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 12 CITY AND COUNTY OF SAN FRANCISCO

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 Coordination Proceeding
 17 Special Title (Rule 1550(b))
 18 MARRIAGE CASES

19 CITY AND COUNTY OF SAN
 FRANCISCO, a charter city and county,

20 Plaintiff/Petitioner,

21 vs.

22 STATE OF CALIFORNIA, et al.

23 Defendants/Respondents.

JUDICIAL COUNCIL COORDINATION
 PROCEEDING NO. 4365

Case No. 429-539
 (Consolidated with Case No. 504-038)

DECLARATION OF M.V. LEE
 BADGETT IN SUPPORT OF CITY
 AND COUNTY OF SAN FRANCISCO'S
 CONSTITUTIONAL CHALLENGE TO
 MARRIAGE STATUTES

Hearing Date: TBD
 Hearing Judge: Richard A. Kramer
 Time: TBD
 Place: 304

Date Action Filed: March 11, 2004
 Trial Date: Not set

1 I, M. V. LEE BADGETT, declare as follows:

2 1. I make this declaration of my own personal knowledge and would testify
3 competently to the matters stated herein if called upon to do so.

4 2. I am an Associate Professor in the Department of Economics, University of
5 Massachusetts-Amherst, where I have taught since 1997. I am also the Research Director of the
6 Institute for Gay and Lesbian Strategic Studies, a think tank that focuses on empirical policy
7 analysis related to the lesbian, gay, bisexual, and transgender populations. I am also on the
8 Faculty of the Center for Public Policy and Administration, of the University of Massachusetts.
9 From 1990 to 1997, I was Assistant Professor at the School of Public Affairs, University of
10 Maryland, College Park. I have conducted research at the Amsterdam School for Social Science
11 Research, University of Amsterdam, and conducted research and taught at the Women's Studies
12 and Lesbian and Gay Studies programs of Yale University. I received my A.B. in Economics
13 from the University of Chicago in 1982 and my Ph.D. in Economics from the University of
14 California, Berkeley in 1990.

15 3. The primary focus of my research and teaching is in the fields of Economics,
16 including Microeconomics and Labor Economics; and Sexuality and Public Policy, including
17 sexual orientation discrimination, family structures and family policy, same-sex partner
18 recognition in the US and Europe, domestic partner health care and pension benefits, and the
19 health insurance status of lesbians and gay men.

20 4. I have authored numerous published articles and book chapters and one book on
21 the topic of economics and sexual orientation, including, among others: Badgett, Money, Myths,
22 and Change: The Economic Lives of Lesbians and Gay Men (2001); Badgett et al, *Wedding Bell*
23 *Blues: The Income Tax Consequences of Legalizing Same-Sex Marriage*, National Tax Journal
24 (June 2000), pp.201-214; Hyman & Badgett, *Introduction: Towards Lesbian, Gay, and Bisexual*
25 *Perspectives in Economics: Why and How They May Make a Difference*, introduction to special
26 section of *Feminist Economics* (Summer 1998), pp.49-54; Badgett, *The Economic Well-Being of*
27 *Lesbian and Gay Adults' Families*, in *Lesbian, Gay and Bisexual Identities in the Families*:

1 Psychological Perspectives (Patterson & D'Augelli, edits., 1997) Oxford University Press;
 2 Badgett, *Beyond Biased Samples: Challenging the Myths on the Economic Status of Lesbians*
 3 *and Gay Men*, in *Homo Economics: Capitalism, Community, and Lesbian and Gay Life*
 4 (Gluckman & Reed, edits., 1997) Routledge Press; Badgett and King, *Occupational Strategies*
 5 *of Lesbians and Gay Men*, in *Homo Economics: Capitalism, Community, and Lesbian and Gay*
 6 *Life* (Gluckman & Reed, edits., 1997) Routledge Press; *Employment and Sexual Orientation:*
 7 *Disclosure and Discrimination in the Workplace*, *Journal of Gay and Lesbian Social Services*,
 8 Vol. 4, No. 4 (1996), pp.29-52. Simultaneously published as *Sexual Identity on the Job: Issues*
 9 *and Services*, (Lillis & Riggle, edits., 1996), Harrington Park Press; *The Wage Effects of Sexual*
 10 *Orientation Discrimination*, *Industrial and Labor Relations Review*, Vol. 48, No. 4 (July 1995),
 11 pp.726-739. Reprinted in *Women Transforming Politics: An Alternative Reader*, (Cohen et al
 12 edits., 1997) New York University Press; and Badgett and Williams, *The Economics of Sexual*
 13 *Orientation: Establishing a Research Agenda*, *Feminist Studies*, Vol. 18, No. 3 (1992).

