EXHIBIT 67

Volume 5

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, VS. ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of California; MARK B. HORTON, in his official capacity as Director of the California Department of Public Health and State Registrar of Vital Statistics; LINETTE SCOTT, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County of Alameda; and DEAN C. LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles, Defendants.	NO. C 09-2292-VRW San Francisco, California Friday January 15, 2010

TRANSCRIPT OF PROCEEDINGS

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Official Reporters - U.S. District Court

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differently than men in terms of as it relates to children?
A. I'm not familiar with research on that.
Q. Gender is also related to certain occupations, correct?
A. There are certain occupations where some genders are more prominent than others, yes, although this has actually changed pretty dramatically over time.
Q. Gender is associated with educational opportunities, correct?
A. Uhm, I'm not sure it's associated with opportunities. It may be associated in some context with whether or not people take advantage of opportunities.
Q. Men are more likely to perpetrate sexual abuse than women are, as a general characteristic, correct?
A. That's correct.
Q. As a result, stepfathers are much more likely to be perpetrators of sexual abuse than stepmothers, correct?
A. That's correct.
Q. And stepfathers are more likely than biological fathers to abuse their children, correct?
A. I think that's correct, too, yes.
Q. And stepfathers molest children at a higher rate than stepmothers, correct?
A. Yes, correct.
Q. And molestation of a child negatively impacts the child's development, correct?

A. It certainly can, yes.

Q. And there is evidence that men who are married to women, however, are less likely to drink heavily and less likely to gamble, correct?

A. I've heard of that research. It's obviously outside of my expertise -- range of expertise, yes.

Q. When it comes to parenting skills and abilities, you're not saying that men and women are completely interchangeable, correct?

A. What I'm saying is that where it comes to the aspects of parenting that affect children's adjustment, it's the same features of the parents' behavior that are important for their children's adjustment.

Q. I would like to direct your attention to page 225 of your deposition in this case, lines 9 through 14.

A. That's back to --

Q. Binder 1, the testimony binder.

A. Okay. Number 1. And what pages was that?

Q. 225.

A. Okay.

Q. And line 9, it says -- let me make sure I'm in the right place here. All right. Line 9 through 14. Line 9 starts with my question:

> "Is it your opinion that men and women are completely interchangeable in terms of

parenting skills and ability?

"**ANSWER:** Well, I'm not saying they are completely interchangeable with respect to skills and abilities."

And you gave that testimony, right?

A. I did. I continued for several paragraphs explaining what I meant.

(Laughter)

Q. And we'll explore that in great detail today. You --

A. I just don't want you to lose sight of the fact that there is more.

Q. You would concede that gender is a complicated variable, and that it has ramifications for an individual's experiences from the beginning of their life, correct?

A. That's correct.

Q. So gender likely would be related to some of the processes related to raising a child, but not necessarily in a straightforward way, correct?

A. Correct.

Q. And so you think gender is one of those variables that can have ripple effects in a variety of different ways on the way in which people behave, and can in a variety of ways affect the way they behave with their children, correct?

A. It can, yes.

Q. Gender is something that actually has a wide range of

effects on a variety of different levels of our behavior, correct?

A. That's correct.

Q. Fathers' biological and socially-reinforced masculine qualities predispose them to treat their children differently than do mothers, correct?

A. I'm not sure about that.

Q. Well, let's look at tab 9 of your binder, your second binder. And this would be 9A, actually.

A. Uh-huh.

Q. And turning your attention -- this is called -- this is from 2000. It's "Fatherhood in the 21st Century." And this is something you were a coauthor of, correct?

A. That's correct.

And I'd like to direct your attention to page 130. And in particular, to the right-hand column, the second full paragraph. And it's the third sentence, that says:

> "Fathers' biological and socially-reinforced masculine qualities predispose them to treat their children differently than do mothers."

A. And I'm still not sure where you are. Sorry. Oh, okay, the second column. I have you now.

Q. Okay. And when you signed on to this paper as a coauthor, you believed that to be true, correct?

A. Well, I think this is referring to David Popenoe, and

EXHIBIT 68

71-1027

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

RICHARD JOHN BAKER, *et al.*,

Appellants,

—v.—

GERALD R. NELSON,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Minnesota, entered on October 15, 1971, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinions Below

The opinion of the Supreme Court of Minnesota is reported at 191 N.W.2d 185. The opinion of the District Court for Hennepin County is unreported. Copies of the opinions are set out in the Appendix, *infra*, pp. 10a-17a and 18a-23a.

Jurisdiction

This suit originated through an alternative writ of mandamus to compel appellee to issue the marriage license to appellants. The writ of mandamus was quashed by the Hennepin County District Court on January 8, 1971. On appeal, the judgment of the Supreme Court of Minnesota affirming the action of the District Court was entered on October 15, 1971. Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of Minnesota on January 10, 1972. The time in which to file this Jurisdictional Statement was extended on January 12, 1972, by order of Justice Blackmun.

The jurisdiction of the Supreme Court to review this decision on appeal is conferred by Title 28 U.S.C., Section 1257(2).

Statutes Involved

Appellants have never been advised by appellee which statute precludes the issuance of the marriage license to them, and the Supreme Court of Minnesota cites only Chapter 517, Minnesota Statutes, in its opinion. Accordingly, the whole of Chapter 517 is reproduced in App., *infra*, pp. 1a-9a.

Questions Presented

1. Whether appellee's refusal to sanctify appellants' marriage deprives appellants of their liberty to marry and of their property without due process of law under the Fourteenth Amendment.
2. Whether appellee's refusal, pursuant to Minnesota marriage statutes, to sanctify appellants' marriage because both are of the male sex violates their rights under the equal protection clause of the Fourteenth Amendment.
3. Whether appellee's refusal to sanctify appellants' marriage deprives appellants of their right to privacy under the Ninth and Fourteenth Amendments.

Statement of the Case[1]

Appellants Baker and McConnell, two persons of the male sex, applied for a marriage license on May 18, 1970 (T. 9; A. 2, 4) at the office of the appellee Clerk of District Court of Hennepin County[2] (T. 10).

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[1] T. refers to the trial transcript. A. refers to the Appendix to appellants' brief before the Minnesota Supreme Court.

[2] Appellant McConnell is also petitioner before this Court in *McConnell* v. *Anderson*, petit. for cert. filed, No. 71-978 in which he seeks review of the decision of the United States Court of Appeals for the Eighth Circuit, allowing the Board of Regents of the University of Minnesota to refuse him employment as head of the catalogue division of the St. Paul Campus Library on the grounds that "His personal conduct, as represented in the public and University news media, is not consistent with the best interest of the University."

The efforts of appellants to get married evidently precipitated the Regents' decision not to employ Mr. McConnell.

Upon advice of the office of the Hennepin County Attorney, appellee accepted appellants' application and thereupon requested a formal opinion of the County Attorney (A. 7-8) to determine whether the marriage license should be issued. In a letter dated May 22, 1970, appellee Nelson notified appellant Baker he was "unable to issue the marriage license" because "sufficient legal impediment lies thereto prohibiting the marriage of two male persons" (A. 1; T. 11). However, neither appellant has ever been informed that he is individually incompetent to marry, and no specific reason has ever been given for not issuing the license.

Minnesota Statutes, section 517.08 states that *only* the following information will be elicited concerning a marriage license: name, residence, date and place of birth, race, termination of previous marriage, signature of applicant and date signed. Although they were asked orally at the time of application which was to be the bride and which was to be the groom (T. 15; T. 18), the forms for application for a marriage license did not inquire as to the sex of the applicants. However, appellants readily concede that both are of the male sex.

Subsequent to the denial of a license, appellants consulted with legal counsel. On December 10, 1970, appellants applied to the District Court of Hennepin County for an alternative writ of mandamus (A. 2), and such a writ was timely served upon appellee. Appellee Nelson continued to refuse to issue the appellants a marriage license. Instead, he elected to appear in court, show cause why he had not done as commanded, and make his return to the writ (A. 4).

The matter was tried on January 8, 1971, in District Court, City of Minneapolis, Judge Tom Bergin presiding (T. 1). Appellants Baker and McConnell testified on their own behalf (T. 9; T. 15) as the sole witnesses. After closing arguments, he quashed the writ of mandamus and ordered the Clerk of District Court "not to issue a marriage license to the individuals involved" (T. 19). An order was signed to that effect the same day (App. *infra*, p. 12a).

Subsequent to the trial, counsel for appellants moved the court to find the facts specially and state separately its conclusions of law pursuant to Minn. R. Civ. P. 52.01. Judge Bergin then made certain findings of fact and conclusions of law (App. *infra*, p. 14a) in an amended order dated January 29, 1971. Such findings and conclusions were incorporated into and made part of the order signed January 8, 1971. The Court found that the refusal of appellee to issue the marriage license was not a violation of M.S. Chapter 517, and that such refusal was not a violation of the First, Eighth, Ninth or Fourteenth Amendments to the U. S. Constitution.

A timely appeal was made to the Supreme Court of Minnesota. In an opinion filed October 15, 1971, the Supreme Court of Minnesota affirmed the action of the lower court.[3]

[3] In early August, 1971, Judge Lindsay Arthur of Hennepin County Juvenile Court issued an order granting the legal adoption of Mr. Baker by Mr. McConnell. The adoption permitted Mr. Baker to change his name from Richard John Baker to Pat Lynn McConnell. On August 16, Mr. Michael McConnell alone applied for a marriage license in Mankato, Blue Earth County, Minnesota for himself and Mr. Baker, who used the name Pat Lynn McConnell. Under Minnesota law, only one party need apply for a marriage license. Since the marriage license application does not inquire as

How the Federal Questions Were Raised

Appellants contended that if Minnesota Statutes, Chapter 517, were construed so as to not allow two persons of the same sex to marry, then the Statutes were in violation of the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution in their Alternative Writ of Mandamus (App. *infra*, pp. 10a-11a), at the hearing before the Hennepin County District Court on January 8, 1971 (App. *infra*, p. 12a), and to the Supreme Court of Minnesota (App. *infra*, p. 18a). These constitutional claims were expressly considered and rejected by both courts below.

The Questions Are Substantial

The precise question is whether two individuals, solely because they are of the same sex, may be refused formal legal sanctification or ratification of their marital relationship.

At first, the question and the proposed relationship may well appear bizarre—especially to heterosexuals. But

to sex, the bisexual name of Pat Lynn McConnell doubtless kept the clerk from making any inquiry about the sexes of the parties. Shortly after the license issued, Mr. McConnell's adoption of Mr. Baker was made public by Judge Arthur—contrary to Minnesota law. The County Attorney for Blue Earth County then discovered that a marriage license had issued to the appellants, and on August 31, he "declared the license void on statutory grounds." Nevertheless, on September 3, the appellants were married in a private ceremony in South Minneapolis. About a week later the license was sent to the Blue Earth County Clerk of District Court. It is not known whether he filed it, but under the Minnesota statute filing is not required. Further, filing does not affect validity.

neither the question nor the proposed relationship is bizarre. Indeed, that first impulse provides us with some measure of the continuing impact on our society of prejudice against non-heterosexuals. And, as illuminated within the context of this case, this prejudice has severe consequences.

