

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiff,

Case No. 12-10285

-v-

RICHARD SNYDER, ET AL.,

Defendant.

/ VOLUME 7

BENCH TRIAL

BEFORE THE HONORABLE **BERNARD A. FRIEDMAN**
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
March 5, 2014

APPEARANCES:

FOR THE
PLAINTIFFS:

Carole M. Stanyar, Esq.
Dana M. Nessel, Esq.
Kenneth Mogill, Esq.
Robert Sedler, Esq.
Vicki L. Henry, Esq.
Leslie Cooper, Esq.

FOR THE
DEFENDANTS:
Richard Snyder
Bill Schuette

Kristin M. Heyse, Esq.
Joseph E. Potchen, Esq.
Michelle Brya, Esq.
Tonya C. Jeter, Esq.

Lisa Brown

Andrea J. Johnson, Esq.
Beth M. Rivers, Esq.
Michael L. Pitt, Esq.

To Obtain a Certified Transcript Contact:

Christin E. Russell, RMR, CRR, FCRR, CSR - (248) 420-2720
Proceedings produced by mechanical stenography.
Transcript produced by computer-aided Transcription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Bench Trial, Volume 7 - Part A Page

WITNESSES FOR DEFENDANTS:

JOSEPH PRICE, Ph.D.

CROSS-EXAMINATION BY MS. NESSEL 3

REDIRECT EXAMINATION BY MS. BRYA 49

LOREN DEAN MARKS, Ph.D.

DIRECT EXAMINATION BY MR. POTCHEN 58

E X H I B I T S

Exhibit Page

State's Exhibit #16 64

State's Exhibit #17 80

CERTIFICATE OF REPORTER 102

1 Detroit, Michigan

2 March 5, 2014

3 9:00 a.m.

4 (Call to Order of the Court.)

5 THE COURT: You may be seated. Good morning.

6 Okay. Doctor, come on up here. You're still under
7 oath.

8 THE WITNESS: Okay.

9 THE COURT: Okay. You may proceed.

10 MS. NESSEL: Thank you, your Honor.

11 JOSEPH PRICE, Ph.D.

12 called as a witness, previously sworn, testified as follows:

13 CROSS-EXAMINATION

14 BY MS. NESSEL:

15 Q. Good morning.

16 A. Good morning.

17 Q. Okay. So if we can start by just briefly trying to get
18 some clarification on the statistics we talked about yesterday
19 regarding your critique of the Rosenfeld study.

20 Now, you indicated that you found children of same-sex
21 couples were 35 percent less likely to make progress through
22 school than children of heterosexual married parents, correct?

23 A. It's slightly different than that. It's just the odds of
24 children making normal progress through school is 35 percent
25 less.

1 Q. All right. In your testimony from yesterday, you said that
2 this outcome is considered very uncommon, it rarely occurs,
3 right? Regardless of who the child's parents are, it's very
4 rare the child would not pass on from one grade to the next at
5 that level?

6 A. That's correct.

7 Q. And that's why you believe that sample size is so
8 important, right?

9 A. It's one of three reasons, yeah.

10 Q. And when something occurs rarely, a small difference in the
11 rate of the occurrence can result in a very large percentage
12 difference, true?

13 A. That's, yeah, that's true.

14 Q. Okay. So, just so I understand this, and I'm trying to put
15 this in context, I'll try and speak really loudly since there's
16 no microphone right here. But --

17 THE COURT: You have to be near a microphone.

18 MS. NESSEL: Here.

19 THE COURT: There you go.

20 MS. NESSEL: Is this all right if I move over there?

21 THE COURT: You can go wherever you want, as long as
22 you have a microphone. That will work, I think.

23 BY MS. NESSEL:

24 Q. Okay. So, Dr. Price, tell me if this analysis is correct.

25 All right. So if you have Group A, all right, and let's say

1 we're talking about something like the percent that a person
2 will experience blindness, just use that randomly. Okay?

3 If Group A has a one percent chance of blindness, and
4 Group B, people in that category have a 35 percent chance
5 higher, increased 35 percent chance of going blind or
6 experiencing blindness. Then Group B has a 1.35 percent chance
7 of experiencing blindness; is that correct?

8 A. That's correct.

9 Q. Okay. And those are the kind of differences that we're
10 talking about in terms of your study, or your critique of
11 Rosenfeld, correct?

12 MS. BRYA: I'm going to object. Vague question. I
13 don't know what that means.

14 THE COURT: Finish the question. Repeat -- start from
15 the beginning.

16 Doctor, before you answer, we'll hear the objection.

17 BY MS. NESSEL:

18 Q. These type of percentages, or similar to the percentages
19 we're talking about in your study between kids raised by
20 same-sex parents, and kids raised by opposite-sex parents, in
21 terms of their ability to make normal progress through school,
22 correct?

23 THE COURT: There's still an objection?

24 MS. BRYA: Yes, your Honor. I think the question is
25 vague. I don't, I don't know what it means to same kinds of

1 percentages.

2 THE COURT: If Dr. Price can't answer it, or it's not
3 clear please say so, or if he can answer it, please say so.

4 THE WITNESS: Yes. Well, the primary difference is
5 that the base rates would be a little bit higher. So we would
6 be talking about 8 percent versus whatever 35 percent higher
7 that is.

8 But again, with your example about blindness, if
9 someone told a parent that if you do "X" it will increase the
10 chance your child will go blind by 35 percent, I think that's
11 actually the information they might find more useful than
12 saying it goes up by point 35 percentage points.

13 BY MS. NESSEL:

14 Q. But then really, what you would be saying to the person,
15 say somebody took their child to see the eye doctor, and when
16 they said 35 percent increase, what they are saying is instead
17 of your child having a one percent chance of going blind, they
18 now have a 1.35 percent chance of going blind. That's really
19 what that would mean, correct?

20 A. What I mean is the way we would phrase that is we could
21 tell the parent the increased probability of your child being
22 blind is, you know, point 35 percentage points, which happens
23 to be about a 35 increase -- 35 percent increase relative to
24 the baseline rate. I think, actually, both, both of those
25 pieces of information would be helpful to a parent.

1 Q. But still, your percent chance of going blind, whether
2 you're Group A or Group B is very, very minute, correct?

3 A. I mean, it depends on what you mean by minor. I mean,
4 so --

5 Q. Well, by "minor" I mean the difference between 1 percent
6 and 1.35 percent.

7 MS. BRYA: Objection, your Honor. He's asked and
8 answered. Thank you.

9 THE COURT: Sustained.

10 BY MS. NESSEL:

11 Q. Did you have a chance, Dr. Price, after --

12 THE COURT: Why don't you move it back or --

13 MS. NESSEL: I may be going back so.

14 THE COURT: Very good.

15 BY MS. NESSEL:

16 Q. After we had a chance to go through some of your numbers,
17 did you have an opportunity to look at your chart at all to do
18 any calculations, the kind of calculations that we talked
19 about?

20 A. I didn't do that calculation.

21 Q. Okay. Well, in terms of giving us a number, of the number
22 of kids who would progress, I would say the percentage of kids
23 that would progress through school, without any problems at
24 that age, comparing the opposite sex couples' kids or the kids
25 that were raised by married heterosexuals, are you able to do

1 that determination? Are you able to look at your statistics,
2 and look at your graphs and charts that you compiled and come
3 up with numbers for that?

4 MS. BRYA: Objection, your Honor. I think the
5 question has been asked and answered.

6 THE COURT: He can answer yes or no.

7 THE WITNESS: Yeah. I can't do that right now.

8 BY MS. NESSEL:

9 Q. What would you require in order to be able to do that?

10 A. I mean, if I had access to my data or --

11 Q. Okay.

12 A. -- if we -- I mean, my -- yeah.

13 Q. So if you had --

14 MS. NESSEL: May I approach, your Honor?

15 THE COURT: Of course.

16 BY MS. NESSEL:

17 Q. Is this the PowerPoint that you put together?

18 A. This is the PowerPoint that I put together.

19 Q. And that, this includes, somewhere in this PowerPoint is
20 the information that you would need in order to make those
21 calculations, correct?

22 A. It would give an approximation, yeah.

23 MS. NESSEL: Okay. May I hand it to him?

24 THE COURT: You may hand it to him.

25 BY MS. NESSEL:

1 Q. And do you need a calculator to do that?

2 THE COURT: Wait. You're asking him to calculate it?

3 MS. NESSEL: Yes. I would ask him to calculate the
4 percentages.

5 MS. BRYA: Your Honor, I'm going to, I'm going to
6 object to this. This isn't -- this wasn't part of his report.
7 We, you know -- I don't know if it takes --

8 THE COURT: I mean, I feel the same way. You know,
9 the objection has always been it wasn't part of his report, he
10 didn't, you know, and so forth. And now you're asking him to
11 calculate something that wasn't part of his report when I
12 sustained the objection that you made, because I think it's a
13 very valid objection, you couldn't be prepared for it. But it
14 goes -- it's a double-edged sword. It goes for both sides.

15 MS. NESSEL: All right. And I understand that, your
16 Honor. It's just that he actually did put the graphs on the
17 screen and then he talked about the graphs.

18 THE COURT: Yeah. The graphs, you can ask him
19 anything you want about, no problem, as long as it was in his
20 report and it wasn't objected to.

21 MS. NESSEL: Okay.

22 THE COURT: But what you're asking him to do is
23 calculations that he has not done before and was not in his
24 report. And I think if we're going to stay to his report, then
25 we should stay to his reports.

1 MS. NESSEL: All right. So then, just so I'm
2 exceedingly clear, with --

3 THE COURT: Pardon?

4 MS. NESSEL: With a calculator and everything, you
5 don't want me to ask him to?

6 THE COURT: It's not that I don't want you to.

7 MS. NESSEL: All right.

8 THE COURT: If we're going to stay within this report.
9 If you want him to do that, then I'm going to allow the, the
10 State to go into things that weren't in his report. So it
11 wouldn't be fair.

12 MS. NESSEL: I understand, your Honor. That's fine.

13 BY MS. NESSEL:

14 Q. So then you don't know, just to be clear, from your chart,
15 your graph, from what you have already looked at then, you
16 can't say you don't know if the percentage roughly involves 97
17 percent of kids of same-sex parents progressing normally versus
18 98 percent of kids who had opposite-sex parents, you don't know
19 that?

20 MS. BRYA: Objection, your Honor. Asked and answered.

21 THE WITNESS: I don't know that. I did all my
22 analysis in terms of odds ratios, which I think is a reasonable
23 way to present the information.

24 BY MS. NESSEL:

25 Q. All right. But the information I just provided to you,

1 that could be correct then, you just don't know?

2 A. I don't know.

3 Q. All right. I'll move this back.

4 THE COURT: You are going to have to move it a little
5 bit closer. The base, the base. Yeah, there you go. Thank
6 you.

7 BY MS. NESSEL:

8 Q. All right. And again, now, with one of the differences
9 between the way that you looked at the data, and Rosenfeld
10 looked at the data, again, was that Rosenfeld controlled for in
11 the same sex pop -- sorry, the children of same-sex couples'
12 population, one of the things he controlled for was divorce or
13 separation from a parent and you did not control for that,
14 correct?

15 A. That's, that's not correct.

16 Q. Well, could you explain what that -- that was not something
17 that was controlled for by Rosenfeld?

18 A. Yes. So Rosenfeld doesn't know -- I don't know, maybe you
19 could ask your question. I mean, I want to be really clear
20 that I answered this --

21 Q. Okay. Well --

22 A. -- honestly.

23 Q. -- let me rephrase it then. Now, Rosenfeld's data was U.S.
24 Census data that was publicly available, right?

25 A. That's correct.

1 Q. Okay. And he shared his data and his analysis code with
2 you?

3 A. That's correct.

4 Q. And I think you had testified that the level of
5 data-sharing from Rosenfeld, I think this was your quote, "does
6 not exist for most previous research on gay or lesbian
7 parenting," correct?

8 A. That's correct. It's harder to obtain those other previous
9 data.

10 Q. And so you used Rosenfeld's study because it was held up as
11 a gold standard of large data sets?

12 A. That's correct.

13 Q. Okay. And when you and your fellow co-authors
14 reconstructed Rosenfeld's data, do you mean that you ran the
15 numbers the way that Rosenfeld did and got the same results
16 that he got?

17 A. So I hope I was clear about this yesterday, but in Table 2
18 of our paper, we run the results the same way that Rosenfeld
19 does. And we showed that there's different ways to interpret
20 those numbers. And then in table 3, what we do is we expand
21 the sample to include the children that he left out.

22 Q. Now, what you indicated, and maybe this is just what you
23 said, but you said it a different way. So tell me if this is
24 incorrect. But in your expert report, in paragraph 12, what
25 you indicated was in terms of your study, "For our study we

1 reconstruct Rosenfeld's data using publicly available data from
2 U.S. 2000 Census." And you said that, right?

3 A. That's correct.

4 MS. BRYA: Your Honor, can we just hold on for just a
5 moment so we can get to the page?

6 THE COURT: Sure.

7 MS. BRYA: And perhaps even Dr. Price could see a page
8 in his report as well?

9 THE COURT: Absolutely. Is it in the book or a copy?

10 THE WITNESS: It's in the book, but the book is over
11 there.

12 THE COURT: You just don't have the book up there?

13 THE WITNESS: I just don't have the book up.

14 THE COURT: I think there's a witness book right in
15 front -- oh, it's not that?

16 MS. HEYSE: May I approach, your Honor?

17 THE COURT: Oh, please. You might as well give him a
18 copy.

19 Everybody else has copies?

20 THE WITNESS: Which number are you on?

21 BY MS. NESSEL:

22 Q. Oh, I'm sorry. Paragraph 12 in your report. Tell me when
23 you're done.

24 A. I have that, yes.

25 Q. Okay. All right. So now you indicated in that paragraph,

1 as we said just now, that you reconstructed Rosenfeld's data
2 using publicly available data from the U.S. Census from 2000,
3 and you said we also use the same outcome variable, control
4 variable, and family structure definition in our analysis. We
5 then make only two changes to the original analysis, both of
6 which led to very different conclusions from the original
7 study. First change provides --

8 THE COURT: You have to go slow.

9 MS. NESSEL: I'm sorry.

10 BY MS. NESSEL:

11 Q. The first change provides an alternative interpretation of
12 the original empirical specification, and the second expands
13 the sample to include the children that Rosenfeld excluded from
14 his analysis.

