

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

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

Case Number: 12-10285

RICHARD SNYDER, ET. AL.,

Defendants.

/ VOLUME 6 - AM SESSION

**BENCH TRIAL  
BEFORE THE HONORABLE BERNARD A. FRIEDMAN  
UNITED STATES DISTRICT JUDGE**

100 U. S. Courthouse & Federal Building  
231 West Lafayette Boulevard West  
Detroit, Michigan 48226  
TUESDAY, MARCH 4<sup>TH</sup>, 2014

**APPEARANCES:**

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**For the Defendants:**

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## I N D E X

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## STATE DEFENDANTS' CASE

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MARK REGNERUS, Ph.D.	
Cross-Examination by Ms. Cooper	10

## E X H I B I T S

RECEIVED:

None.

1 Detroit, Michigan

2 Tuesday, March 4<sup>th</sup>, 2014

3 (At or about 9:00 a.m.)

4 -- --- --

5 THE COURT: You may be seated.

6 Just before our morning break, we'll talk a  
7 little bit about scheduling so we have some idea.

8 Doctor -- is he here?

9 MS. HEYSE: Plaintiffs have some preliminary  
10 matters, your Honor.

11 What do you have?

12 MS. NESSEL: Good morning your Honor.

13 When we recessed yesterday I brought to the  
14 Court's attention the fact that Ms. Heyse had indicated to  
15 me that she intended to present a power point presentation  
16 for Joseph Price who is scheduled to be the witness after  
17 Dr. Regnerus today.

18 THE COURT: Right.

19 MS. NESSEL: I had asked for the presentation as  
20 quickly as possible. Despite the fact that we sent a couple  
21 emails requesting it following court, I did not receive an  
22 email with the presentation until like 10:28 last night.

23 The presentation involves many complex charts and  
24 graphs that I've never seen before. And the content of this  
25 just from my quick review of it, it appears to include some

1 content that was never in Dr. Prices' expert report. So I  
2 am requesting of the Court one of a number of remedies:  
3 Either that the Court strike the power point and not permit  
4 that to be used or that Dr. Price instead of testifying  
5 after Dr. Regnerus which I think everybody assumes will be  
6 today that he not testify until tomorrow which would give  
7 me an opportunity to review all this matter. Or in the  
8 alternative give an extensive, a lengthy, lengthy recess  
9 following Dr. Regnerus' testimony so that I have an  
10 opportunity to review all this because this is a lot of  
11 material and I've never seen it before. Obviously at 10:30  
12 at night, you know, I was going to bed.

13 THE COURT: Going to bed. This is an important  
14 case.

15 MS. NESSEL: I know.

16 THE COURT: Wait a minute.

17 MS. NESSEL: I haven't had an opportunity to --

18 THE COURT: Ten thirty, you're suppose to take  
19 your No-Doze.

20 MS. NESSEL: I know. If it was over the counter,  
21 then, yes.

22 So those are my requests to the Court, your  
23 Honor.

24 THE COURT: What does the State have to say?

25 MS. HEYSE: Good morning, your Honor.

1 I'm happy to address this but before I do I just  
2 want to take a brief moment.

3 Your Honor had asked me to introduce members of  
4 our staff.

5 THE COURT: I did.

6 MS. HEYSE: They were able to come to court.

7 THE COURT: Please do.

8 MS. HEYSE: I do want to point out that one of our  
9 newest Assistant Attorney General is Scott Shimkus who is  
10 in the courtroom here today.

11 THE COURT: Nice to see you.

12 MS. HEYSE: He has been a tremendous help to the  
13 team in preparing for the case so I did want to acknowledge  
14 him.

15 THE COURT: Good to have you. We're trying to get  
16 everybody acknowledged.

17 MS. HEYSE: Thank you, so much for that  
18 opportunity, your Honor.

19 And, again, I'm happy to address Ms. Nessel's  
20 requests. She is absolutely right that we were unable to  
21 get her the power point until later in the evening  
22 yesterday. I don't dispute that. The fact of the matter is  
23 that we left here, we went to meet with our witness who  
24 came in from out of state, was able to go over the power  
25 point with him, and finalize it so we could get them the

1 final version.

2 Just to represent to your Honor, it certainly  
3 wasn't anything that was purposeful on our part. We got to  
4 it as I represented yesterday, got it to her as soon as we  
5 possibly could.

6 I would point out just a few things, your Honor,  
7 with regard to this matter. It is demonstrative evidence.  
8 Everything that is in that power point and I won't dispute  
9 the fact that there are quite a few slides. Everything that  
10 is in that power point is either contained in Dr. Price's  
11 report or his article that is going to be admitted. Again,  
12 it's demonstrative so we're not moving for admission, it's  
13 just something he's going to be discussing during his  
14 testimony.

15 I also point out for your Honor that, you know,  
16 we've had similar experiences with plaintiffs in this  
17 matter as well. We had some last minute changes from them  
18 with regard to two power points that we just bring to the  
19 Court's attention because quite frankly these things just  
20 happen in trial. So, you know, we would ask that we be  
21 allowed to use the power point. We certainly don't have any  
22 objection if Ms. Nessel needs additional time to prepare.  
23 We have no objection to that, your Honor, but we would ask  
24 that we be allowed to present the power point.