14 5. I have also authored and co-authored a number of reports on the topic of
 15 economics and sexual orientation and the demographics of the lesbian and gay community,
 16 including: Badgett et al, *Same-Sex Couples and Their Children in Massachusetts: A View from*
 17 *Census 2000*, Institute for Gay and Lesbian Strategic Studies, Amherst, MA (Feb. 2004); Badgett
 18 and Sears, *Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Domestic*
 19 *Partnership Act*, Institute for Gay and Lesbian Strategic Studies and Williams Project of UCLA
 20 Law School (Dec. 2003); Badgett and Sears, *Same-Sex Couples and Same-Sex Couples Raising*
 21 *Children in California*, Institute for Gay and Lesbian Strategic Studies and Williams Project of
 22 UCLA Law School (May 2004); Badgett and Sears, *Equal Rights, Fiscal Responsibilities: The*
 23 *Impact of AB205 on California's Budget*, Institute for Gay and Lesbian Strategic Studies and
 24 Williams Project of UCLA Law School (May 2003); Badgett and Rogers, *Left Out of the Count:*
 25 *Missing Same-Sex Couples in Census 2000*, Institute for Gay and Lesbian Strategic Studies,
 26 Amherst, MA (2003); *Calculating Costs with Credibility: Health Care Benefits for Domestic*
 27 *Partners*, *Angles*, Vol. 5, Issue 1 (Nov. 2000); *The Fiscal Impact on the State of Vermont of*
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1 10. Same-sex couples in California are in many respects similar to married couples in
2 California, including their geographic location, their racial and ethnic characteristics, and their
3 economic characteristics. There are same-sex couples in every county in California, just as
4 married couples are spread throughout the state. As a percentage of all couples in a county,
5 same-sex couples range from at least 0.6% in Glenn and Tehama Counties to at least 6.9% in San
6 Francisco County. In terms of the absolute numbers of couples, same-sex couples range from
7 two couples in Alpine County to over 25,000 couples in Los Angeles County.

8 11. Like individuals in married couples, individuals in same-sex couples in California
9 are of every race. Individuals in married couples and same-sex couples are similar in age, with
10 average and median ages in the 40s, although people in same-sex couples are slightly younger.
11 (The average age of individuals in same-sex couples in California is 43 and the average age of
12 individuals in married couples is 47.)

13 12. Members of same-sex couples actively contribute to the California economy. In
14 fact, people in same-sex couples are more likely than people in married couples to be employed
15 in the paid labor market. Specifically, 71% of individuals in same-sex couples are employed,
16 compared with 62% of members of married couples.

17 13. Contrary to a popular stereotype, same-sex couples in California have household
18 incomes that are comparable to their married counterparts. After controlling for educational
19 attainment, race and age, male couples' average household income is approximately 4% higher
20 than married couples' average household income, while female couples' average household
21 income is approximately 7% lower than married couples' household income.

22 14. In spite of the military's historic policy of excluding gay men and lesbians from
23 service, and its current policy of excluding openly gay men and lesbians, individuals in married
24 couples and same-sex couples are surprisingly similar in terms of veteran status; 14% of
25 individuals in married couples in California are veterans, while 11% of individuals in same-sex
26 couples are veterans.

1 15. Many same-sex couples in California are raising children. In California in 2000,
2 28.4% of all same-sex households reported that they were raising one or more children who were
3 the householder's "own" children; the number of these children totaled 58,600. (The
4 "householder" was the person who owned or leased the home in question, or who filled out the
5 Census form on behalf of those in the home. The householder's "own" children included his or
6 her biological children, adopted children, and step-children.) In addition, same-sex couples are
7 raising 11,900 children who are not the legal children of the householder, either because they are
8 his or her partner's children, foster children, or because for some other legal reason the
9 householder is not recognized as a parent. Thus approximately 32.3% of same-sex couple
10 households in California include children under the age of 18, and approximately 70,500 of
11 California's children are living in households headed by same-sex couples.

12 16. These California children being raised by same-sex parents are in every racial and
13 ethnic community. Both married couples and same-sex couples with their own children in
14 California have, on average, two children. Married couples with children are also similar to
15 same-sex parents in terms of age. Parents in married and same-sex couples are again similar in
16 terms of veteran status; while 6% of parents in same-sex couples are veterans, 7% of parents in
17 married couples are veterans.

18 17. The Census data shows that same-sex couples with children need the same sort of
19 protections that married couples with children have. However, comparisons of households with
20 same-sex couples raising their own children and married couples raising their own children show
21 that same-sex parents have fewer economic resources to provide for their children, partly as a
22 result of the financial disadvantages of not being married.

