown University Medical Center, Washington DC, February
1997.

Department of Psychology, University of Virginia, Charlottesville, April 1997.

Department of Human Development, University of Maryland at College Park, December 1997.

Baltimore County Child Advocacy Center, Towson MD, December 1998.

Department of Developmental Psychology, Ruhr University of Bochum, Bochum (Germany), December 1998.

Department of Psychology, University of Delaware, Newark, February 1999.

Department of Psychology, University of Lancaster, December 2003.

Department of Social and Developmental Psychology, University of Cambridge, March 2004.

First Annual Zangwill-Bartlett Lecture, Department of Experimental Psychology, University of Cambridge, January 2006.

Centre for Family Research, University of Cambridge, January 31, 2006.

Institute of Psychiatry, Kings College London, June 15, 2006.

Department of Child and Adolescent Psychiatry, Oxford University, June 20, 2006.

Institute of Behavioural Sciences, University of Linköping (Sweden), September 22, 2006.

Child Study Centre, Yale University, April 24, 2007.

Developmental Psychopathology Group, University of Manchester, February 20, 2008.

Department of Child and Adolescent Psychiatry, Oxford University, December 2, 2008.

Institute of Criminology, University of Cambridge, February 5, 2009.

Department of Psychology, University of California, Davis, May 20, 2009.

Department of Psychology, Arizona State University, Tempe, 28 January, 2010.

National Association of Parenting Researchers, Kings College London, 26 April, 2010.

Department of Developmental Psychiatry, Cambridge University, 26 January, 2011.

Institute for Social and Economic Research, University of Essex, Colchester, 21 January, 2011.

Institute for Applied Psychology, Lisbon, 18 February 2011.

Centre d'expertise Marie-Vincent, Montreal, 30 March 2011.

Department of Child and Youth Studies, University of Stockholm, 27 October 2011.

Exhibit B

BIBLIOGRAPHY

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on September 10, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

By: /s/ Sklar Toy
Sklar Toy
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE ROBERT C. JONES, CHIEF DISTRICT JUDGE
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BEVERLY SEVCIK, et al., :
 :
Plaintiffs, :
 : No. 2:12-CV-578-RCJ-PAL
-vs- :
 : August 10, 2012
BRIAN SANDOVAL, etc., et :
al., : Las Vegas, Nevada
 :
Defendants. :
 :
and :
 :
COALITION FOR THE :
PROTECTION OF MARRIAGE, :
 :
 :
Intervenor-Defendant. :
 :
_____ :

TRANSCRIPT OF MOTION HEARING

APPEARANCES:

FOR THE PLAINTIFFS: KELLY H. DOVE
Attorney at Law
Las Vegas, Nevada

TARA BORELLI
Attorney at Law
Los Angeles, California

DAWN SESTITO
Attorney at Law
Los Angeles, California

FOR THE DEFENDANT: C. WAYNE HOWLE
Deputy Attorney General
Carson City, Nevada

(Appearances continue on next page.)

1 APPEARANCES (Continued):

2

3 FOR DEFENDANT GLOVER: RANDALL R. MUNN
4 Deputy District Attorney
Carson City, Nevada

5 FOR DEFENDANT ALBA: MICHAEL L. FOLEY
6 Deputy District Attorney
Carson City, Nevada

7 FOR DEFENDANT HARVEY: HERBERT B. KAPLAN
8 Deputy District Attorney
Reno, Nevada

9 FOR INTERVENOR- MONTE N. STEWART
10 DEFENDANT: Attorney at Law
Boise, Idaho

11 D. CHRIS ALBRIGHT
12 Attorney at Law
Las Vegas, Nevada

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1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 10, 2012, 9:01 A.M.

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4 THE COURT: Let's call Sevcik versus Sandoval,
5 please, civil case. You may come forward and take a moment.
6 I'll be calling for appearances in just a moment.

7 Appearances please, plaintiff.

8 MS. DOVE: Good morning, your Honor. Kelly Dove
9 with Snell & Wilmer for plaintiffs.

10 MS. BORELLI: Good morning, your Honor. Tara
11 Borelli with Lambda Legal for the plaintiffs.

12 We are also joined in the courtroom today by a
13 number of the plaintiffs, including our lead couple Beverly
14 Sevcik and Mary Baranovich.

15 THE COURT: Thank you.

16 MS. SESTITO: Dawn Sestito with O'Melveny &
17 Myers also for plaintiffs.

18 THE COURT: Thank you.

19 MR. HOWLE: Good morning, your Honor. I'm Wayne
20 Howle, State Solicitor General, here for the State of Nevada
21 and the government.

22 MR. MUNN: Good morning, your Honor. Randall
23 Munn, Carson City District Attorney's office, on behalf of
24 Clerk Recorder Alan Glover.

25 MR. STEWART: Monte Stewart on behalf of movant

1 and proposed intervenor-defendant Coalition For the Protection
2 of Marriage.

3 MR. FOLEY: Michael Foley for Diane Alba, the
4 county clerk here.

5 MR. ALBRIGHT: Chris Albright, local counsel for
6 the Coalition movement.

7 MR. KAPLAN: Your Honor, Herbert Kaplan, Washoe
8 County Deputy District Attorney on behalf of Amy Harvey.

9 THE COURT: Thank you.

10 We have several items on the docket. I would
11 propose that we take up first the motion to intervene, number
12 30, and then address the motions to dismiss, 32 and 33.

13 Let's take up first, please, the motion to
14 intervene.

15 MS. SESTITO: Your Honor, if I may just be heard
16 for a moment, just before we were called into the courtroom
17 the parties were discussing some issues vis-a-vis scheduling
18 and the motion to intervene, and respectfully I think that
19 maybe if we had a few more minutes to discuss those, we might
20 be able to resolve some of the motions that are pending right
21 now in particular the intervention motion.

22 THE COURT: I'm sorry, I can't give you
23 continuance. I've got a full morning full of criminal and
24 civil matters.

25 MS. SESTITO: If we could just be heard maybe

1 after some of the other matters this morning, maybe ten
2 minutes, so maybe if another matter was heard now, we could--

3 MR. STEWART: I believe we're asking for ten
4 minutes, your Honor.

5 THE COURT: That shortens your time on the other
6 arguments with all due respect. It's out of your time frame,
7 not mine. If you want 60 seconds there in front of the podium
8 to discuss between yourselves, that's no problem.

9 MR. STEWART: Thirty seconds. Actually, we do
10 need the 60 seconds.

11 (Discussion held off the record.)

12 THE COURT: And, frankly, some of the questions
13 I would be asking on the motions to dismiss would change
14 depending on whether this intervention motion is granted or
15 not, so that's why I need to resolve it first.

16 MR. STEWART: I'm going to attempt, your Honor,
17 with the aid of counsel where I stumble to articulate the
18 agreement reached between all counsel with respect to the
19 pending motions.

20 They are as follows: Number one, the plaintiffs
21 withdraw their objection to the intervention of my client, The
22 Coalition for the Protection of Marriage.

23 Number two, the parties who have filed the pending
24 motions to dismiss based upon *Baker against Nelson*, that is,
25 Governor Sandoval through the Attorney General's office, and

1 Alan Glover, Clerk Alan Glover through Mr. Munn, agree with
2 the plaintiffs and myself that the ruling on those pending
3 motions to dismiss, both the argument and the subsequent
4 ruling, will be deferred until the time of argument, and
5 ruling on cross-motions -- let me see if I can get this
6 correct -- initial prediscovery cross-motions for summary
7 judgment with the briefing schedule to be governed by the
8 proposed scheduling order, although I think we had better pick
9 our trigger dates and make sure --

10 THE COURT: What are the scheduling order dates?

11 MS. BORELLI: Your Honor, we had proposed
12 21 days from resolution of the motion to dismiss or the motion
13 for intervention, whichever was later in time.

14 MR. STEWART: Shall we just go 30 days? Thirty,
15 60 --

16 THE COURT: Here's why the discussion is
17 important. These would have been the questions I would be
18 asking assuming the motion is granted, that is, whether you
19 wanted me to go forward on the motion to dismiss or open it to
20 a full merits discussion on the law, of course, prediscovery,
21 motion for dismissal or motion for summary judgment. That's
22 the nature of Judge Kay's ruling. I've read it, you attached
23 it, I appreciate that.

24 Judge Kay, of course, addresses the *Baker* issue
25 initially. That's an issue that talks about -- or that issue

1 is whether or not the Supreme Court has already spoken on
2 equal protection and due process violations for this type of
3 alleged discrimination. That's the motion to dismiss, and
4 Judge Kay, of course, ruled on that question.

5 But he also went on in the context of summary
6 judgment, in my opinion, really, in the context of a motion to
7 dismiss, in essence, it's a ruling on the law, as to the
8 merits. Assuming that *Baker* does not find, then the question
9 is on the merits and that's what Judge Kay addressed.

10 So that was going to be my first immediate question,
11 would you not like to address all of that. Do you want me to
12 go ahead just on the *Baker* question first.

13 So, again, I'll repeat that same question, does your
14 discussion or stipulation contemplate a -- perhaps not a
15 fuller briefing on *Baker*, but the addition of the merits
16 discussion on the law, prediscovery, summary judgment fashion,
17 so that we can resolve those issues as well. Is that what
18 you're talking about?

19 MR. STEWART: Exactly right, your Honor, and we
20 believe that there are strong prudential reasons why Judge
21 Kay's pattern should be followed in this court. The -- and I
22 think that with the stipulation we are now trying to
23 articulate, we are accomplishing that.

24 The only task left is to make sure that we, counsel,
25 are in agreement regarding the briefing schedule, and I

1 believe we are talking 40 days to opening briefs, 60 days to
2 responsive briefs and --

3 MS. BORELLI: I think the scheduling order had
4 30 for reply briefs.

5 THE COURT: Normally that would be two weeks.
6 So I'll let you extend that for 20 days if you wish.

7 MR. STEWART: Yes, 30, 60, 20.

8 THE COURT: Okay. Now, before I respond to
9 that, is there any further need felt for briefing on *Baker*, or
10 will this address simply the merits issues to the extent we go
11 beyond *Baker*?

12 MR. STEWART: If I'm a party, and I don't know
13 that I am yet --

14 THE COURT: You do want to address *Baker* as
15 well?

16 MR. STEWART: I just want to say this. I
17 mentioned the prudential reasons. One of the *Baker* issues is
18 simply are the issues identical between what was presented to
19 the Supreme Court in 1972 and what is being presented to you
20 in 2012.

21 THE COURT: Correct. And as I understand the
22 basic argument, the basic issue is --

23 MR. STEWART: Yes, but, Judge --

24 THE COURT: -- plaintiffs contend that there is
25 a distinction because *Baker* only considered gender equal

1 protection issues, not sexual orientation. But you would
2 point out or the other side would point out that sexual
3 orientation was a part of the *Baker* state supreme court
4 decision as well. That's the basic issue.

5 MR. STEWART: Yes, and the prudential
6 consideration is this. Judge Kay had the benefit when he was
7 ruling on *Baker* of having had really all of the issues fully
8 ventilated through the cross-motions for summary judgment.

9 THE COURT: So that he could see, he could
10 measure *Baker* and determine whether or not it involved those
11 issues.

12 MR. STEWART: And I think there will be further
13 illumination, and that further illumination may be congenial
14 to the plaintiffs, it may be --

15 THE COURT: That's an answer to my question
16 then. You do intend to be able to add further comment on
17 *Baker* as well as the merits issues.

18 MR. STEWART: I think there's no intent to
19 preclude that, your Honor.

20 THE COURT: Okay. So 30, 30 more days, and
21 20 days, and we'll put those into an order with definite date.

22 MR. STEWART: No, the important date -- the
23 important timeframe was actually the response date of 60 days,
24 and we could let plaintiffs' counsel present to you the
25 reasons for that.

1 THE COURT: You lost me.

2 MR. STEWART: All I can say is I'm in agreement
3 with it.

4 THE COURT: I don't understand.

5 MR. STEWART: Thirty days from now for opening
6 briefs.

7 THE COURT: Right.

8 MR. STEWART: Sixty days to response briefs,
9 20 days to reply briefs.

10 THE COURT: Now, who's filing the initial brief?

11 MR. STEWART: It's anticipated that both sides
12 will file.

13 THE COURT: In blind.

14 MR. STEWART: Yes, in blind.

15 THE COURT: Okay. I will only give you one
16 chance to respond then. There won't any reply briefs. There
17 will be an in-blind filed in 30 days, 30 days later a
18 responsive brief.

19 MR. STEWART: Sixty, your Honor.

20 THE COURT: I'm sorry, 30 days later so a total
21 of 60 days out.

22 MR. STEWART: No, at 90 days out.

23 THE COURT: Oh.

24 MS. BORELLI: And, your Honor, the reason that
25 we've proposed -- actually, if I may jump back for just a

1 moment, just to make sure the record is clear, there are two
2 additional significant independent reasons that we think *Baker*
3 does not control aside from whether sexual orientation was
4 raised, just to make that clear.

5 With respect to the 60-day reply, or, I'm sorry,
6 summary judgment opposition deadline, what that contemplates
7 is incorporating into it the local rule for disclosure of
8 experts.

9 We would intend to move your Honor with supporting
10 expert testimony. That 60-day period allows both sides then
11 to take any necessary depositions or discovery -

12 THE COURT: Expert testimony on what?

13 MS. BORELLI: It would be both the level of
14 review, your Honor, that's appropriate for sexual orientation
15 classifications and also governmental interests.

16 THE COURT: On the first one I don't think
17 expert testimony is appropriate. You're just having the
18 expert tell me what the law is? You're supposed to tell me
19 what the law is and I'm supposed decide it subject to the
20 Ninth Circuit's review.

21 MS. BORELLI: Your Honor, there are facts that
22 have aided a number of courts and that we think may aid this
23 Court --

24 THE COURT: So, for example, on the second
25 issue, governmental interest, that is, whether or not in the

1 institution of marriage under the traditional definition is
2 still appropriately supported by governmental interests,
3 right?

4 MS. BORELLI: That's correct.

5 THE COURT: In my mind, it's an absurd
6 proposition for Judge Walker to presume to take expert
7 testimony on the institutional support of marriage under the
8 traditional definition. That's just incredible to me, and I'm
9 not sure I can see how experts would help me.

10 For example, just to explain a little bit more where
11 I'm coming from, I think it was Justice Marshall that said
12 experience is the life of the law.

13 You know, in our country we have a bifurcated system
14 of law development. One is just like the Roman statute and
15 the civil system, we believe legislatures and/or kings should
16 be allowed to change the law immediately.

17 The other method, however, that we largely follow is
18 the common law. It's developed case by case over centuries,
19 if you will, and so the institution of marriage is one of the
20 recognized areas of the common law, marriage, probate,
21 welfare, contract, tort, I could name them all off, all the
22 classes that you took in law school, all have very strong
23 components of common law development over not just a few
24 decades, centuries, in the case of the marriage institution
25 going back over hundreds of years. That's the institutional

1 support.

2 So to take an expert's testimony, how could I
3 presume -- in light of Justice Marshall's comment, how could I
4 presume in a month, two months, two years, to take
5 consideration of all those strains of support and current
6 trends, how could I take that into account in making a
7 decision on whether the underpinnings of the traditional
8 definition are still this? How could I do that? How could I
9 presume to do that, or how could I presume to take that from
10 an expert witness?

11 Would this be a sociologist, a legal scholar? Would
12 this be a person who statistically summarizes all of the cases
13 over the last 500 years and the trends therein? Would this be
14 a -- a Lexis or a Westlaw that summarizes the principles,
15 headnote principles and trends over the last 100 years versus
16 the prior 500 years?

17 What kind of an expert would help me in that
18 governmental issue? Would it be an expert who testifies to me
19 as to the motivations of the people who voted yes for the
20 constitutional amendment? Where would there be any help from
21 an expert?

22 MS. BORELLI: Well, your Honor, we would urge
23 the Court to look actually at what Judge Kay did. He, in
24 fact, permitted us, as the parties did, a sufficient expert
25 testimony on several grounds. So, for example, with respect

1 to the heightened scrutiny factors, there is a question about
2 the history of discrimination against gay people, the relative
3 political powerlessness and other related concepts where --

4 THE COURT: That just goes right over my head.
5 I don't understand how one expert, 200 experts could tell me
6 about -- in other words, they're summarizing the
7 discrimination against gay people over the last hundred years,
8 is that what they're doing?

9 MS. BORELLI: There is, in fact, expert
10 testimony that does describe the history of discrimination
11 against gay people since they came to be recognized in this
12 society. That's just one example, your Honor.

13 THE COURT: You would be asking me to sit as a
14 legislature in deciding -- or as a polling, and even then my
15 expert that I would have here from polling of the United
16 States thoughts and processes would be such a narrow
17 statistical -- in my background of statistics, it wouldn't
18 even make any sense. How could I rely on an expert?

19 You know, we have some acknowledged areas where we
20 take expert testimony on discrimination issues, for example, a
21 state in its hiring practices, or a local fire department, or
22 a local school district, or a local group of realtors, that's
23 pretty broad, in housing have maintained a practice of
24 discrimination, and when we are looking at statistical
25 analysis in practice, not actual intent to discriminate, but

1 actually as a result of statistics, we do have some recognized
2 areas where we take statistics to consider that.

3 This area you're talking about is so broad it's
4 across the entire United States. You're asking them to
5 summarize thousands of incidences. This smacks to me of the
6 Wal-Mart question and the class-action question.

7 You know, could you successfully bring a
8 class-action discrimination case under the Wal-Mart standard
9 based upon the statistics of discrimination in the State of
10 Nevada or nationally? Could you do that? I don't think so.

11 MS. BORELLI: Your Honor, I think that's a
12 different question with different issues involved in a case
13 that is helpful for this Court to know. Obviously this expert
14 testimony would be introduced here, the Court could give it
15 any weight the Court thought was appropriate or not.

