

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

Case Number: 12-10285

RICHARD SNYDER, ET. AL.,

Defendants.

/ VOLUME 2

BENCH TRIAL (Excerpt)
BEFORE THE HONORABLE BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
WEDNESDAY, FEBRUARY 26TH, 2014

APPEARANCES:

For the Plaintiffs:

Carole M. Stanyar, Esq.
Dana M. Nessel, Esq.
Kenneth Mogill, Esq.
Robert Sedler, Esq.

For the Defendants:

Richard Snyder,
Bill Schuette,

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

Lisa Brown

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

To Obtain Certified Transcript, Contact:

JOAN L. MORGAN, OFFICIAL COURT REPORTER
734 812-2672

I N D E X
PLAINTIFFS' CASE IN CHIEF

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MICHAEL ROSENFELD, Ph.D.	
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E X H I B I T S

RECEIVED

None.

1 Detroit, Michigan
2 Wednesday, February 26th, 2014
3 (At or about 9:00 a.m.)
4 (Excerpt of Proceedings.)

5 -- --- --

6 THE COURT: Good morning, everybody.
7 Where's the rest of your team?

8 MS. STANYAR: The plaintiffs will not be here this
9 morning because they have to go to the doctors if that's
10 okay with Court.

11 THE COURT: Oh absolutely.

12 MR. MOGILL: Professor Sedler teaches on
13 Wednesdays.

14 THE COURT: That's fine. As long as everyone is
15 satisfied.

16 Professor, are you all ready to roll?

17 THE WITNESS: Ready to roll.

18 THE COURT: We left off with family stability. Why
19 don't we start --

20 MR. MOGILL: Yes, your Honor.

21 M I C H A E L R O S E N F E L D , PhD.,
22 having been previously sworn, testified as follows:

23 DIRECT EXAMINATION (CONTINUING)

24 BY MR. MOGILL:

25 Q Good morning, Professor.

1 A Good morning.

2 Q At the point at which we broke yesterday afternoon I
3 was starting to ask you some questions about family
4 stability; do you recall?

5 A Right.

6 Q I'd like to ask you one that circles back to your
7 analysis of Professor Regnerus' study.

8 A Okay.

9 Q And then ask you a number of questions that relates to
10 what's on your slides.

11 With respect to Professor Regnerus' study have
12 you analyzed the percentage of family transitions in the,
13 quote, lesbian mother or, quote, gay father groups as
14 defined by Professor Regnerus that were attributable to
15 breakups of the same sex couple?

16 A Yes. My analysis of all the family transitions that
17 those children went through shows that 7 percent of those
18 transitions were due to breakup of same sex couple. So the
19 predominant factor is breakup of the heterosexual couple,
20 the biological mother and the biological father, and then
21 there's also the custody changes which are -- account for a
22 lot as well.

23 Q Okay. Now, with respect to stability issues you were
24 given some -- at end of yesterday you talked about general
25 statistics and I was about to ask you is there also a body

1 of data comparing stability of same sex couples with the
2 stability of opposite sex couples?

3 A Indeed there is. So in this, I sort of surveyed some
4 of the literature that we have on this. There's older
5 literature that goes back to the 1970s. Probably the
6 classic citation is Blumstein and Schwartz. In the older
7 literature they generally found that same sex couples were
8 less stable than heterosexual married couples. But of
9 course, we're talking about the 1970s and there wasn't any
10 root to formalization for same sex unions.

11 So the more recent data shows quite a different
12 picture. There's the Andersson, et. al. study from Sweden
13 in the 1990s. There were registered partnerships for same
14 sex couples and marriages for heterosexual couples. The
15 marriages were somewhat more stable than the registered
16 partnerships for same sex couples, but the Rossett et. al.
17 study covers four years of civil partnerships in the United
18 Kingdom. And actually as far as I can tell it's a complete
19 record of all the civil partnerships from 2005 to 2008, and
20 then it follows them into 2009.

21 In the United Kingdom data which I think included
22 about 30,000 same sex couples registered partnerships which
23 was all of the registered partnership they had at that time
24 the breakup rate of the same sex registered partnerships
25 was actually lower than the breakup rate of heterosexual

1 marriages contracted at the same period. So that's a really
2 interesting and important piece of data.

3 And then for the United --

4 Q That's from the United Kingdom?

5 A That's from the United Kingdom. That's England and
6 Wales I think it covers.

7 Q Okay.

8 A And interesting -- I mean, it's a report that's put
9 out by their Office of National Statistics. So it's sort of
10 like the official data and it covers all -- you know they
11 have -- every breakup that's reported they have it recorded
12 and every civil partnership they have it reported. So it's
13 not even a sample. It's a hundred percent of the data.

14 Q With respect to the United States is there a body of
15 data?

16 A So with respect to the United States there's a couple
17 of data sources from the recent data. There's a really
18 interesting study by Balsam, et. al. On civil unions
19 contracted in Vermont around 2001. They went to the
20 registrar, you know, the public records of the civil
21 unions. They wrote to everybody. There were several
22 thousand people who had gotten the civil union in the early
23 days. They found several hundred people -- several hundred
24 same sex couples to respond to the survey and then they
25 matched them with siblings who were in heterosexual

1 marriages and they followed them for three years. And they
2 also matched them with friends who were in same sex unions
3 but hadn't gotten the civil union. So they didn't have a
4 formal union.

5 What they found was that the breakup rate of the
6 same sex couples who had civil unions was very similar to
7 the breakup rate of the heterosexual couples. I think they
8 differed by about one percentage point. It was like three
9 percent compared to four percent. And the same sex couples
10 who hadn't gotten civil union had a much higher breakup
11 rate, nine percent.

12 So the Balsam, et. Al., study showed a pattern
13 that my own data also shows which is that there's a very
14 similar breakup rate of same sex couples in the United
15 States who have some kind of formal union compared to
16 heterosexual married couples. And that the same sex couples
17 without the formal union have a much higher breakup rate
18 corresponding to the breakup -- in my data I actually also
19 have heterosexual couples who don't have formal unions. So
20 the data in my survey show that the same sex couples
21 without a formal union and the heterosexual couples without
22 formal union are quite similar in breakup rates. And the
23 same sex couples with formal union and the heterosexual
24 married couples are also quite similar in terms of breakup
25 rate.

