

# **EXHIBIT 10A**

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ENDORSED  
 FILED  
 San Francisco County Superior Court

SEP - 2 2004

GORDON PARK-LI, Clerk  
 BY: \_\_\_\_\_ Deputy Clerk

11 Attorneys for Plaintiff  
 12 CITY AND COUNTY OF SAN FRANCISCO

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

17 Coordination Proceeding  
 Special Title (Rule 1550(b))  
 18 MARRIAGE CASES  
 19 CITY AND COUNTY OF SAN  
 20 FRANCISCO, a charter city and county,  
 21 Plaintiff/Petitioner,  
 22 vs.  
 23 STATE OF CALIFORNIA, et al.  
 24 Defendants/Respondents.

JUDICIAL COUNCIL COORDINATION  
 PROCEEDING NO. 4365

Case No. 429-539  
 (Consolidated with Case No. 504-038)

DECLARATION OF DR. ROBERT  
 GALATZER-LEVY IN SUPPORT OF  
 CITY AND COUNTY OF SAN  
 FRANCISCO'S CONSTITUTIONAL  
 CHALLENGE TO MARRIAGE  
 STATUTES

Hearing Date: TBD  
 Hearing Judge: Richard A. Kramer  
 Time: TBD  
 Place: 304

Date Action Filed: March 11, 2004  
 Trial Date: Not set

1 I, Robert Galatzer-Levy, declare as follows:

2 1. I know the facts stated herein of my own personal knowledge, except those facts  
3 known on information and belief, and if called as a witness I could and would testify  
4 competently thereto.

5 2. I am a psychiatrist, a psychoanalyst, a child and adolescent psychiatrist and a  
6 Lecturer in psychiatry at the University of Chicago. I received an M.D. from the Washington  
7 University School of Medicine in 1971. I was licensed as a physician by the State of Illinois in  
8 1974 following a Residency in Psychiatry at the University of Chicago. I have maintained a  
9 private practice in psychiatry since that time. I have been a member of the American  
10 Psychoanalytic Association since 1984 and have served on a number of committees within that  
11 organization, including as chair of its Committee on Scientific Activities. I have co-authored or  
12 co-edited four books in my field, including *The Course of Gay and Lesbian Lives: Social and*  
13 *Psychoanalytic Perspectives*, which was co-authored with Dr. Bertram J. Cohler and published  
14 in 2000. A true and correct copy of my *curriculum vitae* is attached hereto as Exhibit A.

15 3. Between 1994 and 2000, I conducted an extensive study of the classification of  
16 homosexuality as a disease or mental illness. I conducted this study in my role as a member of  
17 the American Psychoanalytic Association's Committee on Scientific Activities. At that time, the  
18 American Psychoanalytic Association was the only one of the major mental health providers'  
19 professional associations that had failed to adopt the position that homosexuality was not a  
20 disease or mental illness. The other major associations, including the American Psychiatric  
21 Association and the American Psychological Association, adopted this position in the 1970's.  
22 My committee was asked to review existing literature and conduct research on the issue and  
23 make a recommendation to the association as to the adoption of an official position.

24 4. In conducting this study, I extensively reviewed the scientific literature on this topic.  
25 A complete list of the literature I reviewed in connection with this study can be found in the  
26 References section of *The Course of Gay and Lesbian Lives: Social and Psychoanalytic*  
27 *Perspectives*. I also relied upon my years of experience in private practice, during which I have  
28 treated numerous individuals who happened to be gay or lesbian.

1 5. As a result of the study, I concluded that homosexuality is not a disease or mental  
2 illness. Based upon this study, the committee recommended that the American Psychoanalytic  
3 Association adopt an official position that homosexuality is not a disease or mental illness. The  
4 Association did so shortly thereafter.

5 6. The research conducted in connection with this study later became the basis for my  
6 book, *The Course of Gay and Lesbian Lives: Social and Psychoanalytic Perspectives*. Some of  
7 the specific conclusions I reached, and their bases, are explained in greater detail below.

8 7. Same-gender sexual orientation is not a disease or mental illness. This conclusion  
9 has been widely adopted in the medical community, including, as previously stated, by the major  
10 mental health providers' organizations. The conclusion is based upon three primary factors.