23 18. For example, same-sex couples with children own homes at lower rates than
24 married couples with children. While 63.2% of married couples with children in California own
25 their own homes, only 51.1% of same-sex parents own their own homes. Moreover, homes of
26 same-sex couples with children are less valuable than married couples' homes. The median
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1 property value for married couples with children is \$37,000 higher than the median property
2 value of same-sex couples with children.

3 19. The household incomes of same-sex couples with children are on average \$10,000
4 to \$14,000 lower than married couples, even though employment rates are roughly the same.
5 While 70% of parents in married couples are employed, 66% of parents in same-sex couples are
6 employed.

7 **ECONOMIC IMPACT UNDER STATE LAW OF DENYING**
8 **MARRIAGE TO SAME-SEX COUPLES**

9 20. In order to calculate the economic impact of denying marriage to same-sex
10 couples, I used data from Census 2000 and the status of same-sex couples under current law in
11 California. In general, denying same-sex couples the right to marry in California places direct
12 expenses on families headed by same-sex couples, and also deprives them of financial benefits.

13 21. The main State law-driven economic harms imposed on same-sex couples by their
14 inability to marry are 1) an increased state income tax burden, and 2) the loss of valuable
15 employment-related benefits, such as health insurance coverage.

16 **A. State Income Tax**

17 22. The estimates in this section are based on calculations of state income taxes using
18 data on same-sex couples from the Census Bureau's 1% Public Use Micro Sample for Census
19 2000. To calculate adjusted gross income for these couples, I assumed each partner used the
20 standard deduction and had one exemption to claim apiece if single and one dependent
21 exemption per own child. I then applied the 2003 California state tax schedule to calculate the
22 taxes owed by each individual and couple, first when each partner files as single or as head of
23 household (if children are present) and second when the couple files jointly as a married couple.

24 23. My analysis showed that 54% of same-sex couples in California pay more in state
25 income taxes because they are not allowed to file their state income taxes jointly as a married
26 couple. The average decrease in taxes for these couples, if they were able to marry, would be
27 \$542. For 35% of same-sex couples, filing jointly would have no impact on their state income
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1 taxes. For a minority of same-sex couples, approximately 11%, state income taxes would
2 increase if they could file jointly. The average increase in taxes for these couples would be
3 \$866.

4 **B. Employment Benefits**

5 24. Many employers provide compensation in the form of benefits, particularly health
6 insurance coverage. In 2002, 65% of California businesses offered health insurance to their
7 employees. Many employers provide such coverage to the spouse and children of employees, as
8 well.

9 25. However, as of 2001, only 18% of workers in the western United States worked
10 for an employer that covered same-sex domestic partners' health insurance. Therefore, large
11 numbers of members of same-sex couples, and in some cases their children, are ineligible for
12 coverage through their partner's employer because they are not allowed to marry under
13 California law and qualify as spouses for the purposes of employer-provided health insurance.
14 Not surprisingly, two recent studies (the National Health Interview Study and a study based on
15 the Current Population Survey) show that people in same-sex couples in the United States are, in
16 fact, much more likely to be uninsured than are married people. (Same-sex couples in California
17 are likely to have very similar patterns as the country as a whole.) The higher rates of being
18 uninsured for same-sex couples remain after controlling for age, education, income, children and
19 full-time employment status.

20 26. More specifically, according to the Current Population Survey, while 70.5% of
21 spouses of employees with employer-provided coverage have coverage as a dependent, only
22 5.8% of people with same-sex partners who have employer coverage have coverage as a
23 dependent. Furthermore, 14.5% of people whose same-sex partner has employer coverage are
24 uninsured, while only 4.0% of married people are uninsured when their spouse has employer-
25 provided coverage.

26 27. In 2002, the average additional cost to California employers of providing family
27 benefits instead of single coverage was \$3162. However, for many families headed by same-sex
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1 couples, the actual cost of not having health insurance is much greater than the \$3162 it would
 2 cost employers to provide for such coverage. Individual health insurance plans are typically
 3 harder to qualify for, and generally much more expensive than adding a spouse to an employer-
 4 provided health insurance plan, and provide for less coverage with greater copayments. Since
 5 many families are unable to pay for individual plans, if the uninsured partner has a serious health
 6 problem the economic consequences for the family, and potentially the State and the County,
 7 could be in the tens of thousands of dollars.

8 **ECONOMIC IMPACT UNDER FEDERAL LAW OF**
 9 **DENYING MARRIAGE TO SAME-SEX COUPLES**

10 28. By denying same-sex couples the right to marry, the State precludes them from
 11 accessing over 1,000 federal rights and benefits. Many of these rights and benefits have negative
 12 economic consequences for same-sex couples. While the federal Defense of Marriage Act
 13 (DOMA) (28 U.S.C. § 1738C) may still mean that these economic burdens are imposed on same-
 14 sex couples even if California allows same-sex couples to marry, it is also true that until
 15 California allows same-sex couples to marry, there is no way for them to access any of the
 16 federal rights and benefits which are contingent upon marriage.

