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 San Francisco County Superior Court
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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

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

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

21 Plaintiff/Petitioner,

22 vs.

23 STATE OF CALIFORNIA, et al.

24 Defendants/Respondents.

JUDICIAL COUNCIL COORDINATION
 PROCEEDING NO. 4365

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

DECLARATION OF GEORGE
 CHAUNCEY 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 **A. Background and Summary**

2 I, George Chauncey, declare as follows:

3 1. I am a Professor of History at the University of Chicago, where I have taught
4 since 1991. I am the author of *Gay New York: Gender, Urban Culture, and the Making of the*
5 *Gay Male World, 1890-1940* (1994) New York: Basic Books, which won the Organization of
6 American Historians' Merle Curti Award for the best book in social history and Frederick
7 Jackson Turner Award for the best first book in any field of history, the Los Angeles Times
8 Book Prize in History, and Lambda Literary Award. I am also the author of *Why Marriage?*
9 *The History Shaping Today's Debate over Gay Equality* (2004), New York: Basic Books,
10 coeditor of three books and special journal issues, including *Hidden From History: Reclaiming*
11 *the Gay and Lesbian Past* (1989) NAL, and the author of numerous articles, including *From*
12 *Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female*
13 *Deviance* (Fall 1982-Winter 1983), 58-59 *Salmagundi* 114-46 (which has been translated into
14 Spanish and reprinted twice); *Christian Brotherhood or Sexual Perversion? Homosexual*
15 *Identities and the Construction of Sexual Boundaries in the World War One Era* (1985) 19
16 *Journal of Social History* 189-211 (which has been translated into French and Dutch and
17 reprinted ten times); and *The Postwar Sex Crime Panic*, True Stories from the American Past,
18 (William Graebner edit., 1993) McGraw-Hill, pp.160-78 (which has been translated and
19 published in Dutch). I am an expert on the history of the United States in the twentieth century
20 and gender, homosexuality, and sexuality in the United States. I have knowledge as a historian
21 of the following facts and, if called upon to do so, I could and would competently testify thereto.

22 2. I base this declaration on my own research and publications (including those cited
23 above) and the work of other historians and scholars, including: Nan Alamilla Boyd, *Wide Open*
24 *Town: A History of Queer San Francisco* (2003) Berkeley: University of California Press; John
25 D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority, 1940-*
26 *1970* (1981) Chicago: University of Chicago Press; David K. Johnson, *The Lavender Scare: The*
27 *Cold War Persecution of Gays and Lesbians in the Federal Government* (2004) Chicago:
28 University of Chicago Press; Allan Bérubé, *Coming Out Under Fire: The History of Gay Men*

1 and Women in World War II (1992) New York: Free Press; Estelle B. Freedman, *'Uncontrolled*
2 *Desires': The Response to the Sexual Psychopath, 1920–1960* (1987) 74 *Journal of American*
3 *History* 83–106; and Martin Meeker, *Behind the Mask of Respectability: Reconsidering the*
4 *Mattachine Society and Male Homophile Practice, 1950s and 1960s*, (2001) 10 *Journal of the*
5 *History of Sexuality* 78–116.

6 3. Lesbians and gay men faced substantial discrimination and political
7 disenfranchisement on the basis of their homosexual status throughout the last century. They
8 were labeled “deviants,” “degenerates,” and “sex criminals” by the medical profession,
9 government officials, and the mass media. The federal government banned the employment of
10 homosexuals and insisted that its private contractors ferret out and dismiss their gay employees.
11 Many states, including California, prohibited gay people from being served in bars and
12 restaurants. The Hollywood studios prohibited the discussion of gay issues or the appearance of
13 gay or lesbian characters in films. Finally, many municipalities launched police campaigns to
14 suppress gay life. In sum, many authorities created or reinforced the belief that gay people were
15 an inferior class to be shunned by other Americans.

16 **B. Public Perceptions of Lesbians and Gay Men**

17 4. The widespread discrimination faced by lesbians and gay men in the late
18 nineteenth and twentieth centuries was historically unique and unprecedented. In the colonial
19 era, sodomy laws and other statutes proscribed a diverse and inconsistent set of sexual acts
20 engaged in by various combinations of partners. Above all, they regulated *conduct* in which
21 *anyone* (or, at certain times and in certain places, any male person) could engage. Although
22 some (but not all) forms of homosexual conduct were regulated by such statutes, and a handful
23 of men were executed for engaging in such conduct during the colonial era, non-procreative sex
24 of any kind rather than homosexual conduct per se was the object of most such laws. In the
25 nineteenth century, they were rarely enforced.

