

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

v.

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

RICHARD SNYDER, ET AL.,

Defendants.

_____ /

BENCH TRIAL

Wednesday, March 5, 2014

Appearances:

FOR THE PLAINTIFFS:

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DANA M. NESSEL, ESQ.
KENNETH MOGILL, ESQ.
ROBERT SEDLER, ESQ.
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- - -

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Bench Trial
Wednesday, March 5, 2014

I N D E X

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1 Detroit, Michigan
2 Wednesday, March 5, 2014
3 1:00 p.m.

4 - - -

5 **THE COURT:** Thank you. You may be seated.
6 Any preliminary matters? Okay. You may continue.

7 - - -

8 **LOREN MARKS, PH.D.,**
9 being first duly sworn by the Court to tell
10 the truth, was examined and testified upon
11 their oath as follows:

12 - - -

13 **DIRECT EXAMINATION**

14 **BY MR. POTCHEN:**

15 **Q.** Doctor Marks, I would like to now turn to studies
16 that you looked at. The first one would be the one
17 conducted by very Nanette Gartrell in 1996, The National
18 Lesbian Family Study. That would be in front of you. Can
19 you tell us where that is on the chart?

20 **A.** It appears to be the second one from the top.

21 **Q.** That's where it says Gartrell et al, 1996, right?

22 **A.** Correct.

23 **Q.** Okay. Did Doctor Gartrell use a longitudinal survey
24 for her study?

25 **A.** She did. In fact, I believe the title of the study

1 was the National Longitudinal Or Lesbian Family Study.
2 Longitudinal is in the title and that is accurate.

3 **Q.** Okay. Do you know how the study was conducted?

4 **A.** It was 39 lesbian mothers were sampled from San
5 Francisco, thirty-seven from Boston and I believe eight
6 from Washington, D.C. The samples were based on informal
7 networking and recruits or volunteers that were -- that
8 were gathered through events at book stores and through
9 lesbian newspapers etc.

10 **Q.** Is that -- is there a certain name for that type of
11 sampling method?

12 **A.** It's convenience sampling.

13 **Q.** So while the title said National Longitudinal
14 Lesbian Family Study, did the approach actually constitute
15 a nationally representative sample?

16 **A.** No. A sample that small from three different cities
17 would not approximate a nationally representative sample.

18 **Q.** And the sample, did it consist of lesbian couples
19 only?

20 **A.** It was lesbian mothers only I believe. No gay
21 fathers.

22 **Q.** Was it compared to any heterosexual couples?

23 **A.** Gartrell, in at least early studies, did not have
24 any heterosexual comparison group.

25 **Q.** Okay. Now, I am going to turn to Golombok on the

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 same chart, specifically her 2003 study. That is about
2 the middle of the page?

3 **A.** Yes.

4 **Q.** And do you know what the name of that particular
5 study was called?

6 **A.** I believe it was done in Avon, England and the name
7 of the study is the Avon Community Study or something
8 similar.

9 **Q.** So this was done in England. And what was the
10 sample size of that one?

11 **A.** Thirty-nine, again, lesbian mothers, and no gay
12 fathers, if memory serves.

13 **Q.** And those studies, there is a few there, one, two,
14 three, four, five, we are looking at Golombok right now.
15 There is a variety of Golombok studies, isn't that
16 correct?

17 **A.** Yes.

18 **Q.** What were the compare groups for those studies?

19 **A.** The comparison group, as I mentioned, for Gartrell
20 there was no comparison group. With Golombok et al. in
21 2003, there was a mixed bag of couples and singles.

22 **Q.** Okay. Then I want to go back to the slide, to
23 Brewaeys. And this is a 1997 study, is that correct?

24 **A.** It was. It was a study of donor inseminated
25 couples. I believe, again, all lesbian mothers, conducted

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 in Belgium.

2 **Q.** Is insemination expensive?

3 **A.** I don't have exact figures but, yes, it's an
4 expensive and a cost prohibitive procedure.

5 **Q.** And generally, is that representative of the
6 population of gays and lesbians that were part of these
7 samples? Actually, let me rephrase that a little better.
8 Is that a representative population of the entire
9 population?

10 **A.** I would assume, no. Part of my critique earlier
11 today was that wealthy, well educated, white lesbians,
12 privileged on the whole, have been repeatedly sampled.
13 And if we move to the area of donor insemination you are
14 probably dealing with a relatively privileged class. The
15 same would be true for adoptive couples on the whole.
16 Those are generally expensive ways to acquire children
17 although biologically it's not cheap either.

18 **Q.** The '97 study, do you know what was being compared
19 in that particular study?

20 **A.** The outcomes that are mentioned there are emotional
21 and gender development. There are possibly other
22 variables as well.

23 **Q.** And the sample size, that was a 30 sample size?

24 **A.** It was. If we look across studies there, we have
25 got Brewaeys with 30, the minimum that we typically want

1 to see in a quantitative study. I believe back with
2 Golombok it was 39. With Gartrell we have a nice number
3 at 154, 156 individuals. But, again, no comparison group
4 and no ability to make a strong comparative statement
5 across groups.

6 **Q.** And there is another study by a Chan?

7 **A.** I have two listed. Chan, Brooks, et al, 1998.
8 Chan, Raboy, 1998. Again, we are dealing with small
9 sample sizes. Thirty, the bare minimum. And the
10 heterosexual comparison group even lower than that at 16
11 with the second study, fifty-five, which is a better
12 number. But, again, we are below 30, the minimum on the
13 heterosexual comparison group. Again, we have got donor
14 inseminated couples and some concerns about
15 representativeness there.

16 **Q.** The final one I want to talk about from your chart
17 is the Wainwright and Patterson which is probably two
18 slides up. Three. This would be --

19 **A.** Wainwright.

20 **Q.** 2004, second from the bottom. What can you tell us
21 about that particular survey or study?

22 **A.** This is an often featured study. It was selected,
23 for example, by two reviewers in a 2005 piece, and in
24 their opinion, one of the best few studies that have been
25 conducted to that point on gay and lesbian parenting.

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1 Often it's featured or claimed to be a rare nationally
2 representative sample. If we look closer, we find
3 something different, however. It is drawn from what is
4 called an Ad Health sample. On page 1889 of that
5 publication, the sample of Ad Health is listed at 12,105
6 for the entire sample. The subsample, however, of lesbian
7 mothers, if we continue to read on to 1890, I believe the
8 next page, we're told that in terms of the mothers who met
9 what Wainwright and Patterson called the idealized image
10 of lesbian mothers was very small at 18. The
11 questionnaire did not ask explicitly about sexual
12 orientation which kind of muddies the water in terms of
13 same sex parents. It's a little bit difficult to tell,
14 for example, if you are a same sex parent, is there a
15 possibility that it might be a mother, daughter or two
16 sisters sharing a home.

17 If we consider that that smaller number of 18
18 which fit the idealized type that is talked about on page
19 1890, that is a miniscule fraction of the overall sample
20 of 12,105. I ran the numbers on it. It's .00148 which is
21 lower than three individuals out of every 2000. That
22 would fit that idealized type. Again, in terms of those
23 who would report, we wonder about representativeness.

24 Q. I mean, just to interrupt, if someone were to
25 represent that that sample size was 12,000, in your

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1 opinion, would that be a misleading representation?

2 **A.** It would. That is the larger group that these 18 or
3 at best 44 were drawn from.

4 **Q.** Where do you get the 44 number from?

5 **A.** That is a little bit fuzzy reading through. They
6 mention on 1890 that there are 18 that meet idealized
7 image but another 26 appear to meet other qualifications
8 to bolster the overall comparison group to 44.

9 **Q.** So the largest true comparison group was 44?

10 **A.** For the lesbian mothers, yes.

11 **Q.** Okay. Did the Ad Health survey ask the parents to
12 specify their sexual orientation?

13 **A.** No, I don't believe it did.

14 **Q.** And, again, was this a study of lesbian mothers
15 only?

16 **A.** It was. The Wainright and Patterson article
17 mentions that there were only six gay fathers, I believe,
18 that identified. Again, they didn't ask. I am not
19 certain how they got that, but the number was small enough
20 that they dismissed that sub-sample.

21 **Q.** Are you aware if Patterson made any -- noticed
22 anything regarding her study?

23 **A.** The characteristics of the lesbian mothers by an
24 idealized image, we return again to some points that I
25 made earlier about privilege in terms of income, education

1 and race.

2 Q. Okay. And what was the data collected for this
3 study?

4 A. The Ad Health sample that they drew was 1994, 1995.

5 Q. Is that a longitudinal study?

6 A. For purposes of that study that would be
7 cross-sectional, I believe. The Ad Health runs across
8 time, but for that purpose or purposes of that study, no.

9 Q. So it's not longitudinal, is that correct?

10 A. It doesn't appear to be in the Wainright et al.
11 piece in 2004.

12 Q. After you published your report that we have been
13 discussing your testimony today, did individuals indicate
14 that they disagreed with your findings?

15 A. There were many who did not like the report. I
16 heard from folks around the country. In terms of findings
17 I tried to be very explicit giving specific studies and
18 page numbers where possible so that a data audit trail was
19 created that could be retraced. Like anyone I make
20 mistakes, made several corrections working through, and
21 there were probably mistakes that remain. But the
22 critiques that I received were more about content than a
23 quibble over methods or findings.

24 Q. Okay. So, even though they disagreed perhaps with
25 what you were saying --

1 **MS. STANYAR:** Objection.

2 **THE COURT:** I didn't hear the objection.

3 **MS. STANYAR:** I object to the date. So if we
4 can get a foundation.

5 **THE COURT:** Counsel?

6 **MR. POTCHEN:** I can identify.

7 **BY MR. POTCHEN:**

8 **Q.** Are you familiar with the person by the last name of
9 Amato?

10 **A.** Yes.

11 **Q.** Did that person stress any concerns regarding your
12 study?

13 **A.** Professor Amato reviewed my piece at some point and
14 he didn't express concern with the methods. He did
15 express concerns with one of the implications or
16 recommendations I made at the end, that ideally it would
17 be best if we had a national, large national
18 representative sample.

19 **Q.** Let me interrupt. What was the recommendation you
20 made at the end?

21 **A.** The recommendation that I made at the end is that
22 the validity of the studies in this area would increase
23 substantially if researchers in this area heeded a few
24 recommendations. I listed several. One of those was to
25 do our best to find some large representative samples.

1 Professor Amato's point to me was that may be difficult to
2 do at this point, to find a large nationally
3 representative sample of gay and lesbian parents. And I
4 think it's a fair point, that it's difficult.

5 Q. And did a person named Eggebeen --

6 A. Professor Eggebeen also reviewed the article, yes.

7 Q. Was there any concerns raised by that Professor?

8 A. Not that I remember.

9 Q. How about Osborne?

10 A. Doctor Cynthia Osborne also reviewed it. I don't
11 remember pronounced concerns from her.

12 Q. Okay. But of the individuals who you heard from
13 regarding your piece, did any claim that your numbers or
14 the data was incorrect?

15 A. No.

16 Q. Okay. However, you felt the needed to submit a
17 written response to those comments?

18 A. I did. I did.

19 Q. If you would turn to Exhibit Number 18 to the book
20 beside you and tell us what that is?

21 A. Amato, Eggebeen and Osborne, the three professors I
22 just mentioned, reviewed my paper at some point. I don't
23 know if they were part of the formal review team or if
24 they were asked to write all reviews later. But at some
25 point they reviewed my paper carefully, all three of them,

1 and wrote up critiques and recommendations and suggestions
2 that were to be published in the journal and were
3 published with the journal along with my article. I was
4 given the opportunity -- admittedly my turn around time
5 was very, very brief. It was a matter of by the time the
6 final one rolled in, a matter hours instead of days to
7 respond. But it was, I was given the opportunity to at
8 least respond to the critiques and counterrecommendations
9 that they made and that's what we have here.

10 **Q.** And so what is the name of the piece?

11 **A.** The piece is We See What We Seek, A Rejoinder To The
12 Responses of Amato, Eggebeen, and Osborne.

13 **Q.** And is that a true and accurate copy of the
14 rejoinder?

15 **A.** It appears to be. It's just two pages long.

16 **MR. POTCHEN:** I move to admit Exhibit 18?

17 **THE COURT:** Any objection.

18 **MS. STANYAR:** No objection.

19 **THE COURT:** Received.

20 **BY MR. POTCHEN:**

21 **Q.** What do you mean by We See What We Seek?

22 **A.** What I'm getting at, and I believe the closing line
23 of the article, maybe not verbatim, is that all of us have
24 blind spots. We have different theoretical perspectives
25 that direct us and give us permission and encourage us to

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1 see certain things. But by extension those same
2 perspectives and world views tend to blind us to other
3 things that are very important to consider. I close up by
4 saying that it's ironic perhaps that our blind spots are
5 best pointed out to us by those who see the world quite
6 differently than we do, particularly through respectful
7 interaction with others who see the world differently.
8 And that was the tone that I tried to take in this
9 rejoinder, that there is a great deal we can learn from
10 respectful dialogue.

11 **Q.** Are you familiar with the term reflexivity?

12 **A.** I am.

13 **Q.** Is that kind of what you are referring to here or is
14 that at all related or was it discussed in your paper?

15 **A.** I don't know that I mentioned the term reflexivity
16 but certainly it's the heart of what I'm talking about.
17 Briefly, in the sciences, we claim to hold an objective
18 ideal. We want to shoot for truth. Perhaps ideally truth
19 with a capital T, and at least with a smaller T. However,
20 the idea behind reflexivity is that because of those blind
21 spots that each of us have, the limitations and knowledge,
22 as well as the biases that we develop through a life
23 experiences, that it's almost impossible for any
24 individual to be completely objective. As a result, some
25 like me believe that a more authentic and honest approach

1 to research is to essentially lay your cards on the table,
2 to be open and forthright about the biases that we hold,
3 specifically the biases that we hold that would directly
4 bear or be relevant on our domain of inquiry. The hope
5 there is that by being honest and transparent that it
6 introduces a fair set of checks and balances at one level,
7 and that also we become increasingly aware of our own
8 blindness and limitations and move towards a product
9 through interaction with others that more closely
10 approximates truth. It certainly is -- it's an ideal that
11 I endorse.

12 **Q.** Are you aware of any studies that may reflect this,
13 what you're talking about?

14 **A.** In much of my own qualitative work I include a
15 formal or informal reflexivity section trying to disclose
16 biases that would be relevant to the study at hand as I
17 mentioned a minute ago.

18 **Q.** Okay. What about studies by an individual named
19 Miller?

20 **A.** Yes. Miller is an interesting case in terms of
21 reflexivity and more appropriately, bias in terms of not
22 just an individual researcher but the field as a whole. I
23 believe at the outset today I discussed the APA's vote in
24 August of 2011. One hundred fifty-seven to zero in favor
25 of same sex marriage. There have been some writings by

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1 scholars including Schumm who have argued through other
2 data, through an evidence of homosexual bias or liberal
3 bias in published research.

4 An interesting case study, and we might move up
5 on the slide to Mucklow and Phelan. In 1979, 1980 and
6 1981, there were a series of three studies conducted by
7 scholars at Colorado State University. The Mucklow and
8 Miller team. Two of these studies had predominantly
9 positive findings regarding lesbian mother families.
10 Another study done by the same team, actually Miller,
11 Mucklow Jacobsen and Bigner in 1980 does not appear on
12 this slide. The point here was that we have the same
13 research team from the same academic institution producing
14 studies based on the same data set.

15 Additionally, two of these three studies were
16 published in the same journal, Psychological Reports.
17 What was noted by a scholar named Schumm was that the 1979
18 and 1981 piece, it presented a positive picture, had been
19 cited by 2010 about 65 times, while the Miller Mucklow
20 Jacobsen and Bigner piece had only been cited twice. I
21 did some research of my own on February 27th of this year,
22 you know, almost five years later, and found that the
23 Mucklow and Phelan --

24 **MS. STANYAR:** Objection. It's beyond his
25 report, Judge.

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1 **MR. POTCHEN:** I think he is making a point,
2 your Honor.