16 These experts on these subjects that we would intend
17 to use have introduced testimony in a wide range of cases
18 across the country including some that were relied on by the
19 defendants in their *Baker* versus Nelson briefing.

20 THE COURT: Well, I think my only response can
21 be put whatever you want into the moving papers. I don't know
22 that I'm going to hear from experts, nor do I know that I will
23 admit experts on these questions which appear to me to be
24 pretty much questions of law for which expert testimony would
25 be -- not only useless, it would be an absurd inquiry. So I

1 think my response is put whatever you feel you need to.

2 These will be cross-motions for summary judgment on
3 the merits in addition to addressing *Baker*. You do have --
4 unless you have permission of the Court, you do have the
5 30-page limit, I remind you, unless you have some stipulation
6 for something else. Please don't seek a stipulation for 500
7 pages, it's just not going to happen.

8 As Judge McKibben has always said, you know, I'll
9 read the first 30 pages and then I'll simply put my glasses
10 down. So I just remind you of that in seeking permission or
11 stipulation to go beyond 30 pages.

12 I can image that you may need to go beyond 30 pages
13 if you're arguing some of these other issues, but be
14 circumspect, please.

15 You'll have 30 days to file those initial motions,
16 and then you'll have 30 days to respond, and that's where
17 we'll leave it preparatory for the oral argument.

18 If you feel the need because of a response or
19 something raised brand-new in the response for the first time,
20 then, of course, you can ask for permission and the Court will
21 undoubtedly grant you permission to file a reply for
22 newly-raised issues in a response.

23 All of you know you're not supposed to do that, you
24 file and you put everything you think is appropriate into the
25 motion. The response is not to reiterate your arguments,

1 simply to respond to the other parties' arguments, and
2 citations.

3 So if in the response for the first time a party is
4 raising something anew, of course, ask permission and I'll
5 give you permission to reply to that item.

6 So 30 days and 30 days to respond.

7 MS. BORELLI: Your Honor?

8 THE COURT: Please.

9 (Discussion held off the record.)

10 MR. STEWART: In fairness to all parties to the
11 bargain, it is true that the 60 days between --

12 THE COURT: I'm not party to the bargain.

13 MR. STEWART: I understand, your Honor, and I
14 respect --

15 THE COURT: I'm the one who sets and controls my
16 own calendar.

17 MR. STEWART: All I was going to say is that was
18 a material part of the bargain, so I would think that if that
19 doesn't obtain, there's a question mark about whether the
20 bargain obtains, but that's plaintiffs' call.

21 THE COURT: I'm not even interested in the
22 bargain.

23 Can you comply with the response within 30 days? Do
24 you want to ask for more time?

25 Motion within 30 days, you've already briefed the

1 Baker issue. You may feel the need to add to that, 30 days to
2 add -- make your motions, cross-motions, and then 30 days to
3 respond.

4 Do you need more time beyond 30 days to respond?

5 MS. BORELLI: Your Honor, we may if we are
6 deposing each other's witnesses, and so that was why we had
7 contemplated a 60 day period for oppositions so we would have
8 the opportunity, since we won't see anybody's evidence,
9 there's been no discovery, no disclosures, we'll see
10 everybody's --

11 THE COURT: I think you need to make an initial
12 showing to me that you need witnesses. I just can't conceive
13 as I'm sitting here, and I haven't heard any appropriate
14 response to my problem, my concern.

15 MS. BORELLI: Your Honor --

16 THE COURT: I don't know how expert witnesses
17 can help me. An expert witness is either going to tell me
18 what the law is or the trend of the law. That's what you get
19 in law school. I have already been to law school, with all
20 due respect, and it's the lawyer's problem and concern, I'm a
21 student, you're the teacher, you're the ones who are supposed
22 to tell me what the law ought to be, and then I'm the one who
23 finally says, subject to the Ninth Circuit's review, what the
24 law is.

25 So I don't see how an expert in that area helps me,

1 nor do I see how a sociologist, a legal scholar, how a
2 government political scientist with knowledge about government
3 interests or private interests or the realm where the
4 legislature can legislate and where it can't. I don't see how
5 that's going to help me.

6 MS. BORELLI: Your Honor --

7 THE COURT: Or even the question of expert
8 testimony on the history of discrimination unless it pertains
9 to the history of discrimination in Nevada or in Clark or
10 Washoe or Douglas County.

11 MS. BORELLI: Your Honor, if I understood the
12 Court correctly, the Court is saying that we may of course as
13 a matter of due process submit the evidence that we believe is
14 appropriate, and then, of course, the Court can look at it and
15 weigh and decide what weight, if any, to give to it.

16 That is correct?

17 THE COURT: Correct.

18 MS. BORELLI: And, your Honor, to return to
19 the -- in addition, there is authority out there about the
20 appropriateness of submitting precisely the type of evidence
21 that we would seek to do in this court.

22 So if there were any desire on the part of the Court
23 to exclude it, we would wish to have the opportunity to brief
24 that first. The Court probably can make all those
25 determinations once it has the evidence in front of it. So

1 we'll take the Court's cue and submit it with evidence.

2 Your Honor, with respect to the --

3 THE COURT: How about the 30 days to respond, is
4 that sufficient or not?

5 MS. BORELLI: Yes.

6 Your Honor, could we leave open the possibility that
7 we could move for an additional 30 days if we need at that
8 time to take discovery of --

9 THE COURT: Yes, but I would rather anticipate
10 the need now.

11 MS. BORELLI: If so, your Honor, then 60 days is
12 what all of the parties --

13 THE COURT: How about 45 days?

14 MS. BORELLI: We'll agree to 45 days. And, your
15 Honor, in the unlikely event that we needed just a little bit
16 more time, we might come back to the Court and ask for it?

17 THE COURT: Sure, you always can, especially if
18 the response contains something brand-new which it should not,
19 but certainly you can.

20 Okay, 30 days and an order, please. Could I call
21 from the parties an order that provides the date certain,
22 30 days for the motion, 45 days for the response, and then an
23 argument -- an oral argument. Madam Clerk, when, please?

24 I handle all of my items on argument, civil motions
25 to dismiss, motions for summary judgment, not all district

1 judges do that either in our district or across the country so
2 that's why I'm setting a date now, about 15 or 20 days beyond
3 that.

4 THE CLERK: In November --

5 THE COURT: While we're looking for a date, you
6 might also discuss to the extent that both of you think that
7 some kind of expert testimony or evidence would be helpful to
8 the Court or intend to propose that, you might strongly
9 consider stipulations between yourself as to what evidence was
10 before Judge Kay unless that evidence pertains simply to the
11 District of Hawaii, and if he, in fact, considered it, took it
12 into consideration and had a record, you might consider
13 stipulations between yourselves on that level as well.

14 THE CLERK: November 26th will be our Las Vegas
15 calendar via video.

16 THE COURT: In other words, in Reno.

17 THE CLERK: It will be in Reno and Las Vegas.

18 THE COURT: Do you have any problem coming to
19 Reno for this argument? You've got plaintiffs from Douglas
20 and Washoe, Clark, you've got attorneys from all over
21 Timbuktu. Do you have any problem in coming to my courtroom
22 in Reno to argue the case?

23 Give us the date and time, please. I don't hear any
24 strong objection although November is beginning to get into
25 the winter months.

1 THE CLERK: Yes, it is. That would be
2 November 26th at 9:00 a.m.

3 THE COURT: November 26th at 9:00 a.m. for oral
4 argument. Question?

5 MR. STEWART: What is the relationship of the
6 26th to Thanksgiving?

7 THE CLERK: It's the Monday after.

8 THE COURT: It's the Monday after the holiday.
9 Is that a problem?

10 MR. STEWART: Not here.

11 THE COURT: Okay. All right. That will be the
12 date. What else?

13 MR. HOWLE: Your Honor, may I address the Court
14 for just one minute?

15 THE COURT: Sure. You're representing?

16 MR. HOWLE: I'm Wayne Howle, and I represent the
17 state, and I just wanted to explain to the Court that we
18 haven't posed putting off a decision on the motion to dismiss
19 for several reasons. One is the law is developing as the
20 Court has seen, and there are five cert petitions pending
21 before the U.S. Supreme Court now that address some of these
22 issues.

23 THE COURT: Right. It makes sense to get this
24 decided and off with the circus train.

25 MR. HOWLE: It can be looked at two ways, either

1 decided quickly and up there with the rest of them, or let's
2 wait and see what the Supreme Court says.

3 THE COURT: And there's some benefit to that
4 argument, quite frankly, for example, the Ninth Circuit's
5 analysis both of the *Baker* type issue went off on the fact
6 that there's a distinction between California and Nevada.
7 California had allowed that type of marriage.

8 MR. HOWLE: Yes.

9 THE COURT: And mandated that it be allowed.

10 MR. HOWLE: And there's never been --

11 THE COURT: -- and therefore Prop 8 was a
12 withdrawal, and that's one of the primary distinctions that
13 the Ninth Circuit made.

14 MR. HOWLE: Yes, sir.

15 THE COURT: A case coming up from this district
16 where that's not -- it's a different context, so we face a
17 basic initial question is there an equal process, due process
18 violation where it's never been granted before.

19 MR. HOWLE: Correct.

20 THE COURT: Therefore, of course, in my opinion
21 there's no need to take evidence. There wasn't in California
22 either, but there's no need to take evidence as to the
23 motivations of people who voted on the ballot.

24 So if that's the case, this kind of a case going up
25 at the same time would form a very good context, in other

1 words, the logical extension of the California case is that
2 *Baker* applies in our case.

3 MR. HOWLE: Correct.

4 THE COURT: That's the logical extension, and,
5 of course, I'm not the one who ultimately will decide that,
6 the Supreme Court ought to decide that.

7 So there is some good beneficence in what you say
8 that the sooner we can resolve on my level and send it on to
9 the circuit the better.

10 MR. HOWLE: Yes, your Honor.

11 THE COURT: So where does that leave you?

12 MR. HOWLE: It has left us the statement is
13 equivocal, but we're still confident in our argument and so it
14 doesn't matter whether we get it concluded now or later.

15 THE COURT: Will you not need to resolve -- are
16 you asking me to resolve *Baker* now?

17 MR. HOWLE: No, I'm not, your Honor. I'm
18 explaining why we've gone along with the parties.

19 THE COURT: Okay. So -- and do I still need
20 to -- is there anything else you wanted to represent, sir?

21 MR. HOWLE: I think that's it except,
22 your Honor, that we also agree with the Court that this is not
23 a case for a courtroom fact finding, and to that extent it
24 would be the position of the defendants --

25 THE COURT: To that extent you'll make your

1 position known in your brief.

2 MR. HOWLE: Yes, your Honor, thank you.

3 THE COURT: One other question I have then, what
4 are we doing with the motion to intervene? Am I granting that
5 so that they can file briefs with this new schedule?

6 MS. SESTITO: Yes, your Honor. We will withdraw
7 our opposition to the motion.

8 THE COURT: If I deny the motion -- well, it's
9 cross-motions for summary judgment so I'm going to rule one
10 way or the other, and we'll send it on to the circuit, right?
11 So I don't need to contemplate further problems in time delays
12 in trial.

13 And you do have a motion -- do you have a motion on
14 the docket for preliminary injunction?

15 MS. SESTITO: We do not.

16 THE COURT: You've never asked for that.

17 MS. SESTITO: We have not --

18 THE COURT: So there's no urgency on behalf of
19 the plaintiffs.

20 MS. SESTITO: There is urgency, your Honor, but
21 we have not filed a motion for preliminary injunction.

22 THE COURT: Nor a temporary restraining order.

23 MS. SESTITO: That's correct.

24 THE COURT: Okay. That's what's usually taken
25 as a sign to a court, as you know, that I can decide on these

1 questions leisurely.

2 MR. STEWART: Three quick housekeeping matters,
3 your Honor.

4 First, we would like to note granting the motion to
5 intervene to be based on both intervention as of right and
6 permissibly.

7 Second, we very much agree with your Honor regarding
8 the need to move this forward. We would like to see the fate
9 of the Nevada marriage amendment to the greatest extent
10 possible influenced at the very least, influenced by Nevada
11 parties, Nevada counsel and at least one Nevada judge, and so
12 we very much agree with your view that let's have our voices
13 be heard here in Nevada.

14 THE COURT: I agree with that.

15 MR. STEWART: Thank you. And just one
16 correction for the record, you mentioned that there were
17 claims based on both equal protection and due process. I
18 would point out that the complaint --

19 THE COURT: This complaint just raises equal
20 protection.

21 MR. STEWART: Exactly right.

22 THE COURT: Of course, Judge Kay, of course --
23 in *Baker* it's alleged addressed both due process and equal
24 protection and one third one, what else, constitutional ground
25 for challenging and arguably one way or the other gender

1 and/or sexual orientation discrimination.

2 MR. STEWART: But the claim does allege both sex
3 and sexual orientation but only for protection.

4 THE COURT: Okay.

5 MS. SESTITO: Your Honor, I would propose that
6 the parties consider present a motion to the Court on
7 intervention and on the schedule.

8 THE COURT: Do you want to be heard on his
9 request both as of right and permissive?

10 MS. SESTITO: I think that we're fine
11 withdrawing the opposition as of right, and if for some reason
12 the case proceeds beyond the cross-motions for summary
13 judgment, the plaintiffs would reserve the right to come back
14 to the Court if it turns out that there's any scheduling
15 issues or delay that we don't anticipate --

16 THE COURT: That's fine, but I'll issue the
17 order. I'll issue the order. Okay?

18 All right. Thank you so much. I'll greet you again
19 in Reno.

20 -o0o-

21 I certify that the foregoing is a correct
22 transcript from the record of proceedings
in the above-entitled matter.

23 /s/Margaret E. Griener 08/22/2012
24 Margaret E. Griener, CCR #3, RDR
25 Official Reporter

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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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

Case No. 12-17668

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

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court

for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

**PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
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6

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 * * *

10 BEVERLY SEVCIK and MARY BARANOVICH;
ANTIOCO CARRILLO and THEODORE SMALL;
11 KAREN GOODY and KAREN VIBE; FLETCHER 2:12-CV-00578-RCJ-PAL
WHITWELL and GREG FLAMER; MIKYLA
12 MILLER and KATRINA MILLER; ADELE
TERRANOVA and TARA NEWBERRY; CAREN
13 CAFFERATTA-JENKINS and FARRELL
CARRERATA-JENKINS; and MEGAN LANZ
14 and SARA GEIGER,

ANSWER OF AMY HARVEY,
WASHOE COUNTY CLERK

15 Plaintiffs,

16 vs.

17 BRIAN SANDOVAL, in his official
capacity as Governor of the State of
18 Nevada; DIANA ALBA, in her official
capacity as Clerk for Clark County;
19 AMY HARVEY, in her official capacity
as Clerk for Washoe County; and ALAN
20 GLOVER, in his official capacity as
Clerk-Recorder for Carson City,

21 Defendants.
22 _____/

23
24 COMES NOW, Defendant, Amy Harvey, the Washoe County Clerk,
25 by and through her undersigned counsel, and hereby answers
26 Plaintiffs' Complaint For Declaratory and Injunctive Relief

(Doc #1) as follows. Preliminarily, however, Ms. Harvey wishes to express that she has no intention to defend the substantive merits of this case and has agreed to be bound by the final, decision herein.

A. INTRODUCTION

1. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 1 of Plaintiffs' Complaint For Declaratory and Injunctive Relief (hereinafter referred to as "Complaint").

2. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 2 of Plaintiffs' Complaint.

3. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 3 of Plaintiffs' Complaint.

4. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 4 of Plaintiffs' Complaint.

PARTIES

5. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 5 of Plaintiffs' Complaint.

6. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 6 of Plaintiffs' Complaint.

1 7. Defendant is without sufficient information to either
2 admit or deny, and therefore on that basis denies, the
3 allegation contained in paragraph 7 of Plaintiffs' Complaint.

4 8. Defendant is without sufficient information to either
5 admit or deny, and therefore on that basis denies, the
6 allegation contained in paragraph 8 of Plaintiffs' Complaint.

7 9. Defendant is without sufficient information to
8 either admit or deny, and therefore on that basis denies, the
9 allegation contained in paragraph 9 of Plaintiffs' Complaint.

10 10. Defendant is without sufficient information to either
11 admit or deny, and therefore on that basis denies, the
12 allegation contained in paragraph 10 of Plaintiffs' Complaint.

13 11. Defendant is without sufficient information to either
14 admit or deny, and therefore on that basis denies, the
15 allegation contained in paragraph 11 of Plaintiffs' Complaint.

16 12. Defendant is without sufficient information to either
17 admit or deny, and therefore on that basis denies, the
18 allegation contained in paragraph 12 of Plaintiffs' Complaint.

19 13. Defendant admits the allegations contained in
20 paragraph 13 of Plaintiffs' Complaint.

21 14. Defendant admits the allegations contained in
22 paragraph 14 of Plaintiffs' Complaint.

23 15. Defendant admits the allegations contained in
24 paragraph 15 of Plaintiffs' Complaint.

25 16. Defendant admits the allegations contained in
26 paragraph 16 of Plaintiffs' Complaint.

1 17. Defendant is without sufficient information to either
2 admit or deny, and therefore on that basis denies, the
3 allegation contained in paragraph 17 of Plaintiffs' Complaint.

4 **JURISDICTION AND VENUE**

5 18. Defendant is without sufficient information to either
6 admit or deny, and therefore on that basis denies, the
7 allegation contained in paragraph 18 of Plaintiffs' Complaint.

8 19. Defendant is without sufficient information to either
9 admit or deny, and therefore on that basis denies, the
10 allegation contained in paragraph 19 of Plaintiffs' Complaint.

11 20. Defendant admits the allegations contained in
12 paragraph 20 of Plaintiffs' Complaint.

13 21. Defendant admits the allegations contained in
14 paragraph 21 of Plaintiffs' Complaint.

15 22. Defendant admits the allegations contained in
16 paragraph 22 of Plaintiffs' Complaint.