1 5. Current historical research suggests that it was only in the late nineteenth century
2 that the very concept of the homosexual as a distinct category of person developed. The word
3 “homosexual” appeared for the first time in a German pamphlet in 1868, and was introduced to
4 the American lexicon only in 1892. As the French historian and philosopher Michel Foucault
5 has famously described this evolution, “the sodomite had been a temporary aberration; the
6 homosexual was now a species.” Sodomy laws had criminalized certain forms of conduct, but it
7 was only in the twentieth century that the state began to classify and penalize citizens on the
8 basis of their identity or *status* as homosexuals.

9 6. The states began to enact discriminatory measures in the 1920s and 1930s, but
10 such measures and other forms of anti-gay harassment were especially virulent in the twenty
11 years following the Second World War, when government agencies systematically discriminated
12 against homosexuals.

13 7. The discriminatory measures I will describe responded to the growing visibility of
14 gay and lesbian subcultures in San Francisco, Los Angeles, New York, and other American cities
15 in the late nineteenth and early twentieth centuries. While some Americans responded to gay life
16 with fascination and sympathy, others regarded the growing visibility of lesbian and gay life with
17 dread. Hostility to homosexuals was sometimes motivated by an underlying uneasiness about
18 the dramatic changes underway in gender roles at the turn of the last century. Conservative
19 physicians initially argued that the homosexual (or “sexual invert”) was characterized as much
20 by his or her violation of conventional gender roles as by specifically sexual interests. At a time
21 when many doctors argued that women should be barred from most jobs because employment
22 would interfere with their ability to bear children, numerous doctors identified women’s
23 challenges to the limits placed on their lives as evidence of a medical disorder. Thus doctors
24 explained that “the female possessed of masculine ideas of independence” was a “degenerate”
25 and that “a decided taste and tolerance for cigars, ... [the] dislike and incapacity for needlework
26 ... and some capacity for athletics” were all signs of female “sexual inversion.” Similarly,
27 another doctor thought it significant that a male “pervert” “never smoked and never married;
28 [and] was entirely averse to outdoor games.”

1 8. Such views lost their credibility once public opinion had come to accept
2 significant changes in women's roles in the workplace and political sphere, but doctors continued
3 for several more decades to identify homosexuality per se as a "disease," "mental defect,"
4 "disorder," or "degeneration." Until the American Psychiatric Association removed
5 homosexuality from its list of disorders in 1973, such hostile medical pronouncements provided
6 a powerful source of legitimization to anti-homosexual sentiment, much as medical science had
7 previously legitimized widely held (and subsequently discarded) beliefs about male superiority
8 and white racial superiority.

9 **C. Police Assaults on Freedom of Association**

10 9. Anti-vice societies organized in the late nineteenth century also opposed the
11 growing visibility of homosexuality, which they regarded as an egregious sign of the loosening
12 of social controls on sexual expression in the cities. They encouraged the police to step up
13 harassment of gay life as part of their campaign to shut down dance halls and movie theaters,
14 prohibit the consumption of alcohol and the use of contraceptives, dissuade restaurants from
15 serving an interracial mix of customers, and otherwise impose their vision of the proper social
16 order and sexual morality. As a result of this pressure, the police began using misdemeanor
17 charges, such as disorderly conduct, vagrancy, lewdness, loitering, and so forth to harass
18 homosexuals. These state misdemeanor or municipal offense laws, which carried fewer
19 procedural protections, allowed further harassment of individuals engaged in same-sex intimacy.

20 10. In some cases, state officials tailored these laws to strengthen the legal regulation
21 of homosexuals. For example, in 1923 the New York State legislature specified for the first time
22 one man's "frequent[ing] or loiter[ing] about any public place soliciting men for the purpose of
23 committing a crime against nature or other lewdness" as a form of disorderly conduct. Many
24 more men were arrested and prosecuted for non-commercial solicitation under this misdemeanor
25 charge than for sodomy. Between 1923 and 1966, when Mayor John Lindsay ordered the police
26 to stop using entrapment to secure arrests of gay men, more than 50,000 men had been arrested
27 on this charge in New York City alone. Section 647 of the California Penal Code long served in
28 a similar manner in this state.

