

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

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

Case Number: 12-10285

RICHARD SNYDER, ET. AL.,

Defendants.

/ VOLUME 8

BENCH TRIAL
BEFORE THE HONORABLE BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
THURSDAY, MARCH 6TH 2014

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1 Detroit, Michigan
2 Thursday, March 6th, 2014
3 (At or about 9:00 A.M.)

4 --- --- ---

5 THE COURT: Good morning, everyone.

6 MS. HEYSE: Good morning, your Honor.

7 THE COURT: Just a couple of things I thought we
8 would talk about.

9 Number one, is tomorrow in terms of Closing
10 Arguments how about starting at 10:00; is that good? I
11 thought that would give everybody a little more leeway to
12 get downtown.

13 The other thing is that the expert reports, I
14 don't think -- I don't think, have not been offered as
15 evidence. Is it the parties' intention to not offer or to
16 offer them?

17 Obviously, we have copies of some of them that
18 we've read because they were attached to some motions. But
19 I don't care, I'm just -- you know, they've been referred
20 and so forth.

21 MS. STANYAR: We're not going to offer the expert
22 reports. We just wanted them to testify.

23 THE COURT: You're not going to?

24 MS. HEYSE: From the States defendants'
25 prospective we would like to get them in.

1 THE COURT: Okay. If the State wants to offer
2 them, as I say, they've all been authenticated, they've all
3 been testified to, why don't we -- you can mark them and if
4 --

5 MS. STANYAR: Well, if they're going to put theirs
6 in, we'll put ours in.

7 THE COURT: It's up to you. I'm not forcing
8 anybody to do anything, but they've been referred to so
9 often and they've been identified so the only thing they
10 haven't been is offered, but certainly -- you can think
11 about it. If you want to offer them --

12 MS. STANYAR: If you're going to allow theirs in,
13 we want ours in.

14 THE COURT: Oh, I think they're both allowable in,
15 but -- it's up to you if you want to make a motion to have
16 them in.

17 MS. STANYAR: Okay. We'll do that.

18 THE COURT: Okay. Mark them and --

19 MS. HEYSE: We'll bring them tomorrow morning.

20 THE COURT: As I say, it's not a requirement, but
21 I thought about it last night, we've referred to them,
22 talked about them, and I've read several of them because
23 they were attached to the motions.

24 Okay. Next witness, State.

25 Good morning, Doctor.

1 A This is my CV, yes.

2 Q And is that a true and accurate copy?

3 A Except for the fact that there have been a few
4 additions since I've submitted this.

5 Q And what additions have there been?

6 A I've had three publications since then. The paper
7 "More Heat than Light" has been accepted for publication.
8 There's a paper on "Household Production and Sexual
9 Orientation" that's been accepted for publication. And
10 there's a theory paper not really related to this case
11 that's been accepted for publication.

12 Q Okay. With those --

13 A Sorry. Three papers have been accepted for
14 publication.

15 THE COURT: You don't have to repeat it.

16 Also you should know that there's another room
17 that they're watching us and so forth that's why we have to
18 stay by the microphones and for the folks in the audience.

19 Most witnesses don't realize it. You can see the
20 little camera things, they're watching it in other rooms.

21 THE WITNESS: Okay.

22 THE COURT: Thanks, Doctor.

23 BY MS. HEYSE:

24 Q With those additions, Dr. Allen, is that the extent of
25 your CV?

1 A Yes.

2 MS. HEYSE: Okay. At this time, your Honor, I
3 would move for admission of State Defendants' Exhibit 10.

4 THE COURT: Any objection?

5 MR. MOGILL: No objection.

6 THE COURT: Very well.

7 MS. HEYSE: Thank you.

8 (State Defendants' Exhibit No. 10 received into
9 evidence.)

10 BY MS. HEYSE:

11 Q Doctor Allen, what is your profession?

12 A I'm a professor of economics at Simon Fraser
13 University.

14 Q And can you give the Court an overview of your
15 employment history?

16 A So I graduated with a Ph.D. in 1988. I was -- I had a
17 first job as an assistant professor at Carleton University
18 in Ottawa. I was there for two years.

19 In 1990, Simon Fraser offered me a job and the
20 way I put it, my wife took it. So I've been at Simon Fraser
21 since 1990.

22 I've had visiting appointments at other
23 universities, but I've been continuously employed at SFU
24 since 1990.

25 Q Okay. I'm going to ask you to try to slow down a

1 little bit.

2 A Sorry.

3 Q Okay. Are you a full professor at Simon Fraser
4 University?

5 A Yes, I am.

6 Q And are you tenured?

7 A Yes.

8 Q And when you were tenured?

9 A I was tenured in 1994.

10 Q And when did you become a full professor?

11 A 2000.

12 Q What are your duties with respect to your position at
13 Simon Fraser?

14 A I teach four courses per year, both at the
15 undergraduate and graduate level. I sit on two department
16 committees each year. And I sit on various university
17 committees each year. Some years maybe none, but other
18 years maybe three or four. And I'm expected to do research
19 continuously.

20 Q Okay. Doctor Allen, your expert report indicates you
21 are the Burnaby Mountain Professor of Economics at Simon
22 Fraser University. How does one become a Burnaby Mountain
23 Professor?

24 A So in 2000, Simon Fraser created eight what they call
25 Burnaby Mountain Chairs. They're endowed chairs so they

1 basically supplement an income. They created eight, and I
2 was given one of them.

3 Q And how does one become a Burnaby Mountain Professor?

4 A They were given for excellence in research.

5 Q Okay. And is this considered to be a prestigious
6 honor?

7 A It is. There are about 1200 faculty members at Simon
8 Fraser so I was one of eight that got them.

9 Q And what courses do you teach at the University?

10 A So I teach a variety of undergraduate courses. I teach
11 what's called microeconomic theory. Some people might just
12 call it economic theory. I teach that the first year, third
13 year, fourth year. I also teach it at the graduate level
14 sometimes.

15 I also teach a series of what we call seminar
16 courses at the undergraduate level and the graduate level
17 At the undergraduate level, I teach a course on the
18 economics of the family. I teach a course on law and
19 economics. And I teach a course on institutions.

20 At the graduate level I teach a course called law
21 and economics.

22 Q Do any of your courses cover the topics that we're
23 going to discuss here today, marriage, parenting?

24 A So my course on the economics of family certainly
25 does. It covers all kinds of topics, divorce, marriage,

1 births out of wedlock, fertility, and same-sex marriage.

2 The course on law and economics, there's usually
3 a section on the family and there's usually a small section
4 on same-sex marriage.

5 Q And that's what I was going to ask you: Do any of your
6 courses cover same-sex marriage --

7 A Yes.

8 Q -- aside from that particular one that you just
9 mentioned?

10 A No.

11 Q Okay. Do you conduct research in your position?

12 A I do.

13 Q And does your research have any common themes?

14 A Yes, my research all link together through my work on
15 institutions. So my major contributions in economics for --
16 from an academic level really is this theory of
17 institutions. That's what links it altogether. And I've
18 studied institutions in a variety of context. And about a
19 third of my research is related to the family as an
20 institution.

21 Q Just to be clear, what is institutional economics?

22 A It's basically using economic methods, theories,
23 statistical methods to analyze institutions.

24 Q Okay. Have you received any honors in either your
25 academic or professional capacity?

1 A Yes. So the important ones are the Burnaby Mountain
2 Chairs as an honor.

3 In 2000, I was also given Dean's Medal for
4 outstanding work, outstanding academic work.

5 I've been an Erskine Fellow at the University of
6 Canterbury twice.

7 I received an Excellent Teaching Award from Simon
8 Fraser and from the University of Washington.

9 I've received numerous grants and research
10 rewards.

11 Q Okay. Have you sat on any academic or professional
12 boards?

13 A I sit on -- or I just came off of the Board for The
14 International Society for New Institutional Economics.

15 Q Are you affiliated with any organizations?

16 A So on and off I've been affiliated with The American
17 Economics Association, the Canadian Economics Association,
18 The Western Economics Association, The Canadian Law and
19 Economics Association. I think that's about it depending on
20 whether I remember to fill out the renewal forms or not.
21 I'm usually a member of those associations.

22 MR. MOGILL: I didn't get that part, I'm sorry.

23 BY MS. HEYSE:

24 Q He missed the last part of your answer.

25 A Well, the reason why I'm not continuously a member of

1 those things is I often forget to fill out the renewal
2 forms.

3 Q Are you affiliated with an organization called the
4 Ruth Institute?

5 A Yes, they have what's called a circle of experts and
6 I'm one of the circle of experts.

7 Q Okay. And what does that entail?

8 A It doesn't entail very much. I've presented at a
9 couple of their conferences, some of my work on no-fault
10 divorce and same-sex marriage. I answer -- I've had about
11 half a dozen phone calls with the president of that
12 organization who will often ask me questions about either
13 the literature or some issue. I did a radio interview with
14 them on the replication of Rosenfeld Paper.

15 Q And what is the Ruth's Institute?

16 A It's a non-profit agency that tries to promote
17 families at the college level.

18 Q And what is their position on same-sex marriage?

19 A Opposed.

20 Q Do you have any affiliations with any other
21 organizations?

22 A No.

23 Q Have you been the beneficiary of any grants?

24 A Yes, I have. I've received numerous grants. With the
25 exception of a national science foundation grant and an

1 early grant from Simon Fraser University all of my grants
2 come from The Social Sciences and Humanities Research
3 Council of Canada with is the federal granting agency of
4 the Canadian government equivalent to the NSF in the U.S.

5 Q And have any of those grants pertained specifically to
6 your work in research and the family?

7 A Yes.

8 Q Have you published any peer review articles?

9 A Yes, I have. I have 49 peer reviewed publications.

10 Q And what journals are you published in?

11 A All sorts of journals. So I've published in general
12 economics journals including the very best economics
13 journals, The American Economic Review. I've published
14 numerous times in field journals, and those fields would
15 include law and economics. Economic history, labor
16 economics, industrial organization, agricultural journals.
17 I've published in law journals. I've recently published in
18 a family journal.

19 Q Okay. How many of your articles pertain to the family?

20 A Twenty-nine.

21 Q And do any of your articles pertain to marriage?

22 A To marriage?

23 Q Yes.

24 A Most of those 29 pertain to marriage in one or
25 another.

1 Q And how about same-sex marriage?

2 A Six papers published in same-sex marriage topics. I
3 have one working paper that's about to be submitted.

4 Q And how many of those publications pertain to
5 empirical estimates of child outcomes?

6 A Three. Two have been published already, and one is
7 likely to come out in a book.

8 Q And can you identify those for me?

9 A So the first one is the demography paper that
10 replicates the Rosenfeld Study. The second one is the paper
11 that came out on high school graduation rates using the
12 Canada Census. And the third one is a paper coming out in a
13 volume that the Witherspoon Institute is putting out that
14 basically extends the Rosenfeld Study.

15 Q Okay. Thank you.

16 Have you published any books on economics?

17 A I have five books. Two books are theory textbooks. Two
18 other books are academic books. The fifth one is an edited
19 volume on the family.

20 Q Are you the editor of any journals?

21 A I have been the editor of The American Journal of
22 Agricultural Economics, associate editor.

23 Q What does it mean to be an associate editor?

24 A Essentially you're the gatekeeper. You're managing
25 files, sending things out to referees, making decisions on

1 whether or not articles get accepted or not.

2 My role at -- that journal in particular was to
3 handle all the institutional papers that involved
4 agriculture.

5 Q And apart from your duties as an associate editor have
6 you ever been asked to review the works or others, articles
7 of others?

8 A Almost on a weekly basis.

9 Q Okay. And for what journals?

10 A Probably over 40 different journals. Not just
11 economics journals, but often family journals or journals
12 that may be in agriculture or -- mostly economics journals.

13 Q Okay. And what is the Delta Economics Group?

14 A The Delta Economics Group is a small consulting firm,
15 headed up by a friend of mine that I met when I was at
16 Carleton University. He's an EBC professor of business and
17 economics. It mostly focuses in on antitrust. I'm one of
18 the senior consultants there.

19 Q Okay. And what kind of work do you do for -- as a
20 senior consultant?

21 A Essentially work like I'm doing now, writing reports
22 on various legal cases.

23 Q Does any of your work involve marriage or same-sex
24 marriage?

25 A Yes. So this is my fourth same-sex marriage case. I've

1 worked on cases to do with child support guidelines, two of
2 them. And I've worked on a case, a small case on the value
3 of a housewife.

4 Q Okay. What other same-sex marriage cases have you been
5 involved in?

6 A The first case I was involved was the Helprin case,
7 the Ontario case in Canada, 2003-2004.

8 The second case I was involved was a small Irish
9 case where a couple had been married in Canada. They were
10 Irish and wanted a divorce.

11 The third case was the Perry case, Proposition 8
12 in California.

13 And the fourth is this one.

14 Q Okay. And you may have touched on this earlier but I'm
15 not certain so I'm going to ask again --

16 MR. MOGILL: Sorry --

17 MS. HEYSE: Sorry, Ken.

18 BY MS. HEYSE:

19 Q You may have touched on this earlier, but can you give
20 us a brief description of your academic background, your
21 educational background?

22 A I have an undergraduate degree, honors degree in
23 economics and business administration from Simon Fraser.

24 I have a master's degree in economics from Simon
25 Fraser.

1 I have a Ph.D. from the University of Washington.

2 Q And when did you receive your Ph.D.?

3 A 1988.

4 Q Okay. And what did you write your Ph.D. thesis on?

5 A It was a theory of marriage and divorce.

6 Q Doctor Allen, does Canada recognize same-sex marriage?

7 A Yes.

8 Q And when was same-sex marriage legalized in Canada?

9 A By statute, July of 2005.

10 Q Do you belong to any organized religion?

11 A Yes.

12 Q And what religion do you belong to?

13 A The Protestant faith as a religion, but the specific
14 church I attend is called a Christian and Missionary
15 Alliance.

16 Q Do your religious views impact your research?

17 A No.

18 Q Have you conducted research continuously since 1988?

19 A I have.

20 Q And have you conducted original research on issues
21 pertaining to the family?

22 A Yes.

23 Q And have you conducted research on issues pertaining
24 to the marriage and same-sex marriage?

25 A Yes.

1 Q And have you conducted original research on same-sex
2 couples, the outcomes for same-sex -- children raised by
3 same-sex couples?

4 A Children of same-sex couples, yes.

5 Q Thank you.

6 Have you also completed a literature review of 60
7 studies addressing the outcomes of same-sex couples?

8 A Yes, I have.

9 Q Do you consider yourself to be an expert in any
10 specialty or subcategory of economics which may be
11 pertinent to this case?

12 A So my expertise lies in this area of the economics of
13 institutions, institutions being the humanly devised
14 constraints that we live by. Since marriage is an
15 institution that theory is applicable in this case. I also
16 do a lot of empirical work, and the empirical work is
17 applicable in this case.

18 Q And why are you interested in family and marriage as
19 economic institutions?

20 A So I've always found marriage and family in general
21 interesting and fascinating institution. At the one level
22 it's something that we -- in our day-to-day experience, we
23 all experience it and know about it. But the more you
24 examine it, and think about it, it's very rich and
25 complicated.

1 So as an economist, I just find it interesting to
2 try to come up with theories to explain what's going on.
3 But also, I mean, over the last 40 years we've been living
4 through a revolution in family law, and that provides
5 excellent opportunities to test theories of marriage.

6 Q Thank you. And what type of methods do you use in your
7 research?

8 A Both theoretical and empirical. So my standard
9 procedure would be to develop some kind of a model of
10 whatever kind of behavior I'm interested in, generate
11 hypotheses and then try and test them.

12 At the same time I've also replicated other
13 studies or where I've gone in and just done an empirical
14 research or tried to measure something.

15 Q Have you received any additional training in empirical
16 research methods?

17 A So as an undergraduate and a graduate student, I was
18 trained in statistics and econometrics. Econometrics is the
19 training in specific problems that arise with economic and
20 social science data, the special statistical techniques
21 that you need to deal with. But continuously since 1988, I
22 worked with all kind of data sets, large data sets, small
23 data sets, private data sets, public data sets, rectangular
24 data sets and -- with all different kinds of programming
25 languages as well.

1 Q Are you a social scientist?

2 A I am a social scientist. So to me that means as a
3 scientist I use a scientific method, namely, developing
4 theories, formalizing them, developing test Y-hypotheses,
5 and then actually testing them.

6 It's social because I'm interested in social
7 phenomena, behavior of people, organizations, how we
8 organize life, etc.

9 Q What opinions do you plan to offer here today?

10 A I'm planning to offer the opinions of my report,
11 namely, to discuss the literature since 1995, on child
12 outcomes. Specifically, I'm interested in -- or plan to
13 report on the Rosenfeld studies, the issue that are
14 involved there and why there's more to it than just what
15 Rosenfeld presented.

16 I plan on presenting my High School Graduate
17 Rates paper and discuss that as well.

18 Q Thank you.

19 MS. HEYSE: At this time, your Honor, I would move
20 to qualify Dr. Allen as an expert in applied economics with
21 a speciality in institutional economics, empirical methods,
22 and the family.

23 THE COURT: Any objection?

24 MR. MOGILL: No.

25 THE COURT: He shall be received as an expert.

1 MS. HEYSE: Thank you, your Honor.

2 BY MS. HEYSE:

3 Q Doctor Allen, are you familiar with social science
4 studies that claim that there are no difference in child
5 outcomes in same-sex parented households?

6 A Yes, I am, in particular with respect to studies since
7 1995.

8 Q And did you, in fact, conduct an exhaustive survey of
9 child outcome literature from 1995 until 2013?

10 A I tried to be as exhaustive as I could. I may have
11 missed a few things, but, yes.

12 Q Okay. If you could refer to what's been previously
13 been marked as State Defendants' Exhibit 12, in the binder
14 before you.

15 A Okay, I've got it.

16 Q Can you identify this document for me?

17 A This is my paper, "More Heat Than Light: A Critical
18 Assessment of the Same-Sex Parenting Literature, 1995-
19 2013."

20 Q Is this the study that you did for the outcomes
21 literature?

22 A This is my literature review, yes.

23 Q And does that appear to be a true and accurate copy of
24 your literature review?

25 A Yes.

1 MS. HEYSE: At this time, your Honor, I would move
2 to admit State Defendants' Exhibit 12.

3 THE COURT: Any objection?

4 MR. MOGILL: No.

5 THE COURT: Twelve will be received.

6 (State Defendants' Exhibit 12 received into
7 evidence.)