17 **STATEMENT OF THE FACTS**

18 23. Defendant is without sufficient information to either
19 admit or deny, and therefore on that basis denies, the
20 allegation contained in paragraph 23 of Plaintiffs' Complaint.

21 24. Defendant is without sufficient information to either
22 admit or deny, and therefore on that basis denies, the
23 allegation contained in paragraph 24 of Plaintiffs' Complaint.

24 25. Defendant is without sufficient information to either
25 admit or deny, and therefore on that basis denies, the
26 allegation contained in paragraph 25 of Plaintiffs' Complaint.

26. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 26 of Plaintiffs' Complaint.

27. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 27 of Plaintiffs' Complaint.

28. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 28 of Plaintiffs' Complaint.

29. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 29 of Plaintiffs' Complaint.

30. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 30 of Plaintiffs' Complaint.

31. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 31 of Plaintiffs' Complaint.

32. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 32 of Plaintiffs' Complaint.

33. Defendant admits the allegations contained in paragraph 33 of Plaintiffs' Complaint.

34. Defendant admits the allegations contained in paragraph 34 of Plaintiffs' Complaint.

35. Defendant is without sufficient information to either

1 admit or deny, and therefore on that basis denies, the
2 allegation contained in paragraph 35 of Plaintiffs' Complaint.

3 36. Defendant admits the allegations contained in
4 paragraph 36 of Plaintiffs' Complaint.

5 37. Defendant is without sufficient information to either
6 admit or deny, and therefore on that basis denies, the
7 allegation contained in paragraph 37 of Plaintiffs' Complaint.

8 38. Defendant is without sufficient information to either
9 admit or deny, and therefore on that basis denies, the
10 allegation contained in paragraph 38 of Plaintiffs' Complaint.

11 39. Defendant is without sufficient information to either
12 admit or deny, and therefore on that basis denies, the
13 allegation contained in paragraph 39 of Plaintiffs' Complaint.

14 40. Defendant is without sufficient information to either
15 admit or deny, and therefore on that basis denies, the
16 allegation contained in paragraph 40 of Plaintiffs' Complaint.

17 41. Defendant is without sufficient information to either
18 admit or deny, and therefore on that basis denies, the
19 allegation contained in paragraph 41 of Plaintiffs' Complaint.

20 42. Defendant is without sufficient information to either
21 admit or deny, and therefore on that basis denies, the
22 allegation contained in paragraph 42 of Plaintiffs' Complaint.

23 43. Defendant is without sufficient information to either
24 admit or deny, and therefore on that basis denies, the
25 allegation contained in paragraph 43 of Plaintiffs' Complaint.

26 44. Defendant admits that couples who marry in Nevada

1 have their marriages solemnized pursuant to state law, NRS
2 122.010(1). Defendant further admits that the law in Nevada
3 provides no state-approved mechanism to solemnize a registered
4 domestic partnership. Defendant is without sufficient
5 information to either admit or deny, and therefore on that
6 basis denies, the remaining allegations contained in paragraph
7 44 of Plaintiffs' Complaint.

8 45. Defendant is without sufficient information to either
9 admit or deny, and therefore on that basis denies, the
10 allegation contained in paragraph 45 of Plaintiffs' Complaint.

11 46. Defendant is without sufficient information to either
12 admit or deny, and therefore on that basis denies, the
13 allegation contained in paragraph 46 of Plaintiffs' Complaint.

14 47. Defendant is without sufficient information to either
15 admit or deny, and therefore on that basis denies, the
16 allegation contained in paragraph 47 of Plaintiffs' Complaint.

17 48. Defendant is without sufficient information to either
18 admit or deny, and therefore on that basis denies, the
19 allegation contained in paragraph 48 of Plaintiffs' Complaint.

20 49. Defendant is without sufficient information to either
21 admit or deny, and therefore on that basis denies, the
22 allegation contained in paragraph 49 of Plaintiffs' Complaint.

23 50. Defendant is without sufficient information to either
24 admit or deny, and therefore on that basis denies, the
25 allegation contained in paragraph 50 of Plaintiffs' Complaint.

26 51. Defendant is without sufficient information to either

1 admit or deny, and therefore on that basis denies, the
2 allegation contained in paragraph 51 of Plaintiffs' Complaint.

3 52. Defendant is without sufficient information to either
4 admit or deny, and therefore on that basis denies, the
5 allegation contained in paragraph 52 of Plaintiffs' Complaint.

6 53. Defendant is without sufficient information to either
7 admit or deny, and therefore on that basis denies, the
8 allegation contained in paragraph 53 of Plaintiffs' Complaint.

9 54. Defendant is without sufficient information to either
10 admit or deny, and therefore on that basis denies, the
11 allegation contained in paragraph 54 of Plaintiffs' Complaint.

12 55. Defendant is without sufficient information to either
13 admit or deny, and therefore on that basis denies, the
14 allegation contained in paragraph 55 of Plaintiffs' Complaint.

15 56. Defendant is without sufficient information to either
16 admit or deny, and therefore on that basis denies, the
17 allegation contained in paragraph 56 of Plaintiffs' Complaint.

18 57. Defendant is without sufficient information to either
19 admit or deny, and therefore on that basis denies, the
20 allegation contained in paragraph 57 of Plaintiffs' Complaint.

21 58. Defendant is without sufficient information to either
22 admit or deny, and therefore on that basis denies, the
23 allegation contained in paragraph 58 of Plaintiffs' Complaint.

24 59. Defendant is without sufficient information to either
25 admit or deny, and therefore on that basis denies, the
26 allegation contained in paragraph 59 of Plaintiffs' Complaint.

60. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 60 of Plaintiffs' Complaint.

61. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 61 of Plaintiffs' Complaint.

62. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 62 of Plaintiffs' Complaint.

63. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 63 of Plaintiffs' Complaint.

64. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 64 of Plaintiffs' Complaint.

65. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 65 of Plaintiffs' Complaint.

66. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 66 of Plaintiffs' Complaint.

67. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the allegation contained in paragraph 67 of Plaintiffs' Complaint.

68. Defendant is without sufficient information to either admit or deny, and therefore on that basis denies, the

1 allegation contained in paragraph 68 of Plaintiffs' Complaint.

2 69. Defendant is without sufficient information to either
3 admit or deny, and therefore on that basis denies, the
4 allegation contained in paragraph 69 of Plaintiffs' Complaint.

5 70. Defendant is without sufficient information to either
6 admit or deny, and therefore on that basis denies, the
7 allegation contained in paragraph 70 of Plaintiffs' Complaint.

8 71. Defendant is without sufficient information to either
9 admit or deny, and therefore on that basis denies, the
10 allegation contained in paragraph 71 of Plaintiffs' Complaint.

11 72. Defendant is without sufficient information to either
12 admit or deny, and therefore on that basis denies, the
13 allegation contained in paragraph 72 of Plaintiffs' Complaint.

14 73. Defendant is without sufficient information to either
15 admit or deny, and therefore on that basis denies, the
16 allegation contained in paragraph 73 of Plaintiffs' Complaint.

17 74. Defendant is without sufficient information to either
18 admit or deny, and therefore on that basis denies, the
19 allegation contained in paragraph 74 of Plaintiffs' Complaint.

20 75. Defendant is without sufficient information to either
21 admit or deny, and therefore on that basis denies, the
22 allegation contained in paragraph 75 of Plaintiffs' Complaint.

23 76. Defendant admits the allegation contained in
24 paragraph 76 of Plaintiffs' Complaint.

25 77. Defendant admits the allegation contained in
26 paragraph 77 of Plaintiffs' Complaint.

1 78. Defendant is without sufficient information to either
2 admit or deny, and therefore on that basis denies, the
3 allegation contained in paragraph 78 of Plaintiffs' Complaint.

4 79. Defendant is without sufficient information to either
5 admit or deny, and therefore on that basis denies, the
6 allegation contained in paragraph 79 of Plaintiffs' Complaint.

7 80. Defendant is without sufficient information to either
8 admit or deny, and therefore on that basis denies, the
9 allegation contained in paragraph 80 of Plaintiffs' Complaint.

10 81. Defendant is without sufficient information to either
11 admit or deny, and therefore on that basis denies, the
12 allegation contained in paragraph 81 of Plaintiffs' Complaint.

13 82. Defendant is without sufficient information to either
14 admit or deny, and therefore on that basis denies, the
15 allegation contained in paragraph 82 of Plaintiffs' Complaint.

16 83. Defendant is without sufficient information to either
17 admit or deny, and therefore on that basis denies, the
18 allegation contained in paragraph 83 of Plaintiffs' Complaint.

19 84. Defendant is without sufficient information to either
20 admit or deny, and therefore on that basis denies, the
21 allegation contained in paragraph 84 of Plaintiffs' Complaint.

22 85. Defendant is without sufficient information to either
23 admit or deny, and therefore on that basis denies, the
24 allegation contained in paragraph 85 of Plaintiffs' Complaint.

25 **CLAIM FOR RELIEF**

26 86. Defendant is without sufficient information to either

1 admit or deny, and therefore on that basis denies, the
2 allegation contained in paragraph 86 of Plaintiffs' Complaint.

3 87. Defendant admits the allegation contained in
4 paragraph 87 of Plaintiffs' Complaint.

5 88. Defendant admits the allegation with regard to the
6 Fourteenth Amendment of the United States Constitution
7 contained in the first sentence of paragraph 88 of Plaintiffs'
8 Complaint. Defendant is without sufficient information to
9 either admit or deny, and therefore on that basis denies, the
10 remaining allegations contained in paragraph 88 of Plaintiffs'
11 Complaint.

12 89. Defendant is without sufficient information to either
13 admit or deny, and therefore on that basis denies, the
14 allegation contained in paragraph 89 of Plaintiffs' Complaint.

15 90. Defendant is without sufficient information to either
16 admit or deny, and therefore on that basis denies, the
17 allegation contained in paragraph 90 of Plaintiffs' Complaint.

18 91. Defendant is without sufficient information to either
19 admit or deny, and therefore on that basis denies, the
20 allegation contained in paragraph 91 of Plaintiffs' Complaint.

21 92. Defendant is without sufficient information to either
22 admit or deny, and therefore on that basis denies, the
23 allegation contained in paragraph 92 of Plaintiffs' Complaint.

24 93. Defendant is without sufficient information to either
25 admit or deny, and therefore on that basis denies, the
26 allegation contained in paragraph 93 of Plaintiffs' Complaint.

1 94. Defendant is without sufficient information to either
2 admit or deny, and therefore on that basis denies, the
3 allegation contained in paragraph 94 of Plaintiffs' Complaint.

4 95. Defendant is without sufficient information to either
5 admit or deny, and therefore on that basis denies, the
6 allegation contained in paragraph 95 of Plaintiffs' Complaint.

7 96. Defendant is without sufficient information to either
8 admit or deny, and therefore on that basis denies, the
9 allegation contained in paragraph 96 of Plaintiffs' Complaint.

10 97. Defendant is without sufficient information to either
11 admit or deny, and therefore on that basis denies, the
12 allegation contained in paragraph 97 of Plaintiffs' Complaint.

13 98. Defendant is without sufficient information to either
14 admit or deny, and therefore on that basis denies, the
15 allegation contained in paragraph 98 of Plaintiffs' Complaint.

16 99. Defendant is without sufficient information to either
17 admit or deny, and therefore on that basis denies, the
18 allegation contained in paragraph 99 of Plaintiffs' Complaint.

19 100. Defendant is without sufficient information to either
20 admit or deny, and therefore on that basis denies, the
21 allegation contained in paragraph 100 of Plaintiffs' Complaint.

22 101. Defendant is without sufficient information to either
23 admit or deny, and therefore on that basis denies, the
24 allegation contained in paragraph 101 of Plaintiffs' Complaint.

25 102. Defendant is without sufficient information to either
26 admit or deny, and therefore on that basis denies, the

1 allegation contained in paragraph 102 of Plaintiffs' Complaint.

2 103. Defendant is without sufficient information to either
3 admit or deny, and therefore on that basis denies, the
4 allegation contained in paragraph 103 of Plaintiffs' Complaint.

5 104. Defendant is without sufficient information to either
6 admit or deny, and therefore on that basis denies, the
7 allegation contained in paragraph 104 of Plaintiffs' Complaint.

8 105. Defendant is without sufficient information to either
9 admit or deny, and therefore on that basis denies, the
10 allegation contained in paragraph 105 of Plaintiffs' Complaint.

11 **DECLARATORY AND INJUNCTIVE RELIEF**

12 106. Defendant is without sufficient information to either
13 admit or deny, and therefore on that basis denies, the
14 allegation contained in paragraph 106 of Plaintiffs' Complaint.

15 107. Defendant is without sufficient information to either
16 admit or deny, and therefore on that basis denies, the
17 allegation contained in paragraph 107 of Plaintiffs' Complaint.

18 108. Defendant is without sufficient information to either
19 admit or deny, and therefore on that basis denies, the
20 allegation contained in paragraph 108 of Plaintiffs' Complaint.

21 109. Defendant is without sufficient information to either
22 admit or deny, and therefore on that basis denies, the
23 allegation contained in paragraph 109 of Plaintiffs' Complaint.

24 **PRAYER FOR RELIEF**

25 110. The prayer for relief, containing paragraphs A
26 through F, contains no allegations of fact requiring an answer.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint on file herein fails to state a claim against this Defendant upon which relief may be granted, as the county clerk has a ministerial duty to abide by the laws of the State of Nevada and has no authority to disregard the law.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' Complaint on file herein fails to state a claim against this Defendant upon which relief may be granted, as the county clerk has no discretion to issue marriage licenses other than in compliance with Nevada law.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' Complaint on file herein fails to state a claim against this Defendant upon which relief may be granted, as the county clerk acted in good faith in performing her duties in issuing marriage licenses only in conformity with Nevada law.

FOURTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over this matter.

FIFTH AFFIRMATIVE DEFENSE

Defendant is entitled to immunity because the rights that are alleged to be violated were not clearly established.

SIXTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs seek an award of attorney's fees

1 against this defendant, such an award must be precluded based
2 on the fact that the county clerks are mandated by law to
3 comply with existing Nevada law with respect to issuing
4 marriage licenses.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 To the extent Plaintiffs seek an award of attorney's fees
7 against this defendant, defendant has stated prior to filing
8 this answer that she does not intend to defend this lawsuit,
9 but agreed to be bound by the final order entered herein.

10 WHEREFORE, Defendants pray as follows:

11 1. That Plaintiffs take nothing by way of the Complaint
12 For Declaratory and Injunctive Relief; and,

13 2. That judgment be entered against Plaintiffs and in
14 favor of Defendants; and,

15 3. That the Court allow Defendant's costs and a
16 reasonable attorney's fee; and,

17 4. That the Court grant Defendants such additional or
18 alternate relief as it deems just and proper.

19 Dated this 18th day of May, 2012.

20 RICHARD A. GAMMICK
21 District Attorney

22 By /s/ HERBERT B. KAPLAN
23 Herbert B. Kaplan
24 Deputy District Attorney
25 P. O. Box 30083
26 Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR DEFENDANT
AMY HARVEY, WASHOE COUNTY CLERK

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I electronically filed a true and correct copy of the foregoing ANSWER OF AMY HARVEY, WASHOE COUNTY CLERK and which was electronically mailed to the following:

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dca@albrightstoddard.com, cgrey@albrightstoddard.com

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6 I further certify that I deposited for mailing in the U. S.
7 Mails, with postage fully prepaid, a true and correct copy of
8 the foregoing in an envelope addressed to the following:
9

10 Craig G. Taylor, Esq.
11 Belnap Stewart Taylor & Morris PLLC
12 12550 W. Explorer Drive, Suite 100
Boise, ID 83713

13
14 Dated this 18th day of May, 2012.

15
16 /s/ MICHELLE FOSTER
17 MICHELLE FOSTER
18
19
20
21
22
23
24
25
26

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District Attorney
CIVIL DIVISION
State Bar No. 001565
By: **MICHAEL L. FOLEY**
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Diana Alba, Clark County Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BEVERLY SEVCIK and MARY
BARANOVICH; ANTIOCO CARRILLO and
THEODORE SMALL; KAREN GOODY and
KAREN VIBE; FLETCHER WHITWELL and
GREG FLAMER; MIKYLA MILLER and
KATRINA MILLER; ADELE TERRANOVA
and TARA NEWBERRY; CAREN
CAFFERATA-JENKINS and FARRELL
CAFFERATA-JENKINS; and MEGAN LANZ
and SARA GEIGER,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as
Governor of the State of Nevada; DIANA ALBA,
in her official capacity as Clerk for Clark County;
AMY HARVEY, in her official capacity as Clerk
for Washoe County; and ALAN GLOVER, in his
official capacity as Clerk-Recorder for Carson
City,

Defendants.

Case No: 2:12-cv-00578-RLH-PAL

ANSWER OF DEFENDANT DIANA ALBA

COMES NOW, Defendant, Diana Alba, Clark County Clerk, through her attorney
STEVEN B. WOLFSON, District Attorney, by MICHAEL L. FOLEY, Deputy District
Attorney, and in answer to Plaintiffs' Complaint on file herein, admits, denies and alleges as
follows:

1 1. This Answering Defendant admits the allegations contained in Paragraph 22.

2 2. This Answering Defendant lacks sufficient information to fully respond to the
3 factual allegations contained in Paragraphs 1 through 13, 18, 20, 23 through 32, 34, 35, 38
4 through 85, 87, 90, 97, 99 through 105 and 109 and therefore deny each and every allegation
5 contained therein.

6 3. Answering Paragraph 14, 15 and 16 of Plaintiffs' Complaint, this Answering
7 Defendant admits that the County Clerks in Nevada issue marriage licenses, solemnize
8 marriages and keep some marriage records only to the extent that the Clerks are authorized
9 to perform those functions by the State. This Answering Defendant denies each and every
10 other allegation contained therein.

