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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO
 UNLIMITED CIVIL JURISDICTION

17 Coordination Proceeding
 Special Title (Rule 1550(b))
 18 MARRIAGE CASES
 19 CITY AND COUNTY OF SAN
 FRANCISCO, a charter city and county,
 20
 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 NANCY F. COTT
 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
2 I, NANCY F. COTT, Ph.D., declare:

3 1. I have personal knowledge of the following facts and if called upon to testify I
4 could and would testify competently thereto. The opinions expressed herein are my true
5 opinions as an expert in the area of the history of marriage in the United States.

6 2. I am the Jonathan Trumbull Professor of American History at Harvard University,
7 and Pforzheimer Foundation Director of the Schlesinger Library on the History of Women in
8 America, Radcliffe Institute for Advanced Study. I teach graduate students and undergraduates,
9 and my field is American social history and history of the family.

10 3. In 1969, I received my Master's degree in History of American Civilization from
11 Brandeis University. In 1974, I received my Ph.D. in History of American Civilization from
12 Brandeis University. Since that time, I have taught history, principally at Yale University, where
13 I was a professor for twenty-six years before coming to Harvard. I have received many
14 fellowships, honors and grants, including a Fulbright Lectureship Grant in 2001, and a John
15 Simon Guggenheim Memorial Foundation Fellowship in 1985.

16 4. I have written seven published books, including *Public Vows: A History of*
17 *Marriage and the Nation* (2000) Harvard Univ. Press, the subject of which is marriage as a public
18 institution in our society. I have also published more than twenty scholarly articles, including
19 several discussing the history of marriage in the United States. I have delivered scores of
20 academic lectures and papers over the past thirty years on a variety of topics. I also serve on
21 many advisory and editorial boards of academic journals. A true and correct copy of my
22 curriculum vitae is attached hereto as Exhibit A.

23 **MARRIAGE IN OUR SOCIETY**

24 5. I spent over a decade researching the history of marriage in the United States—
25 especially its legal attributes and obligations, and its social meaning—in order to write my book
26 *Public Vows: A History of Marriage and the Nation* (2000) Harvard Univ. Press. The claims and
27 evidence in this declaration come from that research and are more fully documented in the book;
28

1 the numerous historical sources that I studied and analyzed, and the other scholars' work that I
2 consulted while researching and writing, can be found in my published footnotes.

3 6. My research has led me to the conclusion that there is nothing at present that has
4 the same meaning, obligations, rights and benefits as marriage except marriage itself. In
5 previous centuries, many local communities gave informal unions and so-called "common-law"
6 marriages the same force and status as legal marriage, and most courts were willing to recognize
7 them as marriages in order to sustain established households, legitimize children, and enforce
8 fathers' obligations to support dependents. But most states invalidated "common-law" marriage
9 during the late nineteenth and early twentieth century. As the twentieth century progressed,
10 society and government at every level became more ramified and bureaucratic; government
11 functions and benefits, especially at the federal level, expanded enormously; and these
12 developments affected the legal and the economic attributes of marriage. In the United States, a
13 married pair now gains special consideration beyond the individual in many if not most
14 government benefits.

15 7. State and federal governments' special recognition of marriage appears in many
16 forms, including the areas of immigration and citizenship, tax policy, and property rules. For
17 example, social security and veterans' survivors' benefits, intestate succession rights, and jail
18 visitation privileges are extended only to legally married spouses. As the General Accounting
19 Office reported in 1996, the corpus of federal law mentions more than 1,000 benefits,
20 responsibilities and rights connected with marriage.

21 8. Marriage thus is a bundle of rights, obligations, and benefits, but it is more than
22 that. Marriage has a legitimacy that has been earned through many years of validation and
23 institutionalization in law and society. Enhanced by government recognition for so long, legal
24 marriage is a symbol of privilege. The idea that marriage is the happy ending, the ultimate
25 reward, the sign of adult belonging, and the definitive expression of love and commitment is
26 deeply ingrained in our society. This is reflected in and perpetuated in custom and the high and
27 popular arts as well as in law.