15 That's, that's all correct, right?

16 A. That is all correct.

17 Q. Okay. In other words, when you do what Rosenfeld did, when
18 you recreate his study, the result is that the outcome to
19 children raised by same-sex couples cannot be distinguished
20 with statistical certainty from children of heterosexual
21 married couples. You would agree with that, right?

22 A. Let me just qualify that answer. Again, the big difference
23 is whether it's economically significant versus whether it's
24 statistically significant.

25 And the point we're trying to make is that even using

1 Rosenfeld's specification, the coefficient is about a 15
2 percent advantage for children raised by heterosexual married
3 couples. However, it's rather imprecise, and so it would be
4 impossible to rule out effects that were as large as even 47
5 percent.

6 Q. Wait. I'm sorry. So even when you recreate what he did
7 exactly, you get different results?

8 A. No. It says, if you read my report, it says the first
9 change provides an alternative interpretation of the original
10 empirical specification.

11 Q. You're talking about changes. I'm saying that in terms of
12 the precision of what Rosenfeld did, when you run the numbers
13 the way he ran the numbers, you get the same results?

14 A. Again, he did not report standard errors in his paper. But
15 we do both agree that those results are sufficiently imprecise;
16 that it does not allow you to determine whether it's
17 statistically significantly different from zero.

18 Q. Well, you consider Rosenfeld's paper to be a real leap
19 forward in the literature, correct?

20 A. I do.

21 Q. All right. Now, let's talk about some of the studies that
22 you, that you examined regarding child outcomes.

23 Now, the studies that you're aware of, or the studies
24 I should say, that you examined, the majority of children who
25 were raised by same-sex couples were originally born to

1 heterosexual parents that either broke up or divorced, right?

2 A. That's quite, that's quite possible.

3 Q. It's possible or it's correct?

4 A. So in my data, it's more complicated than I thought to
5 determine that. But actually, if you had to ask me, I'd
6 probably guess that the majority of children being raised by
7 same-sex couples were part of a heterosexual marriage at some
8 point. But it's actually harder than I thought to calculate
9 that specific number.

10 MS. NESSEL: Your Honor, may I approach the witness?

11 THE COURT: Of course.

12 BY MS. NESSEL:

13 Q. Dr. Price, I'm going to show you --

14 THE COURT: You have to be by a microphone. Hand him
15 and then -- you can give it to him.

16 MS. NESSEL: Give you that.

17 THE COURT: And then back to the microphone.

18 BY MS. NESSEL:

19 Q. I've just handed you what appears to be your deposition
20 testimony that you gave on January 18th, 2014 in Lansing,
21 Michigan. Is that what that document is that I handed you?

22 A. That is correct.

23 Q. Okay. And I wonder if I could have you turn to page 60 of
24 that document. And just tell me when everybody is ready.

25 MS. HEYSE: Is that six zero?

1 MS. NESSEL: Six zero.

2 BY MS. NESSEL:

3 Q. Now, are you -- is everybody there?

4 Okay. So Dr. Price, on line 4 of your -- of page 60
5 of your deposition, the question was posed to you:

6 "So the evidence that we do have are from samples that
7 you say the majority of which consisted of children who are the
8 product of a failed heterosexual union, before being raised by
9 same-sex couples; is that right?"

10 And Dr. Price, your answer was, "Well, they are the
11 product of a failed -- they are not biologically related to
12 both parents in the sense that they are listed as
13 stepchildren."

14 Is that right?

15 A. Yeah. That's what it says there, yes.

16 Q. So there's --

17 A. Yes.

18 Q. Stepchildren are the children that are of a failed
19 heterosexual relationship, correct?

20 A. Well, so let's just -- if you look at the deposition,
21 you'll see in the line you quoted, it's using the word
22 "heterosexual union." Okay? And then if you come down to the
23 next question, it's about a heterosexual couple conceiving
24 them.

25 So the thing, I mean, this is kind of a fine point,

1 but if a single woman conceives a child, presumably it will be
2 with, with a man, but they might not actually be in a union.

3 And that's what I meant by I wasn't -- I'm not quite sure what
4 the number of children that were from a, a heterosexual union.

5 Q. All right. Well, but you think the normal way that
6 same-sex couples have children is actually through a previous
7 failed heterosexual union, though; is that correct?

8 A. No. It's this word "union." I don't know if it's through
9 a failed union. It's, it's through, I mean, it was through --
10 the child was conceived through a sexual relationship. But I
11 think when we talk about a union, we think of either a marital
12 union or potentially a cohabiting union.

13 Q. Okay.

14 A. I mean, we don't think of a single mother as being part of
15 a union.

16 Q. But you're, what you're talking about, though, is a man and
17 a woman having a child together, whether they are living
18 together, whether they are cohabitating together. You're not
19 talking about people in the situation, say, of our clients, who
20 took their children in together as a couple, at their births;
21 you're not talking about them?

22 A. No. And I'm really clear in here about to say that the
23 fraction of children that are adopted is rather low.

24 Q. All right. And the type of, the type of relationships that
25 you did examine then, either a failed heterosexual union or

1 some type of heterosexual relationship between the man and the
2 woman that created that child, for those kids that there was
3 some kind of a relationship between the parents who got
4 divorced, divorce is strongly associated with poorer outcomes
5 for children. You would agree with that, right?

6 A. Yes.

7 Q. And divorce has negative consequences regardless of whether
8 the couple is subsequently raised by a straight couple or
9 subsequently raised by a same-sex couple, correct?

10 A. If you could repeat that again. Sorry.

11 Q. Okay. If you have a child who comes from a failed
12 heterosexual relationship, okay? And those parties, the male
13 and the female get divorced, it doesn't matter if that child
14 goes on to live with his mother and another man, or goes on to
15 live with his mother and a woman. I mean, you -- the
16 consequences of that child would be the same?

17 MS. BRYA: Your Honor, I'm going to object as to what
18 it means by the consequences. I'm not sure what that means. I
19 think it's vague.

20 THE COURT: Doctor, if you know what it means, you may
21 answer. If you don't, then --

22 THE WITNESS: Yeah. I mean, it's -- I think I'm -- we
23 don't have a lot of information about the consequences of
24 failed relationships.

25 BY MS. NESSEL:

1 Q. Well, you know failed relationships are bad for kids
2 though, right?

3 A. Well, we know a lot of information about divorce being bad
4 for kids. There's actually, you know, I mean -- I don't know.
5 A failed relationship could mean that the child never -- I
6 don't know what it means for a failed relationship to occur
7 before the child is born.

8 Q. All right. So, but the way that you did your study,
9 obviously, included children who came from a failed
10 heterosexual actual relationship, either they lived together or
11 they were married or something like that, and then they went on
12 to live with a same-sex couple, correct? You added that back
13 in?

14 A. Yeah. That's correct.

15 Q. Okay. And the data in the studies you looked at, if I
16 understand this, it doesn't allow to distinguish whether the
17 poorer outcomes of the children are operating through a
18 previous divorce, or the fact that the child later lives with a
19 same-sex couple. You don't know what the circumstance was, you
20 don't know why, correct?

21 A. Yes. And neither Rosenfeld's study or my study would have
22 the data to be able to control for that.

23 Q. All right. And the information just wasn't available to
24 determine how many of those children are raised from birth or
25 near birth by same-sex couples, right?

1 A. No. It's, it's actually quite hard to find children in
2 that category.

3 Q. In fact, in the Regnerus study that you talk about, we know
4 that out of all the couples that he looked at, there were only
5 two children that were raised from birth or near birth by
6 same-sex couples, right?

7 A. And that's what I meant with my statement, that it's really
8 hard to find children that --

9 Q. Right.

10 A. -- have been raised from birth by a same-sex couple.

11 Q. But the two kids in that study that were raised from birth
12 or near birth by same-sex couples, those kids turned out quite
13 well, didn't they?

14 A. I don't know if we can -- I mean, it's two observations.
15 So I don't know, actually. I didn't look at specific
16 observations in this data set.

17 Q. You don't know how those two kids turned out --

18 A. I don't.

19 Q. -- who were raised in that environment?

20 A. Yeah. When I work with data, I never look at the specific
21 observations. I mean, I work in averages across curves.

22 Q. All right. So you don't look at the specific observations
23 in terms of the outcome of the kids?

24 A. No. When I do research on basketball, I never look at
25 individual players or referees. I, I aggregate across

1 individuals.

2 Q. You don't think that kind of information is important?

3 A. I'm an economist. We have a different approach. I would
4 agree that there's other professions in which they are going to
5 interview people, do qualitative work, but that's not the kind
6 of research I do.

7 Q. Well, but you would agree that in smaller studies where you
8 can do that kind of thing, those are worthy of consideration in
9 other fields, aren't they?

10 A. I, I acknowledge that other fields find that to be
11 important. I, from a statistical inference perspective,
12 there's some challenges with working with really small data
13 sets.

14 Q. Now, let's talk about the mechanisms that you describe that
15 could explain poorer outcomes of children.

16 I think that what you said yesterday, and in your
17 presentation, was that you believe as an expert in economy,
18 that the three mechanisms that explain the conclusions that
19 children of same-sex couples have noticeably worse outcomes
20 than the children of married heterosexual parents are, tell me
21 if I'm wrong about this, gender appearance, biological
22 relatedness, and family structure stability, correct?

23 A. Yeah. I'm posing these as three reasonable explanations
24 for why we observe differences in outcomes.

25 Q. Okay. And those are the only mechanisms that you offer,

1 right?

2 A. Those are the only I offered in my expert report.

3 Q. Now, you agree that there is also possibly a different
4 mechanism, which is divorce, or a separation that could also be
5 a mechanism, that contributes to child outcomes, right?

6 A. Yeah. Divorce certainly can contribute to child outcomes.

7 Q. Okay. But I'm trying to understand your testimony. You're
8 indicating that you don't believe it's appropriate to control
9 for a prior divorce as a confounding variable when you're
10 assessing the outcomes of children raised by same-sex couples?

11 A. I didn't say that. I said that neither Rosenfeld or I, the
12 data we were using, had the ability to control for that.

13 Q. Okay.

14 A. That variable.

15 Q. But it seems like that would be an important thing to
16 control for, don't you think?

17 A. I agree. I mean, we would always like to control for more
18 things. But in this data set, and the other data sets that I
19 looked into, that wasn't a possibility.

20 Q. Okay. So then you, just to be clear, you don't know of any
21 study that is able to answer the question of whether poorer
22 outcomes that you claim for children of same-sex couples is
23 attributed to the product of being a failed heterosexual union,
24 versus being raised by a same-sex couple, correct?

25 A. I don't know, I don't know of any large national

1 representative data set that would be used commonly by
2 economists that would provide that information.

3 Q. Okay. Let's talk about what you had indicated about
4 parental gender. Now, it's your belief that mothers and
5 fathers play distinct and complementary roles in raising
6 children of --

7 (Coughing in courtroom.)

8 COURT REPORTER: I'm sorry. Can you repeat that?

9 MS. NESSEL: Sure.

10 BY MS. NESSEL:

11 Q. You think that mothers and fathers play distinct and
12 complementary roles in raising children, correct?

13 A. Yes.

14 Q. Okay. So therefore, you believe that same-sex couples,
15 their children are at a disadvantage, correct?

16 A. I believe that children that don't have a mother are at a
17 disadvantage. I believe that it's probably also true that
18 children that don't have a father would be at a lesser
19 disadvantage, but possibly still a disadvantage.

20 Q. Now, the study that you did on parent and child time, you
21 didn't examine the outcomes of children, right?

22 A. The American Timing Survey does not include information
23 about the outcomes of those children.

24 Q. Okay. Now, you had stated that fathers spend more time
25 playing sports with their children, and doing exterior

1 housework together, while mothers spend more time reading to
2 their children, talking with the children, and doing interior
3 housework together. That's what something that you stated,
4 right?

5 A. Those are three activities that look distinct between
6 fathers and mothers.

7 Q. Okay. And honestly, this is not a facetious question. I
8 just want to know, what century is this statement based on? Is
9 this, is this based on 21st century data, 20th century? What
10 time frame are you looking at when you come to those
11 conclusions?

12 A. The American Timing Survey started in 2003.

13 Q. Okay.

14 A. And it's been going on since then.

15 Q. Well, you talked a little bit about basing your theories
16 about parental gender on, and the way men and women operate in
17 modern society, and whether they are descendants of societies
18 that practice plow agriculture, you wrote a -- you talked about
19 that yesterday in the blog you posted for the Austin Institute,
20 right?

21 A. That's correct.

22 Q. Okay. So do you base your theories on parental gender at
23 all in people who lived centuries ago?

24 A. I don't think I understand your question.

25 Q. Does your -- do your theories about plow agriculture that

1 you've blogged about, do those influence your theories about
2 parental gender?

3 A. Again, I'm not positing -- I guess actually, I don't
4 even -- yeah, I don't actually know how to answer your
5 question. But I hadn't thought about whether I'm influenced by
6 the, you know, agricultural practice hundreds of years. I
7 actually don't know if that's what --

8 Q. That's what --

9 A. In my, in my paper when I'm talking about differences
10 between the practices of fathers and mothers, I'm looking at
11 differences in the frequency with which they do different
12 activities.

13 Q. Okay. Well, when you describe the way that you believe
14 mothers tend to behave and the way fathers tend to behave,
15 you're describing averages, right?