11 4. This Answering Defendant denies all factual allegations contained in
12 Paragraphs 17, 19, 21, 88, 89, 91 through 96, 98, 107 and 108.

13 5. Answering Paragraphs 33, 36 and 37 of Plaintiffs' Complaint, the statutes and
14 constitutional provisions speak for themselves. To the extent the Plaintiffs are alleging in
15 any paragraph that the Clerk violated a statute or constitutional provision, this Answering
16 Defendant denies such allegations.

17 6. Answering Paragraph 86 of Plaintiffs' Complaint, this Answering Defendant
18 realleges its answers to Paragraphs 1 through 85 and incorporate them by reference.

19 7. Answering Paragraph 106, this Answering Defendant realleges its answers to
20 Paragraphs 1 through 105 and incorporate them by reference.

21

22

23

24

25

26

27 ///

28 ///

AFFIRMATIVE DEFENSES

First Affirmative Defense

This Court lacks subject matter jurisdiction.

Second Affirmative Defense

This Court lacks Article III jurisdiction as between the Clerk and the Plaintiffs as there is no genuine case or controversy.

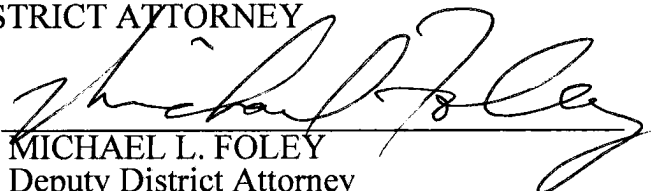
Third Affirmative Defense

The Clerks are unnecessary parties to this action and should be dismissed under Rules 19, 20 and 21.

WHEREFORE, Defendant prays that the Plaintiffs take nothing by way of the Complaint.

DATED this 18th day of May, 2012.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: 

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///

///

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Clark County District Attorney and that on this 18th day of May, 2012, I served a true and correct copy of the foregoing **Answer of Defendant Diana Alba** through CM/ECF Electronic Filing system of the United States District Court for the District of Nevada (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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22 *Attorneys for Plaintiffs*

23 **UNITED STATES DISTRICT COURT**

24 **DISTRICT OF NEVADA**

25 BEVERLY SEVCIK and MARY
26 BARANOVICH; ANTIOCO CARRILLO
27 and THEODORE SMALL; KAREN
GOODY and KAREN VIBE; FLETCHER
28 WHITWELL and GREG FLAMER;
MIKYLA MILLER and KATRINA

No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

MILLER; ADELE TERRANOVA and
TARA NEWBERRY; CAREN
CAFFERATA-JENKINS and FARRELL
CAFFERATA-JENKINS; and MEGAN
LANZ and SARA GEIGER,

Plaintiffs,

v.

BRIAN SANDOVAL, in his official capacity
as Governor of the State of Nevada; DIANA
ALBA, in her official capacity as Clerk for
Clark County; AMY HARVEY, in her
official capacity as Clerk for Washoe
County; and ALAN GLOVER, in his official
capacity as Clerk-Recorder for Carson City,

Defendants

Plaintiffs Beverly Sevcik and Mary Baranovich; Antioco Carrillo and Theodore Small;
Karen Goody and Karen Vibe; Fletcher Whitwell and Greg Flamer; Mikyla Miller and Katrina
Miller; Adele Terranova and Tara Newberry; Caren Cafferata-Jenkins and Farrell Cafferata-
Jenkins; Megan Lanz and Sara Geiger, by and through their attorneys, file this Complaint against
Defendants, Brian Sandoval, Diana Alba, Amy Harvey, and Alan Glover, and allege as follows:

INTRODUCTION

1. Plaintiffs are eight loving, committed same-sex couples. They bring this action, pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief for the violation of their rights under the Fourteenth Amendment to the United States Constitution caused by their being denied the right to marry in the State of Nevada (the “State”). The State has instead relegated these couples to the inferior and novel status of registered domestic partnerships, and has disrespected the marriages some of them have entered in other jurisdictions, because they are lesbians and gay men in same-sex relationships.

2. Civil marriage plays a unique role in society as the universally recognized and celebrated hallmark of a couple’s commitment to build family life together. Plaintiffs have formed committed, enduring family bonds equally worthy of the respect afforded by the State to

1 different-sex couples through access to the status of marriage. Yet the State, without any
2 adequate justification, has deprived lesbian and gay Nevadans of the right to marry, or to have
3 their valid marriages from other jurisdictions recognized as marriages, based solely on their
4 sexual orientation and sex. This discrimination (referred to herein as the State’s “marriage ban”)
5 is enshrined both in Nevada statutes, and in article 1, section 21 of the Nevada Constitution,
6 which limits marriage solely to couples composed of “a male and female.”

7 3. After barring lesbians and gay men from civil marriage, the State created an
8 alternative status that they are allowed to enter that, with only a few exceptions, provides “the
9 same rights, protections and benefits” and “the same responsibilities, obligations and duties . . . as
10 are granted to and imposed upon spouses.” Nev. Rev. Stat. § 122A.200(1)(a). The State’s
11 selective bar to access to marriage—despite a public policy recognizing that same-sex couples
12 merit the same family, parenting, and relationship rights and responsibilities as different-sex
13 spouses—serves no purpose other than to impose a stigmatizing government label of inferiority
14 upon lesbians and gay men and their relationships and denies Plaintiffs equal treatment based on
15 their sexual orientation and sex.

16 4. This exclusion from marriage and relegation to a second-class status inflicts
17 serious and irreparable harms upon Plaintiffs and other same-sex couples and their children.
18 Plaintiffs seek equal access to the institution of marriage as the only means to fully eliminate the
19 myriad harms inflicted by the State on them and other same-sex couples.

20 **PARTIES**

21 **A. Plaintiffs**

22 5. Plaintiffs Beverly Sevcik and Mary Baranovich are lesbian individuals who are a
23 committed same-sex couple residing in Carson City, Nevada.

24 6. Plaintiffs Antioco Carrillo and Theodore Small are gay male individuals who are a
25 committed same-sex couple residing in Las Vegas, Nevada.

26 7. Plaintiffs Karen Goody and Karen Vibe are lesbian individuals who are a
27 committed same-sex couple residing in Reno, Nevada.
28

1 8. Plaintiffs Fletcher Whitwell and Greg Flamer are gay male individuals who are a
2 committed same-sex couple residing in Las Vegas, Nevada.

3 9. Plaintiffs Mikyla Miller and Katrina Miller are lesbian individuals who are a
4 committed same-sex couple residing in Reno, Nevada.

5 10. Plaintiffs Adele Terranova and Tara Newberry are lesbian individuals who are a
6 committed same-sex couple residing in Las Vegas, Nevada.

7 11. Plaintiffs Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins (full name, Janet
8 Farrell Cafferata-Jenkins) are lesbian individuals who are a committed same-sex couple residing
9 in Carson City, Nevada.

10 12. Plaintiffs Megan Lanz and Sara Geiger are lesbian individuals who are a
11 committed same-sex couple residing in Las Vegas, Nevada.

12 **B. Defendants**

13 13. Defendant Brian Sandoval is sued in his official capacity as Governor of the State
14 of Nevada. As decreed by article 5, sections 1 and 7 of the Nevada Constitution, Governor
15 Sandoval is vested with the executive power of the State and has the duty to see that the State's
16 laws are faithfully executed, including the state's marriage ban. Governor Sandoval is a person
17 within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times
18 relevant to this complaint.

19 14. Diana Alba is sued in her official capacity as the County Clerk and Commissioner
20 of Civil Marriages for Clark County, Nevada. Ms. Alba's duties include issuing marriage
21 licenses, solemnizing marriages, certifying other persons who may solemnize a marriage in the
22 county, and maintaining records relating to marriage licenses. Ms. Alba must ensure compliance
23 through all of these functions with relevant Nevada laws, including those that exclude same-sex
24 couples from marriage. Ms. Alba is a person within the meaning of 42 U.S.C. § 1983 and was
25 acting under color of state law at all times relevant to this complaint.

26 15. Amy Harvey is sued in her official capacity as the County Clerk and
27 Commissioner of Civil Marriages for Washoe County, Nevada. Ms. Harvey's duties include
28 issuing marriage licenses, solemnizing marriages, certifying other persons who may solemnize a

1 marriage in the county, and maintaining records relating to marriage licenses. Ms. Harvey must
2 ensure compliance through all of these functions with relevant Nevada laws, including those that
3 exclude same-sex couples from marriage. Ms. Harvey is a person within the meaning of 42
4 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

5 16. Alan Glover is sued in his official capacity as the Clerk-Recorder for Carson City,
6 Nevada. As the Clerk-Recorder, Mr. Glover oversees the operations of the city's Marriage
7 Bureau and his duties include issuing marriage licenses, certifying other persons who may
8 solemnize a marriage in the city, and maintaining records relating to marriage licenses. Mr.
9 Glover must ensure compliance through all of these functions with relevant Nevada laws,
10 including those that exclude same-sex couples from marriage. Mr. Glover is a person within the
11 meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this
12 complaint.

13 17. Each of the Defendants, and those subject to their supervision, direction, and
14 control, intentionally performed, participated in, aided and/or abetted in some manner the acts
15 alleged herein, proximately caused the harm alleged herein, and will continue to injure Plaintiffs
16 irreparably if not enjoined.

17 **JURISDICTION AND VENUE**

18 18. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the
19 deprivation under color of state law of rights secured by the United States Constitution.

20 19. This Court has original jurisdiction over the subject matter of this action pursuant
21 to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution
22 and laws of the United States.

23 20. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all Defendants
24 reside within the District and State of Nevada, and a substantial part of the events that gave rise to
25 Plaintiffs' claims took place within the District of Nevada.

26 21. This Court has the authority to enter a declaratory judgment and to provide
27 preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of
28 Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

22. This Court has personal jurisdiction over Defendants because they are domiciled in the State.

STATEMENT OF FACTS

23. Plaintiffs are residents of Nevada who experience the same joys and shoulder the same challenges of family life as their heterosexual neighbors, co-workers, and other community members who freely may marry. Plaintiffs are productive, contributing citizens who support their families and nurture their children, but must do so without the same dignity and respect afforded by the State to other families through access to the universally celebrated status of marriage. Instead, Plaintiffs are consigned to registered domestic partnership, which lacks the same reputation, standing in the community, and traditions and prestige as marriage. The State's exclusion of Plaintiffs from marriage, relegating them to the second-class status of registered domestic partnership, subjects Plaintiffs to legal vulnerability and related stress, while depriving them and their children of equal dignity and security. Through its constitutional and statutory marriage bans, and its relegation of same-sex couples to the lesser registered domestic partnership status, the State sends a purposeful message that the State views lesbians and gay men and their children as second-class citizens who are undeserving of the legal sanction, respect, and support that different-sex spouses and their families enjoy.

A. Plaintiffs' Attempts to Marry and Marriages in Other Jurisdictions.

24. But for the fact that they are of the same-sex, each unmarried Plaintiff couple is legally qualified to marry under the laws of Nevada and wishes to marry in the State. Each Plaintiff is over the requisite age of 18, no Plaintiff is precluded from marriage as a result of being closely related to his or her life partner, and no Plaintiff is recognized by the State as having another spouse. Nev. Rev. Stat. § 122.020(1).

25. On April 3, 2012, Beverly Sevcik and Mary Baranovich appeared in person at the Carson City Marriage Bureau in Carson City, Nevada to seek a marriage license. They both were prepared to present valid forms of identification to prove their names and ages, pay the required \$75 fee, and complete a marriage application. When the couple requested a marriage license, the employee working behind the counter stated "You have to go to the Secretary of State's office to

1 register as domestic partners, we don't do that here." When Beverly clarified that they had
2 already registered as domestic partners in Nevada and wanted to get a marriage license, the
3 employee refused their request. Beverly and Mary accordingly were denied the opportunity to
4 obtain a marriage license by an employee of Defendant Glover based solely on Nevada's
5 prohibition on marriage for same-sex couples and Plaintiffs' respective sex and sexual
6 orientation.

7 26. On April 6, 2012, Antioco Carrillo and Theodore Small ("Theo") appeared in
8 person at the Marriage Bureau for the Office of the Clerk for Clark County in Las Vegas, Nevada
9 to seek a marriage license. They both were prepared to present valid forms of identification to
10 prove their names and ages, pay the required \$60 fee, and complete a marriage application. As
11 they approached the counter to apply for a marriage license they saw a sign indicating that
12 applicants must be a "bride and groom only." Antioco and Theodore asked an agent or employee
13 of Defendant Alba for a marriage license application, and she responded that the couple would
14 have to contact the Secretary of State to register as domestic partners. When Antioco and Theo
15 indicated that they had already registered as domestic partners and wished to marry, she said they
16 could not because the state does not issue marriage licenses for same-sex couples. Defendant
17 Alba's agent or employee denied the couple's request for a marriage license, based solely on
18 Nevada's prohibition on marriage for same-sex couples and Plaintiffs' respective sex and sexual
19 orientation.

20 27. On April 1, 2012, Karen Goody ("Karen G.") and Karen Vibe ("Karen V.")
21 appeared in person at the Washoe County Marriage Bureau in Reno, Nevada to seek a marriage
22 license. They both were prepared to present valid forms of identification to prove their names
23 and ages, pay the required \$60 fee, and complete a marriage application. They were barred,
24 however, from even going through security to enter the Marriage Bureau. When they entered the
25 building a security officer asked about the purpose of their visit, and the couple said that they
26 wanted to apply for a marriage license for the two of them to marry one another. The security
27 officer then asked them "Do you have a man with you?" When Karen V. said no and explained
28 that she and Karen G. wished to obtain a marriage license, the security guard told them that they

1 could not. Karen V. asked if they could at least fill out the marriage license application, and an
2 employee of Defendant Harvey who was standing behind the Marriage Bureau counter responded
3 “Two women can’t apply.” The security officer added that it has to “be between a man and a
4 woman.” The employee behind the counter then indicated that the couple’s option was to “apply
5 for a civil partnership with the Secretary of State.” Karen G. and Karen V. accordingly were
6 denied the opportunity to obtain a marriage license by an employee of Defendant Harvey based
7 solely on Nevada’s prohibition on marriage for same-sex couples and Plaintiffs’ respective sex
8 and sexual orientation.

9 28. On April 4, 2012, Fletcher Whitwell and Greg Flamer appeared in person at the
10 Marriage Bureau for the Office of the Clerk for Clark County in Las Vegas, Nevada to seek a
11 marriage license. They both were prepared to present valid forms of identification to prove their
12 names and ages, pay the required \$60 fee, and complete a marriage application. When the couple
13 took their application for a marriage license to the clerk, who is an agent or employee of
14 Defendant Alba, they were directed to the Secretary of State’s website to register as domestic
15 partners. When Greg clarified that they were there to get a marriage license, the clerk denied
16 their request, based solely on Nevada’s prohibition on marriage for same-sex couples and
17 Plaintiffs’ respective sex and sexual orientation.

18 29. Mikyla Miller and Katrina Miller were validly married in another jurisdiction and
19 seek through this suit to end the State’s current denial of recognition of their marriage on the
20 ground that it is a marriage entered by two individuals of the same sex.

21 30. Adele Terranova and Tara Newberry were validly married in another jurisdiction
22 and seek through this suit to end the State’s current denial of recognition of their marriage on the
23 ground that it is a marriage entered by two individuals of the same sex.

24 31. Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins were validly married in
25 another jurisdiction and seek through this suit to end the State’s current denial of recognition of
26 their marriage on the ground that it is a marriage entered by two individuals of the same sex.
27
28

32. Megan Lanz and Sara Geiger were validly married in another jurisdiction and seek through this suit to end the State's current denial of recognition of their marriage on the ground that it is a marriage entered by two individuals of the same sex.

B. Nevada's Exclusion of Same-Sex Couples from Marriage and Consignment of Same-Sex Couples to an Inferior Registered Domestic Partnership Status.

33. Nevada Revised Statutes § 122.020(1) restricts marriage to a male and a female couple.

34. In 2000, a group called the Coalition for the Protection of Marriage collected the number of signatures required to place a proposed amendment to Nevada's Constitution on the general election ballot that year. The proposed amendment provided that "Only a marriage between a male and female person shall be recognized and given effect in this state." The voters approved the measure biennially (during the 2000 and 2002 general elections), as required to amend the state constitution, pursuant to Nev. Const. art. 1, § 21.

35. Many of the campaign messages used to persuade voters to amend the constitution relied on false, stigmatizing messages that same-sex couples are inferior to different-sex couples, and that both the institution of marriage and children need to be protected from same-sex couples. One 2002 flyer, for example, urged voters to adopt the constitutional amendment by saying "Let's not experiment with Nevada's children." Other campaign material falsely suggested that allowing same-sex couples to marry would lead to schools teaching "explicit homosexual sex acts" and "promot[ing] homosexuality."

36. In 2009, the Nevada state legislature enacted a law entitled the "Nevada Domestic Partnership Act" to allow eligible same-sex and different-sex couples who have "chosen to share one another's lives in an intimate and committed relationship of mutual caring" to register with the state as domestic partners. Nev. Rev. Stat. §§ 122A.100, 122A.010 et seq. Couples are eligible to register if they share a common residence, are not married or in a domestic partnership with a different person, are not related by blood in a way that would prevent them from being married to each other in the State, are at least 18 years of age, and are competent to consent to the domestic partnership. Nev. Rev. Stat. § 122A.100. The law took effect on October 1, 2009.