1 11. Even this stepped-up policing of gay life fails to anticipate the scale of the
2 discrimination against homosexuals put in place later in the twentieth century, especially
3 between the 1930s and 1960s. In the early years of the Great Depression, restrictions on gay life
4 intensified. New regulations curtailed gay people's freedom of association. In New York State,
5 for instance, the State Liquor Authority established after the Repeal of Prohibition issued
6 regulations prohibiting bars, restaurants, cabarets, and other establishments with liquor licenses
7 from employing or serving homosexuals or allowing homosexuals to congregate on their
8 premises. The Authority's rationale was that the mere presence of homosexuals made an
9 establishment "disorderly," and when the courts rejected that argument the Authority began
10 using evidence of unconventional gender behavior or homosexual solicitation gathered by
11 plainclothes investigators to provide proof of a bar's disorderly character. Hundreds of bars
12 were closed in the next thirty years in New York City alone.

13 12. Similar regulations were enforced in California. In 1942, after the beginning of
14 the Second World War, military authorities declared scores of bars off-limits to servicemen
15 because they were patronized by homosexuals, and military and civilian police cooperated in
16 anti-vice crackdowns against gay bars and public meeting places in San Francisco. Gay bars,
17 which were an important meeting place for lesbians and gay men since they were often the only
18 public spaces in which they dared be openly gay, faced constant policing for the next decade. In
19 1949, for instance, the Board of Equalization revoked the liquor license of the Black Cat Café on
20 the grounds that it was a "hangout for persons of homosexual tendencies." The owner of the
21 Black Cat appealed the decision in 1950, however, and in 1951 the California Supreme Court
22 ruled in *Stoumen v. Reilly* (1951) 37 Cal.2d 713, in favor of the Black Cat that the mere presence
23 of homosexuals in an establishment did not make it disorderly.

24 13. For the next four years, bars patronized by lesbians and gay men enjoyed a new
25 degree of security. But in 1955, the state legislature passed an amendment to the California
26 Business and Professions Code that allowed for the investigation and revocation of the liquor
27 license of any bar known as a "resort for sex perverts." Beginning that year, the newly created
28 Department of Alcoholic Beverage Control (ABC) assumed responsibility for regulating bars

1 and other businesses licensed to sell liquor. According to the historian Nan Alamilla Boyd, the
2 ABC "collapsed the difference between homosexual status (a state of being) and conduct
3 (behavior) and suggested that any behavior that signified homosexual status could be construed
4 as an illegal act. Simple acts such as random touching, mannish attire (in the case of lesbians),
5 limp wrists, high pitched voices, and/or tight clothing (in the case of gay men) became evidence
6 of a bar's dubious character" and grounds for closing it. In other words, the ABC closed bars
7 because they were patronized by gay people by asserting that any behavior that was
8 stereotypically associated with gay people that they observed in a bar made that bar disorderly.

9 14. In the twenty years following the Second World War, the police departments of
10 numerous cities stepped up their raids on bars and private parties attended by gay and lesbian
11 persons, and made thousands of arrests for "disorderly conduct." New York launched major
12 crackdowns on gay bars as part of its campaign to "clean up the city" before both the 1939 and
13 1964 World's Fairs. During the course of a 1955 investigation of the gay scene in Boise, Idaho,
14 1,400 people were interrogated and coerced into identifying the names of other gay residents.

15 15. San Francisco witnessed repeated drives against gay life. The San Francisco
16 Police Department (SFPD) initiated a major drive against gay bars in the summer and fall of
17 1954. It was joined by the Armed Forces Disciplinary Patrol Board in closing several bars and
18 arresting dozens of patrons. In 1956, the Alamo Club (also known as Kelly's) was raided and 36
19 women arrested on the charge of visiting a disorderly house. Hazel's, a gay bar on the San
20 Francisco Peninsula, was also raided and shut down that year. Ninety people were arrested and
21 many of their names appeared in local newspapers.