17 29. Economic harms that the federal government imposes on same-sex couples and
 18 their families by denying them the right to marry include: 1) an increased federal tax burden; 2)
 19 decreased access to Social Security benefits; 3) an increased financial risk in the event one
 20 partner falls ill or dies; and 4) an increase in legal and other costs for couples that include a non-
 21 U.S. citizen.

22 **A. Federal Tax**

23 30. Using the Census 2000 data on same-sex couples in California and 2003 federal
 24 income tax forms and schedules provided by the IRS, I estimate that 53% of the same-sex
 25 couples in California would pay, on average, \$1550 less in federal taxes if married. Another
 26 24% of same-sex couples in California would see no change in their federal income taxes if
 27 married, and the remaining 23% would see an increase in taxes of \$1669 on average.

1 31. The federal government taxes the employer contribution to a domestic partner's
2 benefits as if it were cash income to the employee whose partner is covered. However, the
3 federal government does not tax the employer contribution to a spouse's benefits. In 2003, the
4 median income for a person in a same-sex couple in California was \$32,132 (projecting 1999
5 earnings from the Census into 2003 dollars). Subtracting off the standard deduction and one
6 exemption places the median person in the 15% federal tax bracket. In addition, employees and
7 employers each pay FICA taxes of 7.65% of the value of benefits. As noted above, the average
8 employer contribution to family health insurance benefits was \$3162, so an employee with the
9 median income in this situation would pay \$716 in additional federal income taxes, and his or
10 her employer would pay an additional \$242 in payroll tax.

11 32. Inability to marry also has federal income tax implications upon the death of a
12 partner. Surviving partners of same-sex couples are liable for taxes when they inherit an IRA
13 from an unmarried partner, while married spouses in the same situation may face no immediate
14 taxes at all. When a legal spouse dies, the surviving spouse has three options: (1) he or she can
15 designate himself or herself as the owner of the plan without taxation or limitations and allow it
16 to continue to grow tax-free, subject only to the minimum distribution rules based on his or her
17 age; (2) he or she can be treated as a beneficiary and withdraw the funds over five years, which
18 would have a tax impact if it pushes the beneficiary into a higher marginal tax bracket; or (3) he
19 or she may begin making annual withdrawals, which reduces the value of tax deferral if the
20 beneficiary is considerably younger than 70½ years old.

21 33. Because same-sex couples cannot get married in California, a surviving partner
22 only has the second and third options listed above. Thus they are placed in a situation that is
23 likely to have adverse tax consequences when compared with the treatment of a spouse. Non-
24 spouses cannot rollover the inherited IRA into their own because they are treated as strangers
25 under the federal tax code; any payouts are immediately subjected to taxation, which can also
26 push the recipient into a higher tax bracket.

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B. Social Security Benefits

34. Social Security provides a variety of benefits to spouses and surviving spouses of covered workers. Same-sex couples are deprived of these benefits, which are designed to assist couples in old age or in the event of death or disability, because they cannot marry under California law. Notably, they are deprived of the benefits even though individuals in same-sex couples must pay into the social security program at the same rates as individuals in married couples.

35. In California 9.5% of same-sex couples have one person sixty-five or over, and in 4.9% of couples both partners are sixty-five or over. Because they cannot marry, some of these older same-sex couples will be put at a considerable financial disadvantage when one partner retires or dies.

36. On retirement, a married social security recipient is entitled to the larger of either his or her own retirement benefit or one-half of his or her covered spouse's retirement benefit. In California, the average monthly spousal retirement benefit was \$448 in December 2002, or \$5376 per year. Since same-sex couples are not allowed to marry, they are not able to receive this spousal benefit at all.

37. On the death of a retired spouse, the surviving spouse receives the deceased spouse's benefit if it is greater than the survivor's own social security retirement benefit. The Census 2000 data for California show that in 4.3% of same-sex couples, both partners receive social security benefits. The average difference between the two benefits is \$4619 a year. If the higher earning partner were to die, the surviving partner would lose the higher earner's entire social security payment and continue to receive their lower payment. By contrast, if same-sex couples could marry, the lower earning surviving spouse would receive the higher earner's benefit, which would be \$4619 over his or her own benefit. Thus, denying older same-sex couples the right to marry could cost many surviving members of such couples as much as \$4619 a year in lost social security payments.