8 BY MS. HEYSE:

9 Q Doctor Allen, how did you become interested in
10 evaluating this literature?

11 A It's really a question of one thing being connected to
12 another. So I was asked to be an expert in the Helperin
13 case. I wrote a report for that case. A couple years later
14 I presented that at the Harvard Law School. I was asked if
15 I would submit it to one of their journals. I did. It was
16 accepted. I believe out of that, I was asked to work on the
17 Proposition 8 case. Out of that, came a paper I published
18 in the Drake Law Review trying to articulate my views of
19 the whole issue.

20 One of the responses to both of those theoretical
21 arguments was, you know, where is the empirical validity
22 behind them. So that started me on sort of a quest to
23 gather data, work on problems, fertility, matching,
24 household product, that sort of thing.

25 In the context of that I started reading the

1 child outcomes literature. Initially this paper was just --
2 it was just starting -- it was a way of keeping track of my
3 note. And when I was finished. I realized I had something
4 to say in a broader sense, the critique of the literature.
5 So that's where this paper came from, and sort of all the
6 other subsequent papers came out of those earlier things.

7 Q Can you tell the Court how many studies were part of
8 this literature review?

9 A Sixty.

10 Q Okay. Did you include of your own studies within that
11 review?

12 A Yes.

13 Q And which studies are those?

14 A The demography paper, 2013, which is the replication
15 of Rosenfeld and the High School Graduation Rates paper.

16 Q And was your assessment of the same-sex parenting
17 literature done based on the standards in economics?

18 A Yes, but also just the general standards in social
19 science.

20 Q Are these standards commonly held?

21 A I believe they are. So, for example, you know, there's
22 a matter of sample size in the report. It's generally held
23 that the larger the sample size the better, other things
24 equal.

25 Q Doctor Allen, do you believe it's important to

1 minimize or eliminate bias in social science research?

2 A I think it's absolutely critical. If all you're
3 interested in doing is studying a small group on their own
4 then it doesn't really matter. But if you're interested in
5 generalizing your findings to talk about a broader
6 implication of your findings then it's absolutely critical
7 to have an unbiased sample because otherwise you're going
8 to end up making a mistake in your generalizations.

9 Q Is it also important to have random representative
10 samples?

11 A That's the way we eliminate bias is to have random
12 samples, one of the ways.

13 Q And is it preferable to have tests that can be
14 replicated by others?

15 A I think that's also sort of critical for the general
16 authority of a paper. If you do something that nobody else
17 can replicate I think the paper has less merit.

18 Q And do you believe it's imperative for subjects to
19 have an incentive to report honestly and to not have an
20 interest in the outcome?

21 A Absolutely because if somebody's telling you something
22 that's not true then your study is basis from the get go.
23 You may be completely unaware of the bias and making
24 generalizations based on claims that are false.

25 Q Is it also important in social science that the people

1 who collect the data be different from those that analyze
2 it?

3 A I just think it's a good idea that -- in typical
4 studies in economics we're using data that's collected by
5 statistical agency. They're the -- you know, it's the U.S.
6 Census, Canada Census or Stats Canada or Department of
7 Labor or whatever. So the people that are collecting the
8 data have no idea what that data is going to be used for.
9 So it's sort of a safeguard.

10 You know, in preliminary studies, it's very
11 common for people to collect data and analyze it. But it's
12 just, again, something that's a red flag if you're trying
13 to generalize things.

14 Q You mentioned that it's important or preferable to
15 have large sample sizes. Why is that important?

16 A Large sample sizes help to generate power. Power is
17 the ability to reject a no-hypothesis when, indeed, it's
18 false. If you don't have power, you're unable to do that.
19 There's too much noise in the data, and you can't tell if
20 it's false when it actually it is.

21 Q Okay. So we're going to define some of these terms
22 that you just used.

23 A All right.

24 Q Can you explain to the Court what a "no hypothesis"
25 is?

1 A "No hypothesis" is the hypothesis that you're
2 interested in testing. So in this literature the "no-
3 hypothesis" often is there is no difference.

4 Q Okay. And can you tell me what "noise" is?

5 A So you have a sample and the sample is a number of
6 observations. And that number of observations is giving you
7 some information. From that information you're going to
8 make an estimate of something. So often you're estimating a
9 perimeter. Suppose you're estimating this perimeter on
10 average. So maybe you estimate the perimeter as three.

11 By "noise" we mean what's confident, what's a
12 confidence band around that estimate? How wide is it? So
13 you estimate the number should be three. But maybe you have
14 a confidence band that says 19 times out of 20 that number
15 could actually be a minus two or a plus seven. You say
16 there's quite a wide range that could happen. If I was
17 drawing from the same sample size 19 times out of 20, I
18 would have this wide range. So that's what we mean by
19 "noise." Lots of "noise" means there's a wide range.

20 Having a precise estimate means that that
21 confidence interval is narrow. So maybe you say, well, the
22 estimate is three, but it would be 2.9 -- between 2.9 and
23 3.1, 19 times out of 20. So that would be a precise
24 estimate. That's what you get when you get power. Power
25 gives you these narrow confidence bands which you have more

1 confidence in the estimate.

2 Q Thank you.

3 So, Dr. Allen, did you reach any conclusions
4 about the child outcome literature that you reviewed from
5 1995 to 2013?

6 A I did. So prior to 2010, and a few of the studies
7 after 2010, they're just simply not generalizable. They are
8 to be charitable. They're preliminary studies, what I would
9 call preliminary. So they have all these characteristics
10 that up on the screen there that they use small samples.
11 They use bias samples.

12 They're biased because often they're what's
13 called convenient sample. And a convenient sample is a
14 sample that's literally convenient to derive.

15 Many times samples are what are called snowballed
16 which means members in the sample talk to their friends to
17 join the sample.

18 There's evidence of research bias where people
19 who are reporting are either coached or the results are
20 interpreted by a certain world view, something like that.

21 They're characterized by what I call soft
22 measures, measures that are difficult for a third party to
23 replicate, and probably contain lots of measurement error
24 because they're hard to measure.

25 And then it's also a literature that I think is

1 virtually impossible often to replicate. The data is not
2 available for others. It's considered proprietary. The code
3 that is being used is not publically available. It's not
4 posted on line or anything like that. So it's almost
5 impossible to replicate.

6 So all those things are fine for preliminary
7 studies, but they're not generalizable to the general
8 population.

9 Q Okay. What does it mean by difference of means test
10 with no power?

11 A So how these studies are structured is they'll have a
12 sample of usually lesbian households. Then they'll try to
13 match them with some other sample of heterosexual
14 households. Most of the time they try that. Sometimes they
15 don't. But so they'll have one sample of lesbian
16 households, a sample of heterosexual households, and then
17 they'll calculate some averages, some means. Then they'll
18 conduct a difference of means test. It's just a simple
19 little statistical test to see if there's a statistical
20 difference in these means, and they almost always find
21 there is no statistical difference.

22 Now, there's two things about that. The reason
23 why they're usually not finding a difference is just simply
24 because they have no power. Their samples are so small,
25 there's so much noise that they can't tell the difference.

1 One study had a three, the other one had a zero.
2 There is a difference, but the confidence bands are so wide
3 that they can't statistically distinguish them.

4 The interesting thing about this literature is
5 that a difference of means test is founded on the
6 assumption that the samples are random. Samples are never
7 random and so the tests are completely irrelevant and
8 inappropriate.

9 Q Okay. You mentioned false measures. Can you explain
10 what those are?

11 A So as I mentioned, I mean, these are things that
12 conceptually are difficult to measure so you're asking
13 about somebody's attitude towards something, how they feel
14 about something as oppose to what I would call a hard
15 measure which is more quantifiable, did you graduate from
16 high school, yes or no. Have you been arrested, yes or no.

17 Q In conducting your literature review, Dr. Allen, how
18 many of the 60 studies that you reviewed failed to have
19 random representative samples?

20 A About 54 or 55.

21 Q How many of them failed to have tests that could be
22 replicated by others?

23 A With the exception of the Rosenfeld Study I would say
24 all of them.

25 Q Okay. How many of those 60 studies had the same people

1 collecting data as the people analyzing the data?

2 A Again, with the exception of the large sample studies
3 virtually all of them.

4 Q Okay. And how many of those studies did not have
5 sample sizes large enough to generate power?

6 A Again, aside from the large sample studies which is in
7 the neighborhood of four or five them, all the others.

8 Q Were there any other flaws that you noted in these
9 studies that you haven't already addressed?

10 A One of the interesting things about these studies is
11 that when they come to the conclusions, the conclusions
12 often are either unrelated to the actual findings or are
13 exaggerated claims about the findings.

14 The other interesting thing is often they do find
15 lots of differences but -- they often do find differences,
16 but they're often downplayed.

17 Q Okay. And as part of your literature review did you
18 compile a table of all --

19 A I did, and part of that table is on the screen now. So
20 the table just goes through and shows whether or not they
21 use a random sample or not. And that table is showing the
22 early studies from '95. You'll notice there's a whole bunch
23 of noise there. So you don't see any random samples showing
24 up until later on in the sample.

25 The next column shows the gay sample size or the

1 same-sex sample size. You'll see the numbers are relatively
2 small, 55, 30, 26,25, etc.

3 The next column shows my judgment on whether the
4 questions looked at were hard or soft. About 16 of them
5 used hard objective measures. Most of them used soft.

6 The next column is showing whether or not there
7 was a group that was being compared to or not. You see
8 sometimes there is, and often there's not.

9 The next column is showing whether or not these
10 data are time series. For the most part they're not.
11 They're not what we call longitudinal. They're mostly
12 cross-sectional. All of the large sample studies are cross-
13 sectional. We don't have any longitudinal ones.

14 And then the last column is finally just looking
15 at whether or not these studies looked at gay households or
16 lesbian households. And for the most part they look at
17 lesbian households. If they do look at gay households the
18 sample sizes are usually very small.

19 Q Thank you. Out of the 60 studies that you reviewed how
20 many met the criteria for reliable data meaning the data
21 set is large, it's variable, it's replicable, it's
22 longitudinal and it's population base?

23 A Well, by all of those criteria, actually none of them
24 do. So the -- that's because none of them are longitudinal.

25 If you get rid of the longitudinal criteria then

1 you're looking at really about I think three studies.

2 Q So based on your literature review, are the typical
3 gay and lesbian parenting studies that examine hard
4 quantifiable measures of performance and adjustment in the
5 minority?

6 A Absolutely.

7 Q Doctor Allen, up until 2010, was there a single study
8 conducted that utilized a sufficiently large random sample?

9 A No.

10 MR. MOGILL: What was the first part of the
11 question? I'm sorry.

12 THE COURT: Why don't you repeat it?

13 MS. HEYSE: I can repeat it. Sure.

14 MR. MOGILL: Thank you.

15 BY MS. HEYSE:

16 Q And can you identify those studies after 2010 that
17 utilized a large -- utilized a large random sample?

18 A So the first was Rosenfeld. That's why I call his
19 paper a watershed paper is because it was so different that
20 what came before it.

21 The second one would be the replication of that
22 study by myself, Joe Price, and Catherine Pakaluk.

23 The third one would be my study which is
24 essentially conducting the Rosenfeld-type experiment using
25 the Canada Census.

1 And then if you want to include the forthcoming
2 paper by myself, Catherine and Joe that sort of goes back
3 and reexamines and extends the Rosenfeld experiment with
4 the U.S. Census --

5 MR. MOGILL: Object to the reference to the
6 forthcoming paper that's not --

7 THE COURT: Sustained.

8 MR. MOGILL: Ask that it be stricken.

9 THE COURT: I won't strike it, but we won't
10 consider it.

11 MR. MOGILL: That's good enough for me.

12 Thank you, Judge.

13 MS. HEYSE: Thank you.

14 BY MS. HEYSE:

15 Q You mentioned the Rosenfeld Study and noted --

16 THE COURT: Doctor, so you know, because it's
17 beyond the scope of what hasn't been published yet they
18 can't cross-examine.

19 THE WITNESS: No problem.

20 BY MS. HEYSE:

21 Q You mentioned the Rosenfeld Study and you believe it's
22 a watershed study; correct?

23 A Correct.

24 Q Do you still agree with that statement?

25 A Yes.

1 Q Okay. But is it fair to say, Dr. Allen, that based on
2 your replication of Rosenfeld's Study you don't agree with
3 his results?

4 A I don't agree with the results, and I don't agree with
5 the interpretation of his results.

6 Q Okay. And we'll talk about that more in a little bit.
7 Doctor Allen, did you also review Dr. Regnerus'
8 2012 NFSS Study?

9 A I did. It was part of the papers.

10 Q Okay. And what was the significance of that study?

11 A I think in the context of the time, I mean it was
12 similar to Rosenfeld in a number of ways so I believe he
13 was looking at that literature and saying, okay, I'd like
14 to do a study that tries to get a random sample that has a
15 large sample size and asks some hard questions. One of the
16 interesting things about his study is he asks a lot of
17 questions, looks at a lot of different outcomes. So I think
18 he was attempting to do the same thing. He was obviously
19 working on it at the same time Rosenfeld was working on
20 his. So in terms of where it fits in that literature I
21 think that was the objective of that study.

22 MR. MOGILL: The last part of that answer --

23 A I think his study fits in that literature sort of in
24 the same place where Rosenfeld's did in that he was trying
25 to get a large sample with a hard objective measure of

1 child outcomes and a random sample.

2 BY MS. HEYSE:

3 Q Okay. Doctor Allen, then in 2013, you conducted a
4 similar study to Rosenfeld's using the 2006 Canada Census.

5 A Yes.

6 Q Okay. Without going into too much detail because we're
7 going to discuss it later what was the purpose of that
8 study?

9 A I was working with the Canada Census on another
10 project and so I had the data all uploaded, I was familiar
11 with it, etc. At the same time, I was also working on the
12 replication of the Rosenfeld paper with Joe and Catherine.
13 So it was no stroke of genius, I mean, it was kind of
14 obvious to say why don't I try to do exactly the same
15 experiment using the Canada data and see if, you know, what
16 happens. Maybe I get a totally different result, maybe I
17 get a similar result. So I was merely trying to --
18 "replicate" is probably the wrong word, but to try to do
19 the same type of experiment in Canada as had been done in
20 the U.S.

21 Q Besides your review of the literature have there been
22 any other critical surveys of same-sex parenting literature
23 that you're aware of?

24 A To my knowledge there's five other critical surveys.
25 One was by a sociologist named Steven Nock. He was also an

1 expert in the Helprin case and his literature review was
2 done for the Helprin case.

3 He studied essentially the literature up to 2001,
4 and concluded that nothing in the literature met the
5 standards of social science research.

6 The second study was by Loren Marks who examined
7 the literature up to 2005, but the literature that was
8 relevant to the APA Statement on child outcomes. He
9 concluded that conclusion of the APA was not warranted on
10 the empirical merits of those papers.

11 And then a fellow named Walter Shumm has produced
12 three critical surveys, one in 2005, one in 2011, and I
13 believe one in 2012.

14 MR. MOGILL: I'm going to object to these that
15 have not been included in his report.

16 THE COURT: Counsel?

17 MS. HEYSE: Well, your Honor, he's just discussing
18 things that he relied on and reviewed for purposes of his
19 report.

20 THE COURT: So far we haven't gotten -- but --
21 he's talking about these five as being critical and just
22 giving us a background. I'm not sure where you're going,
23 but if they're not in his report in terms of substance then
24 we'll have to talk about it at that point.

25 MR. MOGILL: Thank you.

1 MS. HEYSE: And we're not going to go into them
2 any further, your Honor. That's the extent of it.

3 THE COURT: That's fine.

4 BY MS. HEYSE:

5 Q Doctor Allen, as a result of the flaws you've
6 recognized in the literature, did you determine whether a
7 significant majority of these studies were not
8 generalizable to the population?

9 A That's correct.

10 Q And in your -- you have stated that you believe that
11 all of these studies before 2010 can only be viewed at best
12 as preliminary and at worst they would be seen as trying to
13 forward a political agenda. What do you mean by that?

14 A By preliminary what I mean is, is that these studies
15 have the characteristics of early studies in almost any
16 kind of research program. So there's maybe no data
17 available so you have to go look for it yourself. You have
18 to collect it yourself. You have to analyze it yourself,
19 etc. You're using bias samples. You know, you're
20 interpreting it your own way. Nobody is replicating your
21 results. All these sorts of things. So by preliminary
22 that's what I mean. It has these characteristics.

23 By putting forth a political agenda I just mean
24 that when you look at the conclusions that are being drawn,
25 when you look at the research or bias, it seems pretty

1 obvious that the researchers have, you know, their -- they
2 feel strongly about the results they're finding, they're
3 not being very objective.

4 Q Okay. Doctor Allen, plaintiffs' experts have urged
5 that based on these sample -- small convenient sample
6 studies there's a consensus that there's no difference in
7 child outcomes for children raised in same-sex households
8 as compared to children raised in opposite sex households.
9 In others that the children of same-sex parent fair just as
10 well as intact biological household, and that that issue is
11 settled. As an applied economist who has an expertise in
12 empirical research methods and based on your literature
13 review spanning from 1995 to 2013, do you agree with that?

14 A I certainly agree there's a consensus. Everybody
15 agrees that these studies come to the same conclusion. The
16 question is: is that consensus warranted or not, and I
17 would say no. The fact that you have, you know, 55
18 preliminary studies doesn't give you -- that doesn't add up
19 to a, you know, a legitimate study that we would draw a
20 strong conclusion from.

21 And even on the large sample random studies, the
22 few that have been done I would say we're just getting in
23 the door. We have a long way to go to understand what's
24 going on here.

25 So, consensus, yes. Do I agree with the

1 consensus, no. And do I think the consensus is warranted,
2 no.

3 Q And you mentioned the large studies that are
4 available, is it fair to say that when you look at those
5 large studies or the majority of those that there is an
6 actual difference in outcomes of children in same-sex
7 households as oppose to those being raised in opposite sex
8 households?

9 A So really we only have two. We have the U.S. Census
10 results and the Canada Census results, and they're only on
11 two measures of child performance. When it comes to the
12 U.S. Census results we have a dispute between the Rosenfeld
13 and us. So I would certainly come down on our side and say
14 that the evidence supports there is a difference. And on
15 the Canada side, I would say the evidence supports a
16 difference. But, again, I would say these are just two
17 studies, two outcome measures and we're just getting
18 started.