1 And -- you know, we show that actually formal
2 union has the same relation preserving effect for same sex
3 couples as it always had for heterosexual couples. This is,
4 you know, the central -- you know, one of the central
5 values of marriage is preserving unions, and increasing
6 stability which is so important to children and from all
7 the data that we have so far it's clear that formal union
8 has the same preserving effect for same sex couples.

9 There's one other key thing that I want to
10 indicate about all this literature which is that all of
11 this literature predates what we would think of as full
12 marriage equality for same sex couples.

13 So in my data I'm following couples in 2009,
14 2010, 2011. None of those same sex couples had marriages
15 that were recognized by the U.S. Federal Government. So
16 some of them had marriages recognized in their home state.
17 Some of them had domestic partnerships recognized in their
18 home state. Some of them had domestic partnerships
19 recognized in the state but they didn't live in that state
20 any more and the current state of residence didn't
21 recognize anything about their formal union. And some of
22 them had marriages that was consecrated between themselves
23 and their partner without any formal recognition.

24 So the formality of these same sex unions in
25 terms of recognition by the state is substantially -- what

1 we know about the way formalization works among couples is
2 we would expect that as they have more recognition and more
3 legal rights that they would gain even more stability
4 benefit from that recognition.

5 So to a certain extent all the data that we have
6 from the past about same sex couples stability is an
7 unequal test because the heterosexual married couples have
8 rights and benefits that the same sex couples didn't have.
9 And even despite that unequal test the comparison shows
10 that they're quite comparable.

11 Q Thank you.

12 Professor, I want to ask you a couple of
13 questions -- a couple more questions on issues of stability
14 that go to the concern raised by the State defendants that
15 legalization of same sex marriage could have negative
16 effects on opposite sex marriage. It's correct, is it not,
17 that we now have about a decade's worth of experience in
18 Massachusetts and growing experience in the other states
19 that have legalized same sex marriage. Is there any
20 evidence in the research that legalization of same sex
21 marriage has had any negative effect whatever on the
22 stability of or the rate of opposite sex marriage?

23 A Yeah, that's an interesting question and the answer is
24 fairly straightforward, there's no evidence whatsoever that
25 same sex marriage has any effect on heterosexual marriage.

1 We have a couple of interesting studies that look
2 at state-by-state data in the United States comparing when
3 there were changes in regime in terms of same sex marriage
4 by state to what the state marriage rate for heterosexuals
5 was.

6 So the Dinno and Whitney is the most recent paper
7 in this area. It looked at year-by-year marriage rates for
8 heterosexual couples and then tried to see if there was any
9 impact on that year-by-year marriage rate by the
10 legalization of same sex marriage and they determined very
11 emphatically that there was no such effect.

12 There's an earlier paper by Langbein and Yost
13 that used census data so they had three time points. The
14 Dinno and Whitney they have year-by-year-by-year which a
15 little more effective because these things change year-by-
16 year. But the Langbein and Yost had three time points and
17 they used the census data and they found the same thing
18 that that same sex marriage didn't have any negative effect
19 on the marriage rate of heterosexuals.

20 And then in my own data -- so the Dinno and
21 Whitney and the Langbein and Yost they're looking at state
22 averages. So when they do their analysis they have 50
23 states over time.

24 In my data set I actually -- I'm looking at
25 individuals. So I'm looking at the individual heterosexual

1 couples living in the states that either do or don't have
2 same sex marriage. And in my data set I've shown that the
3 divorce rate for heterosexual married couples is no
4 different whether they live in a state that has same sex
5 marriage or don't. So I don't think there's any credible
6 evidence that same sex marriage has any negative effects.

7 Q Thank you. I'd like to ask you a different question
8 now and that is you talked a little bit -- really more than
9 a little bit yesterday about statistical significance.

10 A Right.

11 Q And I anticipate that there will be testimony from at
12 least one of the State defendants' witnesses about a
13 distinction between an actual difference and a
14 statistically significant difference.

15 From the standpoint of someone who works with
16 statistics and data analysis is there a meaningful concept
17 of actual difference that doesn't have statistical
18 significance?

19 A I'd like to maybe address this with an example, I
20 think.

21 So let's say you have a coin and you want to know
22 if it's a fair coin, that is -- in other words just as
23 likely to give you heads or tails. And what you do is you
24 might is you might take this coin and flip it a hundred
25 times and see how many heads you get.

1 So say you flipped it a hundred times and you got
2 51 heads. Now, 51 is more than 50. The question is what
3 have you learned in this experiment? The truth is if you
4 take the coin and you flip it a hundred times and you get
5 51 heads that's perfectly consistent with the coin being a
6 fair coin because there's random variation. You don't
7 expect to get exactly 50 heads every time. In fact, I think
8 the probability of getting exactly heads is only about
9 eight percent.

10 So -- what we have in samples is random
11 variation. So if you flip the coin a hundred times and you
12 got 51 heads that actually is perfectly consistent with the
13 coin being a fair coin just as likely to give you heads or
14 tails. Of course, if you flip the coin a hundred times and
15 you got 80 heads you would be sure that the coin was not a
16 fair coin. So it's a question of how close the result is to
17 what you were expecting to get and, you know, how many coin
18 flips you make.

19 And the other thing to add about this is that,
20 you know, there's a certain amount of uncertainty -- I
21 think the confidence interval around that coin flip goes
22 about ten percent in either direction if you flip it a 100
23 times. So you know more or less where you expect the next
24 coin flip percentage to be but you don't know exactly.

25 On the other hand, if 50 other people had done

1 the same experiment and they all got around 50 heads when
2 they flipped the coin you would be very confident that the
3 coin was a fair coin.

4 So just because 51 is more than 50 doesn't mean
5 that you can rule out that the coin is a fair coin. In
6 fact, the 51 heads is kind of confirming that the coin is a
7 reasonably fair coin.

8 Q Thank you. Just a couple of last questions.

9 A Sure.

10 Q On the basis of everything that you know from the
11 research in this area do you have an opinion as to whether
12 children are in any way disadvantaged with respect to
13 outcomes as a result of being raised by same sex parents?