The relationships contemplated is neither grotesque nor uncommon. In fact, it has been established that homosexuality is widespread in our society (as well as all other societies). Reliable studies have indicated that a significant percentage of the total adult population of the United States have engaged in overt homosexual practices. Numerous single sex marital relationships exist de facto. See, e.g., A. KINSEY, SEXUAL BEHAVIOR IN THE HUMAN MALE (1948); Finger, *Sex Beliefs and Practices Among Male College Students*, 42 J. ABNORMAL AND SOCIAL PSYCH. 57 (1947). The refusal to sanction such relationships is a denial of reality. Further, this refusal denies to many people important property and personal interests.

This Jurisdictional Statement undertakes to outline the substantial reasons why persons of the same sex would want to be married in the sight of the law. Substantial property rights, and other interests, frequently turn on legal recognition of the marital relationship. Moreover, both the personal and public symbolic importance of legal ratification of same sex marriages cannot be underestimated. On the personal side, how better may two people pledge love and devotion to one another than by marriage. On the public side, prejudice against homosexuals, which tends to be phobic, is unlikely to be cured until the public acknowledges that homosexuals, like all people, are entitled to the full protection and recognition of the law.

Only then will the public perceive that homosexuals are not freaks or unfortunate abberations, to be swept under the carpet or to be reserved for anxious phantasies about one's identity or child rearing techniques.

A vast literature reveals several hypotheses to explain the deep prejudice against homosexuals. One authority maintained that hostility to homosexual conduct was originally an "aspect of economics," in that it reflected the economic importance of large family groupings in pastoral and agricultural societies. E. Westermarck, 2 Origin and Development of the Moral Idea 484 (1926). A second theory suggests that homosexuality was originally forbidden by the "early Hebrews" as part of efforts to "surround the appetitive drives with prohibitions." W. Churchill, Homosexual Behavior Among Males 19 (1969). Under this theory, opposition to homosexuality was closely related to religious imperatives, in particular the need to establish moral superiority over pagan sects. *Id.*, at 17; see also W. James, The Varieties of Religious Experience, lectures XI, XII, XIII (1902).

Whatever the appropriate explanation of its origins, psychiatrists and sociologists are more nearly agreed on the reasons for the persistence of the hostility. It is one of those "ludicrous and harmful" prohibitions by which virtually all sexual matters are still reckoned "socially taboo, illegal, pathological, or highly controversial." W. Churchill, *supra*, at 26. It continues, as it may have begun, quite without regard to the actual characteristics of homosexuality. It is nourished, as are the various other sexual taboos, by an amalgam of fear and ignorance. *Id.*, at 20-35. It is supported by a popular conception of the causes and characteristics of homosexuality that is no more deserving of our reliance than the Emperor Justinian's belief that homosexuality causes earthquakes. H. Hart, Law, Liberty and Morality 50 (1963).

There is now responsible evidence that the public attitude toward the homosexual community is altering. Thus, the Final Report of the Task Force on Homosexuality of the National Institute of Mental Health, October 10, 1969, states (pp. 18-19):

> "Although many people continue to regard homosexual activities with repugnance, there is evidence that public attitudes are changing. Discreet homosexuality, together with many other aspects of human sexual behavior, is being recognized more and more as the private business of the individual rather than a subject for public regulation through statute. Many homosexuals are good citizens, holding regular jobs and leading productive lives."

To a certain extent the new attitudes mirror increasing scientific recognition that homosexuals are "normal," and that accordingly to penalize individuals for engaging in such conduct is improper. For example, in D. Abrahamsen, Crime and the Human Mind 117 (1944), it is stated:

> "All people have originally bisexual tendencies which are more or less developed and which in the course of time normally deviate either in the direction of male or female. This may indicate that a trace of homosexuality, no matter how weak it may be, exists in every human being."

Sigmund Freud summed up the present overwhelming attitude of the scientific community when he wrote as follows in 1935:

"Homosexuality is assuredly no advantage but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an illness; we consider it to be a variation of the sexual function produced by a certain arrest of sexual development. Many highly respectable individuals of ancient and modern times have been homosexuals, several of the greatest men among them (Plato, Michelangelo, Leonardo da Vinci, etc.). It is a great injustice to persecute homosexuality as a crime and cruelty too." Reprinted in 107 Am. J. of Psychiatry 786-87 (1951).

In the face of scientific knowledge and changing public attitudes it is plainly, as Freud said, "a great injustice" to persecute homosexuals.

This injustice is compounded, we suggest, by the fact that there is no justification in law for the discrimination against homosexuals. Because of abiding prejudice, appellants are being deprived of a basic right—the right to marry. As a result of this deprivation, they have been denied numerous benefits awarded by law to others similarly situated—for example, childless heterosexual couples.

Since this action has been filed, others have been instituted in other states.[4] This Court's decision, therefore, would affect the marriage laws of virtually every State in the Union.

[4] See, e.g., *Jones* v. *Hallihan*, W-152-70. (Ct. Apps. Ky. 1971).

I.

Respondent's refusal to sanctify appellants' marriage deprives appellants of liberty and property in violation of the due process and equal protection clauses.

The right to marry is itself a fundamental interest, fully protected by the due process and equal protection clauses of the Fourteenth Amendment. See *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Loving* v. *Virginia*, 388 U.S. 1 (1967); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942); *Meyer* v. *Nebraska*, 262 U.S. 535 (1923). In addition, significant property interests, also protected by the due process clause, flow from the legally ratified marital relationship. In his testimony at the trial, the appellant Baker enumerated six such interests which he cannot enjoy because of the State's refusal to recognize his marriage to the appellant McConnell:

1. The ability to inherit from one another by intestate succession.
2. The availability of legal redress for the wrongful death of a partner to a marriage.
3. The ability to sue under heartbalm statutes where in effect.
4. Legal (and consequently community) recognition for their relationship.
5. Property benefits such as the ability to own property by tenancy-by-the-entirety in states where permitted.
6. Tax benefits under both Minnesota and federal statutes. (Among others, these include death tax benefits

and income tax benefits—even under the revised Federal Income Tax Code.)

There are innumerable other legal advantages that can be gained only in the marital relationship. Only a few of these will be listed for illustrative purposes. Some state criminal laws prohibit sexual acts between unmarried persons. Many government benefits are available only to spouses and to surviving spouses. This is true, for example, of many veterans benefits. Rights to public housing frequently turn on a marital relationship. Finally, when there is a formal marital relationship, one spouse cannot give or be forced to give evidence against the other.

The individual's interests, personal and property, in a marriage, are deemed fundamental. See, e.g., *Boddie* v. *Connecticut, supra; Loving* v. *Virginia, supra; Griswold* v. *Connecticut, supra; Skinner* v. *Oklahoma, supra; Meyer* v. *Nebraska, supra.* Thus marriage comprises a bundle of rights and interests, which may not be interfered with, under the guise of protecting the public interest, by government action which is arbitrary or invidious or without at least a reasonable relation to some important and legitimate state purpose. E.g. *Meyer* v. *Nebraska, supra.* In fact, because marriage is a fundamental human right, the state must demonstrate a subordinating interest which is compelling, before it may interfere with or prohibit marriage. Cf. *Bates* v. *City of Little Rock,* 361 U.S. 516 (1960).

In a sense, the analysis presented here involves a mixing of both due process and equal protection doctrines. As they are applied to the kind of government disability at issue in this case, however, they tend to merge. Refusal to sanctify a marriage solely because both parties to the

relationship are of the same sex is precisely the kind of arbitrary and invidiously discriminatory conduct that is prohibited by the Fourteenth Amendment equal protection and due process clauses. Unless the refusal to sanctify can be shown to further some legitimate government interest, important personal and property rights of the persons who wish to marry are arbitrarily denied without due process of law, and the class of persons who wish to engage in single sex marriages are being subject to invidious discrimination. With regard to the due process component, see *Boddie* v. *Connecticut, supra; Griswold* v. *Connecticut, supra* (all the majority opinions); *Meyer* v. *Nebraska, supra.* With regard to the equal protection component of this argument, see *Loving* v. *Virginia, supra; McLaughlin* v. *Florida,* 379 U.S. 184 (1964); *Skinner* v. *Oklahoma, supra;* cf. *Reed* v. *Reed,* 92 S. Ct. 251, 30 L. ed.2d 225 (1971).

Applying due process notions, in this case, the state has not shown any reason, much less a compelling one, for refusing to sanctify the marital relationship. Its action, therefore, arbitrarily invades a fundamental right.

Separately, each appellant is competent to marry under the qualifications specified in Minnesota Statutes Sections 517.08, subd. 3, 517.02-517.03. Compare *Loving* v. *Virginia, supra.* Why, then, do they become incompetent when they seek to marry each other?

The problem, according to the Minnesota Supreme Court, appears to be definitional or historical. The institution of marriage "as a union of a man and a woman, uniquely involving the procreation and rearing of children within a family, is as old as the Book of Genesis" (App., *infra,* pp. 20a-21a). On its face, however, Minnesota law neither

states nor implies this definition. Furthermore, the antiquity of a restriction certainly has no bearing on its constitutionality, and does not, without anything additional, demonstrate that the state's interest in encumbering the marital relationship is subordinating and compelling. Connecticut's restriction on birth control devices had been on its statute books for nearly a century before this Court struck it down on the ground that it unconstitutionally invaded the privacy of the marital relationship. *Griswold* v. *Connecticut*, *supra*.

"Surely the Minnesota Supreme Court cannot be suggesting that single sex marriages may be banned because they are considered by a large segment of our population to be socially reprehensible. Such a governmental motive would be neither substantial, nor subordinating nor legitimate. See, e.g., *Loving* v. *Virginia*, *supra*; *Cohen* v. *California*, 403 U.S. 15 (1971); *Street* v. *New York*, 394 U.S. 576 (1969).

Even assuming that government could constitutionally make marriageability turn on the marriage partners' willingness and ability to procreate and to raise children, Minnesota's absolute ban on single sex marriages would still be unconstitutional. "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). There is nothing in the nature of single sex marriages that precludes procreation and child rearing. Adoption is quite

clearly a socially acceptable form of procreation. It already renders procreative many marriages between persons of opposite sexes in which the partners are physically or emotionally unable to conceive their own children. Of late, even single persons have become eligible to be adoptive parents.

Appellants submit therefore, that the appellee cannot describe a legitimate government interest which is so compelling that no less restrictive means can be found to secure that interest, if there is one, than to proscribe single sex marriages. And, even if the test to be applied to determine whether the Minnesota proscription offends due process involves only questions of whether Minnesota has acted arbitrarily, capriciously or unreasonably, appellants submit that the appellee has failed under that test too. Minnesota's proscription simply has not been shown to be rationally related to any governmental interest.

The touchstone of the equal protection doctrine as it bears on this case is found in *Loving* v. *Virginia*, 388 U.S. 1 (1967). The issue before the Court in that case was whether Virginia's anti-miscegenation statute, prohibiting marriages between persons of the Caucasian race and any other race was unconstitutional. The Court struck down the statute saying:

> There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification as measures designed to maintain White Supremacy. We have consistently

> denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause. *Loving* v. *Virginia*, 388 U.S. at 11-12.