1 9. The relation between government and marriage is especially important in the
2 United States, because valid marriage here has always been authorized only by civil law. Each
3 colony, state and territory of the United States, as it came into being, set up marriage laws and
4 regulations which were supreme over any religious views or practices of marriage. To be sure,
5 marriage is invested with religious significance for many people; marriage ceremonies
6 commonly take religious form; and spokespersons for various religions may try to impose their
7 views of what marriage is and should be on the broader society. Nonetheless, from the very
8 founding of the United States, marriage has always been an institution authorized by civil law to
9 serve the purposes of civil society.

10 10. Since the colonial era, governments at all levels in the United States have been
11 concerned both to encourage and to regulate marriage because marriage organizes households
12 and figures largely in property ownership and inheritance. These are all matters of civil society
13 in which governments are highly interested.

14 11. In particular, since the colonial era governments at all levels in the United States
15 have seen marriages as economically beneficial to the public. Marriage creates economic
16 obligations between the parties mutually consenting and binds them to support their dependents.

17 12. By the nineteenth century, it became clear that legislatures and courts in the
18 United States encouraged marriage and enforced the economic obligations of marriage on the
19 spouses, in order to minimize public expense for poor relief (among other public benefits).
20 Today, the United States is more emphatic than virtually any other industrialized nation in its
21 public policy of channeling economic benefits through spousal relationships. Governments have
22 relied on marriage as the principle vehicle for organizing economic sustenance among members
23 of the population, particularly those who cannot labor to support themselves, such as the
24 dependent young and old.

25 13. While the ability or willingness to produce progeny has never been a condition of
26 freedom to marry, support for any child born or adopted into a family has always been an
27 obligation. The inability to have children (sterility) in a man or woman has never been a ground
28 for annulment or divorce; but if a divorce or separation occurred in a marriage that had produced

1 dependent children, support for those children has been required of both the father and the
2 mother. This requirement placed on a married pair acts as a critical limit on the public's
3 responsibilities for dependent children.

4 14. As a legal and civil institution with important economic consequences, marriage
5 has thus been intended by governments to serve public order. It has, equally, served as a marker
6 of individual freedom. Although these two goals may sometimes seem to conflict, both are aims
7 of American society, and both are necessary to the American way of life.

8 15. Legal marriage expresses and enhances individual freedoms by being based on
9 consent and freedom of choice. Mutual consent of the two parties has always been seen as
10 essential to the marriage contract. The individual's ability to give such consent is the mark of the
11 free person in possession of basic civil rights. This is a fact compellingly illustrated by the
12 history of slavery in the United States. Slaves were not able to marry legally, most basically
13 because they did not have the freedom to consent. Their masters' power could always intercede
14 and overcome slaves' intentions; thus slaves could not validly consent and contract to carry out
15 the duties of marriage.

16 16. Building on the association between individual freedom and the consensual basis
17 of marriage, courts during the twentieth century have increasingly articulated a fundamental right
18 to marry—overturning, for example, state laws that prevented parents in arrears on their child
19 support obligations and incarcerated felons from marrying. (See, e.g., *Zablocki v. Redhail*
20 (1978) 434 U.S. 374, *Turner v. Safley* (1987) 482 U.S. 78.) The U.S. Supreme Court in *Zablocki*
21 narrowly and firmly restricted statutory classifications that would "attempt to interfere with the
22 individual's freedom to make a decision as important as marriage." (434 U.S. at 387 n.12.)

23 CHANGES IN MARRIAGE

24 17. Marriage in the United States has not been an immutable institution. Certain
25 principles in marriage—namely consent as its basis, and mutual economic support and sexual
26 fidelity as its requirements—have been long lasting. But many other features of legal marriage
27 have evolved over time to keep up with changes in society at large. Marriage has been a
28 successful civil institution precisely because it has been flexible, not static. Flexibility and

1 adjustment in some features of marital roles, duties, and obligations were necessary to preserve
2 the value and relevance of marriage during centuries of dynamic change. Of course, this does
3 not mean that changes in marriage were always readily welcomed, or that they were not difficult
4 for some in society to accept. Indeed, many features of marriage that we take for granted today,
5 such as the ability of both spouses to act as individuals, marriage across the color line, or the
6 possibility of divorce, were very much resisted as they were coming into being; opponents saw
7 these new features as threatening to destroy the institution of marriage itself.

8 18. To be successful for so many hundreds of years, the institution of marriage has
9 had to be resilient, absorbing change when necessary to reflect and embody societal norms. The
10 examples of change over time in the laws of marriage highlighted below are in the areas of racial
11 regulation and spousal roles.