25 THE COURT: Okay. I think -- demonstrative

1 evidence is just that, it demonstrates or helps the witness  
2 demonstrate to the Court in an easier fashion. We had a  
3 policy that each side would exchange it as soon as they had  
4 it. Each side in this case has gotten along, the civility  
5 is great. I have no reason to believe that the State didn't  
6 get it to them -- to the plaintiffs as soon they could. So  
7 what we're going to do, we'll proceed. It's demonstrative,  
8 it's not anything else.

9 Ms. Nessel, if there comes a time when it becomes  
10 necessary to have more time, we'll certainly talk about. I  
11 have no problems with that. But I think -- let's see what  
12 it's all about. As I say, we've seen demonstrative evidence  
13 before. And, again, it's only to demonstrate and to help  
14 the Court and those are here understand the testimony.

15 It is limited, however, of course, to the report.  
16 If it exceeds the report then there would be I suspect an  
17 objection indicating that -- not so much demonstrative  
18 evidence but the testimony itself because the demonstrative  
19 evidence is not evidence.

20 So we'll proceed and take it one step at a time.

21 MS. NESSEL: May I just briefly, your Honor?

22 THE COURT: Yes.

23 MS. NESSEL: My only issue, your Honor, is that I  
24 won't know that until I see it presented since I haven't  
25 had an opportunity to review it. So that's why I'm asking



1 to have some kind of lengthier recess so that I can at  
2 least review the slides to know whether they were in the  
3 report or not. It's very difficult as you can imagine the  
4 second that it appears for me then to know, you know, was  
5 it in the report --

6 THE COURT: But you know -- okay. I'm going to  
7 give you some time. But you know, it's in the report. It's  
8 not what's on the screen that counts, it's what the expert  
9 testifies to. If he's testifying to something to whether it  
10 be on the screen or based upon his testimony, and it's not  
11 in his report then I would suspect that you're going to  
12 make an objection. You already know the report I'm sure  
13 backwards and forwards. So you will be able to make that  
14 objection. It has no bearing whatsoever to the  
15 demonstrative evidence. It has to do with his sworn  
16 testimony.

17 MS. NESSEL: I would only bring to the Court's  
18 attention, there's some very complex charts and graphs with  
19 many, many numbers so I have to be able to go through the  
20 numbers to --

21 THE COURT: Let's take it one at a time. Let's  
22 move on.

23 MS. NESSEL: All right.

24 THE COURT: We'll see. We may get a break and it  
25 may be right at the right time for lunch, and we may take a

1 little longer lunch. Let's take a look. We're not going to  
2 jam either side. I think each side throughout this whole  
3 trial their intent wasn't to do anything to the other side.

4 Let's move on. Anything else?

5 MS. STANYAR: No, your Honor.

6 THE COURT: Okay. Where's our witness?

7 We're not going to re-swear you, you're still  
8 under oath.

9 Counsel, you may proceed.

10 MS. COOPER: Thank you.

11 THE COURT: I don't know if the witness has met  
12 you.

13 M A R K R E G N E R U S, P H . D . ,  
14 H A V I N G B E E N D U L Y S W O R N , T E S T I F I E D A S F O L L O W S :

15 C R O S S - E X A M I N A T I O N

16 B Y M S . C O O P E R :

17 Q Leslie Cooper.

18 Good to see you live in person.

19 Good morning.

20 A Good morning.

21 Doctor Regnerus, you mentioned on Direct Exam  
22 yesterday that you asked two of the plaintiffs' expert  
23 witnesses, Michael Rosenfeld and Gary Gates to serve as  
24 consultants on your NFSS Study; is that right?

25 A Yes.

1 Q And you consider Michael Rosenfeld to be well-regarded  
2 professionally; is that right?

3 A Yes.

4 Q And you consider Gary Gates to be well-regarded in  
5 lesbian and gay demography; correct?

6 A Yes.

7 Q Now, turning your opinions, it's not your opinion, is  
8 it, that children raised by same sex parents necessarily  
9 have poor outcomes; is that right?

10 A Would you restate that?

11 Q Sure. It's not your opinion is it that children raised  
12 by same sex parents necessarily have poor outcomes; is that  
13 right?

14 A Poorer outcomes.

15 Q Poorer outcomes.

16 A That is not my opinion.

17 Q And you agree that the social science of gay parenting  
18 based on non-probability samples have taught us that it is  
19 possible for children raised in same sex households to  
20 develop normally; is that right?

21 A Yes.

22 Q In fact, you wrote in your -- in one of your NFSS  
23 articles that most of the respondents in your own NFSS  
24 Study report ample success and largely avoid problematic  
25 physical and emotional difficulties regardless of their

1 parents' experiences; is that right?

2 A It depends on the different outcomes. You know, some  
3 outcomes that's certainly true.

4 THE COURT: Speak a little bit slower.

5 BY MS. COOPER:

6 Q And you have written that,

7 "It's possible that there may be genuinely be two  
8 gold standards of family stability and context for children  
9 flourishing, a stably couple heterosexual household and a  
10 stably couple homosexual household but no population base  
11 sample analyses have yet been able to consistently confirm  
12 wide evidence of the latter"; is that right?