The Minnesota Supreme Court ruled that the *Loving* decision is inapplicable to the instant case on the ground that "there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex" (App., *infra*, p. 23a). It is true that the inherently suspect test which this Court applied to classifications based upon race (see, e.g., *Loving* v. *Virginia, supra; McLaughlin* v. *Florida, supra*), has not yet been extended to classifications based upon sex (see *Reed* v. *Reed*, 92 S. Ct. 251, 30 L. ed.2d 225 (1971)). However, this Court has indicated that when a fundamental right—such as marriage—is denied to a group by some classification, the denial should be judged by the standard that places on government the burden of demonstrating a legitimate subordinating interest that is compelling. *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). As we have already indicated neither a legitimate nor a subordinating reason for this classification has been or can be ascribed.

Even if we assume that the classification at issue in this case is not to be judged by the more stringent "constitutionally suspect" and "subordinating interest" standards, the Minnesota classification is infirm.

The discrimination in this case is one of gender. Especially significant in this regard is the Court's recent decision in *Reed* v. *Reed*, 92 S. Ct. 251, 30 L. ed.2d 225 (1971),

which held that an Idaho statute, which provided that as between persons equally qualified to administer estates males must be preferred to females, is violative of the equal protection clause of the Fourteenth Amendment. There the Court said (30 L. ed.2d at 229):

> In applying that clause, this Court has consistently recognized that the Fourteenth amendment does not deny to States the power to treat different classes of persons in different ways. [Citations omitted.] The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920).

Childless same sex couples, for example, are "similarly circumstanced" to childless heterosexual couples. Thus, under the *Reed* and *Royster* cases, they must be treated alike.

Even when judged by this less stringent standard, the Minnesota classification cannot pass constitutional muster. First, it is difficult to ascertain the object of the legislation construed by the Minnesota courts. Second, whatever objects are ascribed for the legislation do not bear any fair and substantial relationship to the ground upon which the

difference is drawn between same sex and different sex marriages.[8]

II.

Appellee's refusal to legitimate appellants' marriage constitutes an unwarranted invasion of the privacy in violation of the Ninth and Fourteenth Amendments.

Marriage between two persons is a personal affair, one which the state may deny or encumber only when there is a compelling reason to do so. Marriage and marital privacy are substantial rights protected by the Ninth Amendment as well as the Fourteenth Amendment due process clause. By not allowing appellants the legitimacy of their marriages, the state is denying them this basic right and unlawfully meddling in their privacy.

> To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranted in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever.

Griswold v. *Connecticut*, 381 U.S. 479, 491-492 (Goldberg, J., concurring); see also, *Mindel* v. *United States Civil Service Commission*, 312 F. Supp. 485 (N.D. Cal. 1970). Accordingly, Minnesota's refusal to legitimate the appellants' marriage merely because of the sex of the applicants is

[8] The fact that the parties to the desired same sex marriage are not barred from marriage altogether is irrelevant to the constitutional issue. See *Reed* v. *Reed*, *supra*; *Loving* v. *Virginia*, *supra*; *McLaughlin* v. *Florida*, *supra*.

a denial of the right to marry and to privacy reserved to them of the Ninth and Fourteenth Amendments. See *Griswold* v. *Connecticut*, *supra*; *Loving* v. *Virginia*, 388 U.S. 1 (1967); cf. *Boddie* v. *Connecticut*, 401 U.S. 371 (1971). Indeed, it is the most fundamental invasion of the privacy of the marital relationship for the state to attempt to scrutinize the internal dynamics of that relationship. Absent a showing of compelling interest, or an invitation from a party to the relationship, it is none of the state's business whether the individuals to the relationship intend to procreate or not. Nor is it the state's business to determine whether the parties intend to engage in sex acts or any particular sex acts. Cf., e.g., *Griswold* v. *Connecticut*, *supra*.

CONCLUSION

For the reasons set forth above, probable jurisdiction should be noted.

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EXHIBIT 69

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Effects of Welfare Participation on Marriage

We investigated the widely held premise that welfare participation causes women to refrain from marriage. Using data from the Fragile Families and Child Wellbeing Study (N = 3,219), we employed an event history approach to study transitions to marriage among mothers who have had a nonmarital birth. We found that welfare participation reduces the likelihood of transitioning to marriage (hazard ratio is 0.67, p <.01), but only while the mother is receiving benefits. Once the mother leaves welfare, past receipt has little effect on marriage. We infer that the negative association between welfare participation and subsequent marriage reflects temporary economic disincentives rather than an erosion of values.

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The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, often referred to as welfare reform, ended entitlement to welfare benefits under Aid to Families with Dependent Children (AFDC) and replaced AFDC with Temporary Assistance for Needy Families (TANF) block grants to states. The broad goal of the PRWORA was to reduce dependence on government benefits by promoting work, encouraging marriage, and reducing nonmarital childbearing. The legislation represented a convergence of dissatisfaction with the welfare system on both sides of the political spectrum. Welfare participation was viewed by many as a cause of dependence, rather than a consequence of disadvantage, and part of a ''tangle of pathologies'' (to borrow from Moynihan, 1965) alongside nonmarital childbearing. The new legislation required mothers to work in exchange for cash benefits, imposed lifetime limits, and encouraged marriage—all with the goal of breaking the cycle of dependence and bringing an increasingly marginalized underclass to the mainstream.

In terms of reducing caseloads, welfare reform has been a clear success; welfare rolls have declined by over 50% since their peak in 1994, and at least one third of the caseload decline can be explained by welfare reform. At the same time, employment rates of low-skilled mothers rose dramatically (Ziliak, 2006), and at least some of that increase was a result of welfare reform (Schoeni & Blank,

2000). The effects on family structure have been less clear. A large literature on the effects of welfare reform on marriage and a smaller one on cohabitation have yielded mixed findings, and the literature on nonmarital childbearing and female headship indicates slightly negative but inconsistent effects of welfare reform (Blank, 2002; Gennetian & Knox, 2003; Grogger & Karoly, 2005; Moffitt, 1998; Peters, Plotnick, & Jeong, 2001; Ratcliffe, McKernan, & Rosenberg, 2002).

That there were large reductions in welfare caseloads and increases in employment, with little accompanying change in marriage and nonmarital fertility, casts doubt on the existence of a tight pathological knot involving those behaviors—a premise that has been taken as a given by policymakers and researchers alike. According to Blank (2007) in a recent synthesis article on the effects of welfare reform, ''There is continuing grist for the research mill of social scientists in all disciplines to understand both why one set of behaviors [work, earnings] was so responsive [to welfare reform] in the past decade, while other behaviors [marriage, nonmarital fertility] have been relatively unchanged'' (p. 32).

The two causal mechanisms most commonly assumed to operate are that welfare participation compromises values and that there are economic disincentives to marrying while on welfare. In terms of the former, one of the very vocal arguments in favor of welfare reform focused on the value of work (Katz, 2001). The idea was that work builds character and positively affects attitudes toward family, whereas welfare reliance erodes family values (Mead, 1989). In terms of the latter, critics of AFDC pointed to the perverse financial incentives of the program. The logic was that AFDC discouraged marriage because benefits were more easily obtained by one-parent families, making women more likely to have children outside of marriage and remain unmarried. PRWORA eliminated some of the disincentives to marriage, but because the income of a cohabiting partner or spouse is factored into eligibility for TANF, disincentives to co-residing or marrying may still exist—particularly when family structure is difficult to conceal, as in the case of marriage (e.g., see Burstein, 2007, for a good discussion of eligibility rules for two-parent families under AFDC and TANF).

Direct links between welfare participation and marriage have rarely been explored—either under AFDC or TANF. The literature on effects of welfare *policy* on marriage does not directly test or further our understanding of how participation in the welfare system might discourage the formation of marital unions. Moreover, welfare participation could have small effects on marriage that become apparent only over a long period of time (longer than the time frame considered in most policy analyses) or it may delay marriage temporarily but have little effect on the likelihood of an individual ever marrying.

By design, most participants in TANF and its predecessor AFDC have been unmarried women, and the two behaviors (welfare participation and marriage) are therefore strongly associated. It is not clear, however, that welfare causes nonmarriage. Marriage could make women ineligible for welfare (reverse causality) or differences in marriage behavior between participants and nonparticipants could reflect (relatively stable) cultural or socioeconomic characteristics or (transitory) changes in circumstances. Studies that have used welfare participation as a control variable in analyses focusing on other determinants of marriage have generally found weak or insignificant associations with marriage (e.g., Brien, 1997; Lichter, McLaughlin, Kephart, & Landry, 1992; Smock & Manning, 1997).

As far as we know, only two studies have explicitly investigated the effects of welfare participation on marriage. Both report findings based primarily on AFDC, so their results may not be applicable to TANF participation in the post-1996 environment. The first used data from the Panel Study of Income Dynamics to estimate the effects of AFDC participation on being married 10, 15, and 20 years later (Vartanian & McNamara, 2004). The authors found a negative association between participation in AFDC for more than 2 years and being married 15 years later, a positive association between AFDC participation for less than 2 years and being married 20 years later, and no other significant associations. The inconsistent results, small sample sizes, and possible selection issues make it difficult to draw inferences from the study about the long-term effects of AFDC participation on marriage.

Using 1989 to 2000 data from the Survey of Income and Program Participation, Fitzgerald

and Ribar (2004) found sizable negative effects of current welfare participation (AFDC or TANF) on exits from female headship (the most common pathway being through marriage) in simultaneous models of welfare participation and headship. Their estimated effect sizes are larger than the associations found in other studies, perhaps reflecting their focus on the effect of being on welfare rather than having been on welfare at some point in the recent past.

Overall, a very small literature indicates that there are short-term (contemporaneous) negative effects of welfare participation on marriage but that the effects in the longer term are unclear. To comprehensively explore the effects of welfare participation on marriage and to understand what underlies those potential effects, it is necessary to consider both short- and long-term effects, which requires that the two be modeled simultaneously, or at least consistently (using the same data, control variables, and model specifications). Potential long-term effects are of particular interest to us, as they are more relevant to claims about a self-perpetuating culture of poverty.

We use post-welfare-reform data to test the widely held premise that participation in welfare discourages marriage. We employ an event history approach to estimate the effects of TANF participation on the likelihood and timing of marriage among mothers who have had a nonmarital birth, a group at high risk for welfare dependence. We estimate effects that are concurrent with TANF receipt and those that persist after spells on TANF have ended and project effects over the life course. Specifically, we address the following questions: Is TANF participation associated with long-term changes in marital behavior? Is TANF participation associated with marriage in the short term (while a participant is receiving benefits)? What are potential mechanisms? What is the role of selection? How large would the sum of long-term and short-term effects be over the life course if the effects remained constant over time?

