

Proposed Findings of Fact¹

The Institution of Marriage

1. Marriage is a complex social institution.
2. Marriage forms the foundation of the family and society.
3. Marriage has its roots in pair bonding between men and women that emerged early in our evolution as a species.
4. Every society has had some form of the institution of marriage.
5. Throughout history and across societies, marriage has always been defined, in both law and language, as the union of a man and a woman.
6. Marriage is a relationship within which a group socially approves and encourages sexual intercourse and the birth of children.
7. A core purpose of marriage is to guarantee that, insofar as possible, each child is emotionally, morally, practically, and legally affiliated with the woman and the man whose sexual union brought the child into the world.
8. As a matter of biological reality, societies must develop a method to bind men to their offspring.
9. Although certain aspects of the institution of marriage have varied from society to society, it has *universal functions*. These universal functions are:
 - a. Complementing nature with culture to ensure the reproductive cycle;
 - b. Providing children with both a mother and a father whenever possible;
 - c. Providing children with their biological parents whenever possible;
 - d. Bringing men and women together for both practical and symbolic purposes; and
 - e. Providing men with a stake in family and society.
10. In light of its universal functions, the institution of marriage has been marked by *universal features*. These universal features include:

¹ In proposing these findings of fact, Defendant-Intervenors reserve the right to argue legal theories that, if adopted by the court, would result in some of the proposed findings being irrelevant to the outcome of this case. By proposing these findings in other words, they do not concede their relevance. Nor do they concede that they constitute adjudicative, as opposed to legislative facts.

- 1 204. The fertility rate in the United States is barely at replacement level.
- 2 205. Nations view their low and declining birthrates as a serious crisis that could jeopardize their
- 3 basic societal foundations and threaten their survival as nations.
- 4 206. The traditional institution of marriage promotes formation of naturally procreative
- 5 relationships.
- 6 207. The traditional institution of marriage promotes stability in naturally procreative relationships.
- 7 208. The traditional institution of marriage promotes enduring and stable family structures for the
- 8 responsible raising and care of children by their biological parents.
- 9 209. Traditional marriage promotes procreation by encouraging stability and commitment in
- 10 opposite-sex relationships conducive to undertaking the responsibilities associated with
- 11 raising children.
- 12 210. Married opposite-sex couples tend to have more children than non-married opposite-sex
- 13 couples.
- 14 211. Opposite-sex couples are more likely to raise children than same-sex couples.
- 15 212. Opposite-sex couples with children raise, on average, more children than same-sex couples
- 16 who raise children.
- 17 213. The relationships of married, opposite-sex couples are, on average, more stable than the
- 18 relationships of unmarried, opposite-sex couples.
- 19 214. There is a natural and mutually beneficial bond between children and their biological parents.
- 20 215. Children desire to know and have a relationship with their biological parents.
- 21 216. The traditional institution of marriage nurtures and promotes the bond between children and
- 22 their biological parents.
- 23 217. The traditional institution of marriage increases the probability that natural procreation will
- 24 occur within stable, enduring, and supporting family structures.
- 25 218. The traditional institution of marriage increases the probability that each child will be raised
- 26 by both of his or her biological parents.
- 27 219. The traditional institution of marriage increases the probability that each child will be raised
- 28 by both a mother and a father.