13 A Yes, presuming you're directly quoting from --

14 Q Your report.

15 A The report, yes.

16 Q Okay. You have recognized that studies using non-  
17 population base samples suggest that children in planned  
18 gay, lesbian, bisexual families seem to fair comparatively  
19 well; is that right?

20 A Could you repeat that once more?

21 Q Sure.

22 MS. HEYSE: Your Honor, I would ask that if we're  
23 going to have lengthy quotes that Dr. Regnerus be able to  
24 see a copy of what she's quoting from?

25 THE COURT: I think he has the report.

1 MS. COOPER: This was from the study itself.

2 BY MS. COOPER:

3 Q Do you have a copy of your NFSS Study?

4 A From the study itself?

5 Q The study itself?

6 THE COURT: Do you remember what exhibit --

7 MS. HEYSE: Exhibit 6 from your original article.

8 THE COURT: Counsel, you can continue to ask him  
9 questions, but just kind of refer him to the page.

10 BY MS. COOPER:

11 Q Looking at page 766, the conclusion section.

12 A Yes.

13 Q Bottom of the first paragraph, if you'll read with me.

14 You reference that,

15 "While previous studies suggest that children in  
16 planned GLB families seem to fare comparatively well": is  
17 that right?

18 A Yes.

19 Q Okay. Now you also believe that we should privilege  
20 the collection of probability base data over other data; is  
21 that right?

22 A Yes.

23 Q In your view, the hallmark of a rigorous study is a  
24 large representative pool of participants drawn from a  
25 population base random sample; is that right?

1 A That's correct.

2 Q But you recognize that this is not necessarily true  
3 within the field of psychology; is that right?

4 A I know psychologists don't privilege those kind of  
5 samples in the way that sociologists or certainly  
6 demographers do.

7 Q And your understanding is that most research in  
8 psychology uses smaller non-representative samples; right?

9 A I wouldn't speak for all of psychology, but there are  
10 plenty that privilege smaller samples for sure.

11 Q Okay. You had your deposition taken in January; is  
12 that right?

13 A Yes.

14 Q And you have a copy of your transcript there? I have  
15 one for you.

16 If you turn with me to page 19. Line 19,  
17 beginning there,

18 "Question: And is it true that most research in  
19 psychology uses smaller non-representative samples?

20 "Answer: That is my understanding."

21 Did I read that correctly?

22 A Yes.

23 Q Thank you. Now, yesterday on Direct testimony you  
24 talked about your criticism of the research on gay parent  
25 families that was discussed in a report by the American

1 Psychological Association. Now that report was issued in  
2 2005; is that correct?

3 A Right.

4 Q And you're aware that research on children of same sex  
5 parents did not stop in 2005?

6 A Correct.

7 Q That there has been research conducted since then?

8 A Yes.

9 Q Now, yesterday you testified that it's premature I  
10 think is the word you used to allow same sex marriage until  
11 we have large scale population base longitudinal studies on  
12 outcomes for children of same sex couples; is that right?

13 A Yeah, and I think the reference -- I could be mistaken  
14 but the reference is to premature to settle the signs  
15 around this stuff.

16 Q Okay. You, yourself, did a large scale study of over  
17 15,000 individuals in the NFSS; is that right?

18 A We screened 15,000. Interviewed fully just under  
19 3,000.

20 Q You would call that a large scale study.

21 A Yes.

22 Q And after screening over 15,000 people you found only  
23 two who were raised from birth in a same sex parent family;  
24 is that right?

25 A That's correct.

1 Q That sample wasn't big enough to give you statistical  
2 power to evaluate children raised from the beginning in  
3 same sex families; right?

4 A That is correct.

5 Q You need a bigger group to do that.

6 A Definitely.

7 Q How many people do you think you would need to survey,  
8 to screen rather, to get a large enough group to study?

9 A It depends a little bit on the outcome that you're  
10 evaluating. If on average the outcomes at face value differ  
11 markedly, for example, the sample -- in adults whose  
12 mothers have same sex relationship, mothers -- adult  
13 children whose mothers had a same sex relationship they  
14 tend to report experiencing poverty or being on community  
15 assistance at notably greater rates. It's like 70 percent  
16 or something compared to closer to 10 to 20 percent for  
17 intact biological families. When you have a profound  
18 difference one does not need lots of cases because there's  
19 already a notable difference in the effect. But when you're  
20 detecting smaller effects then you need a larger number of  
21 cases.

22 So like my reference yesterday to the CNN poll  
23 where if two candidates are running neck and neck you need  
24 a larger sample size to distinguish whether there's a  
25 statistically significant difference between those two. But



1 if one is being -- in the other 70 to 30 you don't need  
2 that many cases. But certainly more than two, certainly  
3 more than -- ideally well over -- more than 50 or a 100.

4 Q Okay. So if they need more than 50 or 100 let's say --

5 A Ideally. It depends on the outcome and how different  
6 those outcomes are.

7 Q So by my math to get 50 if your 15,000 people yielded  
8 only two to get 50 -- you can check my math -- you would  
9 have to have 375,000 people screened?