1 38. Social Security also provides a survivor benefit to widows and widowers whose
2 spouses have paid into the system but have not yet retired. According to the Social Security
3 Administration, it not only provides a surviving spouse with a \$255 lump sum benefit on the
4 death of a covered worker, but “for an average family, it provides protection equivalent to a
5 \$354,000 insurance policy.” (U.S. Social Security Administration, 2004a.) In California, the
6 average monthly survivor benefit was \$868 in December 2002, or \$10,416 per year. Because
7 they are not allowed to marry, members of same-sex couples are not allowed this survivor
8 benefit at all.

9 39. If a covered worker becomes disabled, his or her spouse who is 62 or over
10 receives a benefit of one-half the disabled recipient’s Social Security benefit. In December 2002,
11 the average spousal disability benefit in California was \$214/month, or \$2563 per year. In
12 addition, the “Social Security disability program for an average family is equivalent to a private
13 disability insurance policy worth over \$233,000.” (U.S. Social Security Administration, 2004b.)

14 **C. Aging Couples**

15 40. An older person in a same-sex couple may be at a greater risk of losing their home
16 if a partner dies because the survivor faces financial challenges that married surviving spouses do
17 not face. The surviving same-sex partner may lose or receive reduced social security benefits
18 and will have to pay inheritance taxes and beneficiary taxes for the deceased partner’s IRA
19 401(k) plan. Married individuals do not face these additional financial burdens under federal law
20 on the death of a spouse.

21 41. In California, same-sex couples are no more likely to have paid off their
22 mortgages by the time they have reached retirement age than have married couples. (Only
23 60.4% of same-sex couples with at least one member over 65 have paid off their mortgages,
24 compared with 62.8% for married couples.)

25 42. Members of same-sex couples in California are also at risk of losing their home
26 when a partner enters a nursing home because the State does not allow them to marry. Because
27 nursing home costs are so high—between \$80,000 and \$100,000 per year—Medicaid steps in to
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1 pay those costs when a nursing home resident's savings run out. However, special Medicaid
2 regulations protect a married resident from having to "spend down" assets and impoverishing
3 and/or displacing their spouse who is not in the nursing home. First, a still-healthy spouse of
4 such a nursing home resident has a special claim to some of the nursing-home resident's income
5 and assets. Second, these protections extend to a married couple's home. The government will
6 eventually seize the home and force a sale to recover what it spent on nursing home bills—but
7 only after the other, surviving spouse dies as well.

8 43. Same-sex couples are not provided with these protections. The results can be
9 financially catastrophic. They are not entitled to some of the nursing-home resident's income or
10 assets, nor is their home protected while they are still alive. Medicaid regulations also presume
11 that joint bank accounts of same-sex couples are owned by the nursing home resident, so the
12 government will require that the money in such accounts be spent down too. If the deed to the
13 house is in the nursing home resident's name and she has no chance of coming home, the home
14 must be sold at fair market value within nine months. It doesn't matter how long the couple has
15 been together, shared the home and shared responsibility for the mortgage payments.

16 D. Couples That Include One Non-Citizen

17 44. In 11.3% of same-sex couples in California, only one person is a U.S. citizen. If
18 married, the partner who is not a citizen would become eligible for permanent residence status, if
19 he or she does not already have such status, and would not be subject to numerical limitations on
20 immigration. Furthermore, spouses are eligible for citizenship after three years, compared with
21 five years for other immigrants.

22 45. The inability to marry and receive the favored immigration status could cause
23 economic harm in several ways. Non-citizen partners without lawful permanent residence status
24 may need to return to their home countries for extended periods of time, requiring costly travel
25 expenses for both partners. These extended visits may hinder the occupational advancement of
26 either or both individuals, reducing earnings over the course of a lifetime.

1 46. Couples may decide to relocate to countries that will legally recognize their status
2 for immigration purposes. Relocation can be costly in direct moving costs as well as in loss of
3 earnings.

4 47. Finally, those mixed-citizenship couples may require expensive legal counsel to
5 understand and enhance their legal options.

6 **IMPACT ON ECONOMIC SECURITY AND EFFICIENCY**
7 **OF DENYING MARRIAGE TO SAME-SEX COUPLES**

8 48. Economists and other scholars have suggested several ways that marriage
9 promotes interdependence and enhances economic efficiency for couples and, therefore, for
10 society as a whole. Because they are not allowed to marry under California law, same-sex
11 couples are deprived of this enhanced economic efficiency and security.