3 **MS. STANYAR:** It doesn't matter if he is
4 making a point.

5 **THE COURT:** I will allow him to testify. Go
6 on. February 27th of this year?

7 **A.** February 27th of this year I revisited these two
8 studies on Google Scholar and found the Miller or the
9 Mucklow and Phelan positive study from '79 had been cited
10 67 times. The Miller, Jacobsen and Bigner study from 1981
11 that appears up here had been cited a total of 89 times.

12 Out of curiosity I punched in the 1980 Miller,
13 Mucklow, Jacobsen and Bigner study that included negative
14 reports and found that it had been cited a total of six
15 times. And two of those citations were by a scholars
16 named Schumm who was indicating that the study seemed to
17 have been systematically overlooked and ignored. The
18 total citations in terms of ratio would be 156 to 6.
19 Schumm refers to this as a natural experiment in social
20 sciences.

21 **Q.** So --

22 **THE COURT:** I have one question. Does this
23 special Google site for scholars and scientists --

24 **THE WITNESS:** Yes, sir. Google Scholar dot
25 com. And you should be able to check and verify the

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1 numbers that I just presented.

2 **THE COURT:** I am not suggesting that. I
3 never knew -- so it's generally accepted scholars would
4 use that cite to do some research on what has been
5 published and so forth. Is that the purpose of the site?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Okay.

8 **THE WITNESS:** It's also a convenient search
9 engine for academics.

10 **THE COURT:** Is it free or do you have to --

11 **THE WITNESS:** It tends to be free, yes.

12 **THE COURT:** I was just curious. I'm sorry.

13 **BY MR. POTCHEN:**

14 **Q.** Looking at the chart here, so you were telling us
15 that the Miller 1979 report is up there, and the Miller
16 1981 report is up there because they showed positive
17 results. Yet the one study, the 1980 Miller report that
18 showed negative results was just completely eliminated
19 from the picture?

20 **A.** It was not cited in the APA brief, pages 5 to 45.

21 **Q.** Okay. As a social scientist do you believe it's
22 important to consider other viewpoints?

23 **A.** I do. And that's part of my point here, again, was
24 with blind spots and bias, it would appear important to
25 equally consider each of the three studies from the

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1 similar team of scholars.

2 Q. Have you noticed that your viewpoints in this
3 particular area have been met with any sort of resistance
4 that you have been testifying on today?

5 A. Yes.

6 Q. What have you experienced?

7 A. I would prefer not to go into detail.

8 Q. Okay. We can move on. Are you associated with the
9 Heritage Foundation?

10 A. No.

11 Q. Did the Heritage foundation fund your study at all?

12 A. No.

13 Q. Did anyone fund your study?

14 A. My study was unfunded.

15 Q. Okay. Did anyone from the Heritage Foundation ask
16 you to do your study?

17 A. No.

18 Q. What religion are you?

19 A. I am a member of the Church Of Jesus Christ of
20 Latter Day Saints, sometimes referred to as the Mormon
21 Church.

22 Q. Are you involved in the church?

23 A. I am, actively.

24 Q. Okay. And do you know what your religious view on
25 same sex marriage is?

1 **A.** I do. The church opposes same sex marriage.

2 **Q.** Okay. And does your religion's view on same sex
3 marriage impact your findings that you presented here
4 today?

5 **A.** It's an interesting question.

6 **Q.** That's why I asked.

7 **A.** I think that the full truth in response to that
8 answer is both yes and no.

9 **Q.** Okay. Can you please explain?

10 **A.** I will. Given the amount of opposition that one
11 faces in this domain expressing opinions like I have, I am
12 not sure that anyone in their right mind would oppose the
13 social norm like 157 to zero without some deeper meaning
14 based motive. Again, being as honest as reflective as I
15 can, there is too much at stake. I think that in part,
16 that it was biases that at least encouraged me to take a
17 second look at the beginning and to look closely at these
18 studies. That's as honest as I believe I can be on the
19 yes answer.

20 In terms of the no response, if we were to walk
21 through either my 2012 article or my 2013 expert report
22 and go point by point through Table A and look at each of
23 the questions, question one, how representative ethically,
24 racially, economically were the samples that were drawn to
25 represent same sex parenting couples, I outlined

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1 specifically by article and often with page number trying
2 to the point of fault. Eggebeen said that my paper was
3 festooned with footnotes, trying to document and create a
4 data audit trail so that I could be challenged on any of
5 these points that were not objective and that were not
6 fair. If we move to point two.

7 **Q.** So was that answer to question one affected by your
8 religion?

9 **A.** No. No.

10 **Q.** So move on to two, please?

11 **A.** Move on to point two. Were there -- did all of the
12 studies in the APA brief use heterosexual comparison
13 groups? The answer, again, was no. Only 33 of the 59
14 did. Again, I document in Table A the 33 that did and the
15 26 that fell short in that area.

16 I don't mean to take the Court's time, but if we
17 could, if we took the time to walk through each of my six
18 points or seven points in the article, I have tried to
19 create a data audit trail whereby I can be challenged on
20 unfair and third party verifiable data. And in that
21 sense, I have a difficult time believing that that third
22 party verifiable data has anything to do with my religious
23 affiliation whatsoever.

24 **Q.** In answer to the questions, your religion did not
25 impact your answers to those questions?

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1 **A.** Specifically to the findings, no.

2 **Q.** Have any reports or studies been brought to your
3 attention that are definitive to the issue of children
4 being raised by same sex couples?

5 **A.** In short, if we are talking about, and I am, about
6 large representative samples that can be considered to be
7 generalizable, the answer is, no. Potential exceptions
8 would include Rosenfeld 2010 and Price, Allen and Pakaluk
9 2012. Extremely large census based studies. But both
10 those studies only look at one small dimension of one of
11 the seven or eight critically, societally important
12 outcomes that I mentioned. That outcome is education
13 based. It's progress through school which is a binary.
14 Yes or no, you pass it. It's not even nuanced by grade
15 point average, etc. So it's a crude measurement and I
16 believe both Rosenfeld and also Allen and colleagues
17 acknowledge that. But I think it's probably the best
18 study that we have to date.

19 **Q.** Okay. All right. Doctor Marks, what is your
20 opinion regarding the data claiming that there is no
21 difference between children being raised in same sex
22 households and those heterosexual two parent households?

23 **A.** None of the 59 studies cited in the brief compare a
24 large representative sample of same sex parents with a
25 large representative sample of marriage based in tact

1 families. Not one. Further, if we look more closely, as
2 I mentioned earlier, those outcomes that should concern us
3 most from a societal and economic perspective have been
4 almost entirely overlooked in favor of gender and other
5 arguably less important outcomes.

6 So what we are left with largely are small
7 convenience samples that are biased, rather heavily even
8 by the researchers' own admissions that look at outcomes
9 often in childhood as opposed to adolescence or adulthood
10 when we would expect to see the most valid expressions of
11 those outcomes. After reading very carefully through the
12 59 studies, my conclusion was that I cannot personally as
13 a scientist in good conscience make a strong data based
14 claim for or against this issue. I don't believe that
15 that claim would be based in high quality science.

16 **Q.** Okay. Just a minute. In making that statement, do
17 any particular quotes come to mind?

18 **A.** I made the statement that I personally did not feel
19 remotely confident as a scientist making a strong data
20 based claim either way. In doing so, I think my opinion
21 lines up most closely with one presented by Professor
22 Schiller of Yale University in the journal American
23 Psychologist which is published by the American
24 Psychological Association, page 2007, page 712. Professor
25 Schiller says in part.

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1 **MS. STANYAR:** What year?

2 **THE WITNESS:** 2007.

3 **MS. STANYAR:** Beyond the scope.

4 **BY MR. POTCHEN:**

5 **Q.** Is this in your article?

6 **A.** The quote I'm going share is in my article and in my
7 expert witness and it's cited in the reference list.

8 **MS. STANYAR:** Your Honor, it's beyond the
9 scope.

10 **THE COURT:** He is quoting from somebody in
11 terms of what his bottom line was, I think, is basically
12 the way to put. He may testify. I'm sorry. I am
13 supposed to be talking into the microphone. He may
14 testify.

15 **A.** Professor Shiller's summation after doing her own
16 review was that the line between science and advocacy
17 appears blurred. I feel very, very similarly.

18 **Q.** Thank you.

19 **MR. POTCHEN:** No further questions.

20 **THE COURT:** Okay. You may cross-examine.

21 **MS. STANYAR:** Five minutes.

22 **THE COURT:** We will take a real five minutes.
23 I will find out -- you have the best person working on a
24 chair. I didn't see it.

25 **MS. STANYAR:** Right here.

1 **THE COURT:** If Carol can't it, it isn't -- we
2 take a real five minutes.

3 (Recess from 2:50 p.m. until 3:10 p.m.)

4 **THE COURT:** I just got notice we've got a
5 bunch of money from Congress to do something in this
6 building. There's going to be a big press conference
7 across the hall in 115. So it was in the paper this
8 morning. It was in the paper this morning how much they
9 got and it said 40, but I heard 70. Tomorrow we will know
10 what we are going to do. It will be interesting. What
11 time was that press conference?

12 **THE COURT CLERK:** 2:00.

13 **THE COURT:** Senator Levin will be there by
14 video. It's a big deal. We will all be here to see that
15 maybe. Okay.

16 - - -

17 **CROSS-EXAMINATION**

18 **BY MS. STANYAR:**

19 **Q.** Good afternoon, Doctor Marks. Pleasure to be
20 cross-examining you again.

21 **A.** Thank you.

22 **Q.** I would like to first turn to a report from Family
23 Scholars entitled Why Marriage Matters, third edition,
24 from 2011.

25 **MS. STANYAR:** May I approach, Judge?

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 **A.** Thank you.

2 **BY MS. STANYAR:**

3 **Q.** All right. You are listed as a co-author on this
4 report, is that right?

5 **A.** Yes.

6 **Q.** And this is a report from the Institute for American
7 values. Is that right?

8 **A.** Yes.

9 **Q.** All right. And you appear as one of the co-authors
10 on page, I guess, it would be page five?

11 **A.** Yes.

12 **Q.** Prior to agreeing that your name could be included
13 in this report as a co-author, did you review the entire
14 report?

15 **A.** Yes.

16 **Q.** Did you make recommendations and additions to the
17 text?

18 **A.** Some minor recommendation and minor additions, yes.

19 **Q.** I would like us to turn to page 12 of that report.
20 And these are 30 conclusions, a snapshot, and they fall
21 under the categories of family, economics, physical health
22 and longevity, mental health and emotional well-being and
23 crime and domestic violence. If we look at number two,
24 children are most likely to enjoy family stability when
25 they are born into a married family. Did you sign off on

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 that conclusion?

2 **A.** Yes.

3 **Q.** Number four, cohabitation is not the functional
4 equivalent of marriage. You signed off on that statement?

5 **A.** Yes.

6 **Q.** Number seven, marriage and a normative commitment to
7 marriage fosters high quality relationship between adults
8 as well as between parents and children. You signed off
9 on that statement?

10 **A.** Yes.

11 **Q.** Number eight, marriage has important bio-social
12 consequences for adults and children?

13 **A.** Yes.

14 **Q.** Number nine, divorce and an unmarried child bearing
15 increases poverty for both children and mothers and
16 cohabitation is less likely to alleviate poverty than is
17 marriage?

18 **A.** Yes.

19 **Q.** Number ten, married couples seem to build more
20 wealth on average than singles or cohabitating couples?

21 **A.** Yes.

22 **Q.** Eleven, marriages reduces poverty and material
23 hardship for disadvantaged women and their children.

24 **A.** Yes.

25 **Q.** Number 14, parental divorce or failure to marry

1 appears to increase children's risk of school failure?

2 **A.** Yes.

3 **Q.** Number 15, parental divorce reduces the likelihood
4 that children will graduate from college and achieve high
5 status jobs?

6 **A.** Yes.

7 **Q.** Number 16, children who live with their two married
8 parents enjoy better physical health on average than do
9 children in other family forums?

10 **A.** Yes.

11 **Q.** Number 18, marriage is associated with reduced rates
12 of alcohol and substance abuse for both adults and teens?

13 **A.** Yes.

14 **Q.** Number 21, marriage seems to be associated with
15 better health among minorities and the poor?

16 **A.** Yes.

17 **Q.** Number 22, children whose parents divorce have
18 higher rates of psychological distress and mental illness?

19 **A.** Yes.

20 **Q.** Number 27, marriage appears to reduce the risk that
21 adults will either be the perpetrators or victims of
22 crime?

23 **A.** Yes.

24 **Q.** Let me double back. Children whose parents, number
25 22 -- did we already cover that one? Yes, we did. Number

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 24, family breakdown appears to increase significantly the
2 risk of suicide?

3 **A.** Yes.

4 **Q.** Number 26, boys raised in non-in tact families are
5 more likely to engage in delinquent and criminal behavior?

6 **A.** Yes.

7 **Q.** All right. In terms of your background in
8 preparation for your testimony today, did you read the
9 reports of the state defendant experts Doctor Allen,
10 Doctor Price, Doctor Regnerus or Mr. Girgis?

11 **A.** No.

12 **Q.** Okay. Did you review the reports of the plaintiff's
13 expert, Doctor Brodzinsky, Doctor Rosenfeld, Doctor Gates,
14 Mr. Sankaran?

15 **A.** I read all that you just mentioned except for
16 Sankaran. I also read Cott.

17 **Q.** Nancy Cott on marriage?

18 **A.** Yes.

19 **Q.** All right. Your undergraduate major at Brigham
20 Young University was family sciences, is that right?

21 **A.** Yes.

22 **Q.** And your Master's program was also in family
23 sciences and human development?

24 **A.** Yes.

25 **Q.** Okay. I asked you some questions during the

1 deposition about your dissertation and some writings that
2 would have been published kind of --

3 **THE COURT:** Get closer to the microphone.

4 **BY MS. STANYAR:**

5 **Q.** At your deposition, I asked you some questions about
6 your dissertation and we had some followup questions about
7 which of your published works were based upon your
8 dissertation. Can you tell us which ones those are, the
9 primary ones?

10 **A.** Yes. The 2004 piece in family process was based on
11 my dissertation as well as 2005 bio-psycho-social health
12 and religion piece in the Journal on Religion and Health.
13 And a 2006 piece in Journal On Religion And Health on
14 religion and family. Those three. Others had pieces of
15 the dissertation but those three were based on the
16 dissertation.

17 **Q.** Would you agree with me that you also have both
18 studied and written and taught on, in particular,
19 African-American families?

20 **A.** Yes. It's a focal area for me.

21 **Q.** All right. Did you have a doctoral degree in
22 sociology?

23 **A.** No.

24 **Q.** Do have you a doctoral degree in psychology?

25 **A.** No.

1 **Q.** How about social work? A doctoral degree in social
2 work?

3 **A.** No.

4 **Q.** In terms of focused expertise, do you consider
5 yourself an expert psychologist?

6 **A.** I think that that would be debatable. Psychology is
7 certainly subsumed. As I mentioned earlier, family
8 studies is a hybrid of psychology and sociology. I am
9 certainly familiar with both those disciplines.

10 **Q.** But in terms of a focused expertise you wouldn't
11 claim to be a psychologist or expert in psychology?

12 **A.** I wouldn't claim to be an expert psychologist.

13 **Q.** All right. Have you ever been qualified as an
14 expert in any court proceeding in psychology?

15 **A.** No.

16 **Q.** Is this the first time are you testifying in court?

17 **A.** Yes.

18 **Q.** All right. As an undergraduate did you ever take a
19 class specifically on methodology?

20 **A.** That's going back a ways but, yes, I took a methods
21 course as an undergrad.

22 **Q.** All right. We talked at your deposition about the
23 different classes that you have taught over the years and
24 if you need to refer to your CV, I think it's Exhibit 16
25 of the state. We talked about the classes that are listed

1 in your CV and that you conducted or that you taught which
2 would have covered the topics of same sex marriage, same
3 sex couples or parenting by gay and lesbian parents. My
4 followup question now is, to the extent that you have
5 taught students in this area, have you ever assigned your
6 students reading by Charlotte Patterson as a teaching
7 tool?