12 19. As mentioned earlier, slaves, being deprived of all civil rights, including the legal
13 capacity to consent, could not legally marry. Where slaveholders allowed it, slave couples often
14 wed informally, creating long-lasting unions and family units. However, slaveholders broke up
15 slave unions with impunity. Not being legally valid, slave marriages received no defense from
16 state governments. Forced migration or sale by their owners very commonly prevented African
17 American slaves from maintaining stable families, and they developed patterns of informal
18 unions, self-divorce, and serial monogamy, which then (in circular fashion) generated
19 stereotypes of African American infidelity and promiscuity. The very slaveholders who
20 prevented slave marriages then blamed slaves for loose sexual behavior, and thereby justified
21 their own sexual assaults on slave women. Anti-slavery advocates who lambasted the
22 "barbarism" of slavery very often focused on slavery's grievous desecration of marriage and
23 family life as evidence.

24 20. After emancipation, former slaves could for the first time turn to the government
25 to uphold their marriages. At the end of the Civil War the victorious Union government, through
26 the U.S. Freedmen's Bureau, actively sought to enable former slaves to marry legally and to gain
27 employment by contract. The Freedmen's Bureau sought to avoid having the support of
28 impoverished former slaves fall on the public purse. Its policy reflected general anti-slavery

1 sentiment that legal marriage was the best route to creating stable, productive, economically
2 viable households among the emancipated slaves. Freedpersons, who flocked to get married
3 legally, had their own motivations. They saw marriage as an expression of their newly acquired
4 civil rights. Now being individuals in the eyes of the law, they could consent, and therefore
5 could enter into legal marriage; their marriages deserved protection by the state from disruption
6 by white overlords.

7 21. Former slaves were still constrained in their choice of a spouse, however. Even
8 after emancipation, most states still had (and several newly passed or reinforced) laws
9 prohibiting marriage between a white person and a person who was defined as a Negro or
10 "mulatto". Despite the principle of freedom of choice in marriage, for hundreds of years in the
11 United States there were legal bars to marriage across the color line. In as many as forty-one
12 states and territories at some time in their history, marriages between white persons and Negroes
13 or 'mulattos', and sometimes between white persons and native Americans, Chinese, Japanese, or
14 Filipinos, were criminal or void. These laws were justified on several grounds, but were usually
15 said to enact what nature or God dictated and to prevent "corruption" of the institution of
16 marriage.

17 22. In California, race-based restrictions on marriage had been in place since the first
18 session of California's legislature in 1850. State officials who supported these restrictions stated
19 that "[n]egroes are socially inferior and have so been judicially recognized. . . . [M]arriage
20 between Caucasians and non-Caucasians is socially undesirable because of the physical
21 disabilities of the latter. . . ." (See *Perez v. Sharp* (1948) 32 Cal.2d 711, 723, 727.) The
22 authorities that passed these laws considered it appropriate and defensible to place restrictions on
23 marriages across the color line.

24 23. Slowly but unmistakably, however, social and legal views changed; courts and
25 society came to see these marriage restrictions as inconsistent with the fundamental right to
26 marry freely. As free African Americans were able to join American society more fully in the
27 generations after emancipation, these laws were deemed to be inconsistent with principles of
28 equal rights, and damaging to members of non-white groups. Laws restricting marriage choice

1 on the basis of race came to be seen as antithetical to the concept of marriage as founded on
2 consent and choice.

3 24. California was the first state to find that race-based restrictions on marriages were
4 unconstitutional. In 1948, the California Supreme Court recognized that the right to marry is a
5 “fundamental right” that is “essential to the orderly pursuit of happiness by free men.”
6 (*Perez v. Sharp* (1948) 32 Cal.2d 711, 714.) As a result, the Court struck down race-based
7 restrictions on choice of marriage partner, holding that legislation addressing the right to marry
8 “must be free from oppressive discrimination to comply with the constitutional requirements of
9 due process and equal protection of the laws.” (*Id.* at 715.)

10 25. The *Perez* case sparked debate in other states about changing marriage laws to
11 reflect society’s evolving views about racial equality. Eventually, in 1967, the principle of
12 freedom of choice of marriage partner triumphed in *Loving v. Virginia*, (1967) 388 U.S. 1, where
13 the U.S. Supreme Court struck down all marriage bars based on racial attribution as
14 unconstitutional. Today, virtually no one questions the legal right of individuals of different
15 races to marry.