14 A It's clear that being raised by same sex parents is no
15 disadvantage to children.

16 Q From your prospective as a sociologist is there any
17 rational basis at all for a claim that children develop
18 better with a mother and a father than when raised by same
19 sex parents?

20 A There's no basis for that.

21 Q Stated another way, from your prospective as a
22 sociologist is there any reasonable basis for questioning
23 whether children raised by same sex couples have outcomes
24 as good as children raised by opposite sex couples?

25 A I believe that the literature is really clear in that

1 the fundamental research social science consensus on this
2 issue hasn't been questioned in any reasonable way. That
3 there's no reasonable basis to question that scholarly
4 consensus.

5 MR. MOGILL: Thank you.

6 I have no further questions.

7 THE COURT: Thank you.

8 You may cross-examine, counsel.

9 You may move the podium where you would like it
10 if you don't like it there.

11 MS. HEYSE: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. HEYSE:

14 Q Good morning, Dr. Rosenfeld.

15 A Good morning.

16 Q How are you today?

17 A Excellent.

18 Q Doctor Rosenfeld, you understand that Ms. Deboer and
19 Ms. Rowse, the plaintiffs in this case, would like to get
20 legally married in the State of Michigan; correct?

21 A That's my understanding.

22 Q And you understand that no state in this country has
23 permitted same sex marriage until 2004 in Massachusetts?

24 A That's my understanding as well.

25 Q So same sex marriage is a relatively new concept in

1 the United States; correct?

2 A Okay.

3 Q And would you agree with me that the definition of
4 marriage in Michigan has always been understood to be
5 between a man and a woman?

6 A I don't know exactly how -- I don't know how the
7 definition is always been understood, but --

8 Q But it's currently between a man and a woman; correct?

9 A That's sounds correct, yes.

10 Q And have you no knowledge of it being any other
11 definition; correct?

12 A Correct.

13 Q Okay. Thank you.

14 Did you know that no country allowed same sex
15 couples to marry until the Netherlands in 2000?

16 A That sounds correct.

17 Q And you support same sex marriage; correct?

18 A I do.

19 Q I'm going to talk a little bit about your work.

20 A Okay.

21 Q You stated in your Direct Testimony that you've
22 published a number of articles; correct?

23 A Yes.

24 Q But you haven't published any in statistical journals;
25 correct?

1 A That's correct.

2 Q And as to your publications none of them deal
3 specifically with same sex marriage; correct?

4 A No, that's not correct. The -- my book on "The Age of
5 Independence" actually deals with same sex marriage and its
6 history, yeah.

7 Q Sure. Do you recall giving a deposition in this
8 matter?

9 A I don't know if you asked me --

10 Q I didn't ask you that question. Do you recall giving a
11 deposition in this matter?

12 A Oh, yes, absolutely.

13 Q Was that sworn testimony?

14 A Yes.

15 MS. HEYSE: Your Honor, if I may approach the
16 witness?

17 THE COURT: Absolutely.

18 BY MS. HEYSE:

19 Q Do you recall me asking you questions at your
20 deposition?

21 A Certainly.

22 Q Okay. So if you'll look on page 64 of your deposition,
23 Dr. Rosenfeld. Actually it would be the last line of page 63.
24 I'll just read. My question to you is:

25 "And how many of your publications deal with same

1 sex marriage?"

2 THE COURT: I don't think he has it yet. Do you?

3 MS. HEYSE: I apologize.

4 THE COURT: Can you find it, Professor?

5 THE WITNESS: Yes.

6 BY MS. HEYSE:

7 Q My question to you was:

8 "Okay. And how many of your publications deal
9 with same sex marriage?"

10 A Right.

11 Q And your answer was,

12 "Well, "The Age of Independence" my book deals
13 with same sex couples."

14 A Right.

15 Q Correct?

16 A Correct.

17 Q And then if you skip down to --

18 A Right, but what it says is --

19 Q No, I didn't -- that's what it says; correct?

20 MR. MOGILL: I'm sorry, the witness is not done
21 answering the question.

22 THE COURT: He has a right to read it for purposes
23 of completeness.

24 A Let me -- you said,

25 "How many of your publications deal with same sex

1 marriage?"

2 And I said,

3 "Well, 'The Age of Independence" my book deals
4 with same sex couples." And at the time there wasn't same
5 sex marriage in the United States. But the book addresses
6 the question of same sex marriage.

7 Q Okay. And if you look at the next question, it says,

8 "Any other of your publications deal with same
9 sex couples or same sex marriage besides your book"?

10 And you say --

11 A I say, "Right, 'The Searching for a Mate' also deals
12 with same sex couples and heterosexual couples."

13 Q So that does not deal with same sex marriage?

14 A Right.

15 Q Okay. So you have one publication that deals with same
16 sex marriage?

17 A Okay.

18 Q Thank you.

19 So you're not an expert in the law; correct?

20 A That is correct.

21 Q And you're not an expert in child development;
22 correct?

23 A Well, I have some expertise in child development. I
24 think when I answered at the deposition was that it's not
25 my main area, but I have some expertise in it.

1 Q And you've not been qualified as an expert in that
2 purposes of this case; correct?

3 A That sounds correct.

4 Q Okay. And you've conducted only one study regarding
5 outcomes on children raised by same sex couples; correct?

6 A That's correct.

7 Q And you're aware that childrens' outcomes were at
8 issue in the same sex marriage debate before you began your
9 research in that study; correct?

10 A That's correct.

11 Q And with your research you sought to contribute to
12 that debate; correct?

13 A That's correct.

14 Q Okay. Thank you.

15 Now, would you agree with me, Dr. Rosenfeld, that
16 families are diverse?

17 A That's sounds correct.

18 Q And that would include same sex families; correct?

19 A Yes.

20 Q And as a social scientist you would agree that it's
21 important to make sure that your research reflects
22 diversity; correct?

23 A There are circumstances where your research can
24 reflect that diversity and there's other circumstances
25 where the diversity is not always accessible to you.

1 Q Sure. But any time it's accessible and possible that
2 would be an important thing to make sure that your research
3 reflects that diversity; correct?

4 A That's -- you know, one of the reasonable goals.

5 Q And you would agree that heterosexual married couples
6 are the predominant system in the United States for raising
7 kids; correct?