22 16. After his administration's commitment to suppressing gay life became an issue in
23 his 1959 re-election campaign, San Francisco Mayor George Christopher launched a two-year-
24 long crackdown on the city's gay bars and other meeting places. Forty to sixty men and women
25 were arrested every week in bar sweeps, and within two years almost a third of the city's gay
26 bars had been closed. Because of the criminalization of their businesses and the constant threat
27 of police harassment and closure, bar owners who served lesbians and gay men were forced to
28 pay bribes to the police in order to keep their bars open. This practice was so widespread that a

1 major scandal over corruption in the San Francisco Police Department in the early 1960s became
2 known as the "gayola" scandal.

3 **D. Censorship**

4 17. Other regulations curtailed gay people's freedom of speech and the freedom of all
5 Americans to discuss gay issues. The Hollywood studios, under pressure from a censorship
6 movement led by religious (primarily Catholic) leaders, established a production code that from
7 1934 on prohibited the inclusion of gay or lesbian characters, discussion of homosexual issues,
8 or even the "inference" of "sex perversion" in Hollywood films. This censorship code remained
9 in effect for some thirty years and effectively prohibited the discussion of homosexuality in the
10 most important medium of the mid-twentieth century.

11 18. Gay people's freedom of speech and the freedom of all people to discuss
12 homosexuality in print media were also restricted. Postal officials in Los Angeles banned an
13 issue of the first gay political magazine, *ONE*, from the mails in 1954; the Supreme Court
14 overturned that prohibition in 1958. In 1957, Lawrence Ferlinghetti and Shig Murao were
15 arrested for publishing and selling *Howl*, a poem by Allen Ginsberg that openly discussed
16 homosexuality. That same year, the U.S. Customs Office in San Francisco reported that it seized
17 about 700 pieces of mail a week on suspicion of being obscene; although they did not specify the
18 content of such mail, customs officials regularly seized mail sent to American residents by
19 foreign gay organizations and publishers.

20 **E. Discrimination in the Military**

21 19. As the country's largest and most influential employer, the military has often had
22 an important influence on employment and other social policies nationwide. This was true as the
23 nation dealt with racial integration and the role of women in the workforce, and was true as the
24 nation dealt with questions of gay equality. Like all states once did, the military long made
25 sodomy a criminal offense (and continues to do so). In the twentieth century, it shifted its focus
26 from regulating homosexual offenses to discriminating against people on the basis of their
27 homosexual status. The Second World War was the first war during which the military banned
28 homosexuals as such from military service. The military made screening out homosexuals part

1 of its standard induction procedures. Thousands of men and women were kept from serving their
2 country, and often faced public opprobrium as a result. Thousands more who evaded the
3 screening procedures were later dishonorably discharged after honorably serving to defend their
4 country. As a result, they were denied benefits from the GI Bill and also faced employment
5 discrimination in the civilian sector. During the late 1940s, discharges for homosexuality
6 averaged slightly more than 1,000 per year, and in the early 1950s that number grew to an
7 average of 2,000 per year.

8 **F. The McCarthy Era and its Aftermath**

9 20. The persecution of gay men and lesbians dramatically increased at every level of
10 government after the Second World War. In 1950, following Senator Joseph McCarthy's
11 denunciation of the employment of gay persons in the State Department, the Senate conducted a
12 special investigation into "the employment of homosexuals and other sex perverts in
13 government." The Senate Committee recommended excluding gay men and lesbians from all
14 government service. It noted that homosexual acts violated the law and gave its imprimatur to
15 the prejudice that "those who engage in overt acts of perversion lack the emotional stability of
16 normal persons" and that homosexuals "constitute security risks." It also portrayed homosexuals
17 as predators: "[T]he presence of a sex pervert in a Government agency tends to have a corrosive
18 influence on his fellow employees. These perverts will frequently attempt to entice normal
19 individuals to engage in perverted practices. This is particularly true in the case of young and
20 impressionable people who might come under the influence of a pervert. Government officials
21 have the responsibility of keeping this type of corrosive influence out of the agencies under their
22 control. ... One homosexual can pollute a Government office."

