

1 Detroit, Michigan

2 February 26, 2014

3 11:00 a.m.

4 * * *

5 THE CLERK: All rise.

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

7 Okay. Next witness, please?

8 MS. STANYAR: For the record, the plaintiffs are here.

9 THE COURT: Oh, good. I hope the appointment went
10 well this morning.

11 MS. DEBOER: Thank you.

12 THE COURT: Would you be kind enough to raise your
13 right hand.

14 (Witness is sworn.)

15 THE COURT: Please be seated. And when you have an
16 opportunity to be seated, be kind enough to give your full name
17 and spell your full name, please.

18 THE WITNESS: Vivek Sankaran. "V" as in Victor. I-V,
19 as in Victor, E-K. Last name is Sankaran. "S" as in Sam,
20 A-N-K-A-R-A-N.

21 THE COURT: Thank you.

22 I have to make sure we have our reporter. Sometimes I
23 start without the reporter.

24 Thanks. You may proceed.

25 MS. NESSEL: Thank you, your Honor.

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VIVEK SANKARAN

called as a witness at 11:00 a.m., testified as follows:

DIRECT EXAMINATION

MS. NESSEL:

Q. All right. So as you stated, your name is Vivek Sankaran, correct?

A. Yes.

Q. And, sir, what is your educational background?

A. I graduated from the University of Michigan Law School in 2001. And before that, I got my Bachelor's degree from the College of William & Mary in 1998.

Q. And where are you currently employed?

A. I'm employed at the University of Michigan Law School.

Q. What are your responsibilities there at the University of Michigan Law School?

A. I direct our Child Advocacy Law Clinic. I'm a clinical professor of law at the university. In addition to directing the Child Advocacy Law Clinic, I teach several courses there. I direct our Child Welfare Appellate Clinic. I teach a course on children in the law, which examines adoption, guardianship and juvenile court cases. I teach a family law litigation class.

I also direct a project here in Detroit called the Detroit Center for Family Advocacy, which is aimed at reducing the number of kids in foster care by prevention and trying to

1 prevent kids from entering care.

2 Q. Now, let's start with your work at the Child Advocacy Law
3 Clinic. Can you be more specific as to what your
4 responsibilities and your obligations are with the Child
5 Advocacy Law Clinic?

6 A. Sure. So the law clinic is a program, an offering for
7 students at the law school who are my students, are
8 representing children and parents in Michigan's foster care
9 system.

10 We do work in about six different counties across the
11 state of Michigan. And so we're actively litigating cases,
12 teaching students how to be lawyers through handling these
13 cases. Additionally, there's a classroom component where we're
14 teaching substantive child welfare law, trial skills.

15 So my eight years at the law school, I probably have
16 taught about 300 students or so.

17 Q. Okay. Now, when you say that you instruct students on how
18 you handle certain types of cases and supervise them, what
19 kinds of cases are we talking about?

20 A. These are all, almost all foster care cases. They are all
21 cases where kids have been removed from their parents, placed
22 in foster care.

23 We typically get appointments directly from the court,
24 and then we will stay on the case until the case has concluded.

25 Q. All right. So but as it pertains to kids in foster care,

1 what is it that you're doing? What kinds of court procedures
2 are you involved in?

3 A. These are procedures dealing with the placement of
4 children, whether they should be returned home, whether they
5 should be placed with licensed foster parents. There may be
6 issues involving the adoption of the children out of the foster
7 care system, guardianship of children out of the foster care
8 system. Really, the issue of what should happen to these
9 children and what outcomes we should be pursuing.

10 Q. Okay. Now let's talk about you. You said that you also
11 are involved with the Detroit Center for Family Advocacy,
12 correct?

13 A. Correct.

14 Q. Okay. And your position again is what there?

15 A. I'm the founding director of the center.

16 Q. Okay. And what are your responsibilities in regard to the
17 Detroit Center for Family Advocacy?

18 A. So I founded the center back in 2009. The idea of the
19 center was to try to reduce the number of kids in Michigan's
20 foster care system by working with families before kids entered
21 foster care, and also working with families to get kids out of
22 the foster care system. So we get our cases directly from the,
23 for the most part, from the Department of Human Services,
24 trying to divert kids away from foster care.

25 So I oversee the project, consult with the attorneys

1 there when issues come up on their cases, fundraise, grant
2 writing, and provide whatever technical assistance the
3 attorneys in the office need.

4 Q. Okay. And again, when you use the word cases, handling
5 their cases, what specifically are you doing relevant to these
6 foster -- I assume they are foster care kids?

7 A. They are. Although, many of our clients are kids we're
8 trying to prevent from entering the foster care system in the
9 first place. So we do a lot of work, for example, with
10 guardianships.

11 Since 2009, we've handled 54 guardianship cases. We
12 do work on the tail end with adoptions. Often times, we're
13 trying to eliminate barriers for, that may exist that are
14 preventing adoptions from happening. And so we're asked by the
15 Department of Human Services to work with the families to try
16 of eliminate those barriers.

17 Q. Okay. And what about your prior employment? Before you
18 worked for the University of Michigan Law School, were you
19 involved professionally at all doing any kind of child advocacy
20 work within the legal field?

21 A. I was. So I graduated in 2001 from Michigan. And
22 immediately, I went to Washington, D.C. to work in an
23 organization called the Children's Law Center where, for the
24 first two years of practice, I primarily handled custody and
25 domestic violence cases representing kids.

1 Since 2003, I've been doing exclusively foster care
2 work. So I did the foster care work at the Children's Law
3 Center as well, representing kids in the D.C. foster care
4 system.

5 And I started off as a staff attorney, and then I went
6 on and became a supervising attorney there before I left that
7 office and came to the University of Michigan.

8 Q. Okay. Now, have you authored any kind of publications, as
9 pertains to the area of child welfare, foster care, or the
10 placement of children into foster and adoptive homes?

11 A. I have. So I've authored about 25 or so publications on
12 all different aspects of the foster care system.

13 Q. And where would these articles have appeared? Have they
14 been published? Where, where do they appear?

15 A. In a wide variety of places. So I've had several articles
16 published in law review law journal articles. I've had several
17 in specialty journals, like the Michigan Child Welfare Law
18 Journal, the Family Law Quarterly, which is run by the American
19 Bar Association. I've written Op-eds in newspapers. I've
20 written chapters in national publications and books.

21 Q. What kind of books? Books about what?

22 A. Books about the child welfare system. There's a seminal
23 book that practitioners in the field use that was published
24 through the National Association of Counsel for Children. And
25 I wrote a chapter in that book.

1 And currently, I'm editing a book for the American Bar
2 Association on representing parents in the child welfare
3 system. I'm also drafting a chapter of that book, as well.

4 Q. Okay. Well, Professor Sankaran, we've had some, some prior
5 testimony from sociologists and psychologists.

6 In terms of getting articles published, what is the
7 process that you have? Is that different than other fields of
8 academia?

9 A. It's a little bit different. So it depends on the type of
10 publication. So for a law review or law journal, those are,
11 for the most part, student editorial boards. And so, sort of a
12 quirk of the legal academy that students are evaluating work
13 product of law professors. So for law reviews, students would
14 make a decision.

15 But I've also had publications published where it's
16 more like the peer review process, in the sense that other
17 professionals are evaluating my work as well. So these would
18 be the specialty child welfare journals, the Family Law
19 Quarterly, which has an editorial board comprised of family law
20 professors from across the country. So it really depends on
21 the, on the publication itself.

22 Q. What about the chapters in the book that --

23 THE COURT: Can you move the microphone just a little
24 bit closer?

25 MS. NESSEL: Closer? Okay.

1 THE COURT: There you go.

2 BY MS. NESSEL:

3 Q. What about the chapters in the book that you described?

4 How do those -- what's the process for publication for that?

5 A. So the chapters in the book that I've, I've written have
6 been reviewed by the editorial board of the, of the book, which
7 were professionals in the field.

8 Q. Okay. Now, have you ever conducted any trainings on this
9 topic, on any of the topics that you just discussed?

10 A. I have. So training is a big part of what I do. And so
11 I've conducted approximately 70 trainings or so for judges,
12 attorneys, lawyers, case workers, both here in Michigan and in
13 approximately 20 other states across the country, on a broad
14 array of child welfare and foster care issues.

15 Q. Okay. So just so the Court understands this, you conduct
16 the trainings for the state court judges as it pertains to
17 these issues you're going to be testifying to here today?

18 A. Correct.

19 Q. All right. Now, do you do any consulting work on a
20 national scale with any other states outside of Michigan?

21 A. I do. So I do trainings for other states. So I've been
22 asked typically by their own -- every state has a state court
23 administrative office. It has a child welfare division within
24 that office. And I'm typically invited by those offices to
25 come train their judges and attorneys. In addition, I'm doing

1 work as a consultant for the National Center for State Courts
2 as part of a judicial engagement project.

3 Q. What, what is that, the National Center for State Courts?

4 A. It's a nonprofit that provides technical assistance for
5 state courts across the country on a wide variety of issues.

6 What I'm doing is focusing particularly on foster care
7 issues, and working with judges in eight states to help improve
8 decision-making within the child welfare system itself.

9 Q. Do you recall what those states are?

10 A. Gosh, it's going to be Michigan, Wisconsin, Indiana,
11 Arizona, Colorado, California, Florida and Indiana.

12 Q. Okay.

13 A. I'm not sure if I've gotten eight there.

14 Q. I think that was eight. All right.

15 So, I'm sorry, did you indicate, have you sat as part
16 of any other committees nationally?

17 A. I have. So I am on the American Bar Association Steering
18 Committee for improving parent representation. I'm a member of
19 the American Bar Association's commission on homelessness and
20 poverty. I've also been asked to consult other child welfare
21 programs. So this year, I was invited to Florida, to assess a
22 master's level program at the Nova Southeastern University.
23 And that's a program for child welfare professionals that they
24 offer.