8 A That's correct.

9 Q Okay. Now your opinions in this particular case are
10 based at least in part on review of others' literature
11 especially with regard to the small convenient sample
12 studies; correct?

13 A Well, as I answered at the deposition the convenient
14 studies and here we mean --

15 MS. HEYSE: Your Honor, I would ask that the
16 witness respond to the question.

17 THE COURT: I agree with you. If you would like a
18 yes or no answer ask him to answer yes or no.

19 Professor, if you can't answer it yes or no
20 because you're under oath in order to be complete let
21 counsel know so that she knows and then she can do whatever
22 she cares, but I agree with you.

23 MS. HEYSE: Thank you, your Honor.

24 BY MS. HEYSE:

25 Q Your opinions in this case are based at least in part

1 on review of others' literature especially with regard to
2 the same convenient sample studies, yes or no?

3 A I don't think I can answer that yes or no. I need to
4 qualify that.

5 THE COURT: That's fair.

6 A So --

7 THE COURT: Counsel will let you know if she wants
8 you to qualify that.

9 MS. HEYSE: I'll move on.

10 BY MS. HEYSE:

11 Q In preparing the report for this particular case you,
12 in fact, had assistance from plaintiffs' counsel in
13 determining what literature would be useful and relevant to
14 the Court; is that correct?

15 A They did help me figure out what issues --

16 Q Is that correct, yes or no?

17 A Yes.

18 Q And plaintiffs' counsel assisted you in determining
19 what issues were relevant for purposes of your report;
20 correct?

21 A Correct.

22 Q Thank you.

23 And your research is focused on large sample
24 nationally representative studies; correct?

25 A Correct.

1 Q So you would agree with me that you're not as familiar
2 with the small sample convenient sample studies; correct?

3 A That's correct.

4 Q That's not really your area of expertise.

5 A That's right.

6 Q Okay. And you don't have a firm grasp on the details
7 of those small sample, convenient sample studies; correct?

8 A I'd like to qualify that and say that I don't have a
9 firm grasp on the details of them all.

10 Q Okay. Fair enough.

11 And you would agree with me that there are
12 limitations to small convenient sample studies; correct?

13 A I'd like to qualify that answer as well.

14 Q I don't think it requires a qualification.

15 THE COURT: If you can answer yes or no, fine. If
16 you can't, just say you can't.

17 A Yes.

18 BY MS. HEYSE:

19 Q And small sample convenient studies don't allow for
20 statistically powerful test of hypotheses; correct?

21 A The -- I'd like to qualify that as well.

22 Q Well, Dr. Rosenfeld --

23 A Well --

24 MR. MOGILL: If the witness says he can't answer
25 it yes or no --

1 THE COURT: If you can't answer it yes or no just
2 tell her.

3 BY MS. HEYSE:

4 Q If you could then turn to page 119 of your deposition?

5 A Sure.

6 Q Half way through the page there, there's a question
7 posed and I say to you,

8 "I think you mentioned in your testimony" --

9 MR. MOGILL: What page?

10 MS. HEYSE: I'm sorry, 119.

11 MR. MOGILL: Thank you.

12 BY MS. HEYSE:

13 Q I say to you,

14 "I think you mentioned in your testimony that you
15 acknowledge that there are some limitations with regard to
16 small sample studies. Can you identify me -- identify for
17 me what those limitations would be."

18 And your answer,

19 "Well, all research has limitations so the
20 limitations of small convenient studies is that they don't
21 allow for statistically powerful tests for all your
22 hypotheses."

23 That was your response; correct?

24 A That's correct.

25 MR. MOGILL: That was part of his response. The

1 rest of it needs to be read --

2 THE COURT: I'm sorry.

3 MR. MOGILL: I would object to taking it out of
4 context. I think the remainder of the response is necessary
5 --

6 THE COURT: Well, you'll have a chance on
7 Redirect.

8 MR. MOGILL: Thank you, your Honor.

9 BY MS. HEYSE:

10 Q In fact, Dr. Rosenfeld, you noted in your demography
11 article -- you noted that in your demography article;
12 correct?

13 A I think if you want me to agree to something in the
14 demography article, I'd like to see the quote.

15 Q Sure.

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

17 THE COURT: Absolutely.

18 A Do you have a page for me?

19 BY MS. HEYSE:

20 Q You stated that you don't recall discussing these
21 small convenient samples in your demography article?

22 A Well, I remember discussing it, but I would like you
23 to refer me to a specific so I can get the context of what
24 I said in the article.

25 Q Okay. It would be on page 756 to 757 of your article.

1 A Yes.

2 Q The answer to the question is yes or you're ready?

3 A Repeat the question.

4 Q Sure. We were talking about the small sample studies
5 not allowing for statistical powerful test of hypotheses,
6 and I said, in fact, you noted that in your demography
7 article --

8 A What I noted was that -- that critique exists in the
9 literature.

10 Q But it's noted in your demography article; correct?

11 A It's noted that that critique exists in the
12 literature, but that's distinct from saying that's my
13 critique.

14 Q Okay. And you would agree that when the APA issued its
15 statement in 2005 it did so relying almost exclusively on
16 these small convenient sample studies; correct?

17 A That's correct.

18 Q And with these convenient sample studies instead of
19 using a survey as you discussed in your studies the
20 researchers find people to study that are closest to them;
21 correct?

22 A Correct.

23 Q Okay. And it's true, isn't it, that small sample
24 studies have many more studies of lesbian mothers than of
25 gay men; correct?

1 A That's correct.

2 Q Now, Dr. Rosenfeld, are you familiar with Gary Gates?

3 A I am.

4 Q And isn't it true that both of you analyze census
5 data?

6 A That's correct.

7 Q And you would agree with me that Gary Gates is the
8 predominant expert in census data; correct?

9 A He's one of the predominant experts in census data as
10 it relates to same sex couples for sure.

11 Q And are you aware if you qualified that answer in your
12 deposition?

13 A I don't remember.

14 Q In fact, you consulted him with regard to your study
15 on "How Couples Meet and Stay Together"; correct?

16 A That's correct.

17 Q So you would agree with me that he knows the census
18 data better than you; correct?

19 A I don't believe I said that.

20 Q Okay. If you could turn to page 41 of your deposition.

21 A Can I continue my answer?

22 Q I'm going to read this to you,

23 "Gary Gates has a lot of expertise in the census
24 data and I think probably knows the consensus data better
25 than I do."