METHOD

The Fragile Families and Child Wellbeing Study follows a cohort of parents and their newborn children in 20 U.S. cities (located in 15 states). Mothers were interviewed in the hospital at the time of their child's birth (baseline) and over the telephone 1, 3, and 5 years later. Baseline interviews were conducted with a probability sample of 3,711 unmarried mothers and a comparison group of 1,196 married mothers from 1998 to 2000 (see Reichman, Teitler, Garfinkel, & McLanahan, 2001, for details of the research design). Response rates of unmarried mothers were 87% at baseline, 89% (of baseline completed interviews) at the 1-year follow-up, 87% (of baseline completed interviews) at 3 years, and 84% (of baseline completed interviews) at 5 years (Bendheim-Thoman Center for Research on Child Wellbeing, 2008).

Of the 3,293 mothers who reported that they were unmarried at baseline and who completed follow-up interviews at 1 year, 39 (approximately 1%) were excluded from the analysis because of inconsistent or missing reports of marriage dates, 5 (<1%) were excluded because of missing TANF participation dates, and 30 (approximately 1%) were excluded because of missing data on other covariates. The remaining 3,219 cases formed the analysis sample. A comparison of the mothers in our analysis sample to the baseline unmarried mothers not in our analysis sample (primarily because they did not complete 1-year follow-up interviews) revealed the two groups to be very similar in terms of race/ethnicity, education, and baseline cohabitation status. Mothers who remained in the sample were more likely than those who were lost to follow-up to be less than 20 years old at the time of birth (23% vs. 16%) and to be U.S. born (88% vs. 79%).

We focused on whether, to what extent, and how TANF participation affects entry into marriage among mothers who had nonmarital births. We used time-varying measures of marriage and welfare participation. All other analysis variables were measured at baseline and were non-time-varying. The outcome of interest was marriage, either to the baby's father or to someone else. At each wave of the survey, mothers provided exact dates of marriage (when applicable), which were used to ascertain their marital status at each month of the observation period. The 527 observations for which there was no completed 3- or 5-year follow-up interview were right censored at the time of the mother's last interview.

Dates and numbers of months of welfare participation were asked about in each follow-up wave. Specifically, respondents were asked whether they were currently on TANF, whether

they had received TANF in the past 12 months, and whether they had ever received TANF. They were also asked for how many months and when they last received TANF. We used those reports to construct monthly welfare histories from 1997 until the focal child was 5 years old (2003 to 2005, depending on the year the children were born). The TANF participation dates were used to construct two time-varying measures of TANF participation, allowing us to estimate short- and long-term effects. The first was a measure of *current* TANF participation, which was coded 1 for months in which the respondent was on TANF and 0 for months in which she was not on TANF. The second was a measure of *past* TANF participation, which was coded 1 for any given month if the respondent had been on TANF at any time since 1997 but was not currently on TANF and coded 0 otherwise. By considering welfare participation only since 1997, we excluded previous AFDC participation from our measure of past participation. It is therefore possible that a mother who relied on AFDC but not on TANF was coded as not having relied on TANF in the past. We tested for sensitivity of the results to this restriction, as described later. When exact TANF participation dates were missing at any point during the mother's observation period, we imputed dates on the basis of information provided by the mother at all available survey waves and assessed the sensitivity of our findings to those imputations.

Table 1 shows the combinations of TANF statuses experienced by individual sample members. Over half (57%, Groups B–F) of the mothers received TANF at some point during or before the observation period; of those, 84% (Groups B, C, F) experienced between one and six transitions onto or off of TANF (we were able to observe up to three separate TANF spells for a given mother) and most (70%, groups B, C) were included in the reference group (never on TANF) for at least some of their exposure time.

We incorporated the following control variables (all measured at baseline) that past research indicates are associated with both welfare participation and transitions to marriage: mother's race/ethnicity (non-Hispanic White, non-Hispanic Black, Hispanic, and other non-White), mother's educational attainment (less than high school, high school or equivalent, or more than high school), mother's nativity (U.S. born vs. foreign born), whether the mother was cohabiting with the baby's father, parity (whether the birth of the focal child was the mother's first birth), the mother's age (whether she was at least 20 years old), whether the birth was covered by Medicaid, whether the mother lived with both of her biological parents at age 15, the mother's health (excellent, very good, or good, compared to fair or poor), and whether the mother attended religious services at least several times per month.

We also included city indicators to control for state policies and other characteristics of mothers' cities and states (such as labor and marriage markets) that may be associated with both TANF participation and marriage. The city

Table 1. *Observed TANF Status Transitions* (N = *3,219*)

Description	Observed TANF Status: Never (reference group)	Current	Past	*n*
A Never received TANF in past or during observation period	X			1,373
B First transitioned to TANF during observation period and remained on throughout	X	X		199
C First transitioned to TANF during observation period and left TANF during observation period	X	X	X	1,100
D On TANF throughout entire observation period		X		37
E On TANF only prior to observation period			X	252
F On TANF when or before observation period began and left TANF during observation period		X	X	258
Total number of mothers *ever* observed in each status	2,671	2,967	1,610	

indicators also controlled for the amount of time mothers were exposed to the post-1996 welfare environment since, in each city, births were sampled within a short period of time (births in Oakland and Austin occurred in 1998; those in Philadelphia, Baltimore, Detroit, Richmond, and Newark occurred in 1999; and those in the remaining 13 cities occurred in 2000).

RESULTS

Descriptive Analysis

As shown in Figure 1, marriage rates were relatively low and declined slightly over the observation period. Approximately 9% of the sample married within 12 months after the birth of the child. The percentages marrying each subsequent year were 5%, 4%, 4%, and 3%, respectively (from life table estimates). After 5 years, 75% of the mothers remained unmarried. Applying national race-specific marriage rates for mothers with nonmarital births, from Graefe and Lichter (2002), to the racial distribution of our sample, the percent marrying within 5 years of the birth would have been approximately 30%. Our slightly lower observed rate (25%) could reflect the fact that our sample is more recent and exclusively urban.

Marriage rates during the observation period differed considerably by TANF participation status. Of those in the sample who received TANF at some point between 1997 and when they were last interviewed, only 16% married within 5 years, compared to more than twice as many (37%) among those who were never on TANF. As explained earlier, these differences could reflect marriage delays associated with current TANF participation, delays resulting from having been on TANF in the past, or characteristics (observed or unobserved) of mothers that are associated both with TANF participation and marriage.

Characteristics of mothers by whether they ever participated in TANF between 1997 and their last interview are presented in Table 2. Overall, a large proportion of this sample of urban unmarried mothers was poor or nearly poor (40% of mothers had less than a high school education, and 76% had births covered by Medicaid). There were notable differences, however, between TANF participants and nonparticipants. Participants were less likely than nonparticipants to be non-Hispanic White, to have high educational attainment levels, to be foreign born, to have been cohabiting with the infant's father at the time of the birth, and to have lived with both parents at age 15. They were

FIGURE 1. KAPLAN-MEIER UNMARRIED SURVIVAL ESTIMATES.

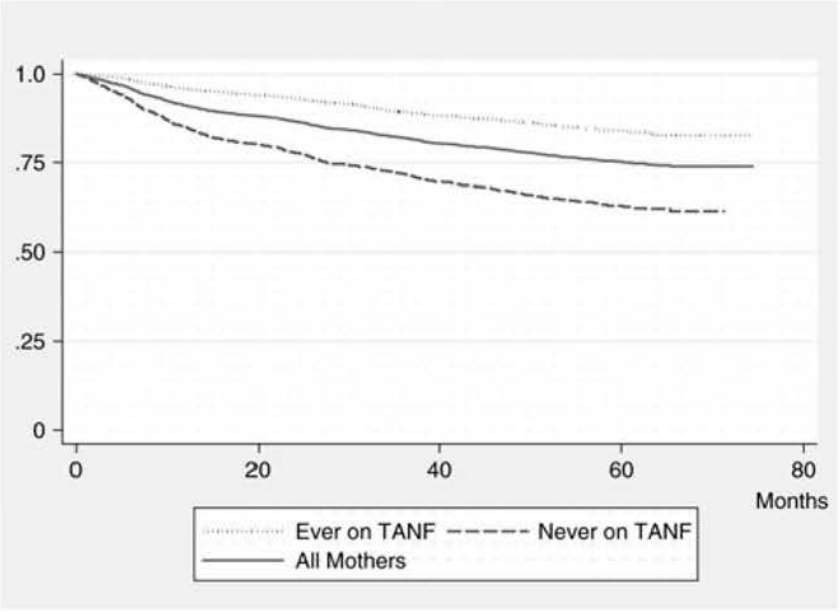

Table 2. *Sample Characteristics by TANF Participation Status*

	Ever on TANF	Never on TANF	All Mothers
Married father or partner by 5 year or last interview	15	34	24
Baseline characterics			
Non-Hispanic White	11	20	15
Non-Hispanic Black	67	40	55
Hispanic	20	37	27
Other non-White	2	3	3
Less than high school	46	31	40
High school graduate	34	33	34
More than high school	19	36	26
Born in U.S.	94	79	88
Cohabiting with father of child	40	59	48
First birth	32	51	40
Age ≥20 years	76	79	77
Medicaid birth	84	65	76
Lived with both biological parents at age 15	29	45	36
Good, very good, or excellent health	90	93	91
N	1,846	1,373	3,219

Note: Figures are percentages.

more likely to be having a second- or higher-order birth and to have relied on Medicaid to pay for the birth.

Fifty-seven percent of the sample (1,846 out of 3,219 mothers) relied on TANF at any time between 1997 and when they were last interviewed (between 2003 and 2005 for most mothers in the study). For this group, the average length of the first TANF spell that occurred between the focal child's birth and the mother's last interview was 10.8 months; the median was 7.3 months (figures not shown in table). Six percent of participants were still on their first TANF spell when they were last interviewed (not shown in table). As would be expected given the time-limited nature of cash assistance since the PRWORA legislation, the TANF spells in our sample were substantially shorter than typical AFDC spells in the early 1990s; the latter had a median duration of about 2 years (U.S. Department of Health and Human Services, 1998).

Multivariate Analysis

We employed event history analysis to model the effect of TANF participation on the likelihood and timing of marriage. Specifically, we estimated Cox proportional hazard models in which duration was measured in months from the child's birth. All baseline unmarried mothers who completed 1-year follow-up interviews were included, whether or not they completed subsequent interviews. Individuals who did not marry during the observation period were right-censored at the time of their last interview. Because the outcome of interest was marriage, mothers were included in the analyses only until the month they married. We employed the commonly used Breslow approximation method to handle ties (multiple marriages occurring in the same observation month), a technique that is appropriate when events are rare relative to the size of the at-risk sample.

Using an event history framework had several advantages over standard regression techniques. First, by incorporating time varying measures of both welfare participation and marriage, we were able to establish the sequencing of the two. Second, we did not have to choose an arbitrary time point at which to assess marital status and could determine the extent to which TANF participation was associated with delays in marriage. Finally, we could make use of observations even when mothers did not complete all follow-up interviews.