19 Q What that being said, Dr. Allen, do you believe these
20 studies should be considered as evidence for purposes of
21 changing Michigan marriage law?

22 A Why I think the large sample studies should be
23 considered as evidence because it's really all we've got.

24 Q Okay. Let's turn now to your replication of the
25 Rosenfeld Study.

1 A All right.

2 Q First, can you tell the Court just briefly about the
3 Rosenfeld Study, I mean, what was it about, what was he
4 attempting to do there?

5 A So he was using the U.S. Census and he was asking the
6 question -- his child outcome measure was normal progress
7 through school. He was running a regression, and he was
8 trying to see does the household type matter for a child's
9 normal progress through school. That's what he was trying
10 to do.

11 Our study had -- really brings up three issues.
12 The first issue is what did he actually find?

13 Rosenfeld claims that he found evidence for no
14 difference in normal progress through school. We claim
15 that's a misinterpretation. That what he actually found was
16 no statistical difference between the two types of
17 households.

18 The second issue that we have is he had two what
19 are called sample restrictions. He eliminated certain
20 observations from the data. We think the first sample
21 restriction is not appropriate.

22 The second sample restriction that he did we also
23 think it's -- you know, it's a question of do you control
24 for this thing one way or another. We think the standard
25 way is with a control in the regression. He thinks it

1 should be used by sample restrictions. So we dispute that.

2 Q Okay. Just to be clear for the record when you are
3 saying that "we" --

4 A I'm referring to Catherine, Joe and myself.

5 Q So that would be the Allen, Pakaluk and Price Study?

6 A That's right.

7 Q Okay. If you can refer State's Exhibit 9 which has
8 already been admitted into evidence?

9 A Correct.

10 Q Can you identify that as a study --

11 A This is our comment that appeared in Demography.

12 Q Okay. So you've mentioned three areas or issues that
13 you took with the way that Rosenfeld conducted his study.
14 So let's take those in order.

15 First, you mentioned the finding that there was
16 no difference. Can you explain that?

17 A Sure. So maybe the way I'll explain this, I'll go
18 through Table 2 of that paper and then maybe I'll refer to
19 the Table that's on the overhead there.

20 Q Sure.

21 A So one of the interesting things about his study was
22 that when he reported his results he did not include the
23 standard errors. So he's making an estimate. He's
24 estimating a perimeter that -- on the effect of being
25 raised in a same-sex household. And there's some error in

1 that estimate I've talked about before, some variance, and
2 he doesn't tell us what that is. He just tells us whether
3 there's a statistical significant effect or not.

4 So the first thing that Joe did, he was the one
5 who did the actual empirical work here, was he said well
6 let's just --

7 Q Let me stop you there. If you're going to refer to
8 "Joe" --

9 A Joe Price. I'm sorry.

10 Q Thank you.

11 Go ahead.

12 A The first thing that Joe Price did was he switched the
13 left out category. Now let me explain.

14 So when you run a regression you have these
15 different household types. We have opposite sex married
16 households. Same-sex households. Single moms. They're
17 listed up there, "never married women, etc."

18 So when you run the regression the coefficients
19 you're getting for same-sex, for heterosexual cohabiting,
20 for separate divorced women, etc., all of those
21 coefficients are relative to the left out category, the
22 married opposite sex households.

23 And so when he ran his regression he found that
24 there was no statistical difference. You see that middle
25 column there. There's no statistical difference between a

1 same-sex couple and a heterosexual married couple.

2 But then he found -- if you look at the "yeses"
3 there, he found a statistical difference between those
4 types of households and the comparison group which are the
5 heterosexual married households.

6 So the first thing that Joe Price did is he said,
7 well, let's switch, let's switch the left out category. And
8 so the left out category becomes the same-sex couple. So
9 now all of the comparisons are to the same-sex couple, not
10 the heterosexual married couple. And look what happens --
11 so you still get the same "no" when you compare
12 heterosexual married to same-sex you still get "no."
13 There's still -- you still get the same result.

14 And if you were to look at Table 2, if you look
15 at, say, column 1 and column 2 there you get exactly the
16 same estimate and that's because it doesn't matter which is
17 the left out category if you're comparing married --
18 heterosexual married to same-sex, or same-sex to
19 heterosexual married you get the same result. So that
20 doesn't change.

21 But look at what happens to all the other ones.
22 Same-sex couples are not statistically different from any
23 of the categories that are listed there. Now why is that?
24 It's because there's so much noise in the estimate of the
25 same-sex couple that you can't distinguish them from

1 anyone.

2 So, again, if you look at Table 2 he actually
3 finds a difference. The number that he's estimating there
4 is not zero in column 1 and 2. A zero would mean there's no
5 difference. Or in columns 3 and 4 when you look at the odds
6 ratio, an odds ratio of 1 would mean that there's no
7 difference. So he finds a difference. It's just you can't
8 tell if that difference is statistically meaningful or not.

9 He concludes that there's no difference when, in
10 fact, there is, it's just not statistically different.

11 That's a very subtle point, but it's a very
12 important one.

13 Q Okay. And just to be clear when we're looking at the
14 chart that's on the screen here, which one represents the
15 work that you did?

16 A The far right-hand column.

17 Q Okay.

18 A And the middle one is just what Rosenfeld found.

19 Q Okay.

20 A What he reported.

21 Q Thank you.

22 A I mean, it's important to realize here we're using
23 exactly the same data. We're not changing anything. We're
24 just doing what he did. All we're doing is switching the
25 left out category and it just shows you how the

1 interpretation changes, right? You realize that the same-
2 sex couples are not statistically different from any of
3 those other categories.

4 So if I use his same logic you'd have to say,
5 well, there's no difference between a same-sex couple and
6 never married men as household heads if we use the same
7 logic. Of course, that would be improper.

8 Q Okay. Thank you.

9 If you could tell me -- you said there were
10 issues, two issues with sample restrictions. Let's take
11 what we're calling the own child restriction first. First,
12 explain what the own child restriction is and then why you
13 took issue with that.

14 A So the issue is in all these studies is you're always
15 trying to compare apples to apples. The way you do that
16 normally in a regression is you control for things. So you
17 tell the computer, okay, here are the people's incomes. So
18 hold that constant when you're making an estimate on the
19 household type. Here's the ratio background, or here's
20 whatever. Here are all these demographic controls. That's
21 the normal way you do it.

22 Another way you could do it is you throw away
23 observations that you think belong to a certain category
24 and it would be inappropriate to be in there.

25 So his first sample restriction is based on own

1 children. He said, okay, I only want children in the same-
2 sex households that are the own child of the parents. Well,
3 the way the Census defines "own child" is: are you related
4 to the household head? And that's the criteria he used for
5 selecting. So he threw away I believe it's in the
6 neighborhood of 15 percent of the sample.

7 It turned out though that three quarters of those
8 people that he -- observations that he threw out, three
9 quarters of them were the own child of the partner. So
10 they're the own children in the household, they're just not
11 the own children of the one -- of the household head. So
12 really by his own criteria, they should have been in there.
13 If you put them in so all you have is the own children, the
14 very criteria he wants, you not only find a difference
15 again but you find a statistical difference.

16 The other types of children that he threw out are
17 adopted children, children in quarters, etc. It turns out
18 that's such a small sliver that it really doesn't matter if
19 they're in or out, but in our replication we put them in
20 and we control for them. So we tell the computer this is an
21 adopted child, etc. So the computer again when the computer
22 is calculating the estimate of the same-sex household it's
23 controlling for the fact that the child is adopted, etc. So
24 that's the first issue, the own child one.

25 The second one is this five-year residency

1 business. So the problem is this: We know that a lot of
2 children, most of these children, in same-sex households
3 are arriving there from a previous heterosexual coupling,
4 either married or cohabiting. And so there was a previous
5 divorce or separation or some kind of trauma, a transition
6 that was experienced in the household. And it's important
7 to control for that whether or not there was a transition
8 or not and this is a problem when you've got a cross-
9 section data set like a census because it's just a
10 snapshot.

11 And so Rosenfeld's attempt to control for that
12 was to use a proxy variable. He doesn't know whether there
13 was a transition or not, but he uses a proxy. And his proxy
14 is five years ago were you living in the same residence?

15 Now, that's not -- living in the same residence
16 doesn't mean that you did not experience a transition. And
17 when you don't live in the same residence that doesn't mean
18 that you had a divorce. Many people move houses and don't
19 have a divorce. So it's a proxy. It's correlated, but it's
20 not the exact same thing.

21 So he drops people from the sample if they did
22 not have the same five-year residency. So he's clearly
23 dropping people that never had a transition, but, you know,
24 just happened to move.

25 That turns out to have a huge cost, a huge cost

1 in terms of power because it eliminates about half the
2 sample. And because -- well, it's likely it turns out that
3 five-year residence variable is highly correlated with
4 same-sex households. So he not only dropped half the
5 sample, but he drops a disproportionate number of same-sex
6 households. And when you drop the sample size, you lower
7 the power, you raise the standard errors and you get this
8 less precision. That's why you can't distinguish these
9 household from anybody.

10 So what we do, we do a more standard procedure by
11 including those couples back into the sample, and
12 controlling. So we still tell the computer these couples
13 moved in the last five years. That's important. It's not
14 just that we throw them back in and ignore the fact that
15 they've moved. So we throw them back. And as a result, we
16 find that we get a difference measure again, and with
17 statistical significance.

18 So if we just eliminate the first sample section,
19 the own child, we find a difference. We find it
20 statistically significant. If we just include the five-year
21 residency control, throw them back in, we find a difference
22 statistically significant. And if we put them both together
23 we, of course, find a difference and it's statistically
24 significant.

25 Q Okay.

1 THE COURT: We're going to take just a quick
2 recess. I have to attend to something this morning and I
3 forgot to tell my secretary. So we'll take -- I'm sorry,
4 Doctor. We'll take just a quick five minutes. No more than
5 five minutes because we are going to break at 11:00. That's
6 what I have to talk to my secretary about. We're suppose to
7 have a matter and I'm not sure we're going to have it.

8 We'll stand in recess.

9 (Court recessed, 10:15 a.m.)

10 (Court reconvened, 10:25 a.m.)

11 THE COURT: Okay. You may be seated.

12 You may continue.

13 MS. HEYSE: Thank you, your Honor.

14 BY MS. HEYSE:

15 Q Doctor Allen, when we left off you were explaining
16 some of the problems that you saw with the Rosenfeld Study.
17 Did you determine that there were, in fact, actual
18 differences between children's progress in same-sex
19 households when compared with opposite sex households when
20 you did your replication?

21 A Yes. So when you change the sample restrictions to
22 have controls and put the data back in you do find a
23 difference. But Rosenfeld also found a difference, it's
24 just now the difference is statistically significant.

25 Q Okay. And is it also precise?

1 A Yes, it's more precise, the estimate is more precise.

2 Q Okay. Are you aware of any criticisms that Dr.
3 Rosenfeld had of your replication?

4 A The Canada one?

5 Q No, your -- the replication of his study.

6 A Well, he seems to feel that you absolutely have to use
7 a sample --

8 THE COURT: Rosenfeld, did he communicate that to
9 you or through a paper?

10 THE WITNESS: Only through his reports.

11 THE COURT: Okay.

12 THE WITNESS: I only read his report.

13 THE COURT: Okay.

14 A So he insists that it's essential to have this five-
15 year residency as a sample restriction.

16 Again, I think it's important in that debate, two
17 things: One, it's only a proxy variable. So when you make
18 that sample restriction you're introducing error because
19 people may have not moved and they could be having a
20 separation although it might seem unlikely. But many people
21 do move and, in fact, there is no marital transition. So
22 that's one issue.

23 So -- yes, it's a proxy. It's not really
24 capturing exactly what you think it's capturing.

25 Now, I just lost the second point.

1 THE COURT: Think about it.

2 THE WITNESS: Yeah, I'll think about it.

3 THE COURT: Moving?

4 BY MS. HEYSE:

5 Q We can come back to it. If you think of it, certainly
6 let me know.

7 A I'll let you know.

8 Oh, I know what it was.

9 THE COURT: Okay. Go for it.

10 A In the end, this is just a dispute over the way the
11 method of how to control for this issue of transition. We
12 control for it one way which we think is a standard way you
13 control it. And the reason why it's standard is because,
14 you know, you don't want to be throwing data out all the
15 time because you're losing power. So he controls for it one
16 way. We control for it another way. That's the dispute, and
17 it turns out that the result is sensitive to the method
18 which is another way of just saying you should be careful
19 in how much weight you put on this one study because the
20 result is sensitive to just the mere method of controlling
21 for an issue.

22 THE COURT: So he controls it --

23 THE WITNESS: Through a sample selection.

24 THE COURT: Through samples. And you do it by
25 regression?

1 THE WITNESS: Well, no. He's running a regression,
2 too. It's just that his regression does not include these
3 households that moved in the last five years.

4 Our regression includes them, but we add another
5 variable in the regression that says did you move in the
6 last five years? Yes or no. And so we're telling the
7 computer these observations take account for the fact that
8 they did move.

9 THE COURT: Okay. So that's all you've done, but
10 you've used the regression also.

11 THE WITNESS: We're both running regressions, and
12 the only difference --

13 THE COURT: The samples are different.

14 THE WITNESS: Is the sample size, and the fact
15 that when we put -- when we use the full sample, we have
16 these variables that say is this an own child, is this a
17 foster child, etc., and have you moved.

18 THE COURT: Okay. I'm glad you thought of it.

19 Thank you.

20 BY MS. HEYSE:

21 Q Doctor Allen, I'm going to turn your attention to the
22 screen here.

23 A Yes.

24 Q Do you recognize this Figure 2?

25 A I do.

1 Q Where is this Figure 2 from?

2 A It's from my report.

3 Q And did you draft this figure?

4 A I did.

5 Q And why did you draft this figure?

6 A So in my report when I'm starting this discussion on
7 these figures 1, 2, and 3, it's in the section of my report
8 that's talking about this issue of statistical difference
9 versus actual difference. And I say let me use a stylized
10 figure to represent this idea. Later on, I call it a
11 metaphor. I'm not trying to use the actual numbers that
12 Rosenfeld came up with. I'm not trying to actually
13 represent his data in any way. I'm just trying to get at a
14 graphical way to convey the difference.

15 So I'm using this -- I'm even using ovals here
16 which is not an academic way of representing this sort of
17 thing, but I just thought it visually kind of got across
18 the idea. So I'm just trying to show that what he's
19 actually finding is that the estimate for the same-sex
20 households has no precision, it's very wide. And that's
21 what I'm showing with that wide oval.

22 I don't -- it doesn't mean anything where it
23 actually is sitting, but it's just how it's relative to the
24 other ones. So that the variance in these same-sex
25 households is wide enough that it's including the other

1 household types in the regression.

2 Now, it's true in his regression there are no
3 foster kids. But, again, I was just making this thing up.
4 It wasn't representing what he actually did. It was
5 representing this difference between statistical difference
6 and actual difference. It's a metaphor. It's stylized. It's
7 for the layman to try to get across this idea.

8 Q So you were just trying to make it easier for the
9 average person to understand --

10 A To understand this difference because it's actually a
11 subtle issue.

12 Q Okay. And do you intend to mislead or misrepresent Dr.
13 Rosenfeld's data in any way?

14 A No, absolutely not.

15 Q Okay. Thank you.

16 Doctor Allen, I want to move on to your -- the
17 study that you did based on Canada Census. If you can turn
18 to State Defendants' Proposed Exhibit 15.

19 A Fifteen?

20 Q Yes.

21 A Got it.

22 Q Can you identify that document for me?

23 A That's my paper on High School Graduation Rates.

24 Q And does that appear to be a true and accurate copy?

25 A It does, yes.

1 MS. HEYSE: At this time, your Honor, I would move
2 for admission of State Defendants' Exhibit 15.

3 THE COURT: Any objection to 15?

4 MR. MOGILL: No.

5 THE COURT: It will be received.

6 MS. HEYSE: Thank you, your Honor.

7 (State Defendants' Exhibit 15 received into
8 evidence.)

9 BY MS. HEYSE:

10 Q Doctor Allen, what was the purpose of this study?

11 A As I mentioned earlier, it was just an attempt to run
12 the same type of experiment using Canada data. I mean, this
13 is what we do in social science is somebody comes up with
14 something, somebody else either tests it or you try to test
15 it in a different environment and see how robust the
16 findings are.

17 So I am trying to do a study that was as close as
18 I could to the Rosenfeld Study but, of course, I was
19 constrained by the data set. The data set does not have
20 exactly the same variables in it. But the data set has some
21 advantages over the U.S. Census.

22 Q And what are those advantages?

23 A So they're listed on the screen there. I mean, the
24 first one I think is really important.

25 So Rosenfeld uses the 2000 Census. The 2000

1 Census does not identify directly or self-identify same-sex
2 couples. You have to identify them through a series of
3 questions and that introduces measurement error because
4 every respondent to a survey can make a mistake ticking off
5 a various box. And when you have to tick off multiple boxes
6 to draw a conclusion that increases the chance there might
7 be a mistake.

8 The problem with looking at same-sex couples is
9 there's so few of them that all it takes is a few
10 heterosexuals. You know, it's a slight fraction of the
11 heterosexual population to be making a mistake, but a
12 slight fraction of a large population can actually swamp
13 the actual same-sex couples. So the U.S. Census has this
14 measurement error in it.

15 The Canada Census, you know, does not have that
16 problem because it self-identifies, people self-identify on
17 the census are you a same-sex couple. So that's one
18 advantage.

19 Q Let me stop you there because I have a few questions
20 for you about that.

21 You mentioned measurement error, what are you
22 talking about there?

23 A So measurement error is the problem -- in your data
24 set you have a variable that identifies a household as
25 being same-sex. But, in fact, again, there's some noise

1 around that. So that's what we mean by measurement error,
2 what's the error in knowing that that number that's on this
3 data is actually true or not. So, you know, it's a function
4 of the people ticking off the boxes. There can be a large
5 amount of measurement error.

6 Q Okay.

7 A Now, people could make the same mistake on self-
8 identifying as a same-sex couple but, again, they're only
9 ticking off one box, and it's less likely to make a mistake
10 than on multiple boxes.