10 A I don't have to check your math, but it's -- it's a  
11 lot more than 15,000 to screen which indicates that we're  
12 not only dealing with a small population among whom  
13 stability was comparatively rare in that era, but we're  
14 also -- I mean, it calls for more data analysis. So this is  
15 why people are interested in the census and what it has to  
16 say on this, or the versions of the census, The American  
17 Community Survey. But it raises an interest in new data  
18 collection.

19 Q Because the census data doesn't actually provide  
20 information on child outcomes; right?

21 A Not many.

22 Q School progress is one.

23 A Right.

24 Q Okay. How much did it cost you to do the project  
25 surveying or screening 15,000 people?

1 A You're saying how much did it cost?

2 Q How much did it cost to do that survey?

3 A I think total about \$415,000.

4 Q So to screen -- your survey was not longitudinal,  
5 right it was just one assessment.

6 A Yes.

7 Q So if it was -- you say 400 --

8 A Four hundred fifteen is my recollection.

9 Q So in order to screen say 375,000 people on multiple  
10 assessments can you even estimate the cost of that? Is it  
11 in the tens of millions of dollars to fund that?

12 A I can't offhand estimate, but it's not something that  
13 the federal grant system can't handle if it wishes to study  
14 this.

15 Q Is it common for researches to get grants in the tens  
16 and millions of dollars?

17 A Well, I know that the Ad Health Project is now on it  
18 way four or five, that was in the eight figures I know in  
19 terms of the grant. I mean, it's unusual but it's not  
20 unheard of for those large federally funded grants.

21 Q And do you expect anyone would fund a tens of millions  
22 of dollars study to assess whether children raised by same  
23 sex parents fair any differently than children raised by  
24 heterosexual couples when the professional groups in the  
25 fields of psychology, sociology and pediatrics have already

1 said we have sufficient research to answer this question  
2 and we know the answer?

3 A One of the things I think it ought to be added to is  
4 either an existing or an upcoming large federal grant and  
5 there's a handful of them out there at any given time. I'm  
6 not aware of what's out there right now. It could be tacked  
7 onto an existing children's study. So it's not -- for all I  
8 know it could be in the works, but I'm unaware of it.

9 Q So in your opinion -- or is it your opinion that if  
10 the type of study you describe, a nationally representative  
11 large scale, longitudinal study if that type of study is  
12 never done because its cost prohibitive is it your view  
13 that we should just never allow same sex couples to marry?

14 MS. HEYSE: Objection, your Honor. Calls for  
15 speculation.

16 THE COURT: He's an expert. He can testify.

17 A Well, there are other aspects to consider including  
18 scientific aspects. I mentioned in a deposition and I think  
19 I mentioned yesterday that marriage historically is about  
20 expectation of permanence, fidelity, and generally openness  
21 and welcoming of children. Scientifically and studies that  
22 we talked about yesterday permanence is -- permanence is  
23 less common especially in households of two women.  
24 Expectations of fidelity are less common in households of  
25 two men scientifically. And then you look at the welcoming

1 of children and that's when we get into talking about  
2 expectations -- assisted reproductive technology which is  
3 very expensive and less expected among people of lower  
4 means. So it's not just about science around child  
5 outcomes. It's also a science around common expectations  
6 and marriage.

7 Q So either if we had the type of study you would  
8 require that still wouldn't be -- that wouldn't answer the  
9 question and allow you to support same sex marriage.

10 A There are more aspects to it than just a large child  
11 outcome study for sure.

12 Q Now, I want to go back to your statement that there  
13 may be two gold standards of family stability and context  
14 for children flourishing, a stably coupled heterosexual  
15 household and a stably coupled homosexual household but no  
16 population base sample analyses have yet been able to  
17 consistently confirm wide evidence of the latter. That was  
18 your statement in your report; right?

19 A Yes.

20 Q Now, are there population base studies that  
21 consistently confirm that children of low income couples  
22 develop as well as children of higher income parents?

23 A I'm going to ask you to repeat that one.

24 Q Sure. Are there population base studies that  
25 consistently confirm that children of low income couples

1 develop as well as children of higher income couples?

2 MS. HEYSE: Objection, your Honor. That's outside  
3 the scope of his report.

4 THE COURT: Again, he's an expert and it's cross-  
5 examination. If he knows.

6 A Insofar as I know, yes.

7 BY MS. COOPER:

8 Q Confirming the equally good outcomes of children of  
9 low income and high income parents?

10 A Confirming that, no. I mean -- typically  
11 distinguishing that there are differences.

12 Q Right. So, in fact, studies show the opposite. It  
13 doesn't confirm that they are doing equally well, it  
14 confirms that children raised by low income parents don't  
15 on average develop as well.

16 A That's what I'm agreeing with.

17 Q Okay. Are there population base studies that  
18 consistently confirm that children of non-college educated  
19 parents develop as well as children of college educated  
20 parents?

21 A I know less about that, but on average I would expect  
22 there to be differences.

23 Q Right. Studies actually show the opposite that kids of  
24 non-college educated parents don't develop as well as  
25 children of college educated parents.