16 26. *Loving v. Virginia* overturned a legal practice in marriage that had been in place
17 for three centuries, since its origin in the American colonies. Affirming that freedom of choice
18 of one’s partner was basic to the civil right to marry, the Court strengthened and validated the
19 institution of marriage within society. Thus laws constraining the choice of marriage partners by
20 race were changed over time to reflect society’s evolving views of racial equality.

21 27. In the definition of spousal roles, marriage law has changed as noticeably as on
22 race. Traditionally, marriage law and practice gave very different roles to husband and wife.
23 The husband was seen as the independent partner and economic provider, the wife his dependent,
24 whose service and labor the husband could command.

25 28. Traditional marriage was based on the legal fiction that married couples were a
26 single entity, with the husband serving as the legal, economic and political representative of that
27 unit. This doctrine of marital unity was called coverture. The wife had no separate legal
28 existence under the oldest formulations of the coverture doctrine. As a result, a wife could not

1 even commit a crime (her husband would be the responsible party); and husbands and wives
2 could not enter into enforceable agreements between themselves, because they were one person.
3 According to the law of coverture, wives could not own or dispose of property, earn money, or
4 sue or be sued in their own name, but could do these things only through their husbands. This
5 legal regime reflected society's view of the marital couple as a unit naturally headed by the
6 husband, a view that, in turn, reflected society's views about the proper role of men and women
7 in society.

8 29. In the United States, the notion that wives had neither legal individuality nor
9 economic maneuverability apart from their husbands began to clash with the realities of the
10 developing society as early as the mid-1800s. While coverture defined the roles of the two
11 spouses as absolutely different with respect to law and domestic economy, in practice the tasks
12 of husband and wife overlapped. Wives needed, and began to demand, rights to their own
13 property and labor. In a dynamic market economy (not a static rural economy like the one in
14 which coverture doctrine had been born) husbands saw advantages to their wives being able to
15 have property in their own names. Judges and legislators saw the advantages in a wife's separate
16 property, to keep ordinary families solvent if the husband's creditors sought his assets; and they
17 saw savings for the public purse in married women being able to earn their own income to
18 support their children if their husbands were profligate.

19 30. Rather than view marriage as immutable in definition, courts and legislatures
20 altered marriage to take account of spouses' actual relationships with each other and society. In
21 addition to arguments for wives' individuality from an equal rights point of view, functional
22 economic arguments for change were persuasive to many.

23 31. Coverture had for hundreds of years been understood as basic and essential to
24 marriage, but it was gradually eliminated by all the states. The rule of coverture was rejected
25 early in California's statehood. For example, in *Wilson v. Wilson* (1868) 36 Cal. 447, the
26 California Supreme Court permitted a wife to sue her husband to recover money due upon a note
27 executed by him in her favor before the marriage, stating: "The present policy of the law is to
28 recognize the separate legal and civil existence of the wife, and separate rights of property, and .

1 .. [this recognition] involves a necessity for opening the doors of judicial tribunals to her, in
2 order that the rights guaranteed to her may be protected and enforced." (*Id.* at 454.) Similarly,
3 courts in California also granted married women the right to manage and control their separate
4 property. (*Alexander v. Bouton* (1880) 55 Cal. 15, 19) (a wife "has the absolute right to use and
5 enjoy [her separate property] and the rents, issues, and profits thereof, and to dispose of the
6 same, by her own act and deed, without the consent of her husband.")

7 32. Changes in California and elsewhere along these lines were protracted, and some
8 laws well into the twentieth century still expressed preconceived notions highly differentiating
9 the two spouses' roles. The shift to individuality and presumptive equality for both marriage
10 partners was heralded by the U.S. Supreme Court in 1971 in *Eisenstadt v. Baird* (1971) 405 U.S.
11 438. "The marital couple is not an independent entity with a mind and heart of its own, but an
12 association of two individuals each with a separate intellectual and emotional makeup." (*Id.* at
13 453.) In 1981, the U.S. Supreme Court struck down a provision of Louisiana's community
14 property law that treated a husband as 'head and master' of property jointly owned with his wife.
15 (*Kirchberg v. Feenstra* (1981) 450 U.S. 455, 461.)