11 The second one is an extremely important again,
12 and it gets at this five-year residency business. So in the
13 Canada Census I have a variable that identifies whether or
14 not the household was in the same residency for the past
15 year, and whether it was in the same residency for the past
16 five years, the exact same variable that Rosenfeld used.

17 However, the Canada Census has a question
18 identifying the current marital status. It's not a perfect
19 measure of marital transitions over the past, but it's a
20 pretty good measure. And it's certainly better than the
21 five-year residency measure.

22 So I know in the Canada Census whether or not
23 there has been a divorce in the household. So I'm not
24 proxying it. It's not a proxy which what the five-year
25 residency is. That's a proxy variable. You're hoping it's

1 highly correlated, but you don't know.

2 Here, I actually have a variable that measures --
3 it's an attempt to measuring the transition. So I have a
4 better measure of this thing that's so important in the
5 Rosenfeld Study.

6 Third, same-sex marriage was legalized in Canada
7 in 2005, and by court decisions there was same-sex marriage
8 going on for several years before that. So the census comes
9 in 2006.

10 So on the 2000 Census there are no states in the
11 United States that allow same-sex marriage. In Canada, my
12 data comes after same-sex marriage was allowed.

13 And then the other thing I wanted to do in this
14 study which I think is important, Rosenfeld lumps all of
15 the same-sex households together. If it's a gay household
16 or a lesbian household he lumps them together. He also
17 lumps all children together. So whether you're a girl or a
18 boy, he lumps together.

19 It seems to me that misses one of the
20 opportunities to do what we call a natural experiment. So a
21 natural experiment is when the world has given you an
22 opportunity to test apples to apples. You don't have to
23 just try to proxy it with variables in the regression.

24 So what I do in this is I started off separating
25 out the gays from the lesbians, and then I separate out the

1 boys from the girls because whether or not a boy or a girl
2 is in the household is pretty much a random draw. So if
3 there is no difference in household type there certainly
4 should not be a difference between gays versus lesbians.
5 And there shouldn't be a difference between whether it's
6 boys or girls.

7 So that was the purpose -- that's the advantage
8 of using the Canada Census over the 2000 Census.

9 Q And just to clarify why is the fact that Canada
10 legalized same-sex marriage an advantage?

11 A Well, I mean, others have argued that Canada is a
12 better place for studying these issues because people are
13 more likely to be honest in answering the questions. Canada
14 is often considered, maybe among just Canadians, a more
15 tolerant kind of place, less -- you know, less ostracism
16 against same-sex couples, etc. So I think people just
17 generally feel that if something is legal you're more
18 likely to answer honestly on a survey than if something is
19 not legal.

20 Q Thank you.

21 You noted that you were able -- you replicated
22 Rosenfeld's Study as best you could. What were the
23 differences between your study and Rosenfeld's Study?

24 A The major difference was in the Canada Census I don't
25 have the variable normal progress through school, or at

1 least I can't calculate normal progress through school. The
2 only outcome measure that I have for children is whether or
3 not they graduated from high school.

4 So in the regression the left-hand side variable
5 instead of being normal progress through school, is high
6 school graduation. And on the right-hand side, I've tried
7 to match the variables that Rosenfeld used.

8 Q Okay. Were there any changes to his methodology?

9 A No.

10 Q Okay. What were your findings then on whether high
11 school graduation rates among children of the same-sex
12 couple showed an actual difference from those of children
13 raised by an opposite sex couple?

14 A That's right. So I find a difference in high school
15 graduation rates. So if you are -- I don't know if you want
16 to turn to Table 5 of that paper.

17 Q That's Exhibit 15?

18 A Exhibit 15, Table 5.

19 So in that Table, column 3 would be the one that
20 comes closest to the Rosenfeld paper, but I don't lump the
21 gays and lesbians together.

22 So if you look at the odds ratio there, so the
23 odds ratio if your child is in a gay parent household it's
24 .69 which means the odds from graduating from high school
25 are 69 percent of the odds from graduating from an opposite

1 sex married household. If you look at the standard error
2 there it's statistically significant. For a child in a
3 lesbian household the odds ratio is .6, but that was not
4 statistically significant.

5 So that's the result that's closest to the
6 Rosenfeld finding.

7 If you look over at Table 6 this is where I split
8 the sample up into boys and girls. What I find here is that
9 the results from the other table are being driven by the
10 results on the girls. So girls in a gay household -- I need
11 my reading glasses -- the odds ratio is -- if I look at
12 column 2 there. So if I look at column 2, the odds ratio is
13 .15. So that's a very low odds ratio. It's saying that if
14 you're a girl in a gay household the odds are only 15
15 percent of the odds of a similar girl in an opposite sex
16 married household to graduating. And you see it's estimated
17 quite finely. It's highly significant.

18 If you look at the effect of boys -- sorry,
19 sorry. Girls in a lesbian household, you find the same
20 thing. So the odds ratio is .45. Again, kind of low and
21 statistically significant. So I finally measure effect for
22 girls.

23 On the boys' side I find a lot of noise. In other
24 words, I had a lot of variance. I can't statistically
25 distinguish if there's a difference.

1 Interestingly enough, I find a large positive
2 effect for boys in gay households and a lower effect for
3 boys in lesbian households.

4 So I think the best thing to take from table is
5 the fact it looks like gender matters. The actual estimates
6 they are what they are, but it looks like it matters. And
7 the point is, it shouldn't matter if household type doesn't
8 matter. I mean, this about as close to the natural
9 experiment as you can get. Why would it matter if it's a
10 boy versus a girl.

11 Q So you believe that table, Table 6, provides
12 information regarding gender composition of parents.

13 A Yes. It looks like the parent -- the gender
14 combination looks like it matters.

15 Q Okay. Are you aware of any criticisms of your 2013
16 study based on the Canada Census?

17 A So the paper came out last fall and it was immediately
18 criticized in various blogs. I am aware of some criticisms
19 that Rosenfeld had made in his report.

20 One of the criticisms is this business about --
21 well I'm using some -- my sample, I chose children that
22 were between the ages of 17 and 22. And Rosenfeld said you
23 have this five-year residency requirement. So that means
24 that the earliest information you have is on somebody who
25 is 12 years old. And maybe there was a transition in the

1 household when they were seven years old. He makes an
2 assertion that, oh, if you're not going to graduate from
3 high school it was because something that happened to you
4 in grade one. I don't know if that's true or not. But he's
5 saying that the problem is Allen is comparing apples to
6 oranges. He's got children in a household that are de-
7 stabled, comparing them to opposite sex marital households
8 that are stabled. So he's got the wrong apples to oranges
9 comparison.

10 I think this completely misses the point that I
11 mentioned earlier. I'm only using the five-year residency
12 here to replicate what Rosenfeld did to include it, to show
13 you how it matters. I have a better measure of family
14 transition. I have this observation. I have a measure that
15 says was there a divorce? And whether there's a divorce
16 when you're in grade one or two it's going to show up as a
17 divorce. So I actually control for the very thing they're
18 actually worried about. So he was worried about this
19 problem in the 2000 Census that has a proxy. I'm actually
20 controlling for whether or not it actually happened.

21 Now, the other interesting thing if you go back
22 to Table 5 the difference between column 1, column 2 and
23 column 3 is whether or not I'm controlling for -- in column
24 1, I'm not controlling for the education of the parents,
25 and I'm not controlling for this marital status.

1 In column 2, I'm controlling for the education of
2 the parents. I'm still not controlling for the marital
3 status.

4 In column 3, I'm controlling for everything.

5 Now, if it were the case that residency was
6 highly correlated with divorce, it should make it no
7 difference to the estimates when you move from column 2 to
8 column 3. But, of course, you see that the estimates do
9 change, all right.

10 And you see, for example, if I go up to the
11 children in gay households the odds ratio is .54 in the
12 second regression. It's .69 in the third regression.

13 So when you control for divorce it's true divorce
14 is hard on children. If you control for it, the probability
15 of graduating from high school goes up, but the odds ratio
16 is still not one, it's quite away from one.

17 So it's important to control for that. I do. But
18 most importantly, notice that it changes. If residency and
19 divorce were the same thing, if they're really highly
20 correlated it shouldn't have changed.

21 So that tells you in his study when he's using
22 this five-year residency thing, it's just a proxy, and it's
23 not as good as having a variable that's actually
24 controlling for divorce.

25 So I think that criticism is completely off the

1 tracks. It's ignoring that I actually do it in a better way
2 what he's actually interested in.

3 In terms of the blogging criticisms, so one
4 criticism is if you look at the averages, the descriptives
5 of the data set the average age of the different samples,
6 the average age of the children in the different samples is
7 not exactly the same. I mean, why would it be? So it's a
8 criticism that, oh, if you look the average age of the
9 children in same-sex household is slightly lower than the
10 average age of the opposite sex married households and
11 people say, wow, you know, so what's now going is the
12 reason why they're not graduating is because you've got
13 more 17 year olds and they're still in high school.

14 What that ignores is that again I'm telling the
15 computer what the age of these people are. So the computer
16 knows how old they are. So the computer is controlling for
17 the age. So these estimates are holding age constant,
18 what's the effect of household size. So that criticism just
19 ignores the fact that I'm controlling for those things.

20 I think the most significant criticism of this
21 paper is one that I worried about when I did it was whether
22 or not there's a selection bias in using an age range of 17
23 to 22. A selection bias would come out in the following
24 way. Suppose I'm looking at the 22 year olds. I need these
25 children to be members of the household. If they're not

1 members of the household they're going to have their own
2 records on the -- different in the census. I won't have
3 them.

4 So what if the really successful children in
5 same-sex households just left and, you know, in the
6 opposite sex households they stayed behind. Then my sample
7 would be bias on the 22 year olds. That I think is a
8 legitimate criticism and one that I worried about. What I
9 did and mentioned in some footnotes here is I did what we
10 call a robustness check. So I ran the regressions looking
11 at just 17 and 18 year olds. Just at 17 year olds. Go from
12 17 to 20. Run it with all the children in, you know, from
13 five to 60. Run them from five to 18 etc. I tested around.
14 And what I found was the point estimates so the coefficient
15 estimates that you're getting there, they change a little
16 bit but they don't change much. What really changes is the
17 standard errors. So the more children I add the larger the
18 sample, the smaller the standard errors, the more likely
19 there's statistical significance.

20 So there's a tradeoff. I recognize if I do have
21 35 year olds in the sample there's going to be a selection
22 bias I think.

23 So I went from 17 to 22 because I thought that
24 sort of college age reasonably -- I don't think there's too
25 big of a selection bias problem there. But it allowed me to

1 get enough power to statistically identify. Those are the
2 main criticisms.

3 Q Was there also an erratum that was --

4 A Sorry, yes.

5 THE COURT: Also a what?

6 MS. HEYSE: An erratum.

7 A Yes. So almost immediately when the paper came out I
8 was contacted by Dr. Gary Gates. And in the original paper
9 -- when you receive the data from Stats Canada, comes in a
10 file and they send you what's called a code book.

11 A code book is like a telephone directory or
12 something. It's telling you this variable is defined by
13 this question and it takes on these values.

14 So when I was describing the data in the paper I
15 described it based on the code book. And Dr. Gates
16 correctly pointed out to me that on the actual census form
17 the question was not exactly the same as I described it. So
18 the errata basically corrects that statement that the
19 variable is coming from such and such a question the
20 census, etc., not as it was described in the code book.

21 So it makes absolutely no difference with respect
22 to the results of the paper. It was just a correction on
23 the way that the data was described, how it was derived.

24 Q Thank you.

25 Doctor Allen, do you know when same-sex marriage

1 was first recognized anywhere?

2 A I believe it was the Netherlands in 2000.

3 Q And do you know when it was first recognized here in
4 the United States?

5 A 2004, in Massachusetts.

6 Q So ten years ago.

7 A Ten years ago. Late in 2004.

8 Q As someone who's been studying the family and marriage
9 for more than 20 years is that enough time to formulate any
10 definite conclusions about the effects of same-sex
11 marriage?

12 A Highly unlikely. I know that sounds strange. You say
13 ten years why isn't that enough?

14 Let's take the case of Massachusetts. It's really
15 -- the way to think about that it's one observation. So you
16 have one-time series. You have some observations before,
17 and you have a few observations afterwards. But that's just
18 one-time series.

19 Imagine that's all you had. So you're going to
20 look at anything like did it affect marriage rates, did it
21 affect divorce rates. You've got one observation. You
22 really can't tell anything from one observation. There were
23 millions of things that changed in Massachusetts in 2004.
24 You can't control for all of them. Maybe the Boston Bruins
25 didn't make the playoffs. Maybe that's really what's

1 driving divorce rates in 2005.

2 So you have to try to control for all these
3 different things. So what we have to do is -- what we would
4 like to have is we want to have observations across
5 different states. So we would like to have as many
6 different jurisdictions as possible because then we can
7 start control for differences across the states. And we
8 would like to have as many observations across time so we
9 can control for differences across time. And then we'd also
10 like to have many -- we'd like to have our observations at
11 an individual level. Now that doesn't sound like a big deal
12 that means there has to be some agency that's collecting
13 data on an individual level across time, across states. So
14 think again in the U.S. how difficult that's going to be
15 because you don't have any federal agencies that are
16 collecting data on sexual orientation, you know, prior to
17 2004.

18 Now, you say, well, maybe we could look across
19 country. That's going to give you some more variation. But
20 now you've got different countries that you have to worry
21 about in controlling for. So that means you need even more
22 information. You need more variation. So we talked about
23 power coming from large sample sizes, but power also comes
24 from having variance in these variables that you're using
25 to describe. So you need lots of observations, across lots

1 of time.

2 Now, let's talk about what you're actually trying
3 to analyze. You're trying to analyze family outcomes.
4 Families are very complicated things with all kinds of
5 complicated dynamics, and lots of families vary on all
6 kinds of dimensions. So, again, if you're just going to use
7 aggregate statistics like let me look at the divorce rate
8 in the state of Georgia and how it changed over time when
9 the law changed. You know, you're just looking at average
10 families. I mean, you're lumping a whole bunch of things
11 together.

12 So even though it sounds like an exaggeration
13 when you say ten years isn't enough time, it really isn't.
14 The best analogy I can give there is the -- basically the
15 social experiment we've had with no-fault divorce.

16 So in the United States, you had California
17 switch in 1969. You had a whole bunch of states switching
18 throughout the 1970s. And it ends with South Dakota in
19 1985. So you had, you know, 16 years of transitions. You
20 have people collecting data throughout that time.

21 The first real study of that analysis was in
22 1986. But like the Rosenfeld paper, it turned out that that
23 result hinged on a very small coding issue. So that result
24 was overturned in 1992.

25 In the 1990s we had all kinds of studies starting

1 to come along trying to estimate the effect of no-fault
2 divorce.

3 MR. MOGILL: If it please the Court, this is not
4 in his report.

5 THE COURT: Doctor, is this contained, this
6 discussion contained in your report? I mean the no-fault
7 and the --

8 THE WITNESS: I believe in the report I make a
9 reference to the no-fault issue and the similarity there
10 are to this issue.

11 THE COURT: Then I'll sustain the objection.

12 MR. MOGILL: Thank you.

13 THE WITNESS: I'm only making the argument that it
14 took a long time. I mean, it really wasn't until about 2006
15 with Justin Wolfers' American Economic Review Paper, that
16 people figured, okay, I think we're close to answering that
17 question --

18 THE COURT: That's on no-fault.

19 THE WITNESS: Sorry?

20 THE COURT: That's on no-fault.

21 THE WITNESS: Yes. So it took 15, 30 years.

22 THE COURT: Okay. I think we've heard enough.
23 That's good. I don't think we should go any further on
24 that.

25 MS. HEYSE: Thank you, your Honor.

1 THE COURT: Okay. Thank you.

2 BY MS. HEYSE:

3 Q So, Dr. Allen, based on your review of the --
4 extensive review of the literature in this area from 1995,
5 to 2013, as well as your own research on child outcomes,
6 have you formed any opinions relative to this case?

7 A My opinion on this case is that of the evidence you've
8 got there's no evidence, no hard evidence that child
9 outcomes, that's no difference in child outcomes across
10 household types. That what evidence we do have looks like
11 there is a difference. My conclusion is that the State
12 should be very cautious in making such a fundamental change
13 to such a fundamental institution when there really isn't
14 any evidence on the child outcomes issue.

15 Like my point two says there I think we're a long
16 way from really understanding what the empirical results
17 are in a conclusive way.

18 MS. HEYSE: If I may have a moment, your Honor?

19 THE COURT: Of course.

20 MS. HEYSE: Thank you.

21 (Short pause.)

22 I have nothing further, your Honor.

23 THE COURT: Very well.

24 You may cross-examine.

25 MR. MOGILL: I'm happy to start. I know the Court

1 has indicated you were going to take a break --

2 THE COURT: I have an 11:00 o'clock quick matter.
3 We can break now.

4 It's funny, I was just looking to see if the
5 attorneys are here yet. The defendant is in custody so we
6 know where he is. I have not seen either of the attorneys.

7 Let's take a break now. I know both lawyers
8 usually are right on time. They're just probably waiting
9 until 11:00.

10 My matter is at 11:00. So we'll reconvene at
11 about 11:15.

12 I'll take my break right now. Give Joan a break
13 right now. We'll do our plea -- our sentencing. As soon as
14 that sentencing is over, we'll start right away with your
15 case.

16 Is that good?

17 MR. MOGILL: Thank you.

18 THE COURT: Carole, did you have something?

19 MS. STANYAR: I just wanted to acknowledge our
20 other helpers.

21 THE COURT: Oh, please.

22 MS. STANYAR: Yale Law School, Irina Vaynerman,
23 Bryn Williams and --

24 THE COURT: Just hold it. Who's who?

25 MS. STANYAR: Okay. Irina Vaynerman.

1 We have Bryn Williams and Steven Kochevar. They
2 have been helping us.

3 THE COURT: Yale Law School, what year?

4 MR. WILLIAMS: We're all 3-Ls.

5 THE COURT: All 3-Ls.

6 Do you have jobs?

7 MS. VAYNERMAN: We do.

8 THE COURT: All three of you have jobs?

9 All right. I want to hear about jobs.

10 Where are you going?

11 MS. VAYNERMAN: I'm going to be clerking in the
12 District Court in Minnesota, Eight Circuit.

13 THE COURT: Excellent.

14 MR. WILLIAMS: I'll be clerking on the Tenth
15 Circuit.

16 THE COURT: Excellent.

17 MR. KOICHEVAR: I'm teaching in China for a year,
18 and then I'll be clerking in the Southern District of the
19 Second Circuit.