1 A The "Canadian census data."

2 Q Pardon, "Canadian census data better than I do. I
3 haven't done my own research on the Canadian census data."

4 Let me qualify my question then. So Gary Gates
5 knows the Canadian census data better than you; correct?

6 A Yeah, that's an important qualification because my
7 research with the U.S. census.

8 Q Absolutely, and I apologize for misstating that. He
9 does, in fact, know the Canadian census data better than
10 you.

11 A I would expect so.

12 Q Thank you.

13 Now, Dr. Rosenfeld, you have some criticisms of
14 Dr. Allen's study analyzing the Canadian census data;
15 correct?

16 A Yes.

17 Q And, again, from that deposition testimony, you've not
18 done your own research with regard to the Canadian census
19 data; correct?

20 A That's correct.

21 Q Okay. Now, you criticize Dr. Allen's study of
22 children's progress through school using the Canadian
23 census data because it was limited to five years; correct?

24 A The window of what we know about the past of the
25 family was limited to five years.

1 Q Thank you.

2 A In fact, in the heart of the paper as far as I can
3 tell he only used a one-year window.

4 Q Thank you, but I think you've answered my question.

5 But the same is true of the U.S. Census data that
6 you rely on; correct, you get that five-year window.

7 A Right.

8 Q Okay. So outside of the five-year period that -- for
9 lack of a better term I'm going to call it the five-year
10 snapshot, if you will, in both the United States and the
11 Canadian census data that data cannot tell you the family
12 makeup outside of that five years; correct?

13 A Well, I'd like to qualify the answer which is that
14 it's true that you have the same five-year window in the
15 Canadian census and the U.S. census but I was looking at
16 progress through the primary school for which the five-year
17 window covers most or all.

18 Q That doesn't answer my question. My question to you
19 is: outside of that five-year period in both of the United
20 States census data and the Canadian census data that data
21 is not going to tell you about anything outside of that
22 five-year period; correct?

23 A That's correct.

24 Q Thank you. And you would agree with me that five years
25 is not long enough to actually raise a child; correct?

1 A That's correct.

2 Q Thank you. Now, you also have some criticisms of Dr.
3 Regnerus' study; correct?

4 A Yes.

5 Q And you believe that Dr. Regnerus' New Family
6 Structure Study, NFSS, his data is high quality though;
7 correct?

8 A I think it's high quality data.

9 Q Thank you. And you would agree with me that the
10 underlying data gathering process that Dr. Regnerus' study
11 used is mainstream social science; correct?

12 A That's correct.

13 Q In fact, there are certain strengths to the data in
14 the NFSS study; correct?

15 A I'd like to qualify what those are if I may.

16 Q We're going to go through them so if you could just
17 answer my question that would be perfect.

18 A All right.

19 Q There are strengths to the NFSS data; correct?

20 A Yes.

21 Q Okay. And those strengths include that it has a
22 nationally representative -- is nationally representative
23 data which is an advantage over many data sources used to
24 study same sex couples; correct?

25 A What I would say about the advantage of national

1 represent-sensitivity is it has some advantages and some
2 disadvantages as well.

3 Q Well, didn't you, in fact, state those explicit words
4 in a re-analysis that you did of Dr. Regnerus' study?

5 A Yes.

6 Q So in other words, you specifically stated -- and I
7 quote. I mean, this is directly from your work,

8 "Those strengths include it has a nationally
9 representative data which has an advantage over many data
10 sources used to study same sex couples."

11 A Correct.

12 Q Okay. And another strength of that data is that the
13 NFSS over sampled children raised at least in part by same
14 sex couples allowing researchers statistical leverage;
15 correct?

16 A That's correct.

17 Q Okay. And another advantage is that it contains a
18 detailed year-to-year family calender from which
19 respondent's childhood family structure history can be
20 reconstructed; correct?

21 A Correct.

22 Q Thank you. And it also asks many questions about a
23 variety of childhood and adult outcomes; correct?

24 A Correct.

25 Q Thank you. Now you did your own re-analysis of Dr.

1 Regnerus' data; correct?

2 A Yes.

3 Q And with your re-analysis of Dr. Regnerus' data you
4 find no disadvantages for child being exposed to same sex
5 relationships; correct?

6 A Correct.

7 Q But to reach that finding you had to add an additional
8 control for family stability; correct?

9 A Correct.

10 Q But you would agree with me that family transitions
11 which translates to family instability; correct?

12 A Could you say --

13 Q Family transitions would be the same thing as family
14 instability?

15 A Okay.

16 Q But you would agree with me that those transitions
17 dominate same sex couplehood in the study of family
18 effects; correct?

19 A No, the --

20 Q You don't believe that transitions dominate same sex
21 couplehood in the study of family effects?

22 A Okay, yes, I agree.

23 Q Thank you. Now, children of same sex couples often
24 have a prior family; right?

25 A Right.

1 Q Either have been in the foster system or potentially
2 the product of a failed heterosexual union; correct?

3 A Correct.

4 Q And you would agree with me that Dr. Regnerus' results
5 were correctly reported.

6 A Given the limitations of his --

7 Q I understand you don't agree with the findings, but
8 when you ran the numbers they were correctly reported.

9 MR. MOGILL: Excuse, Ms. Heyse is continually
10 interrupting Professor Rosenfeld's answers. I think it's
11 inappropriate. I think the witness needs to be allowed to
12 complete his answer.

13 THE COURT: I'm not sure that's happening. I
14 didn't quite notice that, but, yes, let's move on. I didn't
15 see that --

16 MS. HEYSE: I'll certainly try to pay attention,
17 your Honor.

18 THE COURT: Good.

19 BY MS. HEYSE:

20 Q Okay. Backtracking for a moment, Dr. Rosenfeld, we
21 were discussing the family transitions dominating same sex
22 couples. I just want to restate my question to make sure --

23 A Well --

24 Q Let me restate the question because I don't have a
25 question posed before you and then you'll have an

1 opportunity to answer; okay. It goes a lot better that way.