8 **A.** No. Not specifically, although it's likely that she
9 or her work is cited in textbooks that I have used.

10 **Q.** But in terms of what you assigned to your students
11 to read?

12 **A.** No.

13 **Q.** How about Susan Golombok? Same question.

14 **A.** No.

15 **Q.** Michael Lamb, same question.

16 **A.** Michael lamb, possibly. Even probably. Doctor Lamb
17 has written on a wide array of topics. It's likely that I
18 assigned readings from Doctor Lamb at some point.

19 **Q.** Nanette Gartrell?

20 **A.** No.

21 **Q.** Did you provide an expert witness affidavit in the
22 case of Perry versus Schwarzenegger?

23 **A.** Yes.

24 **Q.** Was that in 2009, 2010?

25 **A.** Yes. Late 2009, I believe.

1 **Q.** And did you also testify at a deposition, not in
2 court, but at a deposition in the Perry case?

3 **A.** Yes.

4 **Q.** All right. In terms of child outcomes, you
5 testified at the deposition in this case that child
6 outcomes is a broad area?

7 **A.** Yes.

8 **Q.** All right. And child outcomes, is that term used
9 broadly? Would you consider yourself an expert in child
10 outcomes as it's used broadly?

11 **A.** As it's used broadly, going back to my deposition, I
12 believe I said that it's difficult to imagine anyone who
13 could claim a broad expertise in child development because
14 there are so many different strains and forms of it.
15 There may be such a person, but it's not me.

16 **Q.** Okay. I think my question was, maybe I just
17 misspoke, how about child outcomes? Do you have a
18 specific expertise in child outcomes?

19 **A.** I deal with some child outcomes. But in terms of a
20 focus, specific expertise, not necessarily.

21 **Q.** In terms of -- am I correct that you would not claim
22 expertise broadly in the area either of child adjustments
23 and that you have to be careful about claiming expertise?

24 **A.** Yes, I would agree with that.

25 **Q.** Have you ever been qualified as an expert

1 specifically in the area of either child development or
2 child adjustments?

3 **A.** No.

4 **Q.** Other than the Perry case and this case, were you
5 also involved in another case in Virginia, same issues,
6 same -- excuse me -- same sex marriage?

7 **A.** I was asked to submit an expert report for the
8 Virginia case, yes, about the same time that reports were
9 filed for the present case.

10 **Q.** Okay. Other than reading the articles that you
11 talked about cited by the APA in their brief and same sex
12 parenting and the few that you mentioned that were kind of
13 outside of that window, in addition to writing your 2012
14 article, in addition to writing your report in that
15 Virginia lawsuit, writing your report in this case,
16 appearing at your deposition, is there anything else that
17 you have done in the areas of child outcomes that would
18 have led to your having a focus in child outcomes?

19 **A.** I conduct primary research with a large quantitative
20 sample that looks at marriage and parenting issues. Child
21 outcomes are certainly implicit in that work as are
22 marriage outcomes. But the focus is mostly on process and
23 relationships.

24 **Q.** But in terms of -- I guess I am trying to get at, do
25 you have any other basis for your expertise in the area of

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 child outcomes or other than those things that I
2 mentioned?

3 **A.** In terms of bearing on this case as you mentioned,
4 reading the 59 studies, writing the article, reading
5 another 40 plus, so, probably 100 plus articles in this
6 domain, that would be the extent.

7 **Q.** Okay. And am I correct that you have not conducted
8 any original primary research of your own in that area?

9 **A.** Yes, that's correct. Just the review work that has
10 been published that we already addressed.

11 **Q.** Okay. Would you agree with me that the 2012
12 article, your report in the Virginia case, and the report
13 in our case here are all very similar in terms -- not
14 identical but similar in terms of content?

15 **A.** Very similar, yes.

16 **Q.** All right. You indicated in answer to Mr. Potchen's
17 question that you have a specialty in methodology. Did
18 you talk about that?

19 **A.** I did.

20 **Q.** And I think you also said that your own speciality
21 is qualitative research?

22 **A.** Yes.

23 **Q.** That would be studying processes, parental processes
24 or -- qualitative research -- can you tell us again what
25 qualitative research is?

1 **A.** Yes.

2 **Q.** And distinguish it from quantitative research?

3 **A.** Yes, I would be happy to. Quantitative research is,
4 in short, statistics based, focused on numbers.
5 Qualitative tends to be word based and the aim often is
6 depth instead of breadth.

7 **Q.** And quantitative?

8 **A.** Quantitative again would be statistics based.

9 **Q.** All right. I think you said something about the
10 fact that you had conducted quantitative studies? Did I
11 hear that correctly.

12 **A.** I have co-authored a handful of quantitative studies
13 over the last -- over the years.

14 **Q.** Let me ask, did any of them relate to same sex
15 parenting or child outcomes?

16 **A.** One related to child outcomes. If you would like me
17 to take a peek, I can.

18 **Q.** Yes, please.

19 **A.** The one I'm referring to is Laird, Marks and
20 Marrero, 2011, Religiosity, Self-control And Anti-social
21 Behavior published in the Journal Of Applied Development
22 Psychology.

23 **Q.** That was quantitative?

24 **A.** It was.

25 **Q.** All right. Was that a large study, a probability

1 based study?

2 **A.** No. We made efforts to go beyond typical
3 convenience sampling. But it's tough. It's tough to move
4 passed convenience sampling. We employed a local agency,
5 a data finding agency on LSU's campus. The sample size
6 was modest.

7 **Q.** What do you mean by modest?

8 **A.** Probably 300 plus or minus.

9 **Q.** Was that the target group or was that the
10 ultimate --

11 **A.** The actual sample. It was adolescence.

12 **Q.** Was this a published study then?

13 **A.** It was.

14 **Q.** Okay. You talked about at least in the deposition
15 what you referred to as gold standard research. Am I
16 right?

17 **A.** Yes.

18 **Q.** And you described that, and am I right in terms of
19 child outcome research for the children of same sex
20 parents, you would categorize gold standard research as
21 being large scale, probability study, longitudinal,
22 according to measured into adulthood? Would that be
23 included in it?

24 **A.** Ideally, yes.

25 **Q.** Okay. How long into adulthood?

1 **A.** That's a good question. And it would vary based on
2 the outcome of concern. For example --

3 **Q.** Infant mortality would be a shorter study?

4 **A.** Mortality. Divorce outcomes as adults obviously.
5 You would want to track that as long as possible, frankly,
6 but there is a lot of variation.

7 **Q.** And you want it to be replicable. I think you
8 already described that?

9 **A.** Yes.

10 **Q.** Am I correct the psychologists tend to use more in
11 the way of convenience samples as opposed to the large
12 representative studies?

13 **A.** Yes, I think psychologists are likely to use
14 convenience samples.

15 **Q.** They are likely to use not just -- not just in child
16 outcomes, but across the board they are likely to use
17 smaller sample sizes?

18 **A.** Compared to larger samples -- comparing them with.

19 **Q.** I'm saying larger samples comparing to the large
20 studies, the Rosenfeld type studies and Allen type
21 studies?

22 **A.** Yes. They are more likely to use small convenience
23 samples than sociology, demography, many family studies.

24 **Q.** I think we heard one expert actually say the
25 sociologists are concerned with numbers and broad based,

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 you know, statistics and psychologists are kind of more
2 focusing more deeply into the family. Would that be
3 accurate?

4 **A.** I think in many cases there is probably some truth
5 to that.

6 **Q.** In the subset population of children of gay and
7 lesbian parents, we have had another euphemism, the needle
8 in a haystack population, that there may be some
9 difficulty in getting an adequate sample size. Is that
10 your understanding of this population in terms of how hard
11 it is to get a sample size?

12 **A.** I have not done primary research in this area as you
13 are aware. But it appears to be difficult.

14 **Q.** During your deposition in this case you talked about
15 the unique problems of studying a group that is -- has
16 suffered discrimination or stigmatization. You should
17 assume for purposes of this question we already have
18 evidence in the record in this case that gay and lesbian
19 persons in this country have been the target of
20 discrimination, disparate treatment, stigmatization,
21 abuse, harassment, and that they have been a disfavored
22 minority for many decades. Would this fact contribute to
23 the difficulty in finding subjects willing to participate
24 in the research studies?

25 **A.** I believe that it almost certainly would. And to

1 expound a little bit, number one, it would be difficult to
2 get a group at all, a sample at all. A second difficulty
3 would be that when you are dealing with the sampling of
4 stigmatized groups of any kind, that if you are employing
5 convenience methods you would be most likely to get the
6 most privileged cross-section of that group, the group
7 that would be least fearful of stigmatization, the
8 relative privilege. I think in the deposition we
9 discussed a comparison with Muslims, for example.

10 **Q.** All right. So let's talk about that. You have a
11 focal area or you have studied Muslim families and you
12 talked about the fact that they were stigmatized and that
13 you have done research, and are there problems there with
14 getting sample size, adequate sample size?

15 **A.** Yes. And certainly I empathize with gay and lesbian
16 folks that are interested in researching gay and lesbian
17 families in terms of sample struggles. Again, that has
18 been my finding, that those most willing to speak to me or
19 speak out, period, tended to be those that are most
20 privileged. On one hand, that is an advantage because you
21 tend to get inside from those who are articulate and well
22 educated. The limitation as I discussed earlier today is
23 that it gives you virtually no power of generalized
24 ability to apply the findings of your study to a broader
25 population.

1 **Q.** I think that you talked about this in deposition,
2 that with these convenience samples, hard to locate a
3 group of sufficient samples, they are doing the best they
4 can do, researchers are, to get a population?

5 **A.** That, I don't know. That I can't speak to.

6 **Q.** Okay. You talked about a researcher, I believe,
7 it's professor of family sociology and demography named
8 Paul Amato?

9 **A.** Yes.

10 **Q.** You have great respect for him?

11 **A.** I do.

12 **Q.** And actually he was one of the people that you
13 sought out to consult with when you were -- at what point
14 in your drafting of your report? Was it after it was done
15 or were you asking him for ideas for the structure of it
16 or was it both?

17 **A.** Paul Amato, actually, I did not seek out. He was, I
18 assume asked by the journal editor at some point to review
19 my work, either as an official peer reviewer or after it
20 was already accepted. I am not sure about that, which one
21 it is. But I didn't seek him out. But he was asked and
22 kindly obliged.

23 **Q.** Are these normally -- when peer reviewers are
24 reviewing your research, is it normally done blind or am I
25 wrong about that?

1 **A.** Yes. Almost always it's done blind.

2 **Q.** When did you know that he was one of your reviewers?

3 **A.** Not until I got his -- well, I don't know. I
4 certainly knew once I got his article that incorporated
5 recommendations and feedback on mine. If I knew before
6 then, it wasn't very long before.

7 **Q.** So you're not saying that you published it and then
8 he read your article and then he provided feedback? There
9 was something before that, wasn't there?

10 **A.** Right. The article was accepted in March and
11 published in July.

12 **Q.** Of which year?

13 **A.** 2012. And so there was something of a lag time
14 between the acceptance and the formal publication.

15 **Q.** I see?

16 **A.** And it was either shortly before then or shortly
17 after then that Amato read my piece.

18 **Q.** We'll come back to him.

19 **A.** Okay.

20 **Q.** You indicated that you reviewed the expert witness
21 report of David Brodzinsky. He is the expert psychologist
22 in this case. His report included his background and his
23 qualifications. And I would like to ask you some
24 questions about Doctor Brodzinsky.

25 You should assume that we already heard

1 testimony from -- that Doctor Brodzinsky conducted
2 research on this population, same sex parents, adoptive
3 parents, the children of same sex parents, that he has
4 done his own research. We have heard testimony that he
5 counseled over a thousand families, at least a hundred gay
6 and lesbian families. We have heard testimony that he
7 authored many articles on adoption by gay and lesbian
8 couples. He has published a book on this topic. He has
9 been qualified as an expert in child development,
10 parenting by gay and lesbian persons, and he has testified
11 in court as to these topics. He's a Ph.D. psychologist.

12 Based upon all of that, not only on your review
13 of the report, but based on what I just read in terms his
14 testimony, would you consider him an expert in the field
15 of children raised by same sex parents?

16 **MR. POTCHEN:** Objection, your Honor. Calls
17 for a legal conclusion.

18 **THE COURT:** I don't know if it calls for a
19 legal conclusion or not. But it would be his opinion and
20 if he has an opinion and wants to express it, he may do
21 so.

22 **THE WITNESS:** Doctor Brodzinsky's Vitae was
23 very impressive to me. His experience spans a few decades
24 and he obviously has been very busy.

25

1 **BY MS. STANYAR:**

2 **Q.** Would you agree with me as between yourself and
3 Doctor Brodzinsky, given his background and given his
4 credentials and experience, that his expertise in this
5 specific area of gay and lesbian parenting and child
6 outcomes for gay and lesbian children would exceed yours?

7 **A.** I am sure that there are many things that Doctor
8 Brodzinsky knows that I do not. In terms of exceeding --
9 my focused testimony in the trial related to reading
10 through very carefully the 59 studies cited by the APA.
11 How carefully Doctor Brodzinsky has read those 59 studies
12 and reviewed them, I don't know.

13 **Q.** Fair enough. Are you familiar with the work of
14 Doctor Michael Lamb?

15 **A.** I am.

16 **Q.** And would you recognize him as a pre-eminent scholar
17 and researcher in the area of gay and lesbian parenting
18 and child outcomes?

19 **A.** Yes.

20 **Q.** Would you recognize him as a leading expert in the
21 field?

22 **A.** Yes, I would.

23 **Q.** All right. Of your work that has been published in
24 peer review journals, do you consider all of that work
25 still to be of high quality social science looking back?

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 **A.** Looking back. And I think we talked about it a
2 little bit in my deposition, but looking back at early
3 work, my first published studies came out when I was an
4 undergraduate doing the best that I could at that point in
5 time. I am not embarrassed by any of it. I think it's
6 still of publication quality. The peer reviewed
7 materials, I wouldn't scratch any of it off my Vitae. But
8 I would hope that like a discipline, that I progressed a
9 little bit across the past 20, 25 years.

10 **Q.** Does any of your research meet the gold standard
11 level that you defined as you defined it earlier today?

12 **A.** No.

13 **Q.** Is there a category of research -- I am not just
14 talking about your own -- but, in general, which is not
15 gold standard as you defined it, but which contributes to
16 the development of the social sciences and is published in
17 respected journals by respected scholars?

18 **A.** I sure hope so or I wasted an awful lot of my time.
19 Yes, there is. And we hope for incremental modest change
20 along the way as academics and scholars and scientists. I
21 certainly do not intend to say that gold standard research
22 is the only research that matters. Just to say that
23 generalizable representative research has to meet certain
24 standards from -- as dictated by science to be generalized
25 to broader populations.

1 **Q.** I understand that. But these other studies, studies
2 that don't meet all of the criteria and certainly they
3 contribute to the research broadly.

4 **A.** Yes, the better ones do, certainly.

5 **Q.** In your report you indicate that you published over
6 60 studies and chapters relating to families. Is that
7 right?

8 **A.** Yes.

9 **Q.** How many of those chapters or articles specifically
10 involved comparing child adjustment outcomes of gay and
11 lesbian parents to other populations, other structures?

12 **A.** The only published work that I have done on lesbian
13 and gay parents is before us in terms of the exhibits, the
14 2012 pieces, my review piece of the 59 studies and the
15 rejoinder that we revisited just a little while ago.

16 **Q.** The rejoinder relates back to the 2012 article?

17 **A.** It does. It's not necessarily a stand alone piece.

18 **Q.** Both of which relate to your assessment of the
19 American Psychological Association's brief which we will
20 talk about?

21 **A.** Yes.

22 **Q.** Do you think that both family processes -- family
23 processes and family structures are important to child
24 outcomes?

25 **A.** Yes. Very.

1 **Q.** In the empirical work that you reviewed, does family
2 structure correlate to good child outcomes or does family
3 structure cause good child outcomes?