25 Q. Okay. Now, have you ever been certified by any national

1 associations as a specialist in the field of child welfare?

2 A. I have. So, so the National Association of Counsel for
3 Children has a specialization program for child welfare
4 attorneys. And I was one of the first attorneys specialized
5 through that program. That requires you to take an exam, and
6 also to fill out an application, and collect up to six
7 references, including judges, attesting to your qualifications
8 in the field.

9 Now, I sit on the committee that reviews applications
10 from others who are trying to get certified in this field.

11 Q. Okay. So you are part of the process of evaluating whether
12 another attorney, or an applicant attorney, is certified as a
13 child welfare specialist?

14 A. Correct.

15 Q. Is that your testimony? Okay.

16 Now, have you ever received any appointments from the
17 Michigan courts in regard to issues pertaining to child welfare
18 issues?

19 A. I have. So I've been appointed three times by our State
20 Supreme Court to represent parents in appeals of terminations
21 of parental rights. These are sort of direct appointments that
22 the court gives out to me to handle these cases.

23 I've also handled seven other cases before the
24 Michigan Supreme Court on issues affecting termination of
25 parental rights and adoption as well.

1 Q. Okay. And I don't know if you covered this in terms of the
2 committees you sit on, but in terms of any other state boards
3 involving child welfare issues, are there any other State of
4 Michigan boards that you sit on, or that you participate in?

5 A. There are. So each state has a court improvement project,
6 where members are in the community who do child welfare work
7 are invited to participate. I'm on the court improvement
8 project here in Michigan, which is our entity to do that. It's
9 a statewide board comprised of judges and lawyers and social
10 workers, looking to improve the child welfare system.

11 I was also appointed by Governor Snyder on two
12 occasions, to serve on our Child Abuse Prevention Board, which
13 is also known as the Michigan's Trust Fund.

14 Q. Okay. So the State defendant in this case appointed you to
15 that board?

16 A. Correct.

17 Q. Okay. And have you ever received any type of professional
18 awards in your capacity as a legal advocate on behalf of
19 children in the foster care system?

20 A. I have. So I received the, I think it was in 2009, the
21 Foster Care Review Board's Parent Attorney of the Year.

22 Q. And who presented you with that award? Who was that -- who
23 assigned that to you?

24 A. It was Director Corrigan who, who handed out the award.

25 Q. So is that Maura Corrigan?

1 A. Correct.

2 Q. The Director of DHS, of the Department of Human Services
3 from Michigan?

4 A. Correct.

5 Q. All right. And she gave you the Attorney of the Year
6 Award?

7 A. Correct.

8 Q. All right.

9 MS. NESSEL: Your Honor, at this time, I would like to
10 admit into evidence Plaintiff's proposed Exhibit Number 400,
11 which would be the CV of Professor Sankaran.

12 THE COURT: Any objection?

13 MR. POTCHEN: Your Honor, at this point, are they
14 seeking to have him admitted as an expert in anything?

15 THE COURT: They haven't moved for that yet. All they
16 are moving for is the --

17 MR. POTCHEN: The CV is fine. We're okay with it.

18 (Plaintiffs' Exhibit #400 received, 11:14 a.m.)

19 BY MS. NESSEL:

20 Q. Okay. Now, Professor Sankaran, during the course of your
21 work in the well -- in the child welfare arena, have you worked
22 with any other types of experts, other than obviously you're a
23 lawyer and you work with other lawyers, I assume. But besides
24 attorneys and judges, and people in the legal profession, any
25 other kinds of experts that you work with?

1 A. I have. So, on almost a daily basis in our clinic, we have
2 a psychologist who is a co-faculty member of mine. So to take
3 a step back, sort of inherent in the nature of this work, it's
4 a multi-disciplinary practice, where lawyers are often called
5 to make non-legal decisions in this work about what's best for
6 a child regarding placement and services. And so the nature of
7 this work involves reaching out to professionals all the time
8 to understand issues involving attachment and child
9 development, child psychology.

10 So through my work, on almost a daily basis, I'm
11 reaching out to psychologists, social workers, doctors,
12 primarily those three professions, to help me understand what
13 decisions to make on behalf of the children I represent.

14 The standard, when we represent children in Michigan,
15 for lawyers, is we need to figure out what's best for a child.
16 That's not a pure legal decision. And that really requires us
17 to go out and, and understand these other fields.

18 Q. Okay. I think you said psychologist, social workers and
19 doctors. Child welfare workers as well, did you say?

20 A. Oh, yes. So every one of our cases involves a child
21 welfare case worker, who may or may not have a social work
22 degree.

23 Q. Okay. And on how many occasions -- you said routine
24 interactions, I think. But I mean, how many occasions would
25 you say that you've consulted with these type of experts,

1 meaning psychologists, social workers, child welfare workers,
2 doctors?

3 A. Hundreds. I mean, it's a daily occurrence. Again, because
4 it's the nature of our, our interdisciplinary practice.

5 Q. Okay. And if you can be as specific as possible, your
6 consultation with these other kinds of experts pertains to what
7 types of issues for the children?

8 A. It could range from issues involving placement of where the
9 child should be placed, to what type of services the child
10 should, should receive. Really, you know, the overall
11 well-being of a child.

12 So as a result of that, I've had trainings on
13 attachment, child development, child psychology, the needs of
14 kids aging out of foster care. There's a wide variety of
15 issues.

16 Q. Okay. And in terms of the foster care system, I mean, are
17 you familiar with any of the current issues or problems
18 involved with Michigan's foster care system?

19 A. I am. So part of my work as an academic, in addition to
20 handling cases, is I study the system, I study the laws. I sit
21 on the statewide committees looking at the systems. And I do a
22 lot of work on policies, trying to improve child welfare
23 outcomes for children.

24 Q. All right. And have you done any work which specifically
25 involves researching and investigating the cost to the State

1 involving children in the foster care system, and the cost to
2 the State of children aging out of the foster care system?

3 A. So as part of my work as the director of the Detroit Center
4 for Family Advocacy, at the end of our three-year evaluation
5 period, we had to document our outcomes and cost savings to
6 funders, to the State. And so that's where I did investigation
7 into the costs of foster care, the costs of preventing kids
8 from entering foster care, and also the costs of having kids
9 age out of the foster care system.

10 Q. Okay. Now, what's your familiarity with the application
11 process to become a foster care parent?

12 A. I'm quite familiar with that process, both through my work
13 as a, as a lawyer representing children and parents. It's -- I
14 constantly interact with licensed foster parents, licensed
15 foster care agencies. And then on a personal level, I, myself
16 have gone through the orientation step of becoming a foster
17 parent. So I know it on a firsthand level as well.

18 Q. Okay. What's your familiarity with the process that the
19 Department of Human Services uses to place a foster child into
20 a home?

21 A. Very familiar. I mean, this is, this is sort of the world
22 that I, that I study and, and lawyer in.

23 In every single case that I've handled, this is the
24 process that, that happens, that we're really sort of inquiring
25 about where the child should be placed and who the child should

1 be placed with. And so I know it very, very well.

2 Q. Okay. What's your familiarity with the process involved in
3 either a public or a private adoption? And if you could first
4 explain what the difference is between a public and private
5 adoption.

6 A. Sure. So the difference between a public and private
7 adoption is a public adoption involves the child being adopted
8 out of the foster care system.

9 A private adoption typically doesn't involve the
10 Department of Human Services, but is sort of a private, legal
11 matter between two individuals, and the Court will get involved
12 directly to assess whether the potential placement is suitable
13 for a child.

14 Again, I'm pretty familiar with both these processes.
15 I'm much more familiar with the public adoption, because this
16 is the experience that my clients go through, quite frequently,
17 as they get out of the foster care system.

18 And so through my work, both in D.C. and here in
19 Michigan, and just studying the system, I've become quite
20 acquainted with, with the public adoption system. I've handled
21 and studied private adoption as well, so I know the basics of
22 the process.

23 Q. Okay. Now, what's your familiarity with the process of an
24 adult becoming a guardian for a child, where a child only has
25 one legal parent, and then that legal parent dies or becomes

1 incapacitated, and so cannot care for that child anymore?

2 A. So I'm quite familiar with it. Primarily through my work
3 with the Detroit Center For Family Advocacy, guardianships
4 comprise the bulk of what we do. As I stated before, we've
5 done, I believe, 54 guardianship cases since 2009.

6 In our clinic, personally my students and I have
7 handled roughly, you know, 10 to 15 guardianship cases. In
8 addition, though, I teach on these issues. And so I teach in
9 the law school a class on children in the law, where we really
10 explore adoption, guardianship, child custody cases. And so
11 I've had to study the systems through these different
12 perspectives.

13 Q. Do you also teach all of these issues, when you're at
14 training seminars with the state court judges, do you also
15 teach the state court judges these issues as well?

16 A. Correct. So you can't do child welfare work without
17 understanding these collateral systems. And so, because often
18 times, attorneys and judges are using guardianships, adoptions
19 or custody proceedings to provide an end to a child welfare
20 case, a sense of permanency and stability for children out of
21 foster care. And so really, to do this work well, you have to
22 understand each of these collateral legal systems.

23 MS. NESSEL: And, your Honor, I'm going to ask at this
24 time, that Professor Sankaran be qualified as an expert on
25 Michigan's foster care system, and economic issues relative to

1 the foster care system; the placement of foster and adopt --

2 THE COURT: Slow down.

3 MS. NESSEL: I'm sorry.

4 THE COURT: Go on.

5 MS. NESSEL: Okay. The placement of foster --

6 MR. POTCHEN: What was -- I'm sorry. Michigan's

7 foster care system is one.

8 MS. NESSEL: And economic issues relative --

9 MR. POTCHEN: And economic issues, okay.

10 MS. NESSEL: Care system, yup. The placement of
11 foster and adoptive children into permanent homes. And
12 Michigan's Adoption Code and Probate Code as it relates to the
13 adoption and guardianships for minors.