We first estimated effects of current and past welfare participation on the likelihood and timing of marriage. By including both welfare statuses in our models, we were able to disentangle associations between TANF participation and marriage that were short-term (i.e., confined to the recipiency period) and those that persisted beyond the period of welfare participation. The two potential mechanisms of interest, changes in values and responses to eligibility criteria, would predict effects of different duration. If welfare participation erodes family values, negative effects on marriage should persist beyond the recipiency period (i.e., we should find evidence of past TANF participation effects). If economic disincentives related to eligibility deterred marriage, these should operate primarily during the recipiency period, leading to much stronger effects of current than of past TANF participation.

Next, we estimated an extensive set of auxiliary models. We assessed the sensitivity of the

estimates to the coding of TANF participation, explored potential reverse causality, estimated effects for subpopulations at high risk of relying on welfare, examined the extent to which the effects varied by cumulative time spent on TANF, and assessed the sensitivity of the estimates to how we coded marriage and to the inclusion of additional covariates.

Third, we explored potential selection explanations. We distinguished between two potential sources of selection—that on the basis of relatively fixed individual characteristics such as unobserved cultural or sociodemographic attributes, and that on the basis of transient factors such as relationship breakups. The former would produce associations between *past* TANF participation and marriage similar to what would be expected on the basis of the erosion of values hypothesis. The latter would produce positive associations between *current* TANF participation and marriage and weak or no associations between past TANF and marriage as would be expected on the basis of the hypothesized TANF eligibility mechanism. We conducted analyses with stratified samples to explore the extent to which our findings appeared to reflect selection versus hypothesized causal effects.

Estimated effects of TANF participation on marriage. Table 3 shows estimates from an unadjusted model of the effects of current and past TANF participation on marriage, a model that adds city indicators, and a model that includes city indicators plus all of the covariates listed in Table 2. The hazard ratios in Model 1 (0.68 and 0.45 for past and current TANF participation, respectively) indicate that both TANF statuses reduced the likelihood of marriage (hazard ratios are significant and less than 1). The estimates changed little when controlling for city (Model 2), indicating that policies or other characteristics of cities or states did not explain observed associations between TANF participation and marriage. When we also controlled for the individual level covariates (Model 3), the hazard of marrying while on TANF was two thirds that of marrying while not on TANF (hazard ratio was 0.67 and highly significant) and the effect of past TANF participation was close to 0 (hazard ratio was 0.94, $p = .52$).

We tested the proportionality assumption for all covariates using the Schoenfeld residual test. The test indicated that the effects of all but one variable (whether parents cohabited at baseline) were constant over time. Eliminating this variable from the model did not affect the estimate or significance of the TANF participation variables. For past and current TANF participation, our main analysis variables, the p values from the Schoenfeld test were .25 and .42, respectively.

Table 3. *Effects of Past and Current TANF Participation on Hazard of Marriage (N = 3,219)*

	Model 1	Model 2	Model 3
Received TANF in past	0.68*** (.00)	0.74*** (.00)	0.94 (.52)
Currently on TANF	0.45*** (.00)	0.48*** (.00)	0.67*** (.00)
Non-Hispanic Black			0.50*** (.00)
Hispanic			0.72** (.01)
Other non-White			0.76 (.22)
High school graduate			1.16 (.12)
More than high school			1.55*** (.00)
Born in U.S.			0.73** (.01)
Cohabiting with father of child			2.06*** (.00)
First birth			0.95 (.56)
Age ≥20 years			0.94 (.52)
Medicaid birth			0.95 (.55)
Lived with both biological parents at age 15			1.02 (.84)
Good, very good, or excellent health			1.12 (.44)
Attends religious services several times/month			1.28*** (.00)
City indicators	No	Yes	Yes
Log likelihood	−5,922	−5,881	−5,791
LR chi-square	61.22 (.00)	143.36 (.00)	322.29 (.00)

Note: Figures are proportional hazard ratios (and p values).
** $p < .05$. *** $p < .01$.

Alternative model specifications. Estimates from several additional model specifications are

shown in Table 4. First, we estimated models in which only past TANF participation was included and in which only current TANF participation was included. The estimated effect of past TANF when included alone (hazard ratio = 1.04, $p = .63$) was similar to the corresponding estimate from Model 3 in Table 3, as was that of current TANF participation alone (hazard ratio = 0.69, $p < .01$), indicating that the estimates of past and current TANF participation were not biased because of collinearity between the two. Next, we show estimates from models that restricted the sample to cases for which we had complete information on TANF participation. We found that the estimates were insensitive to these sample restrictions and therefore to our imputations of TANF participation dates. This was not surprising given that the vast majority of imputations were made within very short time intervals. We also estimated models that dropped only the person months affected by the imputation (not shown) and the results were similar.

Next, we estimated models to investigate two potential types of reverse causality—the possibility that a mother left TANF because she became ineligible for benefits as a result of marrying and the possibility that she left TANF because she *planned* to marry. In terms of the former, our coding of both TANF participation and marriage was based on monthly rather than daily reports, so if a mother left TANF and married within a 1-month period, we could not be certain which came first. Three mothers in our analysis sample had TANF exit and marriage dates that were within 1 month of one another, and excluding those cases from the analyses barely changed the results (the hazard ratios in Model 3 were 0.92 and 0.67 for past and current TANF participation, respectively; not shown in table). In terms of the latter, it is possible that a mother left TANF because she planned to marry, perhaps to avoid stigma associated with being on welfare when one married. If this were the case, marriage intentions would have affected TANF participation and our models would have overestimated the negative effects of current TANF participation on marriage and underestimated the effects of past participation. To address this issue, we estimated models in which TANF exits were coded as having occurred 1 month later and, separately, 3 months later than reported. That is, we coded mothers who went off TANF 1 or 3 months prior to marrying as still on TANF when they married. The estimates of current and past TANF participation in this set of models were almost identical to those in Table 3, alleviating concerns about potential reverse causality to the extent that a 3-month lead time fully accounts for the anticipatory effect of marriage on TANF departures. With a 1-month lag (not shown), the Model 3 estimates were 0.95 ($p = .56$) and 0.65 ($p < .01$), respectively, for past and current TANF participation, and, with a 3-month lag, the corresponding estimates were 1.01 ($p = .93$) and 0.69 ($p < .01$), respectively (Table 4).

In the bottom panel of Table 4, we present estimates from models that restricted the sample to women at relatively high risk of welfare

Table 4. *Effects of Past and Current TANF Participation on Hazard of Marriage: Alternative Model Specifications and High Risk Subgroups*

	Sample Size	Received TANF in Past	Currently on TANF
Alternative specifications			
Past TANF only	3,219	1.04 (.63)	*na*
Current TANF only	3,219	*na*	0.69*** (.00)
Nonimputed TANF dates	1,998	1.00 (.99)	0.64** (.01)
TANF exit lagged 3 months	3,219	1.01 (.93)	0.69*** (.00)
Populations at relatively high risk of TANF participation			
U.S.-born mothers	2,819	0.87 (.18)	0.64** (.01)
Mothers eligible for TANF	1,299	1.05 (.79)	0.81 (.27)
Medicaid births	2,438	0.93 (.49)	0.70*** (.01)
Mothers with high school education or less	2,370	0.92 (.48)	0.72** (.02)

Note: All models include the same set of covariates as in Model 3 of Table 3. Figures are proportional hazard ratios (and *p* values).

** $p < .05$. *** $p < .01$.

participation—native born mothers, mothers who were eligible for TANF during the year after their child's birth, mothers who had births covered by Medicaid, and mothers who had at most a high school education (see Reichman, Teitler, Garfinkel, & Garcia, 2004, for details on the TANF eligibility imputation method). For each of these subsamples, the hazard ratio for having been on TANF in the past was close to 1 and not statistically significant, and, for all but the sample of women eligible for TANF, the effect of currently being on TANF was negative (hazard ratio <1) and statistically significant.

In additional analyses (results not shown), we further confirmed the finding of no effect of past TANF participation on marriage by examining whether the effects varied according to cumulative time spent on TANF. Past research has identified the existence of a small group of chronic welfare participants whose behaviors differed distinctly from those of occasional users (Bane & Ellwood, 1983). Thus, although there may have been no effects of past TANF participation on average, there could have been effects for this particular group. Specifically, we interacted past TANF participation with a time-varying measure of the cumulative number of months the mother was on TANF and, in separate models, with a time-varying categorical variable indicating whether the mother had participated in TANF for at least 24 months. We found that the effect of past TANF participation did not increase with longer exposures to TANF (i.e., the hazard ratios of the interaction terms were close to 1 and not at all statistically significant). We also found no interactive effects between current TANF participation and time spent on TANF.

We further assessed the sensitivity of the estimates to how we coded current and past TANF participation (results not shown). Specifically, we estimated models with an alternative measure of past TANF participation that was coded as 1 when a mother was currently on TANF but had another completed welfare spell in the past and models that counted participation in AFDC (pre-1997) as past welfare participation. In both cases, the estimates were virtually unchanged. We also estimated models in which only one time-varying measure of TANF participation (ever on TANF) was included. The hazard ratio for the measure of ever on TANF was significant and approximately half that for the estimate of currently on TANF in Table 3.

Finally, we estimated models that predicted marriage to the biological father of the focal child (as opposed to anyone) and models that included additional covariates—more detailed baseline relationship status measures, whether the mother had any children with another father, maternal employment, mother's intentions to marry, maternal mental health problem, sexually transmitted disease during pregnancy, unintended pregnancy, whether the father was ever incarcerated, and whether the child's father was physically or verbally abusive. In all cases, the results were substantively unchanged (results not shown).

Mechanisms. The very robust finding that there was no effect of *past* TANF participation is inconsistent with the hypothesis that welfare participation erodes family values. This null finding also suggests that selection on the basis of fixed social, cultural, or demographic factors is not at play. The finding of a significant effect of *current* TANF participation suggests that either TANF discourages marriage through immediate financial disincentives (eligibility) or that selection on the basis of transient circumstances (as opposed to that based on fixed characteristics) underlies the observed association between TANF participation and marriage.

To further explore the role of eligibility, we reestimated Model 3 of Table 3, separately, for mothers whose partners (the fathers of the focal children) had very low earnings potential at the time of the baseline interview (as a proxy for future income because time-varying monthly income is not available) and for those whose partners had higher earnings potential. In the former group, we included mothers with partners who had a disability that prevented them from working, were not employed or in school during the week preceding the birth of the child, or had ever been incarcerated. The latter group consisted of mothers whose partners were employed or in school and had never been incarcerated. These analyses were restricted to couples who were romantically involved throughout the study period. We hypothesized that financial disincentives to marrying while on TANF would be smaller (and therefore that the current TANF participation effects on marriage would be smaller) for the mothers whose

partners had low earnings potential, because their financial eligibility for TANF should be less affected by marriage. We found this to be the case, as there was no effect of current TANF participation for mothers whose partners had low earnings potential (hazard ratio = 1.17, $p = .55$) but a strong effect for women whose partners were more likely to contribute income to the household (hazard ratio = 0.51, $p = .03$). These results, which are presented in the top panel of Table 5, are consistent with the weak effects among TANF eligible mothers (from Table 4), almost none of whom could have had partners with significant income.