11 8. First, same-gender sexual orientation is pervasive. Homosexuality appears in all  
12 contexts and is pervasive in the sense that it is found throughout history and all cultures in which  
13 it has been studied.

14 9. Second, to be classified as a mental illness or disease, a condition must inherently  
15 stress the health of the individual. Homosexuality causes no such inherent stress. Generally, the  
16 mental health of homosexuals does not inherently differ from that of heterosexuals. Any  
17 additional stress specific to the mental health of homosexuals is the product of being the object  
18 of societal disdain and oppression; it is not caused by the same-gender sexual orientation of the  
19 individual.

20 10. Third, to be classified as a disease or mental illness, a condition must be discrete.  
21 That is, there must be a bright line methodology for determining whether an individual is  
22 afflicted with the condition. For example, pneumonia is discrete in the sense that it is possible to  
23 medically determine whether an individual has pneumonia or not. A person cannot be suffering  
24 from pneumonia somewhat. Rather, he suffers from pneumonia or he does not. This is not true  
25 of sexual orientation. The sexual orientation of any given individual falls within a spectrum

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1 between same-gender orientation and opposite-gender orientation. Nearly all heterosexual  
2 people are capable of some homosexual response, and nearly all homosexual people are capable  
3 of some heterosexual response. Hence, no sharp line distinguishes homosexuality and  
4 heterosexuality.

5 11. The conclusion that homosexuality is not a disease or mental defect leads me to  
6 conclude that the fact of homosexuality does not inherently affect the individual's ability to  
7 contribute to society. As previously stated, homosexuality does not inherently stress the health  
8 of the individual. Because of this, there is no increased instance of psychiatric illness in gay and  
9 lesbian individuals except that which is the result of oppression or societal disdain. Freud was  
10 said to describe mental health as the capacity to love and work. Thus, a mentally healthy  
11 individual is capable of work and thus contributing to society and the homosexual individual is  
12 equally capable as other individuals to contribute to society.

13 12. The roles that gay and lesbian individuals currently play in our society provide  
14 support for my conclusion that homosexuality does not affect one's ability to contribute to  
15 society. As opportunities to participate in the larger society have increased, we find more and  
16 more openly gay and lesbian individuals visibly active in society. For example, there is currently  
17 a large and growing number of openly gay and lesbian elected officials. Gay and lesbian  
18 individuals also occupy a very wide range of occupations and social positions. There is no  
19 indication that sexual orientation limits occupation with the exception of the limitations imposed  
20 through active discrimination. Additionally, gay and lesbian individuals have been effective in  
21 addressing the problems of other gay and lesbian people. The capability of gay and lesbian  
22 people to organize an effective response to the HIV crisis is an indication of the ability to a  
23 significant segment of the gay and lesbian population to respond in a socially responsible way to  
24 a social crisis.

25 13. Gay and lesbian individuals also make a significant contribution to society in their  
26 role as parents. As a child and adolescent psychiatrist and psychoanalyst I have wide  
27 professional experience and knowledge regarding the psychological development and needs of  
28 children and adolescents generally. I have worked extensively with gay and lesbian parents and

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1 their children in my private practice. I have participated as an expert in many child custody  
 2 cases involving one or more gay or lesbian parents. I have also reviewed a large volume of  
 3 research on this topic, including two outcome studies which examined differences between  
 4 children raised in gay and lesbian households and those raised by heterosexual parents. A  
 5 chapter in the book *The Scientific Basis of Child Custody Decisions*, which I co-edited, an  
 6 extensive review of parenting by gay and lesbian individuals, supports the opinions expressed  
 7 here.

8 14. The fact that the institution of marriage has been unavailable to gay and lesbian  
 9 parents has and does, in my experience, adversely affect the children of those relationships.  
 10 Children form bonds with their caretakers, regardless of the legal status of those caretakers'  
 11 relationship. If a couple is not married, the child being raised by that couple loses many legal  
 12 protections afforded to children of married parents. If the couple separates, the child of a  
 13 homosexual couple can be horribly damaged when one psychological parent loses legal status.  
 14 This damage could be prevented by his or her parents being married.

15 I declare under penalty of perjury under the laws of the State of California that the  
 16 foregoing is true and correct. Executed this 1<sup>st</sup> Day of September, 2004.

17   
 18 \_\_\_\_\_  
 ROBERT GALATZER-LEVY

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