1 37. Pursuant to Nevada Revised Statutes § 122A.200(1)(a), and with only a few
2 exceptions described below, registered domestic partners “have the same rights, protections and
3 benefits, and are subject to the same responsibilities, obligations and duties under law, whether
4 derived from statutes, administrative regulations, court rules, government policies, common law
5 or any other provisions or sources of law, as are granted to and imposed upon spouses.” That
6 statute also provides that former domestic partners “have the same rights, protections and
7 benefits, and are subject to the same responsibilities, obligations and duties under law, whether
8 derived from statutes, administrative regulations, court rules, government policies, common law
9 or any other provisions or sources of law, as are granted to and imposed upon former spouses,”
10 and that a surviving domestic partner “has the same rights, protections and benefits, and is subject
11 to the same responsibilities, obligations and duties under law, whether derived from statutes,
12 administrative regulations, court rules, government policies, common law or any other provisions
13 or sources of law, as are granted to and imposed upon a widow or a widower.” Registered
14 domestic partners enjoy rights and responsibilities related to, for example, pre-marital
15 agreements, Nev. Rev. Stat. § 123A.010 et seq.; postnuptial agreements, Nev. Rev. Stat. §
16 123.070 et seq.; community property and community debt, Nev. Rev. Stat. § 123.220 et seq.;
17 dissolution of the relationship in family court, Nev. Rev. Stat. § 125.010 et seq.; and spousal
18 support, Nev. Rev. Stat. § 125.150 et seq.

19 38. The law expressly provides that the rights and responsibilities of registered
20 domestic partners “with respect to a child of either of them are the same as those of spouses.”
21 Nev. Rev. Stat. § 122A.200(1)(d). The State thus treats same-sex couples who are registered
22 domestic partners as equal to different-sex spouses for the full spectrum of parenting obligations
23 and protections. For example, as is true for different-sex spouses, both members of a registered
24 domestic partnership are presumed parents of a child born to a domestic partner during the
25 domestic partnership, Nev. Rev. Stat. § 126.051. The State also treats registered domestic
26 partners in the same manner as spouses with respect to allocation of child custody and visitation,
27 Nev. Rev. Stat. § 125.450 et seq. and Nev. Rev. Stat. § 125C.010 et seq.; child support, Nev. Rev.
28

Stat. § 125B.020 et seq.; and access to joint and step-parent adoption, Nev. Rev. Stat. § 127.010 et seq.

39. Although registered domestic partnership and civil marriage entail substantially similar rights and responsibilities, notable differences remain between the two statuses. Because of these differences, coupled with the stigma of exclusion and of being branded by government as inferior, same-sex couples and their children suffer both tangible and dignitary harms, all of which are of constitutional dimension.

40. The status of marriage has unique social significance and recognition. Without access to the familiar language and legal label of marriage, Plaintiffs are unable instantly or adequately to communicate to others the depth and permanence of their commitment, or to obtain respect for that commitment as others do simply by invoking their married status.

41. Plaintiffs' exclusion from marriage frustrates their life goals and dreams, their personal happiness, and their self-determination. For example, Plaintiffs Antioco Carrillo and Theo Small have family and friends eagerly awaiting the day that they can attend the couple's wedding. Antioco's family sees marriage as the honorable way to respect one's life partner and the couple's intentions for the future. He is disheartened that the law bars him from the state-sanctioned ceremony and ritual that means so much to his loved ones. As Plaintiff Beverly Sevcik said of her life partner Mary Baranovich, "We've been together for almost 41 years. We've seen each other through thick and thin, in sickness and in health. After four decades of sharing a life together, all we want is to commemorate our love for each other in the same way as other couples, through marriage."

42. The substantive and dignitary inequities imposed on committed same-sex couples include particular harms for same-sex couples' children, who are equally deserving of the stability, permanence, and legitimacy that children of different-sex spouses enjoy. Civil marriage affords official sanctuary to the family unit, offering parents and children a familiar and public means of demonstrating to third parties a legal basis for the parent-child relationship. By denying same-sex couples marriage, the State reinforces the view held by some that the family bonds that tie same-sex parents and their children are less consequential, enduring, and meaningful than

1 those of different-sex parents and their children. Same-sex parents and their children thus are
2 deprived of the family security that inheres in a ready and familiar method of communicating to
3 others the significance and permanence of their familial relationships. Same-sex couples and
4 their children accordingly must live with the vulnerability and stress inflicted by the ever-present
5 possibility that others may question their familial relationship—in social, educational, and
6 medical settings and in moments of crisis—in a way that spouses can avoid by simple reference
7 to being married.

8 43. Children from a young age understand that marriage signifies an enduring family
9 unit, and likewise understand when the State has deemed a class of families as less worthy than
10 other families, undeserving of marriage, and not entitled to the same societal recognition and
11 support as other families. The State has no adequate interest to justify marking the children of
12 same-sex couples, including the children of Plaintiffs Fletcher Whitwell and Greg Flamer, Adele
13 Terranova and Tara Newberry, Caren and Farrell Cafferata-Jenkins, and Megan Lanz and Sara
14 Geiger, and the expected daughter of Mikyla and Katrina Miller, with a badge of inferiority that
15 invites disrespect in school, on the playground, and in every other sphere of their lives.

16 44. Couples who marry in Nevada have their marriages solemnized pursuant to state
17 law, Nev. Rev. Stat. § 122.010(1), but the law provides no state-approved mechanism to
18 solemnize a registered domestic partnership, Nev. Rev. Stat. § 122A.110. By solemnizing only
19 marriages and not registered domestic partnerships, the State sends a message that marital
20 commitments are preferred and are more significant.

21 45. The State refuses same-sex couples the same opportunity to celebrate their
22 marriage with official State sanction, which can negatively affect how their family members and
23 others view the couples' relationship. Same-sex couples instead must register as domestic
24 partners by filing a notarized form with the Secretary of State, Nev. Rev. Stat. § 122A.100, a
25 process not unlike that required to license a business, Nev. Rev. Stat. § 76.100; to apply for
26 appointment as a notary, Nev. Rev. Stat. § 240.010; or to register as an athlete's agent, Nev. Rev.
27 Stat. § 398.452. By treating same-sex couples as unworthy of state-sanctioned solemnization, the
28

1 State denies them the dignity, respect, and stature afforded to different-sex couples who can
2 marry.

3 46. Nevada law also fails to afford registered domestic partners the same streamlined
4 process for one partner to adopt the other's surname, an important rite for many couples to signify
5 to themselves, their children, and the community that they are forming a family. Unlike different-
6 sex spouses, who can effect a name change through the federal Social Security Administration
7 and Nevada Department of Motor Vehicles with a marriage certificate, registered domestic
8 partners instead must obtain a court-ordered name change. This requires same-sex couples who
9 wish to adopt a family name at the time that they enter into a legal relationship to file a verified
10 petition in state court certifying that they are neither a felon nor attempting to defraud creditors,
11 and to publish notice of the requested name change in a newspaper. Nev. Rev. Stat. §§ 41.270,
12 41.280. This process not only requires time and expense, but also imposes the demeaning burden
13 of publicly proving to others that one is not engaging in criminal or fraudulent activity before the
14 name change can be granted, which is not required of different-sex spouses.

15 47. The government is a powerful teacher of discrimination to others. Bearing the
16 imprimatur of the government, Nevada's statutory and constitutional marriage ban, which
17 relegates same-sex couples and their children to the unfamiliar and lesser status of domestic
18 partnership, not only proliferates confusion regarding the legal rights of committed same-sex
19 couples, but also causes others to follow the government's example in discriminating against
20 them. Many private entities defer to the State's bestowment of marital status in defining "family"
21 for purposes of an array of important benefits, often resulting in the exclusion of same-sex
22 couples and their children from important safety nets such as private employer-provided health
23 insurance for family members. The State also encourages disrespect of committed same-sex
24 couples and their children by others in workplaces, schools, businesses, and other major arenas of
25 life, in ways that would be less likely to occur and more readily corrected if marriage were
26 available to same-sex couples.

27 48. Plaintiffs do not challenge the inclusion of different-sex partners in the State's
28 domestic partnership law. Different-sex couples, however, have two options for protecting their

1 families: marriage, which communicates a status with deep social significance that is readily
2 understood and respected, and the novel alternative status of registered domestic partnership. In
3 contrast, committed same-sex couples are denied that option and relegated to the latter, less-
4 respected status.

5 49. Additionally, marriages entered by different-sex spouses in other jurisdictions
6 regularly are honored as marriages by the State, without any additional steps required. The State
7 refuses, however, to recognize marriages entered by same-sex spouses in other jurisdictions as
8 marriages. Instead, a same-sex couple's marriage may only be recognized as a registered
9 domestic partnership and only if the same-sex couple pays the fee required of couples registering
10 as domestic partners, a step that no different-sex spouses need undertake. Nev. Rev. Stat. §
11 122A.500.

12 **C. Plaintiffs Are Similarly Situated To Different-Sex Nevada Couples In All**
13 **Material Respects And Are Injured By The State's Denial of Marriage**
Equality.

14 50. Plaintiffs are loving and devoted same-sex couples who have pledged their
15 commitment to love and to cherish one another, but the State denies them the ability to make the
16 same state-sanctioned commitment to each other as spouses do through civil marriage.

17 ***Plaintiffs Beverly Sevcik and Mary Baranovich***

18 51. Plaintiffs Beverly Sevcik, age 73, and Mary Baranovich, age 76, are a lesbian
19 couple residing in Carson City, Nevada. They are proud grandmothers to their several
20 grandchildren and will celebrate their forty-first year together as a couple in October of this year.

21 52. Beverly and Mary did not dream when they began their relationship decades ago
22 that they might someday identify openly as a couple. When Beverly and Mary committed their
23 lives to each other on October 2, 1971 and bought rings to signify their relationship, they were
24 careful not to purchase matching rings for fear of having their relationship discovered. They
25 worried about facing discrimination commonly visited upon lesbians and gay men at that time,
26 such as harassment from their neighbors, being fired from their jobs, and potentially losing
27 Beverly's children—then ages eight, ten, and twelve—whom they were raising together.
28

1 53. Mary had always known that she was different from other women, but did not
2 learn that she was gay until she took an “abnormal psychology” college class in the mid-1950s.
3 Being gay was still understood as a mental illness at that time, and she was taught that it was
4 abnormal and unhealthy. She recalls vividly that when she began going to bars that quietly
5 catered to lesbians—one of the only places lesbians could associate with each other in the
6 1950s—police routinely would raid the facilities with their nightsticks drawn. Although Beverly
7 and Mary could not have imagined when they first fell in love that same-sex couples might
8 someday be permitted to marry, they have come to wonder why their decades of commitment
9 cannot earn them that honored status. Mary felt deeply hurt by messages from the campaign to
10 amend Nevada’s constitution that allowing same-sex couples to marry would hurt the marriages
11 of heterosexuals because she cannot understand how her lifelong commitment to Beverly harms
12 others.

13 54. Beverly and Mary go to all of their medical appointments together and often have
14 to confront the question of how to identify themselves on hospital and doctor’s office forms.
15 They are frustrated that not even four decades of family life together will allow them to check the
16 only box that feels fitting: “married.”

17 ***Plaintiffs Antioco Carrillo and Theodore Small***

18 55. Plaintiffs Antioco Carrillo, age 44, and Theo Small, age 43, are a gay male couple
19 residing in Las Vegas, Nevada. Antioco is the executive director of a non-profit organization that
20 provides support and advocacy for adults and children living with HIV/AIDS in southern Nevada.
21 Theo is a teacher and has worked in the same school district for nearly two decades. Theo was
22 recently nominated as a Classroom Superhero, as part of a project created by the National
23 Education Association that allows parents, students, and community members to show support to
24 educators. Antioco and Theo have known each other since the mid-1990s through mutual
25 community involvement. They have been in a loving, committed relationship for more than five
26 years and have registered as domestic partners in Nevada.

27 56. Antioco and Theo wish to marry because they love each other and are committed
28 to one another for life. Antioco knows that Theo is “the one” for him, because Antioco cannot

1 see himself with anyone else. For Theo, Antioco is the essential ingredient that allows Theo to be
2 his “best self.” Each knows that the other will always be there for him, no matter what happens.

3 57. In 2010, in the middle of a bank lobby, the two of them raised their right hands
4 before a notary public in order to complete a domestic partnership registration form, which they
5 filed with the Secretary of State. It was a quiet and sterile process. When friends asked why the
6 couple did not have a wedding-like ceremony to celebrate their registration, they explained that to
7 do so would, for them, feel inauthentic. They do not want something “like” a wedding; they want
8 a wedding. As Antioco puts it, he does not want the crumbs of a full life; he wants for them to
9 live a full life. They both long for the day when they can invite their family and friends to bear
10 witness to their love and commitment for each other in the same way that different-sex couples in
11 Nevada are able to do, through marriage.

12 ***Plaintiffs Karen Goody and Karen Vibe***

13 58. Plaintiffs Karen G., age 51, and Karen V., age 37, are a lesbian couple residing in
14 Reno, Nevada. Karen G. works as a sales agent for a medical supply company, and Karen V. is a
15 financial advisor. Karen V. also is a percussionist with the Reno Philharmonic Orchestra and
16 mentors youth through a philharmonic program called Discovery Music. Karen G. and Karen V.
17 have been in a loving, committed relationship since meeting during the summer of 2005. In
18 December of 2005, Karen V. asked Karen G. to marry her, and they have been engaged ever since.
19 They have not registered as domestic partners with the State because they do not want to enter into
20 a second-class status that brands their relationship as “less than” others. As Karen V. describes it,
21 when she proposed to Karen G., her question was “Will you marry me?” and not “Will you enter a
22 secondary status with me?”

23 59. Marriage has played a significant role in both women’s families. Karen G.’s
24 parents were married for 50 years before her father passed away, and Karen V.’s for more than 40
25 years. The couple anxiously await the day that they can have such a state-sanctioned wedding that
26 communicates to others the same depth of commitment as their parents’ marriages. Karen V. is so
27 proud of their relationship that she wants to “tell the world about it,” but is frustrated not to have
28 access to the language that readily expresses their lifelong commitment such as “spouse” or

1 “wife.” Without these terms, the couple struggles to explain their relationship to others, including
2 at the networking events they often attend for work. They frequently have to correct others’
3 confusion about whether they are business partners instead of life partners. They find the ongoing
4 need to explain their relationship stressful and belittling when the State allows others to describe
5 their relationships through one word instantly understood by others: marriage.

6 ***Plaintiffs Fletcher Whitwell and Greg Flamer***

7 60. Fletcher Whitwell, age 37, and Greg Flamer, age 39, are a gay male couple
8 residing in Las Vegas, Nevada. Fletcher and Greg have been in a loving, committed relationship
9 for 14 years and have registered as domestic partners in Nevada. Both share a passion for
10 advancing child welfare. Greg helps find homes for abused and neglected children in his position
11 as a licensing supervisor with the Clark County Department of Family Services. Fletcher, an
12 advertising executive, serves on the board of a non-profit literacy program that distributes books
13 to schools in southern Nevada. Fletcher also is an active member of a foundation engaged in an
14 anti-bullying campaign, which was launched in 2010 after a surge in reported suicides among gay
15 teens. Fletcher and Greg met in 1998 and instantly connected because of their mutual interest in
16 sports, travel, music, and, most importantly, family and friends. The couple moved to Las Vegas
17 in 2006 so that Fletcher could pursue his current job.

18 61. In 2011, Fletcher and Greg welcomed a baby girl, into their
19 family through adoption. Fletcher and Greg share the typical responsibilities and joys of
20 parenting a young child: they feed, bathe, and clothe her; they teach her to walk and to recognize
21 different shapes and colors; they play peek-a-boo with her and take her to visit her grandparents;
22 they care for her when she’s sick; they read her bedtime stories and rock her to sleep at night.
23 Fletcher and Greg wish to marry for their daughter’s sake as well as for their own. Fletcher and
24 Greg worry that, as grows older, she will be deprived of a sense of normalcy and may
25 feel socially outcast because she will absorb the message she receives from her government that
26 her parents are not worthy of marriage. They hope that, one day, can walk down the aisle
27 at their wedding as their flower girl and that she will understand that the love and commitment
28

1 her parents feel for one another—and for their family—is as great as that felt by other couples
2 who currently may marry.

3 ***Plaintiffs Mikyla Miller and Katrina Miller***

4 62. Plaintiffs Mikyla Miller, age 29, and Katrina Miller (“Katie”), age 27, are a lesbian
5 couple residing in Reno, Nevada. Mikyla is a recent law school graduate who works part-time
6 with a non-profit agency serving low-income clients and part-time at a restaurant to make ends
7 meet. Katie is working on a Ph.D. in English at the University of Nevada, Reno. Shortly after
8 they began dating in 2004, they each knew that the other was “the one,” and have been a
9 committed, loving couple ever since. They married in California on June 17, 2008 and have
10 registered as domestic partners in both Nevada and California. Mikyla adopted Katie’s surname
11 and is carrying the couple’s first child, which is due in July. As part of a tradition in Katie’s
12 family, their daughter will be named making her the sixth generation in
13 Katie’s family to adopt the middle name “Love.”

14 63. While living in California, Katie and Mikyla each proposed to the other and
15 planned a commitment ceremony. Just two days before the ceremony, the California Supreme
16 Court ruled that same-sex couples must be permitted to marry. Although that decision was not
17 yet in effect, Katie and Mikyla were overjoyed that their ceremony could feel more “real” in light
18 of the Court’s ruling, and found that, because people understood it as such, it was an important
19 rite of passage that drew their families closer together. Katie’s mom planned the ceremony, and
20 all who attended took a vow during it to support the couple’s relationship. Mikyla’s mother
21 began to treat Katie differently after the ceremony, introducing her to others as a daughter-in-law,
22 instead of as Mikyla’s “friend.”

23 64. When the couple moved to Nevada, their family and friends were shocked to learn
24 that their marriage is not recognized there and that they, in effect, have been “unmarried.” Since
25 then, Mikyla and Katie repeatedly have encountered confusion from others about their
26 relationship. When they looked for their first rental home, the landlord told them that she
27 preferred to rent to a married couple, and they had to explain that they would offer the same
28 stability as a married couple. When Mikyla went to the hospital in February for chest pain, with

1 Katie arriving separately from another location, Mikyla asked the receptionist to let Katie join her
2 when Katie arrived. The receptionist refused, saying that only patients could be allowed in the
3 emergency room treatment area, even though Mikyla could see that a heterosexual spouse of a
4 patient had been admitted to the same area. When Katie arrived, the receptionist refused to let
5 Katie join Mikyla, and Mikyla finally had to seek out her doctor for help, who then had to escort
6 Katie back to Mikyla.