14 THE COURT: Tell me about economics one more time.
15 You're asking what?

16 MS. NESSEL: About economic issues relative to the
17 foster care system.

18 THE COURT: That qualification is relative in terms
19 of?

20 MS. NESSEL: In terms of the cost of children who are
21 in the foster care system, the cost to the state, as well as
22 the cost to the state's -- the state associated with those
23 children --

24 THE COURT: Okay. Now I understand.

25 MS. NESSEL: -- aging out of the system.

1 THE COURT: Okay. Defense, any objection? Or do you
2 want to voir dire?

3 MR. POTCHEN: Yeah, I'd like to voir dire.

4 THE COURT: Absolutely.

5 VOIR DIRE

6 BY MR. POTCHEN:

7 Q. Good morning.

8 A. Good morning.

9 Q. So you testified that you have a BA and a JD, correct?

10 A. Correct.

11 Q. And your BA was in the area of government, correct?

12 A. Correct.

13 Q. You don't have any other advanced degree, correct?

14 A. Other than the JD and the BA, yeah.

15 Q. So that's correct?

16 A. Correct.

17 Q. No other degrees out there that we don't know of, right?

18 A. Correct.

19 Q. In 2005, you wrote one chapter in a textbook on medical
20 decision-making rights that was peer reviewed by an editorial
21 board, correct?

22 A. Correct.

23 Q. Other than that single chapter in 2005, you have not
24 written any other peer-reviewed article, correct?

25 A. That's not correct. So, so as I stated in my direct

1 testimony, a number of the journal articles I have read --
2 depends on how you define peer review.

3 So a number of the journal articles have been reviewed
4 by the professionals in the field and they have decided to
5 accept that publication.

6 Q. Okay. You have not written any articles on the definition
7 of marriage; that's correct?

8 A. Correct.

9 Q. And you haven't written any articles in the outcomes of
10 children being raised by same-sex couples, correct?

11 A. Correct.

12 Q. You have not conducted any studies on the outcomes of
13 children being raised by same-sex couples, correct?

14 A. Correct.

15 Q. And you are not an expert in child-rearing by same-sex
16 couples, correct?

17 A. Correct.

18 Q. And you have never testified in any case as an expert
19 witness, correct?

20 A. That's correct.

21 Q. You don't work for the Michigan Department of Treasury,
22 correct?

23 A. Correct.

24 Q. And you don't develop budgets for the State of Michigan,
25 correct?

1 A. Correct.

2 Q. You haven't published anything in the area of statistics,
3 right?

4 A. Correct.

5 Q. And you don't have any specialized training in the area of
6 statistics, correct?

7 A. Correct.

8 Q. You have no specialized training in the area of psychology,
9 correct?

10 A. I've received trainings in areas of child development and
11 attachment.

12 Q. I'm sorry. My question is you have no specialized training
13 in the area of psychology, correct?

14 A. That's incorrect. So I, I have received trainings.

15 Q. I'm going to provide you a copy --

16 MR. POTCHEN: I'm sorry, your Honor. May I approach?

17 THE COURT: Yes.

18 BY MR. POTCHEN:

19 Q. I'd ask you to turn to -- you took a deposition, do you
20 recall?

21 A. I do.

22 Q. And I asked you questions under oath, and you gave your
23 answers under oath, correct?

24 A. Correct.

25 Q. And I'm going to read from your deposition. And I'm

1 starting at 7, on page 7, line number 8.

2 "Question: Do you have any specialized training in
3 the area of statistics?

4 I don't."

5 I'm sorry. Let me go on further.

6 On number 11, line 11 I'm starting with. Are you
7 there?

8 A. I am there.

9 Q. "Do you have any specialized training in the area of
10 psychology?

11 Answer: I don't."

12 Did I read that correctly?

13 A. You did read that correctly.

14 Q. Thank you.

15 You don't have any specialized training in the area of
16 sociology, correct?

17 A. I don't.

18 Q. And you don't have any specialized training in the area of
19 economics, correct?

20 A. Correct.

21 Q. You are not a psychiatrist, correct?

22 A. Correct.

23 Q. You are not a psychologist, correct?

24 A. Correct.

25 Q. You are a lawyer with an expertise in foster care, correct?

1 A. Correct.

2 Q. You have never been recognized in any legal proceeding as
3 an expert in the field of foster care, correct?

4 A. Correct.

5 Q. And you will not be offering any testimony on same-sex
6 marriage, correct?

7 A. Correct.

8 Q. You have personally handled less than five guardianship
9 cases over the past five years, correct?

10 A. Personally, that's correct.

11 Q. In the past five years, you have represented a total of
12 about ten clients, correct?

13 A. Personally, that's correct. But the way our program
14 operates is that my, my main responsibilities involve students
15 handling cases, and I directly oversee the work of our
16 students.

17 Q. Okay. You don't plan to offer any testimony regarding the
18 State's rationale for not allowing same-sex couples to jointly
19 adopt, do you?

20 A. Could you repeat the question, please?

21 Q. Yes. You don't plan to offer any testimony regarding the
22 State's rationale for not allowing unmarried, same-sex couples
23 to jointly adopt, do you?

24 A. No.

25 MR. POTCHEN: Your Honor, at this point, I mean I --

1 Mr. Sankaran can only offer any unnecessary and irrelevant
2 legal opinions, it appears. He's not going to testify on
3 same-sex marriage. He's not going to be testifying on joint
4 adoption of same-sex couples. He's not qualified to offer any
5 opinions on Michigan's budget or the State's economics for
6 issues relating to Michigan's budget.

7 His testimony regarding foster care and the Michigan's
8 Adoption Code are not relevant here, or are simply just his
9 legal opinions, which the Court can look at. So we move to bar
10 his testimony.

11 THE COURT: Thank you. Ms. Nessel?

12 MS. NESSEL: Your Honor, Professor Sankaran's
13 testimony is very, very relevant to the situation at hand. And
14 --

15 THE COURT: Are you near the microphone?

16 MS. NESSEL: Sorry.

17 THE COURT: Come on. There you go.

18 MS. NESSEL: All right.

19 All of these issues that Professor Sankaran will be
20 testifying to today are very relevant to the arguments made by
21 both Plaintiffs and the State defendants in this case in terms
22 of whether or not there is a rational basis for both the
23 Michigan Adoption Code, and the Michigan Marriage Act, both
24 which prohibit our clients from jointly adopting or both having
25 legal rights to a child.

1 And obviously, his testimony, we've limited it. First
2 of all, I would say I don't know why you have to be a
3 statistician in order to testify to budgetary issues. You
4 don't need to have an advanced degree in that if you're
5 involved enough in the field that you are familiar with all the
6 stats as it pertains to economic issues with the State and with
7 foster care. So there's no requirement for that. Clearly,
8 Professor Sankaran is very well versed in those areas.

9 And the areas in which I'm asking for him to be
10 qualified, I think, I don't -- if Professor Sankaran is not
11 qualified to speak on these issues, being the one who actually
12 trains the state court judges, and being that he, himself, has
13 been appointed to a very prestigious board pertaining to those
14 issues by State Defendant Governor Synder, as well as having
15 received an award for Attorney of the Year, by of all people,
16 the Director of Human Services, I really don't know who would
17 be an expert in those areas.

18 So we're asking that he be certified by the Court as
19 an expert in these particular areas.

20 MR. POTCHEN: Your Honor, if I may?

21 THE COURT: I'll give you another, sure.

22 MR. POTCHEN: Pardon?

23 THE COURT: Did you want to say something?

24 MR. POTCHEN: Just one more thing quickly.

25 THE COURT: Please. Absolutely.

1 MR. POTCHEN: The plaintiff children are not in foster
2 care. I mean, this is not an issue of foster care. This is
3 not that situation so, thank you.

4 THE COURT: Okay. In this matter, I'm not so sure
5 about the relevance, but I don't have to deal with relevance
6 right now because I haven't heard the testimony yet. And I
7 would not want to cut the plaintiffs off if they have a --
8 later on, it becomes relevant and can put it together. And
9 since there's no jury, the Court can ferret out those things
10 that are necessary.

11 I question, to some extent the relevancy, but not the
12 professor's qualifications. I think he's -- it's interesting
13 because his qualifications aren't the typical qualifications
14 that we see of social scientists and so forth, where they have
15 peer review, they have this, they have that, they have this.

16 However, I think all of the teachings tell us that
17 just the mere fact, number one, that somebody hasn't been
18 qualified in Federal court or another court as an expert before
19 does not exclude them, because they have to start somewhere.
20 The mere fact that they may not be a statistician or do the
21 kinds of research that social scientists do, or other kinds of
22 experts do.

23 I believe that listening to Professor Sankaran, that
24 he is immanently qualified in terms of his field, I think both
25 by education, but even more, more important than education, I

1 think his long experience, his long involvement with both
2 academia, as well as his practical experience and his clinical
3 situation leads me to believe, and I think the record is clear,
4 that he does have the expertise in the foster care areas and
5 placement areas and the adoptive areas.

6 The economics, I'm not so sure, but I haven't heard it
7 yet. I'm not sure how that fits in, number one, to the case.
8 I'm not sure how that fits into his testimony. So I will, of
9 course, have a continuing objection to his testimony by the
10 Government. I'm sorry, by the State. I'm so used to the
11 Government. And we'll have a continuing.

12 When we get to the economics, you may want to make a
13 specific objection. Then I will be able to rule on that,
14 because I'm not sure where that's going. I think the other
15 three areas, I have some idea where it's going. And I think
16 that, though I question relevancy at this point, I think it
17 will be allowed. And the economics, we'll see where it goes.

18 Okay. You may proceed.

19 MS. NESSEL: Thank you, your Honor.

20 BY MS. NESSEL:

21 Q. Professor Sankaran, are you familiar with the facts of this
22 particular case as they relate to the three children who are
23 listed as plaintiffs in this matter?

