

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

v.

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

RICHARD SNYDER, ET AL.,

Defendants.

BENCH TRIAL
VOLUME 1

Tuesday, February 25, 2014

Appearances:

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KENNETH MOGILL, ESQ.
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1 Detroit, Michigan
2 Tuesday, February 25, 2014
3 2:00 p.m.

4 - - -
5 - - -

6 **DAVID M. BRODZINSKY, PH.D.,**
7 being first duly sworn by the Court to tell
8 the truth, was examined and testified upon
9 their oath as follows:

10 - - -

11 **CROSS-EXAMINATION**

12 **BY MR. POTCHEN:**

13 **Q.** Can you hear me now? Thank you. Good afternoon.

14 **A.** Good afternoon.

15 **Q.** We have heard a lot about foster and adoption and I
16 want to talk a little bit more about the facts of this
17 case that we have here today. Here the children are not
18 lingering in foster care, is that correct?

19 **A.** That's correct.

20 **Q.** And here the children have been adopted, is that
21 correct?

22 **A.** By the respective parents, yes.

23 **Q.** So both adult plaintiffs are raising the children,
24 correct?

25 **A.** That's correct.

1 Q. And all three of these children are being raised by
2 Ms. Deboer and Ms. Rowse together, correct?

3 A. Correct.

4 Q. Ms. Deboer and Ms. Rowse did not refuse to adopt the
5 children because they couldn't get married, right?

6 A. I assume so, yes.

7 Q. And they did not refuse to adopt the children
8 because they couldn't do so jointly, correct?

9 A. Correct.

10 Q. And you would agree that Ms. Deboer and Ms. Rowse
11 who are not married, are in a stable loving relationship,
12 correct?

13 A. I will assume although I have not interviewed them.

14 Q. And you agree that they are providing a stable
15 environment for the children they have adopted, correct?

16 A. I would assume so.

17 Q. And, in fact, you don't recall personally of any
18 adoptive same sex couple who chose not to adopt solely
19 because they couldn't do so jointly, isn't that true?

20 A. Not personally, correct.

21 Q. Now, Doctor Brodzinsky, you understand that Ms.
22 Deboer on Ms. Rowse would like to get legally married in
23 the State of Michigan?

24 A. Correct.

25 Q. And you agree that this notion of same sex marriage

1 is something relatively new in the United States, correct?

2 A. Correct.

3 Q. And you are aware that no state in this country
4 permitted same sex marriage until Massachusetts did in May
5 of 2004, correct?

6 A. Correct.

7 Q. And you know that no country in the world allowed
8 same sex couples to marry until the Netherlands did in
9 2000, correct?

10 A. I didn't know the specific date but I knew the
11 Netherlands was first.

12 Q. You agree that as a result of this fairly new
13 concept of same sex marriage, it's been difficult to find
14 studies showing outcomes for children raised by same sex
15 marriage couples?

16 A. Correct.

17 Q. And, in fact, you testified that no comprehensive
18 study has been done on children outcomes actually raised
19 by married same sex couples, correct?

20 A. Correct.

21 Q. And you also agree that the research is mixed as to
22 whether allowing same sex couples to marry will result in
23 greater stability in their relationship, isn't that true?

24 A. Repeat the question.

25 Q. Sure. You agree that the research is mixed as to

1 whether allowing same sex couples to marry will result in
2 greater stability in their relationship?

3 **A.** I'm not sure I completely follow that question but I
4 will respond that there are studies on relationship
5 stability in same sex couples. And I think you were
6 asking are those studies mixed as to whether or not there
7 is a higher or lesser breakup rates compared to
8 heterosexuals.

9 **Q.** I am talking about outcomes. And we can refer to
10 your deposition if you could like to?

11 **A.** Please.

12 **MR. POTCHEN:** May I approach the witness?

13 **THE COURT:** Of course.

14 **MR. POTCHEN:** Do you need this?

15 **THE COURT:** I don't ready need it. I
16 appreciate it though.

17 **BY MR. POTCHEN:**

18 **Q.** I ask you to turn to page 185, lines eight through
19 eighteen.

20 **THE COURT:** Sorry. I may need it if you
21 don't mind. What page?

22 **MR. POTCHEN:** Page 185.

23 **THE COURT:** Thank you.

24 **BY MR. POTCHEN:**

25 **Q.** I'm going read starting at page, line eight --

1 excuse me.

2 **THE COURT:** Go ahead. That's right.

3 **BY MR. POTCHEN:**

4 **Q.** I guess at this point I am not looking to impeach
5 him. Does this refresh your recollection?

6 **A.** Sure.

7 **Q.** Yes. You would agree that the research is mixed as
8 to whether allowing same sex couples to marry will result
9 in greater stability in their relationship?

10 **MS. STANYAR:** Objection. That's not what the
11 deposition language says.

12 **THE COURT:** I guess you can answer the
13 question. And then the next question would be -- why
14 don't you repeat the question?

15 **THE WITNESS:** I don't think --

16 **THE COURT:** Hold on, one second. Let him
17 repeat the question. It's out of my mind, too.

18 **BY MR. POTCHEN:**

19 **Q.** You would agree that the research is mixed as to
20 whether allowing same sex couples to marry will result in
21 greater stability in their relationship?

22 **A.** I do not believe that what we are talking about in
23 my deposition exactly addresses the question you are
24 asking. What my deposition response here has to do with
25 was talking about the research that -- about the breakup

1 rates of same sex couples. And there is some old research
2 by Anderson and there is some new research on civil
3 relationships by Balson (ph) and there is a UK study by
4 Ross that I mentioned in here. And the old studies showed
5 higher breakup rates and the new ones show either no
6 differences or actually the UK shows over a five year
7 period lesser breakup rates. That is what this was
8 referring to.

9 Q. When we're talking about breakup rates, we're
10 talking about stability?

11 A. Yes.

12 Q. And the research is mixed when we talk about
13 stability?

14 A. Yes, okay.

15 Q. Okay. You understand that the definition of
16 marriage in Michigan has always been the union of one man
17 and one woman, correct?

18 A. I assume, yes. I don't know the law specifically
19 though.

20 Q. You don't know Michigan's marriage laws?

21 A. I have not reviewed them. But I assume given what
22 this case is about, that it's defined by a man and woman.

23 Q. Okay. You know that Michigan never recognized same
24 sex marriage, correct?

25 A. Yes, that's correct.

1 Q. As to your publications, nothing that you have
2 published deals with the issue same sex marriage, correct?

3 A. That's correct.

4 Q. And as to your publications, only a small
5 percentage, around 10 percent, deal with the issue of same
6 sex parenting, correct?

7 A. Correct.

8 Q. And your clinical work does not focus on same sex
9 marriage, correct?

10 A. Not same sex marriage, no.

11 Q. When doing research on child development, I'm going
12 to now move on to research, okay -- you agree that the use
13 of convenient samples is the traditional method?

14 A. Correct.

15 Q. And convenient sampling is basically done by getting
16 data from people who volunteer or who are selected due to
17 their availability and easy access, correct?

18 A. Correct.

19 Q. And the advantages of this type of sampling is the
20 availability and the quickness to which data can be
21 gathered, correct?

22 A. Correct.

23 Q. The disadvantages are the risks that the sample
24 might not represent the population as a whole, correct?

25 A. Correct. If that is the question of interest, then,

1 correct.

2 Q. And another disadvantage is it might be biased by
3 the volunteers for the sample?

4 A. That's possible.

5 Q. You agree that much of the research on child
6 development in same sex households is based on convenient
7 samples, correct?

8 A. The bulk of it is, yes.

9 Q. And you agree there are other ways to research
10 outcomes for children besides using convenient samplings,
11 correct?

12 A. Correct. As I testified, too, if you are interested
13 in what is going on in the family, then the smaller
14 samples make it much more readily -- it's much easier to
15 look at that. The large samples generally do not allow us
16 to do that.

17 Q. I want to make sure I have this correct on your
18 direct testimony, statistical power is affected by sample
19 size, correct?

20 A. Sample size, yes, is one of the factors.

21 Q. And you agree that in well-conducted social science
22 research, it's important to have clearly defined
23 comparison groups before drawing conclusions regarding
24 either similarities or differences between the two groups,
25 correct?

1 **A.** Generally true, yes.

2 **Q.** So it's important to compare apples to apples, I
3 believe was the term used today?

4 **A.** Yes. I would point out that no study can do that
5 exactly because we can't control people's lives. So we
6 try to match for what we believe to be the relevant
7 factors, and what we can't match for, we try to take into
8 account in other statistical ways for that. But certainly
9 what we go -- what we -- the goal is to try to match for
10 relevant factors.

11 **Q.** Right. The goal is to match apples to apples.
12 Whether you can do it all the time might not be possible.

13 **A.** That's correct.

14 **Q.** I want to switch to this APA policy statement that
15 was entered as Exhibit 112 into the testimony here today.
16 And the APA policy statement says, not a single study has
17 found children of lesbian or gay parents to be
18 disadvantaged in any significant respect relative to
19 children of heterosexual parents.

20 **A.** Correct.

21 **Q.** And you testified there have been actually a few
22 studies, you just don't agree with the studies, that have
23 found children of lesbian or gay parents to be
24 disadvantaged, isn't that true?

25 **A.** The studies of state's witnesses have allegedly

1 shown that.

2 Q. Whether you agree with them or not, first of all,
3 there are studies that have found children of lesbian
4 and/or gay parents to be disadvantaged, isn't that true?

5 A. That's what they allege, yes.

6 Q. Now, the APA's policy statement came out in 2005.
7 Are you aware of that?

8 A. Yes.

9 Q. And the APA policy statement relied on 67
10 manuscripts. Are you aware of that?

11 A. I wasn't aware of the specific number.

12 Q. Okay. Did you know that only 59 of those
13 manuscripts were published?

14 A. Again, I don't know the specific of what they based
15 it on.

16 Q. You don't know any of the specifics?

17 A. I wasn't part of the group that assessed that.

18 Q. Okay. Were you aware that 45 of those studies are
19 based on convenient samples?

20 A. That would probably be accurate. I don't know the
21 specifics, but certainly convenient samples were the main
22 type of samples available at that time.

23 Q. Were you aware that one of the studies forming the
24 basis for the APA policy statement had only five
25 participants?

1 **A.** I wasn't aware of that, no.

2 **Q.** Did you know, of the 59 published studies, 26 did
3 not include a heterosexual comparison group?

4 **A.** I did not. But, of course, again, the question of
5 which comparison group is governed by the questions of
6 interest.

7 **Q.** These had no comparison groups. Were you aware of
8 that?

9 **A.** I wasn't aware of that, no.

10 **Q.** Did you know of the 33 published studies which had
11 comparison groups, 13 of the comparison groups were single
12 parents in comparing them to same sex couples?

13 **A.** I wasn't aware of that.

14 **Q.** And so I guess you wouldn't know of the 20
15 remaining, how many consisted of two biological
16 heterosexual parents?

17 **A.** I would not know that, no.

18 **Q.** You testified that children who grow up in families
19 where they don't have a relationship with a biological
20 parent or two biological parents, they generally do quite
21 well?

22 **A.** Yes.

23 **Q.** But you agree that biology plays a role in the life
24 of a child, correct?

25 **A.** It can, yes.

1 Q. To be clear, you are not claiming that it is somehow
2 bad for a child to be raised by his or her married
3 biological father and biological mother if they are
4 providing a good environment for the child?

5 A. Yes. Absolutely. Correct.

6 Q. And you are not against opposite sex parents raising
7 a child in a good environment, correct?

8 A. Of course not.

9 Q. I want to ask a few questions about adoption that
10 you testified to. In Michigan a single person can adopt
11 whether they are gay, lesbian, straight, if they are
12 deemed fit by the Department of Human Services?

13 A. That's correct.

14 Q. And Michigan does not prohibit individuals from
15 adopting if they are living with a same sex partner,
16 correct?

17 A. I believe that is correct.

18 Q. And Michigan does not prohibit individuals from
19 adopting if they are living with their sister, is that
20 correct?

21 A. As a single parent, you mean?

22 Q. Yes.

23 A. To the best of my knowledge. I don't know, but I
24 wouldn't think they would prohibit that.

25 Q. Now, despite the fact that single people can adopt,

1 you believe the pool should be expanded to allow for joint
2 adoption, isn't that true?

3 A. Yes, I do.

4 Q. You believe when people are cohabitating and wish to
5 adopt jointly, they should be allowed to adopt jointly?

6 A. If they are in a committed relationship, yes.

7 Q. And the committed relationship is the key to you?

8 A. Yes, as opposed to people who are just living
9 together for a brief period of time.

10 Q. And your pool of joint adoptive parents is not
11 limited to same sex couples only, isn't that true?

12 A. Say that again, please.

13 Q. Sorry. Your pool of joint adoptive parents is not
14 limited to same sex couples only, correct?

15 A. My pool?

16 Q. Yes. You want the pool of adoptive people to be
17 expanded for joint adoption, correct?

18 A. Yes.

19 Q. And this pool that we are talking about of joint
20 adoptive parents is not limited solely to same sex
21 couples, correct?

22 A. Through the home study, if the caseworker does a
23 home study, sees that this is a couple in a committed
24 relationship, good mental health, all of the other
25 relevant factors that are assessed, I would suggest that

1 they be allowed just like individuals who are gay or
2 lesbian.

3 Q. Right. So you believe both heterosexual couples and
4 same sex couples should be allowed to adopt jointly?

5 A. Same -- the same criteria should be applied to both.

6 Q. And they don't need to be married to jointly adopt,
7 correct?

8 A. If you're talking cohabiting, no. I would encourage
9 them to marry perhaps but I would not necessarily disagree
10 with your statement, no.

11 Q. And in your view, two sisters should be allowed to
12 jointly adopt?

13 A. I didn't say that. In fact, I said I had never
14 thought about that in deposition. And I would be talking
15 about two individuals who are in a committed married like
16 relationship.

17 Q. Does it have to be a sexual relationship?

18 A. Does have to be -- I never even thought of that.

19 Q. I asked you -- you said committed, and I asked you
20 two sisters, and you said I haven't thought about that.

21 A. I said in a marriage like relationship.

22 Q. You said committed.

23 A. I also followed up --

24 Q. I don't want to mince your words. I'm asking, under
25 your view, can two sisters jointly adopt?

1 **A.** I never thought of that until -- and I gave it no
2 other thought because I think it's somewhat of a
3 ridiculous question, frankly.

4 **Q.** You still have not thought about that answer even
5 though you believe two committed people can jointly adopt?