20 THE COURT: Fantastic. Well, that's good. That's a
21 real tribute to you guys and to your school.

22 Nice to have you.

23 MS. STANYAR: Also we have Brian Apel from the
24 University of Michigan Law School.

25 THE COURT: Excellent. You're 3-L also?

1 MR. APEL: First year, your Honor.

2 THE COURT: First year. Well, that's good. That
3 will give you some experience. Maybe we can get you one
4 summer as an intern here. You've got a little while.

5 If you can get a good paying job, because we
6 don't pay, but we have a good time.

7 MS. STANYAR: One last, Jeanne Howard who works at
8 the Donaldson Adoption Institute. She's been helping us all
9 along here. She's not here today, but she has been helping
10 us.

11 THE COURT: If she happens to get here tomorrow
12 I'd like to see what she looks like.

13 MS. STANYAR: She's actually been at counsel
14 table.

15 THE COURT: Okay. Anybody on the State side? Any
16 new folks?

17 MS. HEYSE: Nobody came to see us today, your
18 Honor.

19 THE COURT: Oh. Okay. I'm sure some will be here
20 tomorrow. I would like to -- I know that one of the people
21 that worked on the case with you, I know he's come in and
22 out. I've been wanting you to introduce him, but every time
23 I look he's gone again. Maybe tomorrow you'll do that.

24 MS. HEYSE: Absolutely.

25 THE COURT: For those who are here watching the

1 case, I'm going to have a matter and you may -- it's a
2 sentencing, nothing to do with this case. But I think it's
3 a pretty interesting sentencing.

4 I'm going to take a break so the marshals can
5 move the defendant over. I'm waiting for the lawyers. You
6 are more than welcome when we start that case to listen to
7 it. Then you'll see what we do every day. We don't do this
8 case every day. These are the kinds of things we do every
9 day.

10 Okay. We'll stand in recess. We'll reconvene for
11 my sentencing, and then right after the sentencing we'll
12 reconvene on this.

13 (Court recessed, 11:00 a.m.)

14 (Court reconvened, 11:30 a.m.)

15 THE COURT: Okay. Are we ready?

16 MR. MOGILL: May I proceed, Judge.

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. MOGILL:

20 Q Professor Allen, good morning.

21 A Good morning.

22 Q I'm going to be asking you a number of questions. Many
23 of them are going to call for a yes or no answer if you can
24 reasonably answer yes or no. If you can't reasonably answer
25 yes or no, that's fine. But if you can I'm asking you and,

1 in fact, directing you please answer yes or no. Fair
2 enough?

3 A Understood.

4 THE COURT: I know it's tough for everybody.

5 THE WITNESS: Especially a professor.

6 THE COURT: Don't worry about it. He'll remind
7 you.

8 BY MR. MOGILL:

9 Q You are a professor of economics; correct?

10 A Correct.

11 Q You are not a psychologist.

12 A That's correct.

13 Q Nor a social worker.

14 A Correct.

15 Q You don't have a degree in sociology.

16 A Correct.

17 Q You've never taught a course in sociology.

18 A Correct.

19 Q You've never even taken a course in sociology.

20 A Correct.

21 Q And you don't hold yourself out as an expert in child
22 development; correct?

23 A Correct.

24 Q Some of these questions are going to reiterate things
25 that you went through on Direct but that's just part of

1 this process as well; okay?

2 A Correct, understood.

3 Q You've acknowledged that there is a broad consensus in
4 the social science community as to what has been
5 characterized as "the outcome difference;" correct?

6 A That's right.

7 Q And you disagree with that consensus.

8 A That's right.

9 Q You made reference in a good amount of detail in your
10 Direct Examination to a number of studies, what, about 60
11 studies of same-sex parenting and the outcomes and you
12 talked about your criticisms of those studies; right?

13 A Yes.

14 Q You acknowledged that those studies span really nearly
15 a 20-year period now; correct?

16 A Yes.

17 Q And, yet, to you those are preliminary and I think
18 you've also indicated at some point that the research in
19 this area is basically in its infancy, that's a term you've
20 also used; right?

21 A Yes.

22 Q And on Direct you've explained your reasons why you
23 assert that to be the case; right?

24 A Yes.

25 Q Now, it's correct, it is not, that small sample

1 studies, convenient studies are very common in the field of
2 psychology?

3 A I don't know about the entire field of psychology.
4 It's certainly common in that literature.

5 Q I'm sorry?

6 A It's common in the literature on child outcomes.

7 Q Okay. It would not surprise you, would it, to find
8 that these kinds of studies are common throughout the field
9 of psychology.

10 A I have no opinion one way or the other.

11 Q You don't know.

12 A Correct.

13 Q It's also correct, is it not, that studies that are
14 small sample, convenient studies, they're not just smaller
15 versions of the large data sample studies of the kind that
16 you've described using the Canadian Census that Professor
17 Rosenfeld did with the United States Census, they're
18 qualitatively different; correct?

19 A Correct.

20 Q They're looking at things in a more individualized way
21 and a more personalized way among other differences;
22 correct?

23 A It could be, not necessarily.

24 Q Okay. If one of the State defendants other witnesses
25 characterized as a rough way of distinguishing between

1 these small studies and the large data studies the
2 psychology studies look at people, the sociology or --
3 we'll give you economic studies look at numbers. In a rough
4 sense that's an accurate statement; isn't it?

5 A I don't think so. I mean, the numbers are just
6 reflective of people, correct?

7 Q No.

8 A The numbers are saying, so, example, if I knew what
9 your income is, that's something about you. It's also a
10 number. So you can't say it's a number and has nothing to
11 do with people.

12 Q No one is saying that the number has nothing to do
13 with people.

14 MS. HEYSE: Objection, your Honor. I think it's
15 getting argumentative.

16 MR. MOGILL: No, no.

17 THE COURT: Why don't you restate it?

18 MR. MOGILL: If she hadn't interfered I was about
19 to turn it into a question.

20 THE COURT: Okay. Turn it into a question.

21 Wait for the question and then we'll go from
22 there.

23 BY MR. MOGILL:

24 Q No one is saying that the number doesn't have
25 something to do with people; isn't that right?

1 A I would agree with that, the number does have
2 something to do with people.

3 Q Of course. Now, it's also correct, is it not, that
4 psychologists did not begin using small sample convenient
5 studies only when they began studying same-sex families;
6 isn't that correct?

7 A I'm not sure I understand the question. Do you mean --

8 Q Psychologists -- let me rephrase it.

9 Psychologists have been using small sample
10 convenient studies far longer than they have been studying
11 same-sex families.

12 A That's probably true.

13 Q Is it also correct that psychologists have studied
14 things as -- since -- long before they began studying same-
15 sex families; isn't that correct?

16 A That be true, yes.

17 Q Studies of heterosexual stably married families,
18 studies of step families, studies of families that have
19 gone through divorce, breakup, other transitions; right?

20 A Correct.

21 Q All of those kinds of studies were a body of
22 literature that was in the field well before the field also
23 began studying same-sex families and their children;
24 correct?

25 A It's probably true to the best of my knowledge.

1 Q I'd like to ask you a couple of questions now about
2 Professor Regnerus study. Would it be fair to say that in
3 your view a reasonable criticism of his study was that he
4 was in a sense comparing apples to oranges?

5 A I think the best way to describe the problem with --

6 Q My question to you is not what is the best way to
7 describe, my question to you is whether that would be a
8 fair way to describe it?

9 A I don't think so.

10 Q Okay. Have you ever stated that the apples or oranges
11 criticism is a fair criticism of Professor Regnerus Study?

12 A I believe I have said that, yes.

13 Q Okay. Is that still your opinion?

14 A Yes, but --

15 Q Thank you.

16 THE COURT: Yes, but -- if you had a choice you
17 would like to explain it.

18 THE WITNESS: Yes.

19 THE COURT: Counsel --

20 BY MR. MOGILL:

21 Q I'm going to let you explain. I want you to explain by
22 reference to Footnote 21 in your Canadian Study. You've got
23 that there; right?

24 A That's Exhibit 15?

25 Q Exhibit 15, page 641, note 21.

1 You expressed an opinion about Professor Regnerus
2 study at that footnote; did you not?

3 A I did, yes.

4 Q Why don't you read into the record what you said about
5 Professor Regnerus study at Footnote 21 of your Canadian
6 Census Study?

7 A "The Regnerus study also used a random sample;
8 however, it was still too small to identify a sufficient
9 sample of same-sex parents. To increase his sample size he
10 decided to use a broader definition of same-sex parent."

11 Q And that's the entire language in that footnote;
12 correct?

13 A Correct.

14 Q Did you mean that as a criticism of Professor Regnerus
15 or as a justification of what he had done?

16 A I believe I just meant it as a description of what he
17 had done.

18 Q Okay. As you sit here today do you believe that is a
19 valid criticism or a justification of what Professor
20 Regnerus did?

21 A It's a statement of what he did. I don't understand
22 what you mean by a "justification."

23 Q Was he justified in expanding the definition?

24 A He was trying to identify an effect. The problem that
25 he had was that the stability was too correlated with the

1 household type. And so all he had if he was looking at
2 couples that were stabled he had a very small really
3 trivial sample size. So you can't do anything with that. So
4 he expanded his definition. I would say that's an issue
5 that people debated about. I think it's a legitimate issue.

6 Q In other words, are you saying that it is a legitimate
7 issue as a matter of criticism to expand the definition the
8 way he did?

9 A It comes down a little bit like the issue with
10 Rosenfeld, you know, what's the proper measure of
11 controlling for something. Here the issue is, you know,
12 he's got a choice to make. He can have larger sample size
13 to generate some kind of result, but the caveat is because
14 you can't really distinguish these couples are so unstable
15 to be a same-sex couple in his data set is pretty much as
16 being unstable. He has to say, okay, I'm going to include
17 the unstable ones.

18 Q So is it your testimony as you sit here at this moment
19 that it was reasonable for Professor Regnerus to use a
20 broader definition of same-sex parent? Yes or no.

21 A Reasonable. Well, yes and to no. I mean, it's an odd
22 way you're stating the question. Again, it comes down to
23 the distinction we had between Rosenfeld and us. I mean,
24 there's multiple ways of doing things. He did it one way,
25 not perfect. But the alternative was to say, well, I've got

1 nothing.

2 Q We're going to talk about your critique of Rosenfeld
3 in a minute, but this is different. This is expanding the
4 definition of parent to include someone the child never
5 lived with and may or may not even have known; correct?

6 A Correct.

7 Q And you're unwilling to say that was as unreasonable
8 definition of parent?

9 A What I'm saying -- for me when I look at the Rosenfeld
10 Study it is what it is, right. We understand that's not a
11 -- it's not the ideal world that he was living in, that he
12 had data-wise. He made that choice and has been criticized
13 for it. But, yeah, you'd want to -- you'd want to ideally
14 be able to look at only the couples where there was a
15 stable household. That's right.

16 Q You still haven't answered my question, Professor.

17 A Is it reasonable or unreasonable? I mean, it depends.
18 He's making a tradeoff between sample size and the
19 definition of the parent.

20 Q Was it a reasonable or unreasonable --

21 MS. HEYSE: Objection, your Honor. Asked and
22 answered.

23 MR. MOGILL: No.

24 If it please the Court, with all due respect,
25 Professor Allen is giving me non-responsive --

1 THE COURT: Ask it one more time.

2 He would like a yes or no answer. If you can't
3 answer yes or no let him know.

4 A Yeah, I can't answer that yes or no.

5 BY MR. MOGILL:

6 Q Okay. You are unable to answer as you sit there today
7 --

8 MS. HEYSE: Objection, your Honor.

9 THE COURT: He has to repeat it. I want to hear it
10 again.

11 MR. MOGILL: I'm sorry?

12 THE COURT: Go on.

13 BY MR. MOGILL:

14 Q Whether it was a reasonable or unreasonable tradeoff
15 for Professor Regnerus to identify parent as someone the
16 child never lived with and may not have even have met.

17 A Given that he posted the data he's allowed -- anybody
18 can look at his data and look at what happens when you make
19 the opposite assumption. Then if I had to choose between
20 one or the other I would say it was reasonable. Given that
21 anybody can look and say what if we didn't make that
22 assumption what would we get? And the reader can decide if
23 it's unreasonable or reasonable.

24 Q Thank you.

25 Now, on the last slide that you had from Direct

1 Examination your final point is that

2 "Any conclusive statements" --

3 THE COURT: You have to speak into the microphone.

4 MR. MOGILL: I'm sorry?

5 THE COURT: You've got to speak into the
6 microphone.

7 MR. MOGILL: I thought I was. I was doing a little
8 it better. One of these days I'll get it.

9 BY MR. MOGILL:

10 Q On that last slide, Professor Allen, the last point
11 is,

12 "Any conclusive statements are premature"; is
13 that your position?

14 A Yes.

15 Q And if I understood you correctly on Direct
16 Examination you said that, what, maybe 25 or more years of
17 study from different locations, etc. around the United
18 States are needed before there can be anything conclusive;
19 right?

20 A I think so, yes.

21 Q And during that period of time, of course, according
22 to what you're suggesting there would be no change in the
23 eligibility of same-sex couples to marry in those
24 jurisdictions in the United States where they do not yet
25 have that right; correct?

1 A The more jurisdictions that change the shorter time
2 period it would take to find out what the effect is.

3 If you have, say -- I mean you have, what, 17
4 states now that have it. If there's 17 states it will take
5 a certain amount of time. If you had all 50 states it would
6 take less time because you have more variation across the
7 states.

8 Q Which would be an argument to have more states include
9 same-sex couples and the opportunity to marry in order for
10 the answer to come more quickly; correct?

11 MS. HEYSE: Objection, your Honor. That
12 mischaracterizes his testimony.

13 THE COURT: He can answer yes or no.

14 A If all you're interested in is the academic outcome,
15 the answer would be yes.

16 BY MR. MOGILL:

17 Q Thank you.

18 Now, on that same slide you also state that,

19 "Any conclusive statements are premature because
20 they're not based on any solid evidence since that evidence
21 does not exist"; is that your opinion?

22 A Yeah, I mean by "solid evidence" I mean -- well, by
23 "solid evidence" as I mentioned in the Direct, you know,
24 what we would really like is a longitudinal study at the
25 individual level.

1 Q You used the word there "solid" -- the phrase there,
2 "solid evidence"; right?

3 A Yes.

4 Q Okay. Have you ever said that solid evidence does
5 exist on this question?

6 A Not to my recollection. I may have.

7 Q Okay. Have you ever said that solid work has been done
8 on this question?

9 A I can't recall.

10 Q Have you ever said that solid statistical work has
11 been done on this question?

12 A I can't recall.

13 Q Have you ever said that Professor Rosenfeld's
14 demography study is "the first solid piece of statistical
15 work done on the question"?

16 A I may have. Where are you referencing that?

17 Q A source called "Mercatonet" on October 10, 2013, and
18 I'm happy to show you a copy.

19 MR. MOGILL: Ms. Heyse was previously provided
20 with it. I just want make sure she's got it.

21 MS. HEYSE: I do.

22 Thank you.

23 MR. MOGILL: May I approach?

24 THE COURT: You may.

25 BY MR. MOGILL:

1 Q Professor Allen.

2 A Right. So this was an online interview that I did. As
3 I said in the Direct -- I think I said it -- I don't want
4 to take away from Rosenfeld in the sense that it was a
5 watershed study much different than what was done before.
6 This really is a statement more about what came before than
7 after. But, yeah, after the solid piece of statistical work
8 was done. So I did say that, yes.

9 Q You meant it when you said it; didn't you?

10 A I meant it was a random sample, large hard question,
11 yes.

12 Q And the first solid piece of statistical work done on
13 the question, you meant that, too; right?

14 A Yes.

15 Q You acknowledged that you have also referred to it as
16 a watershed publication.

17 A Watershed, yes.

18 Q Would you also agree that the importance of Professor
19 Rosenfeld's 2010 Study is hard to overstate?

20 A With respect to how it stands relative to the other
21 literature, yes.

22 Q In fact, the various -- among the various variables as
23 to which you expressed criticism of the psychology
24 literature there are a quite a bit of those variables as to
25 which when you look at Professor Rosenfeld's Study he

1 addresses those; is that not correct?

2 A That's correct.

3 Q It's a random sample.

4 A Random.

5 Q You didn't mention in your report but you mentioned in
6 testimony today about using data from another source and
7 he's got that.

8 A Got that.

9 Q It's a large sample.

10 A Yes.

11 Q Outcome measures are hard and verifiable.

12 A Yes.

13 Q And that outcome measure as you agreed on Direct
14 Examination was normal progress through school; right?

15 A Yes.

16 Q By the way, Professor, very few children are, in fact,
17 held back as they progress through the grades; isn't that
18 right?

19 A That's correct.

20 Q Percent, your best estimate as you sit here right now?

21 A Depending on household size or average?

22 Q Total.

23 A I'm sorry not household size, household type?

24 Q No, in aggregate.

25 A In aggregate, in aggregate you're probably looking

1 around 10, 12 percent.

2 Q Now, in talking about studies that will have
3 statistical merit, that's a phrase as a layperson we can
4 use, one of the factors that you consider in your
5 profession is the sample size; correct?

6 A Correct.

7 Q Have you expressed an opinion as to the minimum sample
8 size that is necessary in order to have a valid study that
9 confines statistically significant differences in
10 complicated family structures?

11 A I repeated the Steven Nock conjecture that you need a
12 sample size of 800. But ultimately, you know, it's data
13 dependent, correct, depending on how the data is
14 distributed, variations, etc. One sample size might give
15 you statistical significance. Another data set with
16 different variation might require a larger or smaller.

17 Q Okay. But in your report you cited Nock as a
18 proposition --

19 A Yes.

20 Q -- that the minimum sample size needed is 800;
21 correct?

22 A Correct.

23 Q And the sample size that Professor Rosenfeld used in
24 his study of children who had lived in the same residence
25 with their parents for at least five years, what's the

1 number?