1 A Typically insofar as it's associated with social class  
2 and life chances for children.

3 Q But you don't favor excluding low educated couples  
4 from marriage; is that right?

5 MS. HEYSE: Objection, your Honor. That's not  
6 relevant to these proceedings.

7 THE COURT: Overruled. Again, it's cross-  
8 examination.

9 A I do not.

10 BY MS. COOPER:

11 Q And you don't favor excluding low income people from  
12 marriage; is that right?

13 A I do not.

14 Q So it is not your view that marriage should be limited  
15 to those groups whose children are statistically most  
16 likely to have positive child development outcomes.

17 A Can you say that again?

18 Q It is not your view, is it, that marriage should be  
19 limited to those groups whose children are statistically  
20 most likely to have positive outcomes?

21 A Correct, it's not.

22 Q And it is not your opinion that groups that are known  
23 from the scientific research to raise children who fair  
24 more poorly should be excluded from marriage.

25 A Right.

1 Q But in your view because there are, quote, outstanding  
2 questions about whether children develop as well in same  
3 sex households compared to opposite households that same  
4 sex couples should not be allowed to marry?

5 A It's my view that the science here is very new whereas  
6 the science around these other questions you've asked is  
7 notably older. So there's an intellectual debate going on  
8 though people would like to close it quickly, I think it  
9 should still be open and it should be further investigated  
10 about the no differences debate. But as I mentioned just a  
11 little bit earlier it doesn't tackle the question of the  
12 hallmarks, the historic hallmarks of marriage.

13 Q And that's a separate issue. We'll got to that.

14 MS. HEYSE: I'm going to object, your Honor. He  
15 should be able to finish his response.

16 THE COURT: He may complete his answer.

17 A I mean, it's not just about the science around child  
18 outcomes. It's also the science around long-standing  
19 expectations around marriage.

20 BY MS. COOPER:

21 Q So given -- you mentioned that the research on low  
22 income and low educated couples is more longstanding, that  
23 research actually confirms poor outcomes but you don't  
24 favor excluding those groups.

25 A Right.

1 Q Okay.

2 A It's a function of sort -- they're more in line with  
3 the longstanding criteria around marriage especially to the  
4 idea that marriage unites man and woman and the  
5 expectations around children because I think still today  
6 half of all children that are born are unplanned. And  
7 marriage for a very long time has served to unite the  
8 parents, the biological parents of children in a union that  
9 will be protective of that child whereas -- I mean --

10 MS. COOPER: Your Honor, it's non-responsive to  
11 the question.

12 THE COURT: There's no question.

13 MS. COOPER: Thank you.

14 BY MS. COOPER:

15 Q Now, in your opinion and I think this was your  
16 ultimate opinion in your expert report and I'm happy to  
17 pull that out if you need but it's a sentence so you tell  
18 me.

19 In your opinion,

20 "It remains prudent for government to continue to  
21 recognize marriage as a union of a man and a woman thereby  
22 promoting what is known to be an ideal environment for  
23 children"; is that right?

24 A Yes.

25 Q Okay. Now, you recognize that same sex couples have



1 children either through adoption or assisted reproduction  
2 including in states like Michigan where they can't marry.

3 A Right.

4 Q And you recognize that excluding same sex couples from  
5 marriage does not prevent them from having children in  
6 these ways.

7 A That is true.

8 Q And you're not aware of any data showing that allowing  
9 same sex couples to marry reduces the number of children  
10 who are raised in heterosexual biological parent families;  
11 is that right?

12 A I'm unaware of that.

13 Q So, in fact, you acknowledged, did you not that you  
14 don't actually know whether the exclusion of same sex  
15 couples from marriage actually does anything to promote  
16 what you consider to be the ideal environment for children.

17 A Right, we don't know except that it's an open  
18 question. Moving forward there's more data to collect here.

19 Q But you don't know.

20 A I don't know.

21 Q Okay. Now I want to ask you some questions about your  
22 NFSS Study. You noted yesterday that to be included in your  
23 "lesbian mother," or "gay father" groups the respondent had  
24 to affirmatively answer the following question:

25 "From when you were born until age 18 or until

1       you left home did either of your parents ever have a  
2       romantic relationship with someone of the same sex"; is  
3       that right?

4       A     Yes.

5       Q     And just for the record if I use "lesbian mother" or  
6       "gay father" terms I'm not using that to suggest anything  
7       about the sexual orientation of the individuals but those  
8       are the terms used in the study so I may use that in  
9       shorthand.

10                 For example, if a respondent reports that her  
11       mother had a relationship with another woman for, say, six  
12       months but otherwise only had relationships with men that  
13       individual would be put in the "lesbian mother" group;  
14       right?

15       A     Right, and in a followup I said it would be better to  
16       talk about this category as mothers who've had lesbian  
17       relationships or fathers who had gay relationships.

18       Q     But this individual would still be in that category.

19       A     Right, because the relationship was a same sex one.

20       Q     Okay. And over half of the respondents you deemed to  
21       fall into the "lesbian mother" category never actually  
22       lived in a same sex household; right?

23       A     Well, they didn't live in the household but their  
24       mother and her partner --

25       Q     So that's yes.

1 A I don't purport to know how long the partnership  
2 lasted.

3 Q But they never lived in an household where there was  
4 a same sex couple living.

5 A Not according to them, yes, correct.

6 Q Okay. And very few of the respondents that you deemed  
7 to be children of a "gay father" ever lived in a same sex  
8 couple household.