2 But you agree that family transitions dominate
3 same sex couplehood in the study of family effects;
4 correct?

5 A No. Same -- family transitions dominate having lived
6 with same sex couples in the prediction of negative
7 outcomes in the data.

8 Q So this is not a quote -- you've not stated this in
9 writing anywhere, yes or no?

10 A It's hard for me -- I don't have the text in front of
11 me.

12 Q I have a copy which I would be happy to provide.

13 A Please.

14 Q Looking at your quote let me restate the quote --

15 MR. MOGILL: Do you have a page?

16 MS. HEYSE: Yes, page 5. It would be the first
17 paragraph under the "Same Sex Couples" heading there.

18 Let me restate my question because I have a
19 little different one so I want to make sure we get this
20 correct; okay?

21 BY MS. HEYSE:

22 Q "But you would agree with me that family transitions
23 dominate same sex couplehood in the study of family effects
24 on children."

25 A Well, the quote if I can read --

1 Q Well, first of all, is that an accurate quote from
2 your -- this is your writing?

3 A Yes, but I don't think you read it correctly so I just
4 want to read it.

5 Q Okay.

6 A "Just as family transitions have been shown to
7 dominate the effect of single parenthood on children's
8 outcomes so too has research shown that family transitions
9 dominate same sex couplehood in the study of family's
10 effects on children."

11 Q So you would agree with me, again, that part of that
12 quote says,

13 "Research has shown that family transitions
14 dominate same sex couplehood in the setting of family
15 effects on children."

16 A That's correct.

17 Q Thank you. And, again, getting back to the question
18 with regard to Dr. Regnerus' study, again, his results were
19 correctly reported?

20 A Yes, I replicated his results given --

21 Q Okay.

22 A I'd just like to finish this.

23 Q Is it responding to my question?

24 A Given the limitations of his study design which I
25 think are fundamental the results are correct in the

1 report.

2 Q Okay. You disagree with the fact that he didn't
3 control for stability.

4 A Right.

5 Q Aside from that his findings were correct.

6 A That's correct.

7 Q Okay. You've also criticized the work of Price, Allen
8 and I'm probably going to mispronounce this but Pakaluk.
9 They replicated your study regarding children's progress in
10 school; correct?

11 A Correct.

12 Q You both reached different results when analyzing that
13 data; correct?

14 A That's correct.

15 Q Okay. You found no difference between the children
16 being raised by same sex couples and they found there were
17 differences; correct?

18 A Well, not exactly because they didn't rely on the
19 children who were actually raised by same sex couples the
20 same way I did.

21 Q Okay. I'm speaking of their outcome.

22 A I want to finish my answer.

23 When I analyzed the data I was relying
24 exclusively on the children who were really raised by the
25 same sex couples because I only included the children whose

1 families through school we really knew. They added in the
2 children whose family through school we didn't know.

3 So while I was analyzing children raised by same
4 sex couples they were doing something else.

5 Q Sure. I understand that you don't agree that. We heard
6 all about that yesterday. My question to you was: You
7 reached different conclusions with regard to these studies;
8 correct?

9 A We reached different conclusions.

10 Q And just to be clear there were two things that you
11 controlled for I think you called it restricted for that
12 they didn't; correct?

13 A Correct.

14 Q Okay. You restricted the study to biological children
15 of the household head; correct?

16 A Yes.

17 Q So that excluded other children living in the home if
18 they weren't biological children of the household head;
19 correct?

20 A Correct.

21 Q And you also restricted the study to children who were
22 living in the same home with the same parents for that
23 five-year period; correct?

24 A Correct.

25 Q Okay. I want to talk you a little bit about -- let me

1 -- now, there's no question on the survey for the census
2 data that asks whether a child was held back in school;
3 correct?

4 A Correct.

5 Q So you're making an inference or an assumption based
6 on the age of the child and his her grade; correct?

7 A Correct.

8 Q Okay. And you testified that you know from the census
9 data that the members of the household were living in the
10 same household for five years; correct?

11 A Correct.

12 Q But you can't actually tell from that data that the --
13 what the status of the relationship was between the parties
14 in the household; correct?

15 A Correct.

16 Q Okay. Now, I want to talk a little bit about figure 2
17 because you spent time on that yesterday. I just want to
18 make clear you made some statements with regard to Dr.
19 Allen's intentions in drafting that figure. I just want to
20 make clear that you don't actually know why Dr. Allen
21 drafted figure 2 the way he did; correct?

22 A I don't have any information about his intentions
23 other than what he wrote in his expert report. And in that
24 expert report he said -- I don't have it in front of me,
25 but that the figure 2 shows what Rosenfeld's results -- I

1 mean -- do you want to pull up the quote?

2 Q No, I think you answered my question sufficiently.

3 Again, you don't actually know what he was
4 thinking when he drafted that particular figure that way;
5 correct?

6 A I don't know what he was thinking.

7 Q And you don't know exactly what he was trying to
8 portray with that figure; correct?

9 A Well, let me go back to --

10 Q Well, do you know with any certainty what he was
11 trying to convey with that figure?

12 A I know that he wrote what Rosenfeld actually found is
13 represented in figure 2. So that's -- I take that
14 seriously.

15 Q Okay. Fair enough.

16 But you have no way of knowing that he actually
17 intended to exaggerate that figure as you stated on the
18 record yesterday; correct?

19 A Well, there's two parts there. I don't know if I --
20 that he intended to exaggerate. What I said was that he did
21 exaggerate. I can't speak to his intention.

22 Q So you have no way of knowing if that was his
23 intention to exaggerate; correct?

24 A That's correct.

25 Q And, again, your study relies on U.S. Census data.

1 A Yes.

2 Q And you've acknowledged that the U. S. Census data
3 suffers from limitations; correct?

4 A Certainly.

5 Q Normal progress through school is the only outcome
6 that can be measured and that's with less precision than
7 you would like; correct?

8 A That's correct.

9 Q And identifying same sex couples is less precise than
10 you would like; correct?

11 A That's also correct.

12 Q And that's because in the 2000 census data there were
13 survey errors and recoding with regard to the household
14 roster; correct?