4 **A.** Almost all social science that I am aware of is not
5 causal. It's very difficult to do truly causal work in
6 the social realm. So most of it is correlational, to
7 respond to the question.

8 **Q.** And can you define correlational for us?

9 **A.** Correlational means that two different phenomenon
10 are highly correlated -- well, either they relate to one
11 another -- for example, we know that poverty correlates
12 with lowered educational outcomes. However, it gets messy
13 when we start trying to draw arrows and determine which
14 came first, so to speak.

15 **Q.** All right. Let me ask you some questions about your
16 expert witness report. If you could turn to page two of
17 your report. You discuss in your report and here today in
18 your testimony under the introduction section, you say
19 that, quote, over the past few decades, differences have
20 been observed between outcomes of children in marriage
21 based in tact families compared with children in
22 cohabitating, divorced, step, and single parent families.
23 That appears in your report, correct?

24 **A.** Yes.

25 **Q.** All right. As you discuss that on page two, are you

1 including in that paragraph, are you merging biological
2 and adoptive family together as you start to talk about
3 the research in that area?

4 **A.** That is an area where the water is muddied in social
5 science. My definition wouldn't be as important as the
6 definition operationalized in studies that have been done.
7 In short, some research that has been done has included
8 adoptive families under the heading of biological with no
9 distinguishing marker. Others partial out adoptive
10 families. So it's a little bit of both and it's not
11 always easy to tell.

12 **Q.** Okay. In the following paragraph we are going to
13 talk about this in a minute, when you talk about societal
14 level concerns, you have a number of topics there and it
15 pertains to footnoted material from 3 through 11?

16 **A.** Yes.

17 **Q.** That is a lot of studies, right?

18 **A.** Yes.

19 **Q.** A lot of research and a lot of studies that are
20 footnoted there, right?

21 **A.** Yes, it is.

22 **Q.** In some of that research, have they merged -- that
23 you are relying on for that paragraph -- have they merged
24 the two groups, biological with adopted?

25 **A.** Yes. I believe one example that comes to mind is

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 Johnson et al, 1996, under number six which is
2 unfortunate. I think it would be -- I prefer precision in
3 scholarship as opposed to more vague statements. I would
4 have liked to have seen biological families considered
5 separately from adoptive families. I think they have
6 different issues. But even in studies where adoptive
7 families are linked under the heading of biological
8 families we are talking about 1 to 2 percent, perhaps just
9 slightly more in some studies of the US population. So it
10 makes the water a little bit more muddy but it is very
11 unlikely that it would completely change the outcome of
12 the overall findings.

13 **Q.** All right. So let's go back to that section. When
14 you are talking about differences that have been picked up
15 in the research there in that section, are you talking
16 about in one category, at page two, married with a small
17 percentage of adoptive in the one category, and you are
18 comparing it with cohabiting, divorced, step, and single
19 families. Those the comparators when you are talking
20 about this section right here?

21 **A.** Yes. Those are the primary ones involved.

22 **Q.** Okay. When you are at page two talking about that
23 section and societal level concerns, that research, there
24 isn't a separate category even in that area for same sex
25 couples?

1 **A.** That is true.

2 **Q.** So let's look at the last paragraph on that page,
3 and these are the societal level concerns and those were
4 raised up on the screen. They would be health and
5 mortality and suicide risks in Category A, drug and
6 alcohol abuse in Category B, criminality and incarceration
7 in C, intergenerational poverty in subsection D, education
8 and/or labor force contribution in E, early sexual
9 activity in early child bearing in Subsection F, and, G,
10 divorce rates as adults?

11 **A.** Yes.

12 **Q.** Again, when you are talking about each of these
13 categories of societal level concerns, page two and page
14 three, research footnotes three to ten, you are still not
15 talking about specifically same sex parents, am I right?

16 **A.** Correct.

17 **Q.** And none of that research separates them out, same
18 sex parents and these other groups?

19 **A.** None that I'm referring to here, no.

20 **Q.** I would like to go into a little detail as to your
21 definition of married, in tact, mother, father, family.
22 So, married means currently married and it's a first
23 marriage for both?

24 **A.** Yes.

25 **Q.** What does in tact mean?

1 **A.** In tact would refer to never divorced, either
2 partner.

3 **Q.** And there has to be a mother and father in the
4 family?

5 **A.** Yes.

6 **Q.** They have to be under the same roof?

7 **A.** Yes, typically.

8 **Q.** And again under this research, it's not necessarily
9 biological?

10 **A.** Not purely. We noted the adoption exception.

11 **Q.** Okay. So when I use the term during my examination
12 of you, your ideal family, this is what I am referring
13 to -- mother, father, in tact, all those things we just
14 talked about?

15 **A.** Okay.

16 **Q.** Okay. With respect to what you call hard outcomes,
17 and one of the good examples is high school graduation, is
18 one of the reason it's difficult to assign causation as
19 opposed to correlation is the fact that a lot can happen
20 to a child between birth and high school graduation?

21 **A.** Yes. Those confounding factors would certainly come
22 into play.

23 **Q.** Those would be, child's heterosexual parents can
24 divorce?

25 **A.** Yes.

1 **Q.** Child can live in dire circumstances, poverty, crime
2 ridden neighborhood?

3 **A.** Yes.

4 **Q.** Child, a later adopted child can have a series of
5 prior foster care placements?

6 **A.** Yes.

7 **Q.** A child may have been born to a drug addicted birth
8 mother. That can affect?

9 **A.** Yes.

10 **Q.** All right. In 2005, you already talked about this,
11 the American Psychological Association issued its official
12 report on lesbian and gay parenting. And this report
13 includes the assertion that you quoted earlier, not a
14 single study, but basically the research fails to show
15 that children of lesbian or gay parents to be
16 disadvantaged in any significant respect relative to
17 children of heterosexual parents?

18 **A.** Correct.

19 **Q.** Okay. So this -- not to parse words -- but they say
20 there is not a single study but they also use this
21 qualifier, in any significant respect. So there is a
22 little wiggle room there in terms of, any significant
23 respect?

24 **A.** I follow you.

25 **Q.** Okay. And that statement sometimes referred to as

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 the, quote, No Difference Conclusion?

2 **A.** Yes.

3 **Q.** And the year 2012 article, in essence, challenged
4 the APA's No Difference Conclusion?

5 **A.** Yes.

6 **Q.** Am I correct, and I think we talked about this at
7 the deposition, that you sought unofficial feedback from
8 about a dozen people in your effort to strengthen the
9 article to get constructive criticism?

10 **A.** Yes.

11 **Q.** One moment.

12 **MS. STANYAR:** May we approach, judge?

13 **THE COURT:** Come on. Do you want it on the
14 record?

15 **MR. POTCHEN:** No.

16 (Side bar conference held off the
17 record.)

18 **THE COURT:** For the record, because we have
19 people listening, there was a technical problem. And the
20 parties resolved it between themselves. So I didn't have
21 to make a decision.

22 **BY MS. STANYAR:**

23 **Q.** So when you referred to that, the unofficial
24 feedback from about a dozen people in your effort to
25 strengthen the article -- you may have already answered

1 that -- when did you seek that feedback?

2 **A.** It was over the course of months beginning some time
3 in 2010 and concluding probably sometime in early,
4 probably late, mid to late 2011.

5 **Q.** All right. Was Brad Wilcox one of those people?

6 **A.** Yes.

7 **Q.** Was he the main author of Marriage Matters?

8 **A.** He was. He was the first author.

9 **Q.** Okay. All right. You already talked about the fact
10 that you wrote a rejoinder that was published in Social
11 Science Research. That would be the same -- that was same
12 journal that published the original article?

13 **A.** Yes, correct.

14 **Q.** All right. And that's -- it was a rejoinder to the
15 responses of Amato, Eggebeen and Osborne?

16 **MR. POTCHEN:** Carol, do you have a copy?

17 **MS. STANYAR:** I just have mine.

18 **MR. POTCHEN:** I have that.

19 **BY MS. STANYAR:**

20 **Q.** All right. And in the rejoinder I direct your
21 attention to the last paragraph of page 784 which is just
22 the first page. It would be the second sentence. Quote,
23 in seeking criticism for more than a dozen diverse
24 researchers on my article, I was repeatedly humbled and a
25 bit chagrined by holes and weaknesses they identified

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 because their criticisms were valid and required more work
2 and a wider scope of vision. You wrote that?

3 **A.** Yes.

4 **Q.** Here is my question. Did you take all their
5 criticism or as to some criticism did you say, I'm going
6 to do it this way and just keep it as it is?

7 **A.** I took some. I discarded some. In the formal
8 review process, I typically have to address just about all
9 the criticism to get something published. In this case I
10 took some and left some.

11 **Q.** A couple sentences -- a couple sentences down, you
12 say, quote, even so, there are likely flaws and blind
13 spots that remain?

14 **A.** Yes.

15 **Q.** All right. Did Paul Amato raise a criticism about
16 your proposed sample size?

17 **A.** He did. He said that my recommendation for large
18 nationally representative samples was -- I am trying to
19 remember his exact words -- but I think it was optimistic,
20 saying that that would be difficult to pull off.

21 **Q.** Would it be difficult to assemble. In terms of pull
22 off, you mean actually difficult to come up with that kind
23 of sample size?

24 **A.** I assume that's what Doctor Amato meant.

25 **Q.** All right. Let me just -- I think you said at the

1 deposition, Amato said it would be very difficult to
2 assemble that kind of sample at least any time in the near
3 future. I asked added a caveat that it might be more
4 realistic in the short term to shoot for a weighted
5 probability sample as opposed to a truly random
6 representative, one large one?

7 **A.** Yes.

8 **Q.** All right. So basically he is saying it's
9 unrealistic to come up with a big study of this size?

10 **A.** He is saying it would be difficult, yes, especially
11 now.

12 **Q.** This is the needle in the haystack problem. Is it
13 associated with the needle in the haystack problem?

14 **A.** Perhaps loosely. But the larger your sample, the
15 more likely you are to find differences if differences do,
16 in fact, exist.

17 **Q.** Did you, other than consulting with them, did you
18 ask any other social scientists to co-author your 2012
19 paper with you?

20 **A.** Of the dozen or so that I mentioned here informally,
21 the area where I was probably weakest in terms of relative
22 strength would be portion seven of the article.

23 **Q.** Which is no longer in this report?

24 **A.** Correct. It's not in the expert report. It deals
25 with --

1 **Q.** You don't need to tell me what it deals with. Let
2 me ask a more pointed question. You already said that
3 your strength is qualitative?

4 **A.** Uh-huh.

5 **Q.** And would the area be more in the area of
6 statistical expertise? That's what you were looking for
7 in terms of a co-author?

8 **A.** Yes. In terms of informal invitations because it
9 was an area of relative weakness for me. Saying that I do
10 have a Ph.D. in family studies and took my share of the
11 miserable statistics classes that are required.

12 **Q.** I heard about it yesterday so I feel your pain.

13 **A.** I won't drag anyone through that. If you hate me for
14 anything else, love me for not revisiting statistics.
15 With that said, that was a portion of the article I had to
16 work very hard on. And to a methodologist or two that has
17 a specialty, and I don't remember who I invited
18 informally, but I said, by the way, if you want to jump on
19 and help me out with the method, you are more than welcome
20 to. Everyone that I informally invited, it was a short
21 list, politely declined.

22 **Q.** You mentioned Michael Rosenfeld?

23 **A.** I did.

24 **Q.** Okay. And you said he produced one of the two --
25 one of the few gold standard studies as you have defined

1 that term?

2 **A.** Yes. I believe in my deposition the exact language
3 that I used was, if there has been a gold standard study
4 produced in this area, it would be Michael Rosenfeld's
5 2010 study, and by extension, the Price, Allen, and
6 Pakaluk 2012 study that uses a similar data set.

7 **Q.** That uses his data set or uses a different data set?

8 **A.** Uses the same data set.

9 **Q.** So it is the extension of the Rosenfeld --

10 **A.** It's an extension -- it's actually larger in size by
11 a little more than 80 percent because they include
12 families that Rosenfeld eliminated.

13 **Q.** He had them in a data set, right? And then he took
14 them out and there was a little bit of them taking out and
15 putting back, right?

16 **A.** Correct.

17 **Q.** That's all I understood from yesterday, by the way.

18 **A.** That's right.

19 **Q.** If you could have gotten Michael Rosenfeld as the
20 co-author of your 2012 article to add that statistical
21 expertise, would you have welcomed him?

22 **A.** I don't know -- I don't know Michael personally or
23 professionally well enough. But he has published
24 scholarship in high quality outlets. I respect him for
25 that. His feedback certainly would have been helpful.

1 **Q.** All right. Your article in your testimony today
2 focuses on the studies leading up to and stopping at 2005
3 in terms of child outcome studies, correct?

4 **A.** Correct. In terms of the child outcome studies.

5 **Q.** For the article, was it your decision to focus on
6 the studies that were included in the APA report up to
7 2005 and to stop there? Was that your decision?

8 **A.** It was. I had, by 2012, when I published the
9 article, read several studies that were more recent. But
10 my focus was on the APA brief itself and it didn't seem
11 fair for me to critique studies that had come out after it
12 had been published.

13 **Q.** Was this identified as a limitation or a flaw by
14 anybody that had was reviewing your paper?

15 **A.** Yes. It was identified by one or two folks who said
16 it would be nice if you continued on and included more
17 recent work after 2005.

18 **Q.** That would be stronger if it included data up to the
19 present?

20 **A.** Yes.

21 **Q.** And did you consider that a valid suggestion? Not
22 doable, but a valid suggestion?

23 **A.** I think it is a valid suggestion if you take the
24 focus on the APA brief out of the equation, if I were just
25 writing a broad review. However, again, remembering that

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 my focus was the specific parameters of the APA brief, I
2 think it was the right decision to disregard that.

3 Q. Let me ask you, but was part of your decision to
4 just focus on the studies up to 2005? Was it because you
5 didn't have enough time?

6 A. Yes. Time and then probably energy as well.

7 Q. And you had no funding?

8 A. No funding.

9 Q. All right.

10 A. No money.

11 Q. We may have already covered this, but the APA report
12 is now a reference that is routinely cited as
13 authoritative in same sex marriages, is that true?

14 A. It is. I believe I mentioned earlier today it's
15 difficult to find a case that does not feature
16 prominently.

17 Q. Okay. With the qualifier that I am asking you about
18 opinions, not empirical research, but opinions within the
19 social science community, is it fair to say there is a
20 consensus opinion in the field of psychology that is
21 consistent with the findings of the APA report from 2005
22 that there is no significant difference in outcomes of
23 children for same sex parents?

24 A. In terms of consensus opinion, 157 to zero is tough
25 to argue with. In terms of research that I cited from

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 others, earlier today I noted a ratio liberal to
2 conservative on social issues including same sex marriage
3 at nearly 23 to one. That is awfully close to consensus
4 in anyone's book, I think.

5 Q. All right. So in terms of the broader social
6 science community, beyond psychology, would you agree that
7 in the broader social science community, that the claim
8 that there is a consensus is accurate, and whether or not
9 it's settled as an opinion, and the answer would be yes to
10 that, too?

11 A. I would agree with that. Again, I don't have hard
12 data like I did this morning with psychologists for the
13 fields of sociology or family studies. But I think it's a
14 reasonable assertion and assumption that we would see
15 similar, perhaps not quite as high, but similar parallels
16 in those two disciplines.

17 Q. All right. You talked about this idea this morning
18 and you were talking about the research of Enbar (ph) and
19 Lammers from 2012. You talked about this kind of the idea
20 of the ratio and that the ratio back in the 1960's was
21 more like three to one. Would that be liberal to
22 conservative?

23 A. Correct.

24 Q. And the ratio has now evolved. So the ratio is far
25 bigger in terms of liberal to conservative?

1 **A.** Yes.

2 **Q.** Would the same be true again of the broader social
3 science community?

4 **A.** I don't have data like the Enbar (ph) and Lammers to
5 refer to again. But I suspect that the trends are similar
6 in sociology and family studies. If not in degree, at
7 least in direction.