16 A. That's right.

17 Q. Now, some mothers may behave in ways that fathers typically
18 behave, right?

19 A. Yes.

20 Q. And some fathers behave in a way that you believe mothers
21 typically behave?

22 A. Yes.

23 Q. Okay. So in some families, the mom might play sports with
24 their kids, and the dad might help the kids with cooking?

25 A. Yeah. That could be true for some families.

1 Q. Okay. And in some families, the mom may spend more time
2 watching TV and roughhousing with the kids, and the dad might
3 spend more time doing housework, right?

4 A. That could be true for some families.

5 Q. Okay. And in some families, the roughhousing and the
6 housework are equally distributed between the mother and the
7 father, right?

8 A. Yes, that could be true.

9 Q. Okay. Now, in terms of the interactions of how things work
10 when you have two moms or two dads, have you ever had the
11 opportunity to personally observe or personally interact with
12 any families that are headed by gays or lesbians?

13 A. That would not be the kind of research I would do. I
14 believe that type of research would result in too small of a
15 sample to provide meaningful statistical inference.

16 Q. So you've not made any personal observations then at all of
17 gay couples and their families?

18 A. That's not the approach that an economist would typically
19 use.

20 Q. Okay. All right. But your belief is that children need to
21 have a father to play sports with them and they need to have a
22 mother to take care of the interior of the household?

23 A. I didn't actually say that's something they need. I say
24 these are indicative that fathers and mothers parent in
25 different ways, and that when you bring together parents that

1 engage in different activities, it's going to provide a
2 complementary opportunity for their kids.

3 Q. But you're basing that on either, either a stereotype or in
4 terms of whatever your research has been, that women are more
5 interested in the interior of the house, and fathers or men are
6 more interested in sports, right?

7 MS. BRYA: I'm going to object, your Honor. I think
8 that mischaracterizes his testimony. He never said it was
9 based on any stereotype or anything like that. I think he's
10 answered.

11 THE COURT: Sustained.

12 BY MS. NESSEL:

13 Q. I'll withdraw stereotype. But that's what your
14 understanding is, though?

15 MS. BRYA: I'll renew the objection, your Honor.

16 THE COURT: Then why don't you rephrase the question.

17 MS. NESSEL: Okay.

18 THE COURT: But ask him a question.

19 MS. NESSEL: Sure.

20 THE COURT: But ask him a question.

21 MS. NESSEL: Is it your understanding then --

22 THE COURT: -- making a statement.

23 MS. NESSEL: Sure, Judge.

24 THE COURT: Ask him a question.

25 BY MS. NESSEL:

1 Q. Is it your understanding then that women are more
2 interested in the interior of the household, in dealing with
3 those matters, and men are more interested in sports?

4 A. Again, my data doesn't say anything about what they are
5 interested in. All it does is it says this is how fathers use
6 their time, this is how mothers use their time.

7 As an economist, we would say look at their actions
8 and rather than ask them, you know, what their preferences or
9 interests are.

10 Q. So in looking at all that then, is it your understanding,
11 for instance, of gay people, that gay men are never interested
12 in interior decorating, and lesbians are never interested in
13 sports?

14 A. I don't know the answer to that question.

15 Q. Okay. And you said you've never actually interacted with
16 any of these people, so you don't know how they react when they
17 are together, where there's two of them together, correct?

18 MS. BRYA: Objection, your Honor. I think that
19 mischaracterizes his testimony. He didn't say he never
20 interacted with gay people.

21 THE COURT: Sustained.

22 THE WITNESS: I mean, all I said earlier was that in
23 the American Timing Survey, there are same-sex couples. And
24 when I talk about those gender patterns, I'm talking about the
25 average man versus the -- the average father compared to the

1 average mother.

2 BY MS. NESSEL:

3 Q. Well, then is it your understanding, do you think that in a
4 two-dad household, that no one does interior work on the house?

5 A. I'm not saying that. I'm saying that there's an average
6 tendency for -- to men to read less their kids, talk less their
7 kids than mothers do.

8 Q. And you don't know if there's compensation that occurs when
9 there's two people of the same gender then, right?

10 A. I don't know that.

11 Q. Okay. So you would agree with me that whether it's a
12 two-dad household or a two-mom household, it's likely that
13 someone does the dishes and someone cooks, right?

14 A. I would hope so.

15 Q. And in a two-dad household, somebody reads to their kids?

16 A. Again, there's lots of households that don't read to their
17 kids.

18 Q. Well, I mean, do you think that in a two-mom household,
19 like in April and Jayne's house, that nobody does the exterior
20 work, nobody mows the lawn or shovels the driveways or does any
21 of those activities?

22 A. So, again, I don't, I don't have any information about
23 that. I wouldn't know how to answer your question.

24 Q. Okay. So you don't know, for instance, at Jayne and
25 April's house if one or both of them still plays sports with

1 the kids, or roughhouses with the kids, or any of those
2 typically male activities?

3 MS. BRYA: Objection, your Honor.

4 THE COURT: Sustained.

5 BY MS. NESSEL:

6 Q. All right. Are you aware of any studies that say that
7 children have poorer outcomes if the mother is the one that
8 plays sports with the kids and the father is the one that does
9 housework with them?

10 A. I don't have that.

11 Q. Okay. Are you aware of any studies at all that find that
12 when mothers behave in ways typically associated with fathers,
13 children have poorer outcomes?

14 A. Yeah, I don't know that.

15 Q. All right. And you're not aware of any studies that find
16 when fathers behave in ways that you typically associate with
17 mothers, that the children have poorer outcomes?

18 A. Yeah. I don't know about that.

19 Q. All right. The next mechanism you talked about was
20 biological relatedness, correct?

21 A. That's correct.

22 Q. Okay. And in terms of theories of evolutionary biology,
23 you're not an expert on that, are you?

24 A. I'm not an expert on that.

25 Q. Okay. You don't know if there are studies out there that

1 critique theories about evolutionary biology?

2 A. I don't.

3 Q. But you say that in same-sex couple, both parents can't be
4 genetically related to a child, right?

5 A. That's correct.

6 Q. Okay. But obviously, if you have a sperm or egg donation
7 from a family member, then you have at least one person who is
8 the biological parent in that instance, right?

9 A. That's correct.

10 Q. Okay. Now, you say that a lack of biological relatedness
11 of one parent in a same-sex couple is a mechanism for poorer
12 outcomes for the child?

13 A. I was listing that as a possible explanation for why
14 outcomes might differ.

15 Q. Well, when you said that, though, in support of that
16 hypothesis, you cite studies indicating that children with
17 stepparents tend to have poorer outcomes, right?

18 A. That is correct.

19 Q. So your belief is that the partner of a same-sex couple,
20 the one who is not biologically related, in the instance that
21 one of them is, you consider them to be a stepparent, right?

22 A. I consider it to be the analogue of a stepparent.

23 Q. Okay. So even in the case that you have, like the case
24 that we're here about today, in the case of April and Jayne
25 where they've jointly raised three kids together since their

1 birth, do you consider one of them to be a stepparent?

2 A. Again, I, I liken it unto one of the issues with
3 stepparents. And one of the issues being a stepparent, is that
4 you're not biologically related to the children.

5 Q. When you have a situation like, for instance, April and
6 Jayne's where they adopted at birth, or you have a situation
7 where say a lesbian couple uses a donor insemination, that
8 child who is being raised by the couple has not experienced a
9 break-up from a prior family unit, correct?

10 MS. BRYA: Objection, your Honor. I don't know if he
11 can speak to whether or not --

12 THE COURT: I agree, but he'll let us know if he
13 can't.

14 MS. BRYA: Thank you, your Honor.

15 THE WITNESS: So if a child is born through artificial
16 reproductive technologies, then it's likely that child wasn't
17 -- I mean, it's clear the child wasn't the result of a failed
18 union.

19 BY MS. NESSEL:

20 Q. But then that's different from a stepparent, right?

21 Because the other parent has always been there in the child's
22 life. The child doesn't know that other person to be anything
23 but a parent. They don't know them as their new stepparent.
24 They know them just as their regular parent, because they don't
25 know anybody else, right?

1 A. And that's why I, I likened it unto a stepfamily.

2 One of the explanations for why stepchildren have
3 worse outcomes is that they are not biologically related to one
4 of their parents. I, I imagine there's other reasons that
5 stepchildren are at a disadvantage.

6 Q. Okay. Now, you've not read any of the psychological
7 literature discussing the reasons why having a stepparent in
8 the picture can lead to a poorer outcome for a child?

9 A. That's correct.

10 Q. Right. In fact, I think you indicated you've only read
11 between 5 and 10 studies on this subject total?

12 A. That's correct.

13 Q. So it might be true then, that psychologists believe that
14 poorer outcomes for children with stepparents is caused by the
15 fact that the stepparent is a new person coming into the
16 picture and disrupting the existing family unit, not because of
17 genetics, right?

18 MS. BRYA: Objection, your Honor.

19 THE COURT: Sustained. He's already testified he's
20 not a psychologist and he's not an expert, and he can't
21 speculate what they may say.

22 MS. NESSEL: I'll move on.

23 BY MS. NESSEL:

24 Q. Now, in terms of conception using egg or sperm donation, if
25 -- I mean heterosexuals do that too, right? They, if they have

1 fertility problems, for instance, they use sperm or egg
2 donation?

3 A. That's correct.

4 Q. That's not just specific to same-sex couples, right?

5 A. That's correct.

6 Q. Okay. So if biological relatedness is a channel or a
7 mechanism through which poorer outcomes for children are
8 caused, you would expect the poorer outcomes to be equally
9 present, whether it's a heterosexual couple having those kids
10 or a same-sex couple that conceives through an egg or sperm
11 donation, right?

12 A. That's correct.

13 Q. Okay. And you're not familiar with any specific studies
14 that analyze the outcomes of children conceived through sperm
15 or egg donation, right?

16 A. Yeah. None of the large nationally representative data
17 sets that, that we use have information about whether the child
18 was conceived through donor insemination.

19 Q. And you haven't read any of the smaller studies on that?

20 A. None that fit into this category of large nationally
21 represented.

22 Q. And you don't know of any research showing that children
23 conceived through sperm or egg donation fare any worse than
24 children conceived through heterosexual intercourse, do you?

25 A. I don't know.

1 Q. Okay. And you don't know whether or not there's research
2 out there showing that children conceived through sperm or egg
3 donation who are raised -- I'm sorry. Strike that.

4 Do you oppose the use of sperm or egg donation for
5 married heterosexuals couples who have fertility problems?

6 MS. BRYA: Objection, your Honor.

7 THE COURT: Sustained.

8 BY MS. NESSEL:

9 Q. Well, do you think given what your philosophy is regarding
10 biological relatedness, do you think that, for instance, the
11 women in this case, April and Jayne, do you think that they
12 love their kids any less because they were adopted and not the
13 products of their womb?

14 MS. BRYA: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MS. NESSEL:

17 Q. All right. Well, let me rephrase it.

18 Do you think the fact that April and Jayne do not have
19 a DNA connection to their three kids means that they are worse
20 parents to those three kids?

21 A. I can't speak to any specific cases.

22 Q. Okay. Now, people who want to adopt or who have, want to
23 have kids using sperm or donor or a surrogacy, these are
24 people, wouldn't you say, that are highly motivated to have
25 kids?

1 MS. BRYA: Objection, your Honor. I don't know what
2 that -- I think the question is vague. I don't know what that
3 means. What does it mean to be highly motivated?

4 THE COURT: That he has said?

5 MS. NESSEL: Let me -- but I'm exploring the
6 biologically-related component.

7 THE COURT: But the objection was -- I sustain the
8 objection. Go on.

9 BY MS. NESSEL:

10 Q. Okay. Well, let me phrase it this way: People who use
11 other means to have kids than just producing them by sexual
12 intercourse, those are people who strongly wanted to have kids,
13 because you have to work hard to get the kids, right?

14 MS. BRYA: The same objection, your Honor.

15 THE COURT: Again, you want his personal opinion or do
16 you want based upon his expertise and research?

17 MS. NESSEL: Well, I'm going to be -- I'll be leading
18 up to something related to what his statements are with
19 biological relatedness.

20 THE COURT: But my question to you is you're asking
21 him a question. Do you want his personal view?

22 MS. NESSEL: No. I want his --

23 THE COURT: If you do, then I'll sustain the
24 objection.

25 MS. NESSEL: I want his view as an expert.

1 THE COURT: In economics, he may testify, if he has
2 one.

3 THE WITNESS: Yeah. I don't have an expert opinion on
4 that.

5 BY MS. NESSEL:

6 Q. Okay. So you don't know if like, for instance, adoption is
7 a very expensive and complex legal process?

8 A. I haven't done research on it, but I imagine that for some
9 people, adoption can be expensive.

10 Q. But in terms of things like artificial insemination, in
11 vitro insemination, surrogacy, are those really difficult and
12 expensive ways to have a child?

13 A. I don't know firsthand, but I would imagine they are
14 expensive.

15 Q. And they are things that take a lot of planning then, for
16 any of those things, right?

17 A. I imagine that would be the case.

18 Q. Okay. So it would seem that anybody who engaged in any of
19 these, adoption or the artificial means of having a child,
20 those are, those are people who want to be parents really
21 badly, right?

22 MS. BRYA: Objection, your Honor.

23 THE COURT: Sustained.

24 MS. BRYA: I think it calls for speculation.

25 MS. NESSEL: All right. Let me just get to my point

1 then.

2 THE COURT: His personal opinion may be interesting,
3 but he's here as an expert.

4 BY MS. NESSEL:

5 Q. All right. But people who have children through biology,
6 maybe they wanted those kids, maybe they didn't, right?

7 MS. BRYA: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MS. NESSEL:

10 Q. Let me ask this: Wouldn't you expect people who want to
11 have kids very badly, and go to all those measures in order to
12 have kids, wouldn't you expect them to be better parents than
13 people who have them by accident?

14 MS. BRYA: Objection, your Honor.

15 THE COURT: If he has done studies or as part of
16 his --

17 THE WITNESS: Yeah. I don't have any expert opinion
18 on that.

19 BY MS. NESSEL:

20 Q. But only one in that category, there's one that's got a
21 biological relatedness, and then the other people, you have
22 either one or both parties that have no biological relatedness,
23 correct?