24 A. Yes.

25 Q. Okay. Have you reviewed the pleadings?

1 A. I have. I've reviewed the pleadings in this matter.

2 Q. Okay. What about the, the children's individual paperwork?
3 Have you reviewed any of that?

4 A. I've reviewed just some basic court orders, describing how
5 the children were adopted by each of the plaintiffs.

6 Q. Okay. So now, what is your understanding of how these
7 three children came to be in the custody of our plaintiffs,
8 April DeBoer and Jayne Rowse?

9 A. It's my understanding, is that all three children had
10 immense special needs, and really entered life with sort of a,
11 a tragic hand dealt to them with parents who were unable to
12 take care of them.

13 Two of the children were adopted through a private
14 adoption, where the Department of Human Services wasn't
15 involved. One of the children was adopted through the foster
16 care system.

17 My understanding is that both plaintiffs are licensed
18 foster parents who have done just a tremendous job with kids
19 who, ordinarily, the system would have problems finding someone
20 to take care of them.

21 Q. Okay. And can you, can you please give us a brief summary,
22 Professor, of the expert opinions that you intend to offer to
23 the Court today?

24 A. Sure. So first, I'd like to talk about the process of
25 becoming a foster parent in Michigan. It's a lengthy,

1 complicated process with lots of checks, a high level of
2 scrutiny.

3 I'd like to talk about the process in which a court
4 determines that a person is fit, or the department determines a
5 person is fit through the licensing process, and my own opinion
6 that that process is so thorough, that the person who undergoes
7 that thought process, should not be deemed to be unfit to adopt
8 a child.

9 I'd like to talk about the, what happens to the
10 surviving parent in a same-sex relationship when the legal
11 parent dies and the legal uncertainty that it creates for the
12 children involved in the proceeding. Specifically, for the
13 non-legal parent, the process for establishing a guardianship
14 is something that's difficult, expensive, time consuming, and
15 really threatens the sense of stability and permanency for
16 children in those homes.

17 I'd like to talk about some of the needs of our foster
18 care system. The fact that we have about 3,500 children in our
19 foster care system who are looking for adoptive homes, but do
20 not have them.

21 I'd like to talk about what happens to these children
22 when we don't, when we fail, and we have these kids age out of
23 the foster care system without adoptive homes; and the outcomes
24 for these children, not just in the outcomes for themselves,
25 but for the costs of the system and the incredible public costs

1 created by our failure to provide these children with, with
2 permanency. And my own opinion, that reducing barriers to
3 adoption and expanding a pool of adoptive applicants could
4 really benefit these children that are aging out of foster
5 care.

6 Q. Okay. Thank you.

7 Now, let's discuss for a moment how one becomes a
8 foster parent in the state of Michigan. You said that both the
9 plaintiffs, the adult plaintiffs in this matter, April and
10 Jayne, they both have been certified as foster care parents
11 prior to their children being placed with them, correct?

12 A. Correct. They've both been licensed as foster parents,
13 which is the sort of term of art that's used.

14 Q. Now, what's the process that an individual has to go
15 through in order to be certified by the State of Michigan as a
16 foster care parent?

17 A. So the first step is approaching a, either the Department
18 of Human Services or a private child welfare agency and making
19 an inquiry about the foster care licensing process.

20 Then afterwards, foster parents will go through an
21 orientation to learn about just the basics of the system, the
22 purposes of foster care, the characteristics of the children,
23 attachment and child development issues, the impact of
24 fostering another family, the role of the foster family, the
25 licensing process, the grievance procedure, the importance of

1 the child's family, parent and sibling visits, policies and
2 procedures of the child welfare agency, supportive services and
3 resources, and provisions on the Child Protection Act.

4 So the first step is really to ensure that foster
5 parent have a thorough sense of what it is that they are, that
6 they are about to embark on.

7 Q. Okay.

8 A. Afterwards, after the orientation is completed and they'll
9 complete and sign an application under our own regulations,
10 both -- any adult caregiver in the house must complete and sign
11 the foster home licensing application.

12 And it's important to note that in our own sort of, in
13 DHS's technical assistance manual, it actually requires both
14 members of the same-sex couple to undergo the licensing process
15 if they would like their home to be licensed.

16 Q. Okay. So if, if you have a couple, a partnered couple,
17 married or unmarried, opposite sex or same sex, both members of
18 that partnership have to be licensed by the State?

19 A. Correct. And once the, the application is signed and
20 received, there's really a two-step process. The agency has to
21 do a very thorough home assessment, which involves things like
22 criminal clearances, child protection clearances, getting
23 medical statements from everyone in the house, collecting
24 references from members, from non-related sources, water
25 inspections. There's sort of a subjective assessment that's

1 done by a social worker about the nature of the home and the
2 strengths and weaknesses, assessing the foster parent's
3 parenting skills. Also the physical home, the adequacy of
4 space, cleanliness, general safety.

5 Again, this is an incredibly thorough process, which
6 makes sense. We're putting in unrelated kids in homes of
7 strangers, and we want to make sure that they are capable of
8 caring for children.

9 Q. Okay. Anything else?

10 A. So in addition to the application itself, there's also a
11 training requirement the foster parents must go through,
12 initially a 12-hour training with up to six hours of
13 orientation included in that, in that training.

14 Once that's done, there's a secondary training that
15 has to happen, which is roughly 12 hours long. And every year,
16 there's an ongoing annual training requirement of six years
17 that exist, as long as the foster home wants to continue to be
18 licensed.

19 THE COURT: Six hours?

20 THE WITNESS: Correct.

21 BY MS. NESSEL:

22 Q. Is there anything else involved in becoming licensed as a
23 foster care parent?

24 A. So at the end of that process, the agency will evaluate all
25 the information, will make sure that the foster parent has gone

1 through the training, and then will make a recommendation as to
2 whether to approve or deny the license.

3 If the recommendation is made to approve the license,
4 the agency retains the discretion to, to document how many
5 children can live in the home, if the home is licensed for
6 special needs children, the ages of the children. Those things
7 will be specified within the foster care license itself.

8 Q. Okay. So all the things that you just stated on the
9 record, those are all the things that you have to go through in
10 order for the State to consider certifying you to become a
11 foster care parent, correct?

12 A. Correct.

13 Q. Okay. Now, typically, how long does this process take in
14 order for the State to certify a person as a foster care
15 parent?

16 A. That can take anywhere from two to six months, and it
17 depends on a number of different issues. Many of our foster
18 care agencies are pretty overwhelmed. And so based on their
19 level of workload, that can slow the process down. It could
20 hinge on how quickly clearances come back, their criminal
21 clearances, child protection clearances, health and water
22 clearances that need to be approved for the home.

23 And then it could depend on the cooperation of family
24 members and how quickly paperwork is completed, but also how
25 quickly it may take for the family to complete the classes,

1 which is a pretty significant requirement, particularly when
2 families may have kids themselves, they have to -- most of the
3 classes are at night, on a weekend. And so families would have
4 to arrange for child care during those times.

5 Q. Okay. Now, how long is this certification? Once someone,
6 a couple or individual receives this certification, how long is
7 that certification good for?

8 A. There's an initial six-month provisional license. And if
9 that is approved, then the license can be renewed for two
10 years.

11 Q. Okay. Once a person or a couple are certified by the State
12 and they've been given a foster child, a foster child has been
13 placed with them, what are the responsibilities of those
14 parents?

15 A. So we put a lot of trust in our foster care -- foster
16 parents. And while a child is in foster care, foster parents
17 are, they step into the shoes in many ways of the parent and
18 are responsible for all the day-to-day tasks of parenting:

19 Getting the children to school; taking them to
20 doctor's appointments; taking them to therapy appointments.
21 They really are rearing these children while the agency is
22 working with, with the parents.

23 In addition to that, the foster parents are also
24 responsible for bringing the child to visits with, with the
25 biological parents. They are responsible for taking the child

1 to those things that may be sort of unique to kids in foster
2 care: Intense therapy, doctors' appointments above and beyond
3 what normal -- ordinary parents of ordinary children who have
4 not experienced abuse and neglect go through.

5 So in a case like this, when you have three special
6 needs children, what foster parents do is just simply amazing
7 because of the, sort of the sheer number of different tasks
8 they are, they are asked to do.

9 But it's important that even, there's sort of an
10 intense licensing period in the beginning. But once that's
11 done and we approve the foster parent, that the kids become a
12 part of that family and foster parents are really responsible
13 for, for raising those kids.

14 Q. Okay. So that the primary responsibilities for the child
15 then are not on DHS, it's really, it's the parents who, the
16 foster parents who have to do all the things that you just
17 stated?

18 A. Correct.

19 Q. Okay. And if they don't do those things?

20 A. Well, then there's a risk that the children would be
21 removed and placed somewhere else.

22 Q. Okay. And so prior to April and Jayne accepting their
23 foster child, Jacob, are these all the measures that they had
24 to take?

25 A. Correct. You cannot become a licensed foster parent in

1 Michigan without taking these steps.

2 Q. Okay. And then all the responsibilities that you talked
3 about after they received him?

4 A. Correct.

5 Q. Okay. Let's talk for a minute about adoptions.

6 Now, all right, you have a foster child who has been
7 placed in the home. And now say that that couple wants to
8 adopt the foster child. What steps have to be taken for a
9 foster child to be adopted into a permanent home, say, the way
10 that Jacob was adopted by Jayne Rowse?

11 A. So for a child like Jacob, the first step would be whether
12 the rights of the biological parent have been terminated or
13 not. In foster care cases, the primary goal is to reunify kids
14 with their birth parents. And so the first step would be to
15 terminate the rights of biological parents.

16 The next step then would be the Department of Human
17 Services would look to the foster parents to see if they are
18 willing to adopt the child.

19 Our, our policies are, are clear that the first person
20 that we look to, to determine whether or not adoption should be
21 pursued are the child's foster parents, primarily because of
22 the relationships and bonds that have developed between the
23 children and their foster parents.