8 **Q.** All right. So considering this idea of this growing
9 ratio, if we can just look at it so I can understand it in
10 another context. There was a time when even scientists
11 agreed that world was flat. Would you agree with me?

12 **A.** Yes.

13 **Q.** It would be a hundred to one the other way, I guess.
14 I don't know what way that would be, whether liberal or
15 conservative. Would that be opinion or would that be
16 empirical research or would it be both in that example?

17 **A.** I'm not sure how to respond. Opinion is sometimes
18 guised as empirical research and that is a foundational
19 concern for me. Hence, my effort to be meticulous to the
20 point that it bored myself putting together tables and on
21 so forth.

22 **Q.** So, now, obviously we know the world isn't flat and
23 the scientists -- both the opinion and the empirical
24 research is merged in that sense that we know that the
25 world is not flat, right?

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 **A.** True.

2 **Q.** I mean, let's try another example to explore the
3 concept. Now, again you focus on another concept and
4 there would be two explanations for a ratio. And the
5 first explanation is that, as I understand it, that there
6 is a liberal conservative bias. I think that you talked
7 about that being one explanation?

8 **A.** Yes.

9 **Q.** And the second explanation would be that somebody is
10 right. Did I hear you right on that one?

11 **A.** I think that's close enough for our purposes here,
12 that essentially this is either opinion based ultimately
13 at the core or empirically research based and driven.

14 **Q.** And there is a right answer or a wrong answer?

15 **A.** Yes. There are probably other hypotheses but I
16 think those are the two that concern us most here today.

17 **Q.** So let's consider this idea of this ratio that would
18 be evolving over time in another analogous context. In
19 the 1600's at the time of the Salem witch trials you would
20 expect even among scientists that there would be a
21 percentage who believed as scientists, empirically or as
22 opinions, that there were witches and these witches were
23 guilty of these things?

24 **A.** Okay.

25 **Q.** And would you expect -- and can you tell us as to

1 whether or not that ratio obviously changed over time?

2 **A.** I would assume that it did.

3 **Q.** Are there witches?

4 **A.** There are at my house on Halloween usually.

5 **Q.** But the explanation in that context doesn't have
6 anything to do with liberal or conservative at least at
7 this point. We know empirically that there aren't witches
8 the way they were described in the Salem witch trials?

9 **A.** I follow you.

10 **Q.** Okay. And I think I follow you, too, now. It's my
11 understanding in your testimony is that your primary
12 conclusion here today is that these are big social science
13 policy issues. They are important questions. We should
14 await the results of high quality social science research
15 as you have defined it. Does that fairly describe your
16 opinion?

17 **A.** I would say that the first part of the opinion you
18 expressed, that these are very important social issues, I
19 completely agree with. In terms of waiting, I don't know
20 about that. But when we make a science based truth claim,
21 as a discipline, as a society, I think we are doing
22 something that is very, very bold. And in some ways my
23 article, my research brief, as strange as it sounds in
24 this context in this courtroom, is not fundamentally for
25 me about same sex marriage.

1 **Q.** I understand that.

2 **A.** It is about the importance of validity or of truth
3 and to holding ourselves to a certain standard. I believe
4 that truth is expensive and that we have not paid the
5 required price in this particular domain yet. Twenty
6 years from now we will be discussing different issues in
7 courtrooms. I don't pretend to know what those are. But
8 I hope that if social science weighs in, that it will do
9 so with the most valid scientific objective research that
10 it can to inform our social future.

11 In the meantime, I don't know that we can stand
12 by. But if we are working off of social scientists'
13 opinions, even consensus opinions, which I believe we may
14 well be doing, if we take such statements as the APA brief
15 at face value and they are based on opinion more than
16 empirical research, we are, in affect, making social
17 science and social scientists the de facto electoral
18 college.

19 **Q.** I understand that. Let me ask you the next
20 question. I think you are getting a little far afield.

21 **THE COURT:** Have you completed the answer?
22 Let him just complete this part of his answer and we will
23 move on.

24 **A.** To me, that becomes a very fundamental issue that as
25 big as this case is, may well be bigger than this case in

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 terms of longevity and how it lasts. And as a result, I
2 think that today and in this courtroom we certainly have a
3 responsibility to measure twice or measure three times or
4 four before we cut once, to use the cut up analogy.

5 **Q.** And we are having this discussion and we have been
6 having this discussion for two weeks now, and it is a
7 serious discussion. And I think everybody in this room
8 takes it very seriously. So point taken.

9 Has the Government ever funded a study which
10 would meet your gold standard, longitudinal probability,
11 all those criterion, studying child outcomes for same sex
12 parents?

13 **A.** No, not that I am aware of.

14 **Q.** Do you know of any large Government funded study in
15 progress meeting your gold standard that would be studying
16 those issues?

17 **A.** No.

18 **Q.** Do you know of any study in progress funded by a
19 large university studying this issue under your gold
20 standard?

21 **A.** No.

22 **Q.** What is the likelihood that either the Government,
23 as a scientist and having reviewed all of the research,
24 what is the likelihood that either the Government or a
25 large scale university will fund such a study any time

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 soon?

2 **MR. POTCHEN:** I will object, your Honor. It
3 calls for speculation.

4 **THE COURT:** Yes. He wouldn't know.

5 **BY MS. STANYAR:**

6 **Q.** Are you familiar with the author David Popenoe in
7 his book, Life Without Father?

8 **A.** Yes.

9 **Q.** And actually he is one of the co-authors on marriage
10 matters?

11 **A.** Yes, I believe so.

12 **Q.** Have you read his book, Life Without father, in its
13 entirety?

14 **A.** I have. It's been some time, but I have.

15 **Q.** And are you familiar with David Popenoe's argument
16 that gender differentiated parenting is essential for good
17 child outcomes?

18 **A.** Yes.

19 **Q.** Do you agree with that argument?

20 **A.** I have seen research that argues both directions.
21 And I would feel uncomfortable taking a data based stance
22 either way.

23 **Q.** And on the other side of that debate is someone you
24 respect, someone who is highly regarded across the social
25 science world, Michael Lamb?

1 **A.** Yes.

2 **Q.** David Popenoe believes in the gender differentiated
3 parenting model. David Lamb, I'm sorry, Michael Lamb does
4 not?

5 **A.** I think that is an accurate assessment.

6 **Q.** All right. And Popenoe's view is that there are
7 parenting activities that men can do that women cannot do
8 or are very unlikely to do and there are parenting
9 activities that women can do that men are unlikely to do.
10 Am I characterizing Popenoe's theory?

11 **MR. POTCHEN:** Your Honor, this goes beyond
12 the scope of his report and the paper we have been
13 discussing.

14 **THE COURT:** I will give her a little leeway
15 since it's cross-examination. You may proceed.

16 **BY MS. STANYAR:**

17 **Q.** That is not a theory that you espouse?

18 **A.** It's not a theory that I espouse, but it's not
19 necessarily a theory I reject all together either.

20 **Q.** But you don't accept it?

21 **A.** Not fully.

22 **Q.** So am I correct that social science research so far
23 has not demonstrated to your satisfaction his theory of
24 gender differentiated parenting so much so that you would
25 adopt it and make it part of your understandings?

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 **A.** Going back to Table B in my article and report and
2 those gold standard studies, as well as the Marriage
3 Matters book we looked at in some length, there are large
4 representative samples, many of them that indicate
5 significant differences in child outcomes across in tact
6 step, divorced, single families as we talked about
7 earlier. That much we know. Why those differences exist
8 remains a point of theoretical argument to some degree.
9 And that's why I am reluctant, trying to be a good
10 objective scientist, to reject or fully endorse that
11 theory. It may be valid.

12 **Q.** I think that you talked about in your deposition
13 that the messy part of that question is as to whether or
14 not the advantages of child outcomes that are attributed
15 by David Popenoe and people who agree with him, are they
16 attributed to having gender differentiated parents or is
17 it attributable to something else?

18 **A.** Yes.

19 **Q.** That's the messy part?

20 **A.** It's part of the mess.

21 **Q.** And one of the problems with that is if you are
22 comparing your ideal mother/father family with single
23 parents, the single parents -- the children are not going
24 to do as well, right?

25 **A.** That's what the data indicated.

1 **Q.** In some of this research, the messy part of the
2 research is they are comparing the single moms with the
3 children -- they are comparing the children of the single
4 moms with the children of the ideal family?

5 **A.** Yes. But the differences also occur for
6 step-families, remarriage based families and cohabiting
7 couples as well.

8 **Q.** Well, the cohabiting families don't have the
9 advantage of marriage, right?

10 **A.** That's true.

11 **Q.** Okay. And you think that is a strong help to
12 families and to children?

13 **A.** I do. I cross those four or five subtypes of
14 families.

15 **Q.** And the step families, they are dealing with
16 additional problems of having an existing family and
17 bringing another adult into the picture and there is
18 problems associated with that, right?

19 **A.** True. There is some complexity that comes into the
20 picture.

21 **Q.** All right. You criticize --

22 **THE COURT:** Time for a break. I don't want
23 to overwork Larry. He is concentrating. We will just
24 take a short break. About ten or fifteen minutes.

25 (Recess from 2:50 p.m. until 3:10 p.m.)

1 **THE COURT CLERK:** Thank you, very much. You
2 may be seated. Before we start, question. We were just
3 talking about this. When you refer to brief in relation to
4 the vote, what are you referring to? When you say -- you
5 said that you're responding to the brief.

6 **THE WITNESS:** Yes.

7 **THE COURT:** What brief?

8 **THE WITNESS:** I mean the 2005 APA brief on
9 lesbian and gay parenting.

10 **THE COURT:** That was submitted to the
11 association or to an outside --

12 **THE WITNESS:** That was presented by the
13 association to the rest of the academic world.

14 **THE COURT:** Okay. So it's not a legal brief.
15 It's a brief that was submitted to the Board and that was
16 the vote -- based upon that document, that was the vote
17 that when you -- that caused you to do what you have done?

18 **THE WITNESS:** I'm not sure what the vote was
19 on the initial brief.

20 **THE COURT:** But the final -- what has been
21 quoted here and lots of other places?

22 **THE WITNESS:** Yes.

23 **THE COURT:** It was based on that brief that
24 they finally came up with that as the conclusion and you
25 went back to the brief and realized that, I think, is that

1 right?

2 **THE WITNESS:** Correct.

3 **THE COURT:** You're not talking about a legal
4 brief filed here or somewhere else?

5 **THE WITNESS:** No. I think I started out
6 talking about the 2005 American Psychological Association
7 brief on lesbian and gay parenting. And then I said 2005
8 APA brief. And then I abbreviated again to brief and I
9 don't think I can abbreviate it anymore.

10 **THE COURT:** We are on the same page with my
11 law clerks and interns and so forth. We had a discussion
12 concerning that, but we are on the same page.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** All the lawyers are on the same
15 page.

16 **BY MS. STANYAR:**

17 **Q.** Let me ask a follow-up question to that. And
18 actually what it is, if you look at page three, it's the
19 lesbian and gay parents and their children summary of
20 research findings.

21 **THE COURT:** Yes. The law students think of
22 briefs only in the sense of underwear and legal briefs.

23 **BY MS. STANYAR:**

24 **Q.** And this is neither. You testified in answer to
25 Mr. Potchen's question, and actually you were criticizing

1 the APA brief and report that we just described because it
2 relegated to a footnote what you considered to be
3 substantial research by an Australian researcher named
4 Sotirios Sarantakos?

5 **A.** Yes.

6 **Q.** Okay. And this is a significant portion of your
7 testimony and it's also a significant portion of your
8 report that you discuss Sarantakos from pages 16 to 19 of
9 your report?

10 **A.** Yes.

11 **Q.** Okay. So, first of all, I want to address, so we
12 are clear, there was a study in 1996 by Sarantakos,
13 correct?

14 **A.** Yes.

15 **Q.** And there was a book that kind of folded in the
16 research from 1996 but also involves expanded interviews
17 and research and study. It was a much -- a bigger book or
18 it was a book?

19 **A.** Yes, and a bigger sample.

20 **Q.** A bigger sample. All right. All right. As to --
21 specifically we are talking about the 1969 study is titled
22 Children In Three Contexts: Family, Education And Social
23 Development. That is the one we are talking about?

24 **A.** Yes.

25 **Q.** All right. As to the 1996 study, what was your

1 understanding of the three groups he studied?

2 **A.** The three groups that he studied, one was children
3 of lesbian and gay parents. I believe 47 lesbian and 11
4 gay families. Fifty-eight cohabiting heterosexual couples
5 and 58 marriage based in tact families.

6 **Q.** So in that third group that you just mentioned that
7 is the equivalent your ideal family -- mother, father,
8 married, in tact household?

9 **A.** Yes. It appears to be from reading the article,
10 yes.

11 **Q.** Second group, heterosexuals, but just cohabitating?

12 **A.** Yes.

13 **Q.** He peeled off all of the group that wasn't married
14 for the heterosexuals, right?

15 **A.** It seems so.

16 **Q.** And the third group consists of couples or
17 homosexually parented children. Are they couples?

18 **A.** I believe they were couples.

19 **Q.** Okay. Am I correct that most of the children of the
20 same sex couples experienced parental divorce in the 1996
21 Sarantakos study?

22 **A.** Yes. I believe page 30 uses word, many. But we
23 visited that at length at the deposition and essentially I
24 think it's most. We can agree on that.

25 **Q.** All right. And part of that is because of the time

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 period and the age of the children and if you kind of --
2 all of that lead you to the understanding that it's most
3 are from failed heterosexual relationships?

4 **A.** Yes.

5 **Q.** All right. From the information in his 1996 article
6 can you tell me whether or not any of the children from
7 the married group were subjected to divorce?

8 **A.** It appears the answer is no from what he tells us
9 there.

10 **Q.** Do you know whether or not Sarantakos ever did any
11 further investigation with respect to the 1996 study into
12 the same sex couples group to make any distinct category
13 for those who had not experienced divorce?

14 **A.** I don't remember reading anything in the 2000 book
15 that specifically addressed that, although it's possible.

16 **Q.** I think you answered this at the deposition, that
17 not to your knowledge?

18 **A.** Not to my knowledge.

19 **Q.** In the 1996 study did Sarantakos recognize this as a
20 flaw that one group, the same sex couple group, had
21 experienced divorce and the ideal family group had not?

22 **A.** I believe that he did.

23 **Q.** Okay. Let's go to page 29 of this report. I want
24 you to look at the paragraph under Family Structure. Is
25 anybody's sample marked?

1 **MR. POTCHEN:** This is marked.

2 **BY MS. STANYAR:**

3 **Q.** Look under the section of Family Structure and go
4 almost to the bottom. It would be the last full sentence
5 under Family Structure. Are you with me? Children of
6 divorce?

7 **A.** Yes.

8 **Q.** Quote, children of divorce finally are thought to
9 demonstrate in higher proportions low performance and
10 misbehavior at school and to be suspended from school more
11 often than other children. And he cites a number of
12 different authors. Do you agree that is what that report
13 says?

14 **A.** Yes.

15 **Q.** He goes on to say, starting at the next paragraph,
16 this factor is found to have the strongest impact on child
17 behavior, referring to divorce. Children, as shown
18 elsewhere, children have experienced -- children who have
19 experienced parental divorce and have been through a
20 number of changes, paren, for example, cohabitation and
21 step-family, closed paren, are more likely to report
22 problems.

23 Continue on to page 20. Also to have been
24 involved in anti-social activities and delinquency and
25 more likely to become recidivists than children who

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 experienced no radical changes in family history.

2 So he did recognize this as a flaw in his
3 research?

4 **A.** Yes.

5 **Q.** All right.

6 **A.** Or at least a limitation.

7 **Q.** A limitation. So Sarantakos is recognizing that
8 this is a failure to do an apples to apples comparison?

9 **A.** At some level, yes.

10 **Q.** You talked about instability. We are going to come
11 back to Sarantakos, but you talked about instability and
12 as it appears in some these various studies and
13 instability amongst the same sex couple population -- the
14 same sex couple population. You studied African-American
15 couples, have you not?

16 **A.** Yes.

17 **Q.** Both married couples, and you studied cohabitating
18 couples?