2 A About 600,000, in that neighborhood, 700,000.

3 Q And the number who had lived for at least five years
4 in a same-sex household --

5 A Oh, I'm sorry. What was your original question?

6 Q Number of children who had lived at least five years
7 in a same-sex household.

8 A I can't remember that number off the top of my head.

9 Q Would you like to have your memory refreshed?

10 A Yes, please.

11 Q Or if I throw a number out at you will you accept it?

12 A I'll take your number.

13 Q Thirty-five hundred and two?

14 A Oh, right. I'll accept that.

15 Q You'll accept that number as accurate?

16 A Yes.

17 Q Okay. If you have any question about it I want you to
18 double check --

19 A No, no.

20 Q -- because I'm just a lawyer asking questions.

21 A I understand.

22 Q So Professor Rosenfeld's sample size even as to the
23 number of children living in same-sex households was
24 approximately four times more than you need according to
25 your opinion based on Nock; correct?

1 A I quote Nock, right, but as I said just a minute ago
2 depending on how the information is distributed in the same
3 you may need more you may need less.

4 Q Well, you have a whole lot of --

5 A That number is a lot bigger than Nock's number.

6 Q Now, it's also correct, it is not, that with respect
7 to the two sample restrictions Professor Rosenfeld used,
8 own child and residential stability, you agreed and still
9 agree today that those are legitimate restrictions;
10 correct?

11 A What do you mean legitimate restrictions? So the issue
12 is should you control for own child?

13 Q Okay. Let me rephrase it.

14 There's a dispute between you and Professor
15 Rosenfeld as to how to account for own child and
16 residential stability; correct?

17 A We really don't dispute the own child one, but, yes.

18 Q Okay. And if I understand what you said on Direct
19 Examination and what you said in your comment on Rosenfeld
20 and in your report it basically -- and I think you
21 summarized it on Direct, comes down to a difference of
22 methodology; correct?

23 A Correct.

24 Q In essence, Professor Rosenfeld took the own child and
25 residential stability points and he identified them as

1 sample restrictions so they weren't in the data going in.
2 And, you and Price and Pakaluk -- am I pronouncing her name
3 right?

4 A Pakaluk, I think, yes.

5 Q Okay. Put them in and gave instructions to the
6 computer to control for them at that end of the process;
7 right?

8 A Correct, except there's this issue about own child,
9 about the household head, etc. So with that caveat, yeah.

10 Q Okay. And there's no question but that you have in
11 your own report, in your own words, characterized Professor
12 Rosenfeld's concern as legitimate, quote, unquote.

13 A I think that you want to control for stability and you
14 would want to control for own children, yes.

15 Q Do you have your expert report there?

16 A I don't know what number it is.

17 THE COURT: Do you have one with you, Doctor?

18 THE WITNESS: Sorry?

19 THE COURT: Do you have your report with you?

20 THE WITNESS: I do not.

21 THE COURT: Like not in your briefcase or
22 anything?

23 THE WITNESS: No, I don't.

24 THE COURT: That's fair. No problem.

25 BY MR. MOGILL:

1 Q Professor, if you would, please, turn to Paragraph 29
2 of your report.

3 A I'm sorry, that's missing from this report.

4 Q I'm sorry?

5 A This report stops at 26 and picks up again at 32.

6 MS. HEYSE: Figure 1 is on the Elmo there.

7 BY MR. MOGILL:

8 Q I want you to take a look at Paragraph 29 and let me
9 know when you've had a chance to look at it, please.

10 A Okay.

11 Q It's correct, is it not, that in your own words you
12 described,

13 "Rosenfeld's justification for the sample
14 restriction was legitimate. He was concerned with comparing
15 'apples to apples'. If children are adopted or arrive into
16 a family in a non-traditional way then failure to make
17 normal progress in school may be caused by some unmeasured
18 difference that is correlated with the adoption. Likewise,
19 he wanted children who were raised in a same-sex household
20 not just ones who were living there during the time of the
21 census"; correct?

22 A Correct.

23 Q And then because I don't want to take anything out of
24 context there's a last sentence in the paragraph where you
25 talk about your concern that dropping children from the

1 sample at the front end effects the power of the test
2 significantly in your view.

3 A Correct.

4 Q There's also no question but that, one, you, Professor
5 Price and Professor Pakaluk were to replicate Professor
6 Rosenfeld's data.

7 A That's correct.

8 Q That he cooperated with Professor Price when Professor
9 Price requested the data including the analysis codes?

10 A That's absolutely correct.

11 Q And it's also correct that the motivation for
12 restrictions such as own child and residential stability is
13 to avoid a measurement error; isn't that right?

14 A Technically he called it an endogenizing problem in
15 this case. So if you don't make the correction, the right-
16 hand side variable, the "X" if you will, is correlated with
17 the error term and you get a biased estimate.

18 Q Have you ever said in your own words and those of your
19 co-authors that the motivation for the restrictions is to
20 avoid a measurement error?

21 A Yeah, I could have worded it that way, yes.

22 Q And it's also correct that you said in your own words
23 that the measurement error,

24 "Would occur if a child's family structure is
25 based on a current household composition that is different

1 from what the child had experienced when his or her
2 progress in school was being effected," correct?

3 A I'll take your word for it.

4 Q I don't want you to take my word for it.

5 A Okay. Do you want to show me again?

6 Q And this is significant because biological relatedness
7 and household instability are "two of the channels" through
8 which family structure can influence child outcomes;
9 correct?

10 A Correct.

11 MS. HEYSE: I'm sorry, I still don't know where
12 you are.

13 MR. MOGILL: Just for the record, the comment
14 isn't paginated so I wrote in the page numbers at the
15 bottom.

16 THE COURT: Okay.

17 MS. HEYSE: That's why we're having technical
18 difficulties here.

19 Oh, Rosenfeld. Thank you.

20 BY MR. MOGILL:

21 Q And, in fact -- if you can turn to page 2 of the
22 comment, you, and Professor Price, and Professor Pakaluk,
23 "Share Rosenfeld's concern that these groups are
24 potential confounders."

25 Is that correct?

1 A Correct.

2 Q Now, what it comes down to is that, among other
3 things, when Professor Rosenfeld uses these factors as a
4 sample restriction he produces a result that finds no
5 statistically significant difference between the children
6 of same-sex parents and children being raised in an
7 opposite sex married household. And that while you -- when
8 you run the numbers the way you and your two colleagues run
9 them you do find a statistically significant difference
10 between those two groups; correct?

11 A That's correct, but I need to elaborate on that a
12 little bit.

13 Q Okay. I'm going to let you elaborate in a minute.

14 As you testified this morning on Direct
15 essentially it comes down to a question of methodology;
16 correct?

17 A False.

18 Q You testified this morning in your own words that it
19 comes down to a question of methodology; did you not?

20 A Except for the fact to deal with that own children,
21 right? So even if we take -- okay, we say let's use a
22 sample restriction. Let's have a sample restriction on own
23 children so you only keep the own children. He did not
24 include all of the own children. So even if we say we'll
25 accept your methodology and we'll keep the own children, if

1 you do that properly you still find a statistically
2 difference. So that's not a methodological issue. That's
3 using the right samples for a restriction.

4 Q Okay. Have you had a chance now to explain what you
5 think is different beyond the methodological point --

6 A That's what different.

7 MS. HEYSE: Objection, your Honor. That's
8 argumentative.

9 MR. MOGILL: No. I want to make sure the witness
10 has had a chance to explain his answer.

11 THE COURT: He said that's what's different.

12 A Yes, that's the non-methodological point.

13 BY MR. MOGILL:

14 Q Because one of the things that is important about this
15 kind of discussion we're having here this morning is to
16 clarify the differences between Professor Rosenfeld's
17 position and your position so that when we're all done
18 talking in court and the Judge is considering the testimony
19 and reading your report, and Professor Rosenfeld's report,
20 and your comment and Professor Rosenfeld Study, we can
21 clarify these differences so the Court can make --

22 MS. HEYSE: Your Honor, there's no question here.

23 BY MR. MOGILL:

24 Q -- an understanding assessment; isn't that correct?

25 A I suppose that's correct.

1 Q Now, this morning one of the things you've said was
2 that Professor Rosenfeld found that there was no difference
3 and he should have said that he found no statistically
4 significant difference. You've said that twice, and then
5 you said it's a subtle but important point; am I right?

6 A Correct.

7 Q I want you to look at Professor Rosenfeld's demography
8 study. It's -- I don't know, whatever number it is.

9 MS. HEYSE: What exhibit is it, Ken?

10 MR. MOGILL: I think it's 109.

11 THE COURT: He may not have that book.

12 MR. MOGILL: Exhibit 109.

13 THE WITNESS: I have their book.

14 BY MR. MOGILL:

15 Q Professor, I am showing you Professor Rosenfeld's -- a
16 copy of Professor Rosenfeld's demography study; is that
17 correct?

18 THE COURT: That's 109?

19 MR. MOGILL: Yes.

20 A Yes.

21 BY MS. HEYSE:

22 Q And towards the bottom of page 770 it's correct, is it
23 not, that what Professor Rosenfeld said was not that
24 there's no difference --

25 A I'm sorry, where are you reading?

1 Q Last sentence on page 770. But what Professor
2 Rosenfeld concluded was that,

3 "When one controls for parental SES and
4 characteristics of the students children of same-sex
5 couples cannot be distinguished with statistical certainty
6 from children of heterosexual married couples"; correct?

7 A That's correct, but that's not all that he says.

8 Q Of course, that's not all that he said. But you
9 claimed he did not qualify his conclusions with the
10 limitation of statistical significance and that clearly
11 shows he did --

12 A I claim --

13 MS. HEYSE: Objection, your Honor. Argumentative.

14 THE COURT: It's argument.

15 What's your question?

16 A I claim --

17 MS. HEYSE: Your Honor --

18 THE COURT: Wait, wait.

19 MS. HEYSE: Objection.

20 THE COURT: Sustained.

21 MR. MOGILL: Okay. Sorry.

22 THE COURT: You can't argue.

23 MR. MOGILL: I apologize.

24 THE COURT: You have to ask a specific question,
25 and then the Doctor can answer a specific question.

1 A I claim that he confuses the two. So in places like
2 that he says statistical significance, but in other places
3 he says the following. So if I could quote from my report
4 --

5 BY MR. MOGILL:

6 Q Sure, quote from your report.

7 A I'm quoting from Paragraph 20. Paragraph 20 reads --

8 Q Just a second, I want to get my hands on it. All
9 right. It's closer to me than I thought.

10 A In Paragraph 20 I say,

11 "Rosenfeld found that children raised by same-sex
12 couples 'cannot be distinguished with statistical certainty
13 from children of heterosexual married couples.'"

14 That's true. That's what you just quoted.

15 However, he concluded from this that,

16 "Children of same-sex couples appear to have no
17 inherent developmental disadvantage."

18 In other words, there's no difference.

19 And that,

20 "The analysis in this article, the first to use
21 large sample nationally representative data, shows that
22 children raised by same-sex couples have no fundamental
23 deficits in making normal progress through school."

24 That's a statement about a difference, not a
25 statistical difference.

1 Q Professor, there is not one place in the entire
2 demography study by Professor Rosenfeld where he claims
3 that there is no difference as oppose to no statistical
4 difference; isn't that correct, and -- I know this is a
5 compound question, but I'm sure you can follow. What you're
6 referring to is not what Professor Rosenfeld said, but your
7 interpretation of that; isn't that correct?

8 A No, it's false. I mean, when he says there's no
9 fundamental deficit how would you interpret that other than
10 to say there's no difference. Or when he says "appear to
11 have no inherent developmental disadvantage." That sounds
12 to me like no difference.

13 Q It could sound reasonably -- it could reasonably sound
14 to a whole lot of other people when they take the study in
15 context that what he means is exactly what he said that
16 there is no statistically significant difference; isn't
17 that also correct?

18 A No --

19 MS. HEYSE: Objection, your Honor. Calls for
20 speculation.

21 THE COURT: Plus, it's argument. He can't tell
22 what other people -- he can only say what -- how he
23 interprets it.

24 BY MR. MOGILL:

25 Q Professor, let's talk a little bit -- why don't we

1 collect that so it's not in your way.

2 While we're on the subject of actual versus
3 statistically significant differences, would it be fair to
4 say that a reason for noting that distinction is because
5 it's important in research and reporting research to be
6 precise?

7 A I think it's a bigger issue than that.

8 Q Okay. It's a bigger issue than that but is it also
9 important to be precise?

10 A You mean precise in language?

11 Q Precise in language, precise with respect to numbers
12 when you're using numbers.

13 A Well, being precise is important but, again, I think
14 there's --

15 Q There's more to it.

16 A There's more to it.

17 Q Okay. Now, we're going to talk in a while about your
18 Canadian Census Study, but looking ahead to that, for
19 example, you break down household types by gay and lesbian
20 and the children in the household by boy and girl; right?

21 A Correct.

22 Q And an example of an actual difference that you found
23 is that boys who are living in a gay household are, in
24 fact, 61 percent more likely to graduate high school than
25 children living in an opposite sex married household;

1 correct?

2 A That's correct.

3 Q And you indicate that in your opinion based on your
4 analysis of the data that that particular figure is
5 statistically insignificant.

6 A That's correct, it is statistically insignificant.

7 Q I'm not quarreling with that.

8 A Okay.

9 Q I'm not quarreling with the fact that you find that to
10 be statistically insignificant.

11 Now, my point is that would be an example of
12 something that there's a difference but in your opinion
13 it's not a statistically significant difference; correct?

14 A Correct.

15 Q All right. Now that I've started down this path of
16 actual versus statistically significant difference, there
17 was one more question I wanted to ask you about Professor
18 Rosenfeld Study and your and your colleagues' critique of
19 that study; okay?

20 A Okay.

21 Q You made a comment about that study in your Canadian
22 Census -- your report of your study on the Canadian Census;
23 correct?

24 A Correct.

25 Q You talk about that at page 642; correct?

1 A I don't have it in front of me. I'm sure it's in this
2 binder, but do we know --

3 MS. HEYSE: Exhibit 15.

4 THE WITNESS: Mine are not paginated.

5 MR. MOGILL: For the record the copy of the
6 exhibit that Professor Allen is looking at has the page
7 numbers cut off. So it took us a second to both literally
8 be on the same page.

9 THE COURT: Okay.

10 BY MR. MOGILL:

11 Q So, we're both on the same page now, Professor?

12 A Correct.

13 Q The page before the section starting with "Data."

14 A Correct.

15 Q All right. And the second from last full paragraph on
16 that page is where you discuss Professor Rosenfeld's study
17 and your and your colleagues response to it; correct?

18 A Correct.

19 Q And it's correct, is it not, that with respect to the
20 two studies you indicate,

21 "The increased chance of failing a grade --
22 especially when the correlation magnitude is so close to
23 that of single parents -- could likely be the result of a
24 previous divorce or separation since many children in same-
25 sex households were initially born into opposite sex

1 families that later broke apart. The 'same-sex' aspect of
2 these parents may have nothing to do with slower grade
3 progress."

4 You said that; right?

5 A I said that.

6 Q You can put that away now so it's not in your way.

7 So this morning you testified about the figures
8 you used in your report; correct?

9 A Correct.

10 Q You testified that they weren't meant to be precise;
11 correct?

12 A Correct.

13 Q I believe you characterized the figures as "stylized"?

14 A And a metaphor.

15 Q I was going to go there in a second.

16 You also testified that you weren't purporting
17 that those drawings on that figure were intended to
18 represent what Professor Rosenfeld actually found; correct?

19 A They're not based on numerical values, that's correct.

20 Q Okay. So when we look at Figure 2, if you look at what
21 you've got represented as children in traditional families,
22 that would be children being raised by heterosexual
23 parents; is that correct?

24 A Correct.

25 Q And children in foster care?

1 A Correct.

2 Q If you just took a look at that figure what a reader
3 might -- would reasonably interpret is that the figure
4 suggests that at age eight there's about a full grade
5 difference in progress between kids being raised in a
6 traditional home and kids being raised in foster care;
7 right?

8 MS. HEYSE: Objection, your Honor. It calls for
9 speculation. He doesn't know what readers -- how readers
10 are going to interpret something.

11 MR. MOGILL: You know, if you want me to rephrase
12 it, I'm happy to, but I think the point is pretty
13 straightforward.

14 THE COURT: You can rephrase it.

15 BY MR. MOGILL:

16 Q Okay.

17 THE COURT: How about, does it show that?

18 MR. MOGILL: I like that.

19 BY MR. MOGILL:

20 Q Does it show that?

21 A Yes.

22 Q That's not accurate though; is it?

23 A No.

24 Q It wasn't meant to be accurate.

25 A Not meant to be accurate.

1 Q Did you say in your report, Professor Allen, that was
2 not accurate and was not intended to be accurate?

3 A I didn't think I had to. I said it was stylized and
4 metaphor.

5 Q Is the answer to my question yes or no?

6 A No.

7 Q With respect to the oval representing kids raised in
8 same-sex families the figure shows that based on -- this is
9 supposedly based on Professor Rosenfeld's data that at age
10 eight you can't tell whether a child is in first grade or
11 even lower, or fourth grade. That's what that shows;
12 doesn't it?

13 A Sure.

14 Q That's not accurate either; is it?

15 A No.

16 Q Have you ever said that your figures were meant to
17 represent what Professor Rosenfeld actually found?

18 A What I said early, what I intended to say was that
19 figure captures the essence of the difference between
20 statistical and actual difference, the problem that was in
21 Rosenfeld's paper.

22 Q Do you have your report in front of you?

23 A I do.

24 Q Take a look at Paragraph 26.

25 A All right.

1 Q Why don't you read Paragraph 26 in its entirety?

2 A "However, Rosenfeld did not find a result that
3 corresponded with Figure 1. What Rosenfeld actually found
4 is represented in Figure 2."

5 Q You said "actually found"; didn't you?

6 A What "actually found is represented."

7 So when I say "actually found" I'm referring to
8 back -- if you go back to the beginning of Paragraph 24 I
9 say,

10 "To explain this important point," namely the
11 difference between statistical difference and actual
12 difference, consider the following stylized diagram.

13 So when I say "actually found" what I'm
14 referencing there is the important point which is this
15 difference.

16 Q That's your explanation?

17 A That's my explanation.

18 Q Now, let's move on to your 2013 study based on the
19 Canadian Census.

20 A All right.

21 Q Does it exactly replicate what Professor Rosenfeld did
22 with the U.S. Census in his 2010 demography study?

23 A No, as I said this morning, it's a Rosenfeld like
24 experiment.

25 Q Did you testify at your deposition that what you did

1 was exactly the Rosenfeld experiment "in Canada"?