16 33. The evolution of judicial views on gender-neutrality and the equality of the spouses
17 can be tracked in California as well. With regard to child custody, the California Supreme Court
18 in *In re Marriage of Carney* (1979) 24 Cal.3d 725, 736-37, declared that the child's best
19 interests, not gender-based stereotypes, must be decisive. Similarly, the California Supreme
20 Court in 1980 noted the elimination of outmoded sex discrimination in parental rights and
21 responsibilities in overturning prior holdings that a father had a "primary right" to have his wife
22 and children assume his surname. (*In re Marriage of Schiffman* (1980) 28 Cal.3d 640, 643-44.)

23 34. In the example of premarital agreements, courts had often held that these agreements
24 were not enforceable, in part because women were seen stereotypically as "uninformed,
25 uneducated, or readily subjected to unfair advantage in marital agreements." (See *In re*
26 *Marriage of Pendleton and Fireman* (1998) 62 Cal.App.4th 751, 762, n. 13.) In 2000, however,
27 the California Supreme Court rejected the argument that women lack the shrewdness to make
28

1 reasonable agreements, and affirmed a ruling that such agreements could be enforceable. (*In re*
2 *Marriage of Pendleton and Fireman* (2000) 24 Cal.4th 39, 52-54.)

3 35. California's legislature and courts have not acted alone in ending differential
4 treatment of men and women in marriage. Over time, many other states have taken steps to
5 transform marriage from an institution based on gender inequality and gender-based roles to one
6 in which the gender of the spouses is immaterial to their legal obligations. At the federal level
7 also, laws governing the respective duties and rights of the two spouses in marriage have
8 changed over time toward gender neutrality. For example, in the nineteenth century the relation
9 between marriage and citizenship was entirely different for husbands and wives. Husbands
10 could convey their American citizenship to their wives, while American women marrying
11 foreigners could not do the same. Children of American male citizens born abroad could claim
12 American citizenship, while children of American female citizens could not. Through a series of
13 protests forcing reforms beginning at the time that women were enfranchised, these regulations
14 were changed so that the relation between citizenship and marriage is the same for both spouses.

15 36. Especially since the Civil Rights Act of 1964 and the "women's rights revolution"
16 of the 1970s, views of sex discrimination have changed so far as to eliminate most legal rules
17 based on gender, in order to remain consistent with broader societal views about sex equality.
18 For example, the New Deal-era federal benefit programs, the most important being the Social
19 Security Act, incorporated sex discriminations with respect to husbands' and wives' entitlements.
20 As a result of legal challenges in the 1970s, however, court decisions eliminated these
21 discriminations so that spousal benefits are gender-neutral. The same change took place in
22 veterans' benefits.

23 37. All of these rectifications bearing on the rights and benefits accruing to legally
24 married spouses reflect changing views about fairness between the partners in marriage. Current
25 legal interpretation is gender-neutral in its assignment of marriage obligations and benefits. This
26 supports the modern view of marriage as an arrangement between two equal and consenting
27 parties.

28

1 38. Legal and judicial views of divorce have likewise evolved to reflect societal
2 assumptions about marriage as an expression of individual consent, and marital roles as not pre-
3 assigned by law or stereotype but up to the spouses themselves to define.

4 39. When divorce was first introduced in many states (just after the American
5 Revolution), it was available only in extremely limited circumstances. The expansion of grounds
6 for divorce was hotly debated all through the nineteenth century. Critics viewed divorce as
7 anathema to the institution of marriage. Major religions opposed divorce entirely, or accepted
8 adultery as the sole justification for divorce. Alarmists believed that provision of divorce would
9 undermine marriage. Judges and legislators in favor of providing legal modes of divorce did not
10 intend, however, to undermine marriage, but to perfect, preserve, and protect it, by indicating
11 what breaches of marital expectations were so unacceptable as to warrant ending a marriage.
12 Proponents wanted to provide a legal vehicle for separations, with enforceable post-divorce
13 arrangements for dependents, rather than countenance informal desertions and marital breakups
14 that occurred in the absence of divorce laws.