19 **A.** To a much lesser degree.

20 **Q.** But you have studied married couples?

21 **A.** Yes.

22 **Q.** You would agree with me that African-Americans have
23 elevated levels of breakup as compared to other groups?

24 **A.** They do.

25 **Q.** Couples who have lower educational levels, higher

1 rates of breakup. There's a correlation there?

2 **A.** Yes.

3 **Q.** Couples who have lower incomes, there is also a
4 correlation to higher breakup rates?

5 **A.** Yes.

6 **Q.** Couples who have been married before, also higher
7 rates of breakup?

8 **A.** Yes.

9 **Q.** Second marriages?

10 **A.** Yes.

11 **Q.** Do you favor excluding any of them from the right to
12 marriage?

13 **A.** No.

14 **Q.** I would like now to turn to the 2000 book, okay?
15 Did you review the chapter where he is talking about the
16 children of same sex couples? That would be chapter
17 seven.

18 **A.** Yes.

19 **Q.** Okay. Would you degree with me that his 2000 book
20 is based upon interviews and other survey work that has
21 been conducted by Sarantakos himself?

22 **A.** Yes.

23 **Q.** Again, he folded it into the 1996 research?

24 **A.** Yes.

25 **Q.** He also does some review of literature as well?

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 **A.** Yes.

2 **Q.** And you described that before as a very
3 comprehensive book?

4 **A.** It really is.

5 **Q.** Okay. There were 316 same sex couples, 153 gay men
6 couples, 153 lesbian couples?

7 **A.** Let's see. 153 gay men. 163 lesbian.

8 **Q.** Okay. All right. Do you know the time period --
9 are both of these comparative groups, are they studied
10 over time? They are not just a one shot cross-sectional,
11 but they are studied over time?

12 **A.** It's tough to tell. It looks to me as though some
13 of it is longitudinal and some of it is cross-sectional.

14 **Q.** Okay. Some of the research for the same sex couples
15 dates back to the 1980s. Do you think that's true?

16 **A.** Yes.

17 **Q.** Would you agree with me that when he finished his
18 research for his 2000 books, Sarantakos, his own studies
19 of the families, his own review of the research,
20 Sarantakos also agreed it was an early iteration of the No
21 Difference Conclusion?

22 **A.** No, I wouldn't agree with that.

23 **Q.** All right. Let's explore that. Before we get to
24 that, if you look at page 15 of the book, I hope it's
25 there. The third paragraph under the sample starts, the

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 main criterion?

2 A. Okay.

3 Q. Are you with me?

4 A. With you.

5 Q. Okay. He reports, the main criterion were selection
6 of homosexuality, a minimum of one year --

7 THE COURT: Slow down.

8 BY MS. STANYAR:

9 Q. The main criterion of selection were homosexuality,
10 a minimum of one year cohabitation -- this is for the same
11 sex persons, couples -- perception of themselves as a
12 couple and perception as a couple but their peers. So, do
13 you agree with me that in the 2000 book, this is how he
14 defined the same sex couples?

15 A. Yes.

16 Q. Okay. As a social scientist and expert in family
17 studies, would you describe a relationship that lasts for
18 one year as a stable relationship?

19 A. I would like to see more longevity than one year if
20 I were conducting the study.

21 Q. All right. If you had -- if it's one year, a person
22 could have multiple relationships, multiple same sex
23 relationships, right? And they would tally up?

24 A. Yes. And -- I'm sorry. Continue.

25 Q. So it's a pretty low bar in terms of characterizing

1 a couple that has been together for one year as a stable
2 relationship?

3 **A.** I think that you could do better, yes.

4 **Q.** Would it be a more fair and more reliable
5 methodology, would it be an apt -- let's put it this
6 way -- would it be an apt comparison to compare an 18 year
7 old child with your ideal family to a child who is raised
8 from birth to 18 by in tact same sex couples?

9 **A.** It's an interesting question.

10 **Q.** First of all, is it an apt comparison? Not that
11 anything else is, but is this an apt comparison?

12 **A.** I think that it could be. But if we were doing
13 longitudinal research, say, from birth to 18 years, it
14 would give us a lot more sense of process and what went
15 on. For example, if one of those families is far more
16 stable, the other less stable than the other, and we were
17 only looking at those who still had in tact relationships
18 between their parents and their homes, we might be dealing
19 with something that researchers Campbell and Stanley refer
20 to as experimental mortality where there is bias expressed
21 and that one of the families is more likely to break up
22 and therefore wouldn't be in your study at 18 years old.
23 And so you might be looking at the cream of one group as
24 compared to the typical situation in another.

25 **Q.** All right. I understand that. Let's look at page

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 121.

2 **A.** Okay.

3 **Q.** Under the topic, Are Gays And Lesbians Unfit As
4 Parents? Look at the second sentence. I believe during --
5 in this paragraph he's talking here about a review of the
6 research.

7 **A.** Okay.

8 **Q.** Quote, overall, it has been found that homosexuality
9 and parenthood are not incompatible. He's citing some
10 studies by Handstom (ph) and Foster. Then he goes on in
11 that same paragraph, quote, lesbian mothers are as good as
12 their heterosexual counterparts. This is his findings
13 based upon his review of the research. Am I right about
14 that?

15 **A.** To me it appears that this is a review of the
16 literature. He's reporting what other researchers have
17 reported. Whether or not he agrees or it's based on his
18 research, I would disagree. It's unclear to me.

19 **Q.** Well, he is citing the research.

20 **A.** He is.

21 **Q.** And he's doing a review of the research in this
22 little section here, just as you have done review of the;
23 research that was cited by the APA up to 2005. So he's
24 looking at this and you are looking at what you looked at?

25 **A.** True. But as a good objective researcher, you are

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 implicitly obligated to share your -- to share conclusions
2 that other researchers have forwarded even if they may be
3 poor quality.

4 **Q.** I understand that. We will go on and see whether
5 this is his opinion or not. And that is a fair point.

6 **A.** Sure.

7 **Q.** Would it be fair to say that he finds, at least
8 based upon the literature, this is what the literature
9 said, that the literature would support a statement that
10 has been found that homosexuality and parenthood are not
11 incompatible? In other words, this looks like an early
12 iteration of what we would call the No Difference
13 Conclusion?

14 **A.** I would say that he does share that statement from
15 Hamstrom and Foster, that it's been found that
16 homosexuality and parenthood are not incompatible
17 certainly. But I would not go as far as to say that that
18 equates with the No Difference Hypothesis necessarily.

19 **Q.** Okay. I'm going to ask you to look at pages 117 to
20 118. My question at the bottom of the page to you,
21 referring to Sarantakos, question, but he finds that the
22 literature would support a statement that it has been
23 found that homosexuality and parenthood are not
24 compatible? Your answer, true. You further answer, and
25 to me this looks like an early iteration of what we would

1 call the No Difference Hypothesis that we talked about
2 earlier today. Was that my question to you and was that
3 your answer?

4 **A.** Yes. And, yes. Going back to the first paragraph,
5 I believe that you just asked me about Hamstam and Foster
6 on the overall statement. If we move further down into
7 that same first paragraph, this is a statement that says
8 lesbian mothers are as good as their heterosexual
9 counterparts from Kepki (ph) et al. That I would say is
10 similar, a reiteration of the No Difference Hypothesis.

11 **Q.** When I asked you whether he finds in the literature,
12 when I was talking about that paragraph, your answer was,
13 this looks like an early iteration of what we would call
14 the No Difference Hypothesis we talked about earlier
15 today?

16 **A.** Yes.

17 **Q.** That was your answer?

18 **A.** Yes. Referring at that point, to the latter portion
19 of the paragraph.

20 **Q.** Fair enough. Let's turn to page 129.

21 **A.** In the deposition transcript?

22 **Q.** I'm sorry. No. 129 of Sarantakos's book. And if
23 you go to that page and look under the Australian
24 children, that section, he writes, quote, the trend and
25 the findings listed above presents a convincing answer to

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 the question about the development of children of gay and
2 lesbian parents. They support the conclusion that
3 children of gay and lesbian parents perform as well as, if
4 not better than, children of heterosexual parents. The
5 findings suggest that there is no reason for concern about
6 their, meaning the children, their well-being or about the
7 suitability of same sex unions as socialization agencies.

8 All right. Would you agree with me that here,
9 Sarantakos is describing a strong leaning in the research
10 of other authors in his review of the research that he has
11 reviewed that supports the No Difference Finding?

12 **A.** Yes, I would. Of course, remembering that the
13 preceding several paragraphs are a review of literature of
14 other authors and not necessarily his conclusions based on
15 his own primary research.

16 **Q.** I agree. It's his review of the literature.

17 **A.** Yes.

18 **Q.** Okay. Let's go to page 134 of Sarantakos. The
19 second paragraph on that page, second sentence, first
20 sentence. There are no final data on this topic. And
21 feel free to read the rest of it. Nevertheless, a
22 preliminary finding suggests that the majority of
23 homosexual parents described their relationship with their
24 children in very favorable terms? Overall there is no
25 evidence to suggest that homosexual parents are inferior

1 or even different from heterosexual parents. Gay and
2 lesbian parents love their children and care for them as
3 much as heterosexual parents. That passage.

4 Now, is that -- I understand that your
5 preference would be for hard measures, all right? Like
6 high school graduation rates. Nevertheless, am I right
7 that this is Sarantakos talking about Sarantakos?

8 **A.** Yes, it is. However, if we move to the next
9 sentence he does say, nevertheless, there are some
10 fundamental characteristics in the parenting roles which
11 were mentioned in our discussions and which deserve our
12 attention. So, he is saying, in part -- he confirms what
13 we would call the No Difference Hypothesis. But on page
14 131 of this book he gives several examples that are
15 exceptions to that rule that aren't based on that primary
16 data.

17 **Q.** All right. I understand what you are referring to.
18 This is the bottom of page 131 to 132. He's talking about
19 different -- what you would consider societal concerns.
20 Correct?

21 **A.** Yes.

22 **Q.** Let me -- there is not a question yet. I will get
23 to the question. He talks about, you know, drug use,
24 drinking, all those things. He talks about deviant
25 behavior of children. But he goes on to say, this is an

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 issue which is very difficult to prove in terms of the
2 linkage, like what causes what. This is at the top of
3 132. Quote, kids who get involved in deviant behavior may
4 do so because of personal, emotional, family or social
5 factors. Whether these factors relate to homosexuality,
6 problems with school, peer reaction, pre-divorce family
7 experience, divorce or post-divorce experience is
8 difficult to ascertain.

9 **A.** Yes.

10 **Q.** Right? So he is talking about there are some
11 differences in terms of these societal concerns but he
12 doesn't assign sexual orientation of parents as the cause.
13 Correct?

14 **A.** That's correct. It would be wrong to draw a causal
15 link, and yet, the point is that those differences did
16 exist.

17 **Q.** They appeared?

18 **A.** They did appear. And in many cases with hard, not
19 soft measures.

20 **Q.** When you co-authored Marriage Matters, you looked at
21 a lot of those hard measures, all of which were associated
22 with the inability or the unmarried married status of
23 parents?

24 **A.** Yes.

25 **Q.** All right. Let's go back to what Sarantakos

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 describes as his methodology. Do you degree that one of
2 the pronounced strengths of Sarantakos was his
3 methodology, sometimes called triangulation?

4 **A.** Yes. That was one feature.

5 **Q.** Okay. So his book was not just based upon
6 interviews with same sex parties, right?

7 **A.** Correct.

8 **Q.** Okay. There is the, my kid is cute phenomenon so we
9 don't have to worry about that because he used a lot of
10 different things. He used teachers assessments. He used
11 report cards. He used different reports. He did use
12 interviews. He used interviews with the parents. He used
13 observations of the children. He used all of those
14 things, right?

15 **A.** At least with some of the samples he did. I think
16 he made a good faith effort to do high quality research.

17 **Q.** And certainly with respect to the hard measures
18 versus the soft measures, relationship quality, all of
19 those things fell into the category of processes that you
20 described, I think in response to Mr. Potchen's questions.
21 Researchers certainly in psychology have been assessing
22 parent/child relationship issues for many, many years,
23 decades and decades as to all children, have they not?

24 **A.** They have.

25 **Q.** There is an established manner in which these things

1 are measured in psychology for children, right? This is
2 the bread and butter of what psychologists do?

3 **A.** It's what many child developmentalists do, yes.

4 **Q.** Including psychologists?

5 **A.** Yes.

6 **Q.** Do you think that psychologists are the social
7 science group that analyze child adjustment perhaps more
8 than anybody else? It's more of a core of what they do?

9 **A.** Yes. I think that that may be a fair
10 generalization.

11 **Q.** All right. We talked about Mark Regnerus. And are
12 you familiar with Mark Regnerus' NFSS study?

13 **A.** Yes.

14 **Q.** You didn't list his as one of the gold standard
15 research studies, did you?

16 **A.** My statement, I think, was that if there has been a
17 same sex parenting study that warrants gold standard
18 labels, it would be Rosenfeld and the Price, Allen and
19 Pakaluk. I probably reversed the names there, but the
20 2012 followup study they did.

21 **Q.** Okay. And would you agree with me that at least one
22 of the weaknesses that you would identify with Regnerus'
23 research methodology is that he identifies -- the
24 definition was that the child identified their parent as
25 having had a same sex relationship at some point as

1 opposed to focusing in on whether the person's orientation
2 as gay or lesbian?

3 **A.** I think that that is the most frequent criticism of
4 the study. It's what we will call an operational
5 definition. And it's kind of the mirror image of my
6 criticism. For example, of saying single parent mothers
7 represent all heterosexual parents, you have the right as
8 a researcher I think to look at the way other researchers
9 operationalize their definitions and voice your opinion
10 about how you would have done or would like to do it
11 better. I don't think that that completely negates the
12 value of the studies, but it's a criticism.

13 **Q.** All right. And another criticism we have talked
14 about here in court that I want to know your reaction to
15 it, Paul Amato has indicated that most of the young adults
16 with gay or lesbian parents or parents that fit in the gay
17 father/lesbian mother category in the New Family Structure
18 Survey have also experienced divorce as children. He
19 says, consequently, it is unlikely that many of the
20 disadvantages reported by these offsprings were due to
21 marital disruption that preceded or coincided with the
22 time when their parents came out as gay or lesbian. In
23 other words, these disadvantages may be due to failed
24 heterosexual marriages of parents rather than the sexual
25 orientation of the parents.

1 So that's Paul Amato's criticism of Regnerus.

2 Do you agree with it?

3 **A.** I think it's a valid criticism.

4 **Q.** All right.

5 **A.** Another way to say it that I would prefer would be
6 to say that it's a limitation, similar to the Sarantakos
7 study and several others.

8 **Q.** Would you agree that it resonates along with the
9 limitations of Sarantakos's first 1996 study that we
10 talked about earlier?

11 **A.** Yes.

12 **Q.** Have you ever used a longitudinal study yourself?

13 **A.** No, not as primary research. I told Jim hoping to
14 in the deposition, but I am not there yet.

15 **Q.** Does this situation fit your idea family, a family
16 in which two married parents adopted the child at or near
17 birth and therefore, have no genetic tie to the child?
18 Would that fit your definition of the idea family?

19 **A.** It could.

20 **Q.** What researchers have identified a biological
21 connection between parent and child as the cause of good
22 adjustment outcomes?

23 **A.** The research that I am familiar with would not be
24 strong enough to refer to as causal research. I am
25 familiar and I believe that Why Marriage Matters refers to

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 some correlational material, but I don't know of any that
2 is causal.

3 **Q.** Do I understand you correctly that as to your
4 professional opinion, the research has not established
5 that children fare worse when raised by same sex parents
6 than when raised by biological parents?

7 **A.** I don't think we do know definitively an answer to
8 that question.

9 **Q.** Is it your opinion that until we prove that there
10 are equivalent outcomes for the two groups, that marriage
11 should be restricted to heterosexual couples?

12 **A.** I am not in favor of redefining marriage at present.

13 **Q.** Is it your opinion that until we prove that there
14 are equivalent outcomes, that second parent adoption
15 should not be permitted as to same sex couples?