23 21. The Senate investigation and report were only one part of a massive anti-
24 homosexual campaign launched by the federal government after the war. The Senate Committee
25 reported that "[a] spot check of the records of the Civil Service Commission indicates that
26 between January 1, 1947, and August 1, 1950, approximately 1,700 applicants for Federal
27 positions were denied employment because they had a record of homosexuality or other sex
28 perversion." In 1953, President Eisenhower issued an executive order requiring the discharge of

1 homosexual employees from federal employment, civilian or military. Thousands of men and
2 women were discharged or forced to resign from civilian and military positions because they
3 were suspected of being gay or lesbian. At the height of the McCarthy era, the U.S. State
4 Department fired more homosexuals than communists.

5 22. In addition, President Eisenhower's executive order required defense contractors
6 and other private corporations with federal contracts to ferret out and discharge their homosexual
7 employees. Many other private employers without federal contracts adopted the federal
8 government's policy by refusing to hire gay people. Furthermore, the FBI initiated a widespread
9 system of surveillance to enforce the executive order. As the historian John D'Emilio has noted,
10 "The FBI sought out friendly vice squad officers who supplied arrest records on morals charges,
11 regardless of whether convictions had ensued. Regional FBI officers gathered data on gay bars,
12 compiled lists of other places frequented by homosexuals, and clipped press articles that
13 provided information about the gay world. ... Federal investigators engaged in more than fact-
14 finding; they also exhibited considerable zeal in using information they collected."

15 23. Countless state employees, teachers, hospital workers, and others lost their jobs as
16 a result of official policy. Beginning in 1958, for instance, the Florida Legislative Investigation
17 Committee, which had been established by the legislature in 1956 to investigate and discredit
18 civil rights activists, turned its attention to homosexuals working in the State's universities and
19 public schools. Its initial investigation of the University of Florida resulted in the dismissal of
20 fourteen faculty and staff members, and in the next five years it interrogated some 320 suspected
21 gay men and lesbians. It "pressured countless others into relinquishing their teaching positions,
22 and had many students quietly removed from state universities." Its 1959 report to the
23 legislature called the extent of homosexual activity in the State's school system "absolutely
24 appalling."

25 **G. Demonization**

26 24. The official harassment of homosexuals received further legitimization from a
27 series of press and police campaigns in the 1930s, 1940s, and 1950s that fomented demonic
28 stereotypes of homosexuals as child molesters. As the historian Estelle Freedman has shown,

1 "Despite the lack of evidence that the incidence of rape, child murder, or minor sex offenses had
2 increased," these press campaigns "led to demands that the state crack down on sex crimes." My
3 own research has found that the majority of cases of child "sex murders" reported by the press
4 involved men attacking girls. But the press often warned that in breaking with social convention
5 to the extent necessary to engage in homosexual behavior, a man had demonstrated the refusal to
6 adjust to social norms that was the hallmark of the psychopath. One popular magazine asserted
7 in 1950 that "Once a man assumes the role of homosexual, he often throws off all moral
8 restraints. . . . Some male sex deviants do not stop with infecting their often-innocent partners:
9 they descend through perversions to other forms of depravity, such as drug addiction, burglary,
10 sadism, and even murder." A Special Assistant Attorney General of California claimed in 1949
11 that "[t]he sex pervert, in his more innocuous form, is too frequently regarded as merely a queer
12 individual who never hurts anyone but himself. All too often we lose sight of the fact that the
13 homosexual is an inveterate seducer of the young of both sexes, and is ever seeking for younger
14 victims." As a result of such press campaigns and official pronouncements, the longstanding
15 public image of the "queer" as an effeminate fairy whom one might ridicule but had no reason to
16 fear was supplemented by the more ominous image of the "queer" as a psychopathic child
17 molester capable of committing the most unspeakable crimes against children.

18 25. The new demonic stereotypes of homosexuals were used to justify draconian
19 legislation. In response to the public hysteria incited by such press campaigns, more than half
20 the state legislatures enacted laws allowing the police to force persons who were convicted of
21 certain sexual offenses—or, in some states, merely suspected of being "sexual deviants"—to
22 undergo psychiatric examinations. The examinations could result in indeterminate civil
23 confinements for individuals deemed in need of a "cure" for their homosexual "pathology." In
24 1939, California enacted legislation that authorized judges to have someone charged with a sex
25 offense involving a minor confined for ninety days so that psychiatrists could determine if he
26 was a sex psychopath, in which case he could be confined indefinitely until cured of his
27 psychopathic tendencies. In 1945, the legislature amended this so that anyone charged with a
28 sex offense, whether or not it involved a minor, could be subjected to such confinement. Adults

1 charged with committing sodomy or other statutory sex offenses with other adult consenting
2 partners could be subjected to involuntary confinement and psychiatric examination under these
3 laws. Moreover, in 1944 the California legislature also passed a law requiring people convicted
4 of certain sex offenses, including sodomy and the “disorderly conduct” and “vagrancy” offenses
5 most often used to punish homosexuals, to register with the police whenever they moved.