We also estimated models for mothers whose relationship with the child's father ended between the baseline and 1-year follow-up interviews and for those who remained involved with the child's father throughout that period. Relationship dissolution is an example of a change in circumstance that could immediately decrease the likelihood of marrying and increase the likelihood of having to rely on TANF. As such, it could potentially explain some of the estimated effect of current TANF participation on marriage. We found that it did not. Whether we defined being in a relationship as living together or being romantically involved regardless of cohabitation status (results from the former are shown in the bottom panel of Table 5), estimates for the mothers who remained in a relationship with the father were as strong as those for both the full sample and for mothers whose relationship with the father ended.

Although neither of the above tests is definitive, the patterns of findings are consistent with a causal explanation that eligibility is driving the association between current TANF participation and marriage through financial disincentives.

Table 5. *Effects of Past and Current TANF Participation on Hazard of Marriage, According to Partner's Earnings Potential and According to Relationship Dissolution*

	Sample Size	Received TANF in Past	Currently on TANF
Partner with low earnings potential[a]			
Yes	451	1.03 (.90)	1.17 (.55)
No	700	1.01 (.97)	0.51** (.03)
Relationship dissolution between baseline and 1 year follow-up[b]			
Yes	396	1.37 (.40)	0.71 (.41)
No	1,148	0.96 (.74)	0.66** (.03)

Note: All models include the same set of covariates as in Model 3 of Table 3. Figures are proportional hazard ratios (and p values).

[a] Among couples romantically involved throughout observation period. [b] Among baseline cohabitors.

** $p < .05$.

Assessing the Magnitude of Effects

We used the results from Table 3 to project the effects of TANF participation on the probability of marriage and on the average delay in marriage over an 18-year period (the period of time before the focal child would reach majority age). The value of this exercise was to provide a sense of the magnitude of the effects, projected over the life course, rather than to predict long-term rates of marriage in the cohort of women we observed for 5 years.

We applied the estimated participation effects to the expected number of years (out of the first 18 years of the focal child's life) mothers would spend on TANF. This calculation required that we make some assumptions about the proportion of mothers who would eventually marry, the proportion who would ever participate in the TANF program, and the average length of TANF spells. The calculations also assumed that effects remain constant over the 18-year period. The assumptions and calculations are detailed in the Appendix. Given our assumptions, we project that TANF participation would decrease marriage rates by, at most, 3.7 to 4.9 percentage points over 18 years. That is, 61%–62% of mothers who will have spent any time on TANF would marry within 18 years of the birth compared to 66% of those who will not have participated in TANF. We also project that TANF participation would result in an average delay in marriage of 12 to 16 months over the 18-year period.

DISCUSSION

We investigated the extent to which welfare participation is associated with the likelihood and timing of marriage among mothers with young

children born out of wedlock—a population of substantial policy interest. We did not address the much-studied question of whether welfare *policies* affect marriage (and if so, by how much); rather, we focused on the less explored but important question of how *participation* in TANF affects transitions to marriage. We tested two theories that have been central to the debates surrounding welfare reform and PRWORA reauthorization—that welfare participation erodes family values (a culture of poverty argument) and that there are financial disincentives to marrying while on welfare (as would be predicted by economic theory).

We found evidence that TANF participation had a negative effect on the probability of marriage, but the effect appeared to be confined to the period of participation and would translate to only minor delays in marriage over the long run, assuming effects remained constant over time. Our estimated effects of current TANF participation were very similar in magnitude to those obtained by Fitzgerald and Ribar (2004), which combined participation in AFDC and TANF. Whether delays in marriage are harmful to mothers and their children is not clear. On the one hand, marriage is an important route out of poverty for many unwed mothers (Lichter, Graefe, & Brown, 2003), and delays may therefore have detrimental effects on mothers' and children's economic well-being. On the other hand, marriage delays could have favorable effects on family stability by leading to more selective searches for mates, which could result in higher quality or longer term relationships.

The lack of evidence of effects of *past* TANF participation on marriage is a new finding and has important implications for theory and policy. Not only can we rule out the proposition that welfare participation, at least in the post-welfare-reform era, has toxic effects on morality and values that discourage marriage, we can also rule out the classic culture of poverty argument that reliance on government assistance and rejection of the institution of marriage are two aspects of a culturally embedded set of poverty norms that is transmitted across generations or communities. The reality is that once mothers leave welfare, their prospect of marriage reverts to that of mothers with similar socioeconomic characteristics who never were on welfare. In other words, poor women who have relied on welfare in the past are not less likely to marry than those who never relied on welfare. We cannot ascertain with our data whether this was the case under AFDC, but under the TANF program disincentives to marriage are at most very short-lived.

The mechanisms behind the observed negative associations between *current* TANF participation and marriage are less clear-cut but point to financial disincentives vis-à-vis eligibility as an underlying cause. We assessed the plausibility of eligibility and selection as drivers of those associations by comparing estimates of current TANF participation from stratified analyses. In doing so, we found more support for the eligibility theory than for selection. The effect of current TANF participation was smaller for women whose partners had low earnings potential (and who would therefore have less to lose in terms of eligibility by marrying) than for mothers with partners who were more likely to contribute to household income, suggesting that eligibility incentives play a role. In contrast, the effects of current TANF participation were similar for mothers whose romantic relationships with the father ended and those who maintained romantic relationships, suggesting that selection on the basis of transient circumstances does not underlie the negative association between current TANF participation and marriage. These tests, however, are not conclusive and do not rule out other plausible explanations that are not testable with our data. For example, the stigmatization of welfare participation (e.g., Klugel & Smith, 1986; Rainwater, 1982) could deter potential marriage partners. Welfare participation may alter participants' perceptions of their own marriage worthiness (Stuber & Schlesinger, 2006), which could lead to difficulties in finding partners and maintaining relationships. The negative association between current TANF participation and marriage could also reflect a tendency for poor couples to delay marriage until they achieve self-imposed levels of economic self-sufficiency (Edin & Kafalas, 2005; Gibson, Edin, & McLanahan, 2005). Any of these explanations is consistent with short-term effects of TANF participation.

We offer several caveats. First, we focused primarily on post-1996 experiences, as only a subset of women in our sample would have been eligible for benefits prior to the welfare reform legislation in 1996. It is possible that there were larger past and current participation effects on marriage under AFDC than under the contemporary regime. That said, TANF is

more relevant than AFDC for welfare debates moving forward. Second, TANF participation was self-reported. Although self-reports of program participation do not appear to have systematic bias (Bound, Brown, & Mathiowetz, 2001), imprecision in the measurement of its timing could lead to underestimated effects of TANF participation. Third, we cannot generalize our findings to women in nonurban areas. Finally, our projections of the effects of TANF participation over the life course are limited by the 5-year observation window. They are also based on a number of assumptions, one of which is that there has been little change since PRWORA in the average amount of time spent on welfare. If substantially less time is spent on welfare under the restrictive new regime (which is likely, because of lifetime limits and the shorter length of TANF spells as compared to AFDC), then our projections likely overestimate the cumulative effects of participation.

The findings from this study inform ongoing welfare policy debates and have two key policy implications. First, TANF participation has only a short-term effect on marriage and appears inconsequential for women's marriage prospects in the long run. Even if it were possible to eliminate the effect entirely, doing so would result in negligible increases in marriage among low income parents. Second, the short-term effects, if they are in fact because of TANF eligibility rules, could potentially be reduced by implementing a grace period during which the earnings of a new spouse would be disregarded in participants' eligibility determinations.

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Appendix: Projections of TANF Participation Effects on Marriage Over 18 Years

Assumptions About Marriage Rates

We computed an expected marriage rate for our sample over an 18-year period by applying race/ethnic-specific marriage rates of women with nonmarital births (from Graefe & Lichter, 2002, which used the National Survey of Family Growth) to the composition of our sample. Graefe and Lichter estimated that 82% of Whites, 62% of Hispanics, and 59% of Black women with out-of-wedlock births will marry. Our sample was 15% White, 28% Hispanic, and 54% Black. We therefore obtained an estimated marriage rate of 62% over an 18-year period or an average marriage rate of 3.5% per year.

Assumptions About Amount of Time Spent on TANF

Using data from the National Longitudinal Survey of Youth from 1979 to 1996, Moffitt (2002) found that welfare recipients received AFDC for an average of 39 months over a 10-year period. The average amount of time on TANF is likely to be somewhat lower than what it was on AFDC because of the time limits and other restrictions under PRWORA. Because Moffitt's figures cover a shorter time period, however, we assumed 3 years (36 months) as a lower bound and 4 years (48 months) as an upper bound figure for average amount of time on TANF over an 18-year period.

Using the proportion of baseline unmarried mothers in our sample who were ever on TANF by the 5-year follow-up interview (.59) as a guide, we assumed 60% as a lower bound estimate of the percentage that will ever be on TANF over an 18-year period and 75% as an upper bound estimate. This translated into an average of 10%–17% of baseline unmarried mothers being on TANF in any given year.

Annual Marriage Rates of Participants and Nonparticipants

From our assumptions above (on average, 3.5% would marry each year over the 18-year period; 10%–17% would be on TANF in a given year) and from the estimated effect of current TANF participation on marriage from Model 3 in Table 3 (.67), we estimated the proportion of TANF nonparticipants and TANF participants who will marry each year; we call these M_{nt} and $M_{t,}$ respectively. Our estimate of the annual proportion of TANF nonparticipants who marry (M_{nt}) on the basis of the assumption of 10% of mothers on TANF each year was calculated as follows:

$$.035 = .67M_{nt} * .10 + M_{nt} * .90M_{nt} = .0362 \quad (1)$$

Our estimate of the annual marriage rate of TANF nonparticipants (M_{nt}) on the basis of the assumption of 17% of mothers on TANF each year was calculated as follows:

$$.035 = .67M_{nt} * .17 + M_{nt} * .83M_{nt} = .0371 \quad (2)$$

Since the .0362 and .0371 figures are so close, we used the midpoint, .0366, to derive the annual proportion of women on TANF who marry, as follows:

$$M_t = .0366 * .67 = .0245 \quad (3)$$

We assumed that the effect of past TANF participation is 0 because in our main and supplementary models the estimates of past TANF were highly insignificant and the hazard ratios were very close to 0.

Cumulative Effect of TANF Participation Over 18 Years

We calculated the expected marriage rate (within 18 years) of mothers who will never be on TANF (C_{nt}) as follows:

$$C_{nt} = M_{nt} * 18 = .659 \quad (4)$$

and the expected marriage rate of mothers who will have been on TANF at some point (C_t) as follows:

$$C_t = (M_t * 3) + (M_{nt} * 15) = .622 \quad (5a)$$

(assuming that women who participate in TANF will do so for an average of 3 years in total), or

$$C_t = (M_t * 4) + (M_{nt} * 14) = .610 \quad (5b)$$

(assuming that women who participate in TANF will do so for an average of 4 years in total).

Cumulative Effect of TANF Participation on Marriage Delay

To estimate the average delay in marriage, we divided ($C_{nt} - C_t$) by the percent of non-TANF recipients who marry each year (M_{nt}). We obtained an estimate of marriage delay ranging from 1.01 to 1.34 years, or 12 to 16 months.