6 **A.** Two people in a committed relationship of a married
7 like forum is what we usually think of in cohabiting
8 individuals.

9 **Q.** So in a marriage like forum, but not married,
10 correct?

11 **A.** That's correct.

12 **Q.** Let's look at the research that you relied on for
13 your opinions today. From all of the studies that you
14 have relied on, most of what is known comes from studying
15 white Caucasian parents, isn't that true?

16 **A.** Most, but not all, yes.

17 **Q.** And you agree that there is diversity in the gay and
18 lesbian community, correct?

19 **A.** Correct.

20 **Q.** You are familiar with the Williamston (ph)
21 Institute, correct?

22 **A.** Yes.

23 **Q.** And you are aware that they found that same sex
24 parents and their children are more likely to be racial
25 and ethnic minorities, isn't that true?

1 **A.** That's correct.

2 **Q.** So the same sex parents in the studies that you
3 relied on for your opinions are not representative of the
4 gay and lesbian parents as a whole, isn't that true?

5 **A.** They are not. But what we know is that those other
6 groups you are talking about, the same factors that
7 predict child development outcomes are found in those
8 families --

9 **Q.** So let me ask you this question --

10 **MS. STANYAR:** Let him finish his answer.

11 **MR. POTCHEN:** I went on and he went on
12 speaking longer.

13 **THE COURT:** Let's move on.

14 **MR. POTCHEN:** Thank you.

15 **THE COURT:** Doctor, if you have not finished
16 your answer let us know.

17 **THE WITNESS:** I certainly will.

18 **BY MR. POTCHEN:**

19 **Q.** In your January 14th deposition you were asked to
20 specify the studies and reports that you believed best
21 supported your opinion. Do you recall that?

22 **A.** I'm sorry. In the deposition?

23 **Q.** In your deposition you were asked to specify the
24 studies and reports that supported your opinions?

25 **A.** Yes. I gave some examples.

1 Q. Correct. And I think you gave some here today. You
2 gave Gartrell (ph). Is that one of them?

3 A. Yes.

4 Q. Brandweis (ph), is that another one?

5 A. Brandweis.

6 Q. Goldenbach (ph)?

7 A. Goldenbach. Several of her studies.

8 Q. Boss (ph). She works in Holland. And Patterson I
9 believe was another one.

10 A. Correct.

11 Q. Now you would agree that these studies were focused
12 on children raised by lesbian women, correct?

13 A. Well, some of the Goldenbach studies I was talking
14 about include gay men.

15 Q. Let's talk about Patterson first. Charlotte
16 Patterson. And she is from the United States?

17 A. Yes. University of Virginia.

18 Q. And I think you said you were relying on her
19 Adolescent Health Survey?

20 A. That is one of the studies I was relying on.

21 Q. Now, for the Ad Health Survey, Patterson relies on a
22 group of children born to or adopted by lesbian mothers in
23 the San Francisco Bay area, correct?

24 A. The Ad Health data?

25 Q. Yes.

1 **A.** That is a national data site.

2 **Q.** They didn't ask parents to specify their sexual
3 orientation, isn't that true?

4 **A.** The Ad Health Data, they don't. I think, just like
5 the census data, it's derived from various kinds of
6 questions that are asked in the surveys.

7 **Q.** The number of lesbian families in the Ad Health
8 Survey is unknown, isn't that true?

9 **A.** The overall number?

10 **Q.** Yes.

11 **A.** We don't know the overall number.

12 **Q.** Okay. What was the sample size for the Ad Health
13 data?

14 **A.** The Ad Health data is about 12 thousand.

15 **Q.** And according to Patterson, the sample was
16 predominantly Caucasian, well-educated, middle to up
17 class, isn't that true?

18 **A.** In the Ad Health data, hers are mixed. She actually
19 has only 60 percent white.

20 **Q.** And what year was her data collected?

21 **A.** I actually don't remember.

22 **Q.** Does '94 and '95 sound about right?

23 **A.** I will accept that.

24 **Q.** Okay. And Brandweis and her colleagues in Belgium
25 studied -- I'm switching to Brandweis -- studied children

1 born into lesbian homes by donor insemination, correct?

2 **A.** Correct.

3 **Q.** And you agree that donor insemination can be
4 expensive, correct?

5 **A.** It can be if it's going through a clinic. Some
6 women do it at home. But through the clinics it's pretty
7 expensive.

8 **Q.** You would agree using your words here that we are
9 not going find many poor parents who are going to use
10 donor insemination, correct?

11 **A.** Through the clinics.

12 **Q.** In Brandweis' '97 study -- that is the study you
13 relied on, the '97 study -- she compared four to eight
14 year old children born to 30 lesbian mothers via donor
15 insemination, children born to 38 heterosexual families
16 via donor insemination, and children born to 30
17 heterosexual families in the conventional way or naturally
18 conceived, is that correct?

19 **A.** Correct.

20 **Q.** And the sample size was 30 lesbian families and 68
21 heterosexual families in Belgium, correct?

22 **A.** Correct.

23 **Q.** And Brandweis found that the quality of the couple's
24 relationships and the quality of the mother/child
25 interaction did not differ between the lesbian mother

1 families in either of the heterosexual family groups,
2 right?

3 **A.** I believe so, yes.

4 **Q.** Buy she also found that the quality of interaction
5 between the mother and the child in lesbian families was
6 superior to that between the father and the child in both
7 groups of heterosexual families, isn't that true?

8 **A.** I believe so. That kind of finding comes up
9 frequently in the studies. I'm not positive it was with
10 her but I will accept that.

11 **Q.** This study, correct me if I'm wrong or whether
12 you're aware of it, noticed a distinction between the
13 gender of the parent and how the child interacts with the
14 parent, correct?

15 **A.** Well, yes, to the extent that there were differences
16 between the female head of the household and the
17 heterosexual fathers, yes.

18 **Q.** Okay. Now, moving onto Gartrell. Gartrell is a
19 1996 study that used the national longitudinal lesbian
20 family study, correct?

21 **A.** Her studies go all the way to 2014. But so she
22 started earlier on. And there is many studies published
23 from the same data set but with different measures.

24 **Q.** Same measures that differed in the longitudinal
25 study, meaning it's over a number years.

1 **A.** Different control groups.

2 **Q.** Let's talk a little bit about how she got her data
3 for the study.

4 **A.** Uh-huh.

5 **Q.** She used -- and this is an informal networking and
6 word of mouth referrals, correct?

7 **A.** Snowballing technique, yes.

8 **Q.** And the participation was solicited via
9 announcements at lesbian events and women book stores and
10 lesbian newspapers, correct?

11 **A.** That was part it, yes.

12 **Q.** And the participants recruited in three metropolitan
13 area in which the researchers resided?

14 **A.** Correct.

15 **Q.** Boston, Washington, D.C. And San Francisco,
16 correct?

17 **A.** I will accept that. I don't know about D.C. but I
18 know the two.

19 **Q.** And the ultimate study group comprised of 84
20 families of children conceived by donor insemination,
21 correct?

22 **A.** 84 -- that may be the original sample. I think the
23 followups were 78.

24 **Q.** 78 -- it got smaller?

25 **A.** Yes. You always get some attrition in longitudinal

1 studies. But hers actually, very little attrition.

2 Q. Right. Okay. So there is this approach, looked at
3 three metropolitan areas, correct?

4 A. Correct.

5 Q. So the sample size, we have already talked about
6 that, was not compared to any heterosexual couples,
7 correct?

8 A. Wrong. I mean, the original study was not. But the
9 subsequent studies used a variety of different control
10 groups, either national data sets or national survey data.
11 There are four or five studies that do use comparisons.

12 Q. But original study did not.

13 A. No. It was not focused on that issue.

14 Q. Right. And you are aware that Ms. Gartrell reported
15 that over half of the people from the original study were
16 separated before their offspring reached 18?

17 A. I believe that's correct.

18 Q. Now looking at Goldenbach.

19 A. Goldenbach, yes.

20 Q. Her study is the Avon Longitudinal Study, is that
21 correct?

22 A. She has three studies. Four studies. Three of
23 which are longitudinal. So one of them is the Avon
24 Longitudinal study of parents and children.

25 Q. Since that is the one that I had my notes on, let's

1 talk about that, okay?

2 **A.** Okay.

3 **Q.** That is a local community study from a community in
4 England, is that correct.

5 **A.** It's -- her sample is a combined sample. In other
6 words, she has a national data set of which she only got
7 18 lesbian families from that and then she used a
8 convenient sample type of approach to increase her sample
9 size. So it's considered a combined community sample.

10 **Q.** Right. So she started out with 18 and then
11 ultimately the sample size was 39 lesbian mothers.

12 **A.** I think 39 is correct, yes.

13 **Q.** Okay. And, again, well, this did not look at
14 children raised in male heads of household, is that true?

15 **A.** That's true.

16 **Q.** And the Goldenbach study used single parent
17 households as a compare group, is that true?

18 **A.** One of the comparison groups. She also uses
19 heterosexuals later on.

20 **Q.** Right. She also use heterosexual single mothers as a
21 comparison?

22 **A.** Single mothers and married -- two parent
23 heterosexual families, too.

24 **Q.** Right. And none of these studies specifically
25 tracked same sex married couples, correct?

1 **A.** I don't know if she had -- she required the
2 heterosexuals to married. We assume that most are, but we
3 don't know the actual number.

4 **Q.** You don't know?

5 **A.** We don't know.

6 **Q.** And, in fact, and I guess you already said this, but
7 it's too recent to get that kind of data again, isn't that
8 true?

9 **A.** Not on married heterosexuals.

10 **Q.** I'm sorry. Married same sex.

11 **A.** We are talking about heterosexuals.

12 **Q.** I am talking about married same sex.

13 **A.** It's probably too soon to get adequate data on
14 married same sex couples.

15 **Q.** Thank you. Now, you have critiqued Regnerus, Allen
16 and Sarantakos in your testimony?

17 **A.** Yes.

18 **Q.** But you have not worked on the data sets that formed
19 the basis of the Regnerus study or the Allen study, have
20 you?

21 **A.** Nor have I worked on data sets of the other studies
22 that I relied on. We generally, as researchers, don't
23 work on other people's data sets. And yet we still are
24 able to use the information from their research and see
25 whether, as reviewers, see whether or not they have done

1 the appropriate kind of controls or whether their
2 conclusions follow from their results. We don't need to
3 work with the data sets to know whether a study has been
4 done appropriately or not.

5 Q. Again, I'm asking that you never worked on data set,
6 correct?

7 A. On their data set.

8 Q. And on their data set, correct?

9 A. I never worked on their data set.

10 Q. And you never analyzed their data set, correct?

11 A. That's correct.

12 Q. And you can't speak to what the data actually says,
13 isn't that true?

14 A. I can speak to what they say the data says.

15 Q. I am asking what the data says. You never worked
16 with it?

17 A. I can't speak to what my analysis of the data would
18 say.

19 Q. Okay. Now, one of the critiques you have of the
20 Allen study is that many of the same sex families came
21 from failed marriages, isn't that true?

22 A. That's an assumption based upon when the families
23 were formed.

24 Q. So, in your opinion, do you believe that Allen
25 should have controlled for this?

1 **A.** Controlled for what?

2 **Q.** The failed marriages?

3 **A.** The data actually, I don't think his census allows
4 him to even know whether there is failed marriages earlier
5 on. That's part of the problem with using existing data
6 sets like a census. They don't ask the appropriate
7 questions.

8 **Q.** Okay. So you don't know if he controlled for it or
9 didn't control for it?

10 **A.** He controlled for -- he doesn't control for previous
11 failed marriages in his study.

12 **Q.** Okay. Now, the funding for your research comes
13 through the Donaldson Institute, isn't that true?

14 **A.** It's the Donaldson's research. I work for the
15 Donaldsons. I don't get funding myself.

16 **Q.** Right. But you were a founding member of the
17 Donaldson Adoption Institute, right?

18 **A.** That's correct.

19 **Q.** And you served on its Board?

20 **A.** I used to serve on its Board until 2006 when I moved
21 to California. It was too expensive to me to fly back and
22 forth to Board meetings. I went off the Board and went on
23 their staff as a researcher. And most of the work I did
24 as a Board member was really staff work. I did research
25 for them.

1 Q. And the Donaldson Institute looks to improve
2 adoption practices, I believe was your testimony?

3 A. Correct.

4 Q. And the Donaldson Institute supports same sex
5 marriage, correct?

6 A. It does, yes.

7 Q. And the Rainbow Foundation funds some of the
8 Donaldson Institution's research, correct?

9 A. It funded one study once about ten years ago at the
10 amount of about \$10,000.

11 Q. And the Boudet (ph) Foundation also funds research
12 for the Donaldson Institute, correct?

13 A. It funds our work. Not specific research.

14 Q. Now, the Boudet Foundation is a LGBT oriented,
15 correct?

16 A. It is.

17 Q. And you are aware that the Boudet Foundation has
18 awarded over \$200,000 since 2006 to the Donaldson Adoption
19 Institute?

20 A. I actually didn't get the figures on that. I don't
21 actually --

22 Q. You are not aware how much they funded the Donaldson
23 Institute?

24 A. I am not aware. I would have thought closer to 150,
25 but that's -- I'm not on the Board anymore so I don't

1 follow that funding information.

2 Q. Didn't -- you were there in the Study For Adoption
3 By Gays And Lesbian Policy Project? Did you work on that
4 study?

5 A. Which one? Expending Resources Three?

6 Q. It's called Adoption On Gays And Lesbian Policy
7 Project is what was funded by -- maybe this will refresh
8 your recollection.

9 A. Okay.

10 MR. POTCHEN: May I approach, your Honor?

11 THE COURT: Please.

12 BY MR. POTCHEN:

13 Q. I'm going to show you something called a form 990-PF
14 which is basically a tax return for a foundation. And
15 that is from 2006. And I believe on the third -- last
16 page that you are looking at, indicates some funding for
17 the Donaldson Institute.

18 A. Correct.

19 Q. What does that say?

20 A. It says -- it says total, 100,000, and then goes
21 over to '85, zero; '86, 50,000; '06, 50,000; '07, 50,000.

22 Q. So that's 100,000 in 2006 over a period of years,
23 correct?

24 A. Yes, that's correct.

25 Q. Okay. I'm going to give you all three of these.

1 There is another form 990 from 2009 and I should have it
2 highlighted there. How much did the Boudet Foundation
3 fund the Donaldson Institute?

4 **A.** Fifty thousand.

5 **Q.** And the one in 2010?

6 **A.** Fifty thousand.

7 **Q.** Okay.

8 **A.** Hold it. Ten thousand.

9 **Q.** Ten thousand. And the one in 2012?

10 **A.** Sixty thousand.

11 **Q.** Okay. You would agree with me those figures add up
12 to over \$200,000?

13 **A.** That's correct. Our annual budget is over a million
14 dollars now. So their funding represents a very small
15 percentage of the amount we bring in through various
16 donations and fund raising at any one year. Fifty
17 thousand, sixty thousand is the most they gave in a year,
18 in a budget of over a million, is a small percentage.

19 **Q.** Okay. You were also on the Scientific Advisory
20 Board of the Rockway Institute in San Francisco, correct?

21 **A.** Technically, I am. I had no involvement with them
22 other than consulting with their -- I think the person who
23 is the head of the institute.

24 **Q.** And that Board focuses on lesbian and gay issues,
25 correct?

1 **A.** Yes, it does.

2 **Q.** And you were the clinical supervisor and consultant
3 to the Pacific Center in Berkley, California, correct?

4 **A.** I was. I am not doing it this year because for
5 different reasons. But for three years I supervised
6 interns who were working with gay and lesbian families.
7 Pacific Center is a small community based center focusing
8 on the mental health of the LGBT community.

9 **MR. POTCHEN:** If I may, your Honor?

10 **THE COURT:** Of course. Thank you.

11 **MS. STANYAR:** One moment, Judge.

12 **MR. POTCHEN:** That's all I have.

13 **THE COURT:** Thank you. Any redirect? Gather
14 your thoughts.

15 **MS. STANYAR:** Yes.

16 **THE COURT:** Take your time.

17 - - -

18 **REXCROSS-EXAMINATION**

19 **BY MS. STANYAR:**

20 **Q.** Mr. Potchen asked you questions about the APA policy
21 statement and the APA's position. And he went into the
22 number of studies that they actually had relied on. Do
23 the studies cited by the APA back in, I guess, was it
24 2005?

25 **A.** Yes.

1 Q. Do they comprise the universe of studies that tell
2 us about same sex parenting?

3 A. Hardly.

4 Q. Did they comprise the universe of studies that tell
5 us about child outcomes in same sex parenting?

6 A. Hardly.

7 Q. Mr. Potchen asked you about whether or not any of
8 the studies that you discussed focused on, just on married
9 same sex couples?

10 A. That's correct. He did.

11 Q. Is there any reason to expect child outcomes to be
12 worse in same sex parent families if the parents can be
13 married?

14 A. The answer is, no. Marriage benefits children. If
15 the children are doing as well in families when they are
16 not married, I know of no research that suggests when
17 people get married, their children do worse. If we were
18 to allow gays and lesbians to marry, the idea that they
19 might do worse, they may not do any better, but to do
20 worse, that doesn't make any sense to me.

21 Q. Is the social science research pretty clear that
22 marriage stabilizes families?

23 A. Yes, it does.

24 Q. Can you only get information about same sex couples,
25 same sex couple families from studies using comparison

1 groups or can we learn about them from studies that don't
2 use comparison groups?

3 **A.** Absolutely. You learn a lot from when you work with
4 a group of individuals without a comparison group. You
5 find out information about what is going on in the family
6 that might benefit that family. The research that I have
7 done at the institute on and gay and lesbian adoptive
8 parents does not use a comparison because we were not
9 really interested in the question of, are they doing
10 better or worse than heterosexuals?

11 What we were looking for is information about
12 the kinds of adoptions they are doing and the kinds of
13 needs they have given the kinds of adoptions they are
14 doing, the extent of openness in adoption and what may
15 help them to manage those relationships with the birth
16 families when there is open adoption, the kind of support
17 that they are getting and so forth.

18 So it gives us a lot of information to help
19 support families who are gay or lesbian just like we do
20 the same kind of research with heterosexuals in order to
21 find out how can we best support individuals who are
22 adopting children, particularly some of the more difficult
23 children, the kids coming out of the foster care system.

24 **Q.** So whether or not you use a comparison group, is it
25 more a product of what you are looking at?

1 **A.** Absolutely.

2 **Q.** Okay. And you can learn from studies that have
3 comparison groups and you can learn from studies that
4 don't.

5 **A.** Absolutely.

6 **Q.** Mr. Potchen asked you about the issue of statistical
7 power --

8 **A.** Yes.

9 **Q.** -- when you have small samples.

10 **A.** Yes.

11 **Q.** Are there any methods available to address the issue
12 of statistical power in studies that have small sample
13 sizes?

14 **A.** Yes. It's called meta-analysis. Meta-analysis is the
15 statistical procedure that is used in virtually every area
16 of science when you have many studies in the same area and
17 you want to see whether or not there is a statistical
18 pattern across those studies, you can pool that
19 information in statistical ways that I don't think we need
20 to go into right now. But it gives you a sense of whether
21 there is a pattern. And meta-analysis increases your
22 power. In other words, it increases the ability to find
23 differences between group means that are true differences.

24 And there has been three meta-analyses of the
25 literature. The most recent one is the most relevant, was

12-10285; APRIL DEBOER, ET AL. v. RICHARD SNYDER, ET AL.

1 done in 2008 by a woman named Alice Krol (ph). I'm not
2 sure if it's Alice or Alicia. And what she finds is that
3 across the studies they did in 19 or 20 studies, there
4 were no differences detected, even with increased
5 statistical power using meta-analysis with one exception.
6 And that is that parents of gay and lesbian families
7 tended to evaluate their family, the parent/child
8 relationships in a more positive way than heterosexual
9 families. That was the only thing they found. And when
10 you look at individual studies you can see that happening
11 often.

12 Q. Thank you. That's all.

13 THE COURT: Okay. Any objection to this
14 witness being excused? Okay. Thank you, Doctor. You may
15 be excused. You may remain in the courtroom if you care
16 to since you already testified or you may leave. Whatever.

17 THE WITNESS: May I stay?

18 THE COURT: All witnesses, once they
19 testified, unless we need them for rebuttal.

20 MS. STANYAR: Yes.

21 THE COURT: I'm sorry. Next witness?

22 MR. MOGILL: I need a couple minutes.

23 THE COURT: When you get a chance, if I could
24 have a witness list, I had one. I looked on my desk. I
25 think I left it at home. Do we have one laying around?

1 You don't have to do it right now, but I would like to
2 have it. Take your time. Ready?

3 **MR. MOGILL:** I think we are ready to set this
4 up.

5 **THE COURT:** Please have a seat. Let me swear
6 you in first.

7 - - -

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

12 **THE COURT:** Please have a seat. And would
13 you be kind enough to give us your full name and spell the
14 last name and get set up.

15 **THE WITNESS:** My full name is Michael John
16 Rosenfeld, R-o-s-e-n-f-e-l-d.

17 **THE COURT:** Okay. Technology has changed the
18 presentations for the better, I might say. But things
19 have really changed throughout years with computerization
20 and so forth. And I'm not sure we have one in this case
21 but we have had witnesses that have been other places and
22 we do it all by video conferencing and it's pretty much
23 like they are sitting right here. It's unbelievable, the
24 technology that is available now.

25 For those that that will be in the building

1 watching the case for whatever reason, stop on the seventh
2 floor and see the historical courtroom and some day when
3 we are waiting for a witness I will give you the history
4 on it. But it's absolutely something to see and the
5 history is also unbelievable and we can talk about that
6 some other time. But you can read about it also. There
7 is a brochure in the historical room about that court.
8 It's always open unless the Judge is sitting at that
9 point. But it's still open. You can just walk in. It is
10 you really something to see and also the history is
11 unbelievable. Al right. Ready?

12 **MR. MOGILL:** I think we are.

13 - - -

14 **DIRECT EXAMINATION**

15 **BY MR. MOGILL:**

16 **Q.** Professor, are you settled?

17 **A.** I'm settled.

18 **Q.** Okay. I know the Judge already swore you but if you
19 could for the record, please state your full name?

20 **A.** Michael John Rosenfeld. Do you want me to spell it?

21 **Q.** Right ahead.

22 **A.** R-o-s-e-n-f-, as in Fred, e-l-d, as in David.

23 **Q.** And professor, how are you employed?

24 **A.** I'm an Associate Professor of Sociology at Stanford
25 University in California.

1 Q. How long have you been at Stanford?

2 A. So, I have been an Associate Professor there since
3 2008. Before that I was an Assistant Professor from 2000
4 to 2008.

5 Q. Would you tell the Court please where you received
6 your undergraduate and graduate education?

7 A. I have a 1989 bachelor's in mathematics from Brown
8 University. I graduated magna cum laude and Phi Beta
9 Kappa. I have a 1991 Master's in Latin American Studies
10 from the University of Chicago and 2000 Ph.D. from the
11 University of Chicago in Sociology.

12 THE COURT: 2000 -- you kind came out --
13 you're fine. Something with the microphone. 2000 --

14 THE WITNESS: 2000 Ph.D. in Sociology from
15 the University of Chicago. That same year I started at
16 Stanford.

17 BY MR. MOGILL:

18 Q. While you were at Chicago doing your Ph.D --

19 THE COURT: Move the microphone a little bit
20 closer.

21 BY MR. MOGILL:

22 Q. While you were at Chicago doing your Ph.D. studies,
23 did you receive any academic honors?

24 A. There was the Centennial Fellowship. That was the
25 highest rank of fellowship that Chicago offered. I have

1 that. And I think I had a couple of years of NIH funding
2 as well.

3 Q. At Stanford, do you have any administrative
4 responsibility?

5 A. Right. I'm currently the director of undergraduate
6 studies in sociology. That's been going on for five
7 years. Previously I have been the Director of the
8 Sociology Master's Program for two years and for one year
9 I was the Director of Urban Studies which is an
10 undergraduate program separate from sociology.

11 Q. At Stanford have you received any academic honors?

12 A. So I have won several teaching awards. There was
13 the Dean's Award for teaching which is an university wide
14 award. And then there was the Phi Beta Kappa Teaching
15 Award which is voted on by the students who are elected to
16 Phi Beta Kappa. There is the Urban Studies Teaching Award
17 voted on by the students who graduated from urban studies.
18 There was a Hellman award for Assistant Professors from
19 the Hellman Foundation.

20 Q. How do you spell that, please?

21 A. H-e-l-l-m-a-n, I believe.

22 Q. Okay.

23 **THE COURT:** From the mayonnaise.

24 A. And 2005 paper of mine in the American Journal of
25 Sociology. The Critique Of Exchange Theory was awarded

1 the Roger Gould (ph) Memorial Award for the best paper in
2 the AJS from 2005.

3 **BY MR. MOGILL:**

4 **Q.** Have you published any academic works that are --
5 have you published any academic works?

6 **A.** Yes.

7 **Q.** Tell the Court, please, have you published any
8 books?

9 **A.** Yes. So I have a 2007 book, The Age Of
10 Independence, Interracial Unions, Same Sex Unions and the
11 Changing American Family published by Harvard University
12 Press. I have a variety of articles about topics like
13 marriage, mate selection, who marries who, how it changes
14 over time, the history of marriage. There is a particular
15 article in the Journal of Demography from 2010 about the
16 outcomes of children raised by different family types
17 which I believe we will be talking about in a little
18 while.

19 **Q.** We will. Are these all peer reviewed publications?

20 **A.** These are all peer reviewed.

21 **Q.** Professor, are there three journals that would be
22 considered to be top journals in the field of sociology?

23 **A.** Historically, the top three journals in sociology
24 are the American Journal of Sociology, The American
25 Sociological Review which is the official journal of the

1 American Sociological Association and Social Forces.

2 Q. Have you published original research in any of these
3 journals?

4 A. Yes, I published original research in all three of
5 those top journals.

6 Q. Have you served on the Editorial Board of any of
7 these journals?

8 A. I've served on the Editorial Boards of two of them
9 -- The American Journal of Sociology and Social Forces.

10 Q. Have you been asked at any point to do a manuscript
11 review for your various journals?

12 A. Yes. For those and many others.

13 Q. Do you also speak at seminars and conferences as
14 listed on your curriculum vitae?

15 A. Yes, I do.

16 Q. And we will get into that evidence in a moment.

17 Professor, I will ask you a little bit about your
18 teaching. In the course of your work at Stanford, do you
19 teach any courses that relate to the subject area of this
20 case?

21 A. I do, indeed. I teach a class called The Changing
22 American Family which is a big undergraduate class. There
23 is a version of that that I teach for freshman students
24 only. I teach a graduate class, Sociology Of The Family,
25 for Ph.D. students. I teach Introduction To Data Analysis

1 for undergraduates and a separate class, Introduction to
2 Data Analysis for Ph.D. students. I teach a class called
3 The Urban Underclass which is really about race and
4 segregation and public policy and poverty and to the
5 extent that it relates to family and poverty, we may touch
6 on that. And the other class I teach is a little bit of
7 an obscure statistical method but it comes into play in
8 some of the papers I published on marriage.

9 Q. Okay. And in any of your teaching, do you, does the
10 subject of same sex families and relationship comparisons
11 between same sex families and opposite sex families come
12 into the curriculum?

13 A. Absolutely. The classes on the American family or
14 the sociology of the family, certainly we talk about same
15 sex couples.

16 Q. I would like to show you or ask you to take a look,
17 please, at the binder in front of you, and look at what
18 has been marked right behind the water pitcher. That's
19 good.

20 A. I don't want to knock the water over on my way to
21 the documents.

22 THE COURT: Any way you are comfortable.

23 BY MR. MOGILL:

24 Q. If you can take a look at what's been marked as
25 Plaintiff's Exhibit 200. Is that something that you can

1 identify?

2 **A.** Yes. This looks like my CV.

3 **Q.** Does it appear to be a current version of your CV?

4 **A.** It does.

5 **MR. MOGILL:** I would move the admission of
6 Plaintiff's Proposed Exhibit 200.

7 **MS. HEYSE:** No objection.

8 **MR. MOGILL:** I offer Professor Rosenfeld as
9 an expert in the filed of sociology.

10 **THE COURT:** Any voir dire or objection?

11 **MS. HEYSE:** No objection, your Honor.

12 **THE COURT:** Very well. You may so testify.

13 **BY MR. MOGILL:**

14 **Q.** Professor, what I would like to do next is ask you a
15 couple of questions just because it's probably fair to
16 assume that a lot of people don't know what sociologists
17 do.

18 **THE COURT:** If you can move the base just a
19 little closer, that would solve the problem. Perfect.
20 Thank you.

21 **MR. MOGILL:** Thank you, judge.

22 **THE COURT:** No problem.

23 **BY MR. MOGILL:**

24 **Q.** Professor, since it's likely that a lot of people
25 don't know what sociologists such as yourself do so let's

1 start with, what is it that sociologists do? What do you
2 study?

3 **A.** Sociologists study society, individuals, and groups.
4 And one of the primary groups that has always been
5 relevant in sociology is the family.

6 **Q.** How is it that sociologists go about studying
7 society and groups including the family?

8 **A.** So, there's a lot of different ways. So, the branch
9 of sociology that I am most familiar with that I use the
10 most is study of large data sets. So survey research and
11 analysis of survey research are sort of key aspects of
12 this. But sociologists are a very diverse bunch and they
13 also do ethnography which is the study of small groups,
14 participant observation. They do all sorts, all kinds of
15 studies.

16 **Q.** Okay. Are there different kinds of studies even
17 among the ones you just mentioned?

18 **A.** So, among survey research, within survey research
19 there is sort of an important distinction between what we
20 call cross-sectional studies and longitudinal studies.

21 **Q.** And is there a way to explain that to a layperson?

22 **A.** So a cross-sectional study is a study of a
23 population at one moment in time. And a longitudinal
24 study is a study of the population where you follow the
25 same subjects over time. And both of these have

1 advantages and disadvantages. But it's important to keep
2 in mind which is which.

3 **Q.** You kind of alluded a minute ago to your own work.
4 But I want to ask you specifically, in your research what
5 methods or method do you use?

6 **A.** So, most of the research I do is research with large
7 data sets. And primarily that means accessing public data
8 like the US Census and analyzing it. So one of the great
9 things about the social sciences is we have a lot of
10 access to free publicly available data such as the US
11 Census. So one downloads it and analyzes it and tries to
12 study subjects under question. And there is also, if
13 there isn't data available out there, one might also
14 consider trying to build a survey oneself.

15 **Q.** Okay. Are there other research methodologies that
16 in your opinion are valid and reliable?

17 **A.** Right. Certainly. There is a lot of small scale
18 studies in sociology and in psychology and other fields.
19 There is all sorts of research methods. There is
20 nationally representative studies which you can do when
21 you have a defined sample to study but there is also
22 convenient sample studies where you study populations at
23 hand. And all of those can be valid and important and
24 relevant.

25 **Q.** Okay. With respect to your own work as a

1 sociologist, is there an area that you concentrate your
2 work in?

3 **A.** So my work is mostly about family and marriage, and
4 to a certain extent, children and children development and
5 what we know about couples and marriage and divorce as
6 well.

7 **Q.** How do you go about -- again, you've alluded to, but
8 how specifically do you go about conducting your own
9 research?

10 **A.** So, if we are talking about analysis of large data
11 sets, one gets the data from the census website or some
12 other source and one studies it using software to analyze
13 the data. And so there is a sort of a wide variety of
14 tools at hand to do that.

15 **Q.** Why don't we be specific here. Are you currently
16 engaged in any research projects supported by grants?

17 **A.** Yes. So, I have a grant from the National Science
18 Foundation of the United States and I am the principal
19 investigator of the study. It's called How Couples Meet
20 And Stay Together. It's a longitudinal study of couples
21 first fielded in 2009 and I am following the same couples
22 and individuals over time.

23 **Q.** Okay. So now you are about going into the fifth
24 year?

25 **A.** Yes.

1 Q. And what kind of data are you gathering in that
2 study?

3 A. Well, originally we gather data about the history of
4 the couples and the individuals and how they met and what
5 their background was. And now we are mainly following
6 them to see if they are still together or if they have
7 broken up and if they have broken up, why. One of the
8 things you can do readily with a longitudinal study that
9 is more difficult to do than with another study, is one of
10 the predictors of something like couple breakup because
11 you can actually follow the same people over time.

12 Q. Are there any same sex couples in the sample that
13 you are studying?

14 A. Yes. So there is a sizeable, what we call an over
15 sample of same sex couples. We went out of our way to get
16 at many as we could into the sample. It's a national
17 representative sample but we also increase the number of
18 same sex couples. We have about 470 of them.

19 **THE COURT:** One quick question. All of this
20 data, when you say follow up, you follow it on the data
21 that is available to you from the Government?

22 **THE WITNESS:** No. When I talk about follow
23 up, I am talking about the longitudinal study that I have.
24 And there is a survey company that follows up with those
25 individuals, resurveys them over time.

1 **THE COURT:** So you get original data and then
2 this company follows up with specific --

3 **THE WITNESS:** Right. I write the questions.
4 They track down the same people and ask them among the
5 questions, you know, two years ago, you said you were
6 married to Susan. Are you still married to Susan?

7 **THE COURT:** Got you. And you are allowed to
8 do that, and, again, I always thought that the census data
9 does not --

10 **THE WITNESS:** The census data -- I'm sorry.
11 The census data is a cross-sectional survey. You can't
12 follow individuals from census to census.

13 **THE COURT:** Okay.

14 **THE WITNESS:** And that's one of the limits of
15 the census. So, but when you are designing one's own
16 survey, you can --

17 **THE COURT:** But you use that initially and
18 then you go into your own survey?

19 **THE WITNESS:** Right. They are separate
20 things. The census survey data is separate and it's
21 cross-sectional. You can't follow people.

22 **THE COURT:** I'm sorry.

23 **MR. MOGILL:** No. It's a very important
24 question. Thank you.

25

1 **BY MR. MOGILL:**

2 **Q.** So let's just make sure that the record is clear,
3 professor. The How Couples Met And Stay Together Study,
4 did that or did that not start with the census?

5 **A.** No.

6 **Q.** This is entirely separate?

7 **THE COURT:** Now I understand.

8 **BY MR. MOGILL:**

9 **Q.** We will be talking in a moment about your demography
10 study which was based on the census?

11 **A.** Right.

12 **Q.** Okay. How long, professor, have sociologists been
13 studying families and children?

14 **A.** Well, the birth of sociology as a discipline, it
15 goes back to the late 19th Century. And right from the
16 beginning, sociologists were studying the family. So as
17 long as there has been sociology, there has been sociology
18 of the family.

19 **Q.** Within the discipline of sociology is there at this
20 point in time a scholarly consensus about the impact on
21 children of being raised by same sex parents?

22 **A.** There is absolutely a scholarly consensus.

23 **Q.** What is that?

24 **A.** The scholarly consensus is that children raised by
25 same sex couples are at no disadvantage.

1 Q. How has the consensus been expressed in the field?

2 A. So, the consensus has been expressed in sociology
3 through an Amicus Brief that the American Sociological
4 Association submitted in the Perrin and Windsor cases.

5 Q. The United States Supreme Court this past term?

6 A. This past term.

7 Q. And how many members are there in the American
8 Sociological Association?

9 A. I believe there are in excess of 14,000 members in
10 the American Sociological Association which I believe
11 accounts for the majority of all people in the United
12 States with sociology Ph.D's.

13 THE COURT CLERK: I'm sorry. Can you move
14 back a little bit?

15 THE WITNESS: Is this better?

16 THE COURT CLERK: They will let me know.

17 THE COURT: They are monitoring.

18 BY MR. MOGILL:

19 Q. Are all of the sociologists in the USA from the same
20 kind of background and same kind of political perspective
21 and same kind of views on the world?

22 A. No. There is a broad range of people covering
23 probably the whole range of people that there are in
24 sociology.

25 Q. Is it common or not within the field of sociology to

1 come to a consensus on a question such as this?

2 **A.** Consensus is actually somewhat unusual. I do
3 research in quite a number of the areas where there is no
4 scholarly consensus, and that's okay. There is several
5 different camps with different theories and they defend
6 those different theories and that's fairly typical. So
7 scholarly consensus in sociology is not that common.

8 **Q.** Is the conclusion that children raised by same sex
9 parents have outcomes as good as the outcomes for children
10 raised by opposite sex parents subject to reasonable
11 debate within the field of sociology?

12 **A.** I don't believe so.

13 **Q.** Why not?

14 **A.** Well, the Amicus Brief, the consensus is a consensus
15 opinion that this debate has been settled. So you
16 couldn't have a consensus if there was sort of a
17 fundamental question about the central issue. So, I
18 believe that the consensus is an indication that there
19 isn't fundamental debate about the central issue, but that
20 doesn't mean that there isn't any debate at all about any
21 issues of relevance.

22 **Q.** Is the manner in which the American Sociological
23 Association made its determination to submit that Amicus
24 Brief a further indication of the extent of the consensus
25 within the discipline?

1 **A.** Yes. What I know about this is that the brief, the
2 text of the brief, the substance of the brief was voted on
3 and unanimously approved by the elected counsel of the
4 American Sociological Association. So to me that
5 indicates that there is broad support for this consensus.

6 **Q.** Is it reasonable for an academic to assert that
7 research into this subject is in its infancy or
8 preliminary?

9 **A.** I don't believe so.

10 **Q.** Why not?

11 **A.** Because the consensus is based on broad research. A
12 lot of that research is in psychology and developmental
13 psychology. But there is a big field of research on
14 children's outcomes for children raised by same sex
15 couples. And the literature seems to show very
16 definitively that those children have good outcomes.

17 **Q.** Within the field sociology, is there a consensus as
18 to whether there are any particular social circumstances
19 that are consistently associated with poorer child
20 outcomes?

21 **A.** Absolutely. So we know that poverty is associated
22 with poor child outcomes. We know that living in
23 segregated neighborhoods has a negative effect. We know
24 that parental education has a big influence over
25 children's outcomes, so children who grew up with parents

1 who are high school dropouts, for instance, are at a
2 really serious disadvantage. And we also know from the
3 literature on families that family instability, that is,
4 children whose family go through many transitions, divorce
5 and so on, that they are at a real disadvantage as well.

6 Q. Okay. Is it important to keep these kinds of
7 factors in mind when engaging in research in the field in
8 order for one's research to be valid and reliable?

9 A. Absolutely. You have to account for the things that
10 we already know have a big impact on children if you want
11 to measure anything else.

12 Q. You've mentioned that among your published and peer
13 reviewed work has been a study that was published on
14 demography. The name of that study again is?

15 A. Non-Traditional Families And Childhood Progress
16 Through School, I believe.

17 Q. I'm going to ask you if you could look, please, in
18 your book.

19 MR. MOGILL: May I approach?

20 THE COURT: Of course.

21 BY MR. MOGILL:

22 Q. We're going to find 109 here somewhere. 109. It
23 was admitted during Doctor Brodzinsky's testimony.
24 Professor, I've turned your binder to Exhibit 109 which
25 already has been admitted into evidence.

1 **A.** Okay.

2 **Q.** Can you identify that?

3 **A.** That looks like my 2010 demography paper.

4 **MS. HEYSE:** For clarification, it's not been
5 admitted.

6 **THE COURT:** I don't think it's been admitted.

7 **MR. MOGILL:** I stand corrected. I apologize.

8 **BY MR. MOGILL:**

9 **Q.** Is that your paper?

10 **A.** It is.

11 **Q.** You authored it?

12 **A.** I did.

13 **MR. MOGILL:** I move its admission.

14 **THE COURT:** Any objection?

15 **MS. HEYSE:** No objection. The parties
16 stipulated to allowing the witness's original articles.

17 **THE COURT:** Thank you. I appreciate that.
18 And I would so rule. So it's admitted.

19 **MR. MOGILL:** I apologize for not remembering
20 it has not been admitted.

21 **THE COURT:** That's great. As I said at the
22 beginning, your cooperation is fabulous.

23 **BY MR. MOGILL:**

24 **Q.** Professor, with respect to this demography study
25 would you tell the Court, please, why you engage in this

1 research?

2 **A.** Well, going back to my dissertation at the
3 University of Chicago, I had been using the census to
4 study families. So I was well familiar with the census
5 data. And when you have a tool and a resource at hand I
6 suppose one is always thinking about what you can do with
7 the tool and the resource.

8 So I was aware that there hadn't been studies of
9 children raised by same sex couples using the US Census
10 data and so I set about to try to figure out if I could
11 study that population with this data set. And the data
12 set has some natural advantages. It has some
13 disadvantages too which I suppose we will discuss. But
14 one of the natural advantages of the 2000 US Census is
15 that it's enormous in sample size. Even small populations
16 you find a lot of people in the 2000 US Census, public use
17 files.

18 **Q.** Okay. And what was it that you wanted to examine in
19 particular in this specific study?

20 **A.** Well, so, what I wanted to know is if there was a
21 way we could figure out something useful about children's
22 outcomes for children raised by same sex couples and in
23 the Census there is not a lot of questions about children.
24 But the one thing, two things that we know is how old they
25 are and what grade they are in. It's possible to figure

1 out with those two pieces of information if the child is
2 making good progress through school or if they appear to
3 have been held back.

4 Q. Now, the Census is a cross-sectional study, right?

5 A. Yes. The census -- I am glad you asked me that.
6 The census is a cross-sectional study.

7 Q. How do you find out about something longitudinal if
8 you are using the cross-sectional study?

9 A. Exactly. That's a key question. So ordinarily, you
10 would only know what family the child was living with at
11 the time of the Census which wouldn't help you answer the
12 question about what the family was when the child was
13 going through school in the past few years, but there is
14 an additional question in the Census about whether or not
15 all the members of the household were living in the same
16 place five years ago and if they are all living in the
17 same place five years ago, you can -- you know that the
18 family has been together for at least five years. So that
19 knowledge helps you know that the family that was there at
20 the time of the Census has been together for at least five
21 years and then you know at least five years worth of who
22 was raising the child.

23 Q. What was the overall size of your sample in that
24 study?

25 A. As I mentioned, the Census is a big sample survey.

1 So there were 700,000 primary school children in the
2 sample including the three thousand children who had been
3 raised by same sex couples.

4 **THE COURT:** How did you get the sample? How
5 did you determine -- just random?

6 **THE WITNESS:** No. The Census files are
7 available to everybody. And so I downloaded them and then
8 I was looking for the grade school children and I selected
9 them.

10 **THE COURT:** I see. There are seven hundred
11 thousand?

12 **THE WITNESS:** Seven hundred thousand children
13 who have lived at least five years with the family.

14 **THE COURT:** I got it now. Thank you.

15 **BY MR. MOGILL:**

16 **Q.** How did you identify which ones were being raised in
17 same sex households?

18 **A.** So, the Census is a survey that is filled out by the
19 head of household. And they indicate, they indicate a
20 bunch of things about themselves and everybody else living
21 in the household. So if they indicate that another adult
22 in the household is their spouse or their unmarried
23 partner and they indicate that that person is the same
24 gender as they are themselves, then that is a same sex
25 couple.

1 **Q.** Okay. And obviously in 2000, this predated
2 legalization of same sex marriage in any state?

3 **A.** Right. There wasn't federally recognized or state
4 recognized marriage for same sex couples. But many same
5 sex couples reported themselves as married anyway because
6 they have marriage like commitments. They considered
7 themselves married. So, it's not -- the Census recoded
8 them actually. The Census didn't allow the married answer
9 to stand, but it was fairly common for same sex couples in
10 long term committed relationships to report themselves as
11 married. In my own data I see that as well, that couples
12 who live in states where there is no same sex marriage
13 report themselves as married if they have been together
14 for a long time and they made that marriage like
15 commitment.

16 **Q.** Are there other same sex couples who were not
17 legally married at the time who you were able to identify
18 as couples but --

19 **A.** There were two options. You could identify the
20 other -- the head of household could identify the other
21 person as their spouse or as their unmarried partner.

22 **Q.** Professor, how long from beginning to develop the
23 study design to publishing the article on demography, how
24 long did it take you to do this study?

25 **A.** It took about four years from when I started

1 planning that study to when the paper actually came out
2 which might seem like a long time. It seemed like a long
3 time to me. And that's just sort of the nature of how
4 academic publishing in the social science works. It's a
5 very slow process.

6 Q. Okay. As a result of the study, is there a main
7 overall finding that you have?

8 A. Yes. The main overall finding is that progress
9 through school for children raised by same sex couples is
10 just as good as the progress through school for children
11 raised by any other kind of family when you compare
12 similarly situated families, that is, families with the
13 same incomes, families with the same parental education
14 and so on.

15 Q. Okay. Now, I'm going to ask you a lot of questions
16 about that.

17 A. Yes.

18 Q. And is it correct that you prepared a series of
19 slides to show the Court today that will help explain how
20 you came to that conclusion?

21 A. Yes, it is.

22 Q. And is it also correct that in the course of going
23 through these slides that you are going to address the
24 kind of factors you've identified?

25 A. Yes.

1 Q. And so where is the starting point, professor?

2 THE COURT: Before you start, usually I take
3 a break at 3:30 but it seems like a good spot to break.
4 No use for him start and stopping so we will take about
5 twelve minutes, give or take. Let's try to reconvene at
6 twenty to.

7 (Recess from 3:25 p.m. until 3:45 p.m.)

8 THE COURT: You may be seated. Thank you,
9 very much. You may proceed.

10 MR. MOGILL: Thank you, Judge.

11 THE COURT: Okay.

12 BY MR. MOGILL:

13 Q. So, professor, at the break we were just about to
14 start taking a look at your data.

15 A. Yes.

16 Q. How you break it down.

17 A. Yes.

18 Q. And explain to the Court where you start and how you
19 got to your conclusion?

20 A. Right. So, what I want to do first is just show --

21 THE COURT: Is this an exhibit?

22 MR. MOGILL: This is a demonstrative exhibit.
23 It's identified as such as our list.

24 THE COURT: Is it in your book?

25 MR. MOGILL: Yes.

1 **THE COURT:** What number, just so we have a
2 whole record. You don't have to tell me right this
3 second. I just think the record, we have to make sure what
4 we are doing.

5 **MR. MOGILL:** 202.

6 **THE COURT:** 202. Thank you.

7 **MR. MOGILL:** I apologize.

8 **THE COURT:** No problem. That's why we are
9 looking at the screen.

10 **BY MR. MOGILL:**

11 **Q.** 202, professor.

12 **A.** So, this is actually a table that's adapted from my
13 2010 demography paper. And what I want to do with this
14 table is give a little bit of perspective about what we
15 are talking about when we talk about percentage of
16 children who have ever been held back. These are primary
17 school, elementary school children. What percentage have
18 been held back and what kind of different categories.
19 It's important to have a little bit of perspective about
20 how big the differences are we are actually talking about.

21 **Q.** I want to interrupt you for a second.

22 **A.** Yes.

23 **Q.** Why is it that you choose to study elementary school
24 children?

25 **A.** Right. So, because in the Census we only know what

1 the family was for the past five years, that five year
2 window covers all or most of elementary school for these
3 children. But if you are looking at later outcomes, high
4 school or something, then the five year window only covers
5 a fraction of their progress through school. So the key is
6 we want to know as much as we can about what the family
7 was when the child was going back through school. You
8 don't know what the family was. So the early outcomes are
9 the only, I think the only outcomes that are relevant.

10 **Q.** Is there another reason why it's useful,
11 particularly useful to study early outcomes?

12 **A.** Right. So research on children and on educational
13 outcomes over the life course really shows that a lot of
14 disadvantage is sort of fixed in at the early ages. We
15 are sort of getting earlier and earlier in our
16 understanding and approach to sort of the differences
17 between children and readiness for school. It's sort of a
18 big thing that they measure at the kindergarten levels.
19 So, and those things actually have a lot of predictive,
20 pretty good value for who is going to do well in school
21 later on. So the early years are important for the
22 children and for the design of the study both.

23 **Q.** Okay. With that background, what do you have?

24 **A.** So, the numbers for children left back in school,
25 these are the raw numbers and so they're not -- in this

1 column here.

2 Q. What do you mean by raw numbers?

3 A. What I mean is this is -- in this column it's
4 numbers that are not corrected for whether the family is
5 rich or poor, whether they live in a rural area or the
6 suburbs and so on. It's sort of the average for that
7 group. And, of course, so there is a couple points I want
8 to make about the averages. And with respect to what I
9 was saying about what we know affects children's outcome.
10 So there is a variety of family structures here. The
11 heterosexual married couples, their children have a
12 6.8 percent --

13 Q. I want to interrupt you.

14 A. Yes.

15 Q. Before we go into each subcategory, why don't we
16 identify what these subcategories are to the Court?

17 A. So first subcategory is family type. And then there
18 is child's relationship to the head of household. So most
19 of the children are natural born children but there are
20 also adopted children, step-children, foster children that
21 are identified as much in the US Census. We have child's
22 race, and on the next page, because this table goes over
23 two pages, we have income of the household, gender of the
24 child, metropolitan status, meaning suburban, urban and
25 rural, and householders' education, education attainment

1 of the adult.

2 Q. So now that we've identified the universe of factors
3 we are looking at, let's go back to the first slide. I
4 know you were starting to talk about raw numbers there.

5 A. So, what you see here at the top is the children
6 raised by heterosexual married couples. They have a
7 6.8 percent rate of grade retention. The children raised
8 by same sex couples had a 9.6 percent rate of grade
9 retention. So it's a difference of about three percent.
10 It turns out that most of that three percent difference is
11 actually explained by the difference in income and
12 education of the families.

13 Q. Is that reflected anywhere on this slide?

14 A. Absolutely. So, when you control, if you go to the
15 far right column, is the difference to the reference group
16 in each category significant after you accounted for the
17 key factors, and the main key factors are income and
18 education, the answer is, no. The children of same sex
19 couples can't be statistically distinguished in terms of
20 progress through school from the children of heterosexual
21 married couples after you account for -- when you are
22 comparing apples to apples, comparing rich families to
23 rich families and poor families to poor families. And
24 that's a key finding.

25 So, and there's other things we know affect

1 children's outcomes. So, relationship to the head of
2 household has a big influence. The natural born children
3 who are also the most likely to have lived their entire
4 life in that family, they have the lowest rate of grade
5 retention. There is pretty big differences by race. The
6 Asian-American children are actually the most likely to
7 make good progress through school.

8 **Q.** If I can interrupt you before you who move to race.
9 Is relationship to the head of household something
10 specifically identified in the US Census?

11 **A.** Yes. Right. So there is different categories for
12 the different relationships. Adopted, step, and foster
13 children are separate boxes to check on the long form of
14 the Census.

15 **Q.** Okay. I'm going to have another question for you
16 about that maybe half an hour, forty-five minutes from
17 now.

18 **A.** I'm looking forward to that. So, as I was saying,
19 there are big differences by race as well. So,
20 Asian-American children actually are slightly more likely
21 to make good progress through school than white children
22 who are more likely to make good progress than Hispanic
23 children who are likely to make good progress than
24 African-American children, and so on. There are big
25 differences based on household income and that sort of

1 goes along with the way that you would expect. The most
2 well to do families have the children who are least likely
3 to be held back in school. And the poor families have the
4 children who are most likely to be held back in school.
5 And those differences are much greater than the
6 differences between, say, heterosexual married couples'
7 children and the children of same sex couples.

8 Female students, girls, I suppose you would say,
9 for elementary school, are more likely to make good
10 progress through school. They are less likely to be held
11 back than boys. Children whose school is in the suburbs
12 who live in the suburbs, they have a lower rate of grade
13 retention than students who live in the city who in turn
14 have a lower rate of grade retention than people in rural
15 areas. And lastly, the householders' education has an
16 enormous influence as well.

17 So, the children whose -- who live in a
18 household where the head of the household has a college
19 degree, only 4.4 percent of them have been held back in
20 school. But the children who live in a household where
21 the head of household has not completed high school, they
22 have a rate of grade retention of about 14.3 percent.

23 **Q.** Okay. So you started out with these aggregates.

24 **A.** Right.

25 **Q.** And then where do you go from there?

1 **A.** So one other thing that I wanted to mention about
2 this is that there is a couple of categories of, you know,
3 it's natural in a sense to compare the children of same
4 sex couples to the children of heterosexual married
5 couples, but there are other comparisons that are natural
6 and relevant as well.

7 So if you look down here, the heterosexual
8 cohabiting couples, these are couples in the 2000 Census,
9 heterosexual couples that were not married. Their
10 children had a rate of grade retention of 11.7 percent
11 which is actually a little bit more than the children who
12 were living with same sex couples which was 9.6 percent.

13 Now, the difference between 9.6 and the 11.7 was
14 not statistically significant. So I think we would say
15 that as far as we can tell from the data, there was no
16 difference that we can measure between the progress
17 through school of the heterosexual cohabitators and the same
18 sex couples. And what is relevant about that is that in
19 2000 and we are talking about children, the Census was in
20 2000, so these are children going through school in
21 1990's. So, the same sex couples, none these same sex
22 couples were legally married in the United States at that
23 time. So, to a large extent, the heterosexual cohabiting
24 couples are in one sense the most natural comparison
25 because they are the most similarly situated in terms of

1 legal status.

2 Q. Okay. Now, when you take all these of factors into
3 account, you have these controls, you have already
4 indicated that there is no statistically significant
5 difference.

6 A. Right.

7 Q. Could you explain to the Court how it is that
8 process, without getting deeply into math and going over
9 all of our heads, how that process is carried out so that
10 you get a fair number and a fair statistical comparison?

11 A. Right. So, there are procedures in applied
12 statistics for comparing groups while controlling for
13 other things. And maybe that's the most I should say
14 about that which is it's well-established how you can
15 control for something like family income or parental
16 education and then look at the difference between two
17 other groups net of whatever the difference between income
18 and education might explain. And as I say about the
19 difference between outcomes for family types, the
20 difference between the family types are fairly narrow to
21 start with. And after you account for the differences in
22 income and education which are the biggest things that
23 drive children's educational progress, the family type
24 groups are all clustered pretty close together.

25 Q. And if you could, just to make it perfectly clear,

1 why is it that you want to conduct your study in a way
2 that takes into account these factors?

3 **A.** Because the family groups differ a lot in income and
4 in parental education. And if you want to know what the
5 affect of family is on children, you have to control for
6 that. Control is kind of a word --

7 **Q.** So this family structure at this income level, this
8 family structure at this income level?

9 **A.** Right. It really comes down to a statistical way of
10 comparing apples to apples. You want to compare similarly
11 situated families to similarly situated families as much
12 as you can to see whether some other factor like family
13 type still has an affect on outcomes after you have
14 controlled for the things that you know affect children's
15 outcomes.

16 **Q.** One second. Thank you. Now, professor, one of the
17 arguments that the state defendants are making in this
18 case is that Michigan's ban on same sex marriage is
19 reasonable because it promotes -- it helps provide an
20 optimal child rearing environment for children. Is it
21 possible to look at your data in a way that examines
22 optimal child outcomes?

23 **A.** Yes. If we follow the theory, and this is not a
24 theory that I subscribe to, but I understand your question
25 that this is a theory promoted by the state defendant's

1 witnesses, if we follow the theory that only families that
2 were in a statistical sense, most likely to have children
3 make good progress, if we only allowed groups whose
4 average outcomes were most associated with good progress,
5 we would actually end up excluding almost everybody. And
6 let me just explain what I mean by that.

7 Among the racial groups, the Asian children
8 actually make slightly better progress than the white
9 children. If we excluded people based on which racial
10 group was most likely to make progress, we would be
11 excluding everybody except the Asian children. And if we
12 look at income, you know, the rich children are much more
13 -- the children of rich families are much more likely to
14 make good progress than the poor. So if we would be
15 excluding everybody except people with the highest
16 incomes, the children living in the suburbs make better
17 progress than children in urban or rural areas, we would
18 be excluding everybody except suburban residents. And
19 parents with college degrees have children who are more
20 likely to make good progress through school.

21 So if we follow this theory to its logical
22 extent, it's a broad experiment I suppose, but if we
23 follow it to its logical extent, only Asian families with
24 high incomes and advanced degrees who lived in the suburbs
25 would be allowed to marry, if that were the rule that were

1 applied.

2 Q. Thank you, professor. Now, I want to turn away from
3 your study and ask you -- actually, we are still going to
4 be a little bit on your study. But I will ask you some
5 questions about response to a particular -- two particular
6 responses to your study.

7 A. Yes.

8 Q. You are aware, are you not, that after your study
9 was published, Professor Allen and Professor Pavaluk and
10 Professor Price published a comment also in demography
11 critical of your study?

12 A. Yes.

13 Q. And it's correct, is it not, that you published a
14 reply also in demography?

15 A. That's correct.

16 Q. And it's also correct in his report in this
17 particular case, Professor Allen has expanded on his
18 critique of your demography study, is that correct?

19 A. That's correct.

20 Q. All right. Now, I would like to start first with
21 Professor Allen's critique from his report. Are you
22 familiar with that?

23 A. I am, indeed.

24 Q. Have you read Professor Allen's report submitted in
25 this case?

1 **A.** I have.

2 **Q.** As you understand it, what is Professor Allen's main
3 criticism of your demography study?

4 **A.** Right. I would like to --

5 **Q.** Have you prepared a slide or two?

6 **A.** Yes, I have. So, I'm going to skip over this one
7 for a moment. I will come back to that one. This slide,
8 the left hand side of this slide is Allen's figure two
9 from his report.

10 **Q.** Does that purport to be based on anything in your
11 study?

12 **A.** Yes. He introduced this figure by saying, what
13 Rosenfeld actually found was represented in figure two.
14 So since I'm Rosenfeld, I thought that I should look into
15 that and see if that was correct.

16 **Q.** Is this at paragraph 26 of Professor Allen's report?

17 **A.** I believe so. I believe so. So the argument that
18 he's making, if you look at the ovals in his figure, the
19 ovals are supposed to represent the confidence intervals
20 for what grade the child would actually be in. And if you
21 look at the large --

22 **Q.** Excuse me. Right there. I need to know what the
23 confidence interval means.

24 **A.** So the confidence interval means, if you were able
25 to replicate the study, the data, in other words, if you

1 had another census sample of equal size, where do you
2 think there would be a ninety-five percent chance that the
3 average from the second sample would be in? And if you
4 had many samples of the similar size, what would the
5 distribution of them be? Because the average would be
6 different. There is nature variation in every sample and
7 so the ninety-five percent confidence interval is supposed
8 to tell you where you think based on the data you have at
9 hand, what you think 95 percent of other theoretical
10 samples would begin. And that gives you an idea of how
11 much uncertainty there is. The larger the confidence
12 interval, the more uncertainty there is. And so if you
13 look at Allen's figure two, you will see that there is --
14 the biggest oval is the oval for same sex. This is --
15 it's a plot of age and grade.

16 Q. Aging on --

17 A. Aging on the X axis and grade on the Y axis. And in
18 theory there is a line that is there that is a helpful
19 line to indicate that every year the student should be
20 advancing one grade. That is the idea. And the question
21 is, well, how much do we know about the grade level of
22 children raised by same sex couples? And in his figure he
23 suggests by that big oval, if you look at the Y axis you
24 will see he has grade two and three.

25 Q. On the up and down axis?

1 **A.** There is two and three. Those are the grades. If
2 you look at the oval for same sex couples it looks like
3 the uncertainty goes from somewhere around one or less
4 than one to maybe where four would be although he has not
5 marked all of the numbers. Anyway, it covers several
6 years of grade.

7 So the idea here would be that there is an
8 enormous uncertainty about what grade you could expect
9 children of same sex couples actually to be in. And that
10 enormous uncertainty would cover three or four years. And
11 that uncertainty is so wide that it includes not only the
12 traditional children of traditional, what he refers to as
13 traditional, which is the heterosexual married couples,
14 but also the foster children.

15 And so it's a specific argument. I would
16 characterize my interpretation of his argument is that the
17 reason Rosenfeld found no difference between the children
18 of same sex couples and the children of heterosexual
19 married couples is that the uncertainty about grade
20 attained for the children of same sex couples is so broad
21 that it would encompass almost anything. And that's my
22 interpretation of what he was arguing. And that's what
23 the figure purports to show.

24 **Q.** Okay. Now, does figure two actually reflect your
25 data?

1 **A.** Right. So here is -- the right side of this little
2 exhibit is one view of what the data actually shows.

3 **Q.** With or without controls?

4 **A.** Without controls.

5 **Q.** Is this is looking -- it's marked at the top?

6 **A.** This is looking at the three groups of the
7 traditional, just adopting his terminology there, the
8 heterosexual married couples. The children of same sex
9 couples and the foster children, and what I have done here
10 is I have plotted the actual data on the same Y axis so my
11 grade two lines up with his grade two, my grade three
12 lines up with his more or less. And here I'm plotting it
13 without controls because you actually see a bigger
14 difference between the groups without controls.

15 **Q.** I want to stop you for a second.

16 **A.** Yes.

17 **Q.** Your figure says nine year old and his says eight
18 year olds?

19 **A.** Yes.

20 **Q.** That is not an accident, is it?

21 **A.** No.

22 **Q.** Can you explain to the Court why that is?

23 **A.** I am going to go back to the previous figure here.
24 The Census happens in the spring. It happens at the end
25 of the school year in April. So by April, most ninth

1 graders, sorry, most nine year olds are in third grade at
2 the end of the school year. Some of them don't turn nine
3 until fourth grade. But if you are in second grade and
4 you are nine years old, it's very likely you have been
5 held back.

6 Really what we are looking at is the nine year
7 old who should be in third grade and if they have been
8 held back, they are still in second grade. And the
9 difference between Allen's figure and mine on the years,
10 it's not actually a material difference in terms of the
11 discussion we are having, but since I am plotting the data
12 accurately, I had to plot it for what it actually shows.
13 So there is a difference in the years but it's not
14 actually the difference that I think is relevant to the
15 argument. The difference that is relevant to the
16 argument --

17 **Q.** Your figure on the right side represents what your
18 data actually shows, correct?

19 **A.** This is an actual graph of the uncertainty in actual
20 grade attained for this sample from the 2000 Census
21 without controls. In a minute I will show you with
22 controls. But what I want to point out here is that the
23 figure -- first of all, on this scale, the grade attained
24 by traditional and same sex couples are so close that you
25 can't tell the two points apart because if you will

1 remember, in the previous figure, there were only three
2 percentage points apart to start with. Three percentage
3 points on the scale is a tiny difference.

4 The other thing is that the actual confidence
5 intervals are plotted here. It's just they are so small
6 you can't see them on this scale. On this scale, the
7 confidence intervals, for instance, of what grade same sex
8 couples children would be in, it covers a range of
9 4 percent and 4 percent on this, you can't really see it.
10 So I have plotted, you know, the grade attained and the
11 confidence interval. But as you can see, it's quite
12 different from the picture that Professor Allen made.

13 **Q.** Okay. Now, so is there anything else that is
14 particularly noteworthy about the differences in what you
15 actually found and what Professor Allen claims you found
16 with respect to the placement of the ellipsis in his
17 figure?

18 **A.** So another thing to notice about his figure is he
19 has his ellipse for the grade by year of same sex
20 children -- raised by same sex couples is so large that it
21 also completely encompasses what we know about foster
22 children. And that would suggest that there wouldn't be a
23 way of distinguishing in the data between outcomes of
24 foster children and the outcomes of children raised by
25 same sex couples.

1 Now, foster children are at a pretty substantial
2 disadvantage without having -- many don't have a stable
3 family situation. In the actual data, in fact, over here
4 on the right, you can see that the foster children and
5 their entire confidence interval are totally outside the
6 confidence interval for the same sex children raised by
7 same sex couples and children raised by traditional or
8 heterosexual married couples. That is a substantial
9 difference. In my models actually, the foster children do
10 significantly worse than the children raised by same sex
11 couples.

12 **Q.** Now, your figure on this slide next to Professor
13 Allen's figure as you already indicated is, before you
14 controlled the factors like parent education, income, you
15 also prepared a slide that shows what these differences
16 are and are not when you do control.

17 **A.** Yes.

18 **Q.** Probably the next slide.

19 **A.** Right. That would be. Yes. So on the same scale,
20 and this is again, Allen's figure two reproduced on the
21 left, on the same scale here, we have the three points,
22 traditional children of traditional heterosexual married
23 couples, children of same sex couple, and foster children
24 after controlling for income and education. And the main
25 difference between this and the previous figure is that

1 here the points on the right are much closer together.
2 Because after you controlled, after you accounted for
3 income and education, there is not that much difference
4 between the family types left because income and parental
5 education are the biggest driving forces in children's
6 educational outcomes.

7 **Q.** Is it still 95 percent confidence levels?

8 **A.** The 95 percent confidence intervals are plotted
9 there but they are just so small you can't actually see
10 them on the scale.

11 **Q.** Which leads to the next question. And that is --
12 that's really hard to see. Can you zoom in?

13 **A.** I can zoom in. I can zoom in. So, this is the
14 zoomed in version of the figure. And what I want to show
15 you here is that now the Y axis of the two figures are
16 different. So on the right hand side, the grade level
17 goes from only 2.8 to 3. And, remember, for nine year
18 olds, if no one was left back in school they all would be
19 in third grade. But a certain percentage were left back
20 so get a little less than third grade on the average. The
21 entire Y axis of this figure would fit into this little
22 fraction right below three of the figure on the left. But
23 so the figure on the right is zoomed in so we can actually
24 see what the points look like and the confidence intervals
25 and so on.

1 Q. So, in your figure with the zoom, now that it's
2 blown up and you can see sort of like under a
3 microscope --

4 A. Yes.

5 Q. -- the square representing where the traditional
6 children are and the diamond with the bar above and below
7 for same sex children, that bar goes above the square for
8 traditional children?

9 A. Right.

10 Q. Could you tell the Court what that means?

11 A. Absolutely. So, previously what I said and what the
12 paper demonstrates is that controlling for income and
13 parental education, there is no significant difference
14 between the children of same sex couples and the children
15 of heterosexual married couples. What we see here is a
16 graphic representation of that. The average in the model
17 of grade attained for the traditional heterosexual married
18 couples is a little bit higher. It's like one percent
19 less likely to be left back in school. But because there
20 are uncertainty about the difference, the confidence
21 interval which is the bars where -- that surround the
22 children of same sex couples, go actually above the
23 average for the children of traditional heterosexual
24 married couples, which means that the data are consistent
25 with the -- well, they are consistent with the two groups

1 being the same in the real world in terms of progress
2 through school. They are also consistent with the children
3 of heterosexual married couples doing a little bit better
4 and they are also consistent --

5 Q. Heterosexual?

6 A. Heterosexual married couples.

7 Q. Heterosexual married couples?

8 A. Right. So the traditional category is heterosexual
9 married couples. And the data also is consistent with a
10 real world in which the children of same sex couples
11 actually did a little better.

12 Q. What does that reflect?

13 A. That's reflected in the fact that this confidence
14 interval goes a little bit higher than that square. The
15 fact that the square is entirely within that confidence
16 interval means that the model is consistent with the
17 reality because, remember, the Census, even though it's an
18 enormous sample size, it's only 5 percent of the country.
19 So, there is uncertainty about what the other 95 percent
20 are up to. And we can sort of quantify that statistical
21 uncertainty.

22 So here is just a graphical expression of the
23 fact that consistent with the model are either that the
24 children of heterosexual married couple do a little bit
25 better than same sex couples or they do actually the same

1 or the children of same sex couples do a little bit
2 better. And that's -- and that's what we mean by no
3 significant difference.

4 When there is no significant difference when any
5 of those three options could be true in the real world, we
6 generally treat the result as if there is no difference in
7 the real world. We haven't proved that there's no
8 difference in the real world. But we also have not been
9 able to reject the hypothesis that in the real world the
10 two groups are the same.

11 **Q.** How do you account for these huge differences
12 between Professor Allen's figure two and your graph as you
13 have documented it?

14 **A.** I can't account for that difference. I know how --
15 I can reproduce how my figure was created. And I believe
16 I reported that. I made a supplemental report to
17 demonstrate how the numbers were arrived at. I don't know
18 how Allen's figure was arrived at, but it's my opinion
19 that it's not -- that Allen's figure is not consistent
20 with the data.

21 **Q.** Were you working with the same data?

22 **A.** Yes.

23 **Q.** Can you explain to the Court why you can be sure you
24 were working with the same data?

25 **A.** Yes. So, you know, the first part of the answer is

1 that the Census 2000 is available to everybody. So it's
2 the same data. But the second and more particular part is
3 that when Price, Allen and Pavuluk were preparing their
4 critique of my name paper in demography, I think maybe
5 Professor Price, but I don't remember who it was, e-mailed
6 asking me for my version of the census data with the
7 recipe that I used to create the models that I used in my
8 demography paper and I was happy to send it to them and
9 they reproduced my model exactly in their paper and did
10 some other things.

11 **Q.** So they could see that they replicated your data?

12 **A.** They replicated my models exactly. So as to what
13 Rosenfeld's model is, there is no debate. We both have
14 used the same model and demonstrated it in the published
15 reports. The one other point I wanted to make clear --

16 **Q.** It's the same question I was going to ask you. Go
17 for it.

18 **A.** The one other thing I was going to say was that you
19 can see here clearly that the confidence interval for
20 foster children is completely outside the confidence
21 interval for children raised by same sex couples. The two
22 are totally distinguishable statistically in this model in
23 the Census. So there isn't -- it's not true that you
24 can't distinguish between them. You can. Absolutely.
25 And it's also possible to make a direct test of the

1 outcomes for the children raised by same sex couples
2 compared to the foster children. And I reported that in
3 the supplemental report as well. It's a significant
4 difference.

5 **Q.** So one or two more questions regarding Professor
6 Allen's critique of your demography study. If you step
7 back just to give it some perspective, what is the
8 percentage of grade level range represented by the
9 confidence interval for the children being raised in same
10 sex households? And what is Professor Allen's, actually
11 two questions -- and what does Professor Allen's figure
12 suggest that the range is?

13 **A.** So the actual confidence interval for children
14 raised by same sex couples, the range of it is about
15 4 percent of one grade year. You can see it goes from
16 about 2.91 to about 2.945. So the entire range of that
17 uncertainty is about 4 percent of one grade level. And if
18 you look at Allen's figure, the entire range of the
19 uncertainty is on the order of three or four actual entire
20 grade years which is a difference of at least 50 times, 50
21 times greater.

22 **Q.** Is his range even remotely accurate?

23 **A.** I don't believe so.

24 **Q.** If, in fact, his range, his figure is inaccurate, is
25 that significant?

1 **A.** Well, the argument as I understand it that Professor
2 Allen was making was that there was enormous uncertainty
3 in outcomes of children raised by same sex couples. So it
4 was a statistical argument. But there is also a more
5 general argument that the defense witnesses make, as I
6 understand it, which is that we just don't know enough
7 about outcomes for children raised by same sex couples,
8 that there is uncertainty not only the Census but in the
9 literature at large. And here Professor Allen had an
10 opportunity to quantify that uncertainty. And as far as I
11 can tell, he exaggerated it by at least 50 times.

12 **Q.** I would like to turn away from this. As we talked
13 about a few minutes ago, it's correct, is it not, that
14 Professor Allen and Professor Pavaluk and Professor Price
15 published a comment critical of you and you responded to
16 that?

17 **A.** Yes. That's correct.

18 **Q.** And also, again, in demography. What is your
19 understanding of the critique in demography that they
20 published?

21 **A.** So, let me see if I have it. So, the procedure that
22 Allen, Pavuluk and Price went through, in their critique
23 of me, was that they extended the sample of children under
24 study. I limited the sample to children who lived in the
25 same household with the same parent for at least five

1 years.

2 Q. Explain again why that was important to you?

3 A. Because the question that we are trying to figure
4 out is how does family affect children's outcomes? And
5 so, if you don't know what the family is, then you can't
6 use that data to answer the question. If the family is
7 unknown, that data does not help at all.

8 Q. You don't know what is accounting for any
9 difference.

10 A. Right. So, and as I said, because the Census is a
11 cross-sectional survey, you have to be careful about
12 knowing what was going on in the past. For a lot of
13 questions in the Census, you only know what the status was
14 at the time of the Census. But we have this five year
15 question, you know, was each person living in the same
16 house five years ago?

17 So what they added into the model was a large
18 number of children, several hundred thousand, who had not
19 been living in the same place with the same parents for
20 the past five years and, therefore, whose family, while
21 they were going through elementary school, was unknown.
22 If we don't know they were living with this family, we
23 don't know what family they were living with. And that's
24 relevant especially to the study of children raised by
25 same sex couples because they are especially likely to

1 have come from an earlier relationship. That is, it's
2 typical in the data to see that --

3 Q. Particularly at this point in time?

4 A. Particularly at this point in time. This is the
5 1990's. It's typical for the children to have been raised
6 by a prior family. Now, in the Census we don't know what
7 the prior fairly is, but we know that the percentage of
8 adopted and foster children is pretty low. So the
9 presumption is the child is the natural child of one of
10 the partners of the same sex couple. And there must have
11 been an earlier family for most of those children.

12 Q. Now, methodologically, as I understand it, what you
13 did to control for family stability was in front, pull out
14 children who had not been in the same family for five
15 years, correct?

16 A. That's right.

17 Q. And what you are saying if I understand you
18 correctly is that Allen, Pavaluk and Price in their
19 comment put those kids back in?

20 A. Right.

21 Q. Did they claim that they took them out in the back
22 end?

23 A. Well, what they would say, I think, if I can
24 characterize it, is they put those additional children
25 into the model but then they control for whether we know

1 the child was in this family five years ago or not. And
2 in my view, and I stated so in my response to their
3 critique, in my view, that that is very problematic
4 because if you don't know what family the child was raised
5 in, the additional data does not give you any useful
6 information.

7 Sometimes there is a tendency, especially so
8 among the people like me who do large sample surveys, is
9 you always want a bigger sample. The larger sample is
10 always good. But if the larger sample doesn't include the
11 information you need it to include, not only does it not
12 help, but it can totally bias all of the analyses that you
13 are doing.

14 So, the problem with adding the children of
15 unknown family in is that they then skew all the other
16 measures and just controlling for whether you know the
17 family or not doesn't solve the problem.

18 **Q.** Is there an analogy maybe to soup?

19 **A.** So, a soup analogy. A soup analogy would be
20 something like, if you had your vegetarian friends coming
21 over for dinner and you were making a vegetarian soup but
22 then you added in the meat at some point because you
23 thought the meat might be helpful, but then you realized
24 that the vegetarian friends would not eat the meat and you
25 took the meat out, would it be just as good -- would it

1 still be vegetarian soup? And the answer is, that analogy
2 is a little -- it may not be an exact enough an analogy.
3 But the idea I am trying to get across with that is that
4 doing the analysis with the sample that is not
5 appropriate, skews the analysis in a way that you can't
6 fix later.

7 Q. Okay. Now it's correct, is it not, that their
8 criticism of your study actually has two particular
9 points. One, the five year control, and there is a second
10 one, isn't that correct?

11 A. Yes.

12 Q. Would you explain to the Court what that second
13 control is?

14 A. They also added -- I had looked only at the children
15 at the head of household identified as the natural born
16 child of the head of household because those are the
17 children most likely to have been with the family the
18 longest. And they added in the adopted children, the
19 stepchildren, and the foster children. And the difficulty
20 with this is that we don't know anything in the Census
21 about the process of how the step and adopted and foster
22 children came into the family.

23 So, and it's also been argued in the literature
24 I think fairly persuasively that same sex couples are more
25 likely to adopt children with special needs. And so, the

1 adoption process and situation is not comparable between
2 the two groups. And if you don't know anything about it,
3 if you don't in the US Census, in my view, you couldn't
4 really use those other cases because the truth is adopted
5 children and foster children and to a certain extent
6 stepchildren as well, they carry some baggage from
7 previous family transitions into the same sex couple
8 family. And you want to try as hard as you can to
9 distinguish between the affect of living with same sex
10 couple parents, being raised by same sex couples from the
11 affect of the prior divorce or the family disruption that
12 put the kid in foster care or up for adoption in the first
13 place. And since the family disruption that put the kid
14 in that situation in the first place could have some real
15 long term consequence, you want to limit that as much as
16 you can.

17 Q. Now, do Allen, Pavaluk and Price claim that they
18 put -- put the step, adopted and foster children into the
19 soup and then controlled for it?

20 A. Right. So --

21 Q. Is the critique of that the same as the five year
22 stability?

23 A. It's the same critique because there is difference
24 between the groups that we can't observe. So just
25 controlling for adopted doesn't account for the fact that

1 the process for adoption would be entirely different
2 potentially between the two groups in ways we couldn't
3 observe.

4 Q. Okay. And have you reduced, I think we have already
5 identified that you reduced your response to their comment
6 to a published reply in demography, is that correct?

7 A. That is correct.

8 Q. If you could look in the binder for Plaintiff's
9 Proposed Exhibit 201 --

10 A. Yes.

11 Q. -- and if I can ask you if that is, in fact, your
12 reply to Allen et al. published in demography just this
13 past year?

14 A. It is.

15 MR. MOGILL: That being the case, I move for
16 its admission.

17 THE COURT: I think there is a stipulation
18 that as long as the witness who is testifying is also the
19 author, they have no objection.

20 MR. MOGILL: I understand it's stipulated.

21 THE COURT: Okay. Thank you.

22 BY MR. MOGILL:

23 Q. Professor, I would like to turn your attention now
24 to another matter but still involving Professor Allen.
25 Are you aware of a study that Professor Allen conducted

1 and which has been published based on high school
2 graduation rates in Canada based on the 2006 Census?

3 **A.** Yes.

4 **Q.** Before we go there, I want to back up. One last
5 question when we go back to the, not the figures -- right
6 where we are. Is it significant -- if you just look at
7 stepchildren?

8 **A.** Right. My analysis is that if you only added
9 stepchildren in, the stepchildren wouldn't change the
10 result. That it's the adopted and foster children who
11 really make the difference and whose -- the process of
12 them coming into the family is most different.

13 **Q.** Okay. Now, Professor Allen has, again, there is a
14 study published of high school graduation rates among 17
15 to 22 year olds in Canada.

16 **A.** Right.

17 **Q.** And that is based on the 2006 Canadian Census?

18 **A.** Yes.

19 **Q.** Are you familiar with that study?

20 **A.** I am.

21 **Q.** And have you carefully reviewed it?

22 **A.** I have.

23 **Q.** And in your opinion, does this study measure
24 anything about children growing up in same sex couple
25 households?

1 **A.** It doesn't measure affects of being raised by same
2 sex couples or growing up in a same sex couple household
3 because the Canadian Census like the US Census has the
4 five year mobility question. Were these people all living
5 together in the same place five years ago or not? But
6 because Allen is studying high school outcomes, the five
7 year window only covers a small portion of the child
8 trajectory through school. So if you are talking about
9 subjects who were age 17 to 22 and you know something --

10 **Q.** 7 or 17?

11 **A.** 17 to 22. Talking about subjects who are 17 to 22,
12 and you are talking, and you know something about their
13 family for the past five years, that means you know
14 something about their family from when they were 12 to 17
15 but you know nothing about what family they were living
16 with before 12 to 17.

17 **Q.** With respect to those who were 22, you don't know
18 anything about the family before they were 17?

19 **A.** In fact, my reading of Allen's analysis is that for
20 some of this analysis he used only one year mobility which
21 means he was only considering families that had been
22 together for one year which for a lot of these subjects
23 wouldn't even cover high school. So it's -- and this is
24 not Allen's fault because the data, the Canadian Census,
25 it's a cross-sectional census. You only really, you know

1 about the family at the time of the census and then the
2 Canadian census does not have, if I recall correctly,
3 educational outcomes for earlier ages so the high school
4 degree is the first outcome you could use. And the
5 problem is that the one year window or the five year
6 window does not cover enough of the child's trajectory to
7 know what the affect of family was.

8 **Q.** Does the Canadian 2006 Census identify -- have the
9 boxes that US Census does, the 2000 US Census, to identify
10 children by whether their own child, step, adopted, or
11 foster?

12 **A.** The Canadian Census has only one category for child.
13 So they instruct the people who are filling out the Census
14 to fill out, child, regardless of whether the child is a
15 natural born child or a stepchild or an adopted child or
16 foster child.

17 **Q.** Is that question six on the 2006 Canadian census?

18 **A.** I don't remember what question number it is.

19 **Q.** Okay. So given these limitations, what else don't
20 we know?

21 **A.** So, but the relevance of not knowing who the adopted
22 and foster children are is that same sex couples are more
23 likely to have adopted and foster children. And adopted
24 and foster children are more likely to have trouble making
25 progress through school because of the family disruptions

1 and instability that comes before living with the same sex
2 couples.

3 Q. Given these limitations, what can one say about what
4 Professor Allen was actually measuring in that study?

5 A. I don't believe that Professor Allen's high school
6 graduation study tells us anything about children raised
7 by same sex couple families.

8 Q. Does it permit one to draw any conclusion at all
9 about the affect on children's outcomes of where they were
10 raised?

11 A. We don't have complete information about who raised
12 them, so the answer is, no.

13 Q. In fact, we have very little information about who
14 raised them, isn't that right?

15 A. That's right.

16 Q. I would like to turn to a different subject now.

17 A. Okay.

18 Q. One of the areas that has been discussed already and
19 will be discussed further in this case is a study by Mark
20 Regnerus, known as the new family structure survey. Are
21 you familiar with that survey?

22 A. I am.

23 Q. Did you have any contact with Professor Regnerus
24 before that study was conducted?

25 A. He e-mailed me with a couple of questions about the

1 survey, actually really about sample size of children
2 raised by same sex couples that you could expect to get
3 using different kinds of survey strategies. I was happy
4 to e-mail him back with whatever information that I could
5 offer.

6 **Q.** Okay. In your opinion, Professor Rosenfeld, is
7 Professor Regnerus' study relevant to the question of
8 whether children raised by same sex couples have outcomes
9 as good as children raised by opposite sex couples?

10 **A.** It's not, for the same kind of reason, it's not
11 because the new family structure study and the way
12 Regnerus analyzed the data. He wasn't actually analyzing
13 the data for children who are really raised by same sex
14 couples.

15 So for instance, in his 2012 paper, How
16 Different Are The Adult Children Of Parents Who Have Same
17 Sex Relationships, he identified 236 subjects whose mother
18 had ever had a girlfriend -- see, I got that wrong
19 there -- whose mother who had a girlfriend and father had
20 a boyfriend. That is a little correction we need to make
21 there. Of those 236, what he called lesbian mother and
22 gay father families, only 75 had ever lived with a same
23 sex couple. So the great majority of those couples, of
24 the subjects had never lived with same sex couples and
25 might never have known the girlfriend referred to if

1 mother had a girlfriend or father had a boyfriend.

2 Q. Okay.

3 A. And then among those 75 subjects, whoever lived with
4 same sex couple parents, the average years living with
5 same sex couple parents was only four years. So we are
6 talking about subjects who went through several different
7 family structures. Typically they were living with mom
8 and dad and then mom and dad broke up and then at some
9 point later the custodial parent had a same sex partner.
10 So there's a lot of family transitions.

11 Q. Were there any subjects in the study who had been
12 raised for the full 18 years by a same sex couple?

13 A. According to my counting, there were only three
14 subjects who had, for their entire childhood, lived with a
15 same sex couple.

16 Q. How did they turn out?

17 A. Turned out fine. It's also important to note that
18 Regnerus' study, it's a study of adults who had
19 retrospective questions about the families they grow up
20 in. So when we are talking about same sex couples here we
21 are talking about same sex couples from the past. If you
22 interview somebody who is 30 years old and you asked them
23 who they were living with when they were a child, we are
24 talking about a decade or two in the past, so we are
25 talking about same sex couples that were formed in the mid

1 1990s typically. Some of them go back to the 70's and
2 80's.

3 Q. Did you conduct an independent analysis of Professor
4 Regnerus' data?

5 A. Yes.

6 Q. Why did you do that?

7 A. I was interested to know whether the results were
8 robust. And my analysis of his data show that what
9 predicts the negative outcomes in these subjects is the
10 number of transitions they went through as children and
11 that's consistent --

12 Q. Explain what you mean by that.

13 A. So if you are living with both parents and the
14 parties get divorced, that is a transition. Maybe father
15 moves out. And then maybe stepdad moves in a couple years
16 later. That is another transition. Maybe the
17 grandparents move in and they move out. All of those
18 transitions have been shown to predict negative outcomes
19 for children because children crave stability. And
20 instability in the family is potentially harmful to
21 children.

22 And so what is interesting about how Regnerus
23 did the analysis is that he was comparing the children
24 whose mother ever had a girlfriend or father had a
25 boyfriend to the children who were raised by the people

1 with in tact biological families, that is, couples where
2 mom and dad were married to each other and stay married
3 for the 18 years that the child lived there and continued
4 to stay together and be married after the child had moved
5 out of the house.

6 And so he was building into his comparison of
7 family type a comparison between children who had not had
8 any family transitions and children who had many. And we
9 know from thirty years of research on marriage and divorce
10 that family transitions cast a big shadow over children's
11 outcomes. And so if you control for family transitions in
12 Regnerus' data which I have done, you find that all of the
13 negative outcomes that he ascribed to having had a lesbian
14 mother or gay father are actually predicted by family
15 transitions. And when you control for family transitions,
16 none of those negative outcomes are associated with
17 lesbian mother or gay father.

18 **Q.** Have you prepared a slide that illustrates in detail
19 the trajectory for a couple of the subjects in Professor
20 Regnerus' study?

21 **A.** Right. So because the story is, you know, the
22 analysis is kind of complicated, I thought it would be
23 helpful to look at a couple of typical cases. And before
24 I get into the explanation of these typical cases what I
25 want to say is that my analysis of the data is based on

1 the whole data, not just on these two cases. So, I am not
2 holding these two case out as -- the analysis does not
3 depend on these two cases. But it's a lot easier to
4 explain what we mean by family transitions and the life
5 course when you actually look at a life course history of
6 the children.

7 Case number one is an 18 year old female
8 subject. She was in the category of having had a lesbian
9 mother. She never lived with same sex couple parents
10 because the majority of the subjects who had, who were
11 categorized as having a lesbian mother or gay father,
12 never lived with same sex couple. So at birth she was
13 living with her biological mother and father together.
14 When she was five, the biological father moved out. When
15 the child was six, both grandparents moved in. When the
16 child was seven, both grandparents moved out. When the
17 child was 12, the biological father moved back in, but
18 that didn't last so long because when she was 14, the
19 biological father moved out again.

20 **THE COURT:** How did the two of you get all of
21 this information?

22 **THE WITNESS:** So one of the things that is
23 really interesting and I think useful and valuable about
24 Regnerus' survey, is that he put the subjects through a
25 calendar of who they lived with for every year of

1 childhood in his survey.

2 **THE COURT:** You took that all off the
3 Canadian --

4 **THE WITNESS:** No. It's not the Canadian
5 Census at all.

6 **THE COURT:** There is a number there. Is that
7 on the left side? Is that --

8 **THE WITNESS:** That's the subject number in
9 the data set, the new family structure survey, which is
10 the data gathered by Mark Regnerus.

11 **THE COURT:** He did his own survey?

12 **THE WITNESS:** He did his own survey.

13 **THE COURT:** I got it.

14 **THE WITNESS:** He did his own survey. And
15 it's actually an interesting survey. It's interesting in
16 part because of how much it tells us about the
17 relationship between family instability when you are a
18 child and negative outcomes later on in life. So,
19 actually it contains a lot of data about, you know, it
20 has --

21 **THE COURT:** It was in his report so that you
22 had access to it?

23 **THE WITNESS:** I have actually access to the
24 data itself. The data is public. I did my own
25 independent analysis of the data. This wasn't in his

1 report, but I actually analyzed, I downloaded his data set
2 that he used to do his analysis. I have the same data
3 set.

4 **THE COURT:** That's different than the Census?

5 **THE WITNESS:** Right. It's totally different
6 from the Census.

7 **THE COURT:** And it's based on a survey that
8 he did?

9 **THE WITNESS:** Right.

10 **THE COURT:** It was available to you?

11 **THE WITNESS:** Right. It's publicly
12 available. Anybody -- and that's the norm in the social
13 sciences, is that you get the grant. You do the survey.

14 **THE COURT:** Now I get all of that.

15 **A.** So, case number one, you know, went through a lot of
16 transitions as a child. This is sort of a more than
17 average number of transitions, but never lived with same
18 sex couple. And she is only 18. I just have a little bit
19 of information there. She never has been arrested, never
20 been convicted, light smoker. Not much you can say about
21 her outcomes particularly. She was on public assistance,
22 apparently, at some point growing up. She is on public
23 assistance at age 18.

24 There is -- it's fairly typical that children
25 who are raised in poverty, at least early on, they were in

1 poverty again. And what I just want to point out is that
2 you might wonder, how could case one be categorized as
3 being the daughter of a lesbian mother since the only
4 partner she ever -- the only family she ever lived with
5 were mother and father together? So the answer is that
6 that is how most of the lesbian mother and gay father
7 families are in Regnerus' data. Most of them never lived
8 with same sex couples. And the reason that is important
9 is because it's the same sex couple's influence on the
10 child that we are really trying to understand. And you
11 can't really say, using case one, you can't say anything
12 about the affect of committed same sex relationships on
13 children because this subject never lived with a same sex
14 couple at all.

15 **Q.** How about subject number two?

16 **A.** Subject number two is typical of the smaller group
17 of subjects who at one point did live with a same sex
18 couple. So when she was born she was living only with
19 biological mother. When the subject was age one,
20 biological father moved in. At age 11, biological father
21 moved out and mother's girlfriend moved in. So for two
22 years from 11 to 13, the subject was living with
23 biological mom and biological mom's girlfriend. She was
24 living with the same sex couple for two years. And then
25 at age 13 there was a change of custody. We don't know

1 why. She moved out of mother and mother's girlfriend's
2 house and moved into biological father's house. And for
3 the rest of her childhood she was living with biological
4 father.

5 **Q.** What conclusions can we draw about the influence of
6 being raised in a same sex parents from subject number two
7 or case number two?

8 **A.** There's a few things to say about this. One is that
9 there is a lot of transitions and turmoil around, before
10 and after the co-residence with same sex couples. Same
11 sex couple, the subject was only living with for two years
12 and the child was 18 years. So there was a lot of other
13 stuff going on.

14 The second thing that is typical about this case
15 is that there is the biological mother and father family
16 first before there is the same sex couple. That is how
17 most of the -- the vast majority of children who lived
18 with same sex couples in the Regnerus data set, the new
19 family structure, the vast majority of those couples,
20 those children were first with the biological mother and
21 biological father.

22 And what is relevant about that is that the
23 biological mother and biological father family has to
24 break up before the same sex couple is formed. And we
25 know from research on marriage and divorce that the

1 breakup or the divorce of the heterosexual, the biological
2 mother and biological father couple, that that breakup and
3 whatever rancor or turmoil accompanies it, that has some
4 potentially negative repercussions for children.

5 What is difficult in the survey data since most
6 of the children who end up living with same sex couples
7 first had to go through this difficult transition. It's
8 very difficult with the survey data to separate out
9 whatever affect there might be if there is any of same sex
10 couple parenting on children because there is this earlier
11 turmoil that precedes it. Now --

12 **Q.** So is there a different way that a researcher who is
13 interested in getting meaningful, valid, reliable
14 information could have gone about that, for example, with
15 subjects like these two?

16 **A.** Well, so, one of the things that you find in the
17 child development psychology literature that studies
18 children raised by same sex couples and that literature is
19 outside of my immediate area, so I don't know everything
20 there is to know about that literature, but there are some
21 well known studies that look at planned same sex couple
22 families, that is, lesbian couples who become pregnant
23 through donor insemination or assisted reproductive
24 technology. And so in those families, the child comes in
25 the families at birth. There is no previous disruption.

1 And in some ways, those families are more useful to study
2 for the question of what is the affect of same sex couples
3 on children because in those families the child starts out
4 in that family. And so there is no prior disruption.

5 **Q.** You don't have the confounding affect of transition?

6 **A.** You don't have the potential confounding affect.

7 **THE COURT:** Just quickly, in one, years spent
8 living with same sex couples. The answer is zero.

9 **THE WITNESS:** Right.

10 **THE COURT:** But he still uses it according to
11 you in his study?

12 **THE WITNESS:** Right.

13 **THE COURT:** He uses it because there was some
14 indication that mother was a lesbian.

15 **THE WITNESS:** There was some indication that
16 mother had once had a girlfriend. What we don't know is
17 whether -- we don't know anything about the seriousness of
18 that relationship or how durable it was. So we don't
19 actually know whether the mother would have considered
20 herself a lesbian or not. We don't have any information
21 about that. We only have the report from the child
22 decades later that mother had once had a girlfriend.

23 **THE COURT:** But the report also indicates
24 years spent living with same sex, zero.

25 **THE WITNESS:** Right. The data indicates

1 that. It is in the data.

2 **THE COURT:** The data is part of the survey
3 which has been provided to somebody and whoever responds
4 to that survey put zero.

5 **THE WITNESS:** Well, they didn't actually -- I
6 don't think there was a question how many years did you
7 live with a same sex couple? What there is the calendar.
8 Who did you live with in year one, two, three? If you go
9 through the calendar data and it turns out that mother's
10 girlfriend was never living there with mother, I created
11 the zero based on the calendar.

12 **THE COURT:** The zero is based on the rest of
13 the calendar.

14 **THE WITNESS:** Base on the calendar and the
15 data.

16 **A.** The one other thing I want to point out about the
17 same sex couple in case two that is important and relevant
18 is that we never observe whether that same sex couple
19 broke up. We don't -- they may still be together. This
20 subject was 24 and this is at age 13 so that may be 12 or
21 13 years ago now. Those -- that couple may still be
22 together. And the reason we don't know whether they are
23 or not is because we only know who was living with the
24 child. The calendar is only about who is living with the
25 child. Once the child is no longer living with the mom we

1 don't have any information about who the mom is living
2 with.

3 So one of the arguments that Professor Regnerus
4 makes, my understanding of that argument is that you can
5 tell by the small number of years people who lived with
6 same sex couples lived with same sex couples that there
7 was instability among those same sex couples, that the
8 same sex couples broke up. But, in fact, what is also
9 very common in this data is not that the same sex couple
10 broke up, although there are instance of that. What is
11 also very common is change of custody where the same sex
12 couple -- the parent in the same sex union no longer has
13 custody of the child and then you don't know whether there
14 was a breakup or not. In this case, we can't tell whether
15 or not that couple -- that's what happened. At age 13,
16 subject moved from biological mother and mother's
17 girlfriend's house to biological father's house. And we
18 don't know whether the couple ever broke up. But what I
19 can say is that there is a substantially higher percentage
20 of custody changes among the parents who are in the same
21 sex unions than there are among any other parents.

22 **Q.** Is there another kind of study that might have
23 helped get more meaningful information in cases like these
24 two young women?

25 **A.** As I was trying to suggest, there is -- there were

1 some convenient sample studies that psychologists have
2 done with planned families.

3 Q. You talked about the donor insemination.

4 A. Right.

5 Q. But part of your point, that these cases would be a
6 perfect illustration for when a convenient study would be
7 particularly useful?

8 A. Right. So the advantage, I mean, every kind of
9 research has advantages and disadvantages, but one of the
10 disadvantages in the large survey enterprise is that it's
11 especially difficult to capture sort of a needle in a
12 haystack populations. So the lesbian moms who conceive
13 through donor insemination is a needle in a haystack
14 population. You never find enough of them in a survey.
15 But if you go to the sperm bank and you study people who
16 became pregnant through the sperm bank, that is what we
17 call a convenient sample study. It has advantages and
18 disadvantages. The advantage, one of the advantages of
19 convenient sample study is you can find the needle in the
20 haystack population and study them directly, whereas a lot
21 of the time in surveys you can't find them at all.

22 Q. Professor, is your opinion of these extreme flaws,
23 extreme problems with Professor Regnerus' study shared by
24 the American Sociological Association as an organization?

25 A. In their Amicus Brief, the American Sociological --

1 Q. The Perrin and Windsor case?

2 A. In the Perrin and Windsor case, the American
3 Sociological Association presented a similar critique to
4 the critique I just presented along the lines that
5 Regnerus' study doesn't tell us anything about children
6 actually raised by same sex couples. And the reason is
7 that the data doesn't have that many children raised by
8 same sex couples and the subjects he was using were not
9 actually raised by same sex couples. And so it doesn't
10 inform the central question which is what is the impact on
11 children being raised by same sex couples?

12 Q. Is a public critique like that by the national
13 organization for the field of sociology normal or unusual?

14 A. In my experience, it's unusual for the American
15 Sociological Association to call out and criticize work
16 published by a sociologist.

17 Q. I would like to segue-way from Professor Regnerus'
18 study to a subject that you talked about in discussing
19 that. And that is the question of family stability.

20 A. Okay.

21 Q. So related to the question of stability, what does
22 the research show about marriage and divorce rates among
23 heterosexual couples? Do you have a slide?

24 A. Right. This is numbers based on the national survey
25 of family growth which is a project of the Center for

1 Disease Control. So this is a whole entire different
2 survey. Apologies for that. We are sort of crossing many
3 different surveys. And I know that can be hard to keep in
4 mind.

5 **Q.** In general, does the data show that there are big
6 differences in divorce rates among heterosexual married
7 couples based on particular groupings?

8 **A.** Yes. So this is data on expected divorce rate after
9 ten years for first marriages in a bunch of different
10 categories. If you look at race, for instance, Asian
11 women, only about seventeen percent of them were divorced
12 after ten years. White women, it was 32 percent.
13 African-American women, it was 44 percent. There is big
14 differences in the divorce rate depending on how old the
15 woman was when she first got married. So women who
16 married when they are teenagers are at higher risk of
17 divorce than women who marry when they are over 25. And
18 nowadays the median age for a first marriage is over 25.
19 It's typical for people to marry over 25.

20 But the people who marry when they are
21 teenagers, the woman who marry when they are teenagers are
22 at substantially increased risk of divorce. There is a
23 big educational gradient. So people with less than a high
24 school education have a 40 percent chance of getting
25 divorced within ten years. But people with a bachelor

1 degree have only a 15 percent chance of getting divorced
2 within ten years.

3 And whether the mother had a child before the
4 marriage also has -- is predictive of divorce. So women
5 who come into the marriage without children have about a
6 29 percent divorce rate over ten years, whereas woman who
7 come into the marriage with children already have about a
8 44 percent divorce rate. So what is useful about the NSFG
9 data, and they have gone through several cycles --
10 National Survey Of Family Growth.

11 **Q.** That is a Government survey, right?

12 **A.** It's a Government survey out of the sub-department
13 of the Centers For Disease Control.

14 **Q.** So --

15 **THE COURT:** Let's break here because we are
16 getting into family stability.

17 **MR. MOGILL:** I will tell you, Judge, I
18 probably have fifteen, twenty minutes. And it's a good
19 time to break. But you are right.

20 **THE COURT:** Is it a good time to break?

21 **MR. MOGILL:** That's fine. But I also just
22 want to alert you I will be done in less than half an hour
23 in the morning.

24 **THE COURT:** That's great. I appreciate that,
25 and I would usually work late to finish up so that we can

1 get the Professor back to California, but not that we
2 don't want to get rid of you, but I am not allowed to work
3 late anymore because they turn the heat off. We used to
4 work late all the time just to accommodate witnesses.

5 **MR. MOGILL:** It's so warm outside.

6 **THE COURT:** And they turn everything off.
7 It's a real chore now. So I'm sorry. You can finish up.
8 We will reconvene tomorrow at 9:00. We will start with
9 the family stability and go from there.

10 **MR. MOGILL:** Thank you, very much.

11 **THE COURT:** Good. Be careful. See you in
12 the morning at 9:00 a.m.

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C E R T I F I C A T I O N

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

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Lawrence R. Przybysz
Official Court Reporter

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