24 THE COURT: In your studies, in your work.

25 THE WITNESS: So that would be situation where one of

1 the parents have a biologic relationship and the other parent
2 doesn't. I mean, if you're talking about adoption, then
3 neither of them would have a biological relatedness, but in the
4 case of donor insemination.

5 BY MS. NESSEL:

6 Q. So the fact that they had to work so hard to have those
7 kids doesn't play a role in whether or not they'll be good
8 parents, just whether or not they have the same DNA as the
9 kids; that's more important?

10 MS. BRYA: Same objection, your Honor.

11 THE WITNESS: Yeah. I don't have an expert opinion on
12 that.

13 BY MS. NESSEL:

14 Q. Let's talk about family stability for a moment, which you
15 mentioned.

16 Now, you talked about Mark Regnerus's conclusions
17 about the stability of same-sex couples to some extent, did you
18 not?

19 A. I didn't talk about that today, but it was something
20 included in my expert report.

21 Q. Right. Okay. So you would agree that a child who is
22 living with a mother, who is dating another woman, but that
23 other woman doesn't live in the house, they are not really
24 being raised by the couple, right?

25 A. I would agree with that.

1 Q. Okay. You also agree that it's a mistake to assume that
2 every time a child stopped living with a, I guess what Regnerus
3 would identify as a gay and lesbian parent, it would be a
4 mistake to assume that that was because the adult couple broke
5 up?

6 A. That is correct.

7 Q. All right. And you cite studies from Scandinavia to say
8 that same-sex couples are less stable than heterosexual
9 couples?

10 A. I do.

11 Q. All right. But those studies involving those same-sex
12 couples, they were only allowed to have registered
13 partnerships, right? They were not permitted to marry,
14 correct?

15 A. One of the points that the authors make is the reason they
16 use data from Norway and Sweden, is because those registered
17 partnerships are given nearly all the same legal rights as
18 heterosexual marriage.

19 Q. When you say nearly all the same legal rights, do you know
20 if it's all the same legal rights?

21 A. They mention there are some small differences, but along
22 all the important dimensions, they said they were nearly
23 identical.

24 Q. Well, you're not an expert in the ways --

25 A. That's correct.

1 Q. -- in which the domestic partnerships differ from legal
2 marriages in Scandinavian countries, right?

3 A. That's correct. I'm just repeating the argument the
4 authors made to try to indicate that these two formal unions
5 were as similar as possible.

6 Q. And you're not aware of a British study that same-sex civil
7 partnerships in the UK during the period in 2005 to 2010, had a
8 lower break-up rate than heterosexual marriages solemnized in
9 the same period?

10 A. So I am aware of the Ross study.

11 Q. And you would agree that's what it indicates?

12 A. I would come to a different interpretation of the results.
13 And they also provide some very important caveats in their
14 results.

15 Q. Well, let me ask you this: We've had same-sex marriage at
16 least in some portion of the country, meaning the United
17 States, our country, for ten years now, correct?

18 A. Yes.

19 Q. Okay. Do you know of any studies that compared same-sex
20 married couples and their dissolution rates, to opposite-sex
21 married couples' rates of divorce?

22 A. So the Balsam study looks at civil unions from Vermont.

23 Q. But that's civil unions; that's not divorces.

24 A. That's civil unions, yes.

25 MS. BRYA: I'd like to ask that he be allowed to

1 answer the question.

2 THE COURT: Yes. Let him finish.

3 THE WITNESS: So, I mean, the two studies that I'm
4 aware of that would be the closest to what you're asking is the
5 Balsam study using civil unions from Vermont. And then I know
6 that Michael Rosenfeld has a working paper about formal unions.

7 BY MR. NESSEL:

8 Q. Okay. But the civil unions in Vermont, during the time
9 period that those were studied, those people didn't get Federal
10 marriage benefits, did they?

11 A. I -- no. They were given civil unions, not marriages.

12 Q. Right. So they didn't have all the same rights as the
13 married couples, the heterosexual married couples, correct?

14 A. I would imagine that's so.

15 Q. Now, wouldn't you say the best and fairest way to analyze
16 stability would be to look at our country, someplace in our
17 country with opposite-sex couples versus same-sex couples who
18 have the same rights and the same legal relationship? Wouldn't
19 that be the best way to look at this?

20 A. Again, I think as empirical economists, what we try to do
21 is learn from the lessons of other countries that adopt
22 policies before we do. And in this case, I actually believe
23 that Norway and Sweden provide the ideal place in which to test
24 for these relationships.

25 Q. Yeah. But ideal would be if they had been married with all

1 the exact same rights. Wouldn't that be ideal, as opposed to a
2 domestic partnership where they had many of the rights but not
3 all of them?

4 MS. BRYA: Objection, your Honor.

5 THE COURT: Sustained. You can't argue with him. Ask
6 him questions.

7 MS. NESSEL: All right. I'll move on, your Honor.

8 BY MS. NESSEL:

9 Q. All right. You don't know enough about family stability,
10 Doctor, to say whether a same-sex couple that's married would
11 have a higher rate of stability than a same-sex couple that's
12 not married, correct?

13 A. Again, the inference we would draw from the experience of
14 Norway and Sweden, is you have a situation where registered
15 domestic partnerships are nearly identical to marriage, and
16 yet, you see lesbian couples having dissolution rates that are
17 50 percent higher than heterosexual couple -- married
18 heterosexual couples. I'm sorry. You see gay couples having a
19 dissolution rate that's 50 percent higher. You see lesbian
20 couples having a dissolution rate that's almost twice as high
21 as heterosexual married couples.

22 And so if this is a case where these things are
23 practically the same, then it would be hard to imagine. So as
24 a scientist, I would say that's, that's really strong evidence
25 that the dissolution rates are going to be different.

1 Q. All right. But again, when you say comparable, you're not
2 talking about the same. You're saying what you think is the
3 best comparable analysis, given the fact that you can't find
4 the exact same between married heterosexual couples, married
5 same-sex couples, right?

6 A. So again, as scientists, we often can't get exact
7 comparison. And so we, we live with "close enough."

8 Q. Okay. Well, but we know that, say here in the United
9 States, we know that certain groups have higher rates of
10 divorce for other -- than other groups, right?

11 A. That's correct.

12 Q. So for instance, certain minorities, such as Hispanics,
13 African-Americans, they have higher divorce rates than
14 Caucasians, right?

15 A. I would imagine that's true.

16 Q. Okay. And you don't believe that we should bar those
17 groups, African-Americans or Hispanics from marrying, because
18 their dissolution rates are higher than Caucasians, do you?

19 A. I don't have an expert opinion on that.

20 Q. Okay. What about people who don't have a high school
21 diploma? They have higher divorce rates than people who are
22 college educated, right?

23 A. That's correct.

24 Q. And you don't favor banning people with high school diploma
25 -- or who don't have a high school diploma from marrying,

1 right?

2 A. I don't have an expert opinion on that.

3 Q. Okay. And low-income people, they have a higher rate of
4 divorce than high-income people, right?

5 A. I would imagine that is so.

6 Q. Okay. But you don't favor banning low-income people from
7 divorcing?

8 A. Again, I don't --

9 Q. I mean, from marrying.

10 A. Again, that sounds like a legal opinion. I don't have an
11 expert opinion on that.

12 Q. But you know as an economist that regardless of who you
13 are, but particularly in the cases where you have, say, people
14 of low income or people that are disadvantaged in some way,
15 that marriage would benefit those people, right?

16 A. We generally believe that low income people would benefit
17 from marriage.

18 Q. Okay. Well, what about child outcome levels for say those
19 different groups? You would agree that there are certain
20 groups who have notably worse child or poorer child outcome
21 results, right?

22 A. Yes.

23 Q. Okay. So, for instance again, African-Americans, lower
24 than Caucasians?

25 A. They tend to have lower outcomes --

1 Q. Okay. Hispanic --

2 A. -- on average.

3 Q. Hispanic children?

4 A. Hispanic also have lower outcomes on average.

5 Q. The children of less-educated people?

6 A. They tend to have lower outcomes on average.

7 Q. Okay. And on average, also lower-income people?

8 A. That's true as well.

9 Q. Okay. And is it not true, Dr. Price, from an economist's
10 standpoint, that children being raised by African-Americans, or
11 Hispanics, or lower-educated people, or lower-income people, it
12 would be a value to those children if their parents married as
13 opposed to not marrying, correct?

14 A. So we generally believe that the traditional marriage,
15 heterosexual marriage has those kind of benefits for all of
16 those groups.

17 Q. Okay. And in terms of adoption, let me ask you, would you
18 favor prohibiting any of those groups from being able to adopt
19 because they traditionally have lower -- well, I should say
20 poorer child outcomes?

21 A. Again, I don't have an expert opinion on that.

22 Q. All right. In fact, as an economist, wouldn't you want to
23 encourage family types that tend to produce worse outcomes to
24 marry because it would increase -- it would increase the chance
25 that their children would be successful later on in life?

1 Wouldn't you think that to be the case?

2 A. I don't know if I can speak to that question.

3 Q. Okay. And you don't know of any economic reason why a
4 child being raised by a same-sex couple wouldn't be advantaged
5 by having two legal parents instead of just one, do you?

6 A. Yeah, I don't know of any. I don't have an opinion on
7 that.

8 Q. Okay. Can you think of any economic reason that a family
9 such as the DeBoer/Rowse family would not be better off if the
10 adults could marry and the children could both be adopted by
11 their parents?

12 A. Again, I don't have an answer to that.

13 Q. Okay. So you don't think that having --

14 A. I don't -- yeah. Sorry. Go ahead.

15 Q. Economically though, just so I understand it, you don't
16 have an opinion as to whether it would be better for those kids
17 to have two legal parents instead of one legal parent?

18 A. Yeah. All I can say is all of our -- all of the research
19 I'm familiar up to this point about the affects of marriage
20 have all been about traditional marriage between a man and a
21 woman. I do not have an expert opinion of how well those will
22 translate to a different type of marriage.

23 MS. NESSEL: Nothing further.

24 THE COURT: You're done?

25 MS. NESSEL: I am, your Honor.

1 THE COURT: Any redirect?

2 MS. BRYA: Your Honor, would it be okay if we took
3 maybe a ten-minute break? Would that be okay?

4 THE COURT: Absolutely.

5 MS. BRYA: Thank you. I appreciate that.

6 THE COURT: We'll stand in recess for about ten
7 minutes, reconvene at about five after.

8 THE CLERK: All rise.

9 THE COURT: Is ten minutes enough? I'll give you more
10 if you want.

11 MS. BRYA: Ten minutes should be fine. Thank you very
12 much.

13 THE COURT: You may step down.

14 (Recess taken, 9:53 a.m. - 10:11 a.m.)

15 THE CLERK: All rise.

16 THE COURT: Thank you. You may be seated.

17 MS. BRYA: May I proceed, your Honor?

18 THE COURT: Please.

19 MS. BRYA: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. BRYA:

22 Q. Good morning, Dr. Price.

23 A. Good morning.

24 Q. On cross-examination, you mentioned an article done by an
25 author by the name of Ross. Can you tell us about that?

1 A. Sure. So this was part of the four studies that have
2 looked at stability. There's the Anderssen study from Norway.
3 There's the Ross study from the U K. There's the Balsam study
4 based on Vermont data. And then there's the Rosenfeld data
5 based on the U.S data.

6 Now, of those four, the Ross data is the only one to
7 show the dissolution rates for same-sex couples are lower than
8 those of heterosexual couples.

9 Now, to be super clear about what this document is,
10 it's not a peer-reviewed article. It doesn't engage in any
11 analysis. There's no regressions in the paper like we would
12 expect from someone like any of the other authors I mentioned.
13 It's, it's a government document that provides a tabulation
14 based on the first few years of same-sex marriage in Britain.
15 And the authors are really clear to note that --

16 THE CLERK: I'm sorry. A little closer to the mic.

17 THE WITNESS: Sorry. Yeah.

18 So what they are comparing is in 2005, you have a
19 bunch of same-sex couples that marry. You have a bunch of
20 heterosexual couples that marry. And you compare the rates of
21 dissolution one year out, two years out, three years out. I
22 think the farthest they can go is about five years.

23 And what they note is in that first year in which
24 same-sex couples can marry, you had a number of couples that
25 have been together for a long time, that were finally able to

1 marry. And you're comparing those unions with a set of brand
2 new, fresh, heterosexual marriages.

3 And so even the authors themselves say, hey, this
4 isn't an apples-to-apples comparison. Really, we should just
5 wait a while and then do this kind of comparison in the future.

6 But I just want to emphasize there's no, there's no
7 regressions, there's no control. This is just a raw tabulation
8 of numbers.

9 BY MS. BRYA:

10 Q. Thank you. And can you tell the Court about the Balsam
11 study that was referenced?

12 A. So the Balsam study has a nice advantage that it's using
13 U.S. data. It is based on civil unions, not marriages. So
14 they are using Vermont's experience with civil unions.

15 It was a kind of a non-conventional data collection
16 approach. There's lots of sample attrition. The other tricky
17 thing about the civil unions in Vermont was it attracted people
18 that were eager to formalize their union. In fact, more than
19 80 percent of those that obtained a civil union in Vermont were
20 not from Vermont.

21 But the authors were able to obtain the information
22 about all of the same-sex couples that obtained civil unions
23 during that time, right in the first year of the law. And then
24 they were -- they contacted those people and asked them for
25 information about one of their friends or siblings who was in a

1 heterosexual marriage. And then what they do is they compare
2 dissolution rates over the next three years, where there's
3 comparison of the civil unions in Vermont with their friends
4 and siblings who are in a heterosexual marriage union. And
5 then what they claim is that there was no statistical
6 difference between these two groups.