9 A In that era that was particularly uncommon.

10 Q So that's correct?

11 A Did you say none of them ever --

12 Q No, no, very few.

13 A Few. I want to say 23 percent lived for some share of  
14 a year with their dad and his partner.

15 Q And you have noted that a majority of the respondents  
16 you deemed to fall into the "lesbian mother" or "gay  
17 father" group were the product of a failed heterosexual  
18 union; correct?

19 A I said a majority, did you say?

20 Q Yes.

21 A Yes.

22 Q Now, your primary heterosexual parent comparison group  
23 or any of your heterosexual parent comparison groups were  
24 not defined by asking the question did your parent ever  
25 have a heterosexual relationship; right? That's not how you

1 established groups.

2 A That is correct.

3 Q Your primary comparison group was a group of  
4 individuals who lived from birth to age 18 in an intact --  
5 two biological parent family; is that right?

6 A According to them, yes.

7 Q Well, all of this is according to them.

8 A Yes.

9 Q And this group which is called in shorthand IBF,  
10 intact biological family, excluded all divorced, a single  
11 parent, heterosexual families; right?

12 A Excluded who?

13 Q Divorced people?

14 A Right. I mean, they may have had a divorce before the  
15 child came along. But the child experienced it as an intact  
16 biological family for the duration of their childhood.

17 Q Okay. So any child who had experienced divorce was not  
18 in that group.

19 A That is correct.

20 Q And similarly any child who experienced single parent  
21 family life, that was stripped away, not in that group.

22 A Correct.

23 Q Okay. So the idea of intact biological family group  
24 was defined by the stability of the families.

25 A Yes. I did that intentionally because stability has

1 long been seen as a resource. And in a lot of the  
2 literature in this area the exact stability of the  
3 comparison group was often unclear sometimes entirely.

4 Historically, stability is a good thing, I wanted  
5 to make sure that we understood the comparison category was  
6 fairly clear.

7 Q So that's a yes it was defined by it being a stable  
8 family group.

9 A Yes.

10 Q Okay.

11 A By the way, we don't know how happy this group was. I  
12 didn't make that -- are they together.

13 Q So on the one hand you compared the two groups -- two  
14 of the groups in which a majority of the individuals had  
15 been through a family breakup. That would be the "lesbian  
16 mother" and "gay father" group. You compared them to a  
17 group that was defined by its stability, the intact  
18 biological parent -- sorry, intact biological family group.

19 A Could you repeat the first part of that?

20 Q Sure. You compared two groups in which the majority of  
21 the respondents had been through a family breakup. That  
22 would be the "lesbian mother" and "gay father" group. You  
23 compared them to a group that was defined by the stability  
24 of the group, the intact biological family group.

25 A Yes.

1 Q Okay.

2 A That was not the criteria by which -- the criteria by  
3 which I sorted them whether they had a same sex -- the  
4 parents had a same sex relationship.

5 Q But that was the comparison.

6 A Yes.

7 Q Now, the two respondents in the "lesbian mother" group  
8 who like the individuals in the "IBF" group lived from  
9 birth to age 18 in an intact stable family appeared well  
10 adjusted.

11 A On average. I don't recall them being notably either  
12 way.

13 Q Yesterday you testified they made --

14 A Yes.

15 Q And you recognize that I think you just said a few  
16 moments ago that stability is associated with better  
17 outcomes for children.

18 A Right.

19 Q And divorce is generally associated with poorer  
20 outcomes for children; is that right?

21 A Yes.

22 Q Now, yesterday you said you had no idea what the study  
23 would reveal before the data came in. Are you saying you  
24 really had no idea that a sample in which most of the  
25 subjects experienced a family breakup would fair worse than

1 a comparison group where not a single one of the subjects  
2 had experienced the family breakup because it was defined  
3 to exclude those individuals?

4 A What I mean by the statement is I had no idea what the  
5 -- when the data was in the field how it would return in  
6 terms of the number of people who had said their parents  
7 had same sex relationship or what their household calendars  
8 would look like. That's what I mean by I had no idea.

9 Q But you recognize that in the era in which these  
10 individuals grew up planned same sex parent families was  
11 quite uncommon.

12 A It was, and I mention that in the study.

13 Q Okay. Now, you said yesterday I think that individuals  
14 in the "lesbian mother" group had outcomes that were very  
15 comparable to the individuals in the step family group; is  
16 that right?

17 A If that's what I had said yesterday, I think -- step  
18 family, yeah.

19 Q Okay.

20 A I think what I said was in the followup study where I  
21 split the pies a little bit more narrow the fewest  
22 differences between cases where adult children had a mom or  
23 same sex relationship and they lived with their partner and  
24 single parents who did not have subsequent partners. I  
25 think that was the most close equation that I mentioned

1       yesterday.

2       Q     But I think you also mentioned the comparison to step  
3       families were very comparable?

4       A     Slightly less but comparable.

5       Q     Okay. Now that actually wouldn't be surprising, would  
6       it, given that in almost every case in the "lesbian mother"  
7       group the mother's same sex partner was not an original  
8       member of the household. It was a later formed  
9       relationship.