12 49. In general, marriage provides a legal framework for living an interdependent
13 economic life. Through marriage, couples can buy property together and other household goods
14 knowing that each member of the couple has ownership rights. And if the worst should happen,
15 that is, if one spouse dies or the relationship dissolves, then the ownership rights would be clear.
16 Thus the contractual nature of marriage facilitates a more efficient use of time and money
17 resources for families than is available to unmarried couples. More specifically, marriage
18 enhances a couple's economic efficiencies in the following ways:

19 50. *Promoting Specialization Of Labor.* Nobel Prize-winning economist Gary Becker
20 has argued that the marriage contract allows for increasing household efficiency. Partners pool
21 time and money, and then divide up their labor in ways that increase the family's productivity in
22 producing goods and services for family members. Without the presumed long-term nature of
23 the relationship that marriage implies, as well as the division of community property and
24 possibility of alimony if a marriage ends, specialization by either party would not necessarily be
25 efficient for individuals in the long-term. For instance, marriage gives couples the economic
26 security to make decisions about education and labor force participation knowing that one spouse
27 can provide the primary economic support if the other can contribute less cash income to the
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1 family. If the relationship ends, a spouse who has sacrificed some earning potential will be
2 eligible for alimony and a share of community property to compensate him or her for those
3 financial losses.

4 51. *Reducing Transaction Costs:* Marriage also promotes economic efficiency
5 through reducing transaction costs for couples, removing the need to renegotiate the terms of the
6 legal relationship as couples experience changed circumstances.

7 52. *Providing Social Insurance:* Marriage also facilitates wealth and income pooling
8 across individuals and within families, which provides insurance against bad times, such as a
9 disability or death or the loss of a job.

10 53. *Signaling Commitment:* In addition, the willingness to marry is an important
11 signal of commitment to a relationship. Through the decision to marry, each partner signals
12 greater effort to maintain the relationship, a greater likelihood that the relationship will endure,
13 and an agreement to make a fair settlement if, despite the good intentions of the parties, the
14 relationship should end. The commitment to a long-term relationship and the rules for
15 distribution of assets and income should the relationship end underlie the specialization,
16 transaction costs, and social insurance functions of marriage.

17 54. *Promoting The Provision Of Caring Labor:* The long-term nature of the marital
18 commitment promotes reciprocity and altruism, as partners take care of one another and any
19 children they might be raising together. The unpaid work done in families is essential for the
20 survival of healthy human beings.

21 55. According to these theories, the legal institution of marriage promotes efficiency
22 at the family level and therefore at the social level. Both individual couples and societies have
23 an incentive to seek out and utilize this relatively efficient institution.

24 56. To the extent that same-sex couples in California are in positions that suggest a
25 high level of interdependence, those couples remain insecure relative to married couples because
26 they cannot receive the public and private support that accompanies marriage.

1 57. For example, in 29% of same-sex couples in California, one person is employed
2 while the other is either unemployed or out of the labor force. By comparison, 34% of married
3 couples have only one person employed. This disparity in employment status may reflect the
4 fact that members of same-sex couples are already paying for a partner's education or taking on
5 full-time child care responsibilities without the protections that marriage provides for such
6 specialization of roles among spouses.

7 58. The interdependence of members of same-sex couples in California is also shown
8 by the disparities between members' individual incomes. In the average same-sex couple, the
9 difference in total individual incomes between the two partners is \$37,034, compared to \$42,497
10 for married couples. To put that figure in perspective, the average total household income for
11 same-sex couples is \$89,366. Some of the factors that result in these disparities reflect decisions
12 that couples are likely to make together: hours worked, degree of labor force participation, time
13 in child-rearing, etc. However, they are making these decisions without the protections, such as
14 community property, provided for by marriage.

15 59. Couples also care for each other when one partner is aging, sick or disabled. In
16 9.5% of same-sex couples, one or both partners are 65 or over. In 21.7% of same-sex couples
17 (but only 19.5% of married couples), one member of the couple has a disability while the other
18 does not. In these couples, members may be taking on responsibility to provide for or care for a
19 senior or disabled member. However, when they do so they are not afforded the support that
20 marriage would provide under California law.

21 60. The statistics above indicate that many same-sex couples in California are taking
22 on responsibilities to care for each other even though they cannot access the legal rights and
23 obligations provided by marriage under California law. By denying these couples marriage,
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1 these couples are at great risk in the event of the death or disability of a partner, or in the event
2 the partners separate.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 31 day of August, 2004, at

5
6 By: M. V. Lee Badgett
7 M. V. LEE BADGETT
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EXHIBIT A /

University of Massachusetts

ECONOMICS DEPARTMENT

Thompson Hall
Amherst, MA 01003

Fax Cover Sheet

To: Kathleen Morris

From: Lee Badgett

Date: 8/31/04

No. of Sheets 2

Message:

Tel: 413-545-2590
Fax: 413-545-2921

"Assessing Health Impact Assessment: Multidisciplinary & International Perspectives," (one of many co-authors) *Journal of Epidemiology and Community Health*, forthcoming.