16 **A.** I don't necessarily have an opinion on that issue
17 that is research based.

18 **Q.** I would like to turn to the expert report of Joseph
19 Price and ask you to look at paragraph eight and read
20 along with me. Based upon my own research and my
21 evaluation of published research in this field, I conclude
22 that children raised by same sex parents have noticeably
23 worse outcomes than children raised by both a father and a
24 mother. Do you agree with Doctor Price -- well, would you
25 say that if he's looking at the same research you are, the

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 science at this point in history does not support that
2 conclusion?

3 **A.** Each of us have different thresholds for being
4 convinced of anything. That is part of my core arguments,
5 I believe. It looks like Doctor Price here refers to his
6 own research which I mentioned earlier is one of arguably
7 two gold standard studies.

8 **Q.** Let me interrupt. He's also referring to, my
9 evaluation of published research in this field. He is not
10 just referring to his own research.

11 **A.** Yes, that's true. He cites both. His own study
12 found 35 percent difference in progress through school
13 with the largest data set ever used, a million three
14 hundred ninety-seven thousand nine hundred forty-four.

15 **Q.** Let me do a followup to that. I think we have
16 established --

17 **MR. POTCHEN:** He didn't finish his answer.

18 **THE COURT:** Did you finish your answer?

19 **A.** The point being that that is by far the largest
20 sample that has been used. However, as I indicated
21 earlier today, that is an important finding. It's an
22 important outcome. But we are talking about progress
23 through school, just through eighth grade. We are not
24 talking about GPA. We are talking about a binary measure.
25 Did they pass? Did they fail? We are not talking about

1 high school graduation, collegiate achievement. While I
2 think it's an important finding, for me personally, the
3 burden of proof in this domain requires multiple studies
4 and multiple domains. I identified eight earlier.

5 **Q.** All right. And we had testimony -- I want to make
6 sure we are all on the same page -- we had testimony that
7 what that -- his finding meant, progress through school,
8 that the difference would be between 1.00 and 1.35. So,
9 what he is talking about is in one point, even at the
10 biggest, we are talking about a 1.35 percent of the
11 failure to achieve the next grade on time. And I may be
12 mangling that, but is that your understanding of what it
13 is?

14 **A.** By this point in the day, I have to tell you I
15 wrestle with statistics even at my best. I am not
16 comfortable making assessments of the study on the whole.

17 **Q.** Fair enough. And but your opinion is that -- so am
18 I correct that your position is that you think that Doctor
19 Price's opinion is premature, that we haven't had enough
20 study yet?

21 **A.** Again, each of us have different thresholds and mine
22 tends to be higher, apparently, than Doctor Price's. It's
23 also higher than Michael Rosenfeld's and others
24 representing the plaintiff. I want to see generalizable
25 large scale high quality studies across domains, not just

1 in one domain, but across domains.

2 **Q.** Fair enough. And as between yourself and Doctor
3 Price, your testimony would be more neutral. That you
4 wouldn't talk in these kinds of absolutes. Is that a fair
5 statement?

6 **MR. POTCHEN:** Objection. Calls for
7 speculation?

8 **THE COURT:** Sustained.

9 **BY MS. STANYAR:**

10 **Q.** Let me ask another question. Is it correct that as
11 between yourself and Doctor Price, your testimony would be
12 more neutral?

13 **MR. POTCHEN:** Objection, again, your Honor.

14 **THE COURT:** In his opinion. He can answer.

15 **THE WITNESS:**

16 **A.** Yes, I think it would be more neutral than Doctor
17 Price's. It would also be more careful and stubborn,
18 perhaps, than Rosenfeld's on the other side of the aisle.

19 **Q.** You reviewed the study -- have you reviewed the
20 study of Allen regarding the Canadian census?

21 **A.** Yes. It's been a little while.

22 **Q.** You're aware that the age of their subjects, of
23 Allen's subjects was between the ages of 17 and 22 upon
24 the time that they were studied? Am I right about that?

25 **A.** I guess that sounds right.

1 **Q.** And then he measured back five years or the Canadian
2 census did for purposes of determining what the family
3 structure was for the preceding five years, is that
4 correct?

5 **A.** Yes. That sounds correct.

6 **Q.** Okay. So if we considered a 17 year old in the
7 study, Allen has information on his or her family
8 structure from the age 12 to 17 for a 17 year old but they
9 didn't really know anything about the family structure
10 from birth to age 12, is that correct?

11 **A.** I believe that is correct.

12 **MR. POTCHEN:** I object to any questions about
13 Allen. He has not testified.

14 **MS. STANYAR:** I'm not going to call him back.

15 **THE COURT:** I will give you a little leeway.

16 **MR. POTCHEN:** It's outside the scope of his
17 report as well, your Honor.

18 **THE COURT:** Now that's a good argument.

19 **MS. STANYAR:** That's a good argument.

20 **THE COURT:** That one works. That's for sure.

21 **MR. POTCHEN:** They are letting me know. I
22 got help here.

23 **THE COURT:** Throw them in there. That's what
24 they tell you to do in law school. Draft a complaint.
25 Throw everything in there.

1 **BY MS. STANYAR:**

2 **Q.** We had, we explored the issue again of gender
3 differentiated role modeling in this case. I have some
4 followup questions to that. Do you ascribe to, as it
5 relates to marriage, that marriage has stabilizing
6 benefits that apply only to heterosexual couples? And
7 here is the context. That, in other words, that I think
8 the example is that men need to be tamed and that their
9 behavior needs modification and that a woman does that
10 when they marry?

11 **MR. POTCHEN:** Your Honor, I object. This is
12 outside the scope as well.

13 **THE COURT:** Yes. I'm not sure where you are
14 going with this.

15 **MS. STANYAR:** All right.

16 **BY MS. STANYAR:**

17 **Q.** All right.

18 **A.** I think my wife would agree, Carol.

19 **THE COURT:** I knew he wanted to answer
20 something.

21 **MS. STANYAR:** He had that smirk. I knew he
22 was going to say something.

23 **BY MS. STANYAR:**

24 **Q.** Let's talk about the drawbacks and limitations of
25 large probability studies. You should assume that for

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 purposes of these questions that we have had testimony in
2 this case from Mark Regnerus that he paid \$415,000 to a
3 survey firm that conducted the NFSS study. They drew from
4 a pool of originally from 15,000 people. That was the
5 original pool. They interviewed just under 3,000 and
6 they -- Mark Regnerus got a total of two children who were
7 actually raised by same sex couples.

8 All right. Let's say we wanted to come up with,
9 instead of two children, let's multiply that by a hundred,
10 that we wanted to come up with 200 children actually
11 raised by same sex parents using a format like that. So
12 if we multiplied all of those numbers by a hundred
13 including the 415,000 figure by a hundred, you are talking
14 about a price for the survey to get potentially, would be
15 in the millions. Might be forty-one million dollars, but
16 it would definitely be in the millions to do that kind of
17 study.

18 **A.** It would pricey.

19 **MR. POTCHEN:** I object, your Honor. This is
20 such a compound question.

21 **THE COURT:** Yes. I think the bottom line is,
22 to do that kind of study, it would be in the millions?

23 **THE WITNESS:** Yes.

24 **BY MS. STANYAR:**

25 **Q.** Is that likely to happen?

1 **MR. POTCHEN:** Objection. Calls for
2 speculation.

3 **THE COURT:** Sustained.

4 **BY MS. STANYAR:**

5 **Q.** You have done research on African-American
6 families -- different question than before. Are you aware
7 of research in terms of how well their children fare
8 within those families? Child outcomes?

9 **A.** In a general sense, the trends tend to follow those
10 of the nation broadly as outlined in the Why Marriage
11 Matters that you addressed and that we talked over
12 earlier. The children do better.

13 **Q.** Excuse me. Children in African-American families do
14 better?

15 **A.** Yes. In marriage based --

16 **Q.** In marriage based families?

17 **A.** Yes.

18 **Q.** Is there research that shows differences in child
19 outcomes based upon a mother's level of education?

20 **A.** I could not give you a study, but I am confident
21 that there is.

22 **Q.** All right. All right. And would you agree with me
23 that low levels of education are correlated with poorer
24 child outcomes?

25 **A.** Yes.

1 **Q.** Same question as to lower incomes. Correlation
2 between lower incomes for the parents. Lower child
3 outcomes?

4 **A.** Yes, I would agree.

5 **Q.** Do you favor excluding low educated people from
6 marriage?

7 **A.** No.

8 **Q.** Do you favor excluding low income people from
9 marriage?

10 **A.** No.

11 **Q.** Do you have any opinion as to whether or not
12 allowing marriage by same sex couples affects the marriage
13 rate of heterosexual couples?

14 **A.** I think that the jury is still out on that and will
15 be for some time. In terms of the data, the closest
16 comparison that I am able to come up with in my own mind,
17 I think it's a plausible hypothesis. For example, the
18 cohabitation rate, depending on the studies that are
19 considered, is increased between four, six, even eightfold
20 since 1970 or so. Does one cohabiting couple in the
21 neighborhood change the social reality? Probably not.
22 But at the same time I have published my opinion that one
23 of the most important principles in social science is that
24 our behavior is permission to others to behave similarly.
25 But it is more than that. It is an invitation to do so.

1 From that perspective, any change or any
2 behavior has potentially a quantum influence. Would such
3 a change have that kind of influence? That I can't say
4 and I don't believe that we have the data.

5 **Q.** So it's an opinion of yours that there is no
6 empirical research that is satisfying to you as a
7 scientist?

8 **MR. POTCHEN:** Your Honor, she asked for his
9 opinion.

10 **THE COURT:** What is the follow-up?

11 **MS. STANYAR:** The follow-up is that it's not
12 as a scientist based on empirical research.

13 **A.** Again, I think the jury still out. I am aware of
14 some data, but I would like to see more.

15 **BY MS. STANYAR:**

16 **Q.** Do you agree that adoption is a reasonably good
17 alternative for children that can't be raised by their
18 biological parents?

19 **MR. POTCHEN:** Objection. Outside the scope.

20 **THE COURT:** Sustained. He's not here for that
21 issue and he wasn't qualified for that. He may be
22 qualified, but he wasn't qualified for that. He wasn't
23 qualified in his voir dire today.

24 **MS. STANYAR:** All right.

25

1 **BY MS. STANYAR:**

2 **Q.** You talked about some of the research -- we'll go
3 through this briefly -- in the APA studies and you said
4 that it's important to the question of the groups that
5 researchers select to represent the heterosexual parents
6 as compared to the same sex parents and that's becomes
7 critical, according to you?

8 **A.** Yes. I think it's very important.

9 **Q.** Okay. According to you, the selection of single
10 parent families in comparison to heterosexual parent -- a
11 heterosexual parent group is noteworthy. Strike that.
12 And you criticized the fact that a lot of those studies
13 don't have a heterosexual comparison group?

14 **A.** Yes. 26 did not of the 59.

15 **Q.** All right. Let's look at the Tasker, the Fiona
16 Tasker and Susan Golombok article.

17 **A.** I think I may have your version here.

18 **Q.** All right. This is one that you cite in your -- as
19 one that you reviewed, correct?

20 **A.** Yes.

21 **Q.** All right. In the original Tasker and Golombok
22 article or the original study, the original one was from
23 1976 to 1977, is that right?

24 **A.** That sounds about right. It goes back quite a ways.

25 **Q.** Okay. And if you look at page 206 of the article

1 under Method, it indicates that the sample of lesbian and
2 heterosexual single mothers initially participated in the
3 study of their general psychological status in 1976 to
4 1977?

5 **A.** Yes.

6 **Q.** This is when it started. This was the original wave
7 and this was one that there were several waves of study as
8 to these particular women. So would you agree with me
9 that in this study they had 27 lesbian mothers and 27
10 single heterosexual mothers in the Fiona Tasker and
11 Golombok study?

12 **A.** Yes. That sounds about right. They list in the
13 abstract 25 for lesbian and 21 for heterosexual single.

14 **Q.** I think you're referring to, I think you are
15 referring to the later study. I am referring to --

16 **A.** I apologize. I see what you're saying.

17 **Q.** In the 1976, 1977 look at these women, there were 27
18 lesbian mothers and 27 single heterosexual mothers?

19 **A.** I follow you now.

20 **Q.** All right. 39 children a piece?

21 **A.** Correct.

22 **Q.** Okay. Then if you go to page 208, they did a
23 followup with the same women. And if you look at the
24 results at the bottom of page 208, there was a followup
25 study from 1991 to 1992 was 15 years later. And would you

1 agree with me that at this point they were looking at 25
2 children raised by lesbian mothers, 25 children raised by
3 heterosexual mothers?

4 **A.** Looks about right.

5 **Q.** 22 of the 25 lesbian moms were living with a female
6 partner. So that's about 88 percent?

7 **A.** And we are now on to 209.

8 **Q.** We are on to 209. And then pretty similar, in the
9 18 of the 21 heterosexual moms left in the study at that
10 point were also living with a male partner because they
11 are heterosexual?

12 **A.** Correct.

13 **Q.** So this is an example of you don't have a comparison
14 of the lesbian moms to the ideal family, but you have a
15 comparison that looks -- does it look to you to be and
16 apples to apples comparison? You have single women. They
17 do what single women sometimes do.

18 **THE COURT:** Let's start asking just the
19 question because I would like to finish this witness and
20 allow him to be excused at 5:00. So why don't you ask the
21 questions and he will answer and just answer the questions
22 and we will hopefully get through all of your concerns.

23 **BY MS. STANYAR:**

24 **Q.** Does this appear to you to be an apples to apples
25 comparison?

1 **A.** It appears that the researchers have made a good
2 faith effort to make it more of an apples to apples
3 comparison than many of the studies that I have seen.

4 **Q.** All right. During your deposition you were
5 discussing -- if you want to see it, let me know -- you
6 were discussing --

7 **THE COURT:** Back to the mike.

8 **BY MS. STANYAR:**

9 **Q.** You were discussing some studies --

10 **THE COURT:** I know it's not your normal
11 style.

12 **BY MS. STANYAR:**

13 **Q.** There was a study in which you had a situation in
14 which you had a lesbian mom and they were comparing that
15 person to a single heterosexual mom. And I think one of
16 the points you made is we really have to look to see
17 whether or not the lesbian mom has taken a partner. Do
18 you remember that or do you want to take a look at that?

19 **A.** It would probably be a good refresher.

20 **Q.** All right. In your deposition we are referring to
21 page --

22 **THE COURT:** He has a copy. Tell him what
23 page.

24 **BY MS. STANYAR:**

25 **Q.** Page 157 to 176. And I think there --

1 **THE COURT:** And, Doctor, if you need some
2 water -- do you need some water? We will get you some.

3 **THE WITNESS:** That would be great. I
4 appreciate it.

5 **THE COURT:** Anybody else need water? All
6 set?

7 **BY MS. STANYAR:**

8 **Q.** All right. This is 157 to 176 and we are talking
9 about the Questen (ph) study, one of the ones that I think
10 it was listed in the Golombok and Tasker that we were
11 talking about. And then this conversation came up
12 about -- well, read it. I mean, to yourself.

13 **A.** Okay. Yes, I remember now.

14 **Q.** All right. I asked you this question. So basically
15 eight more of the women in the lesbian group had a partner
16 in the home. Is that the way you read it? And you said,
17 yes.

18 **A.** Yes.

19 **Q.** And was it your -- is it your opinion or was it your
20 opinion that that would make it an unfair comparison to
21 the single lesbian group or, excuse me, to the single
22 heterosexual group if the lesbians' moms had a partner
23 living with them at that point?

24 **A.** It could be.

25 **Q.** Is that because having a partner at home helps

1 children?

2 **A.** It can.

3 **THE COURT:** That's okay. It can. I don't
4 mean to cut you off, but we have an answer. We are trying
5 to get you back home if we can. Not that we don't like
6 you. It's just I suspect you have other things to do,
7 though the students must love you being here.