10      A     Sure.

11      Q     Okay. Now, you made clear yesterday that you were not  
12      making any claims about causation regarding child outcome  
13      in the NFSS Study; is that right?

14      A     Right.

15      Q     Okay. In fact, you agree that the sub-optimal outcomes  
16      that you found in the "lesbian mother" and "gay father"  
17      groups may not be due to the sexual orientation of the  
18      parent; is that right?

19      A     Since I did not measure it, I cannot make a claim  
20      about it.

21      Q     Okay. Now, switching gears a little bit. I want to  
22      talk about the pool. So the respondents in the NFSS were  
23      ages 18 to 39; right?

24      A     Yes.

25      Q     So the data was collected in 2011 and 2012; right?



1 A Yes.

2 Q So that means they were born from 1972, to 1993; that  
3 window?

4 A Yes.

5 Q At the time the individuals in the NFSS were being  
6 raised, you agree that stigma was more pronounced and  
7 social support for lesbian and gay parents was far more  
8 modest than it is today; is that right?

9 A I would suspect so. I did not measure that. I mean, I  
10 measured how often they were bullied, things like that, but  
11 one can presume so.

12 Q Now, in your article on the NFSS you noted that it is  
13 often the case and it certainly is true of the NFSS that a  
14 gay or lesbian parent first formed a heterosexual union  
15 prior to coming out of the closet; right?

16 A Right.

17 Q And you also wrote that the NFSS may best capture what  
18 might be called "an earlier generation" of children of same  
19 sex parents and includes among them many who witnessed a  
20 failed heterosexual union."

21 MS. HEYSE: Again, your Honor, I would just ask if  
22 we're going to be reading from specific --

23 THE COURT: I agree, and a little bit slower.

24 MS. COOPER: Sure, sure.

25 BY MS. COOPER:

1 Q You've got your NFSS article with you?

2 A Yes.

3 Q If you would turn to page 756, and if you look with me  
4 at the bottom paragraph on that page, second sentence.

5 "Today's children of gay men and lesbian women  
6 are more apt to be 'planned' (that is, by using adoption,  
7 IVF, or surrogacy) than as little as 15-20 years ago, when  
8 such children were more typically the products of  
9 heterosexual unions."

10 You wrote that?

11 A Yes.

12 Q Okay. Let's stay on page 756. Skip that.

13 On page 765, if you go to the third paragraph  
14 from the bottom, last sentence,

15 "Child outcomes in stable 'planned' GLB families  
16 and those that are the product of previous heterosexual  
17 unions are quite likely distinctive as previous studies  
18 conclusions would suggest."

19 You wrote that?

20 A Yes.

21 Q Okay.

22 A And I followed it up with sort of -- we don't know how  
23 many of those actually are.

24 Q You don't believe that you can draw conclusions from  
25 your NFSS Study about outcomes for children in planned

1 lesbian couple families; is that right?

2 A If by "planned" you mean assisted reproductive  
3 technology things like that, yeah.

4 Q Okay. Now, that's families like the plaintiffs --  
5 well, actually families like many couples seeking to marry  
6 and form families together; is that right?

7 A I don't purport to know what share of that is true.

8 Q Okay. I think you emphasized this yesterday but I want  
9 to make sure we understand that the NFSS Study documented  
10 differences statistically significant differences between  
11 groups. In other words, in the groups in the so-called  
12 lesbian mother group and those in the intact biological  
13 family group, but it did not concern itself with the  
14 magnitude of those differences.

15 A Correct, and I stated in the article that was not my  
16 purpose.

17 Q Now, you talked yesterday about the audit of the NFSS  
18 Study conducted by the Journal Social Science Research that  
19 -- the journal that published the study.

20 A It was authorized by the journal. It was not conducted  
21 by the journal.

22 Q Authorized by the journal, okay. And you expressed  
23 some views about the motives of the individual who wrote  
24 the audit, but one question about this that I just don't  
25 think was answered yesterday was -- it was the journal that

1 published that audit; isn't that right?

2 A I believe so.

3 Q Now, are you familiar with a sociologist named Paul  
4 Amato?

5 A Yes.

6 Q He's a professor of sociology at Penn State?

7 A Yes.

8 Q And you consider Paul Amato to be a well-regarded  
9 scholar in family structure studies?

10 A I do.

11 Q You consider him to be a level and level-headed  
12 scholar?

13 A Generally speaking.

14 Q And you consider him to be a scholar who's right down  
15 the middle politically neither liberal, nor conservative?

16 A He had struck me at one point. I have no idea if that  
17 is entirely accurate, but he strikes me as a moderate.

18 Q And, in fact, you asked Paul Amato to be one of the  
19 consultants on your study.

20 A I did.

21 Q And he agreed?

22 A He did.

23 Q So he served as a consultant?

24 A Yes.

25 MS. COOPER: I like to mark a document as an

1 exhibit for identification. It's Exhibit 54.

2 MS. HEYSE: Your Honor, I would just ask that we  
3 be provided a copy. We have not seen it.

4 THE COURT: I think counsel as a bunch of copies.

5 MS. HEYSE: If we could have a few minutes to  
6 review?

7 THE COURT: Sure. Show it to the witness so he can  
8 review it also.

9 MS. HEYSE: Your Honor, I would just note for the  
10 record that we did agree to exchange exhibits in advance of  
11 the trial and this was not provided to us.