24 If the foster parents are willing, and the foster
25 parent would sign an intent to adopt, and almost akin to the

1 licensing process, it starts everything and the scrutiny and
2 the checks all over again; that they have to complete an
3 application, criminal history checks, central registry checks,
4 references, employment status. And this is for all the members
5 of the household. It's almost starting the entire process
6 again.

7 And then after that is done, the agency does yet
8 another assessment of the home, an adoption assessment trying
9 to sort of assess the current state of affairs in the home,
10 very similar to the licensing process. They'll collect the
11 social history, the motivation to adopt, financial background.
12 We'll assess the home and community environment for the, for
13 the children, the ability to meet the child's needs.

14 And ultimately, the line case worker could either be a
15 Department of Human Services worker, or a, Michigan has a very
16 highly privatized child welfare system now. So often you have
17 a private agency making the recommendation as to whether or not
18 to approve the, the request to adopt.

19 Q. So after all those things are submitted by the prospective
20 adoptive parent or parents, either DHS or this agency then
21 makes a recommendation to the court?

22 A. No. So what DHS is doing right now is making a
23 recommendation internally as to whether or not to approve the
24 adoption.

25 For kids in foster care, the next step is there's an

1 entity called the Michigan Children's Institute which basically
2 becomes the *de facto* parent for a child when the rights of the
3 parent are terminated. And the line worker will make a
4 recommendation to the Michigan Children's Institute as to
5 whether the adoption should be approved. But then the next
6 step is for the Michigan Children's Institute to consider
7 whether to accept that recommendation or not.

8 But ultimately, they need to, as the parent, as the
9 entity that's standing in the shoes of the parent, the
10 institute then makes a recommendation or makes a decision about
11 whether to give consent to the adoption as well.

12 THE COURT: Is the institute a state --

13 THE WITNESS: Correct.

14 THE COURT: -- organization?

15 THE WITNESS: It's the state -- it's almost --

16 THE COURT: Institute is just a name?

17 THE WITNESS: Correct. It's actually an individual
18 within the Department of Human Services that, that approves
19 and, and acts on behalf of the institute.

20 I think the name originally comes, because it actually
21 was an institute back in the 1920's and '30s when children were
22 actually placed in this institution, as they were pending
23 adoption. But now, as we've become more progressive in how we
24 place children in foster care, the institute is just a name.
25 But it's actually a governmental agency.

1 THE COURT: And it's referred to in the statute?

2 THE WITNESS: Correct.

3 THE COURT: Okay.

4 THE WITNESS: As the Michigan Children's Institute.

5 THE COURT: Got you.

6 BY MS. NESSEL:

7 Q. And is there anything following that? Let's say that there
8 is consent given by the Michigan's Children Institute. What
9 next?

10 A. Next, it heads to the courts and to the adoption court.
11 And each county has an adoption court. And paperwork needs to
12 be filed, a petition would need to be filed with the adoption
13 court requesting that the court approve the adoption. And then
14 the court then has its own independent obligation to make an
15 assessment as to whether the adoption is in the best interest
16 of the child, and has a pretty extensive list of factors in our
17 adoptive code.

18 Q. Let's talk about that. What specific code are you
19 referring to?

20 A. So it's MCL 710.22 is the Adoption Code. And in the
21 Adoption Code itself, it lists a number of factors that the
22 court has to consider, including the love and affection between
23 the adoptive child and the adoptive parents, the capacity of
24 the adoptive parents, the length of time the child has lived in
25 the home, the permanency of the family unit, the moral fitness

1 of the adoptive parents, the mental and physical health of the
2 adoptive parents, the home, school and community record of the
3 child. If the child is 14 years or older, the preferences of
4 the child, the ability and willingness of the adopting
5 individual to adopt the siblings. And then it has a catch-all
6 of any other factors that a court wants to take into account.

7 Q. So in order for a person to adopt, and so in the case of
8 for instance, Jacob, Jayne Rowse had to go through all of these
9 measures in order to legally adopt her son, correct?

10 A. Correct.

11 MR. POTCHEN: Just a second, your Honor. Well, that's
12 up to you. Do you want to strike that from the record?

13 MS. HEYSE: Not identifying the name?

14 MS. NESSEL: We actually sought specific permission
15 from the Court.

16 THE COURT: Yeah. I think the first day we talked
17 about whether or not they can mention it. I indicated at that
18 time, I thought we put it on the record, but just in case, that
19 it was really up to the plaintiffs.

20 MR. POTCHEN: That's fine.

21 THE COURT: It was their, their protection.

22 MR. POTCHEN: It struck me.

23 THE COURT: I'm really glad you raised it again. But
24 it's my understanding the plaintiffs have agreed that that's
25 what they wished to do.

1 MS. NESSEL: They have, your Honor.

2 THE COURT: Okay. That's fine.

3 MS. NESSEL: With them, they've agreed.

4 THE COURT: Okay.

5 BY MS. NESSEL:

6 Q. And so what about, for the purposes of even -- so that was
7 a public adoption, Jacob, correct?

8 A. Correct. So I don't think I actually answered your
9 question. So they had to go through that, this process to
10 adopt Jacob.

11 And just to sort of recap, it's three steps that have
12 to be taken. The line agency has to be given approval, the
13 Michigan Children's Institute has to give an approval, and then
14 finally, the court has to give its ultimate approval of the
15 adoption.

16 Q. Okay. Now, what about Jayne's -- the couple's other son,
17 Nolan and their daughter, Ryanne, who were not public but
18 private adoptions. Do they have to go through much of the same
19 process?

20 A. Some of it, but there's a significant difference with
21 private adoptions. There, the Department of Human Services and
22 Michigan Children's Institute would not get involved because in
23 private adoptions, you still have a parent who has rights to
24 the child. And so the parent then can give up their rights
25 directly to the, the potential adoptive parent.

1 So in private adoptions, the case will go directly the
2 court system where the information will be presented to the
3 court.

4 From my own experience, judges in private adoptions
5 will make the additional inquiries, order the home studies,
6 order the assessments to really make sure that, that the home
7 is suitable for a child.

8 Adoptions are not a quick process in Michigan. And so
9 this is a lengthy process that, and we do for good reason, to
10 make sure that the adoptive home is suitable for the child.

11 Q. Okay. So for all three of the children in this matter, all
12 of these factors, these best interests factors for an adoption,
13 MCL 710.22, did all of these factors have to be considered in
14 order for each of those adoptions to occur?

15 A. Correct.

16 Q. Okay. All right. So now at the time when, when, say when
17 Jacob was adopted, he was adopted last, had both April and
18 Jayne already been separately adjudicated to be qualified as
19 both foster and adoptive parents by both the State and the
20 court by the time that occurred?

21 A. Yes. Because both by child welfare agencies, through the
22 licensing process, but then through courts, because they had
23 both been approved individually to adopt children, using the
24 standards set forth in the statute.

25 Q. Okay. Now, in your understanding of the Michigan Adoption

1 Code, are there any circumstances that would allow for both
2 April and Jayne to have legal rights as parents to their three
3 kids?

4 A. As adoptive parents, no.

5 Q. As adoptive parents, yes. No. Okay.

6 Can you tell us, who is eligible in Michigan to adopt
7 a child?

8 A. There are three categories of persons. One is an unmarried
9 -- an individual, a single person can adopt. A married couple,
10 a husband and wife can jointly adopt. And third, and this is
11 due to a recent amendment in our law, a married person without
12 his or her spouse can adopt a child if consent is excused by
13 the court or the court makes a finding that that's in the best
14 interest of the child.

15 Q. So in terms of that third prong that you said was a recent
16 amendment, are you saying that half of the married couple,
17 without his or her partner, can still adopt a child so as long
18 as it's permitted by the Court?

19 A. Correct. It really gives the court discretion, based on
20 the facts of the case, to determine whether it's best for a
21 child.

22 Q. Okay. So in that scenario, in those cases, the court has
23 discretion, but not in the case of say a same-sex couple like
24 April and Jayne?

25 A. Correct.

1 Q. Wanting to adopt together. All right.

2 All right. Let's, let's talk about some of the
3 arguments from the State I'd like you to address.

4 MR. POTCHEN: Your Honor, I'm going to object to any
5 testimony regarding our arguments. He's not
6 testifying regarding --

7 THE COURT: Sustained.

8 MR. POTCHEN: Thank you.

9 THE COURT: You can ask him questions, but you
10 can't --

11 MS. NESSEL: I won't. I will rephrase, your Honor.

12 BY MS. NESSEL:

13 Q. All right. What will happen in the event that you had
14 three people that tried to adopt a child?

15 Let's say that the Michigan Adoption Code no longer
16 existed in its current form, and the portion that we discussed
17 a minute ago, MCL 710.24, which delineates who specifically is
18 permitted to adopt a child. In the event say that that was
19 stricken, what would happen in the event that three people
20 attempted to adopt --

21 MR. POTCHEN: I'm going to object. This calls for
22 speculation of this witness.

23 THE COURT: Sustained.

24 MR. POTCHEN: Thank you.

25 MS. NESSEL: I'm going to rephrase.

1 BY MS. NESSEL:

2 Q. Under any set of circumstances, and I'll give you some
3 examples -- well, strike that.

4 THE CLERK: Counsel, I've just been told, can you just
5 move a little closer to the mic? Yeah.

6 MS. NESSEL: Okay.

7 THE CLERK: There you go.

8 BY MS. NESSEL:

9 Q. No matter what group of individual persons who ever seeks
10 to adopt a child, would they still have to go through the court
11 and still have to go through this best interests determination
12 made by the court, for whoever was seeking to adopt?

13 MR. POTCHEN: Your Honor, I'm going to object. The
14 question is vague. I'm not even sure --

15 THE COURT: I'm not quite sure --

16 MS. NESSEL: Okay.

17 THE COURT: -- what the question is either.

18 MS. NESSEL: All right. I will try again, your Honor.

19 BY MS. NESSEL:

20 Q. In the event someone wants to adopt, all right? And I'm
21 talking about an individual, or two people, or whomever would
22 like to adopt a child, is it always necessary that the court,
23 who is considering the petition for adoption, consider these
24 factors delineated under MCL 710.22?