7 Now, keep in mind, this again isn't the best
8 apples-to-apples comparison. But even then, the authors are
9 confusing statistical significance with economic significance.
10 If you look at the actual dissolution rates, the same-sex
11 couples were about 40 percent more likely to, to break up
12 within that three-year period. Okay.

13 Q. And counsel also asked you about other studies regarding
14 dissolution of same-sex couples, and you mentioned the
15 Rosenfeld study. Can you speak to that?

16 A. Yes. So Rosenfeld's collected some really nice data.
17 Again, I admire Rosenfeld along a number of dimensions, and his
18 generosity in sharing data is, is great.

19 And so the nice thing about this data set on which he
20 based his analysis is that he's also made it publicly
21 available, so you can actually, you know, take -- you can go
22 and compare the analysis he did. And again, it's another case
23 where there's a bit of confusion between economic significance
24 and statistical significance.

25 So he is correct that there's no statistically

1 significant difference in the dissolution rates between
2 same-sex couples in a formal union, and heterosexual couples in
3 a formal union. But if you look at the actual numbers, the
4 dissolution rate differs by about 30 percent. So same-sex
5 couples are about 30 percent more likely to break up within two
6 years. And these are all couples in formal unions.

7 Now, for this case, actually, the most relevant group
8 to look at are same-sex couples with children. And so if you
9 use his data to look at that part of the data, you have about
10 700 heterosexual couples with, with children. You have about
11 --

12 THE COURT: Do you need some more water? I'm sorry.

13 THE WITNESS: Yes. Sorry. My mouth dried out really
14 quick.

15 THE COURT: I know. Let me help you, please. Any
16 time you need it.

17 THE WITNESS: Yeah. So if you look at this group of
18 couples that have children, there's about 700 heterosexual
19 couples with children. There's about 30 same-sex couples with
20 children. The dissolution rate for the heterosexual couples
21 is, and this is just in a two-year window, is about 10 percent.
22 The dissolution rate for same-sex couples is 33 percent.

23 Now, if you look specifically at those that have a
24 formal union -- and, and when Rosenfeld talks about formal
25 union, he's including both same-sex marriage and civil

1 unions -- then you have about 600 heterosexual couples in a
2 formal union, you have seven couples with children, same-sex
3 couples with children in a formal union. And the two-year
4 dissolution rates for these two groups is it's 4 percent for
5 the heterosexual couples, it's 14 percent for the same-sex
6 couples.

7 BY MS. BRYA:

8 Q. Now, I want to ask you about something that Plaintiffs'
9 counsel asked you about yesterday. If I can direct your
10 attention to the State's Exhibit 9. It should be in that big
11 black binder next to you.

12 And I think you testified before that this is the, the
13 article that you did, that you prepared based on the study that
14 you did with Allen and Pakaluk.

15 And counsel asked you about the last sentence of the
16 first paragraph on page 958 that states, "while we are unable
17 to reject the hypothesis that there is no difference, this
18 approach also makes it impossible to rule out even very large
19 differences."

20 You didn't get an opportunity to explain what that
21 meant yesterday. And I'd like you to explain what that means
22 for the Court.

23 A. Yeah. Again, so this relates back to the issue of
24 statistical significance versus economic significance.

25 So counsel is highlighting a particular phrase we use,

1 which is, "we are unable to reject the hypothesis that there is
2 no difference."

3 So this harks back to what I mentioned yesterday about
4 a null hypothesis, is you specify that there's this null
5 hypothesis, that there's no difference, and then your
6 statistical approach is to see if you can reject that null
7 hypothesis.

8 And what this sentence is saying, is that using this,
9 the original sample that Rosenfeld used, there is no
10 statistically significant difference between children raised by
11 same-sex couples and heterosexual married couples. However,
12 what the coefficient in that analysis means is that our best
13 guess, it has an odds ratio of point 15, our best guess using,
14 using Rosenfeld's original sample, which I have talked about, I
15 would use the expanded sample. But in his original sample, our
16 best guess is that children raised in heterosexual-married
17 households have an odds of making normal progress in school
18 that is 15 percent higher than a same-sex couple.

19 Now, given the imprecision, we are unable to rule out
20 even really large effects, such as effects that are as large as
21 47 percent.

22 Now, what's making -- so we have an economically
23 significant difference. It's not statistically significant.
24 And this is driven largely by the issues I mentioned about
25 eliminating half the sample.

1 It turns out also, that if you were to just limit this
2 analysis just to certain age groups, you'd come to a different
3 conclusion. You'd actually find that even in the original
4 Rosenfeld data, it would be statistically significant and quite
5 large in magnitude.

6 But I think the last point I want to make is that that
7 15 percent difference is based on this very restricted sample.
8 If you start to relax some of those sample restrictions, for
9 example, if you relaxed the five-year residency restriction,
10 then that 15 percent difference increases to 25 percent
11 difference, and that is statistically significant. Or if you
12 relax the biological relatedness difference, then it expands to
13 30 percent. Or if you relax both of them, it expands to 35
14 percent.

15 And so we feel like the most appropriate method for
16 comparing child outcomes across different family structure
17 types is to use the full sample of children. If we're
18 concerned about stability or biological relatedness, we include
19 those as controls in our regression, which is what we do. But
20 again, we base our analysis on, on all the children in the
21 sample.

22 MS. BRYA: Thank you. Your Honor, I have no further
23 questions for this witness.

24 THE COURT: Thank you. You may step down. Thank you,
25 very much, Doctor.

1 (Witness excused, 10:21 a.m.)

2 THE COURT: Next witness, please?

3 MS. HEYSE: Your Honor, we need just a few minutes to
4 set up PowerPoint.

5 THE COURT: Take your time.

6 MS. HEYSE: Okay.

7 (Brief pause.)

8 THE COURT: Everybody ready?

9 MR. POTCHEN: We're still waiting. But for the
10 record, we have marked the PowerPoint, this is demonstrative,
11 as State's Exhibit No. 20.

12 THE COURT: Okay. Great.

13 MR. POTCHEN: I have two copies.

14 THE COURT: Super. He'll be back in a second.

15 (Off-the-record discussion.)

16 THE COURT: While we're waiting, we might as well
17 swear our witness.

18 If you would be kind enough to stand and raise your
19 right hand.

20 (Witness is sworn.)

21 THE COURT: You may have a seat. And when you can, if
22 you can give us your full name and spell your last name,
23 please, Doctor.

24 THE WITNESS: Loren Dean Marks. M-A-R-K-S.

25 THE COURT: Okay. Thank you.

1 MR. POTCHEN: Your Honor, I believe we can start with
2 the qualifications' aspect.

3 THE COURT: Good. Whenever you're ready.

4 LOREN DEAN MARKS, Ph.D.

5 called as a witness at 10:30 a.m., testified as follows:

6 DIRECT EXAMINATION

7 BY MR. POTCHEN:

8 Q. So, Dr. Marks, can you tell us a little bit about your
9 educational background, please?

10 A. Yes. I received a Bachelor's and Master's degree from
11 Brigham Young University in family sciences and family sciences
12 and human development, and a Ph.D. from the University of
13 Delaware in 2002.

14 Q. And what area was your Ph.D. in?

15 A. It was in family studies.

16 Q. And can you please tell the Court a little bit about what
17 family science is and family studies entails?

18 A. Family studies is a hybrid, essentially, of psychology and
19 sociology. Psychology focuses on the individual. Sociology
20 tends to focus on social groups. And family studies is
21 somewhere in the middle. And we, and we analyze individuals
22 within the family context.

23 Q. Is family studies a long-standing specialty?

24 A. It's a discipline that's not as old as psychology or
25 sociology, but it's existed since about World War II.

1 Q. And you said you also had some education in human
2 development?

3 A. I do. My Master's degree involved human development as
4 well. I've had several human development related courses in my
5 Ph.D. program as well, but the title of the degree is just
6 family studies at the Ph.D. level.

7 Q. Okay. And do all of these fall into the umbrella of social
8 science?

9 A. They do.

10 Q. Can you please let the Court know what you're currently
11 doing?

12 A. I hold the Catherine Norwood and Claude Fussell Alumni
13 Professorship at Louisiana State University. I am an associate
14 professor with tenure, with a joint research and teaching
15 appointment. I also serve as Program Director for the Child
16 and Family Studies program at LSU.

17 Q. And how long have you been doing this?

18 A. I have been at LSU since 2002, so 12 years or so.

19 Q. And you indicated that you're tenured?

20 A. I am.

21 Q. And can you give the Court a little bit an overview of your
22 employment history, please?

23 A. In terms of my employment history, LSU was, was my first,
24 first real job out of graduate school. They had enough of a
25 sense of humor to take a chance on me. And I have -- I was

1 there for about six or seven years before receiving tenure.

2 I have been there another five years or so after
3 tenure, and have really enjoyed my time there. But that is,
4 that's my only full-time academic appointment that I've held.

5 Q. Okay. And can you give the Court an overview of some of
6 your teaching?

7 THE COURT: Can't hear? Which one of them? Both of
8 them?

9 Counsel there, you go.

10 BY MR. POTCHEN:

11 Q. Can you give the Court an overview of some of your teaching
12 assignments?

13 A. During my time at LSU, specifically I have, I have probably
14 taught a dozen to maybe 15 different courses at the
15 undergraduate and graduate level, including methods courses.
16 It will be a little bit more relevant today than many of the
17 other courses.

18 Q. Can you tell us about those courses, please?

19 A. I teach annually a graduate level research methods course
20 on qualitative research methods. I've taught one advanced
21 research methods course at the graduate level a few years ago.
22 That focused on quantitative methods, but qualitative methods
23 are my specialty within the "methods" heading.

24 Q. Okay. So does your teaching involve social science
25 research methods?

1 A. It does.

2 Q. Have you published any peer review articles?

3 A. Yes. I believe in terms of peer-reviewed articles and
4 chapters, my vitae lists 66 or so, and then some others that
5 are in press or forthcoming. I'm not sure the total.

6 Q. Have you published any of your articles in psychology
7 publications?

8 A. Yes. A fair amount have been published in either
9 psychology journals or psychology edited volumes or handbooks.

10 Q. And have you published in any sociology publications?

11 A. Yes. Summarily, the two, the two articles that I've, that
12 I've written that address the subject at hand today most
13 closely were published in Social Science Research, which is a
14 sociology journal. Actually, an interdisciplinary journal
15 across the social sciences.

16 Q. Okay. And we'll get to those articles in just a minute.

17 Have you been asked to review articles for others?

18 A. Yes. I recently went through and I served as a reviewer
19 for 23 different social science journals and some publishing
20 companies as well, including Oxford University Press.

21 Q. Have you reviewed articles by psychologists?

22 A. Yes.

23 Q. And have you reviewed articles by sociologists?

24 A. Yes.

25 Q. Have you given any presentations?

1 A. Many.

2 Q. Okay. Just generally, when or what topic?

3 A. Typically, my presentations at national conferences focus
4 on different aspects of parenting and/or marriage.

5 Q. And have you given or do you work in the area of sampling
6 or sampling methods?

7 A. Yes. Anyone who does primary research is involved in
8 sampling and sampling decisions.

9 Q. Do you have experience dealing with convenient samples?

10 A. Yes.

11 Q. And are you aware of the limitations regarding convenience
12 samples?

13 A. Yes.

14 Q. And do you deal with other types of research techniques?
15 And if so, can you explain a little bit about what those
16 techniques are?

17 A. Yes. I have also involved -- been involved in other
18 studies, not as many, that were quantitative where we strive to
19 push past convenience sampling.

20 I review studies as well, that involve a wide array of
21 sampling techniques, both from psychology and sociology.

22 Q. And have you received any awards recognizing your work?

23 A. I have.

24 Q. Can you tell the Court, please?

25 A. I have been author or co-author on I believe

1 three-sectional paper of the Paper of the Year Award, awards
2 from the National Council on Family Relations. I've also
3 received the Jack Shand Research Award from the Society for the
4 Scientific Study of Religion back in 2005. I think that's,
5 that's about it for research related awards.

6 Q. Okay. And do you have any special certifications?

7 A. One. I'm a, or I earned a certified Family Life Educator
8 certification in 2004, I believe, from the National Council on
9 Family Relations.

10 Q. What is a family life educator?

11 A. It means that across ten different competence areas, that
12 you've received a sufficient training to comment on, on those
13 topical areas and to address them in a teaching setting.

14 Q. I would ask you to turn to the book right next to your side
15 there. And if you look at Exhibit 16, can you please describe
16 what that is?

17 A. It appears to be a copy of my curriculum vitae.

18 Q. And is everything on there true and accurate to the best of
19 your knowledge?

20 A. To the best of my knowledge, yes.

21 MR. POTCHEN: Move to admit State's Exhibit 16,
22 please.

23 THE COURT: Any objection?

24 MS. STANYAR: No objection.

25 THE COURT: It's received.

1 (State's Exhibit #16 received, 10:37 a.m.)

2 BY MR. POTCHEN:

3 Q. Dr. Marks, what are you going to be providing an expert
4 opinion on today?

5 A. My expert opinion will focus on my article that I published
6 in Social Science Research in 2012, that addresses the 2005
7 American Psychological Association's brief on lesbian and gay
8 parenting.

9 Q. And can you explain what you did to review this data?

10 A. I can. I read the 2005 APA brief -- if it's all right,
11 I'll just abbreviate to that, that form from here out.

12 I reviewed the 2005 APA brief for the first time in
13 the late fall of 2009. It had been around for a while,
14 obviously, but that was my first time reading through. And as
15 I did so, I was, I was struck by the strength of language that
16 was used in the claims. Phrases like "none" or "not a single
17 study"; that, that seemed rather strong to me.

18 Now, most of us are taught as social scientists in
19 graduate school to avoid absolutist statements that don't allow
20 room for caveats and so forth.

21 Q. For the record, is this the APA statement which states,
22 "not a single study has found children of lesbian or gay
23 parents to be disadvantaged in any significant respect relative
24 to children of heterosexual parents"?

25 A. It is. I believe that's the version on page 5 of the APA

1 brief.