"Wedding Bell Blues: The Income Tax Consequences of Legalizing Same-Sex Marriage," James Alm, M. V. Lee Badgett, and Leslie A. Whittington, *National Tax Journal*, Vol. LIII, No. 2, June 2000, pp. 201-214.

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"Employment and Sexual Orientation: Disclosure and Discrimination in the Workplace," *Journal of Gay and Lesbian Social Services*, Vol. 4, No. 4, 1996, pp. 29-52. Simultaneously published as *Sexual Identity on the Job: Issues and Services*, Alan L. Ellis and Ellen D.B. Riggle, editors, Harrington Park Press, 1996. Also published in *Psychological Perspectives on Lesbian, Gay, and Bisexual Experiences*, 2nd edition, ed. Linda D. Garnets and Douglas C. Kimmel, Columbia University Press, 2003.

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"Rising Black Unemployment: Changes in Job Stability or Employability?" *Review of Black Political Economy*, Vol. 22, No. 3, Winter 1994, pp. 55-75.

"The Economics of Sexual Orientation: Establishing a Research Agenda," M. V. Lee Badgett and Rhonda M. Williams, *Feminist Studies*, Vol. 18, No.3, 1992.

BOOK CHAPTERS:

"Lesbian and Gay Think Tanks: Thinking for Success," *Identity/Space/Power: Lesbian, Gay, Bisexual, and Transgender Politics*, edited by Mark Blasius, Princeton University Press, 2000.

"Is Affirmative Action Working for Women?" (co-authored with Jeannette Lim) in Mary C. King (ed.) *Squaring Up: Policy Strategies to Raise Women's Incomes in the United States*. Ann Arbor, MI: University of Michigan Press, 2001.

"The Impact of Affirmative Action on Public-Sector Employment in California, 1970-1990," in Paul Ong, editor, *Impacts of Affirmative Action: Policies & Consequences in California*, AltaMira Press, 1999; and in *The Impact of Affirmative Action on Public-Sector Employment and Contracting in California*, A Technical Assistance Program Report of the California Policy Seminar, University of California, 1997.

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"The Economic Well-Being of Lesbian and Gay Adults' Families," in *Lesbian, Gay and Bisexual Identities in the Families: Psychological Perspectives*, ed. by Charlotte J. Patterson and Anthony R. D'Augelli, Oxford University Press, 1997.

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"Beyond Biased Samples: Challenging the Myths on the Economic Status of Lesbians and Gay Men," in *Homo Economics: Capitalism, Community, and Lesbian and Gay Life*, ed. by Amy Gluckman and Betsy Reed, Routledge Press, 1997.

"Occupational Strategies of Lesbians and Gay Men," M. V. Lee Badgett and Mary C. King, in *Homo Economics: Capitalism, Community, and Lesbian and Gay Life*, ed. by Amy Gluckman and Betsy Reed, Routledge Press, 1997.

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"The Changing Contours of Discrimination: Race, Gender, and Structural Economic Change," M. V. Lee Badgett and Rhonda M. Williams, in *Understanding American Economic Decline*, David Adler and Michael Bernstein, eds., Cambridge University Press, Cambridge, 1994.

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"Same-sex Couples and Their Children in Massachusetts: A View from Census 2002," co-authored with Michael Ash, Nancy Folbre, Lisa Saunders, and Randy Albelda, *Angles*, Institute for Gay and Lesbian Strategic Studies, Amherst, MA, February 2004.

"Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Domestic Partnership Act," M.V. Lee Badgett and R. Bradley Sears, Institute for Gay and Lesbian Strategic Studies and Williams Project of UCLA Law School, December 2003.

"Equal Rights, Fiscal Responsibilities: The Impact of AB205 on California's Budget," M.V. Lee Badgett and R. Bradley Sears, Institute for Gay and Lesbian Strategic Studies and Williams Project of UCLA Law School, May 2003.

"Left Out of the Count: Missing Same-sex Couples in Census 2000," M. V. Lee Badgett and Marc A. Rogers, Institute for Gay and Lesbian Strategic Studies, Amherst, MA, 2003.

"Calculating Costs with Credibility: Health Care Benefits for Domestic Partners," *Angles*, Vol. 5, Issue 1, 2000.

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"Vulnerability in the Workplace: Evidence of Anti-Gay Discrimination," *Angles: The Policy Journal of the Institute for Gay and Lesbian Strategic Studies*, Vol. 2, No. 1, September 1997.

"For Richer, For Poorer: The Cost of Nonrecognition of Same Gender Marriages," M. V. Lee Badgett and Josh A. Goldfoot, *Angles: The Policy Journal of the Institute for Gay and Lesbian Strategic Studies*, Vol. 1, No. 2, May 1996.