15 A Correct.

16 Q And the census data also cannot tell you the
17 relationship between the head of the household, the person
18 filling out the form in other words, and the child or the
19 relationship between the child and the partner; correct?

20 A No, I think the survey form tells you the relationship
21 between the head of the household and the child.

22 Q Okay. Does it tell you about the relationship with
23 this child and anyone else in the home?

24 A No.

25 Q Thank you. It also doesn't tell you about -- how many

1 previous relationships a particular couple has had;
2 correct?

3 A That's correct.

4 Q So you would agree with me then that the census data
5 provides limited information regarding family stability;
6 correct?

7 MR. MOGILL: I'm sorry, I didn't hear that one,
8 I'm sorry.

9 BY MS. HEYSE:

10 Q You would agree with me that the census data provides
11 limited information regarding family stability; correct?

12 A I'm going to qualify this answer and say that the
13 census is a cross-sectional survey so it has limited
14 information about family stability as cross-sectional
15 surveys tend to have.

16 Q Now, you would agree with Mr. Dr. Rosenfeld, that the
17 same sex community has a small population for purposes of
18 research; correct?

19 A That's correct.

20 Q In fact, same sex couples compromise between one and
21 two percent of all couples in the United States; correct?

22 A That's correct?

23 Q And the percentage of children raised by same sex
24 couples is less than one percent; correct?

25 A That's correct. And I'd like -- if I could expand on

1 this answer just a little bit and say that part of the
2 reason that we have convenient sample studies and that the
3 convenient sample studies are valuable --

4 MS. HEYSE: Your Honor, I don't believe that's at
5 all responsive to my question.

6 THE COURT: Your attorney -- plaintiffs' attorney
7 will have an opportunity.

8 BY MS. HEYSE:

9 Q In fact, children raised by same sex couples and I
10 quote, "are a needle in the haystack population"; correct?

11 A Correct.

12 Q And as a result, large sample nationally
13 representative studies of children raised by same sex
14 couples are few; correct?

15 A That's correct.

16 Q I'm going to turn now to the stability of same sex
17 couples. There's a small body of research regarding the
18 stability of same sex couples; correct?

19 A Okay, that's correct.

20 Q You testified earlier that research is mixed with
21 regard to stability. Some studies say less stable, some
22 studies say more stable; correct?

23 A Yes.

24 Q And those studies are of short duration; correct?

25 A The studies -- for instance, the study from the United

1 Kingdom followed couple for four years.

2 Q The Balsam study for three years?

3 A The Balsam study for the years. The data that I
4 published was following couples for two years. So that's a
5 modest duration.

6 Q Okay. I do want to talk a little bit about your study,
7 "How Couples Meet and Stay Together."

8 A Right.

9 Q You acknowledge that's a small data set when you're
10 looking at longitudinal studies; correct?

11 A I guess it depends on -- small compare to what? It's a
12 modest sample size, but it actually has a substantial
13 number of same sex couples in it.

14 Q And you actually used the same data source for that
15 study as Dr. Regnerus did for his; correct?

16 A Not exactly. We used the same survey company.

17 Q You're right. The same survey company. Okay.

18 And where do you get your data from for that
19 particular study?

20 A The company is Knowledge Networks. I think it's -- has
21 a newer name which is GFK.

22 Q Sure, but my point is, doesn't the data in fact come
23 from the survey?

24 A They are different surveys. In other words, my study
25 is a survey that I designed and his study was a survey that

1 he designed.

2 Q Sure by the same -- done by the same entity. You
3 designed it and it's implemented by the same entity;
4 correct?

5 A Yes.

6 Q And that's where the data comes from.

7 A That's correct.

8 Q So, in fact, your data source is the same --

9 A No, the data sets are different, but the company that
10 asks the questions of the subjects is the same. But the
11 data source -- usually when we think about data source
12 we're thinking about the data itself so the data itself are
13 different. Two different data.

14 Q Okay. Thank you. You're not aware of any data that
15 tracks the stability of same sex married couples beyond
16 that five-year period; correct?

17 A That's correct.

18 Q And you would agree with me that we'll know more in
19 the future about the stability of same sex married couples;
20 correct?

21 A That's correct.

22 Q And you also agree with me that research is a long
23 process; correct?

24 A That's correct.

25 Q And you would also agree with me that because of the

1 effect -- government recognition -- because the effect of
2 government recognition on longevity -- I'm sorry. Strike
3 that, please.

4 You would agree with them that the effect of
5 government recognition on longevity of same sex formal
6 unions is not measurable in your study of "How Couples Meet
7 and Stay Together"; correct?

8 A My study predates federal recognition of marriage so
9 there's

10 Q Sure --

11 MS. HEYSE: Your Honor, may I ask --

12 THE COURT: Yes.

13 MS. HEYSE: It's a yes or no question.

14 BY MS. HEYSE:

15 Q You agree with me that the effect of government
16 recognition on longevity of same sex formal unions is not
17 measurable -- I'm not asking you why, but just that it is
18 not measurable in "How Couples Meet and Stay Together";
19 correct?

20 A I'm not sure I can answer yes or no because there are
21 differences in -- there are couples in the data set who
22 have government recognition, they have domestic
23 partnerships, or they're married in a state that recognizes
24 marriage. So there are some differences in government
25 recognition. You know, it's possible to test whether those

1 differences have an effect of couples' longevity.

2 Q Given all that you said there that is actually a
3 statement that you made in your paper; correct?

4 A Will you show me a page?

5 Q Sure, happy to do that.

6 It's going to be on page 19. It will be the next
7 to last sentence there before you get to the second
8 section.

9 If you can read along with me,

10 "Because the effect of government recognition on
11 longevity of same sex unions is not measurable in "How
12 Couples Meet and Stay Together."

13 So again taking that language right from --

14 A Now, I see what it means. The context is important.

15 Q So that is a quote.

16 A That is a quote.

17 Q And you would agree with me, Dr. Rosenfeld, that
18 studies of family structure and children's outcomes almost
19 universally find advantage for children raised by their
20 biological parents; correct?

21 A So this is a quote I believe from my demography paper,
22 from the first page of it.

23 Q First, can you answer my question as to whether you
24 agree with that?

25 A Well, so it's a quote from my paper but what the

1 context is, if you look at the quote is that it's
2 heterosexual married couples compared to other heterosexual
3 families. So single parents, unmarried couples and so on.