2 Returning to point, I found the language strong and
3 lacking caveats, which I, I found unusual, particularly for a
4 brief that was representing a large body of social scientists.

5 Q. And can you explain why this struck you, from a social or
6 family scientist?

7 A. It struck me for a number of reasons. I mentioned one
8 briefly, that we typically avoid absolutist language as social
9 scientists. I still slip and it usually costs me.

10 But in addition to that, the social world is complex.
11 And there, there are frequently exceptions, even when there is
12 a rule. Further among well educated, intelligent people, I
13 think that there is considerable room for difference of opinion
14 based on extant data. And I didn't see that kind of latitude
15 allowed in the document and, in particular, in the statement
16 that you just read.

17 As a result, I decided to, to take a look at, at least
18 a few of the studies that the APA cited to buttress this claim.

19 Q. Okay. You indicated that you began looking at this in
20 2009. Why did you begin looking at it then?

21 A. I was involved as a witness in the *Perry vs. Schwarzenegger*
22 case, the Proposition 8 case. And my charge was to review and
23 write about literature that involved comparisons of intact
24 marriage-based families and their children with other family
25 forms.

1 I did not, in that, in that report address same-sex
2 families and their children, but came across, during that same
3 period of time, the APA brief that I mentioned, and out of
4 curiosity, wanted to see how they compared.

5 Q. Did you do this research for the *Perry* case?

6 A. No. I did begin it while the *Perry* case was still in
7 session. But I began the work then and continued it over the
8 course of about two and a half years or so.

9 Q. So you did this work on your own?

10 A. I did. It was independent, non-funded research.

11 Q. "Non-funded" means you didn't get paid for this research?

12 A. No.

13 Q. That is correct, that's what it means?

14 A. Pardon me. Correct. I was not paid.

15 Q. So the research that you did independently on the APA brief
16 was separate and outside of any litigation; is that right?

17 A. Yes.

18 Q. And have you heard of the term "scientific groupthink"?

19 A. I have.

20 Q. And what is that?

21 A. Scientific groupthink is an idea that has been presented
22 by, by numerous psychologists and social scientists in recent
23 years, such as Klein and Stern, Inbar and Lammers, Richard
24 Redding.

25 The idea behind scientific groupthink is that in the

1 1960's, for example, the liberal-to-conservative ratio among
2 psychologists was about 3-to-1. That balance shifted, not
3 reversed, but continued in that direction until in the presence
4 in research as recent as 2012 and 2013. Inbar and Lammers
5 found in a study dealing with 800 psychology professors, that
6 on social issues in particular, this is page 497, that there
7 was a, a pronounced liberal lean on social issues in
8 particular.

9 Of the 800 professors, who were interviewed,
10 psychology professors, 5.5 percent identified themselves as
11 moderate, 3.9 percent identified themselves as conservative,
12 with, if my math is right, just a little over 90 percent
13 identifying with, with the liberal side on most social issues.

14 That leaves us with nearly a 23-to-1 conservative to,
15 or liberal-to-conservative ratio among the psychologists
16 surveyed.

17 The concern here by Redding, and by Inbar and Lammers,
18 who are, Inbar and Lammers are themselves liberal, is that as
19 the balance shifts that heavily in the direction of, of one
20 world view, that it becomes increasingly difficult and costly
21 socially to express an alternative opinion.

22 Q. And did this notion of scientific groupthink play any part
23 in your decision to research the statements raised in the APA
24 brief?

25 A. It certainly did, the idea, if not the concept itself.

1 The APA, the American Psychological Association, in
2 part in reaffirmation it seems by extension of the 2005 brief,
3 for example, as a case study, voted, its board, 157 to zero in
4 August of 2011 in support of same-sex marriage and in effect,
5 at least implicitly affirming the so-called no difference
6 hypothesis that the APA expresses on page 5.

7 This, although it came a couple of years after I had
8 read the APA brief, again, struck me. If, if the vote had been
9 117 to 40, if it had been 127 to 30, I think it would have been
10 much less striking to me. But as a social scientist and an
11 administrator over a group, a small group of social scientists
12 of five, I find it's difficult to get unanimity over even some
13 mundane issues among the five of us, much less a controversial
14 one.

15 At the school level, where there are about 15 social
16 scientists involved, it becomes exponentially more difficult to
17 gain consensus.

18 The figure of 157 to zero struck me as anomalous, both
19 then and now. And in my mind, calls to mind at least two
20 competing hypotheses. One is that the body of research in this
21 area is rigorous enough, substantial enough, that no reasonable
22 psychologist would dispute it. 157 to zero is a staggering
23 vote. And that only a few fringe dissident voices would oppose
24 that, I believe that that's the, the opinion expressed by one
25 of the plaintiffs' experts. I understand where that, that

1 perspective is coming from.

2 Another possibility, going back to this idea of
3 scientific groupthink, is that at some point, between 1960 and
4 the present, particularly with respect to social issues, it has
5 become costly enough, in social or other ways, that it's
6 difficult to find someone who will express an opposing opinion.

7 Q. Now, did you develop an approach for looking at the APA
8 brief and the claims made therein?

9 A. Initially, I was just reading a few of the studies out of
10 curiosity. But as I, as I got four, six, eight, ten studies
11 deep, I started to notice some things that troubled me a little
12 bit, made some notes of them, and began to be more systematic
13 and take notes, write down numbers of sample size, et cetera,
14 of certain characteristics of the studies that were cited.
15 Those now appear as Table A in my 2012 article and also appear
16 in full in my, my expert report.

17 The 59 studies I looked at, I identify a number of
18 different issues, including the sample size for the way the
19 lesbian and gay --

20 Q. Actually, we'll get into --

21 A. Okay.

22 Q. -- the details of it. At this point, you developed some
23 questions to address; is that correct?

24 A. I did.

25 Q. And what were those six -- I'm sorry. What were those

1 questions?

2 A. I originally had about ten. And some of those elude me,
3 but I trimmed it down to six questions that are featured in my
4 expert report, seven in the article.

5 Essentially, in short, those questions were number
6 one, how representative were the same-sex families who were
7 sampled in the studies.

8 Number two, were comparison heterosexual group samples
9 featured in each of these studies to, to provide a point of
10 reference for any claims that were made.

11 Number three, if heterosexual comparison groups were
12 used, what were the characteristics, the more specific
13 characteristics of those heterosexual comparison groups?

14 The fourth was a reference to the page 5 APA statement
15 that you've already referenced, which reads verbatim, not a
16 single study, et cetera; namely, were there in fact,
17 contradictory studies that were marginalized or overlooked or
18 minimized.

19 The fifth was in terms of the outcomes that were
20 examined, what was, what was the nature? Were these child
21 outcomes? Were these adolescent outcomes? Were these adult
22 outcomes? And, and in the back of my mind, I was also
23 considering something called soft versus hard variables that,
24 that we can come back to later.

25 Q. Okay.

1 A. The sixth question was were these outcomes that were
2 featured long-term outcomes or brief cross-sectional outcomes
3 from just one given point in time.

4 Those, I believe, cover roughly the six in my expert
5 report. The seventh included a power, a statistical power
6 issue as number seven, which essentially relates to the number
7 sampled, how many people were sampled, what was the size.

8 Q. Okay. Does most of your research deal with process and
9 interaction?

10 A. Yes. Most of my research deals with, with processes and
11 interactions that take place in marriage and parenting.

12 Q. And is process and interaction connected in any way to
13 outcomes?

14 A. Yes, closely, I think. To, to illustrate, for example, if
15 we were looking at education as a variable of interest, a
16 related process might be the interaction between parents and
17 children doing homework each night, or progression through
18 schools, you know, grades 1 through 8, or 9 through 12.

19 The outcome and example, the fixed outcome that would
20 be verifiable by a third party, a so-called hard variable,
21 might be graduation from high school. The processes lead
22 ideally to critical outcomes that are of interest.

23 Q. So prior to doing your 2012 paper, did you have experience
24 reviewing studies that looked at outcomes?

25 A. Yes.

1 Q. And what was that experience?

2 A. Again, I mentioned that I've served as a reviewer for both
3 psychology and sociology journals and family studies as well,
4 naturally. Some studies deal with outcomes. Some deal with
5 processes. A few deal with both.

6 Q. Okay. And can you tell the Court what you did regarding
7 the methods that you followed in preparing your review of these
8 studies?

9 A. In preparing my, my review of the studies, I wanted to look
10 at a number of different issues. One included the sample size
11 of the gay and lesbian samples that were used. One included
12 the size of heterosexual samples, if they were used. Other
13 issues, as I mentioned, included the type of outcomes that were
14 being looked at, and whether the, the study had a sufficient
15 size or statistical power to be making strong claims.

16 Another very important issue in terms of sampling is
17 not just the size, but whether these samples were random,
18 meaning non-biased, if they were representative of the broader
19 population, or if, as is the tendency with many convenience
20 samples, if they favored a certain portion of the broader
21 population.

22 Q. And what else went to the preparations of your opinions
23 that you'd like to present here today, or your paper?

24 A. The APA brief, pages 23 through 45, lists 59, or actually
25 67 studies that, that they claim relate directly, empirically,

1 to lesbian and gay parents and their children.

2 Eight of those studies were unpublished at that point
3 in time. I eliminated those eight and read the remaining 59,
4 and formulated claims by carefully examining those studies in
5 connection with some of the issues that I just mentioned.

6 I've continued to read studies, an additional 40 plus
7 since then. My related study count is, is over 100 at this
8 point.

9 In addition, as I formulated what became my 2012
10 article, I sought informal feedback from, from colleagues
11 around the country. I'm not a fan of solo authored work on the
12 whole, because we expose ourself to blind spots that all of us
13 have, which is something that I've written about in my work. I
14 thought it was important to get as much feedback as I could
15 informally about things I had overlooked, about blind spots,
16 about weak spots.

17 And in the process of receiving feedback, informal
18 comments from colleagues around the country, I worked through
19 33 major revisions of the paper that was published in 2012,
20 which is far more than I typically do. I'm typically much more
21 lazy than that.

22 Q. Was your article peer reviewed?

23 A. It was.

24 Q. Okay. And when was your study or article accepted for
25 publication?

1 A. I believe it was accepted in March of 2012. I submitted it

2 I believe in October, some time in the fall of 2011.

3 Q. And was it finally published, and if so, what journal?

4 A. It was published in 2012, I believe in July. Social

5 Science Research was the name of the journal.

6 Q. Okay. And is that a nationally recognized journal?

7 A. It is.

8 MR. POTCHEN: Your Honor, at this point, I'd like to
9 qualify Dr. Marks as an expert in family studies and human
10 development, specifically to discuss his article.

11 MS. STANYAR: Excuse me. Families?

12 THE COURT: Is there an objection?

13 MS. STANYAR: I'm sorry. I didn't hear. Family
14 studies?

15 MR. POTCHEN: And human development.

16 MS. STANYAR: Human development. No objection.

17 THE COURT: Any objection or voir dire?

18 MS. STANYAR: No objection and no voir dire.

19 THE COURT: Fair enough. You may proceed.

20 BY MR. POTCHEN:

21 Q. Okay. Can you turn to the first slide?

22 So generally, before we get to the details, what will
23 you be testifying about today?

24 A. The primary point that I'll be testifying is at this point,
25 particularly in 2005, I will be focusing on studies that

1 preceded 2005 in the APA brief. That the research to that
2 point are not strong enough to justify a strong generalizable
3 statement or a claim, either in the yes or no direction in
4 terms of the no difference hypotheses offered on page 5.

5 The available data are, with very, very few
6 exceptions, not generalizable data.

7 Q. Before we get into the six questions, can you tell us a
8 little bit, you've already explained some of it, but can you
9 explain convenience samples?

10 A. Convenient sampling in the social science is -- a
11 convenient sample involves very much what it sounds like. You
12 sample those who are convenient. You grab the low-hanging
13 fruit. You, you get those who are most easily accessible.

14 Q. Are there any limitations with using convenience samples?

15 A. There are. The benefits, and I've used it myself, are that
16 it's the easiest way to go, typically. The pronounced cost
17 among many others is that it has exceptionally low levels of
18 external validity, which is often referred to as
19 generalizability, which means that while you can make claims
20 that relate to the specific sample or group that you have, that
21 you have investigated, the claims cannot be broadened beyond
22 that specific group, even to the population that it represents,
23 much less the larger population.

24 Q. Is there a potential for biased by volunteers?

25 A. There is a high, there is a high potential for bias by

1 volunteers in convenient sampling.

2 Q. In your opinion, is there a better method to make
3 generalized observation for a larger population?

4 A. Well, to go back to what I said a minute ago, you cannot
5 make a generalizable claim of any kind, based on, on convenient
6 sample, not from an objective scientific perspective.

7 The hope is -- I think in most domains of social
8 science, we have to begin somewhere. And typically, you begin
9 with convenient sampling. The hope is that, as a discipline
10 matures, you move from convenient samples, eventually to a
11 weighted probability sample, and eventually and ultimately to a
12 large, random representative sample. That can take years, it
13 can take decades, but that is the aim that we seek.

14 Table B in my article lists 15 such studies that
15 relate to marriage-based intact families and outcomes of
16 children from those families.

17 Q. In social science research, is it important to have clearly
18 defined comparison groups before drawing conclusions regarding
19 differences between two groups?

20 A. Very much so. For example, Mark Strasser, who is a
21 same-sex marriage advocate, wrote in a 2008 --

22 MS. STANYAR: Objection.

23 THE COURT: What's the objection?

24 MS. STANYAR: His report addresses literature that
25 stops at 2005. And we've been under the impression that's,

1 that's what we're addressing here. Even as, as --

2 THE COURT: I think he's giving us an example in terms
3 of not the report and so forth, but in terms of the, he had a
4 different word for, the classification. I think that's what
5 he's doing. So he's only using it as an example and not as a
6 part of his analysis.