25 A. Yes. No adoption can be finalized without the court going

1 through each of those best interests factors and making a
2 determination based on facts of the case that the adoption is
3 in the best interest of the child.

4 Q. Okay. So for instance, this third prong here about half of
5 a married person, a married person with -- without his or her
6 spouse, that just occurred recently, right?

7 A. Correct.

8 Q. Okay. That not the case prior to when?

9 A. I think it was 2012, but I'm not, I'm not certain of that.
10 It's very recent, the last three years.

11 Q. So when they changed the law and allowed half of a married
12 person, without the consent of his or her spouse to adopt, were
13 the courts able to make a determination as to that specific
14 scenario, and then look at the best interest factors?

15 A. Yes. So after the, the amendment was made, what courts do
16 now, and we've had several of these cases in the our Detroit
17 center, they evaluate the facts of the case and determine
18 whether the adoption is in the best interest of the child. But
19 it's using the same best interest standards.

20 THE COURT: Was there something that caused the
21 legislature to change it? Was there some kind of -- why did
22 they change it?

23 THE WITNESS: To my understanding --

24 THE COURT: If you know.

25 THE WITNESS: My understanding is there were kids in

1 foster care that we are seeing, a significant numbers of cases
2 where people were legally married but had not seen their
3 spouses in years.

4 THE COURT: I see. Okay.

5 THE WITNESS: And what happened is that these
6 adoptions were being held up, because of the dearth of legal
7 aid for, to help these relatives.

8 THE COURT: This is because though they were married,
9 the spouse wasn't around or wasn't living in the household or
10 something like that, and they wanted to be able to, to allow
11 these persons to adopt?

12 THE WITNESS: Correct. And to get the, to get the
13 relative to, to navigate the divorce system on their own, and
14 deal with issues like service, was just taking too much time
15 and we were keeping kids in care because of that.

16 THE COURT: I got it. Okay.

17 BY MS. NESSEL:

18 Q. All right. Let's talk about guardianships now.

19 Can you tell us about the risks associated with
20 children only being permitted to have one legal parent? And in
21 our instance, in this matter, if something were to happen to
22 either April or to Jayne, would the non-legal parent be able to
23 retain custody of her non-legal children?

24 A. It would depend on a decision subsequently made by a court
25 in a guardianship case.

1 Q. Let me ask you this specifically. And I'm going to refer
2 you now to a paragraph listed in Document 69, submitted by the
3 State, in the State Defendants' brief in support of motion for
4 summary judgment.

5 So they've indicated in this brief, the State, and
6 I'll --

7 MR. POTCHEN: I'm going to object to this testimony as
8 well.

9 THE COURT: Well, I haven't heard the question yet.

10 MR. POTCHEN: Well, she's reading a brief, from one of
11 our briefs, apparently.

12 THE COURT: Well, it's -- okay. You can read it, but
13 what's the question?

14 MS. NESSEL: Well, the question, if I can read it.

15 THE COURT: And don't answer yet. I want to hear the
16 objection.

17 MS. NESSEL: If the State has indicated, and again I
18 quote, "if the intent for recognition of second-parent
19 adoptions, as Plaintiffs claim, is to provide emotional or
20 financial support for children, Michigan law already provides
21 such legal structures. Michigan has the following available to
22 plaintiffs:

23 Guardianships, conservatorships, wills, durable
24 medical and financial powers of attorney, durable powers of
25 attorney, permitting Plaintiffs to designate each other as

1 agent for purposes of parental decisions, and testamentary
2 trusts, allowing Plaintiffs to list each other as primary
3 beneficiaries, and the child as ultimate beneficiaries that can
4 provide security for the children, without undermining the
5 institutions of marriage and family or creating untenable
6 relationships.

7 And then, your Honor, my question as to all of that
8 is, is this accurate.

9 THE COURT: Is it accurate as to?

10 MS. NESSEL: As it pertains to --

11 THE COURT: Because it's got so many things in it.

12 MS. NESSEL: Right. Okay. Then I'll rephrase.

13 THE COURT: It talks about institution of marriage,
14 which he's not an expert on. It talks about the --

15 MS. NESSEL: Sure, your Honor.

16 THE COURT: -- situations. Do you want to know
17 whether or not Michigan allows these things to happen?

18 MS. NESSEL: Let me, let me rephrase the question,
19 your Honor. I understand.

20 BY MS. NESSEL:

21 Q. Does the execution of these types of documents that the
22 State has listed in their brief, such as a will or an
23 appointment of guardianship, ensure that if April dies, that
24 Ryanne will remain with her, her non-legal mother, Jayne, or if
25 Jayne dies, that the boys, Nolan and Jacob, can remain with

1 their non-legal mother April? Will those --

2 THE COURT: That's okay. Go on. He can answer that.

3 THE WITNESS: No. It does not ensure that the
4 children would necessarily remain with the surviving non-legal
5 parent.

6 BY MS. NESSEL:

7 Q. Okay. And can you tell us why that is? I mean, is there a
8 difference at all?

9 THE COURT: Go ahead and ask one question: Why is it?

10 BY MS. NESSEL:

11 Q. All right.

12 A. Because in each of those, in that circumstance, when
13 there's a surviving non-legal parent, it would place the burden
14 on the surviving parent to affirmatively go to a court, a
15 guardianship, in a guardianship proceeding, to affirmative
16 request that the court give them guardianship. But there's
17 absolutely no guarantee in our law that that person will, in
18 fact, get the guardianship order.

19 Q. Just a moment. What does the court have to consider --
20 well, first of all, you said a petition has to be filed by the
21 non-legal parent?

22 A. Correct.

23 Q. And what is it that the Court has to consider in terms of
24 whether or not the Court is going to appoint the non-legal
25 parent as a guardian to the child of her now-deceased partner?

1 A. So within the guardianship code itself, the probate code,
2 there is a similar best interest test. So the court would have
3 the obligation to figure out what was best for the child,
4 looking at the relationship between the adoptive parent and the
5 surviving non-legal parent and the child, the capacity of the
6 surviving non-legal parent, the length of time the child lived
7 in the home, the permanence of the family unit, the mental and
8 physical health of the parties involved, the child's home,
9 school and community record, the child's preference, the
10 party's willingness and stability to facilitate relationships
11 between siblings and between the child and the parent, maybe
12 domestic violence in the home, and any other, there's a
13 catch-all, any other factor that may be relevant.

14 But the burden would be on the surviving parent to put
15 on evidence to demonstrate to the court that these factors have
16 been, have been met.

17 Q. Okay. Now, in the guardianship best interest factors
18 delineated by MCL 700.5101, where does it say in there that the
19 court must consider the preference of the now-deceased legal
20 parent, in terms of what she wanted to see happen to her child?

21 A. It doesn't explicitly say that.

22 Q. So it's not mentioned at all in there?

23 A. No.

24 Q. So does the court even have to consider that as a factor,
25 what the deceased parent would have wanted in terms of her

1 child?

2 A. Not explicitly, no.

3 Q. All right. What is the process for the non -- for the
4 surviving non-legal parent, what do they have to go through in
5 order to be appointed guardian of, and what is the exact
6 process they have to go, to be appointed guardian for the
7 children of their now-deceased spouse?

8 A. So the first step is that you would have to file a petition
9 with the, the probate court. The court would then review that
10 petition and assess, make a determination as to whether the
11 guardianship was in the best interests of the child.

12 If, situations like you're describing, if the parent
13 is, the legal parent is deceased, the surviving non-legal
14 parent would have to provide notice to interested parties
15 which, in a court rule includes grandparents in there. And any
16 interested party could come forward, relatives, at the time of
17 the hearing itself.

18 Q. Okay. Let me just stop you. So you're saying, for
19 instance, if something happened -- and we keep on saying death,
20 but this involves also if you're just incapacitated in some
21 way, that you cannot properly care for the child, correct?

22 A. Correct.

23 Q. Okay. So say something were to happen to, to Jayne, and
24 April wanted to get guardianship of Nolan and Jacob, is, is
25 this the process then that she would have to go through in

1 order to get guardianship?

2 A. Correct.

3 Q. Okay.

4 A. And then so the first step would be that she would have to
5 file for guardianship, have the court assess it, make a
6 finding.

7 In that process, the court has a number of options in
8 any given case it could use. It could order the Department of
9 Human Services to conduct an investigation. It could appoint a
10 guardian ad litem to make his or her own determination of
11 what's in the best interest of the child. And then a hearing
12 would be held if this information is required to make that,
13 that determination.

14 But it really does, the way our legal structures are,
15 are -- have been created, put the burden on the person seeking
16 guardianship to establish their fitness to care for a child.

17 Q. And so, and when you said contacts or provide notification
18 to the relatives, do you mean like in the case of April, if
19 April wanted to have, that I just mentioned, April wanted to
20 seek guardianship of Nolan and Jacob, she's got to give
21 notification to all of Jayne's family? How does that work?

22 A. So the only relative that's specified in our court rule is
23 the grandparent. So there's nothing that sort of would require
24 her to give broader notification to more than, more than that.

25 But the guardianship procedures, procedures are all

1 open. So nothing would prevent relatives from hearing about it
2 to -- from coming to court.

3 Q. Okay. Now, in terms of this guardianship, say that this
4 guardianship is, the appointment is made by the court through
5 either April or Jayne. Is this a permanent guardianship?

6 A. So the order would exist until the order, until the child
7 turns 18 or the Court modifies the order. But on an annual
8 basis, the guardianship would be reviewed. For children under
9 six, there actually has to be an active court hearing every
10 year. For older children, the court may have a court hearing,
11 or the guardian has to file paperwork every year proving to the
12 court that the child is doing okay in the home.

13 But it's -- I mean, there's a level of, of oversight
14 that, that takes place with the court being sort of the central
15 hub of looking over the family until the child turns 18.