7 65. Based on these experiences, Mikyla and Katie feel anxiety about how the State's
8 refusal to recognize them as married encourages disrespect from others, and worry particularly
9 about how this will affect recognition of their legal relationship to their baby. When the child is
10 born, Mikyla and Katie would like to insure her through Katie's health insurance plan, which
11 provides far superior coverage to Mikyla's. Katie's insurance company, however, advised
12 Mikyla that, unlike a marriage, a domestic partnership is not sufficient for their daughter's birth to
13 be considered a qualifying event, and Katie may only insure her after an adoption. Katie and
14 Mikyla will spend thousands of dollars in attorney and court fees for Katie to adopt their child—
15 money they could otherwise set aside for their daughter's education.

16 ***Plaintiffs Adele Terranova and Tara Newberry***

17 66. Plaintiffs Adele Terranova, age 31, and Tara Newberry, age 37, reside in Las
18 Vegas, Nevada. Tara, formerly a police officer, is now an attorney at a small law firm, and Adele
19 works as the firm's office manager. Their lives revolve around their two children,

20 age two, and three months old, and they are actively involved in a
21 children's play group for same-sex couples' families called "We Are Family." Tara also
22 volunteers to help youth in a juvenile offender diversion program.

23 67. Adele and Tara have been a loving, committed couple since 2005. They married
24 in California in 2008, and are registered domestic partners in both California and Nevada. They
25 have encountered numerous examples of disrespect for their domestic partnership, including
26 being denied marriage-related discounts by their insurance company for Tara's health coverage.
27 They feel a particular sense of urgency about having their marriage recognized because of the
28 confusion their domestic partnership has caused in circumstances involving their children. For

example, although registered domestic partners are presumed the parents of children born into the relationship, when [redacted] was born a hospital social worker insisted that “the dad” had to fill out the declaration of paternity and refused to let both parents be listed. [redacted] birth certificate was returned from the State with a blank for the second parent’s name, and it took a year-and-a-half to get a corrected certificate listing Tara as the second parent. During this process, Tara had to complete another declaration of paternity form, though she had to alter it by crossing out various provisions to make references to her in it accurate. The State returned the form, insisting that it could not be processed as altered, and Tara had to struggle to get the State to accept the form as modified, pointing out that to do otherwise would require Tara to perjure herself on the form. Adele and Tara also are distressed to find themselves answering questions that generally are never asked of different-sex spouses. For example, when the couple took their daughter [redacted] to the emergency room in February, hospital staff asked “which one is the real mom?” If they were able to inform hospital staff that they are married, their family structure and relationship to their children would not be as subject to question and disrespect.

Plaintiffs Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins

68. Caren Cafferata-Jenkins, age 53, and J. Farrell Cafferata-Jenkins, age 48, are a lesbian couple residing in Carson City, Nevada. Caren and Farrell have been in a loving, committed relationship for 15 years and have registered as domestic partners in Nevada. Caren is the Executive Director of the Nevada Ethics Commission and Farrell is the President and Founder of the Nevada Academy of Sign Language. Farrell’s family has deep ties to Nevada; her grandmother was the first woman in Nevada elected to federal office. Caren and Farrell have two boys, [redacted] and [redacted] ages 8 and 7, respectively. When [redacted] was diagnosed with autism at age 2, Farrell learned sign language so that they could better communicate. The couple now serves on the board of a statewide advocacy and resource center for those who are deaf and hard of hearing.

69. Caren and Farrell met 15 years ago at a potluck, at which Caren had arrived on a motorcycle. When Caren took off her helmet, and Farrell locked eyes with her, there was an instant “zing.” Caren then hired Farrell to help with landscaping work and insists that Farrell

1 took longer than necessary pulling weeds so the two could spend more time together. They have
2 been together ever since. In 2002, they held a commitment ceremony in Reno. Because they
3 could not marry, they had to explain on their invitations that the ceremony was instead a *b'rit*
4 *ahu'vah*, which is Hebrew for "covenant of love." They also traveled to California in 2008 to
5 marry.

6 70. Caren and Farrell know first-hand how marriage can change the way they and
7 others view their relationship—but they also know first-hand how hurtful it can feel for that
8 marriage to be disregarded. After returning to their home state of Nevada, they felt as though the
9 State "unmarried" them and that they had to start over from scratch. Although they registered as
10 domestic partners in Nevada, it felt like consigning themselves to bronze, when they previously
11 had a taste of gold. Marriage has always been important to the couple: both Caren and Farrell's
12 parents have been married for more than 50 years, and Caren and Farrell yearn for the opportunity
13 to follow in their parents' footsteps and celebrate a golden anniversary. Recognition of their
14 marriage would also be important for their children. Caren and Farrell experience difficulty in
15 identifying to others that both of them are parents to their children, because school forms often
16 only envision different-sex married parents.

17 ***Plaintiffs Megan Lanz and Sara Geiger***

18 71. Sara Geiger, age 27, and Megan Lanz, age 31, are a lesbian couple residing in Las
19 Vegas, Nevada. The couple met in 2005 through their mutual passion for music. At the time,
20 both were pursuing music degrees at the University of Nevada at Las Vegas. Megan now serves
21 on the faculty at the College of Southern Nevada and maintains a flute studio. Sara is working
22 toward her master's degree in music performance. Sara proposed to Megan with the engagement
23 ring that Sara's father had given to her mother and the couple married in Vancouver, Canada in
24 2007, surrounded by a handful of close family and friends.

25 72. The couple's inability to be recognized as married in Nevada causes them harm.
26 In January 2009, Sara gave birth in Nevada to the couple's daughter, At the
27 hospital, staff told Megan, "You know, we don't have to let you stay here, but we're just going to
28 look the other way." Jarred by this experience, Sara and Megan subsequently registered as

domestic partners in Nevada on the first day when they could do so. Although they had previously married outside Nevada at the time of 's birth, Megan's parent-child relationship with is not afforded express protection under Nevada law, because Nevada does not recognize their marriage and because domestic partnerships were not even available at the time of 's birth. As such, Megan's status as a parent is vulnerable to challenges by others, such as the hospital staff on the day of 's birth. In the absence of the State's recognition of her marriage, Megan's only option is to adopt the cost of which is currently prohibitive for the couple. Megan also finds this forced choice demeaning when different-sex married couples are not forced to adopt their own children to be recognized as parents. If the State recognized Sara and Megan's marriage as it would a different-sex couple's marriage (*i.e.*, existing as of the date it was entered), then there would be no question that the presumption of parenthood would apply to Megan.

73. While vulnerability surrounding their daughter is particularly distressing to the couple, Megan and Sara are frustrated that the law causes others confusion about their relationship in a range of contexts. For example, Megan and Sara also have car insurance in which Sara is listed as the primary insured, but when Megan tried to explain to a police officer during a traffic stop that Sara was her wife, the police officer asked, "What's that about? What do you mean, it's your wife?" Sara and Megan have been together as a same-sex couple in a loving, committed relationship for 6 years, have registered as domestic partners in Nevada, and wish to have their marriage recognized in Nevada.

D. The State's Exclusion of Plaintiffs from Marriage Is Not Narrowly Tailored to a Compelling State Purpose or Even Reasonably Related To a Legitimate State Purpose.

74. No legitimate, let alone important or compelling, interest exists to exclude same-sex couples from the historic and highly venerated institution of marriage, especially where the State already grants lesbians and gay men access to almost all substantive spousal rights and responsibilities through registered domestic partnership. As the State has acknowledged by creating the parallel, but less respected, institution of registered domestic partnership, an individual's capacity to establish a loving and enduring relationship does not depend upon sexual

1 orientation or his or her sex in relation to his or her committed life partner, nor is there even any
2 legitimate interest justifying denial of spousal protections, rights, and responsibilities on such
3 bases.

4 75. The State's decision to exclude same-sex couples from marriage, relegating them
5 to the institution of registered domestic partnership, bears no relation to the State's interests in
6 parenting or child welfare.

7 76. Barring lesbians and gay men from civil marriage does not affect who becomes a
8 parent. Nevada same-sex couples can and do bear children through use of reproductive
9 technology that is available to both same-sex and different-sex couples. They also bring children
10 into their families through foster care or adoption or from a prior relationship.

11 77. Parentage can be determined for all children regardless of marital status, Nev. Rev.
12 Stat. § 126.031 et seq., and parents are required to support their children regardless of marital
13 status, Nev. Rev. Stat. § 125B.020 et seq. Moreover, marriage has never been the sole province
14 of couples who are parents. Neither Nevada nor any other state in this country has ever restricted
15 marriage to those capable of or intending to procreate.

16 78. The consensus within the scientific community is that children and adolescents
17 reared by same-sex parents are as successful psychologically, emotionally, and socially as
18 children and adolescents raised by different-sex parents. The consensus among respected
19 researchers in the field is that parenting abilities are not a function of gender, sexual orientation,
20 or biological connection.

21 79. This consensus is reflected by numerous leading organizations of child welfare,
22 medical, and mental health professionals, which have issued statements confirming that same-sex
23 parents are as effective as different-sex parents in rearing well-adjusted children and adolescents.
24 The State's own public policy also incorporates this view by making no distinction with respect to
25 the parenting rights of same-sex and different-sex couples.

26 80. Excluding same-sex couples from civil marriage will not make children of
27 different-sex spouses more secure. Different-sex spouses' children will continue to enjoy the
28

1 benefits that flow from their parents' marriage, regardless of whether same-sex couples are
2 permitted to marry.

3 81. Excluding same-sex couples from marriage does, however, harm same-sex
4 couples' children, including by branding their families as inferior and less deserving of respect,
5 and by encouraging private bias and discrimination.

6 82. The State's interest in the welfare of children of lesbian and gay parents is as great
7 as its interest in the welfare of any other children. The family security that comes from the
8 State's official recognition and support is no less important for same-sex parents and their
9 children than it is for different-sex parents and their children.

10 83. Excluding same-sex couples from marriage does nothing to protect or enhance the
11 rights of different-sex spouses. Different-sex spouses will continue to enjoy the same rights and
12 status conferred by marriage regardless of whether same-sex couples may marry, unimpaired by
13 the acknowledgment that this freedom belongs equally to lesbians and gay men.

14 84. Neither history nor tradition can justify the State's discriminatory exclusion of
15 same-sex couples. Marriage has remained vital and enduring because of, not despite, its
16 resiliency in response to a dynamic society, as society and the courts have cast off prior
17 restrictions on interracial marriage and coverture. The Constitution is not confined to historic
18 notions of equality, and no excuse for the State's discriminatory restriction can be found in the
19 ancient pedigree of such discrimination.

20 85. Although the State has a valid interest in protecting the public fisc, it may not
21 pursue that interest by making invidious distinctions between classes of its citizens without
22 adequate justification. Moreover, the State not only lacks any such fiscal justification but rather
23 would likely accrue cost-savings by allowing same-sex couples to enter the institution of marriage
24 rather than registered domestic partnership.

25 **CLAIM FOR RELIEF**

26 **Equal Protection on the Basis of Sexual Orientation and Sex**

27 **U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

1 86. Plaintiffs incorporate by reference and reallege paragraphs 1 to 85 of this
2 complaint.

3 87. Plaintiffs state this cause of action against Defendants in their official capacities
4 for purposes of seeking declaratory and injunctive relief.

5 88. The Fourteenth Amendment to the United States Constitution, enforceable
6 pursuant to 42 U.S.C. § 1983, provides that no state shall deny to any person the equal protection
7 of the laws. The conduct of Defendants and their agents in enforcing Nevada Constitution article
8 1, § 21, and Nevada Revised Statutes § 122.020, and all other sources of state law that preclude
9 marriage for same-sex couples and restrict them solely to registered domestic partnership, violates
10 Plaintiffs' right to equal protection of the laws by discriminating impermissibly on the basis of
11 sexual orientation and sex.

12 89. Nevada Constitution article 1, § 21, Nevada Revised Statutes § 122.020, and all
13 other sources of state law that preclude marriage for same-sex couples or prevent recognition of
14 marriages because they were entered by individuals of the same sex violate the equal protection
15 guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

16 90. As the State's chief executive officer, Defendant Sandoval's duties and actions to
17 enforce the State's discriminatory marriage ban violate Plaintiffs' constitutional rights to equal
18 treatment, without regard to sexual orientation or sex, under the Fourteenth Amendment to the
19 United States Constitution.

20 91. As the County Clerk and Commissioner of Civil Marriages for Clark County,
21 Defendant Alba's duties and actions to ensure compliance with the State's discriminatory
22 marriage ban through denying marriage licenses, refusing to solemnize marriages, certifying
23 those eligible to solemnize marriages, and maintaining marriage license records, violate the
24 constitutional rights to equal treatment, without regard to sexual orientation or sex, under the
25 Fourteenth Amendment to the United States Constitution of Plaintiffs Antioco Carrillo, Theo
26 Small, Fletcher Whitwell, and Greg Flamer.

27 92. As the County Clerk and Commissioner of Civil Marriages for Washoe County,
28 Defendant Harvey's duties and actions to ensure compliance with the State's discriminatory

1 marriage ban through denying marriage licenses, refusing to solemnize marriages, certifying
2 those eligible to solemnize marriages, and maintaining marriage license records, violate the
3 constitutional rights to equal treatment, without regard to sexual orientation or sex, under the
4 Fourteenth Amendment to the United States Constitution of Plaintiffs Karen Goody and Karen
5 Vibe.

6 93. As the Clerk-Recorder for Carson City, Defendant Glover's duties and actions to
7 ensure compliance with the State's discriminatory marriage ban through denying marriage
8 licenses, certifying those eligible to solemnize marriages, and maintaining marriage license
9 records, violate the constitutional rights to equal treatment, without regard to sexual orientation or
10 sex, under the Fourteenth Amendment to the United States Constitution of Plaintiffs Beverly
11 Sevcik and Mary Baranovich.

12 94. By acting intentionally to enforce the State's discriminatory marriage ban, each
13 Defendant has set in motion, or has refused to terminate, acts by others to enforce and implement
14 those laws that Defendants know, or reasonably should know, will cause others to inflict these
15 constitutional injuries upon the Plaintiffs. Through this conduct, each Defendant also knowingly
16 has acquiesced in the constitutional deprivations of those that he or she supervises, and has shown
17 a reckless or callous indifference to the rights of Plaintiffs, thereby proximately causing them
18 injury.

19 95. The State's marriage ban, and Defendants' actions to enforce it, denies same-sex
20 couples equal dignity and respect and relegates them to a separate-and-unequal status that is
21 demonstrably inferior. The State's marriage ban brands lesbians and gay men and their children
22 as second-class citizens through a message of government-imposed stigma and causes private
23 bias and discrimination. The State's marriage ban and Defendants' actions reflect moral
24 disapproval and antipathy toward lesbians and gay men.

25 96. The State's marriage ban targets lesbian and gay Nevadans as a class for exclusion
26 from marriage and discriminates against each Plaintiff based on his or her sexual orientation both
27 facially and as applied.
28

1 97. Plaintiffs are similarly situated to different-sex spouses in every relevant respect.
2 Plaintiffs and their children are as worthy of respect, dignity, social acceptance, and legitimacy as
3 different-sex spouses and their children. The emotional, romantic, and dignitary reasons
4 Plaintiffs seek to marry are similar to those of different-sex couples who choose to marry.

5 98. Although the denial of equal treatment is invalid under any form of constitutional
6 scrutiny, differential treatment by the government based on Plaintiffs' sexual orientation warrants
7 at least heightened scrutiny. The government's differential treatment of Plaintiffs based on their
8 sex also warrants heightened scrutiny.

9 99. Lesbians and gay men have suffered a long history of discrimination. They have
10 endured hostility and antipathy from both public and private parties. Being gay or lesbian has
11 been classified as a mental illness. The intimate relationships of same-sex couples have been
12 criminalized. Lesbian and gay civil servants have been purged from federal and municipal
13 employment. Lesbians and gay men disproportionately have been the victims of brutal hate
14 crimes.

15 100. Further, as the State has acknowledged by granting same-sex registered domestic
16 partners virtually the same family, parenting, and relationship rights and responsibilities as
17 spouses enjoy and by prohibiting discrimination based on sexual orientation in employment
18 housing, and public accommodations, Nev. Rev. Stat. §§ 613.330, 118.020, 651.070, neither
19 Plaintiffs' sexual orientation nor their sex bears any relation to their worth as committed life
20 partners or parents, or their ability to contribute to society.

21 101. Sexual orientation is a core, defining trait and is so fundamental to one's identity
22 and conscience that a person cannot be required to abandon it as a condition of equal treatment.

23 102. Sexual orientation generally is fixed at an early age and highly resistant to change
24 through intervention. No credible evidence supports the notion that such interventions are either
25 effective or safe; indeed, they often are harmful and damaging. No mainstream mental health
26 professional organization approves interventions to change sexual orientation, and virtually all of
27 them have adopted policy statements cautioning professionals and the public about these
28 treatments.

1 103. Lesbians and gay men are a small minority of the population, and the legacy of
2 discrimination against them is evident in their ongoing relative vulnerability and lack of political
3 power. Lesbians and gay men lack statutory protection against discrimination in employment,
4 public accommodations, and housing at the federal level and in 29 states; are systematically
5 underrepresented in federal, state, and local democratic bodies; have been stripped of the right to
6 marry through 29 state constitutional amendments and currently are not permitted to marry in a
7 total of 44 states; and now have been targeted through the voter initiative process more than any
8 other group.

9 104. The State's marriage ban discriminates against each Plaintiff on the basis of sex
10 both facially and as applied, barring each Plaintiff from marriage and relegating him or her to
11 registered domestic partnership solely because he or she wishes to marry a life partner of the
12 same sex.