15 40. Like other rules concerning marriage, early divorce laws presupposed different
16 and asymmetrical marital roles for husband and wife. For instance, desertion by either spouse
17 was a ground for divorce; but failure to provide was a breach that only the husband could
18 commit. By the time California became a state, it allowed six fairly expansive grounds for
19 divorce: adultery, extreme cruelty, willful desertion, habitual intemperance, willful neglect, and
20 conviction of a felony. At that time, divorce was an adversary proceeding. That is, one spouse
21 had to accuse the other of committing a wrong against the marriage. The essence of divorce was
22 that one of the partners had broken the bargain embodied in marriage (for instance, the husband
23 had failed in his obligation to provide for his wife). One spouse showed in court that the other
24 had broken the terms of marriage set by the state. The guilty party's fault was a fault against the
25 state's requirements for the marriage, as well as against the spouse.

26 41. In 1969, California enacted the nation's first complete no-fault divorce law,
27 removing consideration of marital fault from the grounds for divorce, the award of spousal
28 support, and the division of property. The move to no-fault divorce reflected society's view that

1 spouses deserved more freedom than in the past to set marital roles for themselves. Rather than
2 the states stipulating only certain grounds for divorce through an adversary procedure, couples
3 now were assumed to be fit to assess their own performance of marital roles.

4 42. In a no-fault divorce system, courts retained a strong role in the ending of
5 marriages; courts not only have to approve the terms of any divorce for it to be valid, but also
6 oversee post-divorce arrangements. The public requirement for both spouses to provide for
7 dependents remains, when a marriage dissolves.

8 46. Courts now expect gender-neutrality in marriage partners' roles, in contrast to
9 earlier patterns. For example, current family law is based not on the husband's sole requirement
10 to support the couple (as in the past), but on both partners' responsibility for one another.
11 Alimony is gender-neutral in current divorce law.

12 47. Similarly, gender neutrality rules child support after divorce. In the nineteenth
13 century, when a marriage broke up, the husband was responsible for the economic support of any
14 dependent children, whereas courts gave the mother preference for custody of the very young
15 children. Current divorce laws, in contrast, assume that both partners in a marriage have equal
16 rights and responsibilities, without reference to gender or gender stereotypes. Both parents of
17 dependent children are deemed to have responsibilities both for economic support and
18 nurturance. The ALI's Principles of the Law of Family Dissolution recommend that all decisions
19 required by a family's break-up, such as decisions about property, support, responsibility for
20 children, and the enforcement of agreements, be treated in a gender-neutral fashion.

21 48. California has been a leader in reforms bringing marriage into step with
22 contemporary social norms and beliefs about racial and gender equality. It was at the forefront
23 in ending race-based restrictions on marriage choice. It was again at the forefront in ending the
24 adversary divorce regime, which, in requiring blame, often caused resort to damaging gender-
25 based stereotypes about spousal conduct within marriage.

26 49. California courts and lawmakers remedied the inequities in earlier marriage laws
27 by reforming those laws. They thus took important steps to change marriage from an institution
28

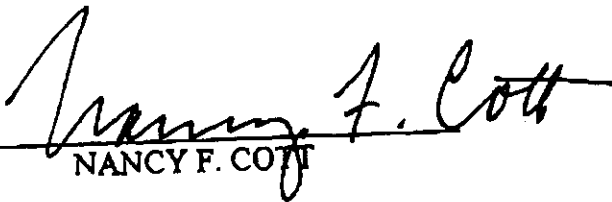
1 based on gender-determined roles, and inequality, to an institution based on symmetry and
2 equality. Over time, many other states have followed suit.

3 50. Marriage has evolved into a civil institution through which the state formally
4 recognizes and ennobles individuals' choices to enter into long-term, committed, intimate
5 relationships. These relationships are founded on the free choice of the parties and their
6 continuing mutual consent to stay together.

7 51. California, along with other states, has eliminated gender-based rules and
8 distinctions relating to marriage in order to reflect contemporary views of racial and gender
9 equality and to uphold fundamental fairness to both marriage partners. California marriage law
10 treats men and women identically—except in the statutory requirement that marriage must be
11 between a man and a woman. Insofar as differentiated roles for husband and wife are no longer
12 either assigned by law or enforced by courts, this gender-based requirement is now out of step
13 with the gender neutral approach of contemporary marriage law.

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

16 Executed this 31st day of August, 2004 at Cambridge, Massachusetts.

17
18 By: 
19 NANCY F. COTT



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