6 26. Lesbians, gay men, and their supporters challenged police harassment and state
7 discrimination throughout this period, but with little success before the 1960s and 1970s.
8 Through much of the twentieth century, gay men and lesbians suffered under the weight of
9 medical theories that treated their desires as a disorder, penal laws that condemned their
10 consensual adult sexual behavior as a crime, and federal policies and state regulations that
11 discriminated against them on the basis of their homosexual status. These state practices and
12 ideological messages worked together to create or reinforce the belief that gay persons were an
13 inferior class to be shunned by other Americans.

14 H. The Growing Debate over the Rights of Gay People

15 27. We continue to live with the legacy of the antigay measures enacted in the 1930s,
16 1940s, and 1950s, in the discriminatory laws still on the books, and in the popular hostility such
17 laws expressed, perpetuated, and legitimized. Nonetheless, it is important to recognize that such
18 hostility is a product of human history, not of human nature. State policies and public attitudes
19 changed to become more hostile in mid-twentieth-century America, but in recent decades antigay
20 discriminatory measures have been subject to increasing debate and many have been repealed.
21 The debate over the marriage rights of lesbian and gay couples is one sign of these historical
22 trends.

23 28. The widespread consensus in the first half of the twentieth century that
24 homosexuality was pathological and dangerous has given way, with the large majority of experts
25 now regarding it as a normal and benign variation of human sexuality. Major institutions that
26 once helped legitimize antigay hysteria have changed their positions. In 1973, for example, the
27 American Psychiatric Association voted to remove homosexuality from its list of mental
28 disorders. The American Psychological Association and the American Medical Association soon

1 followed suit. The federal government, which once prohibited the employment of homosexuals,
2 now prohibits its agencies from discriminating against them in employment. Thirteen states,
3 including California and the District of Columbia have passed laws banning discrimination on
4 the basis of sexual orientation. A substantial number of cities and counties have prohibited
5 discrimination based on sexual orientation. Thousands of private employers have adopted
6 similar measures. Religious attitudes toward homosexuals and homosexuality have also begun
7 to change. The place of lesbians and gay men in religious life is still vigorously debated, but
8 since the 1970s many mainline Protestant denominations have issued official statements
9 condemning legal discrimination against gay people and affirming that homosexuals ought to
10 enjoy equal protection under criminal and civil law.

11 29. The growing openness of gay people and the lessening of discrimination against
12 them have not gone unchallenged, however. Their growing visibility and acceptance have
13 prompted a sharp reaction by some groups, just as the gains of the black civil rights movement
14 did in the 1950s and 1960s. Since the 1970s, national organizations advocating "traditional
15 family values" have paid increasing attention to the issue of gay rights and many local groups
16 have organized to fight gay rights ordinances. In 1977, singer Anita Bryant declared that her
17 Baptist faith moved her to lead a successful campaign to rescind a gay rights ordinance that had
18 been passed in Dade County, Florida. The following year, California State Senator John Briggs
19 promoted a ballot initiative (Proposition 6) that would have outlawed the employment of gay
20 teachers or any teacher who made progay statements with advertisements warning voters that
21 "our children are endangered." Briggs claimed that openly gay teachers in the schools would
22 "inevitably" turn young students into homosexuals. The Briggs Initiative was defeated by the
23 voters. But across the country in the next twenty-five years, scores of referenda were initiated to
24 overturn gay rights laws, and the great majority of them were successful. One of the most
25 extreme examples was Colorado's Amendment 2, which was enacted in 1992 in response to
26 ordinances enacted by several local governments banning discrimination on the basis of sexual
27 orientation. Amendment 2 altered the state constitution to prohibit any future legislative,
28 executive, or judicial action to protect gay men and lesbians. In 1996, the U.S. Supreme Court

1 ruled in *Romer v. Evans* (1996) 517 U.S. 620, [116 S.Ct. 1620, 134 L.Ed.2d 855] that
2 Amendment 2 violated the Equal Protection Clause.