16 Q. Now, who is eligible to petition for guardianship of the
17 minor, who is left without a legal parent as April and Jayne's
18 kids would be, if anything happened to either one of them?
19 When that occurs, can anyone challenge the wishes of the other,
20 now-deceased or now-incapacitated parent as to would they would
21 like to see raise their kids?

22 A. Yes. And even after the guardianship is created, any
23 person could challenge and request that the guardianship be
24 rescinded.

25 You know, guardianships, if you look at the statutes,

1 they really are -- they were never intended to be a permanent
2 option in the sense that they were typically -- they are
3 typically used when you have a biological parent trying to get
4 their, sort of address whatever issues they have, and, and the
5 child lives temporarily with a relative or somebody else, which
6 is why, you know, in foster care cases, the Department of Human
7 Services and the courts and the laws puts guardianship as a
8 very secondary goal to adoption, because there's a sense of
9 impermanence with the guardianship process, that at any time it
10 can be set aside. And so the sort of the predominant sort of
11 concept in child welfare cases is one of permanency, trying to
12 get these kids who have been bouncing around from home-to-home
13 a sense of stability; that this is where you're going to be.

14 And there's a recognition in the child welfare
15 community that guardianships don't provide that, because they
16 are intended for a very different purpose.

17 THE COURT: You know, I think I'm going to give you as
18 much leeway as I can, but I think we are getting into areas
19 that are not relevant. And as the State has indicated a couple
20 times, why don't you get to the meat of that which you --

21 MS. NESSEL: Okay. I'll move on, your Honor.

22 BY MS. NESSEL:

23 Q. Can I ask you this, though? Could the children
24 theoretically, under the laws that exist right now, could they
25 be placed back into foster care instead of staying with their

1 non-legal parent? Could that happen?

2 A. Yes. So in a situation where a child is left with a person
3 who does not have legal authority over the child, which could
4 happen if, if the legal parent is deceased and there's some
5 delay caused by the funeral, or sort of the inherent chaos that
6 may take place after someone dies, then the department could
7 petition, one of the grounds, is when a child is left without
8 proper care.

9 Q. Sure. Let me stop you there.

10 Are there other -- are there any other issues in
11 regard to guardianships that place them not on par with having
12 adoptive legal rights?

13 A. It's just the sense that, first, you'd have to seek court
14 approval. Then on an ongoing basis, you have to continue to
15 prove to the court that you're a fit parent. But then also the
16 broad standing provision that at any time somebody could, could
17 threaten to undo the guardianship.

18 Q. Okay. Now, for the non-legal parent who now has to seek
19 guardianship, are there any financial costs or expenses
20 involved in that process of now having to seek an appointment
21 of guardianship for the non-legal children that they want
22 guardianship of?

23 A. Yes. There's filing fees. For example, in Oakland County,
24 it's \$150. It's very similar in many counties. There could be
25 a home study fee the court could order, if the court orders a

1 home study, which could range, it varies quite a bit from a
2 couple hundred dollars to a couple of thousand dollars,
3 depending on the structure of the court.

4 If the proposed guardian wants an attorney, there are
5 fees associated with that. And then there's a cost of going to
6 court. And there can be child care costs and lost wages as a
7 result of missing work.

8 Q. And, Professor, I think you started to speak to this, but,
9 you know, what happens if there is a delay in, in filing a
10 petition for the appointment of guardianship by the non-legal
11 parent?

12 Say that one of these women were to die or one of them
13 were in a terrible accident and they were hospitalized, what if
14 there is a delay in them being able to get to court to do those
15 things? What could happen to them then?

16 A. So I think the important thing to remember is that when
17 that happens, the surviving parent legally is a stranger to the
18 child. Legally they have no rights to the child. So
19 immediately there could be issues involving access to medical
20 care, access to educational, enrolling the child in school,
21 getting documents related to the child.

22 MR. POTCHEN: Your Honor, I'm just going to continue
23 to object. This is all speculation of what could happen.

24 THE COURT: I don't think it's speculation, but we've
25 covered it once. He's indicated all these things. And I think

1 that again, he's covered it, number one, in various ways. So
2 why don't we move on.

3 MS. NESSEL: All right.

4 THE COURT: And see where you, you know, if you have
5 another area, that's great. If you don't, then...

6 MS. NESSEL: All right.

7 THE COURT: I think he's covered guardianships.

8 MS. NESSEL: I understand. If I could just ask this
9 one last question as it pertains to this.

10 BY MS. NESSEL:

11 Q. In terms of the State's own advice that they give to
12 prospective parents, do they indicate, does the State of
13 Michigan indicate that guardianships are on par with securing
14 adoptive rights?

15 MR. POTCHEN: I'm going to object, your Honor, as to
16 him giving legal opinions in this case.

17 THE COURT: I think his area of expertise does involve
18 legal opinions, but I mean I don't know where you're going. So
19 he can answer this question.

20 MS. NESSEL: I understand, your Honor. We're almost
21 done with this area.

22 BY MS. NESSEL:

23 Q. What does the State of Michigan -- you saw what the State
24 of Michigan had indicated in their brief to the Court.

25 But what is the State of Michigan and the Department

1 of Human Services, in their Child Welfare Manual, what do they
2 indicate about this?

3 MR. POTCHEN: Your Honor, I'm going to object to him

4 --

5 THE COURT: Yeah.

6 MR. POTCHEN: -- opining on the State of Michigan.

7 THE COURT: Let's move on.

8 MS. NESSEL: All right. Moving on.

9 THE COURT: Plus, we heard it already.

10 MS. NESSEL: Okay.

11 THE COURT: We know. This witness and other witnesses
12 have testified the effects of guardianship or non-effects.

13 MS. NESSEL: I understand, your Honor. Moving on.

14 BY MS. NESSEL:

15 Q. All right. Now, you've been qualified as an expert as it
16 relates to your knowledge of the foster care system. What can
17 you tell the Court as it relates for the need for qualified
18 parents who want to adopt a foster child in the state?

19 A. There is a pretty significant need based on the high number
20 of kids we have in foster care. We have roughly just under
21 14,000 kids in foster care.

22 The latest statistics that I saw is of those under
23 14,000 children in foster care, roughly 3,500 kids are children
24 that we refer to as legal orphans, kids whose, the rights of
25 the parents have been terminated, but they don't have -- they

1 haven't achieved permanency through adoption. The latest
2 statistics that I reviewed, I believe in 2012, was that over
3 800 children aged out of our foster care system.

4 What's particularly troubling, is that that number has
5 risen from a little over 500 children, back in 2005, to a
6 little over 800 children now of kids aging out of foster care
7 at a time when our foster care population itself has declined
8 significantly in the state of Michigan.

9 So for whatever reason, we are leaving these children,
10 an increasing number of children without a permanent home, more
11 than we've had in the past.

12 Q. Okay. And what are the prospects for these children that
13 you're talking about, the ones that age out of foster care
14 without any permanent homes?

15 MR. POTCHEN: I'll object to this, your Honor, as him
16 speculating what prospects are for kids going without permanent
17 homes. I don't even know where we're going with this.

18 THE COURT: And I'm not -- I mean, all these -- I
19 mean, I don't know. We've already heard testimony as to that.

20 MR. POTCHEN: We've heard testimony on the population,
21 your Honor.

22 THE COURT: We've heard testimony as to what happens
23 when children age out and so forth.

24 MS. NESSEL: Right. But we haven't heard it from this
25 expert, your Honor.

1 THE COURT: But it's cumulative. I find it very
2 interesting and I think he's very knowledgeable, but number
3 one, it's cumulative. There's no reason to continue it, number
4 one. Number two, that's --

5 MS. NESSEL: All right. I'll move on.

6 BY MS. NESSEL:

7 Q. All right. So generally without going through these
8 numbers --

9 THE COURT: No. No. Move on. Move on.

10 MS. NESSEL: Okay.

11 BY MS. NESSEL:

12 Q. Now, do you believe, Professor Sankaran, that the Michigan
13 Adoption Code provides disincentives for same-sex couples to
14 adopt?

15 A. I do.

16 MR. POTCHEN: I'm going to object to this fact. When
17 I asked him directly, are you going to give any opinions on
18 Michigan's rationale for same-sex -- for second-parent
19 adoptions.

20 THE COURT: He said no. He hasn't gotten into that
21 area.

22 MS. NESSEL: Well, that's what I'm specifically
23 asking, if there are any disincentives for same-sex couples to
24 adopt based on the construct of the Adoption Code.

25 THE COURT: He's already answered the question. He

1 said yes.

2 BY MS. NESSEL:

3 Q. Okay. All right. Can you tell us why?

4 A. Yes. Because it leaves the one parent in the relationship
5 without any legal right to the child.

6 Q. All right.

7 A. There's only one parent, one of the parents can adopt.

8 Q. And can you tell us whether there are any specific
9 challenges involving in, say, placing special needs kids, like
10 the ones that April and Jayne have taken in, those kinds of
11 kids, are there any special challenges placing them in the
12 foster care system into permanent homes?

13 A. Yes.

14 THE COURT: Permanent homes. Go on.

15 THE WITNESS: This is a challenge that we confront in
16 the system every day, with kids with special needs, like the
17 three that are placed with, with the plaintiffs in this case,
18 but also of older youth in foster care. It's, it's something
19 that we struggle with in our system. We can't find enough
20 homes for kids who are older, particularly kids of color.

21 BY MS. NESSEL:

22 Q. All right. Now, if the Adoption Code as it's currently
23 written, if it -- sorry.

24 If the Adoption Code were to be changed, for instance,
25 to allow same-sex couples to adopt, how would that allow -- how

1 would allowing both parties to have adoptive legal rights to a
2 child increase the pool of applicants to adopt foster care
3 children?

4 MR. POTCHEN: I'm going to object, your Honor. It
5 calls for speculation, a legal conclusion and it's irrelevant
6 here, I guess.

