

1 [Supporting AB43 – Religious Freedom and Civil Marriage Act]

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3 **Resolution urging the California Assembly and Senate and the Governor of California**
4 **to support Assembly Bill 43 (AB43), the “Religious Freedom and Civil Marriage Act”,**
5 **which defines marriage as a civil contract between two people.**

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7 WHEREAS, Existing law provides that marriage is a personal relation arising out of a
8 civil contract between a man and a woman; and

9 WHEREAS, From 1850 to 1977, the statutory definition of marriage in California was
10 gender-neutral, containing no reference to “man” or “woman”; and

11 WHEREAS, In 1948, the California Supreme Court became the first state court in the
12 country to strike down a law prohibiting interracial marriage and the only state supreme court
13 to do so before the United States Supreme Court invalidated all those laws in 1967; and

14 WHEREAS, The California Supreme Court held that, “marriage is something more than
15 a civil contract subject to regulation by the state and it is a fundamental right of free men and
16 legislation infringing such rights must be based upon more than prejudice and must be free
17 from oppressive discrimination to comply with the constitutional requirement of due process
18 and equal protection of the laws” (Perez v. Sharp 1948); and

19 WHEREAS, In 1977, the Legislature amended the state's marriage law to specify that,
20 since, as a matter of state law, the gender-neutral definition of marriage could permit same-
21 sex couples to marry and have access to equal rights, the gender-neutral definition would be
22 changed. The gender-specific definition of marriage that the Legislature adopted specifically
23 discriminated in favor of different-sex couples and, consequently, discriminated and continues
24 to discriminate against same-sex couples; and

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1 WHEREAS, The highest courts in three states, Hawaii, Vermont, and Massachusetts,
2 have held that denying the legal rights and obligations of marriage to same-sex couples is
3 constitutionally suspect or impermissible under their respective state constitutions; and

4 WHEREAS, The highest courts in seven Canadian provinces have similarly ruled
5 that marriage laws that discriminate in favor of different-sex couples to the exclusion of same-
6 sex couples violate the rights of same-sex couples and cannot stand; and

7 WHEREAS, California's discriminatory exclusion of same-sex couples from marriage
8 violates the California Constitution's guarantee of due process, privacy, equal protection of the
9 law, and free expression by arbitrarily denying equal marriage rights to lesbian, gay, and
10 bisexual individuals; and

11 WHEREAS, California's discriminatory exclusion of same-sex couples from marriage
12 harms same-sex couples and their families by denying those couples and their families
13 specific legal rights and responsibilities under state law and by depriving members of those
14 couples and their families of a legal basis to challenge federal laws that deny access to the
15 many important federal benefits and obligations provided only to spouses. Those federal
16 benefits include the right to file joint federal income tax returns, the right to sponsor a partner
17 for immigration to the United States, the right to Social Security survivor benefits, the right to
18 family and medical leave, and many other substantial benefits and obligations; and

19 WHEREAS, Other jurisdictions have chosen to treat as valid or otherwise recognize
20 marriages between same-sex couples. California's discriminatory marriage law therefore also
21 harms California's same-sex couples when they travel to other jurisdictions by preventing
22 them from having access to the rights, benefits, and protections those jurisdictions provide
23 only to married couples; and

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1 WHEREAS, California's discriminatory exclusion of same-sex couples from marriage
2 further harms same-sex couples and their families by denying them the unique public
3 recognition and affirmation that marriage confers on heterosexual couples; and

4 WHEREAS, The City and County of San Francisco has an interest in encouraging
5 stable relationships regardless of the gender or sexual orientation of the partners, and the
6 benefits that accrue to the general community when couples undertake the mutual obligations
7 of marriage accrue regardless of the gender or sexual orientation of the partners; and

8 WHEREAS, It is also in the interest of the City and County of San Francisco that the
9 pernicious practice of marriage discrimination in California is ended; therefore, be it

10 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
11 strongly urges the California Assembly and Senate and the Governor of California to support
12 Assembly Bill 43 (AB43), the "Religious Freedom and Civil Marriage Act", which defines
13 marriage as a civil contract between two people; and be it

14 FURTHER RESOLVED, That the Board of Supervisors direct the Clerk of the Board
15 to send copies of this resolution, upon passage, to California Assembly and Senate and the
16 Governor of California.

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