3 30. Additionally, laws permitting overt intolerance and discrimination against
4 homosexuals remain in force, with severe consequences for people's lives and livelihoods. For
5 example, a review of twenty surveys conducted across America between 1980 and 1991 showed
6 that between 16 and 44 percent of gay men and lesbians had experienced discrimination in
7 employment.

8 31. The defenders of the popular prejudice of any particular age, lacking any
9 recognizably rational basis for the distinctions they draw, often resort to claiming they are
10 endorsed by millennia of moral teaching. Many white Southerners once defended segregation
11 by claiming that it was part of God's plan for humankind. In the 1960s, a Virginia judge upheld
12 that state's law against interracial marriage in the lower-court proceeding in *Loving v. Virginia*
13 by claiming that "Almighty God created the races white, black, yellow, malay and red, and he
14 placed them on separate continents. And but for the interference with his arrangement there
15 would be no cause for such marriages. The fact that he separated the races shows that he did
16 not intend for the races to mix." They also distort the meaning of equal protection of the laws.
17 A generation ago, conservative white voters overturned state and local fair housing laws in at
18 least nine referenda, often using arguments that distorted the meaning of antidiscrimination
19 laws. When the opponents of a proposed open housing law in Detroit organized a successful
20 voter initiative against it in 1964, for instance, they argued that such anti-discrimination
21 measures conferred "special privileges" on African-Americans. Opponents of laws prohibiting
22 discrimination on the basis of sexual orientation have often advanced a similar argument, by
23 claiming that such laws confer "special rights" on gay people.

24 32. The opposition to ending discrimination against lesbian and gay couples in
25 marriage law is the latest example of this debate. Gay and lesbian groups have filed suit for the
26 right to marry in numerous states, including Alaska, Hawaii, Massachusetts, New Jersey,
27 Arizona and California. In Hawaii and Alaska, where those law suits were successful or
28 appeared on the verge of success, gay couples lost that right again when voters passed state

1 constitutional amendments barring same-sex couples from marrying. In 1996, under pressure
2 from traditional family values organizations, Congress passed, and President Clinton signed, the
3 federal Defense of Marriage Act (often called DOMA). DOMA provides that no State is
4 required to recognize marriages between people of the same sex performed in any other State
5 and that no legal marriage between persons of the same sex will be recognized for purposes of
6 federal law. The Senate passed DOMA on the first day of a trial in Hawaii that was widely
7 expected to result in the extension of equal marriage rights to lesbian and gay couples in that
8 state. Many of the groups leading the campaign against the marriage rights of gay couples have
9 in the past opposed other gay rights measures that now enjoy widespread popular support.

10 33. Historically, marriage bans have been fiercely defended because they so often
11 serve to signify and reinforce larger patterns of inequality. In 1948, when the California
12 Supreme Court became the first state supreme court in the nation to overturn a state law banning
13 interracial marriage in *Perez v. Sharp*, (1948) 32 Cal.2d 711, it bucked the tide of white public
14 opposition to racial equality. In 1967, when the United States Supreme Court overturned the
15 remaining state laws banning interracial marriage in *Loving v. Virginia* (1967) 388 U.S. 1, almost
16 half of white Americans still supported legal bans on such marriages. It was only 34 years after
17 *Loving* that a plurality of white respondents reported approving of interracial marriages. There
18 remains substantial public opposition to same-sex marriages because they are taken to be a sign
19 of the full equality of lesbian and gay Americans, an equality many Americans are still loathe to
20 recognize.

21 **I. Conclusion**

22 34. The condemnation emanating from religion, medicine and law have, for decades,
23 formed a harsh reality of oppression that shaped the contours of life for gay and lesbian
24 Americans. They have lived and in some cases continue to live their lives under a deep fear of
25 exposure. Moreover, due to pervasive social discrimination, gay and lesbian Americans are
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1 disadvantaged in the political process. Like other minority groups, they have often and must
2 often continue to rely on judges' interpretations of constitutional law to secure equal rights.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Dated: September 1, 2004

6 George Chauncey
7 GEORGE CHAUNCEY

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