13 105. The State's marriage ban also serves the impermissible purpose of blocking
14 departures from sex stereotypes by excluding each Plaintiff from marriage and relegating him or
15 her to registered domestic partnership with the one person he or she loves, because Plaintiffs have
16 failed to conform to the prevailing and State-enforced stereotype that men should marry women
17 and that women should marry men.

18 **DECLARATORY AND INJUNCTIVE RELIEF**

19 **28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure, Rules 57 and 65**

20 106. Plaintiffs incorporate by reference and reallege paragraphs 1 to 105 of this
21 complaint.

22 107. This case presents an actual controversy because Defendants' present and ongoing
23 denial of equal treatment to Plaintiffs subjects them to serious and immediate harms, warranting
24 the issuance of a declaratory judgment.

25 108. Plaintiffs seek preliminary and/or permanent injunctive relief to protect their
26 constitutional rights and avoid the injuries described above. A favorable decision enjoining
27 Defendants would redress and prevent the irreparable injuries to Plaintiffs identified herein, for
28 which Plaintiffs have no adequate remedy at law or in equity.

109. The State will incur little to no burden in allowing same-sex couples to marry and in recognizing the valid marriages of same-sex couples from other jurisdictions on the same terms as different-sex couples, whereas the hardship for Plaintiffs of being denied equal treatment and relegated to a demonstrably inferior relationship status is severe, subjecting them to an irreparable denial of their constitutional rights. The balance of hardships thus tips strongly in favor of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the provisions and enforcement by Defendants of Nevada Constitution Article 1, § 21, Nevada Revised Statutes § 122.020, and any other sources of state law that exclude same-sex couples from marrying and relegate them to only registered domestic partnership, violate Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and, for those couples legally married in another jurisdiction, declaring that it is unconstitutional for Defendants to refuse, based solely on the fact that Plaintiffs are same-sex couples, to respect Plaintiffs' out-of-state valid marriages as marriages in Nevada;

B. Preliminarily and permanently enjoining enforcement by Defendants of Nevada Constitution Article 1, § 21, Nevada Revised Statutes § 122.020, and any other sources of state law that exclude same-sex couples from marriage and restrict them to only registered domestic partnership; and for those same-sex couples who are legally married in another jurisdiction, enjoining Defendants from denying recognition of those marriages based solely on the fact that Plaintiffs are same-sex couples;

C. Requiring Defendants in their official capacities to allow same-sex couples to marry on the same terms as different-sex couples, and to recognize the valid marriages of same-sex couples from other jurisdictions on the same terms as the valid marriages of different-sex couples from other jurisdictions;

D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

1 E. Granting such other and further relief as the Court deems just and proper.

2 F. The relief requested in this action is sought against each Defendant; each
3 Defendant's officers, employees, and agents; and against all persons acting in cooperation with
4 any Defendant, or under a Defendant's supervision, direction, or control.

5 DATED: April 10, 2012.

6 LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

7 

8 JON W. DAVIDSON

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CLOSED,APPEAL

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:12-cv-00578-RCJ-PAL**

Sevcik et al v. Sandoval et al
Assigned to: Chief Judge Robert C. Jones
Referred to: Magistrate Judge Peggy A. Leen
Case in other court: Ninth Circuit, 12-17668
Cause: 42:1983 Civil Rights Act

Date Filed: 04/10/2012
Date Terminated: 11/26/2012
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
04/10/2012	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 350 receipt number 0978-2331341), filed by Adele Terranova, Fletcher Whitwell, Mary Baranovich, Beverly Sevcik, Caren Cafferata-Jenkins, Sara Geiger, Karen Vibe, Antioco Carrillo, Mikyla Miller, Tara Newberry, Farrell Cafferata-Jenkins, Megan Lanz, Greg Flamer, Theodore Small, Katrina Miller, Karen Goody. Certificate of Interested Parties due by 4/20/2012. Proof of service due by 8/8/2012. (Attachments: # <u>1</u> Civil Cover Sheet) (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012		Case assigned to Judge Roger L. Hunt and Magistrate Judge Peggy A. Leen. (MMM) (Entered: 04/10/2012)
04/10/2012	2	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (no image attached) (MMM) (Entered: 04/10/2012)
04/10/2012	3	NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 10-2. Counsel Jon W. Davidson, Tara L. Borelli, Peter C. Renn, Shelbi Day, Carla Christofferson, Dawn Sestito, Melanie Cristol, Rahi Azizi to comply with completion and electronic filing of the Designation of Local Counsel and Verified Petition. For your convenience, click on the following link to obtain the form from the Court's website - www.nvd.uscourts.gov/Forms.aspx . Counsel is also required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) system and the electronic service of pleadings. Please visit the Court's website www.nvd.uscourts.gov to register Attorney(s). Verified Petition due by 5/25/2012. (no image attached) (MMM) (Entered: 04/10/2012)
04/10/2012	<u>4</u>	CERTIFICATE of Interested Parties filed by Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara

		Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. There are no known interested parties other than those participating in the case. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>5</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Jon W. Davidson and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332407) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>6</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Tara L. Borelli and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332426) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>7</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Peter C. Renn and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332448) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>8</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Shelbi D. Day and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332457) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>9</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Carla Christofferson and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332480) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>10</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Dawn Sestito and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332504) by Plaintiffs Mary Baranovich, Caren

		Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>11</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Melanie Cristol and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332521) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/10/2012	<u>12</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Rahi Azizi and DESIGNATION of Local Counsel Kelly H. Dove (Filing fee \$ 200 receipt number 0978-2332544) by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 4/10/2012. (Dove, Kelly) (Entered: 04/10/2012)
04/12/2012	<u>13</u>	ORDER Granting <u>5</u> Verified Petition for Permission to Practice Pro Hac Vice by Jon Davidson and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>14</u>	ORDER Granting <u>6</u> Verified Petition for Permission to Practice Pro Hac Vice by Tara L. Borelli and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>15</u>	ORDER Granting <u>7</u> Verified Petition for Permission to Practice Pro Hac Vice by Peter C. Renn and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>16</u>	ORDER Granting <u>8</u> Verified Petition for Permission to Practice Pro Hac Vice by Shelbi D. Day and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov

		(Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>17</u>	ORDER Granting <u>9</u> Verified Petition for Permission to Practice Pro Hac Vice by Carla J. Christofferson and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>18</u>	ORDER Granting <u>10</u> Verified Petition for Permission to Practice Pro Hac Vice by Dawn Sestito and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>19</u>	ORDER Granting <u>11</u> Verified Petition for Permission to Practice Pro Hac Vice by Melanie Cristol and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>20</u>	ORDER Granting <u>12</u> Verified Petition for Permission to Practice Pro Hac Vice by Rahi Azizi and approving Designation of Local Counsel Kelly H. Dove for Plaintiffs. Signed by Chief Judge Robert C. Jones on 4/12/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/12/2012)
04/12/2012	<u>21</u>	PROPOSED SUMMONS to be issued <i>for Defendant Sandoval</i> , filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 04/12/2012)
04/12/2012	<u>22</u>	PROPOSED SUMMONS to be issued <i>for Defendant Alba</i> , filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 04/12/2012)
04/12/2012	<u>23</u>	PROPOSED SUMMONS to be issued <i>for Defendant Harvey</i> , filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan

		Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 04/12/2012)
04/12/2012	24	PROPOSED SUMMONS to be issued <i>for Defendant Glover</i> , filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 04/12/2012)
04/13/2012	25	Summons Issued as to Diana Alba, Alan Glover, Amy Harvey, Brian Sandoval. (Attachments: # 1 summons issued as to Diana Alba, # 2 summons issued as to Amy Harvey, # 3 summons issued as to Alan Glover)(MMM) (Entered: 04/13/2012)
04/17/2012	26	SUMMONS Returned Executed by Adele Terranova, Fletcher Whitwell, Mary Baranovich, Beverly Sevcik, Caren Cafferata-Jenkins, Sara Geiger, Karen Vibe, Antioco Carrillo, Mikyla Miller, Tara Newberry, Farrell Cafferata-Jenkins, Megan Lanz, Greg Flamer, Theodore Small, Katrina Miller, Karen Goody re 25 Summons Issued. Diana Alba served on 4/13/2012, answer due 5/4/2012; Alan Glover served on 4/13/2012, answer due 5/4/2012; Amy Harvey served on 4/13/2012, answer due 5/4/2012; Brian Sandoval served on 4/13/2012, answer due 5/4/2012. (Renn, Peter) (Entered: 04/17/2012)
04/19/2012	27	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on 4/19/2012. IT IS ORDERED that this case is reassigned to Chief Judge Robert C. Jones for all further proceedings. Judge Roger L. Hunt no longer assigned to case. All further documents must bear the correct case number 2:12-cv-00578-RCJ-PAL. (no image attached) (Copies have been distributed pursuant to the NEF - BLG) (Entered: 04/19/2012)
04/20/2012	28	Mail Returned as Undeliverable re 16 Order on Verified Petition for Permission to Practice Pro Hac Vice, addressed to Shelbi D. Day. Remailed to 3325 Wilshire Blvd Ste 1300, LA, CA 90010. (MMM) (Entered: 04/20/2012)
05/03/2012	29	STIPULATION FOR EXTENSION OF TIME to File Answer to 1 Complaint filed by Defendant Amy Harvey. (First Request) (Kaplan, Herbert) <u>Added docket entry relationship on 5/10/12.</u> (ASB) (Entered: 05/03/2012)
05/15/2012	30	MOTION to Intervene filed by Intervenor Defendant Coalition for the Protection of Marriage. Responses due by 6/1/2012. (Attachments: # 1 Appendix, # 2 Certificate of Service)(Albright, D. Chris) (Entered: 05/15/2012)
05/16/2012	31	NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 10-2. Counsel Craig G. Taylor to comply with completion and electronic filing of the Designation of Local Counsel and Verified Petition. For your convenience, click on the following link to obtain the form from the Court's website - www.nvd.uscourts.gov/Forms.aspx . Counsel is also required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) system and the electronic service of pleadings. Please visit the Court's website

		www.nvd.uscourts.gov to register Attorney(s). Verified Petition due by 6/30/2012.(no image attached) (ASB) (Entered: 05/16/2012)
05/17/2012	<u>32</u>	MOTION to Dismiss by Defendant Brian Sandoval. Responses due by 6/3/2012. Certificate of Interested Parties due by 5/27/2012. Discovery Plan/Scheduling Order due by 7/1/2012. (Howle, C.) (Entered: 05/17/2012)
05/18/2012	<u>33</u>	MOTION to Dismiss for Lack of Jurisdiction by Defendant Alan Glover. Responses due by 6/4/2012. Certificate of Interested Parties due by 5/28/2012. Discovery Plan/Scheduling Order due by 7/2/2012. (Munn, Randal) (Entered: 05/18/2012)
05/18/2012	<u>34</u>	ANSWER to <u>1</u> Complaint, filed by Diana Alba. Certificate of Interested Parties due by 5/28/2012. Discovery Plan/Scheduling Order due by 7/2/2012. (Foley, Michael) (Entered: 05/18/2012)
05/18/2012	<u>35</u>	ANSWER to <u>1</u> Complaint filed by Amy Harvey. Certificate of Interested Parties due by 5/28/2012. Discovery Plan/Scheduling Order due by 7/2/2012. (Kaplan, Herbert) (Entered: 05/18/2012)
05/18/2012	<u>36</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Craig G. Taylor and DESIGNATION of Local Counsel D. Chris Albright (Filing fee \$ 200 receipt number 0978-2375975) filed by Intervenor Defendant Coalition for the Protection of Marriage. Motion ripe 5/18/2012. (Albright, D. Chris) (Entered: 05/18/2012)
05/29/2012	<u>37</u>	NON-OPPOSITION to <u>30</u> MOTION to Intervene ; filed by Defendant Brian Sandoval. (Howle, C.) (Entered: 05/29/2012)
05/29/2012	<u>38</u>	NOTICE of Nonopposition to <u>30</u> Motion to Intervene by Defendant Alan Glover. (Munn, Randal) (Entered: 05/29/2012)
06/01/2012	<u>39</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 06/01/2012)
06/01/2012	<u>40</u>	RESPONSE to <u>30</u> MOTION to Intervene, filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Replies due by 6/11/2012. (Cristol, Melanie) (Entered: 06/01/2012)
06/04/2012	<u>41</u>	RESPONSE to <u>32</u> MOTION to Dismiss, <u>33</u> MOTION to Dismiss for Lack of Jurisdiction, filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Replies due by 6/14/2012. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Borelli, Tara) (Entered: 06/04/2012)

06/08/2012	42	REPLY to Response to 30 MOTION to Intervene ; filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 06/08/2012)
06/08/2012	43	OBJECTION to 39 Proposed Discovery Plan/Scheduling Order, ; filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 06/08/2012)
06/08/2012	44	ORDER that Intervenor Defendant shall file its Certificate as to Interested Parties, which fully complies with LR 7.1-1 no later than 4:00 p.m., June 18, 2012. Failure to comply may result in the issuance of an order to show cause why sanctions should not be imposed. Signed by Magistrate Judge Peggy A. Leen on 6/7/12. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 06/08/2012)
06/11/2012	45	Supplemental REPLY to Response to 30 MOTION to Intervene filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 06/11/2012)
06/11/2012	46	REPLY to Response to 33 MOTION to Dismiss for Lack of Jurisdiction ; filed by Defendant Alan Glover. (Munn, Randal) (Entered: 06/11/2012)
06/11/2012	47	CERTIFICATE of Interested Parties filed by Coalition for the Protection of Marriage that identifies all parties that have an interest in the outcome of this case. <i>Certificate as to Interested Parties Pursuant to Local Rule 7.1-1.</i> (Albright, D. Chris) (Entered: 06/11/2012)
06/12/2012	48	RESPONSE to 43 Objection to 39 Discovery Plan and Scheduling Order filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, and Fletcher Whitwell. (Renn, Peter) <u>Modified docket entry relationships on 6/13/2012. (ASB)</u> (Entered: 06/12/2012)
06/14/2012	49	First MOTION to Extend Time to File Reply to 41 Response to 32 MOTION to Dismiss (First Request) filed by Defendant Brian Sandoval. Motion ripe 6/14/2012. (Howle, C.) (Entered: 06/14/2012)
06/14/2012	50	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on June 14, 2012, by Carrie Lipparelli, Judicial Assistant. IT IS HEREBY ORDERED that 49 Defendant Governor Brian Sandovals Motion for Extension of Time to File Reply Brief is GRANTED. IT IS SO ORDERED. Signed Chief Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - CL) (Entered: 06/14/2012)
06/21/2012	51	REPLY to Response to 32 MOTION to Dismiss ; filed by Defendant Brian Sandoval. (Howle, C.) (Entered: 06/21/2012)
06/21/2012	52	ORDER Granting 36 Verified Petition for Permission to Practice Pro Hac Vice by Craig G. Taylor and approving Designation of Local Counsel D. Chris Albright for Coalition for the Protection of Marriage. Signed by Chief Judge Robert C. Jones on 6/21/12.

		Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 06/21/2012)
06/25/2012	53	MOTION to File Surreply to 32 and 33 MOTIONS to Dismiss filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, and Fletcher Whitwell. (Attachments: # 1 Exhibit Proposed Surreply, # 2 Exhibit Proposed Order) (Borelli, Tara) <u>Modified docket event type and entry relationships on 6/26/2012. (ASB)</u> (Entered: 06/25/2012)
06/26/2012		Notice of Docket Correction to 53 Response to Motion. ERROR: Wrong event used by Attorney <u>Tara Borelli</u> ; image does not match event selected. CORRECTION: Court modified entry as 53 MOTION to File Surreply to 32 and 33 MOTIONS to Dismiss. (no image attached) (ASB) (Entered: 06/26/2012)
06/27/2012	54	NON-OPPOSITION to 53 MOTION to File Surreply to 32 and 33 MOTIONS to Dismiss filed by Defendant Alan Glover. (Munn, Randal) (Entered: 06/27/2012)
06/29/2012	55	MOTION to Immediately Stay Discovery Pending Ruling on 30 Motion to Intervene - Expedited Treatment Requested Before July 3, 2012 filed by Intervenor Defendant Coalition for the Protection of Marriage. Motion ripe 6/29/2012. (Stewart, Monte) <u>Modified docket entry relationship on 6/29/2012. (ASB)</u> (Entered: 06/29/2012)
07/02/2012	56	NON-OPPOSITION to 53 MOTION to File Surreply to 32 and 33 MOTIONS to DismissMOTION to File Surreply to 32 and 33 MOTIONS to DismissMOTION to File Surreply to 32 and 33 MOTIONS to Dismiss ; filed by Defendant Brian Sandoval. (Howle, C.) (Entered: 07/02/2012)
07/02/2012	57	ERRATA to 56 Non-Opposition, ; filed by Defendant Brian Sandoval. (Howle, C.) (Entered: 07/02/2012)
07/02/2012	58	NON-OPPOSITION to 55 MOTION to Immediately Stay Discovery Pending Ruling on 30 Motion to Intervene MOTION to Immediately Stay Discovery Pending Ruling on 30 Motion to Intervene ; filed by Defendant Brian Sandoval. (Howle, C.) (Entered: 07/02/2012)
07/03/2012	59	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on July 3, 2012, by Carrie Lipparelli, Judicial Assistant. IT IS HEREBY ORDERED that 53 Plaintiffs Motion to File Surreply in Further Support of Their Opposition to Defendants Motion to Dismiss is GRANTED. IT IS FURTHER ORDERED that 55 Motion to Immediately Stay Discovery Pending Ruling on Motion to Intervene is GRANTED.