7 Okay. You may continue.

8 THE WITNESS: Thank you.

9 THE COURT: Would you like to be called doctor or
10 professor?

11 THE WITNESS: Either is fine, sir.

12 THE COURT: Okay. Is there -- some of our experts, I
13 never know what to -- either one, doesn't make a difference?

14 THE WITNESS: Doc is good enough.

15 THE COURT: I'll call you "doc." That's good.
16 Thanks.

17 THE WITNESS: Thank you. And with respect to, the
18 2008 Strasser study is one that I cite in my article and expert
19 report specifically. I will -- I don't plan to, to cite
20 studies that relate directly to gay and lesbian parenting that
21 are not in the study or article.

22 Going back to, to Professor Strasser, on page 37, he
23 points out, again, bearing in mind that he, himself, is a
24 same-sex marriage advocate, that the LGBT population, very
25 widely, in their accepted views, attitudes and practices, and

1 for this very reason, it would be misleading to cite a sample
2 of urban gay men from southern California, as though they
3 represented gay men nationally. Again, that's on page 37 of
4 his work there.

5 That, that's a well-made point. It's part of the
6 point that concerns me with many of the studies. They don't
7 cite -- of the 59, very few deal with gay men. Only eight of
8 the 57, or 59 studies actually do directly with children's
9 outcomes. But the, the point being that you need a nationally
10 representative sample to make national claims.

11 I also mention in my article that it seems reasonable
12 to, to ask that when we're informing state and national policy,
13 that we do have at least some nationally representative samples
14 that are informing our decisions.

15 BY MR. POTCHEN:

16 Q. What are considered soft variables and what are considered
17 hard variables?

18 A. In terms of soft and hard variables, which was an issue of
19 concern working through the, the outcomes featured in the 59
20 studies, a so-called soft variable is one that is subjective,
21 that's often arrived at through self-report. It may be one
22 that you and I would differ significantly on, if we were
23 reporting on a third issue, third party issue. This would
24 include things like psychosocial adjustment, gender identity,
25 et cetera. Both of those are, are things that are repeatedly

1 assessed and addressed in the studies featured in the APA
2 brief. Twenty of the 59 studies, for example, deal with gender
3 related issues.

4 A hard variable, or as I would prefer to call it, a
5 third party verifiable outcome or variable would be one that,
6 with almost 100 percent consensus, scientists could agree on.
7 Examples would include a high school graduation, divorce, did a
8 divorce take place or not. Mortality, that would be a pretty
9 difficult one to disagree over, et cetera. You get the idea.

10 I'm not saying that all studies need to deal with hard
11 third-party verifiable variables, most do not. But they have a
12 unique strength in terms of their objectivity. And they serve
13 as a check and balance, if you will, for work that takes place
14 on soft variables.

15 Q. I'm going to ask you to turn to --

16 (Coughing in the courtroom.)

17 COURT REPORTER: I'm sorry. Can you repeat that?

18 BY MR. POTCHEN:

19 Q. I'm going to ask you to turn to State's Exhibit 17 in that
20 book next to you.

21 A. I'm there.

22 Q. And can you please tell the Court what that is?

23 A. This is my 2012 article, published in Social Science
24 Research entitled, "Same-Sex Parenting and Children's Outcomes:
25 A Closer Examination of the American Psychological

1 Association's Brief on Lesbian and Gay Parenting."

2 MR. POTCHEN: Move to admit State's Exhibit 17.

3 THE COURT: Any objection?

4 MS. STANYAR: No objection.

5 THE COURT: Received.

6 (State's Exhibit 17 received, 11:07 a.m.)

7 BY MR. POTCHEN:

8 Q. And again, the statement that you sought to review is the
9 APA statement, "not a single study has found children of
10 lesbian or gay parents to be disadvantaged in any significant
11 respect relative to children of heterosexual parents." Is that
12 correct?

13 A. Yes. I think that that, that that statement captures many
14 of my concerns.

15 Q. Now, are you aware if similar statements have been issued
16 from other professional organizations?

17 A. They have. The 2005 APA briefs stated mission, as assessed
18 by Richard Redding, in a 2008 article that's also directly
19 cited in my article and expert report, mentioned that the
20 mission of the brief was of an advocacy nature.

21 The statement made by, by the APA certainly has been
22 effective. It's been difficult to find a law case involving
23 same-sex parenting or same-sex marriage issues that doesn't
24 feature, feature the 2005 brief prominently. I think it was,
25 in many ways, a model for statements that have followed from

1 other organizations.

2 Q. Now, the APA brief and statement came out in 2005; is that
3 right?

4 A. It did.

5 Q. And are you aware that the first state in this country that
6 had recognized same-sex marriage was in 2004?

7 A. Yes. Massachusetts, I believe.

8 Q. And when you mentioned an advocacy bent to the statement,
9 what do you mean by that?

10 A. Well, advocacy was, was their word. I don't pretend to, to
11 speak for APA.

12 Q. I'm sorry. How did you understand it?

13 A. I understood advocacy in terms of the statement --

14 MS. STANYAR: I object. I think at this point, rather
15 than have his interpretation, if they want to introduce the
16 brief, that's fine with me. But I, I don't know that we want
17 to have him interpret.

18 THE COURT: I think he can testify to it, because he
19 indicated in his initial examination that something triggered
20 his, his mind that he wanted to do this, and he said advocacy
21 was one of those. He may, how he interpreted it and caused him
22 to conduct his research and to write his articles, he may
23 testify.

24 MR. POTCHEN: Thank you.

25 THE WITNESS: The statement on 2000 -- or on page 5 in

1 the 2005 brief, again, as I mentioned earlier, struck me as, as
2 a bit absolutist, and seemed to take a fairly strong advocacy
3 related stance.

4 BY MR. POTCHEN:

5 Q. Let's go through -- well, as I indicated or as you
6 indicated, excuse me, this relied on 67 manuscripts; is that
7 correct?

8 A. It did. Eight were not published, leaving us with 59 that
9 I examined.

10 Q. Okay. Let's go through the six questions and your findings
11 and how you addressed this. Okay?

12 The first question, what did you find regarding how
13 representative and culturally, ethnically and economically
14 diverse were the gay and lesbian households in the published
15 literature behind the APA brief?

16 A. What I found was that repeatedly, and by the reports of
17 same-sex parenting researchers themselves, that the group that
18 had been repeatedly selected to represent, to represent all
19 same-sex parents was privileged, well educated, middle to upper
20 class, and racially white lesbian mothers.

21 Q. Of the 59 published studies, how many of the studies are
22 based on convenient samples of less than 100 participants?

23 A. Forty-five of the 59 studies are based on convenient
24 samples of less than 100, about three quarters roughly.

25 Q. Did any study strike you as unusually small?

1 A. There were several that struck me as unusually small. One
2 in particular that comes to mind, is Wright 1998, that had a
3 sample of just five lesbian mothers with no comparison group.

4 Q. And are you familiar with Professor Mark Strasser?

5 A. I know his work as mentioned earlier, but I do not know
6 him.

7 Q. Okay. And can you explain or identify what are his -- how
8 his work might come into the size or sampling and how that may
9 affect your opinions?

10 A. As I mentioned earlier, he said that it is inappropriate to
11 assume that a small sample from one part of the country, or
12 featuring a demographic tendency, be generalized to represent
13 the nation. Again, that's my concern here, that we're dealing
14 with homogenous sampling.

15 Q. Any other aspects regarding the first question that you
16 would like to testify about?

17 A. As I looked closely at the, at the samples of the studies,
18 I explicitly note a number of studies under, under the heading
19 of question 1, that explicitly stated that they used 100
20 percent white samples. There were about another dozen or so
21 that are --

22 Q. White samples, you're referring to race, is it?

23 A. Racially white samples.

24 Q. Okay.

25 A. I mentioned that many others do not make a statement that

1 that's the case, but *de facto* do not mention a single minority
2 participant, racially minority participant in their studies.
3 And there are another 12 that acknowledge almost all white
4 samples.

5 Q. And what you found regarding question 1, did that cause you
6 any concerns as a scientist?

7 A. It did, on a number of levels. Because we're dealing,
8 again, with a privileged, relatively privileged sub-sample of
9 the sample of same-sex parents, again, well educated, wealthy,
10 racially privileged.

11 I was also struck by the very small number of studies
12 involving gay fathers directly in terms of their children's
13 outcomes. On the whole, as I moved away from question 1, it
14 appeared to me that privileged lesbian mothers had repeatedly
15 been used to represent all same-sex parents across
16 socioeconomic strata, across race, and even across sex, meaning
17 gay fathers as compared to lesbian mothers.

18 Q. Okay.

19 MR. POTCHEN: For the Court's convenience, we have
20 attached the Table 1 that he'll be referring to. He'll
21 identify a lot of names that, the spellings of the names and
22 what the studies are, are attached to the PowerPoint as well.
23 So you'll see them attached.

24 THE COURT: Thank you, very much. And we have a copy
25 for our court reporters?

1 MR. POTCHEN: Yes. I'm assuming that she would ask
2 for one, so we'll get one for her.

3 THE COURT: That's excellent. Makes it much easier.
4 Thank you, very much.

5 BY MR. POTCHEN:

6 Q. The second question, what did you find regarding how many
7 studies of gay and lesbian parents had no heterosexual
8 comparison group?

9 A. As I, as I took a closer look in terms of comparison
10 groups, making the note that if your comparison -- comparing
11 any two groups and making claims, it's important to have
12 representatives of, of both groups included in your study.

13 I went through, and of the empirical studies cited by
14 the APA as directly relating to gay and lesbian parents and
15 their children, there were 59, and 33 of the studies did
16 include a heterosexual comparison group; twenty-six did not.
17 44.1 percent, almost half of the conducted studies, again,
18 included no comparison group of what, whatever size.

19 Q. And as a scientist, did this cause you concerns?

20 A. In my article, I, I stated that although having that
21 smaller number of studies does not negate the APA's claim, it
22 does clearly dilute it considerably, since we're left with,
23 with only about a little more than half of the original sample
24 of studies.

25 Q. Okay. Third, what heterosexual comparison groups were used

1 and what were the characteristics of those groups?

2 A. This was, this was one of the first issues that, that
3 struck me as, as I read through the studies.

4 Directly in my, in my article, I mentioned that 11 of
5 the 33 comparison studies explicitly mention that they used
6 single mothers, typically single divorced mothers as the
7 heterosexual comparison. There were an additional two studies
8 by Bigner & Jacobsen in 1990 or 1989, A and B, that used 90.9
9 percent comparison group of gay fathers.

10 With that said, that leaves us with at least 13 of the
11 33 studies that used exclusively, or almost exclusively single
12 parent, single-parent heterosexual parents as the group
13 representing all, all heterosexual parents.

14 If we look at the, the remaining 20 studies, beginning
15 with 33 comparison studies, removing those 13 that I just
16 mentioned, we're left with 20.

17 It's difficult reading through those 20 studies that
18 remain, in many cases, who or what the characteristics of their
19 comparison group were. Many times, you come across generic
20 phrases such as parents, or mothers or couples. For example,
21 with couples, we are often not told if these were cohabiting
22 couples, if these were remarried couples or intact
23 marriage-based families.

24 This is, this is significant, given the fact that
25 there's a, a large body of, of studies based on large

1 representative samples, 15 of which are listed in Table B that
2 mention or that find significant differences in a number of
3 different outcome areas between children from intact
4 marriage-based families and other family forms, including
5 divorced, stepfamily, and single-parent families.

6 Q. The fourth question that you looked at was does a
7 scientifically viable study exist to contradict the conclusion
8 that not a single study has found children of lesbian and gay
9 parents to be disadvantaged.

10 And what did you find regarding that particular
11 question?

12 A. There are several. Many of those --

13 Q. Several that what?

14 A. There are several that would contradict this claim by the
15 APA. Many of those, and in my opinion, many of the best of
16 those, post date 2005. And I don't plan to, to address those
17 today.

18 But in terms of those that predate 2005, it would have
19 been fair game for the APA to cite and reference. Two were of
20 specific interest to me: Sarantakos 1996 and Sarantakos 2000.

21 Q. And why did you find those two studies to be of interest
22 and scientifically viable?

23 A. The, the 2005 APA brief, to be clear, does mention
24 Sarantakos 1996, but it is relegated to a footnote. And if you
25 look at the, the empirical study section, pages 23 to 45 that

1 contains annotated bibliographies and brief summaries for, for
2 most of the articles, there's simply a note that says no
3 abstract available, and the key findings of that article are
4 not discussed.

5 If we look closely at the Sarantakos 1996 article, we
6 find, despite the fact that it is like any social science study
7 with its limitations and with its flaws, the largest in terms
8 of sample size of any study cited in the APA brief that focuses
9 specifically on children's outcomes, the total sample of the
10 Sarantakos study is 174. There are 58 lesbian and gay parents,
11 47 lesbian, 11 gay, I believe, 58 cohabiting and 58
12 marriage-based families in the study that are involved in
13 what's called a matched pair design, where those families are
14 matched according to, to relevant socioeconomic information,
15 income, et cetera.

16 So from that standpoint, although there were some
17 studies that were larger in the APA brief, they looked at
18 things like adult self-reports of coming out as gay and
19 lesbian. But of those that looked specifically at children's
20 outcomes, it was the largest.

21 Other strengths of the study, from my view included
22 the point, and the APA cited this as a weakness of the study,
23 that the study relied primarily on teacher reports as opposed
24 to parent reports.

25 As an aside, and this is a reference from my article

1 as well, psychologists Roese and Olson, 2007, have pointed out
2 that, that we tend to over-report on our own children; that
3 that's a less reliable measure than getting a more, a more
4 objective call or measure from third parties.

5 In my view, teacher reports as opposed to parent
6 reports, parent reports were used in the majority of the
7 studies, was a pronounced strength of the study.

8 Another, another strength that struck me about the
9 Sarantakos 1996 study was that he involved a research model of
10 triangulation.

11 Q. And what is that?

12 A. Triangulation is, in effect, a system of checks and
13 balances that one can involve in research that involves
14 measuring the same phenomenon or outcome from different
15 vantages, using different instruments, different perspectives
16 and so forth.