2 A I'd have to see that. I don't recall saying that, but
3 I might have.

4 MS. HEYSE: Page?

5 MR. MOGILL: Page 87.

6 THE COURT: Line?

7 MR. MOGILL: Lines 15 and 16.

8 A Well, I guess I did say that.

9 BY MR. MOGILL:

10 Q Professor Allen, you claim that there are a number of
11 advantages to using the Canadian Census from 2006 over the
12 U.S. Census -- 2000 Census used by Professor Rosenfeld;
13 correct?

14 A Correct.

15 Q And you went through those on Direct and I'd like to
16 ask you a few questions about that if we might.

17 A No problem.

18 Q One of the advantages you claim for the Canadian
19 Census is that in the Canadian Census same-sex couples are
20 self-identified.

21 A Correct.

22 Q Now, do you have a copy of the Canadian Census in
23 front of you?

24 A No.

25 Q I'm going to ask you a couple of questions and if you

1 need to take a look at it, just let me know.

2 A Is that the long form or the short form?

3 Q The long form.

4 A The long form, okay.

5 Q It's correct, is it not, that while the Canadian
6 Census directly identifies same-sex or opposite sex
7 cohabiting couples it does not directly identify same-sex
8 or opposite sex married couples?

9 A You brought this up at the deposition, and I said at
10 the deposition that I had checked with Stats Canada on
11 whether or not they could identify, self-identify same-sex
12 couples married or cohabiting. They had said yes. I've
13 since checked that and they agree. Whether it comes -- how
14 it comes from the Census forms I don't know.

15 Q Okay. Let's take a look at the Census form.

16 I'm going to give you a point. It is closer to
17 being self-identification in the Canadian Census than it is
18 in the American Census; correct?

19 A According to Stats Canada they tell me that self-
20 identified --

21 MS. HEYSE: Ken, do you have a copy of that?

22 MR. MOGILL: You know, I don't have an extra copy,
23 but I'll share it with you.

24 THE COURT: You can all gather around the witness.

25 Usually we don't let everybody come so close to

1 you, but we'll do it for this time, Doctor.

2 The two of you are fine. The witness sometimes
3 when attorneys get to close to them say, oh, what's going
4 on here.

5 THE WITNESS: That's right. It's very threatening.

6 THE COURT: It is. That's why -- the two of you
7 are not threatening. That's why you ask permission to
8 approach the witness. It's not so much the formality, it's
9 more for the witness so they understand it's okay, and
10 you're not coming up on their space.

11 MS. HEYSE: Thank you, your Honor.

12 BY MR. MOGILL:

13 Q So Professor Allen, I want to show you a document.
14 It's the long form of 2006 Census Data.

15 A All right.

16 Q Question 6, third column, dealing with person 2, the
17 first three bubbles. The second and third bubbles allow for
18 direct identification whether it's same-sex or opposite
19 sex, cohabiting; right?

20 A That's correct.

21 Q The first bubble is just husband or wife.

22 A Correct.

23 Q Without that same breakdown as same-sex or opposite
24 sex; right?

25 A Correct.

1 Q Now, above there you've got person 1 and identify
2 gender versus 2 identify gender; right?

3 A Correct.

4 Q Okay. But it doesn't directly identify same-sex
5 married the same way it directly identifies same-sex
6 cohabiting; correct?

7 A If that's the only question --

8 Q And I'm not questioning --

9 MS. HEYSE: Your Honor, I would ask that he be
10 allowed to finish.

11 THE COURT: Let him finish.

12 A If that's the only question that's identifying the
13 same-sex couple then you're correct.

14 BY MR. MOGILL:

15 Q I would represent -- do you have any reason to believe
16 that this is not the only question?

17 A Only by my conversations with the statisticians at
18 Stats Canada who tell me that they --

19 Q There's going to have a question mark --

20 MS. HEYSE: Your Honor, he's arguing again.

21 THE COURT: Wait. Ask your question.

22 MR. MOGILL: Okay.

23 BY MR. MOGILL:

24 Q It's important to distinguish what they can correlate
25 from the data from whether or not there's an additional

1 question that I haven't showed you; correct?

2 A So in the code book, the code book says are you a
3 child of a married or common law same-sex couple. I've
4 asked Stats Canada, you know, are you identifying the
5 married and common law couples. They tell me yes. So how
6 they do it, I don't know.

7 Q All right. Now, with respect to the self-
8 identification issue and the advantages as you assert them
9 of the 2006 Canadian Census one of the points that you make
10 is that because same-sex marriage was legalized in Canada
11 in 2006, it promoted better self-identification, better
12 openness and responses; correct?

13 A Correct.

14 Q And you address this in your study; correct?

15 A Correct.

16 Q In fact, what you indicated was that your study uses
17 information from a country -- excuse me.

18 That legalization reduces the stress and "stigma"
19 -- I'm going to back up so I put in quotes what needs to be
20 in quotes.

21 What you said at page 638 --

22 A Sorry, where are you reading from?

23 Q This is page 638 --

24 A Is it a footnote or something?

25 Q The page that's got footnotes 5, 6, 7 on it.

1 A All right.

2 Q Okay.

3 A And you're reading from?

4 Q The third from the last and the second from the last
5 lines.

6 "Legalization reduces the stress and" --

7 A I'm noting this is someone else said this; right?

8 Q Yes, but you're adopting it as something that you're
9 relying on; right?

10 A Yep.

11 Q "Legalization reduces the stress and stigma of
12 homosexuality, and encourages honest participation in
13 census questions."

14 Correct?

15 A Correct.

16 Q You also said that families -- an advantage is that
17 family stability is directly controlled for; right?

18 A I have a measure of family stability, yes.

19 Q Okay. And tell the Court, please, what you mean by
20 family stability.

21 A So there's a question that asks your current marital
22 status.

23 Q Okay. Is it or is it not your position or your belief
24 that the Canadian 2006 Census provides information about
25 prior marital history? Any previous divorces? If someone

1 says they're married now, and you don't know whether they
2 were married before or divorced before, things like that.

3 A So I don't know how many divorces -- if somebody says
4 they're divorced I don't know how many divorces. If
5 somebody says divorced I don't know when the divorce took
6 place. If somebody says they're married they could have
7 been divorced and married so. So there's a measurement
8 error there, right, a measurement error that would make
9 these results better in terms of performance of children in
10 households with respect to opposite sex households. So the
11 biases are going in the opposite way. So if I'm finding a
12 number like an odds ratio of .69 maybe it's really .65 or
13 something.

14 Q The question was --

15 A Is it a perfect measure? No.

16 Q Excuse me, if you would answer my question.

17 A I'm sorry. I'm use to asking questions.

18 Q I understand. I teach, too, but we're not in a
19 classroom now.

20 A We're sure not.

21 Q The question is: Whether the Canadian Census allows
22 you -- provides you with information on prior marital
23 history, and it's correct, is it not, that the answer to
24 that question is no?

25 A No, that's not correct. It provides information.

1 Q As to prior marriages or divorces?

2 A If you say you're divorced, you were divorced in the
3 past, right?

4 Q But you don't know how many, you don't know if there
5 was another marriage --

6 A True, it's not a perfect measure, but it provides
7 information on your marital history.

8 Q Would it be fair to say that it provides limited
9 information on prior marital history?

10 A It would be fair to say that.

11 Q Okay. Now, because you were dealing with young people
12 who were ages 17 to 22 in 2006, you were dealing with young
13 adults who were born between the ages of 1979 and 1984;
14 correct?

15 A Correct.

16 Q Those children were born prior to the time that same-
17 sex marriage was legal in Canada; correct?

18 A Correct.

19 Q For the oldest ones they came very far along in school
20 prior to the time same-sex marriage was legal in Canada.

21 A Correct.

22 Q And I think you would not disagree -- tell me if I'm
23 wrong -- with the fact that many of those children who in
24 2006, were living in same-sex households had previously
25 lived in an opposite sex household where their parents had

1 divorced, broken up, some kind of separation or transition;
2 right?

3 A Yes.

4 Q Okay. Now, I'd like to ask you a couple of questions
5 about the differences in the measurement of capacity of the
6 Canadian Census from 2006, and the U.S. Census from 2010;
7 okay?

8 A Capacity, what do you mean?

9 Q Well, Professor Rosenfeld in his study was measuring
10 whether there was normal progress through grades; right?

11 A Correct.

12 Q Did the 2006 Canadian Census allow you to determine
13 whether a child was making normal progress through the
14 grades?

15 A No.

16 Q Because the only identifier in the 2006 Canadian
17 Census that goes to that question was whether or not the
18 individual had graduated from high school or not as of that
19 moment in time; correct?

20 A Correct.

21 Q If a child was having difficulty in progressing
22 through school the Canadian Census does not give you any
23 information as to when that child began having difficulty
24 progressing through school; correct?

25 A That's correct.

1 Q With whom the child was living with at the time she or
2 he began having difficulty progressing through school;
3 correct?

4 A That's correct.

5 Q What transitions in residence or who the care giver
6 was, parental figures were prior to the time they arrived
7 at their current household with the limited exception of
8 the limited parental-marital history that is available;
9 correct?

10 A I'm sorry, there was a cough there, I missed --

11 Q It was very unkind of him to cough.

12 THE COURT: Oh, it's Mr. Pitt.

13 THE WITNESS: A very strategic cough there.

14 THE COURT: He wanted to let all us know he's
15 awake. I've been watching him, he's been awake the whole
16 trial.

17 BY MR. MOGILL:

18 Q The Canadian Census of 2006 doesn't give you
19 information as to transitions the child might have
20 experienced while growing up other than the limited marital
21 history information we've already discussed; correct?

22 A Plus, the five-year residency question. But the two of
23 them, yes, those limited measures.

24 Q Okay. And we'll talk about the five-year residency.

25 A I know we will.

1 THE COURT: Let me ask you one question. Do you
2 have a lot more to go? That's fine. I don't care.

3 MR. MOGILL: I don't think I have a lot more to
4 go.

5 THE COURT: Just because of Joan's hands. Like by
6 1:00; do you think?

7 MR. MOGILL: Yes.

8 THE COURT: Oh, good. I mean, I don't want to
9 break for lunch and come back for a bit.

10 MR. MOGILL: Allen has a long way to go.

11 THE COURT: Okay. Give or take.

12 BY MR. MOGILL:

13 Q It's correct, is it not, Professor Allen, that unlike
14 the United States Census which separates out children by
15 whether it's a natural born child, a step child, an adopted
16 child, or a foster child the Canadian Census lumps them all
17 together; correct?

18 A That's correct.

19 Q Now, you talked a little bit on Direct Examination
20 about this decision to have your sample include children,
21 young adults as it were, ages 17 to 22; right?

22 A Correct.

23 Q And you acknowledge that there was an issue there;
24 correct?

25 A Correct.

1 Q If I recall correctly you identified that as a
2 legitimate concern.

3 A Correct.

4 Q Let's clarify for the Court the factual possibilities
5 when you've got kids that you're looking at here, okay. You
6 can have someone who has -- whether it's a same-sex or
7 opposite sex household, someone who has graduated from high
8 school and is living at home, okay -- this is just among
9 graduates, okay?

10 A Okay.

11 Q If someone has graduated from high school and is
12 living at home they're going to get picked up; right?

13 A Yes.

14 Q If someone has graduated from high school and is away
15 at college but comes home during the summer they're going
16 to get picked up; correct?

17 A Correct.

18 Q And if someone has graduated from high school and
19 moved on and is not coming home for the summer they don't
20 get picked up.

21 A That's correct.

22 Q Even though they will have graduated from high school
23 on time whether it's a same sex or opposite household;
24 right?

25 A Correct.

1 Q And so -- I think as you testified, you made a
2 compromise and decided this was a good range to run but
3 acknowledged that there was a balancing act and there are
4 concerns.

5 A I also testified that I made robustness checks --

6 Q You testified that you made robustness checks, and
7 that's part of how you came to your conclusion; right?

8 A Correct.

9 Q While you report and I have no reason -- I'm not
10 questioning this, that you control for disability among
11 your controls, it is a fact that among the data you found
12 was that children in the same-sex households about 13
13 percent of them were disabled whereas in opposite sex
14 households it was about 6 percent; correct?

15 A That's correct.

16 Q You testified this morning in Direct that the essence
17 of your conclusions is pretty much summed up Table 5;
18 right?

19 A Let me see. No, I think the essence is summed up in
20 Table 6.

21 Q Let's make sure we're on the same page.

22 Table 5 is the essence of your findings before
23 you break down the family structure by boys and girls and
24 gay and lesbian.

25 A That's true.

1 Q Table 6 is after you do that breakdown.

2 A That's right.

3 Q So before you do the breakdown tell the Court what you
4 claim to be the main finding of your study?

5 A I would say the main finding has to do with
6 Column 3, all right. And the main finding is that for gay
7 households there is a negative effect on children that's
8 statistically significant. For lesbians there's a
9 difference, but it's not statistically significant.

10 Q And are you making a claim that this was based on a
11 one-year or five-year residency stability factor?

12 A I think this one is the past year, but I did it also
13 with the five year.

14 Q We'll get to that in a minute.

15 A Okay.

16 Q And your Table 6 is also based on one year; correct?

17 A Based on the last year, correct.

18 Q Okay. Is it your claim, Professor Allen, that your
19 paper is studying the effect of growing up in a same-sex
20 household?

21 A I think I made it very clear in the paper that I'm
22 talking about people who are living in a same-sex
23 household.

24 Q And that that's a difference; right?

25 A That's a difference.

1 Q In fact, you make that plain in your paper in Footnote
2 9; isn't that correct?

3 A That's correct.

4 Q Why don't you read Footnote 9 in its entirety, please,
5 Professor?

6 A "The census is not a panel, and provides and only a
7 snap shot of the population. As a result, this paper does
8 not study the effect of growing up in a same-sex household,
9 but rather examines the association of school performance
10 for those children who lived with same-sex parents in
11 2006."

12 Q So if Ms. Heyse asked you the question this morning
13 and if Professor Price testified yesterday and I'm
14 asserting to you he did that looking at your Canadian
15 Census study gives information about growing up, or I think
16 the phrase in both of their -- in her question today and
17 his testimony yesterday was being raised in a same-sex
18 household, both the question and the testimony yesterday
19 are incorrect; isn't that correct?

20 A No, I don't think so.

21 May I explain?

22 Q No.

23 You do run a regression -- you do run a table for
24 five years.

25 A I do -- I did.

1 Q I want to back up for a second. There's no ifs ands
2 and buts in your paper or in Footnote 9 with respect to the
3 statement that this paper does not study the effect of
4 growing up in a same-sex household; correct?

5 A That's what it says.

6 Q Those are your own words; right?

7 A Those are my own words.

8 Q So then you've got your Table 5 and Table 6 based on
9 one-year residency; right?

10 A Correct.

11 Q And those show approximately a 35 percent difference

12 --

13 A Yes.

14 Q But you also took a look at the numbers where there
15 had been five years of residential continuity; right?

16 A Right.

17 Q And it's correct, is it not, Professor Allen, that you
18 find no statistically significant difference in high school
19 graduation rates between the children of opposite sex
20 married families and children of gay or lesbian parents
21 when controlling for parental education and marital status
22 based on five years of residency.

23 A Where are you reading that?

24 Q That's my question.

25 A No, are you quoting that from somewhere?

1 Q I'm asking you a question.

2 MS. HEYSE: Your Honor, I would ask if he's
3 quoting from something that it be identified so that --

4 MR. MOGILL: If I'm quoting from some place, I'm
5 putting quotes around it and identifying it to the witness.

6 THE COURT: Very well.

7 A So when I originally submitted this paper to the
8 journal I submitted both the one year and the five year.
9 And the editor --

10 BY MR. MOGILL:

11 Q I'm sorry, I'm going to interrupt you because --

12 THE COURT: Just answer the question.

13 A No, I did not find that. The results were virtually
14 identical, I believe.

15 BY MR. MOGILL:

16 Q All right. Look at Table 8 which you identify as the
17 Appendix, and look at column 3.

18 A Table 8. Okay.

19 Q Column 3 is where you control for parental education
20 and marital status. Asterisks mean statistically
21 significant difference; correct?

22 A Okay, correct, yeah. There is it.

23 Q There is not statistically significant difference in
24 high school graduation rates of children age 17, 22 living
25 in an opposite sex or a same-sex household according to

1 your own data when there's been five years of residential
2 stability; isn't that right?

3 A That's correct, yes.

4 Q You don't discuss that in your report; do you?

5 A Well, because I think for me Table 7 as I said earlier
6 was the interesting table, the chief outcome of the paper.

7 Q There's no question though that your own report finds
8 no statistically significant difference in graduation rates
9 when you control for parental education and marital status
10 and when you do control for five years of residential
11 stability; correct?

12 A When you don't divide the boys and girls up, yes.

13 Q Now, moving on, you have or have had affiliations with
14 a number of organizations and you talked a little bit about
15 this on Direct that are actively opposed to same-sex
16 marriage; right?

17 A Correct.

18 Q The Heritage Foundation.

19 A I've been to a meeting at the Heritage Foundation,
20 yes, and that phone conversation -- a conference call.

21 Q One meeting or two meetings?

22 A I testified it was two meetings at the deposition
23 because my memory was that I had met Brad Wilcox and I met
24 Joe Price there, and in my memory I thought that was two
25 separate meetings. When I got back I double-checked and

1 found out it was only one meeting.

2 Q Okay. And the purpose of the meeting, of course, was
3 to address issues around planning for further activities to
4 oppose legalization of same-sex marriage in the United
5 States; correct?

6 A False.

7 Q It's just a coincidence you're at -- your various
8 opponents of same-sex marriage were at the Heritage
9 Foundation for a meeting?

