IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DEB WHITEWOOD and SUSAN WHITEWOOD, FREDIA HURDLE and LYNN HURDLE, EDWIN HILL and DAVID PALMER, HEATHER POEHLER and KATH POEHLER, FERNANDO CHANG-MUY and LEN RIESER, DAWN PLUMMER and DIANA POLSON, ANGELA GILLEM and GAIL LLOYD, HELENA MILLER and DARA RASPBERRY, RON GEBHARDTSBAUER and GREG WRIGHT, MARLA CATTERMOLE and JULIA LOBUR, SANDY FERLANIE and CHRISTINE DONATO, MAUREEN HENNESSEY, and A.W. AND K.W., minor children, by and through their parents and next friends, DEB WHITEWOOD and SUSAN WHITEWOOD, Plaintiffs, v. MICHAEL WOLF, in his official capacity as Secretary, Department of Health; DAN MEUSER, in his official capacity as Secretary, Department of Revenue; and DONALD PETRILLE, JR., in his official capacity as Register of Wills and Clerk of Orphans' Court of Bucks County, Defendants.	**Civil Action** **No. 13-1861-JEJ**

EXPERT REPORT OF NANCY F. COTT

I, Nancy F. Cott, Ph.D., hereby declare and state that I am an adult over the age of 18 and am competent to testify to the following matters if called as a witness:

PRELIMINARY STATEMENT

1. My name is Nancy F. Cott. I have been retained by counsel for plaintiffs to prepare this expert report in connection with the above-captioned litigation. This report is given based on my personal specialized knowledge, informed by my education and experience as an historian, and by my familiarity with relevant scholarly work by other scholars on the topic of marriage and family, of which a brief list is appended to this report. My background, experience,

and list of publications are summarized in my curriculum vitae, appended to this report as Exhibit A.

2. In 1969, I received a master's degree in History of American Civilization from Brandeis University. In 1974, I received a Ph.D. degree in History of American Civilization from Brandeis University. Since that time, I have researched and taught United States history. I taught for twenty-six years at Yale University, where I gained the highest honor of a Sterling Professorship, and in 2002 I joined the faculty at Harvard University.

3. I am presently the Jonathan Trumbull Professor of American History at Harvard University. I teach graduate students and undergraduates in the area of American social, cultural and political history, including history of marriage, the family, and gender roles. I also am the Pforzheimer Family Foundation Director of the Schlesinger Library on the History of Women in America, Radcliffe Institute for Advanced Study.

4. In the past four years, I have testified as an expert – either at trial or through declaration – or been deposed as an expert in *U.S. v. Windsor*, 133 S. Ct. 2675 (2013), *De Leon v. Perry*, Case No. 5:13-cv-982 (W.D. Tex.), *Cooper-Harris v. United States*, 2013 U.S. Dist. LEXIS 125030 (C.D. Cal. Aug. 29, 2013), *Dragovich v. U.S. Dep't of the Treasury*, 872 F. Supp. 2d 944 (N.D. Cal. 2012), *Golinski v. Office of Personnel Management*, 824 F. Supp. 2d 968 (N.D. Cal. 2012), *Pedersen v. Office of Personnel Management*, 881 F. Supp. 2d 294 (D. Conn. 2012), *Sevcik v. Sandoval*, 911 F. Supp. 2d 996 (D. Nev. 2012), *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), and *Darby v. Orr*, *Lazaro v. Orr*, Nos. 12 CH 19718 & 19719 (Circuit Ct., Cook Cty.).

5. I am being compensated at a flat rate of $1,000.00 for the preparation of this report, and an hourly rate for actual time devoted, at the rate of $250.00 per hour, for testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

6. I am the author or editor of eight published books, including PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000), the subject of which is marriage as a public institution in the United States. I also have published over twenty scholarly articles, including several discussing the history of marriage in the United States. I have delivered scores of academic lectures and papers over the past thirty-five years on a variety of topics, including the

history of marriage in the United States. I also have served on many advisory and editorial boards of academic journals.

7. I have received numerous fellowships, honors and grants, from a John Simon Guggenheim Memorial Foundation Fellowship in 1985 and National Endowment for the Humanities Fellowship in 1993, to a Fulbright Lectureship in Japan in 2001 and election to the American Academy of Arts & Sciences in 2008.

8. I spent over a decade researching the history of marriage in the United States, especially its legal attributes, obligations, and social meaning, before and while writing my book PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION. The statements and evidence in this expert report come principally from the research for that book and many of them are more fully documented there and in an article based on that research, *Marriage and Women's Citizenship*, AMERICAN HISTORICAL REVIEW (1998). The numerous historical sources, legal cases, and government documents that I studied and analyzed while researching and writing the book, as well as the other scholars' work that I consulted, are cited in my published footnotes in the book and article. In addition, I have supplemented my past research with more recent reading and research on matters referenced in this report. In preparing to write this report and to testify in this matter, I reviewed the materials listed in the attached Exhibit B. I may rely on those documents, in addition to PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION, *Marriage and Women's Citizenship*, and certain of the sources cited therein, as well as the documents specifically cited as supportive examples in particular sections of this report, as additional support of my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae, and on the materials listed therein.

SUMMARY OF OPINIONS

9. The opinions expressed in this report are my true opinions as an expert in the history of marriage. This report deals with the history of marriage as an institution created and authorized by law. Beliefs or claims about "tradition" in marriage cannot substitute for the actual history of the institution.

10. Marriage in Pennsylvania initially inherited and retained certain essential characteristics from the English common law. Free consent of the two parties was the hallmark of marriage, more basic even than cohabitation, in the view of the Revolutionary statesman and

legal philosopher James Wilson: "The agreement of the parties, the essence of every rational contract, is indispensably required," he noted in lectures of 1792. That remains so today, while in many other respects marriage has changed significantly to meet changing social and ethical needs.

11. Since the founding of the colony by Quaker William Penn, marriage in Pennsylvania has been regarded as a civil contract embodying a couple's free consent to join in long-lasting intimate and economic union. In authorizing marriage, the Commonwealth (and every other state in the U.S.) turns a couple's vows into a legal status, thus protecting the couple's bond and aiming moreover to advance general social and economic welfare. Throughout U.S. history, states have valued marriage as a means to benefit society.

12. Marriage in Pennsylvania has always been a civil matter under the control of legislative and judicial authorities. Valid marriage relies on state authorization, distinct from religious rites performed according to the dictates of any religious community. Religious authorities were permitted to solemnize marriages only by acting as deputies of the civil authorities, and while free to determine what qualifications they would accept for religious validation, were never permitted to determine the qualifications for entering or leaving a marriage that would be valid at law.

13. Marriage has served numerous complementary public purposes. While the private, subjective experience of "being married" may vary as much as individuals vary and thus resists description, historians can describe and document how the institution of marriage has been defined by law and the purposes it has served. Among these purposes are: to facilitate the state's regulation of the population; to create stable households; to foster social order; to increase economic welfare and minimize public support of the indigent or vulnerable; to legitimate children; to assign providers to care for dependents; to facilitate the ownership and transmission of property; and to compose the body politic. These public purposes have long been recognized in American law.

14. Seeing multiple purposes in marriage, Pennsylvania and other states have encouraged maritally-based households as advantages to public good, whether or not minor children are present, and without regard to biological relationships of descent. Only a highly reductive interpretation would posit that marriage has a single core purpose or defining characteristic of procreation, since marriage has benefitted states and society in numerous ways.

15. The individual's ability to consent to marriage is the mark of the free person in possession of basic civil rights. This is compellingly illustrated by the history of slavery and emancipation in the United States. Slaves could not contract valid marriages. They did not have the ability – the freedom – to consent to the obligations and duties that marriage entailed. After the Civil War, former slaves leapt at the new chance to contract marriage.

16. Marriage rules in several other instances in the past enforced inequalities among inhabitants of the United States. The most widespread examples were states' bans on marriages between whites and persons of color. These applications of marriage rules have since been judged discriminatory and have been eliminated.

17. Societal and consequent legal change over the centuries has produced new features in marriage that would have been unthinkable at the time of the founding of the United States. Three areas of fundamental change illustrate this pattern:

a) Men and women were treated unequally, and asymmetrically, in marriage as defined under the eighteenth-century common law. According to the doctrine of coverture or marital unity, the married couple formed a single entity represented by the husband. The wife, upon marriage, ceded her legal and economic identity to her husband and was "covered" by him. A married woman could not own property, represent herself in court, sign a contract, or keep any money she earned. This inequality, seen as essential to marriage for centuries, was eliminated in response to changing values and the demands of economic modernization. Today, Pennsylvania and federal law treat both spouses equally and in gender-neutral fashion with respect to marriage, and the U.S. and Pennsylvania Supreme Courts have confirmed that such gender-neutral treatment for marital partners is constitutionally required.

b) Racially-based restrictions in Pennsylvania during the 18th century colonial era and in a large majority of states for much of the nation's history prohibited, voided, or criminalized marriages between whites and persons of color. The U.S. Supreme Court, in *Loving v. Virginia*, 388 U.S. 1 (1967), ended the nearly 300-year history of race-based legislation on marriage.

c) Divorce grounds were few in early America. Pennsylvania allowed grounds for divorce more liberal than in many states, but everywhere divorce was an adversary process, requiring one spouse to sue on the basis of the other's marital fault. Over time, Pennsylvania and other states expanded grounds for divorce, and eventually enacted "no-fault"

divorce laws now in place, which recognize that the married couple themselves can best assess the sufficiency or breakdown of their marriage.

18. My research indicates that marriage is a capacious and complex institution. It has political, social, economic, legal, and personal components; its meanings and consequences operate in more than one arena. The institution of marriage combines public and private, status and contract, governance and liberty. Today marriage is both a fundamental right and a privileged status.

19. Marriage has long been entwined with public governance. The relation between marriage and government is visible today in both federal policy and state laws, which channel many benefits and rights of citizens through marital status. Every state gives special recognition to marriage in areas ranging from tax policy to probate rules. In Pennsylvania, hundreds of laws make distinctions based on marital status. Lawfully wedded spouses gain, for example, exemption from inheritance tax, the right to make decisions regarding the medical care of an incapacitated spouse, and rights to bring workers' compensation claims on behalf of a spouse who dies or is injured at work. Federal law too embeds marital status: the General Accounting Office reported in 1996 that the corpus of federal law refers to more than 1,000 kinds of benefits, responsibilities and rights connected with marriage.

20. While marriage has changed throughout the centuries, it retains its basis in voluntary consent of two individuals to join in marital union, mutual love and support, and economic partnership. The institution has lasted over centuries because it has been flexible, capable of being adjusted by courts and legislatures in accord with changing ethical and moral standards.

21. The changes observable over time have moved marriage toward equality between the partners, gender-neutrality in marital roles, and control of marital role-definition and satisfaction by the spouses themselves rather than by state prescription. Marriage restrictions meant to discriminate among groups of citizens in their freedom to marry partners of their choice have been eliminated.

22. The exclusion from marriage of same sex couples stands at odds with the direction of historical change in marriage in the United States. Contemporary public policy assumes that marriage is a public good. Excluding some citizens from the power to marry, or

marking some as unfit on the basis of their marriage choices, does not accord with public policy regarding the benefit of marriage or the rights of citizens.

OPINIONS

I. MARRIAGE IS A CIVIL INSTITUTION

23. From the founding of the United States, marriage has been authorized and regulated by civil law. Each colony, state, and territory included marriage laws and regulations in its founding legislation.

24. Colonial legislatures in America, including that of Pennsylvania, intentionally established secular authority over the making and breaking of marriages. When the United States was founded, that approach was maintained. Regulations for creating valid civil marriages were among the first laws established by the states after declaring independence.

25. Being based on voluntary mutual consent, marriage is understood to be a contract, but it is a unique contract. Because of the state's essential role in defining marital eligibility, obligations and rights, marriage is also a legal status. Spouses cannot, for example, decide to abandon their obligation of mutual economic support. The couple agreeing to join in mutual intimacy and obligation cannot themselves create a valid marriage, unless their state authorizes unceremonialized (or 'common-law') marriage, as Pennsylvania did until recently; in that latter case, their union is 'marriage' only because the state stipulates that it is. If a couple marries, the parties cannot terminate their legal obligations by themselves, since the state is a party to their bond.

26. Throughout the history of Pennsylvania and, indeed, all the states in the United States, whether a marriage was or was not recognized by a religion did not dictate its legality or validity. For many Americans then and now, marriage may have religious significance. Marriage ceremonies may, and often do, take a religious form; it is the civil law, nonetheless, that authorizes the validity of a marriage. State authorities have permitted religious authorities to preside over marriage ceremonies, and to decide which marriages they would recognize according to the tenets of their own faith, but religious authorities had no say in determining which marriages the state would recognize as valid.

27. At the writing of the U.S. Constitution, regulations governing marriage were considered to lie within the power of the several states, as part of their power over the "health,

safety and welfare" of the population. That prerogative continues to lie with the states today, subject to the requirements and protections of the Constitution. States set the terms of marriage, *e.g.*, who can and cannot marry, who can officiate, what obligations and rights the marital agreement involves, whether it can be ended, and, if so, why and how. A marriage in Pennsylvania must be preceded by a license, issued by a county licensing officer, to be valid. The parties each must be 18 years of age, or 16 years old with parental consent, or with judicial approval if under the age of 16 years old. (23 Pa. C.S. § 1304(b).) The persons marrying must not be within the prohibited degrees of consanguinity or affinity. (23 Pa. C.S. § 1304(e).)

28. Pennsylvania's and other states' courts and legislatures repeatedly adjusted marriage terms and rules during the nineteenth and twentieth centuries, sometimes to mold public policy, sometimes to conform marriage to social developments.

II. MARRIAGE HAS SERVED VARIED PURPOSES IN UNITED STATES HISTORY AND TODAY

29. Societies in different historical times and places have defined marriage in many ways. Marriage is an institution of human culture; it may vary as much as human cultures do. In a given society a legitimate marriage may, for instance, be polygamous or monogamous, matrifocal or patrifocal, patrilineal or matrilineal, lifelong or temporary, open or closed to concubinage, divorce-prone or divorce-averse, and so on. The form of marriage we recognize in the United States is a particular form, not a universal one.

30. Historical evidence does not support the attempt to rank one purpose of marriage as its "core" purpose, in the United States. The notion that the primary or core purpose of marriage in the eyes of state government has been to provide an ideal context for the raising of children by their biological parents has no discernible basis in historical documentation. More realistically, according to the historical record, in the Anglo-American practice of four or five centuries that underlies our contemporary system, marriage was designed to be a regulatory institution that established recognizable household heads who would take economic responsibility for their dependents and would serve a broad range of purposes.

A. Marriage Developed in Relation to Governance.

31. Historically, marriage in Western political culture has been closely intertwined with sovereigns' aim to govern their people. When monarchs in Britain and Europe fought to wrest control over marriage from ecclesiastical authorities (circa 1500-1800), they did so because the authorization of marriage was a form of power, and they used marriage as a vehicle through which to govern the population.

32. Anglo-American legal doctrine, continuing into the era of American independence, made married men into heads of their households. The head of household was legally obliged to control and support his wife and all other household dependents, whether biologically related children or relatives or others including orphans, apprentices, servants and slaves. In return, he became their public representative. Marital status and citizenship rights were thus deeply intertwined in early American history. This allotment of household authority and privilege was a major feature of public order at the time of the American Revolution, when about 80% of the thirteen colonies' population were legal dependents of male household heads. (Carole Shammas, *Anglo-American Household Government in Comparative Perspective,* 52 WM. & MARY Q. 104, 123 (1995).)

33. Laws concerning who could marry whom, in what way, and setting the specific duties of husband and wife, formed important dimensions of states' authority over their populations. Married men's full citizenship and voting rights were seen as tied to their headship of and responsibilities for their families; correspondingly, wives' inferior citizenship and lack of voting rights were understood to be suited to their subordination to their husbands.

34. The rule of the male head of household over his wife, children, servants, apprentices, and slaves is now quite archaic. Today, constitutional imperatives have eliminated sex and race inequalities from laws of marriage. Yet a legacy of the sustained relation between marriage and citizenship persists, in that states grant marriage rights to certain couples and not others, and award to married couples benefits and rights not available to other pairs or to single persons.

B. Marriage Creates Public Order and Economic Benefit.

35. Since the era of the American Revolution, states intended legal marriage to serve public order and society by establishing governable and economically viable households which

might hold biologically related and unrelated members. Marriage in early America organized households and figured largely in property ownership and inheritance. These are matters of civil society in which public authorities are highly interested. State governments, including that of Pennsylvania, have typically encouraged as well as regulated marriage because of its importance in creating and serving public order.

36. State governments have encouraged people to marry for economic benefit to the public, as well as to themselves. The marriage bond creates economic obligations between the mutually consenting parties and obliges them to support their dependents. In early America, marital households were formed on presumptions about a "natural" sexual division of labor. That is, men and women were assumed to be prepared for and good at distinctive kinds of work, both kinds being equally necessary to human sustenance, and society. (Men plowed the fields to grow the grain, and women made the bread from it, for example.) Marriage set the arrangements to foster the continuation of this sexual division of labor, especially through the doctrine of coverture, discussed in Section IV(A) below.

37. "Kinship ties were not essential to the definition of family" in Anglo America at the time of colonial settlement. Rather, co-residence and subjection to the same household head were the defining features of a family. (Mary Beth Norton, FOUNDING MOTHERS AND FATHERS: GENDERED POWER AND THE FORMING OF AMERICAN SOCIETY (1996), 17). "Family" and "household" were substantially synonymous, and formed the basic economic units. They organized the production of food, clothing and shelter. Early American families often included more than parents and children; more than one married pair might co-reside; grandparents or unmarried relatives might also be present, as well as unrelated apprentices or other adolescent helpers. The household served to establish a support system for all of these members, whether or not they were related by blood. When statesmen said that families were the foundation of society, they meant that households – those sub-units governed by male heads – were the economic and political basis of the commonwealth or state.

38. Today Pennsylvania and all state governments retain strong economic interests in marriage, though household economies no longer dictate sex-differentiated roles. Marriage obligates the spouses to support each other as well as any children born or adopted. States offer financial advantages to married couples on the premise that their households promise social

stability and economic benefit to the public. State governments try to minimize public expenses for indigents by enforcing the economic obligations of marriage.

39. The economic dimension of the marriage-based family took on new scope as government benefits expanded during the twentieth century. State and federal governments now channel many economic benefits through marital relationships. Federal benefits such as immigration preferences and veterans' survivors' benefits are extended to legally married spouses, but not to unmarried partners, even those who have contracted a civil union where it is possible. Since the Supreme Court struck down Section 3 of the federal Defense of Marriage Act, many of these benefits can be extended to same-sex spouses validly married in a growing number of American states. (*United States v. Windsor*, 133 S. Ct. 2675 (2013).) In some cases, eligibility for the benefit depends on recognition of the marriage by the couple's state of residence. Pennsylvania same-sex couples who are unable to marry in their home state or whose out-of-state marriage is not recognized miss out on these federal benefits.

40. Pennsylvania's close proximity to states, including New Jersey, Maryland, New York, and Delaware, and the appeal of east-coast cities such as Boston, Baltimore, and Washington, D.C., where same-sex couples can marry lawfully, risks out-migration of highly educated and mobile same-sex couples who wish to marry. There is precedent for such migration across state borders where one state's public policy on marriage is preferable to that of its neighbors. Western states with community-property rules for married couples benefited from in-migration from neighboring states with common-law rules in the 1940s, when the federal income tax began to be onerous. At the time, everyone was taxed as an individual. In a community property state, a couple with a single income could split it between themselves for tax purposes and thus achieve a lower tax bracket. States' jostling over this issue – as residents moved across borders, and common-law states considered inaugurating a community-property regime to prevent loss of population – propelled a re-thinking of federal income tax rules, and the creation of the "married filing jointly" category for the federal income tax. (Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, LAW AND HISTORY REVIEW, 6:2 (Fall 1988), 259-310.)

C. Eligibility to Marry Has Never Turned Upon Child-Bearing Ability

41. While sexual intimacy has been expected in marriage, the ability or willingness of married couples to produce progeny has never been necessary for valid marriage in American law. For example, in no state are women past menopause barred from marrying, nor are women divorceable after a certain age. Men or women known to be sterile have not been prevented from marrying. Inability to procreate has never been a ground for divorce, nor could a marriage be annulled for failure to beget children. (*Wilson v. Wilson*, 126 Pa. Super. 423, 429 (1937), "[D]ivorce will not be granted for mere sterility where there is not impotence.")

42. The common law and many later state statutes, including in Pennsylvania, made sexual incapacity (impotence or other debility preventing sexual intimacy) a reason for annulment. Thus sterility or infertility was never a basis for invalidating a marriage while the inability to have sexual relations was. (Chester G. Vernier, AMERICAN FAMILY LAWS: A COMPARATIVE STUDY OF THE FAMILY LAW OF THE FORTY-EIGHT AMERICAN STATES (1931, 1932, 1935).) An annulment for sexual incapacity depended upon a complaint by one of the marital partners, however, and if neither spouse objected, a non-sexual marriage remained lawful and valid in the eyes of the state.

43. Marriage rules in the United States have aimed more consistently at supporting children than producing them. Such requirements act as a critical limit on the public's responsibilities for children. Support for any child born or adopted into a family was in the past an obligation of the household head. Today, it is a responsibility shared by both parents whether married or not and regardless of whether their marriage remains intact or they divorce.

44. Through marriage, state governments have bundled legal obligations together with social rewards to encourage couples to choose committed relationships of sexual intimacy over transient relationships, whether or not these relationships will result in children. Not only today but in the long past, couples married when it was clear that no children would result. Widows and widowers remarried for love and companionship and because marriage enabled the division of labor expected to undergird a stable household. In our contemporary post-industrial economy, many divorced or widowed older adults marry when they are past childbearing age, usually for reasons of intimacy and stability.

45. The idea, raised by Justice Alito in his dissent in *United States v. Windsor*, that a "traditional" or "conjugal" model of marriage (linked to child-bearing) exists and differs from a

novel and "consent-based" version of marriage (unlinked to child-bearing), unnecessarily bifurcates the complexity that characterized monogamy in the Western political tradition and in the United States. Marriage has consistently bundled together several complementary purposes and functions, among which the relative salience has changed over time and amidst varying populations.

46. In the history of marriage in the United States, adults' intentions for their own lives have been central to marriage whether or not children arrived. The idea that a "child-centric" model of marriage is traditional and differs from a novel and "adult-centric" version of marriage (unlinked to child-bearing) lacks historical grounding. Romantic and sexual attachment, companionship, and love between two adults who pledged their hearts and hands to one another were not in the past less intrinsic to marriage than the possibility of children. At the time of declaring independence from Britain, Americans distinguished themselves from their English contemporaries by their emphasis on the marital 'love-match' which would reject parental oversight in choosing a romantic partner. Parallels between the consent and love on which marriage should be based and on which allegiance to the new United States should be based were very common in Revolutionary-era rhetoric.

47. In the twentieth century, sexual intimacy became increasingly separable from reproductive consequences. By the 1920s, contraception was becoming readily available to an influential portion of the American population and intentionally non-procreative marriages had become prevalent enough that social scientists coined the term "companionate marriage" to refer to such unions. Dr. M.M. Knight, for example, declared in the Journal of Social Hygiene in 1924 that this new term made it clear that "an actual and general condition is being dealt with." He acknowledged that "We cannot reestablish the old family, founded on involuntary parenthood, any more than we can set the years back or turn bullfrogs into tadpoles." (M.M. Knight, Ph.D, *The Companionate and the Family*, JOURNAL OF SOCIAL HYGIENE, vol. X no. 5 (May 1924), 258, 267.)

48. In the late 1930s the American Medical Association embraced contraception as a medical service; by that time or soon thereafter most states, including Pennsylvania, had legalized physicians' dispensing of birth control to married couples. The Supreme Court struck down Connecticut's ban on married couples' use of birth control in 1965 (*Griswold v. Connecticut*, 381 U.S. 479 (1965).)

III. DISCRIMINATORY APPLICATIONS OF MARRIAGE RULES HAVE OCCURRED IN THE PAST.

49. Our country's history reveals a number of striking instances in which marriage laws were used to discriminate among actual or prospective members of the populace, creating hierarchies of value and benefit, declaring some persons more worthy of the freedom, liberty, and privacy inherent in marriage rights than others. These laws created or enforced inequalities which seemed obvious and right to their enforcers, and were justified by their supposed naturalness, although to us today they seem patently unfair and discriminatory.

A. Slaves' Inability to Marry Lawfully

50. The most glaring exclusion from legal marriage in the history of the United States is in the case of slaves, who were unable to marry lawfully. Because slaves lacked basic civil rights (*i.e.*, the right to body, liberty, and property), they were unable to give the free consent required for lawful marriage. Furthermore, a slave's overriding obligation of service to the master made carrying out the duties of marriage impossible. Slaves' inability to undertake legally recognized marriages signaled their lack of basic civil rights.

51. Colonial Pennsylvania supported slavery during the 18th century (as did other middle and northern colonies). (See "An Act for the Better Regulation of Negroes in this Province," 1725-26 Pa. Stat. 59.) Philadelphia merchants imported slaves from the West Indies, rather than directly from Africa. Although estimates vary widely, it appears that the number of slaves in Pennsylvania steadily increased from about 5000 in 1721 to about 30,000 in 1766. (Edgar J. McManus, BLACK BONDAGE IN THE NORTH (1973), 15, 21.)

52. Slavery in Pennsylvania was ended by a legislative act of "gradual emancipation" in 1780. ("An Act for the Gradual Abolition of Slavery," 1780 Pa. Stat. 67.) Pennsylvania was the first state to enact abolition, and has been heralded for this. Many Quakers who clustered in colonial Pennsylvania opposed slavery on moral grounds, but on a material level, three Delaware counties had separated from Pennsylvania in 1776, removing the areas where slave laborers were economically important, and radically reducing the slave population in Pennsylvania. "Gradual" emancipation freed no slave at the time. It meant that all slaves remained so until death, and their children too remained enslaved, for their first 28 years of life. These provisions were harsher

than those enacted for gradual abolition by several other Northern states. Slavery was not gone from Pennsylvania until 1847.

53. Where slaveholders permitted, slave couples often wed informally, creating family units of great value to themselves. While these informal unions were honored in the slave community, they received no respect from white society. Slaveholders broke up slave unions with impunity when they sold or moved slaves. Slave "marriages" received no defense from state governments and none of the legal benefits of marriage; that lack of public authority was the very essence of their invalidity.

54. Slaves' inability to contract valid marriages derived from their status as unfree persons, rather than from their race or color per se. After emancipation, African Americans welcomed the ability to marry as a civil right long denied to them. They saw marriage as an expression of their new gain of rights, and a recognition that they were individuals who could lawfully consent to marry a chosen partner.

B. Denial of Lawful Marriage to Couples Marrying Across the Color Line.

55. Another form of race-based discrimination in marriage laws was the criminalization, nullification, and/or voiding of marriages of whites to persons of color. The first such laws were passed in the Chesapeake colonies (Virginia and Maryland), targeting white women who married "negroes, mulattoes, and Indians." Such prohibitions were subsequently strengthened, and they spread to other colonies.

56. Pennsylvania criminalized such marriage (as well as adultery and fornication across the color line) in 1726, in "An Act for the Better Regulating Negroes in This Province." The punishments were very severe, including enslavement for a free Negro and 7 years servitude for a white involved in such a relationship; servitude for 31 years for any child born of a white person convicted of the crime; and an extremely heavy fine for anyone performing such a marriage. (1725-26 Pa. Stat. 59.)

57. After the American Revolution, northern and southern states continued or adopted such punitive laws. As many as forty-one states and territories of the United States banned, nullified, and/or criminalized marriages across the color line for some period of their history. After slavery ended, more states than ever made intermarriage between blacks and whites void or criminal. When enacted by state legislatures and/or justified by state courts, these laws were

typically defended as “natural” and “God’s plan” for the races to remain separate. Numerous Western states added the categories of Indians, Chinese, and “mongolians” to those (black and mulatto) already prohibited from marrying whites. These exclusions exemplified states’ use of marriage laws to discriminate among Americans, thereby endorsing a hierarchy of relative worthiness.

58. Pennsylvania was forward-looking in repealing the criminalization of interracial marriage in 1780, in the same act that provided for the gradual abolition of slavery. (“An Act for the Gradual Abolition of Slavery,” 1780 Pa. Stat. 67.) Some statesmen recognized that such a law deeply constrained free choice of marital partner, and condemned it as prejudicial. Resistance to the recognition of blacks’ civil rights immediately surfaced in the state – but the 1780 law stood, and encouraged antislavery in other new states. (For further discussion of the abolition of racial restrictions on marriage, see Section IV(B), below.)

IV. MARRIAGE HAS CHANGED IN RESPONSE TO SOCIETAL CHANGES

59. Marriage in the United States has proved to be a flexible institution. Legislators and courts have re-shaped the institution when necessary. Like other successful civil institutions, marriage has evolved to reflect changes in ethics and in society at large. Marriage has lasted as a major feature of our society because it has been flexible, not static. Adjustments in key features of marital roles, duties, obligations, and rules of entry have preserved the appeal and value of marriage in our dynamic society.

60. Past changes in marriage were not, however, readily welcomed by all, and were often difficult for some in society to accept. Features of contemporary marriage that we take for granted – such as the ability of both spouses to act as individuals while married, to marry across the color line, or to divorce for reasons of their own – were fiercely resisted when first introduced and were viewed by opponents as threatening to destroy the institution of marriage itself.

61. Today the contemporary pattern of internal equality within marriage commands majority support, but that does not mean that the long-term movement toward that direction is embraced by all Americans. Rather, there has always been a vocal minority of American who found equalitarian families deeply offensive and dangerous, and wished to restore the patriarchal features of a previous day. Spokespersons today who give priority to preserving the institution’s

incorporation and perpetuation of gender difference implicitly rely on conceptions of male and female roles that can be traced to a time of profound *de jure* and *de facto* sexual inequality.

62. The fact that the institution of marriage has been flexible has kept it vigorous and appealing. Modifications in civil marriage undertaken by courts and legislatures to adapt to societal changes can be illustrated in three areas: (a) spouses' respective roles and rights; (b) racial restrictions; and (c) divorce.

A. Spouses' Respective Roles and Rights.

63. Marriage under the Anglo-American common law, as translated into American statutes, prescribed profound asymmetry in the respective roles and rights of husband and wife. Marriage law and practice gave very different roles and legal rights to husbands and wives. Over time, our country has moved to gender parity within the institution.

64. The common law maintained the legal fiction that a married couple was a single unit, of which the husband was the sole legal, economic, and political representative. The wife's identity was absorbed into that of her husband. This doctrine of marital unity, called coverture, reflected society's views of the marital couple as a unit naturally headed by the husband.

65. Coverture required a husband to support his wife and family, and a wife to obey her husband. He commanded her labor and property. The coverture doctrine indicated how far marriage was understood as an economic arrangement. Unlike today, when occupations are open to men and women, the two sexes then were expected to play differing though equally indispensable roles in the production of food, clothing, and shelter. Marriage sustained that differentiation and asymmetry via coverture.

66. Under coverture doctrine, the wife had no separate legal existence. A married woman could not own or dispose of property, earn money, have a debt, sue or be sued, have a domicile separate from her husband's, or enter into an enforceable agreement under her own name, because her husband had to represent her in all such acts. Neither spouse could testify for or against the other in court – nor commit a tort against the other – because the two were considered one person. The two partners were assigned opposite economic roles understood as complementary: the husband was bound to support and protect the wife, and the wife owed her service and labor to her husband.

67. Wives in New York, Maryland, Virginia, and South Carolina could circumvent some of the disabilities of coverture under the common law by going to equity or chancery courts. Pennsylvania did not, however, establish chancery courts. A Pennsylvania Supreme Court justice noted critically in 1820 that "In no country where the blessings of the common law are felt . . . are the interests and estates of married women so entirely at the mercy of their husbands, as in Pennsylvania." (*Whatson v. Mercer and another*, 6 Serg. & Rawle 49, quoted in Elizabeth Bowles Warbasse, THE CHANGING LEGAL RIGHTS OF MARRIED WOMEN 1800-1861 (1987), 46.)

68. Coverture doctrine originated in a slow-moving rural economy in old England. Its constraints began to clash with developments in American society by the 1830s. Wives began to claim their rights to hold property and wages they owned or earned. Cooperative husbands saw advantages in their wives having some economic leverage. Judges and legislators also saw advantages in keeping families supported on both spouses' assets: a wife's separate property could keep a family solvent if creditors came after the husband's assets. Married women with earning potential could support their children if their husbands were profligate.

69. State authorities, including those in Pennsylvania, responded to new economic pressures and women's complaints by beginning to dismantle coverture. Such alterations were extremely divisive, to say the least. Opponents of change claimed that coverture was the essence of marriage. Alteration would be blasphemous and unnatural, opponents objected; the marriage bargain was governed by laws of "Divine origin."

70. Although the marital unity doctrine had been central to what marriage meant, state authorities saw fit to change it. Married women in Pennsylvania gained the right to own and convey their own separate property by the Act of 11th April 1848 (P.L. 536). This inroad into coverture was interpreted very conservatively by Pennsylvania courts, where judges did not like to alter the ancient understanding of marriage. Nonetheless, the die was cast, and the process of unraveling coverture continued. By the Act of 3d April 1872, (P.L. 35), wives in Pennsylvania gained the right to keep their earnings also. By the end of the nineteenth century, wives in Pennsylvania could act as economic individuals, although other disabilities of coverture persisted. (See *In re Hicks Estate*, 7 Pa. Super. 274 (1897), detailing laws abolishing constraints on wives' property, earnings, and ability to sue.)

71. Far from being static, marriage was fundamentally revised in order to take account of societal needs and spouses' evolving relationships. The property basis of coverture, in

place for hundreds of years and understood as absolutely essential to marriage, was eliminated not only by Pennsylvania but by all the states over an extended period of time. Acting at varying paces and taking different approaches, states responded to local pressures with the result that the rules for wives' and husbands' roles and rights varied greatly among the several states.

72. In contrast to Pennsylvania's current refusal to credit same-sex couples' lawful marriages, at no time did Pennsylvania refuse to acknowledge a marriage validly contracted in another state because that state's coverture rules diverged from Pennsylvania's own. Similarly, Pennsylvania did not invalidate first-cousin marriages contracted in another state although its own marriage rules put the first-cousin relation within prohibited degrees of consanguinity. First-cousin marriage was a source of deep regional division in the past. Accepted in much of the South and New England, it was prohibited in many other states, including Pennsylvania; yet Pennsylvania let stand a first-cousin marriage contracted in Delaware. (*Schofield v. Schofield*, 51 Pa. Super. 564 (1911).)

73. The unseating of coverture was a protracted process, not complete until the 1970s, because it involved revising the gender asymmetry in the marital bargain. Pennsylvania's Equal Rights Amendment of 1971 (Pennsylvania Constitution, art. I, § 28) made it clear that coverture was a thing of the past. (See *Henderson v. Henderson*, 327 A.2d 60, 62 (Pa. 1974), "[T]he law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman."; *George v. George*, 409 A.2d 1 (Pa. 1979), Pennsylvania equal rights amendment applies to rights and duties of a man and woman after they marry.)

74. The long-enduring expectation that the husband was the provider in a marriage, and the wife his dependent, was reflected in government benefits. During the New Deal of the 1930s, new federal entitlements built upon that marital patterning. Federal programs such as the Social Security Act included special advantages for married couples, and strongly differentiated between husbands' and wives' entitlements. Legal challenges to this sex differentiation were brought in the 1970s, and the U.S. Supreme Court found discrimination between husband and wife in Social Security and veterans' entitlements unconstitutionally discriminatory. (*See Califano v. Goldfarb*, 430 U.S. 199 (1977); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Frontiero v. Richardson*, 411 U.S. 677 (1973).) Federal benefits channeled through marriage have been gender-neutral ever since then.

75. Of all the legal features of coverture, the husband's right of access to his wife's body lasted longest. Husbands' exemption from prosecution for rape of their wives was a central legal feature of marriage under the common law. Elimination of this exemption signified a new norm of the wife's self-possession and further reframed the roles of both spouses. This development was long in arriving in all the states, beginning only in the 1970s. The Pennsylvania legislature did not eliminate the marital exception to rape until 1995 (18 Pa. C.S § 3121), but had criminalized spousal sexual assault more than a decade earlier, accomplishing almost as much (18 Pa. C.S. § 3128, enacted in 1984 and repealed in 1995). (See also *Commonwealth v. Shoemaker*, 359 Pa. Super. 111 (1986), affirming that the spousal assault law is justified by "a compelling State interest in protecting [the] fundamental right of each individual to control [the] integrity of his or her own body.")

76. Courts and legislatures have changed laws governing the meaning and structure of marriage to keep it current with the time. Courts have chipped away at the inequalities inhering in the status regime of reciprocal rights and duties that originated in coverture. The duty of support, which once belonged to the husband only, is now reciprocal. Likewise, after a divorce, either spouse may seek alimony and both parties have a duty to support their children and an equal right to custody of those children. Marriage criteria have been reassessed and have been moved toward increasing freedom in marital choice, spousal parity, and gender-neutrality in marital roles. Pennsylvania's Equal Rights Amendment undergirds these moves.

77. The result has made marriage into a new status relationship, with spouses assigned gender-neutral rights and responsibilities. Couples are now free to choose how they allocate wage-earning, household, and childrearing responsibilities among themselves. Marriage has been kept relevant not by adhering to concepts from another era but by molding the institution to fit the times. By updating the terms of marriage to reflect modern notions of gender equality and individual rights, the courts have promoted marriage's continuing vitality and relevance. The gender equality of marriage today would profoundly shock any American from the era of the American Revolution or the Civil War. But they would recognize in contemporary marriage the institution's foundation in two consenting parties freely choosing one another.

78. For couples who consent to marry today, marriage has been transformed from an institution rooted in gender inequality and gender-based prescribed roles to one in which the contracting parties decide on appropriate behavior toward one another, and the sex of the spouses

is immaterial to their legal obligations and benefits. The two partners in a marriage are still economically and in other ways bound to one another by law. But the law no longer assigns asymmetrical roles to the two spouses.

79. Today the institution of marriage is defined in law as an equal, gender-neutral partnership, with each party having the same rights and obligations to each other and to society. That evolution, along with the Supreme Court's legal recognition of the liberty of same-sex couples to be sexually intimate, *Lawrence v. Texas*, 539 U.S. 558 (2003), clears the way for equal marriage rights for same-sex couples who have freely chosen to enter long-term, committed, intimate relationships.

B. Racial Restrictions

80. Despite the principle of freedom of choice intrinsic to consent-based marriage, there were legal bars on cross-racial marriage choice in dozens of states for hundreds of years, long after Pennsylvania had abolished its own law penalizing cross-racial marriages. See Section III(B), above.

81. The Supreme Court first articulated the point that the right to marry was fundamental in 1923. (*Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); see also *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).) Yet racially-based marriage bans continued to be reinvented, with Virginia passing the most restrictive law in the nation the very next year, in 1924.

82. The California Supreme Court led the way in 1948, in holding that race-based restrictions on freedom of choice in marriage were unconstitutional. At that time, thirty states banned interracial marriages. California's high court declared that freedom in exercising the "fundamental right" to marry was "essential to the orderly pursuit of happiness by free men." (*Perez v. Sharp*, 198 P.2d 17, 18 (Cal. 1948).)

83. The eventual elimination of these laws nationwide was consistent with increasing emphasis on marriage as a fundamental right. The U.S. Supreme Court's decision in *Loving v. Virginia* stated very clearly that marriage was a "fundamental freedom," thus affirming that freedom of choice of one's partner is basic to each person's civil right to marry. Since then, the Supreme Court has rejected as unconstitutional various state restrictions on the right to marry, including those denying the right to marry to parents who are in arrears on their child support

obligations, and to incarcerated felons. (See, e.g., *Turner v. Safley*, 482 U.S. 78 (1987); *Zablocki v. Redhail*, 434 U.S. 374, 387 (1978), restricting statutory classifications that would "attempt to interfere with the individual's freedom to make a decision as important as marriage.")

84. Today virtually no one in the United States questions the legal right of individuals to choose a marriage partner without government interference based on race. A prohibition long embedded in our laws and concepts of marriage – and often defended as natural and in accord with God's plan – has been entirely eliminated.

C. Divorce.

85. Legal and judicial views of divorce likewise have evolved to reflect society's view of marriage as an embodiment of choice and consent, in which the marriage partners themselves decide what is an appropriate enactment of their marital roles.

86. Colonial Pennsylvania enabled divorce from bed and board (*i.e.*, separation) in the eighteenth century, and its assembly would have allowed absolute divorce, except that the English Parliament denied it that authority. In 1785, the new state of Pennsylvania allowed absolute divorce through the courts and by legislative petition. The allowable grounds were limited to adultery, willful desertion for four years, bigamy, and sexual incapacity. Other states allowed divorce for similarly very limited circumstances within several decades after the Revolution. Pennsylvania was in advance of other states in adding cruel and barbarous treatment by a husband of his wife to its statutory grounds for divorce in 1815, including "indignities to her person" so great as to cause her to leave home. A wife's cruelty to her husband became a ground much later (1854) but even there Pennsylvania was ahead of most other states. (See George Elliott Howard, A HISTORY OF MATRIMONIAL INSTITUTIONS, vol. III (1904), 107-11.) New York's policy was much more limited, leading its citizens to migrate to Pennsylvania to end their marriages. A New York legislative committee commented in 1840 on "how many unfortunate 'yoke fellows' annually seek a refuge from our inexorable law, and take up a residence in moral Pennsylvania, for the sole purpose of dissolving a connection which has been productive of nothing but bitter unhappiness." (Nelson Blake, THE ROAD TO RENO: A HISTORY OF DIVORCE IN THE UNITED STATES (1962), 117.)

87. Divorce began as and long remained an adversary proceeding, meaning that the petitioning spouse had to show that the other, the accused spouse, had broken the social and legal

contract embodied in marriage as set by the state. When divorce was granted, the guilty party's fault was a fault against the state, as well as against his or her spouse.

88. Like other rules concerning marriage, nineteenth-century divorce laws presupposed different and asymmetrical marital roles for husband and wife, and as evident in Pennsylvania, divorce grounds for each could differ. For instance, desertion by either spouse was a ground for divorce, but failure to provide was a breach that only the husband could commit. In order to succeed, a wife seeking divorce had to show that she had been a model of obedience and service to her husband. Under the common law fathers were deemed the guardians of the children of a marriage. When courts (in the nineteenth century) began to allow maternal custody of children under seven, judges insisted upon stringent standards of maternal fitness for the task.

89. Over time, grounds for divorce were expanded. In Pennsylvania, for example, two years' or more imprisonment for a felony, and insanity, became grounds for divorce. (Act of May 2, 1929; Act of September 22, 1972.) Other states went farther, giving judges wide latitude, but that direction of change was hotly contested by critics who were sure that liberalized grounds for divorce would undermine the marital compact entirely.

90. The fault regime continued even as divorce became more frequent in the twentieth century. This led to cursory fact-finding in divorce cases, and even to collusion between spouses and their lawyers to gain a divorce when both spouses agreed the marriage had reached irremediable breakdown without matching their state's grounds for divorce.

91. To accord with new realities and to short circuit the temptation to legal fraud under the fault regime, states introduced no-fault divorce, in the 1970s. This meant removal of consideration of marital fault from the grounds for divorce, awards of spousal support, and division of property. Pennsylvania enacted its form of no-fault divorce in 1980, thus embracing the reform as a means of dealing honestly with marital breakdowns, achieving greater equality between men and women within marriage, and advancing further the notion of consent and choice as to one's spouse. (See *Perlberger v. Perlberger*, 426 Pa. Super. 245 (1993), "Purpose of enacting no-fault divorce provisions in addition to traditional fault provisions was to provide for dissolution of marriage in manner which would keep pace with contemporary social realities.") By 1980, almost every state had adopted some form of no-fault divorce, enabling couples who found themselves incompatible to end their marriages.

92. The liberalization of divorce that took place in the twentieth century vastly changed the institution of marriage as it had been known and experienced in earlier centuries. Courts today still retain a strong role in the ending of marriages (since post-divorce terms of support must have court approval to be valid), but the move to no-fault divorce has reflected a major shift toward enabling the partners to a marriage to set their own marriage goals and to determine how well those goals are being met. This sweeping change reflects contemporary views that continuing consent to marriage is essential.

93. In divorce as in other aspects of family law today, gender neutrality in roles and decision-making is the premise. Both parents of dependent children have responsibility for economic support and for childrearing; gender neutrality is the judicial starting point for post-divorce arrangements. In Pennsylvania, the presumption that a father, solely because of his sex and irrespective of the relative circumstances and capabilities of the parents, has the principal burden of financially supporting minor children was invalidated by the Equal Rights Amendment. (*Conway v. Dana*, 456 Pa. 536 (1974).) So too in alimony, as a result of a U.S. Supreme Court decision of 1979. (*Orr v. Orr*, 440 U.S. 268 (1979).) And with respect to government entitlements, by 1988 welfare reforms placed responsibility for children's support on both parents.

V. MARRIAGE TODAY

94. Marriage has evolved into a civil institution through which the state formally recognizes and ennobles individuals' choices to enter into long-term, committed, intimate relationships. In Pennsylvania as elsewhere, marital relationships are founded on the free choice of the parties and their continuing mutual consent to stay together.

95. The institution of marriage has proved to be resilient rather than static during the course of American history. Some alterations in it have resulted from statutory responses to economic and social change, while other important changes in marriage have resulted from judicial recognition that state strictures must not infringe the fundamental right to marry. In the past half-century, U.S. Supreme Court decisions have confirmed that this basic civil right cannot be constrained by restrictions on marriage partner (*Loving v. Virginia*), by level of compliance with child support orders (*Zablocki v. Redhail*) or even by imprisonment (*Turner v. Safley*), and

that marriage partners have a constitutional right to be treated equally regardless of gender within, or at the ending of, their marriage (*Orr v. Orr*).

96. Marriage rules have changed over the centuries to the extent that features of marriage that once seemed essential and indispensable – including coverture, racial barriers to choice of partner, and state-delimited restrictions on divorce – have been eliminated. Marriage remains a vigorous institution today, strengthened, not diminished, by these changes. Marriage persists as a public institution closely tied to the public good and simultaneously a private relationship that serves and protects the two people who enter into it.

97. In order to reflect contemporary views of gender equality and to provide fundamental fairness to marriage partners, Pennsylvania, along with other states, has eliminated gender-based rules and distinctions relating to marriage. "Today a husband and wife are equal partners in a marital relationship, and, as such, should be treated equally under the law with respect to that relationship." (*Hopkins v. Blanco*, 457 Pa. 90, 93 (1974).) Pennsylvania marriage law treats men and women without regard to sex and sex-role stereotypes – except in the statutory requirement that men may marry only women and women may marry only men. This gender-based requirement is out of step with the gender-neutral approach of contemporary marriage law.

98. The defendants' Responses to Interrogatories found "tradition" voiced as a compelling and legitimate state interest, in the legislative history of the challenged sections of the Pennsylvania Marriage Statute. The history of marriage shows that it is an evolving institution. Had "tradition" in marriage always held, Pennsylvania would still observe coverture and married women would have no legal or economic individuality, divorce would be available only for cause, and most of the United States would prohibit and criminalize marriage between whites and persons of color. The makeup of "tradition" is subject to interpretation.

99. The right to marry and the free choice of marriage partner are profound exercises of the individual liberty central to the American polity and way of life. Legal allowance for couples of the same sex to marry would extend this tradition, and carry on the long history of revisions in the regulation of marriage meant to sustain the vitality and contemporaneity of the institution. Enabling couples of the same sex to enjoy marriage equality would be consistent with the ongoing historical trend. That marriage remains a vital and relevant institution testifies to the

law's ability to recognize the need for change, rather than adhere rigidly to values or practices of earlier times.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on February 14, 2014.
By:

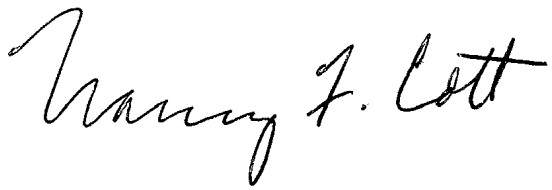

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Exhibit A

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TEACHING APPOINTMENTS:
Harvard University: Jonathan Trumbull Professor of American History, and Carl and Lily Pforzheimer Foundation Director of the Schlesinger Library, Radcliffe Institute for Advanced Study, 2002-
Yale University: Assistant Professor of History and American Studies, 1975-79; Associate Professor, 1979-86; Professor, 1986-90; Chair of Women's Studies Program, 1980-1987, 1992-93; Chair of American Studies Program, 1994-97; Stanley Woodward Professor of History and American Studies, 1990-2000; William Clyde DeVane Professor, spring 1998; Sterling Professor of History and American Studies, 2001.
Boston Public Library, NEH Learning Library Program, Lecturer, 1975.
Wellesley College: Instructor of History, part-time, 1973-74.
Clark University: Instructor of History, part-time, 1972.
Wheaton College: Instructor of History, part-time, 1971.

HONORS, FELLOWSHIPS AND GRANTS:
Mary L. Cornille Distinguished Visiting Professor in the Humanities, Wellesley College, 2012.
American Academy of Arts & Sciences elected member, 2008-
Centre d'etudes nord-americaines, Ecole des Hautes Etudes en Sciences Sociales, Paris: French-American Foundation Chair, 2003-04.
Fulbright Lectureship Grant (Japan-U.S. Educational Commission), July 2001.
Center for Advanced Study in the Behavioral Sciences, Stanford CA, 1998-99, 2008-09.
Radcliffe College Alumnae Association Graduate Society Medal, 1997.
Visiting Research Scholar, Schlesinger Library, Radcliffe College, 1991, 1997.
National Endowment for the Humanities Fellowship, 1993-94.
Liberal Arts Fellowship in Law, Harvard Law School, 1993-94, l978-79.
A. Whitney Griswold grant (Yale Univ.), 1984, 1987, 1988, 1991, 1993, 2000.
American Council of Learned Societies Grant-in-Aid, 1988.
Charles Warren Center Fellowship, Harvard University, l985.
John Simon Guggenheim Memorial Foundation Fellowship, l985.
Fellow, Whitney Humanities Center, Yale University, l983-84, 1987.
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"Abortion, Birth Control, and Public Policy," The Yale Review, 67 (Summer 1978).

PUBLICATIONS: REVIEWS

in American Historical Review, American Prospect, Boston Globe, Business History Review, Intellectual History Newsletter, International Labor and Workingclass History, Journal of American History, Journal of Interdisciplinary History, New Mexico Historical Review, New York Times Book Review, Pacific Studies, Signs: A Journal of Women in Culture and Society, The Times Literary Supplement, Women's History Review, and The Yale Review.

PUBLICATIONS: EDITORIAL PROJECTS

General editor, The Young Oxford History of Women in the United States, 11 volumes, Oxford University Press, 1994.

Editor, History of Women in the United States, 20 volumes (article reprint series), K.G. Saur Publishing Co., 1993-94.

Guest Editor, special issue of Women's Studies Quarterly, XVI:1/2 (Spring/Summer 1988), on "Teaching the New Women's History."

OTHER PROFESSIONAL ACTIVITIES:

GRANT PROJECTS:

Dissertation seminar in gender history for graduate students, Mellon Foundation, 2002.

Steering Committee, Ford Foundation Project on Women and Gender in the Curriculum in Newly-Coeducational Institutions, 1985-90.

Principal Investigator, National Endowment for the Humanities Implementation Grant, "Strengthening Women's Studies at Yale," l983-86.

Principal investigator, National Endowment for the Humanities Pilot Grant to Women's Studies, Yale University, l98l.

ACADEMIC JOURNALS AND REFERENCE WORKS:

American National Biography, senior editor, 1989-98.
American Quarterly, editorial board, l977-l980.
Feminist Studies, associate editor, l977-85, editorial consultant, 1985-97.
Gender and History, advisory board, 1987-92; editorial collective, 1993-96.
Journal of American History, editorial board, 1996-99.
Journal of Social History, editorial board, l978-.
Journal of Women's History, editorial board, 1987-98.
Notable American Women, volume 5, advisory board, 1999-04.
Orim: A Jewish Journal at Yale, editorial board, l984-88.
The Readers' Encyclopedia of American History, advisory board, 1989-91.
Reviews in American History, editorial board, 1981-85.
Women's Studies Quarterly, editorial board, 1981-94.
Yale Journal of Law and the Humanities, advisory board, 1988-2001.
The Yale Review, editorial board, 1980-88, 1991-99.

SERVICE IN PROFESSIONAL ORGANIZATIONS:

Organization of American Historians, Vice President-Elect, 2013
American Historical Association, delegate to American Council of Learned Societies, 2008-12
Society of American Historians, Executive Board, 2006-
Elected member: American Antiquarian Society, Massachusetts Historical Society, Society of American Historians.
Organization of American Historians: Merle Curti Prize Committee, 2008; Binkley-Stephenson Prize Committee, 1987-1990 (chair, 1988); elected member of Nominating Committee, 1993-95 (Chair, 1994-95); elected member of Executive Board, 1997-2000; OAH Lecturer, 1997-.

Berkshire Conference of Women Historians: Co-Chair, Eighth Berkshire Conference on the History of Women (1990).
American Studies Association: Nominating Committee, l98l-84; National Council, 1987-90; American Quarterly Review Committee, 1989.

ACADEMIC ADVISORY BOARDS:

The Museum of Women/The Leadership Center, N.Y. State, (chair of historians' advisory board) 2000-.
Princeton University Program in Women's Studies, l985-2001.
Project on Gender in Context, Mt. Holyoke College, l982-83.
The Correspondence of Lydia Maria Child, 1977-80.
Schlesinger Library on the History of Women, Radcliffe College, 1977-80.

AUDIOVISUAL MEDIA PROJECTS:

Advisory Board, 888 Film Project, "Left on Pearl," 2006-12.
Historical Advisory Board, "Makers: Women Who Make America," 2007-2012.
Advisory Board, Blueberry Hill Productions Ten Stories Project, 2005-
WGBH documentary proposal on the History of Marriage in America, Principal consultant, 2002.
Institute on the Arts and Civic Dialogue, Affiliated Scholar, American Repertory Theatre and W.E.B. DuBois Institute, summer 1999.
Margaret Sanger film project (by Bruce Alfred), Consultant, 1994-96,
"One Woman, One Vote: The Struggle for Woman Suffrage in the U. S.," Advisory Board, Educational Film Center, 1991-95.
"The American Experience," Advisory Board, WBGH-TV, Boston, MA, 1986-90.
Consultant, "Mary Silliman's War," film by Steven Schechter, 1987.
Consultant, "Lowell Fever," film by Made in U.S.A., Inc. 1985-87.
"Legacies: Family History in Sound," radio course on the history of women and the family in the U.S., Advisory Board, l984-86.
Connecticut Public Radio series, "Choices"/Everyday History, Radio Programs for Children 8 to 12," Consultant, 1982-83.
Dan Klugherz (Film) Productions, N.Y., Consultant, l98l-82.
Stanton Project on Films on Women in American History, Advisory Board, 1974-77.

PRIZE AND FELLOWSHIP SELECTION COMMITTEES:

Merle Curti Prize, Organization of American Historians, 2008.
Mark Lynton History Book Prize, 2002.
Bunting Institute Fellowship Program, Radcliffe College, 1982, 1996.
American Antiquarian Society Fellowships, 1991, 1992, 1994.
Governors' Prize, Yale University Press, 1990.
American Council of Learned Societies, Fellowships for Recent Recipients of the Ph.D., 1987, 1988, 1990.
Bancroft Prize (Columbia University), 1985.
Radcliffe Research Scholars Program, 1982.
Hamilton Prize, Women and Culture Series, U. Michigan Press, 1981.

CONSULTANT/EVALUATOR/REVIEW COMMITTEE (selected list)**:**

Johns Hopkins University, History Department, February 2011.
Wellesley College, Wellesley Centers for Women, June 2010.
University of Helsinki, city center campus, 2005.
Univ. of California at Santa Barbara, Women's Studies Program, February 2002.

National Endowment for the Humanities, fellowships for university teachers, 1998; media projects, 2001.
History Department, University of Oregon, 1999.
Woodrow Wilson Center Fellowships, 1991, 1992, 1994.
State of Colorado Commission on Higher Education, 1990.
National Humanities Center Fellowships, 1988, 1989, 1991, 1992, 1994.
"Foundations of American Citizenship," curriculum project, Council of Chief State School Officers, 1987.
Connecticut Humanities Council, 1986.
Rockefeller Foundation Gender Roles Fellowships Program, 1985.
Radcliffe Research Scholars, l983.
Working Women's History Project, 9 to 5, Organization for Women Office Workers, 1981.
Rockefeller Foundation Humanities Fellowships, l980.

ACADEMIC LECTURES, PAPERS, COMMENTS DELIVERED (selected list)**:**

"What Was Sexual Modernism?" Yale Research Initiative on the History of Sexualities, Yale University, September 2013.
"How History Matters to Same-Sex Marriage Rights," College of Charleston, Charleston SC, September 2013.
"Resignifying the Sexual Revolution," invited lecture at Rothermere American Institute, University of Oxford, U.K. May 2013.
Keynote panelist, Transnational Perspectives on Gay Marriage international conference co-sponsored by Brandeis University and the Goethe Institut, Boston, April 2013.
"Historians Go to Court: Marriage on Trial," Keynote, Committee on the Status of Women in the Profession, Organization of American Historians annual conference, San Francisco, April 2013.
Comment, "Women and Social Movements International," Organization of American Historians annual conference, San Francisco, April 2013.
"What was Sexual Modernism," U.C.L.A History Department invited talk, March 2013.
"Modern Marriage: Crisis Terminable and Interminable," Mary Cornille Lecture at the Newhouse Humanities Center, Wellesley College, November 2012.
"Marriage Crisis in the Jazz Age", National Women's History Museum and Woodrow Wilson Center, Washington, D.C. October 2012.
"Marriage in the Courts," Ronald and Kristine Erickson Legal History Lecture, U. of Minnesota, Minneapolis, October 2012.
"The Past, Present, and Future of Feminism," keynote for the 19th annual Susan B. Anthony Institute Interdisciplinary Graduate Conference at the Univ. of Rochester, March, 2012.
"The History of Marriage on Trial," Margaret Morrison Distinguished Lecture in Women's History, Carnegie Mellon University, Pittsburgh, PA March 2011.
"Why History Matters: Same-Sex Marriage," U.C.L.A. History Department special event, February 2011.
"The History of Marriage on Trial in *Perry v. Schwarzenegger*," American Association of Law Schools conference, San Francisco, January 2011.
"Marriage on Trial," Gender and Women's Studies Program, University of Kentucky, December 2010.
"The Craft of History and the Constitution: The Role of Historians as Expert Witnesses in *Perry v. Schwarzenegger*," Yale Law School, October 21, 2010.
Keynote, "Embedded Bodies: Reproductive Justice in Social Context," Harvard Law School, Oct. 2010.
"The History of Marriage on Trial," University of California at Berkeley, History Dept., March 2010.
Panelist, "State of the Field: History of Women/Gender/Sexuality," Organization of American Historians annual meeting, April 2010.
"Born Modern," Center for Advanced Study in the Behavioral Sciences, Stanford University, October 2008.
"Revisiting the Jazz Age," John O'Sullivan Memorial Lecture, Florida Atlantic U., November, 2007.

"Recovering the Interwar Generation," Modern America Workshop, Princeton University, April 2007; University of Chicago Social History Workshop, May 2007.
"The Reproduction of Gender," graduate student conference on Nineteenth-Century Reproduction,Temple University, February 2007.
"Women in the Rubble," Newcombe Institute Summit on Educating Women for a World in Crisis, New Orleans, LA, February 2007.
"Marriage and Citizenship in the History of the United States," Hall Center for the Humanities, University of Kansas, November 2006.
"Women of Happenstance," First Ladies Conference, McKinley Homestead, Canton, OH, Apr 2006.
"Revisiting the 1920s Generation," Rothermere American Institute, Oxford Univ., January 2006.
"Boundaries and Blinders in History: Revisiting the 1920s Generation," keynote address, Western Association of Women Historians annual meeting, Phoenix, AZ, April 2005.
Panelist, "The Political Spectrum of Same-Sex Marriage," conference on Breaking with Tradition: New Frontiers for Same-Sex Marriage, Yale Law School, March 2005.
"Gender History and Generations," Women's History Month address, Rutgers-Camden Law School, Camden NJ, March 2005.
"Collecting Women's History at the Schlesinger Library," Society of American Archivists annual meeting, August 2004.
Colloquium on George Chauncey's *Gay New York*, Dec. 2003, Ecole Normale Superieur, Paris.
Closing remarks, Library of Congress symposium, "Resourceful Women," June 19-20, 2003.
"Women, Men, and Modern Marriage," Ecole des Hautes Etudes en Sciences Sociales, November 2003.
"What's Love Got to Do with It? Marriage as a Public Institution in the United States," Fairleigh Dickinson University, March, 2003.
Comment, "Revisiting Domesticity: Symbolic Economies of Sex and Gender," American Historical Assoc. annual meeting, Washington, D.C., January 2003.
"Gendering Colonial America, Making Women's History Colonial: A Roundtable," Berkshire Conference on Women's History, Storrs, CT, June 2002.
Comment, panel on "Race and Family in Wartime America: Illegitimacy, Immigration, and the Church," Organization of Amer. Hist. annual meeting, Washington, D.C. April 2002.
"New Directions in Women's History after 9/11," Brandeis University, March 2002.
"The Efficacy of Women's History," Bridgewater State University, March 2002.
"Marriage and the Nation," Harvard Law School Legal History Forum, October 2001.
"The Family, Citizenship, and Democracy in the United States," University of Tokyo, Japan, July 2001.
"Women as Workers, Citizens, and Activists in the Mid-Twentieth-Century U. S." four- seminar series, Ritsumeikan University, Kyoto, Japan, July 2001.
"Grooming Citizens: Marriage in the Political History of the United States," Kyoto American Studies Seminar, Kyoto, Japan, July 2001.
"Public Sanctity for a Private Realm: The Family, the Rhetoric of Democracy, and Constitutional Values in the U.S.," Bacon Lecture on the Constitution, Boston Univ., May 2001.
"Democracy and the Family," Yale Tercentennial Series "Democratic Vistas," April 2001.
"Marriage and the Nation: Historical Perspectives," Northeastern University Feminist Studies Colloquium, March 2001.
"Public Vows: On Marriage and the Nation in the Early Twentieth-Century U.S.," Center for Historical Study, U. Maryland, College Park, October 2000.
"Marriage Revised and Revived," Associated Yale Alumni faculty lecture, May, 2000.
Comment, session on "The Idea of Marriage: The British Atlantic Context," International Seminar on the History of the Atlantic World, 1500-1800, Harvard Univ., August 2000.
"Reflections on Women and/in Authority," Women, Justice, and Authority: A Working Conference, Yale Law School, April 28, 2000.

“Grooming Citizens: Marriage and the Civic Order in the United States,” In the Company of Scholars Lecture Series, Yale University Graduate School, April 2000.
“Public Vows: Marriage as a Public Institution,” History Department, Stanford University, January 2000.
"An Archaeology of American Monogamy," History Department, Northwestern Univ., October 1999.
"The Modern Architecture of Marriage," Gender and Policy Workshop, Department of Economic History, Stockholm University, Stockholm, Sweden, October 1999.
"Women's Rights Talk," conference on "Rights--Civil, Human, and Natural," University of Southern Denmark, Odense, Denmark, October 1999.
Comment, "Making and Breaking Marriages: Reconsidering American Families through the Law, Berkshire Conference on the History of Women, June 1999.
"Marriage Fraud in the Making of Immigration Restriction in the U.S." Center for Cultural Studies, Univ. of California, Santa Cruz, May 1999.
Panel discussant, women and citizenship, Univ. of California, Berkeley, October 1998.
"An Approach to Citizenship through Gender History," Univ. of Colorado at Colorado Springs, Feb.1999.
"Marriage and Citizenship," Legal Theory Workshop, Yale Law School, October 1998.
Comment, "Public Policy and Marriage," American Society for Legal History, Seattle, WA, Oct. 1998.
“Thinking about Citizenship and Nationality through Women's History," keynote address, Australian Historical Association, Sydney, Australia, July 1998.
"Race, Blood, and Citizenship: A Gendered Perspective on U.S. Immigration Restriction, 1895-1917," International Federation for Research in Women's History conference, Melbourne, Australia, June 1998.
Introduction, Conference on Sexual Harassment Law, Yale Law School, February 1998.
"Marriage and Public Policy: The Politicization of Marriage in the 1850s," Schlesinger Library, Radcliffe College, May 1997.
Comment, "Association-Building in America," Organization of American Historians annual meeting, San Francisco, April 1997.
"Writing American Women's History: Retrospect on Nineteenth Century Domesticity," Clarion University, Clarion, Pa., April 1997.
"Against Equality: Mary Ritter Beard and Feminism," DePauw University, March 1997.
"Marriage and Women's Citizenship: A Historical Excursion," N.Y.U. Law School, March 1997.
Discussant, "One Woman, One Vote: Painting a 70-year Battle on a 2-hour TV Canvas," Berkshire Conference on the History of Women, June 1996, U.N.C.
Chair, "International Feminism, 1840-1945," American Historical Association annual meeting, January 1996, Atlanta, Ga.
“The Gender of Citizenship and the 19th Amendment," keynote address, University of Texas 8th Biennial Graduate Student Historical Symposium, Austin, Oct.1995; Women's History Week lecture, Fitchburg State College, Fitchburg Mass., March 1996.
"Effects of the 19th Amendment," Delaware Heritage Commission Conference on the 75th Anniversary of the 19th Amendment, Delaware State Univ., November, 1995.
"Forming the Body Politic: Gender, Race, and Citizenship Traditions in the U.S., "John Dewey Lecture in the Philosophy of Law, Harvard Law School, October 1994; Jane Ruby Humanities Fund Lecture, Wheaton College, March 1995.
"The Marriage Knot: Gender, Race and Citizenship Policy in the U.S., 1855-1934," UCLA Center for the Study of Women, October 1994.
Chair and comment, "Debating Democracy in the 19th Century," annual meeting of the Organization of American Historians, Atlanta, GA, April 1994.
"Justice for All? Marriage, Race, and Deprivation of Citizenship in the Early 20th-Century U.S.," Keck Lecture, Amherst College, February 1994; Harvard University, February 1994.
"Marriage, Gender, and Public Order," Symposium of the Association for Women's History, Amsterdam, Holland, November 1993.

"Early Education of Women," symposium on Uncovering Women's History in Museums and Archives, Litchfield (CT) Historical Society, October 1993.
"Early 20th-century Feminism in Germany and the U.S. Compared," Suffrage Centenary Conference, Wellington, New Zealand, August 1993.
"Reviewing the Private and the Public through Women's History," Conference for 20 Years of the Edith Kreeger Wolf Distinguished Visiting Professorship, Northwestern Univ., April 1993.
"Marriage as/and Public Policy in the Late Nineteenth-Century U.S.," annual meeting of the Organization of American Historians, Anaheim, CA, ; Northwestern University History Department, Apr1993.
"Against Equality: Mary Ritter Beard and Feminism," Conference on the 200th Anniversary of Wollstonecraft's Vindication of the Rights of Women, Sussex, England, Dec. 1992.
"'Enlightenment Respecting Half the Human Race': Mary Ritter Beard and Women's History," Sophia Smith Collection Semi-Centennial, September 1992.
"Women's History in Contemporary Perspective," Harvard University Women's History Week, Mar 1992.
"Educating Women in the U.S.," Founders Day lecture, Mary Baldwin College, October 1991.
"Feminism in the U.S. in the Early 20th Century in Comparative Perspective," German Association for American Studies annual conference, Muenster, Germany, May 1991.
Comment, "Women and American Political Identity," conference on Political Identity in American Thought, Yale Univ., April 1991.
"Slavery, Race, and the History of Women's Rights in the U.S.," Trenton State College, NJ, March 1991.
Comment, "Contextualizing Feminism," annual meeting of the American Historical Association, New York City, December 1990.
"The Political Isn't Personal: Mary Ritter Beard's View of Women's History," Center for American Culture Studies, Columbia U., October 1990.
"Mary Ritter Beard and Women's History," N.Y. Public Library, Sept. 1989.
Chair, "Power in the Early Twentieth Century," Organization of American Historians annual meeting, St. Louis, April 1989.
"What's in a Name?: The Limits of Social Feminism," Boston U., Jan. 1989; Brandeis U., Sept. 1989.
Panelist, "Feminist Theory," 10th Anniversary Celebration of the Women's Studies Program at Brandeis U., November 1988.
"Reconsidering Individualism and 'Nature Herself' in the Era of Laissez-Faire Constitutionalism," Harvard U. History Department, April 1988.
Panelist, "Individualism," N. Y. U. Humanities Center, March 1988.
Afterword, "Masculinity in Victorian America," Barnard College, Columbia U., January 1988.
Panelist, "Beyond Roles, Beyond Spheres: Thinking about Gender in the Early Republic," U. of Pennsylvania, December 1987.
Chair, "Women in American Constitutional History at the Bicentennial," Annual Meeting of the American Hist. Assoc., Washington, D.C., December 1987.
"Women's Rights: Unspeakable Issues in the Constitution," Association of Yale Alumni Faculty Seminar, September 1987, New Haven, CT; Brandeis U., March 1988; Second Annual Lowell Conference on Women's History, Lowell, MA, March 1988; Conference on the Constitution as Historical and Living Document, Duchess County Community College, April 1988; Richardson American Studies Lecture, Georgetown U., April 1988.
"How Weird Was Beard? Mary Ritter Beard and American Feminism," Seventh Berkshire Conference on the History of Women, June 1987, Wellesley MA.
"The Birth of Feminism," Women's Studies Program, Cornell U., March 1987.
"Feminism and Women's Political Participation in the Early 20th Century," Conference on Women and Citizenship, Women Historians of the Midwest, St. Paul, MN, March 1987.
"The Power of Communalism: Reflections through Women's History," Historic Communal Societies Conference, October 1986.