4 Q But regardless of your qualification there you've
5 stated here that there is an advantage; correct?

6 A But the context is important. It's an advantage
7 compared to the other heterosexual families.

8 Q But there is an advantage.

9 A Of the children raised by heterosexual married couples
10 compared to the children raised by heterosexual single
11 parents, and unmarried heterosexual couples.

12 Q But there is an advantage to being raised by your
13 biological parents in those comparison groups.

14 A With those comparison groups.

15 MS. HEYSE: If I may have a moment to confer with
16 counsel?

17 THE COURT: Sure.

18 MS. HEYSE: Thank you.

19 I think I'm all set, your Honor.

20 MR. MOGILL: Very briefly.

21 THE COURT: Very well.

22 REDIRECT EXAMINATION

23 BY MR. MOGILL:

24 Q Good morning, Dr. Rosenfeld.

25 A Good morning.

1 Q Let's start with a couple questions about -- some
2 phrases that Ms. Heyse used. Is a five-year look back a,
3 quote, snapshot, unquote?

4 A The importance of the length of the five years is
5 relative to the age of the children. If you're talking
6 about children who are 22 years old then if you have only
7 five years of information about their family five years is
8 not enough. But if you're talking about children who are
9 nine years old and you're talking about their progress
10 through school five years covers their entire progress
11 through school. For childhood outcomes, for primary school
12 outcomes, a five-year window is very good. For high school
13 graduation outcome, five-year window is not sufficient
14 which is why I didn't look at high school outcomes in the
15 U. S. Census it didn't really make sense.

16 Q With respect to the status of the relationship of
17 children living in the home that you looked at in the U. S.
18 Census in your demography study, is it correct that the
19 United States Census unlike the Canadian Census
20 specifically asks category of relationship -- own child,
21 step child, adopted child, foster child?

22 A That's correct. The U.S. Census of 2000 distinguished
23 natural born children from adopted children, from foster
24 children, from step children where as the Canadian census
25 had only one category for child.

1 Q Lumped them all together.

2 A Lumped them all together.

3 Q Ms. Heyse asked you a question about small samples and
4 statistical power.

5 A Right.

6 Q If I understand you correctly an individual small
7 sample does not have a lot of statistical power; is that
8 correct?

9 A That's correct.

10 Q So the question is: is there a way to have statistical
11 power from the fact of small sample studies?

12 A So what we have in the literature is many small sample
13 studies. So it's not -- if we only had one then a sample
14 size of that one if it was 40 or 50 subjects would be, you
15 know, problematic. But if you have 50 samples of 40 or 50
16 subjects even though the individual studies have small
17 sample size the group of studies is relying on fairly large
18 sample size. So the sample size of the study may be small
19 but in the literature there are many such studies.

20 Q And what's the significance of that in terms of
21 statistical power?

22 A Well, the more sample size you have across the studies
23 the more power you have. It's really the total sample size,
24 not the sample size of one individual study that's relevant
25 because it's the total body of literature we're considering

1 not a single study.

2 Q If I understand you correctly, is it essentially that
3 a small sample study or two small sample studies you can't
4 really be confident of the conclusion but if there's
5 replication across a broader number of studies that's where
6 the power comes from?

7 A That's where the power comes from. It's replication.

8 And the other thing I would say is that the
9 larger survey data and the convenient sample studies both
10 have strengths and weaknesses. So one of the things we
11 talked about yesterday was that the survey data have a
12 difficult time identifying, for instance, couples who have
13 been raising the child, same sex couples who been raising
14 the child from birth, right, there's very few of those. But
15 in the convenient sample studies you can actually find
16 those populations and study them directly. So there are
17 advantages to both.

18 Q Let's talk about difficulty of identification which
19 goes to the question Ms. Heyse asked you about errors in
20 the U.S. Census, the U. S. 2000 Census. In the course of
21 conducting your demography study were you aware of and did
22 you account for the likelihood of -- or fact of errors?

23 A Yes.

24 Q And would you tell the Court, please, what you did
25 because you knew they were there and you wanted to make

1 sure you didn't contaminate your data.

2 A Right. So there's the -- the research and this is more
3 research subsequently but there was some of it available at
4 the time when I was writing that paper suggested that among
5 the people who identified themselves as same sex married
6 couples in 2000 there were more errors of identification
7 because there were many, more heterosexual married couples
8 than same sex married couples. So small error in the larger
9 group.

10 Q Well, in 2000 no same sex married couples.

11 A Right. But even the government didn't recognize same
12 sex marriage, people identified themselves as married.

13 So one of the things that I did in my analysis is
14 I redid the analysis without any of the people who
15 identified themselves as married and I got the same
16 results. So I'm confident that whatever identification
17 problems there were don't impact my results.

18 Q Would this be an example of being careful to control
19 for contamination of the data?

20 A It's an example of checking that the results are
21 robust to potential limitations of the data and all data
22 have limitations.

23 Q Now, I'd like to ask you some questions just to
24 clarify with respect to your analysis of Professor
25 Regnerus' study. You agreed with Ms. Heyse that the data

1 itself is real data.

2 A Right.

3 Q Is it correct to say that your concern with Professor
4 Regnerus is not with the data but what he did with it.

5 A That's right. The data are perfectly reasonable but
6 the analysis performed by Professor Regnerus doesn't relate
7 to the question that we're studying here because it didn't
8 really relate to outcomes for children raised by
9 same sex couples and it had many more of the subjects who
10 had never lived with same sex couples at all.

11 The failure to control for family transitions is
12 a huge omission. So it's the analysis that I take issue
13 with, not the data. The data are perfectly good.

14 MR. MOGILL: Nothing further.

15 THE COURT: You may step down.

16 Thank you, Professor. We appreciate it.

17 (End of Excerpt.)

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CERTIFICATE

I, JOAN L. MORGAN, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings were had in the within entitled and number cause of the date hereinbefore set forth, and I do hereby certify that the foregoing transcript has been prepared by me or under my direction.

S:/ JOAN L. MORGAN, CSR
Official Court Reporter
Detroit, Michigan 48226

February 26th, 2014