7 MS. NESSEL: Your Honor, I'm seeking his opinion as to
8 it based on his understanding of how the foster care --

9 THE COURT: He may answer it, but I can't let you go
10 too far. But go on. He can answer. He has an opinion based
11 upon his expertise and his experience within the area.

12 THE WITNESS: So my opinion is that eliminating any
13 barrier, making it easier for families to adopt would benefit
14 my clients, the kids in foster care.

15 My conversations with workers at adoption agencies
16 also suggest that there are a significant number of same-sex
17 couples who are going to other states. That's one of the
18 things that that same-sex couples can do is adopt foster
19 children from other states jointly; that there are 21 states
20 out there that allow adoption by, by unmarried parents. And
21 through the interstate compact on the placement of children,
22 which is a state law, that every state in the United States has
23 adopted as enacted, a couple in Michigan could go elsewhere and
24 adopt children in foster care in another state.

25 BY MS. NESSEL:

1 Q. So that means that kids would be adopted, under that
2 scenario, they would be adopted from other states, but not from
3 the foster care system from the State of Michigan, correct?

4 A. Correct.

5 Q. Okay. And in terms of financial savings to the State, if
6 those couples were to adopt from the State of Michigan's foster
7 care system, say instead of going elsewhere, or not adopting at
8 all, would you expect to see any kind of savings to the State
9 of Michigan as a result of that?

10 MR. POTCHEN: Okay. Now I'm going to object.

11 THE COURT: Well, as to specifics, I sustain your
12 objection.

13 MR. POTCHEN: Thank you.

14 THE COURT: But he obviously knows somewhat. And
15 would you expect to receive savings, he can answer that yes or
16 no. But as to specifics, I don't think that he's --

17 BY MS. NESSEL:

18 Q. Okay. Would you expect to see savings to the State of
19 Michigan, in the event that same-sex couples were allowed to
20 jointly adopt or second-party adopt, would you -- and you had
21 more kids that were adopted from the foster care system, would
22 you expect to see some kind of savings to the State of
23 Michigan?

24 A. Yes. It's an unsettled -- I mean, it's an undisputed fact
25 that foster care is expensive both in terms of direct costs of

1 care involving housing the children, the professionals involved
2 in the cases, but also the indirect costs involved with high
3 rates of incarceration for kids aging out of foster care,
4 homelessness, mental health costs. So I would expect that if
5 we were able to get more kids adopted, it would save the State
6 a significant amount of money.

7 Q. Okay. Now, in your experience as a specialist in the field
8 of child welfare, do you personally, from speaking to all these
9 different experts, and working in the field, do you know any
10 reason why a same-sex couple like April and Jayne should not
11 both be provided with legal rights to the children they are
12 jointly raising?

13 A. No.

14 MR. POTCHEN: Objection, your Honor.

15 THE COURT: He can answer that. He says no, he knows
16 no reason.

17 THE WITNESS: And I think for me, it's telling that we
18 license as foster parents same-sex couples.

19 MR. POTCHEN: This isn't even responsive, your Honor.

20 THE COURT: But non-responsive is the person who asked
21 the question. So if she feels it's non-responsive.

22 MS. NESSEL: It feels responsive.

23 (Laughter in courtroom.)

24 THE COURT: You may continue.

25 THE WITNESS: The State of Michigan license same-sex

1 parents to foster children. And as I stated before, foster
2 parents have a significant amount of responsibility on the
3 day-to-day basis to care for children in the foster care
4 system. So for me, that's telling as any fact that I know.

5 BY MS. NESSEL:

6 Q. Okay. So now based on your assessment of the issues in
7 this case, have you formed any general conclusions as it
8 pertains to these issues?

9 A. I have. So I think that my opinion is that the current law
10 that exists and which I think imposes a barrier on the, the
11 pool of adoptive applicants is really hurting kids in Michigan,
12 particularly kids that I focus oh, kids in foster care. And I
13 also have the opinion that, that other mechanisms like
14 guardianships or wills don't provide the stability of
15 permanency for kids that, that an adoption could provide, which
16 then increases the likelihood of insecurity, instability and
17 impermanency for children.

18 MS. NESSEL: All right. Thank you, very much, your
19 Honor.

20 THE COURT: You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. POTCHEN:

23 Q. Hello again.

24 A. Hello again.

25 THE COURT: Do you want this up? There we go.

1 Okay. Go on.

2 BY MR. POTCHEN:

3 Q. We talked a little bit about the Michigan Adoption Code,
4 MCL point 24 in your testimony earlier, correct?

5 A. Correct.

6 Q. And we talked about an addition, the recent addition onto
7 that which says a married person with or without her spouse can
8 adopt, the addition --

9 A. Correct.

10 Q. -- that occurred?

11 When that married person adopts the child under the
12 third prong, they adopt as a single person, correct?

13 A. Correct.

14 Q. When a home is licensed -- I'm going to talk a little bit
15 about foster care. When a home is licensed as a foster home,
16 DHS can approve more than one foster parent, correct?

17 A. Correct.

18 Q. And when a home is licensed as a foster home, everyone
19 providing care in the home regardless of the number, must be
20 approved by DHS, correct?

21 A. Correct.

22 Q. So DHS can approve multiple caregivers in a foster home,
23 correct?

24 A. Correct.

25 Q. A brother and a sister can apply to be caregivers in a

1 foster home, correct?

2 A. Correct.

3 Q. And the caregiver or foster parent is not the legal parent,
4 correct?

5 A. (No response.)

6 Q. We're talking about foster homes.

7 A. Correct.

8 Q. In a foster home situation, the caregiver or foster parent,
9 however you want to call it, is not the legal parent, correct?

10 A. So what do you mean by the legal parent?

11 Q. Right. In a foster care situation, the biological parent
12 or the state is the recognized legal parent, correct?

13 A. I would say that in a foster care situation, the biological
14 parent, the court, and then the foster parent share
15 responsibilities. But I think your -- but the primarily
16 responsibility hinges with the court and the biological parent.

17 Q. Right. It's not the foster parent. They were not the
18 legal parent. It's either the biological parent or the court
19 or both the court and the biological parent --

20 A. Right.

21 Q. -- together, correct?

22 A. Correct.

23 Q. Now, later, the foster parent can become the legal parent,
24 correct?

25 A. Correct.

1 Q. So in an adoptive home, a permanent legal relationship is
2 created. And in a foster home, that permanent legal
3 relationship has not yet been created. Is that true?

4 A. Correct.

5 Q. In Michigan, a single person can adopt whether they are
6 gay, lesbian, straight, if they are deemed fit by the
7 Department of Human Services, correct?

8 A. And the court, correct.

9 Q. And the court.

10 And if they are deemed fit, DHS policy and the courts
11 do not prohibit someone from adopting based on same-sex, their
12 attraction to a same sex, excuse me.

13 A. Correct.

14 Q. And DHS policy and the courts do not prohibit individuals
15 from adopting if they are living with a same-sex partner,
16 correct?

17 A. Correct.

18 Q. So under Michigan's current adoption law, the pool is
19 married couples or a single person, correct?

20 A. Correct.

21 Q. Ms. DeBoer can execute a will designating her desire to
22 have Ms. Rowse granted rights over the children, correct?

23 A. She could, correct.

24 Q. And Ms. Rowse can execute a will designating her desire to
25 have Ms. DeBoer granted rights over the children, correct?

1 A. She could.

2 Q. Do you know if either of them have done that?

3 A. I don't.

4 Q. And you indicate, even if they are designated as such, the
5 other person still has to go to court and file an acceptance of
6 that appointment, correct?

7 A. Correct. And the court would have to approve the
8 appointment based on a finding that it's in the best interest
9 of the child.

10 Q. You don't have any reason to believe that Ms. Rowse or Ms.
11 DeBoer would not accept such an appointment, do you?

12 A. I don't.

13 Q. And you don't have any reason to believe that either Ms.
14 Rowse or Ms. DeBoer would refuse to become a guardian to the
15 children, do you?

16 A. I don't.

17 Q. In this case, if one of the adult plaintiffs died, the
18 other adult plaintiff could go to probate court, file for
19 temporary guardianship, and if the court approves it, then they
20 could retain the care of the child of the decedent, correct?

21 A. If the court approves it, they could.

22 Q. And generally, courts don't ignore the decedent's wishes,
23 do they?

24 A. So I can't speak to that. So I have not had sort of
25 extensive experience with the -- in situations where a decedent

1 has died. I mean --

2 Q. You wouldn't --

3 A. -- one would hope.

4 Q. You wouldn't expect a court to ignore a decedent's will,
5 expressing their desire to have somebody else care for their
6 children, would you?

7 A. I wouldn't expect it.

8 Q. Okay.

9 MR. POTCHEN: Just a minute, your Honor?

10 THE COURT: Of course.

11 MR. POTCHEN: I have no further questions, your Honor.

12 THE COURT: Thank you. Anything further?

13 MS. NESSEL: No, your Honor.

14 THE COURT: Thank you, Professor.

15 THE WITNESS: Thank you.

16 THE COURT: You may step down. Let's just talk a
17 little bit about tomorrow. We'll start at nine o'clock. We
18 have, is it Dr. Gates, it's my understanding. And he's the
19 only witness tomorrow?

20 MS. NESSEL: Correct, your Honor.

21 THE COURT: Okay. And then Friday we have Dr. Cotts,
22 and she's the only witness. Is that correct?

23 MR. MOGILL: That's correct.

24 THE COURT: Okay. And then Monday, the Government
25 will be prepared to -- the Government.

1 MR. POTCHEN: The State.

2 THE COURT: The State will be prepared to start their
3 case. So we will adjourn for the day. We will all see you
4 tomorrow at nine o'clock, and Friday we'll start at nine
5 o'clock, too.

6 Okay. We'll stand in recess.

7 (Proceedings adjourned, 12:26 p.m.)

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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 excerpt of proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, RMR, CRR, FCRR, CSR

Federal Official Court Reporter