		IT IS FURTHER ORDERED that ORAL ARGUMENT is set as follows: <u>MONDAY, AUGUST 6, 2012 @ 1:30PM</u> 30 Motion to Intervene; and [32, 33] Defendant Governor Brian Sandovals Motion to Dismiss; NOTICE OF HEARING LOCATION: <i>Parties may appear at either location.</i> <u>VIDEO CONFERENCE LAS VEGAS:</u> Lloyd D. George U.S. Courthouse, United States District Court District of Nevada, 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101, <i>COURTROOM LOCATION TO BE DETERMINED AND NOTICED AT PUBLIC ELEVATORS ON HEARING DATE.</i> <u>IN PERSON RENO:</u> COURTROOM 6, Bruce R. Thompson Federal building & U.S. Courthouse, United States District Court District of Nevada, 400 South Virginia Street, Reno, Nevada 89501. IT IS SO ORDERED. Signed Chief Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - CL) (Entered: 07/03/2012)
07/10/2012	60	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Daniel W. Bower and DESIGNATION of Local Counsel D. Chris Albright (Filing fee \$ 200 receipt number 0978-2434865) filed by Intervenor Defendant Coalition for the Protection of Marriage. Motion ripe 7/10/2012. (Albright, D. Chris) (Entered: 07/10/2012)
07/26/2012	61	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on July 25, 2012, by Carrie Lipparelli, Judicial Assistant. IT IS HEREBY ORDERED that due to a conflict with the Courts calendar ORAL ARGUMENT currently set for Monday, August 6, 2012 @ 1:30PM is VACATED and RESCHEDULED as follows: <u>FRIDAY, AUGUST 10, 2012 @ 09:00AM</u> 30 Motion to Intervene; [32/33] Defendant Governor Brian Sandovals Motion to Dismiss. NOTICE OF HEARING LOCATION: <i>PARTIES MUST APPEAR IN LAS VEGAS</i> Lloyd D. George U.S. Courthouse, United States District Court District of Nevada, 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101, <i>COURTROOM LOCATION TO BE DETERMINED AND NOTICED AT PUBLIC ELEVATORS ON HEARING DATE.IT IS SO ORDERED.</i>

		<i>Signed Chief Judge Robert C. Jones.</i> (no image attached) (Copies have been distributed pursuant to the NEF - CL) (Entered: 07/26/2012)
07/26/2012	62	ORDER Granting 60 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Daniel W Bower and approving Designation of Local Counsel D. Chris Albright for Coalition for the Protection of Marriage. Signed by Chief Judge Robert C. Jones on 7/25/12. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 07/26/2012)
08/02/2012	63	ERRATA to 42 Reply to Response to 30 MOTION to Intervene filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 08/02/2012)
08/07/2012	64	SUPPLEMENT <i>Citation to Additional Authority in Support of: The Coalition's 30 Motion to Intervene</i>; filed by Intervenor Defendant Coalition for the Protection of Marriage. (Albright, D. Chris) <u>Docket entry relationship modified on 8/7/2012</u> (SRK). (Entered: 08/07/2012)
08/09/2012	65	SUPPLEMENT Second Citation to Additional Authority in Support of: The Coalition's 30 Motion to Intervene; filed by Intervenor Defendant Coalition for the Protection of Marriage. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Albright, D. Chris) (Entered: 08/09/2012)
08/09/2012	66	ORDER setting Scheduling Conference regarding 39 Proposed Discovery Plan/Scheduling Order and 43 Objection on <u>8/28/2012 at 10:30 a.m.</u> in LV Courtroom 3B before Magistrate Judge Peggy A. Leen. The parties may appear telephonically, and they can be connected to the hearing by dialing 702-868-4907 <u>and entering code "123456" when prompted</u> no later than 10:25 a.m. on 8/28/2012. This line can accommodate a maximum of six unique callers. Should counsel require more than six parties to participate, they are directed to contact Courtroom Administrator Jeff Miller to make special arrangements prior to the hearing. The use of a cell phone or speaker phone during the call is prohibited. The call must be made using a land line. Signed by Magistrate Judge Peggy A. Leen on 8/9/12. (Copies have been distributed pursuant to the NEF - Jones, Elizabeth) (Entered: 08/09/2012)
08/10/2012	67	MINUTES OF PROCEEDINGS - Motion Hearing RE: 30 Motion to Intervene, 32 and 33 Motions to Dismiss held on 8/10/2012 before Chief Judge Robert C. Jones. Ctrrm Administrator: <i>Lesa Ettinger</i>; Pla Counsel: <i>Tara Borelli, Dawn Sestito, Kelly Douglas</i>; Def Counsel: <i>C. Howle, Randal Munn, Michael Foley, Chris Albright, Herbert Kaplan, Monte Stewart</i>; Court Reporter/FTR #: <i>Margaret Griener</i>; Time of Hearing: 9:03 - 9:37 a.m.; Courtroom: 4B; Mr. Stewart informs the Court that the parties have reached an agreement with

		respect to 30 Motion to Intervene, then recites the terms of the agreement on the record. Plaintiffs' withdraw their previously filed opposition to the motion to intervene. 30 Motion to Intervene is granted. Court and counsel discuss the status of the case and scheduling. The Court sets the following deadlines and directs the submission of proposed scheduling order in accordance with the Court's ruling. Motions for Summary Judgment shall be due in 30 days; Responses shall be due in 45 days thereafter. IT IS ORDERED that Oral Argument on Motions for Summary Judgment, and 32 33 Motions to Dismiss are scheduled for 11/26/2012 09:00 AM in Reno Courtroom 6 before Chief Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - LE) (Entered: 08/17/2012)
08/23/2012	68	SUPPLEMENT to the Coalition's Objection to Stipulated Discovery Plan and Scheduling Order filed by Intervenor Defendant Coalition for the Protection of Marriage. (Attachments: # 1 Exhibit)(Albright, D. Chris) (Entered: 08/23/2012)
08/28/2012	70	MINUTES OF PROCEEDINGS - Scheduling Conference held on 8/28/2012 before Magistrate Judge Peggy A. Leen. Crtrm Administrator: <i>Jeff Miller</i>; Pla Counsel: <i>Peter Renn, Esq., Kelly Dove, Esq., Tara Borelli, Esq., Melanie Cristol, Esq.</i>; Def Counsel: <i>C. Howle, Esq., Herbert Kaplan, Esq., Michael Foley, Esq., Randal Munn, Esq., Chris Albright, Esq., Monte Stewart, Esq.</i>; Court Reporter/FTR #: 10:51:28 - 11:08:58; Time of Hearing: 10:30am; Courtroom: 3B; Counsel appear telephonically for these proceedings. The Court hears representations of Plaintiffs' Counsel as to the status of this case. The Court next hears representations of Counsel for all parties concerning their positions on discovery and their discovery needs. IT IS ORDERED: The Parties shall meet and confer within 14 days after decision on the pending dispositive motions, and file a Proposed Discovery Plan and Scheduling Order which addresses any claims that remain pending after the District Judge's ruling, IT IS ORDERED: Parties shall likewise meet and confer after the 9/10/2012 dispositive motion deadling to determine if they are going to request any discovery, or have any immediate pending discovery disputes, while the dispositive motions are pending. <u>Status Conference set for 9/18/2012 @ 09:00 AM in LV Courtroom 3B before Magistrate Judge Peggy A. Leen.</u> Joint Status Report due by 9/14/2012, which shall detail any discovery disputes as directed in open court. If there are no disputes or substantive matters to address with the Court, Counsel can request that the hearing be vacated in their Joint Status Report. (no image attached) (Copies have been distributed pursuant to the NEF - JAM) Modified on 9/5/2012 (JAM). (Entered: 09/05/2012)
08/29/2012	69	TRANSCRIPT of Proceedings, 67 Order on Motion to Intervene Motion Hearing held on 8/10/2012, before Chief Judge Robert C. Jones. Court Reporter/Transcriber: Margaret Griener, 775-329-9980. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber using the court's "Transcript Order" form available on our website <a href=http://www.nvd.uscourts.gov

		target=_blank>www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/19/2012. Redacted Transcript Deadline set for 9/29/2012. Release of Transcript Restriction set for 11/27/2012. (MG) (Entered: 08/29/2012)
09/05/2012	71	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Peggy A. Leen, on 9/5/2012. By Deputy Clerk: Jeff Miller. In regards to the Status Conference that has been scheduled for 9/18/2012 @ 09:00 AM in LV Courtroom 3B before Magistrate Judge Peggy A. Leen, IT IS ORDERED: Counsel are permitted to appear telephonically and are directed to call <u>702-464-5625</u> on the date and time of the hearing if they wish to participate via phone. (no image attached) (Copies have been distributed pursuant to the NEF - JAM) (Entered: 09/05/2012)
09/10/2012	72	MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. Responses due by 10/4/2012. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	73	APPENDIX 1-7 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	74	MOTION for Summary Judgment by Defendant Alan Glover. Responses due by 10/4/2012. (Munn, Randal) (Entered: 09/10/2012)
09/10/2012	75	APPENDIX 8-11 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	76	APPENDIX 12-14 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	77	APPENDIX 15-18 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	78	APPENDIX 19-23 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	79	APPENDIX 24-29 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	80	APPENDIX 30-36 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	81	APPENDIX 37-40 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)

09/10/2012	82	APPENDIX 41-45 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	83	APPENDIX 46-50 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	84	APPENDIX 51-52 to 72 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 09/10/2012)
09/10/2012	85	MOTION for Summary Judgment by Defendant Brian Sandoval. Responses due by 10/4/2012. (Attachments: # 1 Exhibit Attachment 1, # 2 Exhibit Attachment 2)(Howle, C.) (Entered: 09/10/2012)
09/10/2012	86	MOTION for Summary Judgment by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Responses due by 10/4/2012. (Attachments: # 1 Appendix Volume 1, # 2 Appendix Volume 2, # 3 Appendix Volume 3)(Borelli, Tara) (Entered: 09/10/2012)
09/10/2012	87	ADDENDUM to 86 MOTION for Summary Judgment filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 09/10/2012)
09/14/2012	88	Joint STATUS REPORT by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 09/14/2012)
09/17/2012	89	ORDER that the oral argument scheduled for 11/26/12 is VACATED re 32 MOTION to Dismiss filed by Brian Sandoval and 33 MOTION to Dismiss for Lack of Jurisdiction filed by Alan Glover. The Court will issue a written order on the pleadings. Signed by Chief Judge Robert C. Jones on 9/17/2012. (Copies have been distributed pursuant to the NEF - EDS) (Entered: 09/17/2012)
09/17/2012	90	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Peggy A. Leen, on 9/17/2012. By Deputy Clerk: Jeff Miller. The Court has reviewed Counsels' Joint Status Report 88 . Based on Counsels' representations, IT IS ORDERED: The Status Hearing currently scheduled for <u>Tuesday, 9/18/2012 @ 9:00am in Courtroom #3B</u> is hereby VACATED. (no image attached) (Copies have been distributed pursuant to the NEF - JAM) (Entered: 09/17/2012)
09/18/2012	91	

		MOTION for Clarification of 89 Order filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Dove, Kelly) (Entered: 09/18/2012)
09/18/2012		NOTICE of Docket Correction to 91 Letter. ERROR: Document requests action from the Judge. CORRECTION: Clerk's Office modified document as 91 MOTION for Clarification of 89 Order. (no image attached) (ASB) (Entered: 09/18/2012)
09/18/2012	92	AMENDED 89 MINUTE ORDER: IT IS HEREBY ORDERED that oral argument on (Dockets 32 , 33 , 72 , 74 , 85 , 86) set for Monday, November 26, 2012 is VACATED. IT IS FURTHER ORDERED that any newly filed motions filed with the Court after September 18, 2012 will not be scheduled for oral argument. IT IS FURTHER ORDERED that oral argument on November 26, 2012 has been vacated in its entirety. The court will issue a written order on the pleadings. Signed by Chief Judge Robert C. Jones on 9/18/12. (Copies have been distributed pursuant to the NEF - BLG) BLG . <i>Modified on 9/18/2012 NEF Regenerated with PDF attached.</i> (BLG). (Entered: 09/18/2012)
09/27/2012	93	UNOPPOSED MOTION and Proposed Order Re Page Limits for Plaintiffs' Opposition re 74 MOTION for Summary Judgment, 72 MOTION for Summary Judgment, 85 MOTION for Summary Judgment by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 9/27/2012. (Borelli, Tara) (Entered: 09/27/2012)
10/22/2012	94	ORDER Granting 93 Unopposed Motion Regarding Page Limits for Plaintiffs' Combined Opposition Brief to Motions for Summary Judgment. Signed by Chief Judge Robert C. Jones on 10/22/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 10/22/2012)
10/25/2012	95	RESPONSE to 86 MOTION for Summary Judgment, filed by Intervenor Defendant Coalition for the Protection of Marriage. Replies due by 11/11/2012. (Attachments: # 1 Appendix)(Stewart, Monte) (Entered: 10/25/2012)
10/25/2012	96	RESPONSE to 86 MOTION for Summary Judgment, filed by Defendant Brian Sandoval. Replies due by 11/11/2012. (Howle, C.) (Entered: 10/25/2012)
10/25/2012	97	RESPONSE to 86 MOTION for Summary Judgment, filed by Defendant Alan Glover. Replies due by 11/11/2012. (Munn, Randal) (Entered: 10/25/2012)
10/25/2012	98	

		RESPONSE to 74 MOTION for Summary Judgment, 72 MOTION for Summary Judgment, 85 MOTION for Summary Judgment, filed by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Replies due by 11/11/2012. (Attachments: # 1 Affidavit of Michael Lamb, Ph.D., # 2 Affidavit of Letitia Anne Peplau, Ph.D.)(Borelli, Tara) (Entered: 10/25/2012)
10/31/2012	99	APPENDIX in Support of 95 Response to to 86 MOTION for Summary Judgment filed by Intervenor Defendant Coalition for the Protection of Marriage. (Stewart, Monte) (Entered: 10/31/2012)
11/08/2012	100	MOTION for Leave to File <i>Summary Judgment Reply and Supporting Declarations of Michael Lamb, Ph.D. and Tara Borelli</i> by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Motion ripe 11/8/2012. (Attachments: # 1 Exhibit A - Reply Brief, # 2 Exhibit B - Declaration of Michael Lamb, Ph.D., # 3 Exhibit C - Declaration of Tara Borelli, # 4 Exhibit D - Proposed Order)(Borelli, Tara) (Entered: 11/08/2012)
11/09/2012	101	RESPONSE to 100 MOTION for Leave to File <i>Summary Judgment Reply and Supporting Declarations of Michael Lamb, Ph.D. and Tara Borelli</i> , filed by Intervenor Defendant Coalition for the Protection of Marriage. Replies due by 11/19/2012. (Stewart, Monte) (Entered: 11/09/2012)
11/26/2012	102	ORDER that the Motions to Dismiss 32 , 33 are GRANTED IN PART and DENIED IN PART. The Complaint is dismissed as precluded by <i>Baker v. Nelson</i> with respect to the traditional equal protection challenge, but the Complaint is not dismissed with respect to the challenge under <i>Romer v. Evans</i> . FURTHER ORDERED that the Motions for Summary Judgment 72 , 74 , 85 are GRANTED. FURTHER ORDERED that the Motion for Summary Judgment 86 is DENIED. FURTHER ORDERED that the Motion for Leave to File Reply 100 is DENIED. No party has been permitted to file a reply. The arguments have been comprehensively presented, and no reply is necessary to preserve the relevant issues on appeal. FURTHER ORDERED that the Clerk shall enter judgment and close the case. Signed by Chief Judge Robert C. Jones on 11/26/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 11/29/2012)
12/03/2012	103	CLERK'S JUDGMENT is hereby entered per Order 102 filed November 26, 2012. Signed by Clerk of Court, Lance S. Wilson on 12/3/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/03/2012)
12/03/2012	104	NOTICE OF APPEAL by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. Filing fee \$ 455, receipt number 0978-2621463. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Attachments: # 1

		Exhibit A - Order, # 2 Exhibit B - Judgment)(Borelli, Tara) (Entered: 12/03/2012)
12/03/2012	105	Designation of Transcripts and Transcript Order forms and instructions for 104 Notice of Appeal,. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (ASB) (Entered: 12/03/2012)
12/03/2012	106	Civil Appeals Docketing Statement to 104 Notice of Appeal by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell. (Borelli, Tara) (Entered: 12/03/2012)
12/04/2012	107	TRANSCRIPT DESIGNATION by Plaintiffs Mary Baranovich, Caren Cafferata-Jenkins, Farrell Cafferata-Jenkins, Antioco Carrillo, Greg Flamer, Sara Geiger, Karen Goody, Megan Lanz, Katrina Miller, Mikyla Miller, Tara Newberry, Beverly Sevcik, Theodore Small, Adele Terranova, Karen Vibe, Fletcher Whitwell re 104 Notice of Appeal, 67 Order on Motion to Intervene,,,,, Motion Hearing,,,,, 70 Scheduling Conference,,,,,, 69 Transcript,,. (Borelli, Tara) (Entered: 12/04/2012)
12/04/2012	108	ORDER for Time Schedule as to 104 Notice of Appeal, filed by Tara Newberry, Caren Cafferata-Jenkins, Katrina Miller, Antioco Carrillo, Sara Geiger, Adele Terranova, Karen Vibe, Beverly Sevcik, Mikyla Miller, Karen Goody, Greg Flamer, Theodore Small, Megan Lanz, Farrell Cafferata-Jenkins, Mary Baranovich, Fletcher Whitwell. USCA Case Number 12-17668. (MMM) (Entered: 12/04/2012)
12/07/2012	109	Copy of Letter from Supreme Court of the United States re 104 Notice of Appeal: The petition for a writ of certiorari in the above entitled case was filed on December 5, 2012 and placed on the docket December 6, 2012 as No. 12-689. (MMM) (Entered: 12/07/2012)
07/10/2013	110	Copy of Letter dated 6/27/13 from the Supreme Court of the United States re 104 Notice of Appeal. The petition for a writ of certiorari before judgment is denied. (MMM) (Entered: 07/12/2013)

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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 on October 18, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli