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HONORABLE WILLIAM DOWNING

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

HEATHER ANDERSEN and LESLIE CHRISTIAN; PETER ILGENFRITZ and DAVID

SHULL; JOHANNA BENDER and SHERRI KOKX; JANET HELSON and BETTY

LUNDQUIST; DAVID SERKIN-POOLE and MICHAEL SERKIN-POOLE; VEGAVAHINI

SUBRAMANIAM and VAIJAYANTHIMALA NAGARAJAN,

Plaintiffs,

vs.

KING COUNTY; RON SIMS, King County Executive; and DEAN LOGAN, King County

Director of Records, Elections, and Licensing Services Division;

Defendants.

vs.

STATE OF WASHINGTON,

Third Party Defendant.

SENATOR VAL STEVENS, STATE REPRESENTATIVE GIGI TALCOTT, COALITION FOR
COMMUNITY

DEVELOPMENT AND RENEWAL, NUWANDA ADAMS, TRACEY ARMSTRONG, GERALD
BAKER, RICHARD

NO. 04-2-04964-4 SEA

**DECLARATION OF ALLAN C. CARLSON, Ph.D IN SUPPORT OF INTERVENORS' RESPONSE
TO**

MOTION FOR SUMMARY JUDGMENT

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BLAIR, ED COOK, RICK DANNER, SR., BILL DEMPS, HARVEY DRAKE, GEORGE FROST, ELVIN GLADNEY, AARON HASKINS, RICK KINGHAM, SAMUEL K. LAW, JIMMIE W. LEE, DAN MAGALEI, DANA MCCLENDON, TONY MORRIS, NATE MULLEN, PAUL OLVER, JOSEPH PHILLIPS, DAVID PIERSON, JOHN PENTON, KENNETH J. RANSFER, SR., WILLIE C. SEALS, JR., PAUL STOOT, WASHINGTON TALAGA, DANIEL VILLA, DAVID WALLACE, THOMAS L. WESTBROOK, DOUG WHEELER, EARNEST WILLIAMS, REGGIE WITHERSPOON, NATHANIEL WOLF, GRANT ZWEIGLE and WASHINGTON EVANGELICALS FOR RESPONSIBLE GOVERNMENT,

Intervenors.

I, ALLAN C. CARLSON, Ph.D., declare:

1. I am over the age of 18 and competent and knowledgeable to testify to the following matters.

2. I am President of The Howard Center for Family, Religion & Society in Rockford, Illinois, Distinguished Fellow in Family Policy Studies for the Family Research Council in

Washington, DC, and International Secretary for The World Congress of Families. From 1988 to 1993, I served via Presidential appointment on The National Commission on Children. My

primary research fields are the history of marriage and family policy in the United States and Europe.

3. In 1978, I received my Doctorate degree in Modern European History from Ohio University. Since that time, I have engaged primarily in publishing, research, and writing. I

have received research fellowships from The American Scandinavian Foundation, The National Endowment for the Humanities, and the Earhart Foundation.

4. I have authored seven books (six published, and one due out in early 2005), including *Family Questions: Reflections on the American Social Crisis* (1988), *The Family in America:*

Searching for Social Harmony in the Industrial Age (1993; 2003), and *The 'American Way': Family and Community in the Shaping of the American Identity* (2003). I have also published over 100 articles on issues of marriage and family in America. I have testified as an expert witness on these subjects before committees of both the U.S. Senate and House of

Representatives, the U.S. Attorney General's Taskforce on Family Violence, The Presidential Commission

on the Assignment of Women in the Armed Forces, and in Federal and State

Court. A true and correct copy of my curriculum vitae is attached as Exhibit A.

5. The Declaration of Nancy F. Cott, Ph.D. (No. 04-2-04964-4 SEA) correctly notes that “there is nothing but marriage itself that has all the same obligations, rights and benefits as

marriage” and that “Legal marriage in the United States is, and has been for hundreds of years, a privileged status.” However, I strongly disagree with statements made in Dr. Cott’s

paragraph 9 which imply that producing children or progeny is but a secondary or merely “customary” purpose of marriage.

6. Viewed historically, marriage has been a universal institution, found in every known human society, and focused first and foremost on the procreation and rearing of children. This

statement certainly holds true for The United States and for the State of Washington. While legal marriage surely performs other tasks—such as creating stable households and arranging

for the transmission of property—even these are primarily directed toward one goal: the protection of progeny and the binding of the generations.

7. Civil authority in America, as elsewhere, has intervened in the spousal contract of union because the former represents the potential child or children, the first object of marriage, and

because civil authority has accepted the implicit promises made by the spouses to create and to rear that child in a stable home. Only the sexual relation between a man and a woman can

naturally create a child, something which can occur at any time. This is why civil authority has a deep interest in the regularization of male-female sexual relations: it is for the sake of

children, potential and real.

8. It is true that the marriage of a woman and a man who are unable to conceive a child has been considered valid in the United States. Reasons for this include the reluctance of

governments to enter into the business of fertility testing and, even in recent times, the imprecision of judgments about infertility.

9. The historical record, common sense, and social research all affirm that children do best when they are born into and reared by a family composed of their two natural parents bound in

marriage. Any deviation from this model raises the probability of negative outcomes for the children involved. Children raised by their married natural parents are more likely to be

healthy in mind and body and to succeed in school, work, and in life. They are less likely to be physically, sexually, or mentally abused, to use illegal drugs, to be involved in the juvenile

justice system, to become wards of the state, or to attempt suicide. Marriage law has privileged the sexual relation of man to woman because of these positive and protective effects on

children, which have also made valuable contributions to society. Governments have sought to insure that the maximum possible number of children grow up in stable, natural parent, married

couple homes.

10. While marriage has enjoyed a “privileged status” in America, it has also carried certain burdens. For example, marriage law has put restrictions on an individual’s right to end the

relationship. Again, these restrictions on liberty have been justified primarily because of the married couple’s relationship to children. Other human friendships have commonly been left

unregulated, and unregistered.

11. I also take issue with the assertions made by Dr. Cott in her paragraph #15 that “marriage has evolved over time to reflect changes in society at large.” This statement implies

that marriage is an endlessly elastic institution. It is, of course, true that positive changes in marriage law have occurred, including enhanced protection of women’s property rights and an

end to racial restrictions on marriage. But the prior conditions in these cases were either unrelated to, or directly hostile toward, the core purposes of marriage: the procreation and

rearing of children. In this sense, marriage does not “evolve.” Public authority uses law either to strengthen or weaken this natural, universal human institution.

12. Indeed, negative change is possible. For example, Dr. Cott’s discussion of divorce reform (paragraphs 30-36) casts “no fault” divorce as necessary for the law “to remain effective

and fair” and “as an important means of dealing honestly with marital breakdowns and achieving greater equality between men and women....” In fact, research shows that the

introduction of “no fault” independently drove up the divorce rate and that children have emerged as the true victims of this reform. Predictably, the children of divorce are more likely

to face psychological disorders, to suffer from poorer physical health, to perform worse at school, to use illegal drugs and alcohol, and to resort to suicide. Except where physical

violence is involved, even homes with unhappy marriages prove to be better places for the children involved. To imply that “no fault” divorce represents some positive “evolution” is

simply to ignore its deleterious effects on children.

13. I also want to refute the assertion in Dr. Cott’s paragraph #38 that “marriage has come to represent a zone of personal freedom and personal choice.” This presumes that marriage

exists to recognize two persons’ promises of devotion to each other, but little more. The one promised public benefit in this minimalist view of marriage is reduced promiscuity by the

sexual pair. In fact, the historical record shows that marriage—always and everywhere—has been a community event. The couple is actually surrounded by concentric rings of

relationships. The first circle of community, as noted earlier, is that of parents and their potential or unborn children. The second circle is that of extended family, or kin, since each

true marriage merges two families in a manner that perpetuates and invigorates both. The third circle is that of neighborhood, which also has a vital interest in the stability and fecundity of the

newly married couple. The fourth circle is that of the state and nation, which holds a deep concern in the birth and best-possible rearing of children. As the U.S. Supreme Court ruled in

Maynard v. Hill, marriage “is something more than a mere contract... It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the

family and society.”

14. Marriage has played a vital part in American history. Prominent early observers, including Benjamin Franklin, Adam Smith, and Alexis de Tocqueville, all commented on the

special role of marriage in shaping the American identity. As Tocqueville put it: “There is certainly no country in the world where the tie of marriage is more respected than in America,

or where conjugal happiness is more highly or worthily appreciated....” America’s culture of marriage worked in the 20th Century to effect the assimilation of new immigrants into national

life, to carry the nation through global war and the Great Depression, and to undergird successful American efforts to face down Nazi and Communist totalitarianism. Marriage, with

its focus on children, has proven to be a key source of the unique balance between liberty and order that has defined and sustained our democratic republic. As such, it is a vital part of

America’s unwritten constitution.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and

correct.

Executed this _____ day of June, 2004, at Rockford, Illinois.

Allan C. Carlson, Ph.D.