"Pervasive Patterns of Discrimination Against Lesbians and Gay Men: Evidence from Surveys Across the United States," Lee Badgett, Colleen Donnelly, and Jennifer Kibbe, National Gay and Lesbian Task Force Policy Institute, 1992.

"The Impact of the Construction of Luz SEGS VIII on California and the Project Area," William T. Dickens, Lee Badgett, and Carlos Davidson, February 1989.

OTHER PUBLICATIONS:

"Equality Doesn't Harm 'Family Values'", with Joop Garssen, *National Post* (Canada), August 11, 2004,

"Prenuptial Jitters: Did Gay Marriage Destroy Heterosexual Marriage in Scandinavia?" *Slate Magazine*, May 20, 2004, <http://slate.msn.com/id/2100884/>.

"Equality Is Not Expensive," *Connecticut Law Tribune*, April 19, 2004.

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"Recognizing California Couples: Domestic-Partner Law Attacked by Anti-Gay Senator Could Boost Flow of Cash to State," M. V. Lee Badgett and R. Bradley Sears, *Daily Journal*, Oct. 14, 2003.

"A Win at Cracker Barrel," *The Nation*, Feb. 10, 2003.

"Why I was a Dem for a Day," *Daily Hampshire Gazette*, June 2002.

Commentary on Boy Scouts of America, WFCR, Amherst, MA, August 13, 2001.

"Sexual Orientation," Richard Cornwall and M. V. Lee Badgett, entry for *Encyclopedia of Feminist Economics*, ed. by Meg Lewis and Janice Peterson, Edward Elgar, 2000.

"Lesbians, social and economic situation," entry for *International Encyclopedia of the Social and Behavioral Sciences*, forthcoming.

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"Do Sexual Orientation Policies Help Lesbians?" in *Women's Progress: Perspectives on the Past, Blueprint for the Future*, Institute for Women's Policy Research, Fifth Policy Research Conference Proceedings, Washington, DC, 1998.

"Census Data Needed," letter to the editor, *The Washington Blade*, November 7, 1997, p. 37.

"Same-sex partners bring nurturing--and financial benefits--to the altar," op-ed piece with Gregory Adams, *Chicago Sun-Times*, June 8, 1996, p. 16.

"The Last of the Modernists: A Reply," *Feminist Economics*, Vol. 1, No. 2, 1995.

"Domestic Partner Recognition: Doing the Right--and Competitive--Thing," *Synthesis: Law and Policy in Higher Education*, Vol. 6, No. 4, Spring 1995.

"Equal Pay for Equal Families," *Academe*, May/June 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," in *Higher Education Collective Bargaining During a Period of Change*, Proceedings, Twenty-Second Annual Conference, April 1994, The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, 1994.

"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.

"How the Fed Works," *Labor Center Reporter*, No. 177, November 1986.

WORK IN PROGRESS AND PAPERS UNDER REVIEW:

"Variations on an Equitable Theme: International Same-sex Partner Recognition Laws."

"Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Gay, Lesbian, and Bisexual People" (with Michael Ash), under review.

"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.

"Lesbian, Gay, and Bisexual Giving and Volunteering," M. V. Lee Badgett and Nancy Cunningham, August 1998. Revise and resubmit to *Nonprofit and Voluntary Sector Quarterly*.

"Acting Affirmatively or Affirmative Action? Constructing a Sexual Orientation Employment Policy," July 1995. Revise and resubmit to *Journal of Policy Analysis and Management*

"Tolerance, Taboos, and Gender Identity: The Occupational Distribution of Lesbians and Gay Men," July 1998.

"Redistribution and Restructuring by Race and Gender: A Regional and Industrial Analysis," Rhonda M. Williams and M. V. Lee Badgett, Sept. 1994.

PRESENTATIONS OF PAPERS:

"Asking the Right Questions," Joint Statistical Meetings of the American Statistical Association, Toronto, August 2004.

"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:

Guest speaker, Womens studies and political sciences courses at Smith College and Amherst College, Spring 2003.

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:

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:

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:

Out 100, *Out Magazine*, 2001.

One of Best and Brightest Activists, *The Advocate*, 2000.

College Outstanding Teacher Award, Social and Behavioral Sciences, University of Massachusetts, 2000-2001

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

American Economic Association

Board member, Institute for Gay and Lesbian Strategic Studies

Editorial Board (and past Associate Editor), *Feminist Economics*

International Assoc. for Feminist Economics (past board member)

American Statistical Association

REFEREE

Quarterly Journal of Economics

Industrial Relations

Journal of Human Resources

Feminist Economics

Journal of Policy Analysis & Mgmt.

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

Industrial and Labor Relations Review