10 MS. HEYSE: Objection, your Honor. That's
11 argumentative and it's been asked and answered.

12 THE COURT: I haven't heard the question yet.

13 MR. MOGILL: I'll ask a different question.

14 BY MR. MOGILL:

15 Q Regardless of the purpose of the meeting, Brad Wilcox
16 was there; right?

17 A Yes.

18 Q Maggie Gallagher was there.

19 A Yes.

20 Q And you and Maggie Gallagher have co-authored at least
21 one paper together.

22 A Correct.

23 Q And she is a very passionate opponent of same-sex
24 marriage; is she not?

25 A Correct.

1 Q You mentioned that Professor Price was there.
2 A Correct.
3 Q Professor Regnerus.
4 A I don't think he was there.
5 Q You testified at your deposition --
6 A Yeah, I know. Afterwards I was thinking, I don't think
7 I met him there.
8 Q Okay. David Blankenhorn.
9 A He was there.
10 Q And he was an individual I think you testified at your
11 deposition who had been a witness opposing same-sex
12 marriage in the Perry case who later changed his position
13 to supporting it; correct?
14 A Correct.
15 Q Now, you also indicated that you're affiliated with
16 the Ruth Institute.
17 A Correct.
18 Q And the slogan of the Ruth Institute is marriage, one
19 man, one woman for life; correct?
20 A Correct.
21 Q You're on a circle of experts. You explained on Direct
22 what that does or not entail; right?
23 A Correct.
24 Q I asked you at your deposition whether you were or
25 ever had been a board member and you said no.

1 A Right.

2 Q I want to show you something.

3 Professor, I just handed you something that
4 appears to be -- I would suggest to you it taken from the
5 Ruth Institute website. Does that look like something from
6 the Ruth Institute website?

7 A The top logo looks like it is, yeah.

8 Q One man, one woman for life.

9 A Yep.

10 Q As you start coming down the page it's got information
11 with your name on it and several different locations;
12 correct?

13 A Correct.

14 Q And about the fourth time your name is mentioned the
15 first thing it says is Ruth Board, and then your name.

16 A Right.

17 Q Doug Allen.

18 A Right. That's false.

19 Q So it's your testimony that if the Ruth Institute is
20 holding you out as a board member the Ruth Institute is
21 wrong.

22 A Absolutely.

23 Q Just a couple more questions. I want to ask you,
24 Professor, for a self-assessment of whether you are in any
25 way biased in your research, interpretation of data, as it

1 pertains to this case because of your views on
2 homosexuality?

3 A Are you asking me a question?

4 Q That's the question.

5 A What's the question, am I biased?

6 Q Yes.

7 A I don't believe I'm biased.

8 Q Okay. It is correct, is it not, and you testified to
9 your religious affiliation on Direct Examination; right?

10 A Correct.

11 Q It is correct, is it not, that as part of your
12 religious belief --

13 MS. HEYSE: Objection, your Honor.

14 THE COURT: Sustained.

15 MS. HEYSE: Thank you.

16 THE COURT: You opened the door so I'll give him a
17 little -- one question.

18 Go on.

19 MR. MOGILL: That's fine.

20 BY MR. MOGILL:

21 Q It's correct, is it not, Professor Allen, as you
22 testified at pages 13 and 14 of your deposition that the
23 consequence of engaging in homosexual acts quote, means
24 eternal separation from God, in other words going to hell,
25 unquote.

1 A If it's not repented, yes.

2 MR. MOGILL: Nothing further.

3 THE COURT: Any further, counsel?

4 MS. HEYSE: Yes, your Honor. I do and I know
5 you're interested in taking a break and I probably will
6 take a few minutes --

7 THE COURT: Go on.

8 MS. HEYSE: It's going to be a little bit.

9 THE COURT: I don't want to rush you but it also
10 would be nice -- if that okay, Joan?

11 THE WITNESS: I'm totally fine.

12 THE COURT: Pardon?

13 THE WITNESS: Sorry, I thought you were talking to
14 me.

15 THE COURT: No, no. I want to get you out, too.

16 Go on. Take your time.

17 Joan, if you get too fatigued -- she'll let us
18 know.

19 MS. HEYSE: It won't take long.

20 THE COURT: Joan will let us know. She's not
21 bashful.

22 MS. HEYSE: All right.

23 REDIRECT EXAMINATION

24 BY MS. HEYSE:

25 Q Doctor Allen, early on in Mr. Mogill's Cross-

1 Examination he had referred you to a quote about apples and
2 oranges in talking about Dr. Regnerus study. It appeared
3 that you wanted to expand on that. Can you tell me what in
4 addition to what you've had already said you would still
5 like to say?

6 A I think we actually did expand on it during his other
7 questions, but basically that he -- there's this tradeoff
8 on, that he wants to increase his sample size that's
9 causing this problem. The problem is arising from the fact
10 that he can't separate out instability from same-sex
11 households. And so he's either left with nothing. The
12 stable households are very small, or he's going to
13 introduce his instability and have a larger sample size.
14 That's all I wanted to say.

15 Q These are somewhat complicated concepts. Is there a
16 drawing or an illustration that you could do that would
17 help us understand how that works?

18 A I could represent it on a graph.

19 MS. HEYSE: May he approach and work off of the
20 Elmo?

21 THE COURT: Of course.

22 A It's just a way of understanding what's going on in a
23 lot of these regressions.

24 So let "Y" -- "Y" is the dependent variable. So
25 it's normal progress through school, or it's graduating

1 from high school, or something like that. And the circle
2 represents just a variation that you have in the data.

3 Suppose we're interested in the effect of some
4 variable "X1" on the variable "Y". There's some overlap or
5 influence, correlation between "X1" and "Y". And if we just
6 had a simple regression that we're regressing "Y" on "X1"
7 the computer would use this information to have the
8 estimate. It would use that. That's what it would use to
9 estimate the coefficient. And the more overlap there is the
10 smaller the standard errors and the more power you've got.

11 When you've got two variables that you're
12 interested in, so maybe this is education, maybe this is
13 household type, you've got a problem with this overlapping
14 variation here. And what a computer essentially does is it
15 ignores that variation, and it uses just this information
16 over here to estimate the effect of "X1", and this
17 information over here to estimate the effect of "X2".

18 The information is less, there's less information
19 which means the standard errors go up. But it's unbiased
20 because you're not counting this information here. This is
21 why it's important to control for family stability, etc.,
22 because if you don't control for that the computer is going
23 to use this information and have a bias estimate.

24 The problem with a lot of these studies is you've
25 got this going on (indicating). You've got -- here's your

1 outcome variable. Here's your -- suppose this is your
2 household-type variable, your same-sex variable. And now
3 when you add stability you get this (indicating.) You get
4 so much overlap that effectively being unstable is often --
5 almost the same thing as being same sex.

6 We didn't talk about the Potter Study today, but
7 in Regnerus it's the same thing. There's so much overlap
8 between being unstable and being part of a same-sex
9 household that there's -- the computer basically ignores
10 all this overlap. But all that overlap is basically all the
11 variation in the same-sex household. So what you find is no
12 statistical effect. But the computer just doesn't have any
13 information to identify that effect. It's identifying an
14 effect for stability over here because there is some
15 independent variation. And that's what's often the
16 fundamental problem here. We don't have enough data to
17 separate out all these things.

18 So Regnerus, you know, he had so much overlap
19 here that when he was left over he just had two
20 observations that weren't part of that overlap, and that's
21 his fundamental problem.

22 THE COURT: You say the computer, who writes the
23 programs?

24 THE WITNESS: So you're using a statistical
25 package. Most of us are using a package called --

1 THE COURT: There are packages. So you may be
2 using the same package as others.

3 THE WITNESS: Right. And within the package you
4 write a code, but the code would say "Y" is the dependent
5 variable --

6 THE COURT: So anybody -- when they say
7 "disclosing the code" that's what they mean.

8 THE WITNESS: That's what they mean. They're
9 saying, you know, the various selections.

10 THE COURT: Right. So the same package --

11 THE WITNESS: Usually, we're using the same
12 package. You know, there's about three or four that are
13 common.

14 THE COURT: But when you say certain researchers
15 and scholars disclose they're disclosing the code in that
16 package so that you know what --

17 THE WITNESS: They're disclosing their code that
18 they wrote in that package that describes, you know, here's
19 where I got the variables, here's what I selected on,
20 here's how I defined the regression.

21 THE COURT: That's what I thought, but you just
22 confirmed it.

23 Okay.

24 BY MS. HEYSE:

25 Q So that second drawing that you had up there of Dr.

1 Regnerus study essentially he was -- as you mentioned
2 earlier he was making a choice between controlling for
3 stability and having an adequate sample size to make any
4 type determination.

5 A I mean, he does have this problem when he ignores
6 stability he's going to have this problem of a bias, but
7 he's increased in sample size. It's a trade off, and people
8 have to make a judgment call on whether it was the right
9 one or wrong one.

10 Q But the instability is prevalent in these studies.

11 A Yes.

12 Q Okay. And is that because these children are coming
13 into these relationships based upon a failed heterosexual
14 union?

15 A Well, not necessarily just that. I mean, it might be
16 the fact that the same-sex household themselves are
17 unstable.

18 Q Okay. Mr. Mogill referred you to an article in
19 "Mercatonet."

20 A Correct.

21 Q Do you still have that in front of you?

22 A I don't have it right in front of me.

23 Q Okay.

24 MS. HEYSE: May I approach?

25 THE COURT: You may.

1 BY MS. HEYSE:

2 Q I just want to make clear because there was additional
3 information that came beyond the sentence that Mr. Mogill
4 had you quote. If you could read the sentence that he had
5 you originally recite.

6 A The original one that he had me cite was,

7 "This paper had a large random sample and looked
8 at normal progression through school in the U.S. It was in
9 my opinion the first solid piece of statistical work done
10 on the question and he confirmed the no difference
11 finding."

12 Q And that's referring to the Rosenfeld Study; correct?

13 A Correct.

14 Q And can you read slowly the following sentence?

15 A "Later, Joe Price, Catherine Pakaluk, and myself
16 replicated his study and found two problems."

17 Q Thank you.

18 I believe it's important to understand the entire

19 --

20 A Context.

21 Q And, again, Dr. Allen, Mr. Mogill had you read
22 Paragraph 29 from your report. If you could read that,
23 please?

24 A The entire paragraph?

25 Q Correct.

1 A “Rosenfeld’s justification for the sample restriction
2 was legitimate. He was concerned with comparing apples to
3 apples. If children are adopted or arrive into a family in
4 a non-traditional way then failure to make normal progress
5 in school may be caused by some unmeasured difference that
6 is correlated with the adoption. Likewise, he wanted
7 children who are raised in the same-sex household, not just
8 one who were living there during the time of the census.
9 For both reasons he decided to drop cases from the sample
10 even though such a decision reduced the power of the test
11 significantly.”

12 Q Okay. And then did you go on to further explain that
13 in the next paragraph?

14 A Next paragraph,

15 “Allen, Price, and Pakaluk agreed with the two
16 concerns, but replicated the Rosenfeld experiment using a
17 different procedure. They restored the sample to the full
18 size of 1,610,880 cases...”

19 Q I can stop you there, the point being you did
20 recognize that there were the concerns and you dealt with
21 them, you just did it in a different way; correct?

22 A In a different way.

23 Q Thank you.

24 MS. HEYSE: May I approach again, your Honor?

25 THE COURT: Absolutely.

1 BY MS. HEYSE:

2 Q Now, Mr. Mogill also referred you to a quote from your
3 paper that I just handed you and that's from "High School
4 Graduation Rates"; correct?

5 A Correct.

6 Q And he referred you to I believe the last sentence of
7 that paragraph that's highlighted -- underlined there?

8 A The one that says "the increased chance"?

9 Q Correct. If you could read that, please?

10 A "The increased chance of failing a grade especially
11 when the correlation magnitude is so close to that of
12 single parents could likely be the result of a previous
13 divorce or separation since many children in same-sex
14 households were initially born into opposite sex families
15 that later broke apart. The 'same-sex' aspect of the these
16 parents may have nothing to do with slower grade progress."

17 Q Okay. Was there some information at the beginning of
18 that paragraph that puts this into context?

19 A The opening sentence says,

20 "A review of the same-sex parenting literature
21 inevitably leads to the conclusion that it is a collection
22 of exploratory studies."

23 Q Okay. Doctor Allen, why doesn't Rosenfeld's study
24 settle the issue of child outcomes?

25 A Well, first off, it's just the first study, right? I

1 mean, it's only one measure, one study using a 2000 census
2 before there was even any same-sex marriage. So as
3 important as it was it's just -- the very beginning.

4 Second, the result depends on the method that you
5 use. Although if you just look at the -- including all the
6 own children you find a difference and it is statistically
7 significant. But still you would say it's not that robust
8 so I don't think you want -- you know, you can't draw that
9 firm of a conclusion from just one study. You would want to
10 see lots of different studies, and ones that are better,
11 and use higher quality data, etc.

12 Q And I think you testified earlier on Cross-Examination
13 that you don't dispute the own child restriction in the
14 Rosenfeld Study.

15 A I just think it should be done properly.

16 Q So you don't agree with that restriction.

17 A I would prefer to put a control in. I think that's
18 just a more standard practice. But if you are going to do a
19 sample restriction, you want to make sure that all the own
20 children are actually in the sample, not just some of them.

21 Q And Mr. Mogill in your "High School Graduation Rates"
22 study pointed you to some tables that were limited to a
23 one-year residency restriction. You did, in fact, do your
24 calculations under a five-year residency restriction as
25 well; correct?

1 A Correct.

2 MS. HEYSE: If I may approach again, your Honor?

3 THE COURT: Of course.

4 MS. HEYSE: Thank you.

5 BY MS. HEYSE:

6 Q Footnote 9, can you read that for me?

7 A "The census is not a panel, and provides only a
8 snapshot of the population. As a result, this paper does
9 not study the effect of growing up in a same-sex household,
10 but rather examines the association of school performance
11 for those children who lived with the same-sex parents in
12 2006."

13 Q Is that true of all census data?

14 A That's true of the U.S. Census as well.

15 Q Okay. I think you wanted to expand on this to some
16 extent --

17 A I just wanted to expand on it so Rosenfeld tries to
18 deal with that with his five-year residency issue. I deal
19 with that with the divorce variable. So it's a true it's a
20 snapshot and it's true -- what I mean by that footnote is,
21 you know, we don't literally know who's living -- or who's
22 being raised by these households. But we try to get at that
23 somehow, and I'm getting at it with the divorce variable.

24 Q And that's true of the Rosenfeld Study?

25 A Rosenfeld tried to get at it with his five-year

1 residency variable.

2 Q And that's true of your replication of the Rosenfeld
3 Study?

4 A For the replication we use the five-year residency
5 variable as well.

6 Q Okay. And I also handed you a copy of Table 8 from
7 your study as well. Mr. Mogill pointed out that you didn't
8 refer to this particular table in your "High School
9 Graduation Rates" report, can you explain?

10 A It's just here to show the robustness with the --
11 relevant to Table 5. Like I said, for me when I was writing
12 this paper the most interesting outcome was what happens
13 when you split up the boys and girls. And for me, again,
14 I'm not that interested in the actual point estimates as
15 much as it just looks like the gender matters. I think
16 that's the take away. I'm not holding this study up as,
17 okay, this is the definitive study. It's just another
18 study. That's why I keep saying about how we're just coming
19 into the door. We're just starting down this road. The take
20 away for me on this paper is the gender composition looks
21 like it matters, and that's in a natural experiment kind of
22 context when it really shouldn't matter. Why would it
23 matter if it was a boy or a girl? So I think that warrants
24 a lot more investigation.

25 Q And that was something new beyond --

1 A It's something new. Rosenfeld didn't look at it.

2 MS. HEYSE: One more time, your Honor?

3 THE COURT: Sure.

4 BY MS. HEYSE:

5 Q I'm handing you page 87 from your deposition
6 transcript. Mr. Mogill had you refer to -- recite that
7 earlier in your testimony. If you would go to line 13.

8 A So just reading,

9 "As I was working with Canada Census, I realized
10 that the child records were linked to the parent records.
11 Therefore, I could do exactly the Rosenfeld experimenting
12 Canada."

13 Q You didn't say you did the Rosenfeld experiment
14 exactly; correct, just that you could.

15 A I could, right.

16 Q Thank you.

17 Doctor Allen, is there any dispute that both the
18 United States Census and the Canadian Census data is
19 limited?

20 A No dispute.

21 Q So, in fact, in using that data we don't know what's
22 going on within households; correct?

23 A We're limited in what we know.

24 Q Okay. So isn't your dispute with Professor Rosenfeld
25 just further evidence that this area is unsettled?

1 A It's unsettled, that's right. There's some evidence
2 that's there's a difference, but it's still at the very
3 beginning of the process.

4 MS. HEYSE: I have no further questions, your
5 Honor.

6 THE COURT: Perfect.

7 You may step down, Doctor.

8 THE WITNESS: Thank you.

9 THE COURT: My understanding is that the State has
10 rested with this being their last witness; is that correct?

11 MS. HEYSE: We're going to be admitting those
12 reports.

13 THE COURT: I was just going to talk about that.

14 Subject to both sides marking and numbering their
15 expert witnesses that testified reports.

16 Also you can go through the books, make sure
17 everything's been admitted. I think we've been pretty
18 diligent in terms of getting everything admitted. If
19 there's something, take a look at it and we'll go from
20 there.

21 We'll start at 10:00 o'clock tomorrow. We will
22 start with the plaintiffs' closing argument. We will then
23 go to the Oakland County Clerk Brown's closing argument.
24 Then we will go to the State defendants' closing argument.
25 We will then allow the plaintiffs within the time frames

1 that we have discussed whatever time is left over if they
2 care to use for purposes of rebuttal.

3 Is there anything we should talk about -- oh, one
4 more thing just -- since we're all here. We talked about
5 this before that any side that wishes to submit either
6 findings of fact, conclusions of law will do so by noon on
7 Monday. They are not required. They will be simultaneous
8 submissions which means just file them. There won't be any
9 responses or anything of that nature.

10 Starting with the plaintiffs, is there anything
11 -- strike that.

12 My understanding is you're not calling any
13 rebuttal.

14 MS. STANYAR: That's correct.

15 THE COURT: Okay. Is there anything that you want
16 to talk about while we're all here before we start closing
17 arguments tomorrow?

18 MS. STANYAR: I don't believe so.

19 THE COURT: Okay. How about the State defendants?

20 MS. HEYSE: No, nothing from the State, your
21 Honor.

22 THE COURT: Mr. Pitt, anything?

23 MR. PITT: No.

24 THE COURT: Okay. We'll see you all tomorrow at
25 10:00 o'clock.

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(Proceedings concluded, 1:10 p.m.)

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CERTIFICATE

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

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

March 12, 2014