8 **BY MS. STANYAR:**

9 **Q.** This is not the only time that we have -- would try
10 decide as a society whether or not certain people are
11 allowed to marry or not. Back in the 1960's the question
12 came up about interracial marriages. And you studied
13 African-American families. Do you know how many studies
14 they --

15 **MR. POTCHEN:** Your Honor, this is outside the
16 scope.

17 **THE COURT:** Yes. Sustained.

18 **BY MS. STANYAR:**

19 **Q.** You talked about Brewaeys, the study, donor
20 insemination, child development and family functioning in
21 lesbian mother father families. They use on page 1353,
22 they use the initials CBCL, if you look right under the
23 topic of Emotional And Behavioral Adjustment of Children.
24 Does that reference in the social sciences refer to a
25 child behavior check list?

1 **A.** Yes, I believe so.

2 **Q.** All right. So is that a standard instrument that
3 social scientists use to measure child behavior?

4 **A.** It is.

5 **Q.** All right. And does it say here in this study, the
6 CBCL, the child behavior check list for ages 4 to 18
7 years, is a widely used and well validated instrument for
8 the assessment of behavioral emotional problems and social
9 competency of children on the basis of the reports of
10 their parents?

11 **A.** Yes.

12 **Q.** That is your understanding of what that is?

13 **A.** Yes.

14 **Q.** You have criticized some of these studies because
15 there wasn't a comparator group. Is Brewaeys an example
16 of where there is no comparator group but there is a
17 comparison being made or at least an assessment being done
18 and that is to the child behavior check list so the
19 children --

20 **THE COURT:** That was your first question.
21 What is your question?

22 **MS. STANYAR:** The children --

23 **BY MS. STANYAR:**

24 **Q.** Is it correct that children are being compared to
25 the norm?

1 **A.** There is appears a standardized check list.
2 However, it appears to me that we do have a comparison
3 group. We have got two actually in this study. 38
4 heterosexual families with a donor inseminated child and
5 30 heterosexual families with a naturally conceived child.

6 **MR. POTCHEN:** We don't have those.

7 **BY MS. STANYAR:**

8 **Q.** This is Gartrell and this was several waves of
9 studies of the National Lesbian Family Study, correct?

10 **A.** Yes.

11 **Q.** The one in front of you is from 2005, is that right?

12 **A.** Yes.

13 **Q.** All right. I think this was one where you indicated
14 that you didn't think that there was a heterosexual
15 comparator group?

16 **A.** This one -- I am looking at 2005. I need to double
17 check.

18 **Q.** Let me hand you your --

19 **A.** Do you have the table?

20 **Q.** Yes. I have the table. Gartrell et al.. 2005?

21 **A.** There we go. Thank you.

22 **Q.** It didn't have a heterosexual comparator group, but
23 look to page 520. They were using the CBCL. Do you see?

24 **A.** I do.

25 **Q.** They were measuring the children against standard

1 norms, against this assessment, the standard assessment.

2 Do you agree?

3 **A.** Yes, I see.

4 **Q.** All right. This is something that social science
5 does all the time in terms of measuring a child against
6 standard norms. For example, would it be typical for a
7 school social worker to evaluate whether a child needs
8 services?

9 **A.** Possible.

10 **MR. POTCHEN:** I object to the form of the
11 question.

12 **THE COURT:** Sustained.

13 **BY MS. STANYAR:**

14 **Q.** Is this something that, comparison to norms, is this
15 something that social science does often?

16 **A.** It's done from time to time, yes. As an aside here,
17 I mentioned earlier that part of my wrestle with that, the
18 samples were wealthy, well educated, and white. If we
19 take a glance under the method, we see here that the
20 mothers were predominantly college educated, middle and
21 upper class professional managers and the median household
22 income was \$85,000. Bearing in mind that's almost ten
23 years ago, that's well above the median income for that
24 point in time.

25 **Q.** I understand what you mean.

1 **THE COURT:** Let her ask the questions.

2 **BY MS. STANYAR:**

3 **Q.** The point I was making --

4 **MR. POTCHEN:** Can we move to the next
5 question, your Honor?

6 **THE COURT:** Let's move on.

7 **BY MS. STANYAR:**

8 **Q.** All right. You talked about the concept of
9 reflexivity and how you identified that in your written
10 articles and that it's your way of acknowledging bias?

11 **A.** Yes.

12 **Q.** And you testified that you have various areas that
13 could be perceived as bias. You talked about having a
14 preference for thorough research, correct?

15 **A.** Yes.

16 **Q.** And you are insisting in this case and in this
17 particular area on a specific type of research?

18 **A.** Not necessarily. I would like to see at least some
19 large representative samples. But I think there are a
20 number of different domains where we need to improve.

21 **Q.** All right. Would you agree with me that your
22 preference that there must be gold standard studies of
23 this kind before we can resolve the No Difference
24 Conclusion, that you are swimming upstream on this? That
25 is against the consensus?

1 **MR. POTCHEN:** Objection to the form of the
2 question.

3 **THE COURT:** Can you answer it? I understand
4 the objection.

5 **THE WITNESS:** Could you restate, please?

6 **BY MS. STANYAR:**

7 **Q.** That you identified an area of what you identified
8 as your own bias, the fact that you insist on thorough
9 research. And I am asking you, is this insistence in this
10 case on the type of study that you already testified to
11 many times, is that bias here, number one?

12 **THE COURT:** Here in terms of what?

13 **MS. STANYAR:** In the case. Is that a bias
14 assist that you --

15 **MR. POTCHEN:** I object. The question is
16 vague and unclear.

17 **THE COURT:** You want to know whether or not
18 his beliefs in terms of his criticism of this brief and
19 ultimate conclusion are in the minority. As you use it,
20 he is swimming upstream.

21 **MS. STANYAR:** Yes.

22 **THE COURT:** I think that is your question.

23 **MS. STANYAR:** Yes.

24 **THE WITNESS:** I'm in the minority, yes.

25

1 **BY MS. STANYAR:**

2 **Q.** Yes. All right. It isn't just the American
3 Psychological Association. The No Difference Conclusion
4 is accepted by a number different groups -- the American
5 Sociological --

6 **MR. POTCHEN:** Beyond the scope.

7 **THE COURT:** And also, by number. You don't
8 have to list them.

9 **BY MS. STANYAR:**

10 **Q.** It's accepted by the American Medical Association,
11 is that correct?

12 **MR. POTCHEN:** She just said she doesn't have
13 to list them.

14 **MS. STANYAR:** I'm not going to list them but
15 I have a question to follow up to that.

16 **THE COURT:** Ask the question.

17 **BY MS. STANYAR:**

18 **Q.** Is that known as a liberal organization?

19 **A.** I'm not familiar with the political leanings of the
20 American Medical Association.

21 **Q.** I think you testified -- we asked you questions
22 about the American Psychological Association's policy
23 statement titled Sexual Orientation, Parents And Children.
24 Are you familiar with the policy statement?

25 **MR. POTCHEN:** Objection. Outside the scope

1 of this witness's testimony.

2 **THE COURT:** I'm not sure -- I don't know the
3 question. Are you familiar with the statement? With the
4 statement of the association?

5 **THE WITNESS:** I think I may have read it at
6 some point.

7 **MS. STANYAR:** And this pre-dates 2005.

8 **THE COURT:** He said he may have read it. Ask
9 him a question.

10 **BY MS. STANYAR:**

11 **Q.** It says homosexuality is not a psychological
12 disorder. Do you agree with that statement?

13 **A.** Yes.

14 **Q.** It says, beliefs that lesbians and gay adults are
15 not fit parents have no empirical foundation?

16 **MR. POTCHEN:** Again, your Honor, this is
17 outside the scope.

18 **THE COURT:** Sustained.

19 **BY MS. STANYAR:**

20 **Q.** All right. You authored an article teaching correct
21 principles promoting spiritual strength in the LDS people.
22 You co-authored that with another author?

23 **A.** Yes.

24 **Q.** And you talked about this with Mr. Potchen. This
25 identifies yourself as an active and committed member of

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 the Church of Jesus Christ Latter Day Saints?

2 **A.** Yes.

3 **Q.** And in this article in particular you are
4 identifying in the reflexivity section that this may be an
5 area of potential bias?

6 **A.** Yes.

7 **Q.** All right. And that you identify at page 397 the
8 proclamation, the Mormon proclamation, for lack of a
9 better --

10 **A.** Yes.

11 **THE COURT:** What is the date?

12 **MS. STANYAR:** And date of this article?

13 **THE COURT:** Please. Just curious.

14 **THE WITNESS:** 2006.

15 **MS. STANYAR:** 2006.

16 **BY MS. STANYAR:**

17 **Q.** This is not about child outcome. It's about areas
18 of recognized perceived bias, correct?

19 **A.** Yes.

20 **Q.** All right. At page 398 you write that the LDS
21 directive is for a couple to be married by God's authority
22 in God's house, the holy temple, and then to have children
23 per the teaching that God's commandment for his children
24 to multiply and replenish the earth remains in force. You
25 wrote that?

1 **A.** Yes.

2 **Q.** You also -- that statement remains accurate today.

3 You are still a member of the church?

4 **A.** Yes.

5 **Q.** And am I correct that you are the first counselor of
6 the Baton Rouge Stake?

7 **A.** Yes.

8 **Q.** And what does that mean?

9 **A.** In the faith that I'm a member of, we have lay
10 clergy.

11 **THE COURT:** You don't have to go into that.
12 You are active in your church.

13 **THE WITNESS:** I am lay clergy essentially.

14 **BY MS. STANYAR:**

15 **Q.** Are you a highly involved member?

16 **A.** I strive to be, yes.

17 **Q.** I'm going to ask you to look at a document titled
18 The Family, A Proclamation To The World, The First
19 Presidency And Council of the 12 Apostles Of The Church Of
20 Jesus Christ Of Latter Day Saints. Is the proclamation a
21 formal statement of the LDS church that is to be taken
22 seriously by you?

23 **A.** Yes.

24 **Q.** As part of your own personal dogma, do you
25 personally accept the proclamation in all of its --

1 **MR. POTCHEN:** Your Honor, I'm going to object
2 to his personal --

3 **THE COURT:** I will sustain. He already
4 testified that he is a person of faith and so forth. I
5 don't think we have to go into the specific teachings of
6 any faith. And he also talked already about the biases
7 and so forth.

8 **MR. POTCHEN:** Thank you.

9 **THE COURT:** We are going too far.

10 **BY MS. STANYAR:**

11 **Q.** Lastly, we talked about the Why Marriage Matters
12 conclusions. Most significantly, the conclusions that
13 family stability comes with being born into a married
14 family. All of the different advantages that are listed
15 in Why Marriage Matters. Would you agree with me there
16 are no high quality studies which refute these benefits to
17 the children or for the children of same sex couples or to
18 the partners involved?

19 **A.** Yes.

20 **Q.** Do you know of any reason why a child being raised
21 by a same sex couple wouldn't be advantaged by having two
22 legal parents instead of just one?

23 **MR. POTCHEN:** Objection.

24 **THE COURT:** Sustained. He indicated he hasn't
25 done the research and so forth.

1 **BY MS. STANYAR:**

2 **Q.** If the same sex marriage ban were struck down in
3 this case, you would go on studying this area of research,
4 could you not?

5 **MR. POTCHEN:** Objection. That calls for
6 speculation.

7 **THE COURT:** I think he can answer it.

8 **THE WITNESS:** Yes. Yes.

9 **BY MS. STANYAR:**

10 **Q.** Would you continue to research?

11 **A.** My research on this particular topic?

12 **Q.** This topic.

13 **A.** I haven't considered that. I haven't considered
14 that question.

15 **Q.** Well, wouldn't research in this area help families?

16 **MR. POTCHEN:** Objection.

17 **THE COURT:** Plus he's here. His research is
18 on a specific, whatever they call it, proclamation of the
19 association. Not the underlying.

20 **MS. STANYAR:** That's all I have.

21 **THE COURT:** Anything further? *It's not*
22 *approximation. What is it called?*

23 **THE WITNESS:** The APA brief?

24 **THE COURT:** No. The statement. The
25 statement.

1 **THE WITNESS:** Statement.

2 - - -

3 **REDIRECT EXAMINATION**

4 **BY MR. POTCHEN:**

5 **Q.** I would like a couple housekeeping things.

6 **THE COURT:** Absolutely.

7 **BY MR. POTCHEN:**

8 **Q.** I'm going to give you what's been marked as State's
9 Exhibit Number 21 and State's Exhibit Number 22 for
10 identification. Counsel has been discussing fairly
11 extensively from these documents. Can you please identify
12 what the State's Exhibit Number 21 is?

13 **A.** Children in three contexts -- family, education, and
14 social development authored Sotirios Sarantakos.

15 **Q.** That's the '96 study?

16 **A.** Yes.

17 **Q.** And then State's Exhibit Number 22, please?

18 **A.** Same Sex Couples, a book authored by the same
19 author, Sarantakos.

20 **Q.** Are both State's Exhibit Number 21 and 22 true and
21 authentic copies of the documents?

22 **A.** Yes. They appear to be.

23 **Q.** Okay. You indicated that you think we should
24 clarify -- I'm sorry. You have indicated some comments or
25 identified some comments on the publication Why Marriage

12-10285; April Deboer, et al. v. Richard Snyder, et al.

1 Matters, and you remember when we began your testimony
2 there was a number of positive aspects of marriage
3 identified?

4 **A.** Yes.

5 **Q.** Were those positive aspects referring to only
6 marriage between a man and a women?

7 **A.** Yes.

8 **Q.** So those aspects were not opining in any way of same
9 sex marriage, is that correct?

10 **A.** No. Same sex marriage and same sex partners are not
11 mentioned in the Why Marriage Matters book.

12 **Q.** Those factors that were outlined do not apply to
13 same sex couples?

14 **A.** I don't think we know.

15 **Q.** Okay. You have -- you were asked some questions
16 about gender differentiated parenting during
17 Cross-Examination. Do you recall?

18 **A.** Yes.

19 **Q.** And do you believe it's important to be cautious
20 before eliminating gender diversified parenting?

21 **A.** Yes.

22 **Q.** Do you think that science is settled that it's a
23 good idea to completely eliminate both a mom and dad from
24 raising a child?

25 **A.** No. I don't think it's settled.

1 **Q.** Why not?

2 **A.** Because based on the points that we went through in
3 Why Marriage Matters, what we do know is that in tact
4 marriage has significant correlation to positive
5 children's outcomes. We do know that. What we do not
6 know is why. Is it gender differentiated outcomes? We
7 don't know based on those large representative samples.

8 **Q.** Okay. Counsel on cross brought up a criticism of
9 your paper, that you should have included studies after
10 2005. Do you recall that?

11 **A.** Yes.

12 **Q.** And you indicated that you read 40 or so studies
13 post-2005 or that came out after 2005. Do you recall?

14 **A.** Yes.

15 **Q.** Has any of those post-2005 changed your opinion
16 regarding the No Difference Claim?

17 **MS. STANYAR:** Objection. I asked him.
18 Objection.

19 **THE COURT:** What is the objection?

20 **MS. STANYAR:** I didn't ask him what his
21 opinion was about any of those articles. I just asked him
22 whether there is any criticism by the people that he
23 consulted, and that was all.

24 **THE COURT:** I think his question is fair
25 because he is not going into them and I won't let him go

1 into it either. It's just did he change his opinion? Yes
2 or no.

3 **MR. POTCHEN:** That's correct.

4 **BY MR. POTCHEN:**

5 **Q.** Do what you read post-2005, or does what you read
6 post-2005 change your opinion regarding the No Difference
7 Claim?

8 **A.** No.

9 **THE COURT:** That's fine. Otherwise we have
10 to go into all of those things.

11 **MR. POTCHEN:** That's it.

12 **THE COURT:** Perfect timing, Doctor. Have a
13 safe trip home. We appreciate you coming. Tomorrow we
14 will see everybody. It's my understanding that Doctor
15 Allen will be here.

16 **MS. HEYSE:** That's correct.

17 **THE COURT:** Have a safe trip home. See you
18 all in the morning and see Doctor Allen.

19 **THE WITNESS:** Thank you.

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C E R T I F I C A T I O N

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

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Lawrence R. Przybysz
Official Court Reporter

- - -