Chair, "Women in the 1950s: An Interdisciplinary Exploration," Organization of American Historians annual meeting, N.Y., April 1986.
"Feminism in the 1920s," Boston Area Feminist Colloquium, Northeastern U., January 1986.
"History of Feminism," Institute for Policy Studies, Washington, D.C., May 1985.
"Feminist Theory and Feminist Movements: The Past Before Us," Women's History Week, Harvard U., March 1985.
"Problems of Feminism in the l920s: the Political Environment," Women's History Series, New York U., February 1985; American Studies Lecture, Smith College, March 1985; Harvard Law School Faculty Colloquium, May 1985.
"Has Modern Woman Disrupted the Home? 1920s Answers," Wesleyan Center for the Humanities, October 1984.
"Feminism and Women in Professional Occupations in the 1920s," American Studies lecture, Amherst College, February 1984.
"Feminism in Transition, 1910-1930," Sixth Berkshire Conference on the History of Women, June 1984, Northampton, MA.
Comment, "Nineteenth-Century Gender Conventions," Smith-Smithsonian Conference on Conventions of Gender, February 1984.
"Definitions of Feminism in the Early Twentieth-Century United States," Whitney Humanities Center, Yale U., September 1983.
"Challenging Myths of Victorian Womanhood," American Psychiatric Association Convention, New York City, May 1983.
"Women's History and Feminism," Phi Beta Kappa Lecture, Sweet Briar College, February 1983; Sarah Lawrence College, March l983.
"Reappraising the History of Feminism in the 1920s," American Studies Series, Boston College, February 1983; History Dept. Series, U. of Virginia, February l983; Hamilton College, April 1983; Trinity College, April 1983.
"The Hundred Fragments: Feminism, the Woman Suffrage Coalition, and American Society," Whitney Humanities Center, Yale U., January 1983; History Colloquium Series, Princeton U., March 1984.
"Women's Education Before 1837," panel, Conference on Women and Education: The Last 150 Years, Mt. Holyoke College, April 1982.
"The Crisis in Feminism, 1910-1920," Radcliffe Research Scholars Series, Radcliffe College, May 1982; Women's Studies Series, Wesleyan U., October 1982.
"Feminism and Women's History," Harvard U., Women's History Week, March 1982.
"The Problem of Feminism in the 1920s," Isabel McCaffrey Lecture, May 1981, Harvard U.; American Civilization Dept., Brown U., November l98l; History and Women's Studies Series, U. of Michigan, March 1982; Center for European Studies, Harvard U., April 1982.
Comment, "Consciousness and Society in New England, 1740-l840," Organization of American Historians annual meeting, April 1980, San Francisco, CA.
"Women's History: Retrospect and Prospect," Harvard Divinity School History Colloquium, March 1980; U. of South Florida Women's Week, March 1980; American Assoc. for State and Local History, NE Regional Seminar, November 1980, New Haven, CT.
"Women and Feminism in the 20th Century," Bunting Institute, Radcliffe College, October 1978.
"Roundtable on Mary Ritter Beard," Fourth Berkshire Conference on the History of Women, August 1978, South Hadley, MA.
"Ministers and Women in the Late l8th and Early l9th Century," Princeton Theological Seminary, March 1978.
"New England Women's Work in the Early National Period," Historic Deerfield, MA, February 1978.
Comment, "Sexuality and Ideology in l9th-century America," Southern Hist. Assoc. Conference, November 1977, New Orleans, LA.

"Passionlessness: An Interpretation of Anglo-American Sexual Ideology, 1790- l840," History Dept. Colloquium, U. of Mass., April 1977; Rutgers U., March 1978; Marjorie Harris Weiss Lectureship, Brown U., March 1978.

"Women and Religion in Early l9th-Century New England," History Department Colloquium Series, U.of Conn., February 1977; Old Sturbridge Village, March 1977.

Chair and comment, "Comparative Perspectives on Sexual and Marital Deviance and the Law," Third Berkshire Conference on the History of Women, June 1978, Bryn Mawr, PA.

"Adultery, Divorce, and the Status of Women in Revolutionary Massachusetts, "Conference on Women in the Era of the American Revolution, July, 1975, Washington, D.C.; Princeton U. Colloquium Series, November 1975; Boston State College Lecture Series on the American Revolution, November 1976.

Young Women's Conversion in the Second Great Awakening," Second Berkshire Conference on the History of Women, November 1974, Cambridge, MA.

Chair and comment, "Women in the Professions," First Berkshire Conference on the History of Women, March 1973, New Brunswick, N.J.

PUBLIC SERVICE LECTURES:

"The Past, Present, and Future of Feminism," OAH night lecture for the AP U.S. Exam-Reading Session, Louisville, KY, June 2012.

"The Future of Marriage," *Boston Review* evening symposium, M.I.T., March 2011.

"Women's Rights in the 20th Century," week-long series of lectures, Gilder-Lehrman Institute for American History seminars for teachers, June 2008, 2009, 2011.

"What is Gender History?" Symposium on Women, History Connections Teaching American History Grant, Rockford Public Schools, Rockford, Illinois, October 2007.

"Marriage and the State," Thursday Morning Club (for the benefit of Mt. Auburn Hospital), Feb. 2006.

"What Can Venturesome Women of the 1920s Tell Us Today?" Linda Rosenzweig Memorial Lecture, Wellfleet Public Library, Wellfleet MA, August 2005.

"Marriage and the Public Order in the History of the United States," 2005 American Studies Summer Institute, John F. Kennedy Library, July 2005.

"Preserving Women's History at Radcliffe and Harvard," Committee on the Concerns of Women at Harvard, June 2005.

"Women's Education in the 18th Century," Adams Historic Site, Quincy, MA, April, 2005.

Moderator, "What Sort of a Right is Marriage?" Harvard University Human Rights Program, March 2005.

"What is Gender History?" annual luncheon for the College Board, Organization of American Historians, annual meeting, San Jose, CA, April 2005.

"What the State Has to Do with It: Changing Marriage," Democrats Abroad, Paris, Dec. 2003.

"Marriage and the Law," invited discussion with Senior Matrimonial Lawyers, educational retreat, Troutbeck Conference Center, Amenia NY, October 2003.

"Marriage as a Public Institution in the United States," Harvard Neighbors, February 2003; Harvard Librarians' group, February 2003.

"Looking at the World after 9/11 through a Women's History Lens," Radcliffe Seminars Final Conference, April 2002.

"Women as Workers and Citizens in the Twentieth Century," Institute for Emerging Civil Rights Leaders, Harvard Graduate School of Education, June 11, 2001.

"The Value of Women's Work: Historical, Public and Private Views," Bostonian Society, May 2001.

"Woman Suffrage: Why Did It Take So Long?" and "The Gender Structure of Citizenship," NEH Summer Institute for High School and Middle School Teachers on Women's Rights and Citizenship in American Thought," Ohio State Univ., July 2000.

"Education in Abigail Adams' Time," Women and the American Revolution Lecture Series, Adams National Historical Site, Quincy, MA, June 2000.

“Women of Conscience in Politics,” Maine Town Meeting, 50th anniversary of Sen. Margaret Chase Smith’s Declaration of Conscience, June 1, 2000, Skowhegan, Maine.

“The History of Marriage,” testimony and discussion before the Judiciary Committee, Vermont House of Representatives, January 2000.

"Women as Citizens in the 20th Century," A Millennium Evening at the White House, Washington, D.C., March 1999.

"Historians and Filmmakers: A Dialogue," Chatauqua .N.Y., August 1997.

"Winning the Women's Ballot: Citizenship, World War, and the Woman Suffrage Campaign," U.S. Air Force Academy, Colorado Springs, August 1995.

"The Beginnings of Women's Education in the U.S.," Witmer Lecture, Social Studies Dept., Hunter College High School, March 1995.

"New Immigrants, New Women," Rebecca Plank Memorial Lecture, Milton Academy, March 1995.

"The South and the Nation in the History of Women's Rights," Conference of Southern Humanities Foundations, Washington, D.C., May 1988.

"Women's Rights: Unspeakable Issues in the Constitution," Judicial Seminar, N.Y. State Judiciary Continuing Education, July 1988.

EXHIBIT B: MATERIALS CONSULTED

SCHOLARLY WORKS

BAILEY, MARTHA J., *"Momma's Got the Pill": How Anthony Comstock and Griswold v. Connecticut Shaped US Childbearing*, 100 AMERICAN ECONOMIC REVIEW 98 (March 2010)

BAILEY, MARTHA J., ET AL., *Early Legal Access: Laws and Policies Governing Contraceptive Access, 1960-1980*, Working Paper (2012), available at http://www.bus.ucf.edu/faculty/mguldi/file.axd?file=2013/3/Early+Legal+Access-legal.pdf

BARDAGLIO, PETER W., RECONSTRUCTING THE HOUSEHOLD: FAMILIES, SEX, AND THE LAW IN THE NINETEENTH-CENTURY SOUTH (1995)

BASCH, NORMA, FRAMING AMERICAN DIVORCE (1999)

BASCH, NORMA, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN 19TH CENTURY NEW YORK (1982)

BECK, PHYLLIS W. AND JOANNE ALFANO BAKER, *An Analysis of the Impact of the Pennsylvania Equal Rights Amendement*, 3 WIDENER J. PUB. L. 743 (1994)

BECK, PHYLLIS W. AND PATRICIA A. DALY, *Pennsylvania's Equal Rights Amendment Law: What Does It Portend for the Future?*, 74 TEMP. L. REV. 579 (2001)

BLAKE, NELSON, THE ROAD TO RENO: A HISTORY OF DIVORCE IN THE UNITED STATES (1962)

BREDBENNER, CANDICE. A NATIONALITY OF HER OWN: WOMEN, MARRIAGE, AND THE LAW OF CITIZENSHIP (2009)

BURNHAM, MARGARET, *An Impossible Marriage: Slave Law and Family Law*, 5 LAW AND INEQUALITY 187 (1987)

CALVERTON, V.F., THE BANKRUPTCY OF MARRIAGE (1928)

CHUSED, RICHARD H., *Married Women's Property Law: 1800-1850*, 71 GEO. L.J. 1359 (1983)

COONTZ, STEPHANIE, MARRIAGE, A HISTORY (2006)

COONTZ, STEPHANIE, THE SOCIAL ORIGINS OF PRIVATE LIFE: A HISTORY OF AMERICAN FAMILIES, 1600-1900 (1988)

COTT, NANCY F., *Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records*, JOURNAL OF SOCIAL HISTORY (Fall 1976)

COTT, NANCY F., *Divorce and the Changing Status of Women in 18th-Century Massachusetts*, WM. & MARY Q. (October 1976)

COTT, NANCY F., *Marriage and Women's Citizenship in the United States, 1830-1934*, AMERICAN HISTORICAL REVIEW (1998)

COTT, NANCY F., PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000)

DITZ, TOBY L., PROPERTY AND KINSHIP: INHERITANCE IN EARLY CONNECTICUT (1986)

EDWARDS, LAURA F., *The Marriage Covenant Is at the Foundation of All Our Rights*, 14 LAW & HIST. REV. 90 (1996)

FOWLER, DAVID H., NORTHERN ATTITUDES TOWARDS INTERRACIAL MARRIAGE (1987)

FREEDMAN, ESTELLE B. AND JOHN D'EMILIO, INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA (2d ed. 1997)

GLENDON, MARY ANN, ABORTION AND DIVORCE IN WESTERN LAW (1987)

GROSSBERG, MICHAEL, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA (1985)

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