EXHIBIT 70

A renowned sociologist surveys four decades of divorce trends throughout the world

WORLD CHANGES IN DIVORCE PATTERNS

WILLIAM J. GOODE

World Changes in Divorce Patterns

William J. Goode

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In the 1980s, some slackening of the official crude rates occurred, and at the end of this period several countries showed a tiny decrease. Many commentators suggested that this might be the end of the rise and that divorces would fall again. It is also possible, however, that the lowering of the rate during this period is merely a result of the decline in marriage rates and the simultaneous increase in cohabitation in all these countries. Both of these changes effectively remove millions of couples from the risk of official divorce, though not of course from informal dissolutions (and, as we noted, cohabitants have higher dissolution rates than legal unions).

Table 6.1 also shows the current crude divorce rates in each of the Anglo countries. The United States, as we noted, still have the highest divorce rates (4.7 per 1000 population in 1990), followed by Canada (3.7 in 1987) and England and Wales (2.9 in 1989). The lowest divorce rates among these roughly similar countries were in Australia (2.5 in 1989) and New Zealand (2.6 in 1989).

The divorce rates per 1,000 married women, which are more precise than the crude rates, are shown in Table 6.2. Here too we see the highest current rates in the United States (21 divorces per 1,000 married women in 1988). The other Anglo countries have considerably lower rates and are closely grouped together: 12.7 in England, 12.4 in Canada, 12 in New Zealand, and 10.8 in Australia between 1986 and 1989. Note that with these more refined figures we can still observe a slackening of rates, even a slight decline, at the end of the 1980s. (Of course, all these figures also exclude the dissolutions among cohabiting unions.)

Changes in Grounds for Divorce

A systematic coverage of the grounds in all these countries cannot be done within a small compass, since in both Canada and the United States (and Australia until the 1959 divorce law) the states and provinces all applied somewhat different rules. Nevertheless some brief description should be useful.

Although Canada seemed to be leading the way with its 1968 recognition of irreconcilable marital breakdown as sufficient grounds for divorce (adopted by Australia in 1976; England and Wales in 1973; and New Zealand in 1980) that law also continued the option of using matrimonial offenses (cruelty, adultery, drunkenness, and the like) as did other Anglo countries. Indeed, in the period 1973–1985, there was little change in the grounds used by Canadians. "Marital breakdown," as we see in China and Europe, may not be an easy road to divorce, if stringent proof for it is

required. Three years of separation or five years' desertion were still a requisite in Canada for that proof. Thus over that period, only one-third of the couples followed that seemingly easier course; many viewed the charge of matrimonial offenses as a quicker solution, while others reared in a fault framework viewed it as more appropriate. Still others used fault charges to gain some advantages in the settlement. Even the 1986 law still permitted such offenses to be used, but today, if the couple can reach an agreement they can get a divorce almost immediately. That is, if they petition before the year of waiting is over they might be divorced when the period is completed.[6] Thus by 1987–1988, about 80 percent of all divorces were based on a separation of one year or more.

In New Zealand, there was no major liberalization of divorce until 1980, when it followed the Canada 1968 law and reduced the waiting period before a petition could be made to two years in cases of desertion and formal separation, and to 4–7 years without that formality.[7] A more important step was also taken in 1968, however,—the Domestic Purposes Benefit Act. Even women who had been separated from their husbands, not only those who were widowed or deserted, could receive state assistance if necessary. By the time of the 1980 act, which (like the 1975 Act in Australia) simply accepted a single ground, the irreconcilable breakdown of marriage, divorce had become common in New Zealand. Living apart for two years is all that is legally required for the purpose, and the other party cannot prevent it. It is, in effect, a slow "no-fault" divorce.

In Australia the effect of the new law in 1976 was a rise from 7.3 divorces per 1,000 married women to 19.2 in the following year when it took effect.[8] Since the law required only a waiting period, the jump was made up largely of people who had already completed that wait; after that the rate fell until the early 1980s,[9] when it began to rise once more.

In England and Wales, the Marital Proceedings Act of 1969 began a series of changes embodied in subsequent legislation (effective in 1973), which wee stimulated by and in turn caused much public debate and family research. This sociolegal debate continued through the 1980s. The trend was toward less stringent grounds for divorce, and increasing attention to the problems of economic settlements after divorce. The 1969 law permitted divorce on the basis of separation, but it did not lead to amicable proceedings, and fault continued to be alleged even after the Matrimonial Act of

6. *Health Reports*, supplement no. 17, 1990, vol. 2, no. 1, "Divorces 1987–1988," (Ottawa: Statistics Canada), pp. 34–37. On these points, see John F. Peters, "Divorce and Remarriage," pp. 220, 221.
7. Carmichael, "Remarriage," p. 88.
8. Phillips, *Divorce*, p. 47.
9. Carmichael, "Remarriage," p. 102.

1984: in 1987, some three-quarters of all divorce petitions alleged the faults of adultery, "behavior" (in effect, "cruelty"), or desertion.[10]

Indeed, from 1950 to 1971, when most of the new provisions were finally in place, the charge of adultery was made in 50–70 percent of the cases filed by husbands and 37–47 percent of those filed by the wife. Charges of desertion continued to be high until the end of the 1960s (one-half to one-fourth of the cases). By the 1970s, desertion as a charge by either spouse dropped to very low percentages.[11] By contrast, allegations of cruelty ("behavior") rose threefold between 1950 and 1986, to include about half of all cases.

While some people who charge their spouses with adultery or cruel behavior may in fact believe that their spouses are guilty of such marital misconduct, the large number of fault-based divorces may also be explained by the fact that this is the quickest route to getting a divorce in England and Wales. A fault charge may be heard as soon as a hearing can be scheduled—in contrast to divorces by agreement, which require a two-year separation, and those without an agreement, which require a five-year separation.

From the 1950s on, legal aid from the state was used by English wives in about 70 percent of their petitions (Stone, pp. 437–88). A similar program was begun in the United States in the 1970s, as part of an expanding poverty-law program. It was thought that the poor most needed help in problems relating to landlords and business debts, but instead the greatest demand was from wives who wanted legal help in getting out of a marriage, or relief from a difficult husband. The American response was to make some effort to restrict the number of cases (for example, to those in which there was physical violence), since otherwise the government would be charged with aiding the dissolution of marriage.

The basic ground in England and Wales is the same in all cases. The breakdown of the marriage is "proved" by (1) any of the three older faults (adultery, desertion, or "behavior"); (2) two years' separation with an agreement between the spouses; or (3) five years' separation without such an agreement. These grounds do not require, however, and in practice discourage, a court fight or even an appearance. Most divorces occur instead through a "special procedure." One party fills in a form stating the presumed facts, and this is considered by a judicial officer. The other party can legally resist the petition, but lawyers will advise against it. The state will only rarely give any financial support for such a fight, and as a practical matter it would be useless in the long run.[12]

10. On these points see the "Background Materials" by Mavis Maclean and John Eekelaar, Bellaggio Conference, 1990.

11. Lawrence Stone, *Road to Divorce* (New York: Oxford University Press, 1990), pp. 440–41.

12. Maclean and Eekelaar, 1990.; see also G. C. Davis and M. Murch, *Grounds for Divorce* (New York: Oxford University Press, 1988).

Thus, though in a formal sense some fault may still be charged, in the usual course of events the allegation now is no more than a clerical necessity. Moreover, except in extreme cases, courts will not consider fault in cases of custody or support for wives and children. Nevertheless, in 1985, only about 22 percent of all divorce cases were based simply on separation with mutual consent.[13]

Canada, too, moved toward less severe rules for divorce through the introduction in 1968 of marital breakdown as grounds,[14] in addition to the usual marital offenses. Breakdown was to be shown by a separation for three years, desertion for five years, or addiction to alcohol. It was not until 1986 that a Canadian variety of no-fault divorce was possible—that is, one year of separation, or a separation with agreement, which could presumably be granted as soon as the year was over. Legally, the couple might apply together and get a divorce as soon as the court convened.

Matrimonial offense may still be used for divorce in Canada, however, as in England and Wales. Indeed, in the period 1973–1985, divorces granted on the grounds of separation alone remained steady at about one-third of all cases. (Again, this process was slower and took at least three years.) The effect of the 1985–1986 law was quick and decisive: once separation for only one year was the basis for divorce, it became the choice of four-fifths of the couples obtaining a divorce between 1987 and 1988.[15]

Although liberalization of divorce law occurred still later in New Zealand, in the Family Proceedings Act of 1980, important steps toward it took place in 1968. One was an act that reduced the waiting period, as noted earlier.[16] The more significant change was the Domestic Purposes Benefits Act, which granted financial support from the state to all women in need, whether widowed, divorced, deserted, or separated. The number who sought that help increased fourteenfold in ten years. The possibility of state support and the increasing number of wives taking jobs probably led more women to utilize the available legal grounds and also assured husbands that very likely they would not have to bear the full financial consequences of divorce. Thus the political pressure to ease the laws increased. The 1980 act was the first major liberalization of divorce, in effect making irreconcilable breakdown of the marriage the only ground: living apart for two years with legal dissolution an automatic procedure.[17]

13. Divorce Series FM2, no. 12, *1985 Marriage and Divorce Statistics* (London: Office of Censuses and Surveys), p. 99, table 4.6.

14. Peters, "Divorce," pp. 210–11.

15. *Health Reports*, "Divorces 1987–1988," pp. 34–37; and Owen Adams, "Divorce in Canada, 1988," ibid, p. 57.

16. Carmichael, 1985, "Remarriage," pp. 87–90.

17. Phillips, *Divorce*, p. 47.

In the United States the individual states have maintained separate family laws even more than the separate states of Canada or Australia. In 1969, for example, when California became the first state to pass a "pure" no-fault law (either partner could get the divorce, and the other spouse could not refuse it even if "innocent"), New York and South Carolina still permitted divorce only for adultery. All the states form part of a distinctive "modern high-divorce-rate culture" and march in a common direction even though some lag at times far behind the others.

Of all Western nations the United States has had the highest divorce rate, and now competes only with Sweden (and probably Russia) for preeminence in this dubious achievement. Still, its legal acceptance of divorce was reluctant, too, until after the 1950s. The new laws began to appear in various states in the late 1960s, paralleling changes in other Western countries.

By 1990, 14 states had accepted irreconcilable differences or breakdown as "a sole ground," 22 accepted that plus additional grounds, and a majority required some period of separation (often with some additional requirement).[18] In all these states, it seems clear that the legislative changes followed alterations in marital behavior and the actual practices of courts. That is, successive interpretations by courts had already weakened the laws, and the real behavior of couples often simply evaded the laws—for example, by establishing a false residence in a "quick-divorce" state or fabricating an "adultery" case in the states with severe laws. Thus, when the laws were made to conform more closely with real practice, they had only modest effects on the rates.

On the other hand, it seems equally obvious that the laws have always opened the door for some couples who would not have taken that step without the new liberalization; and the laws have also helped to create a set of social understandings as to how easy it is to become divorced if married life seems irksome.