17 The Sarantakos study appeared to use at least four.
18 Only about five other studies in the entire APA used that same
19 number of multiple perspectives to measure single, a single
20 outcome.

21 There were, there were some other strengths as well,
22 but all in all, I, I was, I was impressed with the strength of
23 the overall design and was not surprised to find out later that
24 Sarantakos had offered a multivolume, a three volume set on
25 research methods in the social sciences.

1 Q. You had mentioned the Sarantakos 2000 study as well. Is
2 that any different than the '96 study or?

3 A. It is. It seems to incorporate the 1996 study, but is much
4 bigger. Also, the, the 1996 Sarantakos study involved grade
5 school aged children.

6 The Sarantakos 2005 -- or 2000 study involved some
7 additional strengths not available in the 1996 study. One of
8 those was that it, it looked at children raised in gay and
9 lesbian homes from a young age, all the way up to 18 years and
10 older. So we're no longer constrained to just a grade school
11 sample.

12 Another is that it included a total of 181 children
13 from gay and lesbian parents in homes instead of just 51. So
14 the sample size roughly tripled.

15 Also of interest to me, was the fact that the
16 Sarantakos study examined, what I refer to in my article and
17 expert report, as societally critical outcomes.

18 By societally critical outcomes, I, I mean things
19 like, for example, drug and alcohol abuse, particularly across
20 time; divorce rate as adults; long-term collegiate academic
21 achievement and labor force contribution.

22 Q. I'm sorry to interrupt. Are those the third party
23 verifiable or hard variables you were talking about earlier?

24 A. In many cases, these would be at some level third party
25 verifiable. Although, they are third party verifiable, they

1 are also very important to, to the national economy.

2 Part of my critique of the 59 studies was that, as I
3 mentioned earlier, 20 of the 59 studies, for example, examined
4 gender. I don't mean to imply that gender is not important,
5 but it seems to be complicit in overlooking many other, at
6 least equally important and relevant variables, like those that
7 I just mentioned.

8 The Sarantakos study examined not just one. And his
9 1996 study examined education, which is one of those that I
10 mentioned, but he looked at, for example, truancy, sexual
11 behavior, deviance, criminality, drug and alcohol use, and
12 other, other variables that are of significant interest, and
13 reports his findings regarding those issues on page 131 of his
14 2000 book.

15 Q. And you actually indicated earlier that the '96 study was
16 relegated to a footnote, and the 2000 study was completely
17 absent from the APA brief.

18 Have you heard arguments regarding the reliability of
19 those two studies?

20 A. I haven't heard a lot of discussion of any kind regarding
21 the 2000 study.

22 Q. Okay.

23 A. A critique of the '96 study, I mentioned earlier that one
24 critique was that it used teacher reports instead of parent
25 reports, which I tend to view as a strength.

1 Another very fair critique, I think, of the study is
2 that as he states on page 30 of his article, many, and probably
3 most of the children in the lesbian and gay parents at homes,
4 it experienced a family transition, or a divorce at some point
5 in their life. We know that transitions, as a general rule,
6 are not helpful for children.

7 I think that that's a fair critique. The same
8 critique, by the way, would apply to many of the other 59
9 studies in the APA brief.

10 Q. So are these critiques, in your mind, sufficient to
11 completely discredit this Sarantakos studies?

12 A. No. Certainly there are, there are worthwhile things we
13 can gather from the 1996 study.

14 The 2000 study as I mentioned, in my view, is, is far
15 more valuable. And by extension, it's even more striking to me
16 that it's not, it's not referenced at all in the 2005 APA
17 brief.

18 Q. And to be clear, what was the findings in the '96 and 2000
19 Sarantakos studies?

20 A. In the 1996 Sarantakos study, he examined nine different
21 dimensions -- many were academic, others were social -- and
22 found significant differences between intact marriage-based
23 families and same-sex parented families on eight of the nine
24 dimensions.

25 As an aside, although there was a very small

1 difference, same-sex parented children actually fared higher in
2 one dimension, that was social studies.

3 Q. What were the eight other dimensions?

4 A. We can take a look, if you like.

5 Q. Sure. That would be great.

6 A. Listed on 742 of my article, we have language achievement,
7 mathematics achievement, social studies achievement, sports
8 interest and involvement, sociability and popularity, school
9 and learning attitude, parent/school relationship, support with
10 homework, and parental aspirations.

11 Again, I think that these are, are worth noting. They
12 relate to a critical societal outcome of education. But I
13 think they are far less significant than many of the critical
14 findings in the 2000 Sarantakos piece.

15 My primary purpose in, in presenting this piece, at
16 some length in my article, was to clearly and repeatedly
17 demonstrate that there certainly were exceptions to the rule
18 that was being claimed on page 5.

19 Q. Okay. So there were studies out there finding poorer
20 outcomes for children being raised by same-sex couples,
21 correct?

22 A. Yes.

23 Q. Okay. Now, the fifth question that you had were what type
24 of outcomes had been investigated.

25 A. We have them up on the screen. Well, actually --

1 Q. For the record, we have to identify what they are.

2 A. Okay. Actually, could you restate the question one more
3 time?

4 Q. Yes. What did you find regarding outcomes? I'll do it
5 real broad.

6 A. In terms of outcomes, I noted earlier that the most often
7 studied outcome seemed to relate to gender. Twenty out of the
8 55 or 59 studies related to gender, and that, almost
9 conspicuously absent by comparison were the following critical
10 societal concerns. We see here, I list these in the article
11 and my expert report: Health, mortality and suicide risks;
12 drug and alcohol abuse; collegiate education and/or labor force
13 contribution; serious criminality and incarceration; collegiate
14 education and/or labor force contribution. It looks like we've
15 doubled up there. And early sexual activity and early
16 childbearing, and also subsequent divorce as adults.

17 These are, number one, very important from a societal
18 standpoint, as I already indicated. But if we look closely and
19 think like scholars for a minute, we will also note that these,
20 these outcomes are not child outcomes. That these particular
21 outcomes are not going to be optimally observable in most cases
22 until late adolescence or even early in mid-adulthood in many
23 cases, which is a point of significant concern when we consider
24 that the vast majority of the children involved in the 59
25 studies were, were rather young.

1 Q. So regarding the APA brief's statements and your findings
2 regarding question 5, did that raise any concerns to you?

3 A. It did. Primarily because in these, in these seven or
4 eight areas of societal level concern, we know, we know very,
5 very little or next to nothing, either way, about how same-sex
6 parenting may influence or not influence these, these very
7 important considerations.

8 Q. And the sixth question that you sought to answer was what
9 do we know about long-term outcomes of children of lesbian and
10 gay parents. What did you find regarding that?

11 A. In some ways, this concern piggybacks off of the point that
12 I just made. If we, if we're assessing things, if we're
13 assessing things, for example, like education, the best we can
14 do if we're, if we're looking at grade school children is grade
15 school outcomes. If we're looking at middle school children,
16 well, that's, that's what we're limited by. But in many cases,
17 the most important outcomes of interest will come, will come
18 later.

19 What, what I found was that very, very few comparison
20 studies examine the critical societal outcomes during late
21 adolescence or early, early adulthood, and those, those that
22 do, tend to use very small convenient samples. None of those
23 are large and representative.

24 An exception to that regarding those critical societal
25 outcomes that were featured on the previous slide is the

1 Sarantakos 2000 study. But again, it was not featured at all
2 in the APA brief.

3 Something I failed to mention is that total sample of
4 181 children from same-sex parents would have made it, by far,
5 the largest children's outcome study in the APA brief, had it
6 been cited in the APA brief.

7 Q. In your studies of the samples, did you find to be an
8 average sample size that was used?

9 A. That's an interesting question. The total of, of all
10 sample sizes, and there's a little bit of wiggle room here, but
11 as I totalled up the samples for each of the 59 studies, the
12 total was 7,800. This, however, includes psychologists'
13 opinions, college students' perceptions, et cetera.

14 If we, if we narrow our parameters to what is of
15 interest and concern to us here today, and that is children's
16 outcomes, and I'm zeroed in on, we find a much, much smaller
17 sample size.

18 For example, we lose from the list of 59 studies, a
19 study by Morris, et al., 2002, which had a very large sample
20 size, 2,431, but it was based solely on adults' reports of
21 coming out gay or lesbian, not on children's outcomes, even in
22 an indirect sense.

23 Eliminating studies like that, when zeroing in on
24 children's outcomes, I found based on my work in Table A, that
25 there are a total of only about 900, slightly over 900 children

1 represented.

2 If we take a closer look still, we find that many of
3 the researchers or, or research advocates in some cases, use
4 the same small, non-representative convenient samples, seem to
5 use them repeatedly. If we trim those duplicate studies off,
6 as well as the Sarantakos 1996 study that I, that I mentioned a
7 minute ago, which was criticized heavily by the APA, then we
8 end up with a total of 685 children, only about 8.8 percent of
9 the total initial sample size of 7,800.

10 Bearing in mind that of those 685, those are not a
11 random representative sample, but those are based on small,
12 non-representative convenient samples.

13 By comparison, if you look at Table B, the very
14 smallest study that I cite there, based on representative data
15 is, I believe, Ellis et al., with a sample of over 700, meaning
16 that all of those comparison studies involving children's
17 outcomes, and there are 19 of them that we're left with of the
18 59, total less than the smallest nationally representative
19 sample or probability sample in Table B.

20 If we run the numbers on those 19, to conclude in
21 answer to your initial question, the average sample size of the
22 children of lesbian and gay parents is 36 in those particular
23 studies, which is, again, concerns me because that's only six
24 larger than what is typically considered the absolute minimum
25 that you would want to use in a scientifically viable study, an

1 "N" of 30.

2 Q. So to be clear, the APA is making a, in your opinion, a
3 bold statement about not a single study has found children of
4 lesbian or gay parents to be disadvantaged in any significant
5 respect relative to children of heterosexual parents. When you
6 boil everything down, they are talking about perhaps 19 studies
7 with an average sample size of 36?

8 A. Yes. And again, that eliminates the Sarantakos and
9 duplicate studies.

10 Q. Which found, actually, there to be problems?

11 A. Right.

12 Q. Okay.

13 A. But even with the most generous estimate of 900, 910
14 earlier, we're still looking at a fraction of the 7,800, less
15 than a thousand children when we boil it down. Again,
16 emphasizing if that is not a representative sample, it's a
17 conglomeration of small, and in many cases, privileged samples.

18 Q. Are you familiar with the term, "type II error"?

19 A. Yes.

20 Q. And what does that mean? And then, how is it relevant
21 here?

22 A. Type II error is relevant --

23 Q. What is it, first?

24 A. Well, in layman's terms, it's, it's failing to find the
25 needle in the haystack. It is concluding when you compare

1 Group A with Group B that no significant difference exists;
2 that you failed to find a difference between the two groups.
3 It does not mean conclusively, in any respect, that they are
4 the same. That would -- that takes very large samples to
5 claim.

6 It relates to us here in that it is possible to
7 conclude over, and over, and over again the two groups do not
8 differ in statistically significant ways from another one, when
9 in fact, they do. That would, that would comprise a type II
10 error. Hence, part of the danger of such small sample sizes.

11 Q. Table 1, if you can flip a few slides. Can you kind of go
12 over what Table 1 reflects? Or Table A, excuse me.

13 A. Table A, moving from right to left, we have is as
14 self-evident, the author and year of the study. These were all
15 cited in the APA brief, pages 5 to 45 inclusive.

16 We then have the gay and lesbian sample size. In some
17 cases, like the Bailey, et al., study there, parents and
18 children are listed.

19 As we look to the, the hetero N, that means the sample
20 size of the heterosexual comparison group, if the heterosexual
21 group was included, zero, zero in some, and we continue on
22 down.

23 The outcome studied there relates to what was being
24 examined. I won't waste too much time on that, that column,
25 except to say that, again, this is a particular concern to me

1 because so rarely are the societally critical outcomes
2 considered in these studies, very, very rarely.

3 The last one there says heterosexual comparison group.
4 In some cases, it says none. This is not the size, but what
5 the authors tell us.

6 You'll see as we look down, fathers, we see D.I., for
7 example Brewaeys, et al., 1997 DI/non-DI couples. That means
8 donor inseminated or non-donor inseminated couples.

9 Q. Okay. We'll talk about the Brewaeys one. For example,
10 let's look at that. They were, the compare group was -- D.I.
11 stands for what?

12 A. Donor insemination.

13 Q. So that's what they were comparing the gay and lesbian
14 group with; is that right?

15 A. Yes. And if we glance at that study, for example, we see
16 that the sample size for the gay and lesbian group, which,
17 which is lesbian here, would be 30, as I mentioned a moment
18 ago, the, the bare minimum typically accepted in statistics.

19 We've got the heterosexual comparison group. We have
20 the outcome studied; there were a couple. We see gender
21 development as I mention is addressed at some level, in about
22 20 of these study very frequent area of interest, along with
23 emotional development. We'll note that both of these outcomes
24 would qualify as soft outcomes. And then we have donor
25 insemination there in the far right.

1 Anything else, sir?

2 MR. POTCHEN: Okay. So we're about to go through some
3 of these studies, your Honor. I don't know if you want me to
4 continue? Is that fine?

5 THE COURT: We can break for lunch.

6 MR. POTCHEN: Yeah. It's going to get a little --

7 THE COURT: Perfect. Perfect. It's a good segue-way.
8 And so we'll break for lunch. What do you think, 1:15? 1:30?

9 MS. STANYAR: 1:15 is fine.

10 THE COURT: We'll see you all back at 1:15.

11 THE CLERK: All rise.

12 THE COURT: You may step down.

13 (Recess taken, 11:45 a.m.)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

As an official court reporter for the United States District Court, appointed pursuant to provisions of Title 28, United States Code, Section 753, I do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, CSR, RPR, FCRR, CRR
Federal Official Court Reporter