Nevertheless, despite the persistent diversity of the divorce laws in the fifty U.S. states, there appears to be a legal consensus emerging: most people believe that individuals who are unhappy in their marriage have a "right" to get a divorce and that it is unfair and inappropriate for the state to erect legal obstacles to prevent them from exercising that right. Thus most states have adopted some form of no-fault divorce law, which makes it relatively easy to get a divorce with mutual consent and, in many states, only slightly more difficult to get a divorce if only one party wants it. (The difficulties in the legal process, which help lawyers earn a living, vary from state to state and de-

18. Doris Jonas Freed and Timothy B. Walker, "Family Law in the Fifty States: An Overview," *Family Law Review* 23 (Winter 1990), pp. 515–16.

pend on the "formal" grounds, filing procedures, waiting periods, costs, and requirements for legal separations and separation agreements.)

While there is increased freedom to end a marriage, there is also an increased concern about the economic aspects and effects of divorce and a feeling that it is appropriate for the state to oversee and regulate such matters. Courts therefore spend more time today on valuing and dividing marital property and establishing orders for child support (and, less frequently, alimony). As a result, as Lenore Weitzman observed in *The Divorce Revolution*, the focus of the legal process has shifted from moral questions of fault and responsibility to the economic issues of the ability to pay and financial need. Today fewer husbands and wives fight about who did what to whom: they are more likely to argue about the value of marital property, what she can earn, and what he can pay.[19]

Divorce laws among the six Australian states were independent until the Marital Causes Act of 1959, which enacted a uniform law for the nation as a unit.[20] The existing separate grounds for divorce were kept, but standards for proof were set for all. Thereafter, anyone could obtain a divorce on the grounds of separation for five years. So long a duration did not seem appealing to many, and thus the most common grounds remained adultery or desertion (two years) until the mid-1970s. The act came into effect in 1961, and was part of a series passed during the years from 1959 to 1966.[21]

The Australian Family Law Act of 1975 went into effect the succeeding year, and the divorce rate per 1,000 married women rose almost threefold, from 7.3 to 19.2, though it fell sharply after that.[22] Essentially the act reduced the grounds to a "continued separation for one year." It required no proof of fault, as fault is no longer relevant. Thus a divorce is possible even if only one party wants it.[23]

Duration of Marriage and Chances of Eventual Divorce

As in many European countries, the average duration of marriages in the Anglo nations has decreased only little over the past four decades, in spite of the strong rise in divorce rates. Often durations are reported as medians (the

19. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: Free Press, 1985), p. x.

20. Gordon A. Carmichael and Peter F. McDonald, "The Rise and Fall (?) of Divorce in Australia, 1968–1985," San Francisco: Population Association, 1988, unpublished paper.

21. See *Yearbook Australia 1985* (Canberra: Australian Bureau of Statistics), p. 92.

22. Gordon A. Carmichael, "The Changing Structure of Australian Families," *Australian Quarterly* 57 (1985), p. 102.

23. See also Kate Funder and Richard Ingleby, "The Economic Impact of Divorce: The Australian Perspective," in Weitzman and Maclean.

EXHIBIT 71

The UNEXPECTED LEGACY of DIVORCE

A 25 YEAR
LANDMARK STUDY

Judith Wallerstein, Julia Lewis, and Sandra Blakeslee

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TWENTY-TWO

Conclusions

"What's done to children, they will do to society."
Karl A. Menninger

Around the time I was finishing this book, a very important judge on the family law bench in a large state I shall not name invited me to come see him. I was eager to meet with him because I wanted to discuss some ideas I have for educating parents under court auspices that go beyond the simple advice "don't fight." After we had talked for a half an hour or so, the judge leaned back in his chair and said he'd like my opinion about something important. He had just attended several scientific lectures in which researchers argued that children are shaped more by genes than by family environment. Case in point, studies of identical twins reared separately show that in adulthood such twins often like the same foods and clothing styles, belong to the same political parties, and even bestow identical names on their dogs. The judge looked perplexed. "Do you think that

could mean divorce is in the genes?" he asked in all seriousness. "And if that's so, does it matter what a court decides when parents divorce?"

I was taken aback. Here was a key figure in the lives of thousands of children asking me whether what he and his colleagues do or say on the bench makes any difference. He seemed relieved by the notion that maybe his actions are insignificant.

I told him that I personally doubt the existence of a "divorce gene." If such a biological trait had arisen in evolution, it would be of very recent vintage. But, I added, "What the court does matters enormously. You have the power to protect children from being hurt or to increase their suffering."

Now it was his turn to be taken aback. "You think we've increased children's suffering?"

"Yes, Your Honor, I do. With all respect, I have to say that the court along with the rest of society has increased the suffering of children."

"How so?" he asked.

We spent another half hour talking about how the courts, parents, attorneys, mental health workers—indeed most adults—have been reluctant to pay genuine attention to children during and after divorce. He listened respectfully to me but I must say I left the judge's chambers that day in a state of shock that soon turned to gloom. How can we be so utterly lost and confused that a leading judge would accept the notion of a "divorce gene" to explain our predicament? If he's confused about his role, what about the rest of us? What is it about the impact of divorce on our society and our children that's so hard to understand and accept?

Having spent the last thirty years of my life traveling here and abroad talking to professional, legal, and mental health groups plus working with thousands of parents and children in divorced families, it's clear that we've created a new kind of society never before seen in human culture. Silently and unconsciously, we have created a culture of divorce. It's hard to grasp what it means when we say that first marriages stand a 45 percent chance of breaking up and that second marriages have a 60 percent chance of ending in divorce. What are the consequences for all of us when 25 percent of people today between the ages of eighteen and forty-four have parents who divorced? What does it mean to a society when people wonder aloud if the family is about to disappear? What can we do when we learn that married couples with children represent a mere

26 percent of households in the 1990s and that the most common living arrangement nowadays is a household of unmarried people with no children?[1] These numbers are terrifying. But like all massive social change, what's happening is affecting us in ways that we have yet to understand.

For people like me who work with divorcing families all the time, these abstract numbers have real faces. When I think about people I know so well, including the "children" you've met in this book, I can relate to the millions of children and adults who suffer with loneliness and to all the teenagers who say, "I don't want a life like either of my parents." I can empathize with the countless young men and women who despair of ever finding a lasting relationship and who, with a brave toss of the head, say, "Hey, if you don't get married then you can't get divorced." It's only later, or sometimes when they think I'm not listening, that they add softly, "but I don't want to grow old alone." I am especially worried about how our divorce culture has changed childhood itself. A million new children a year are added to our march of marital failure. As they explain so eloquently, they lose the carefree play of childhood as well as the comforting arms and lap of a loving parent who is always rushing off because life in the postdivorce family is so incredibly difficult to manage. We must take very seriously the complaint of children like Karen who declare, "The day my parents divorced is the day my childhood ended."

Many years ago the psychoanalyst Erik Erikson taught us that childhood and society are vitally connected. But we have not yet come to terms with the changes ushered in by our divorce culture. Childhood is different, adolescence is different, and adulthood is different. Without our noticing, we have created a new class of young children who take care of themselves, along with a whole generation of overburdened parents who have no time to enjoy the pleasures of parenting. So much has happened so fast, we cannot hold it all in our minds. It's simply overwhelming.

But we must not forget a very important other side to all these changes. Because of our divorce culture, adults today have a greater sense of freedom. The importance of sex and play in adult life is widely accepted. We are not locked into our early mistakes and forced to stay in wretched, lifelong relationships. The change in women—their very identity and freer role in society—is part of our divorce culture. Indeed, two-thirds of divorces are initiated by women despite the high price they pay

in economic and parenting burdens afterward. People want and expect a lot more out of marriage than did earlier generations. Although the divorce rate in second and third marriages is sky-high, many second marriages are much happier than the ones left behind. Children and adults are able to escape violence, abuse, and misery to create a better life. Clearly there is no road back.

The sobering truth is that we have created a new kind of society that offers greater freedom and more opportunities for many adults, but this welcome change carries a serious hidden cost. Many people, adults and children alike, are in fact not better off. We have created new kinds of families in which relationships are fragile and often unreliable. Children today receive far less nurturance, protection, and parenting than was their lot a few decades ago. Long-term marriages come apart at still surprising rates. And many in the older generation who started the divorce revolution find themselves estranged from their adult children. Is this the price we must pay for needed change? Can't we do better?

I'd like to say that we're at a crossroads but I'm afraid I can't be that optimistic. We can choose a new route only if we agree on where we are and where we want to be in the future. The outlook is cloudy. For every person who wants to sound an alarm, there's another who says don't worry. For everyone concerned about the economic and emotional deprivations inherited by children of divorce there are those who argue that those kids were "in trouble before" and that divorce is irrelevant, no big deal. People want to feel good about their choices. Doubtless many do. In actual fact, after most divorces, one member of the former couple feels much better while the other feels no better or even worse. Yet at any dinner party you will still hear the same myths: Divorce is a temporary crisis. So many children have experienced their parents' divorce that kids nowadays don't worry so much. It's easier. They almost expect it. It's a rite of passage. If I feel better, so will my children. And so on. As always, children are voiceless or unheard.

But family scholars who have not always seen eye to eye are converging on a number of findings that fly in the face of our cherished myths. We agree that the effects of divorce are long-term. We know that the family is in trouble. We have a consensus that children raised in divorced or remarried families are less well adjusted as adults than those raised in intact families.

The life histories of this first generation to grow up in a divorce

culture tell us truths we dare not ignore. Their message is poignant, clear, and contrary to what so many want to believe. They have taught me the following:

From the viewpoint of the children, and counter to what happens to their parents, divorce is a cumulative experience. Its impact increases over time and rises to a crescendo in adulthood. At each developmental stage divorce is experienced anew in different ways. In adulthood it affects personality, the ability to trust, expectations about relationships, and ability to cope with change.

The first upheaval occurs at the breakup. Children are frightened and angry, terrified of being abandoned by both parents, and they feel responsible for the divorce. Most children are taken by surprise; few are relieved. As adults, they remember with sorrow and anger how little support they got from their parents when it happened. They recall how they were expected to adjust overnight to a terrifying number of changes that confounded them. Even children who had seen or heard violence at home made no connection between that violence and the decision to divorce. The children concluded early on, silently and sadly, that family relationships are fragile and that the tie between a man and woman can break capriciously, without warning. They worried ever after that parent-child relationships are also unreliable and can break at any time. These early experiences colored their later expectations.

As the postdivorce family took shape, their world increasingly resembled what they feared most. Home was a lonely place. The household was in disarray for years. Many children were forced to move, leaving behind familiar schools, close friends, and other supports. What they remember vividly as adults is the loss of the intact family and the safety net it provided, the difficulty of having two parents in two homes, and how going back and forth cut badly into playtime and friendships. Parents were busy with work, preoccupied with rebuilding their social lives. Both moms and dads had a lot less time to spend with their children and were less responsive to their children's needs or wishes. Little children especially felt that they had lost both parents and were unable to care for themselves. Children soon learned that the divorced family has porous walls that include new lovers, live-in partners, and stepparents. Not one of these relationships was easy for anyone. The mother's parenting was often cut into by the very heavy burdens of single parenthood and then by the demands of remarriage and stepchildren.