12 THE COURT: Why was it not provided?

13 MS. COOPER: This is being used for identification  
14 to ask questions, and it was an exhibit that was used at  
15 the deposition, they have it.

16 THE COURT: Do you intend to introduce it?

17 MS. COOPER: No.

18 THE COURT: Okay.

19 MS. HEYSE: Oh, I'm sorry.

20 THE COURT: It's only for purposes of use, but not  
21 for --

22 MS. COOPER: Not to admit.

23 THE COURT: Okay.

24 BY MS. COOPER:

25 Q So, Dr. Regnerus, this is a statement Paul Amato wrote

1 about your NFSS Study; is that right?

2 A The source is a blog. I'm not sure what all of it is  
3 verbatim, Paul Amato's words, and what is --

4 Q Well, I'll direct your attention. Thank you for  
5 clarifying.

6 A This is not Paul Amato's blog.

7 Q Understood. If you'll read with me. It says here --

8 THE COURT: Tell him where you're reading.

9 MS. COOPER: I just want to find the right  
10 passage.

11 BY MS. COOPER:

12 Q If you look at the second paragraph from the top.

13 A First page?

14 Q Yes. Second sentence,

15 "I regret that before writing that post" --

16 A Who wrote that?

17 Q I'll clarify. The first three paragraphs in Italics  
18 are statements from somebody who wrote the blog, not  
19 attributable to Paul Amato.

20 MS. HEYSE: I'm going to object, your Honor, to  
21 the extent this is hearsay.

22 THE COURT: I'm not sure where she's going at.

23 The first three were not written by --

24 MS. COOPER: I'm trying to direct Professor  
25 Regnerus to the statement that this blogger says,

1                    "There is a statement sent to me by Paul Amato  
2                    which I agree to post" and then he posts the statement  
3                    below.

4                    A            And who is he?

5                    THE COURT: Who is the blogger, is that your  
6                    question?

7                    THE WITNESS: Yes.

8                    MS. COOPER: The blogger's name is Phil Cohen, I  
9                    believe. This is something we looked at your deposition.

10                   BY MS. COOPER:

11                   Q            Do you not recall identifying it?

12                   A            I do, yeah. I just don't know -- I can't identify on  
13                   this who wrote this top part.

14                   Q            Okay. But the part I want to flag your attention to is  
15                   in the second paragraph it says -- this is not Paul Amato,  
16                   this is the blogger,

17                   "I regret that before" --

18                   MS. HEYSE: Your Honor, I'm going to object to the  
19                   extent of reading something into the record --

20                   THE COURT: Sustained.

21                   The blogger said something and now what's your  
22                   question?

23                   MS. COOPER: I don't really care what the blogger  
24                   said, I just wanted to direct Professor Regnerus so the  
25                   statement from Paul Amato that is posted here.

1 THE COURT: Good.

2 BY MS. COOPER:

3 Q That begins,

4 "Thoughts on the Mark Regnerus 2012 Study by Paul  
5 Amato."

6 Do you see that heading in bold?

7 A Yes.

8 Q So that's the beginning of the statement.

9 So I'd like you to turn to page 3 of this  
10 statement.

11 A Are there's 12 pages to this? I'm only seeing four.

12 Q This is the first four. I didn't print the comments to  
13 the blog because -- I think, in fact, that may have been  
14 something that counsel for defendants did not want to  
15 include in the exhibit. But either way I did not consider  
16 that.

17 THE COURT: The exhibit is just to ask him  
18 questions.

19 MS. COOPER: It's just to feature the statement.

20 BY MS. COOPER:

21 Q So if you can go to page 3 with me.

22 A Okay. If you would look at the second paragraph from  
23 the bottom, okay, beginning with the second sentence, and  
24 read along with me,

25 "Many" --



1 MS. HEYSE: Your Honor, it's hearsay and she can't  
2 read it into the record.

3 MS. COOPER: It's not for the truth. I want to ask  
4 him if he agrees with statements made by one of his own  
5 consultants about his study.

6 THE COURT: For that purpose, you may.

7 BY MS. COOPER:

8 Q "Many conservative observers have cited the Regnerus  
9 study as if it provided evidence that being raised by gay  
10 or lesbian parents is harmful to children. This claim is  
11 disingenuous because the study found no such thing. A  
12 noteworthy example came from Regnerus himself who signed an  
13 amicus brief to the Supreme Court citing his study as  
14 evidence against same sex marriage. This is curious because  
15 on page 766 in his 2012 article, Regnerus stated that his  
16 study was not intended to either affirm or undermine the  
17 legal right to same sex marriage."

18 And on page 768 of his response to the  
19 commentaries in the same issue, he stated,

20 "That his data should not be used to press any  
21 political program. Given these cautious early statements it  
22 is exasperating to see Regnerus later cite his own study as  
23 evidence against same sex marriage."

24 So, first question about this: Is Professor Amato  
25 who is a consultant on your study correct to say that it is

1 disingenuous to claim that the NFSS Study provides evidence  
2 that being raised by gay or lesbian parents is harmful to  
3 children?

4 A The question hinges around sort of what does it mean  
5 to be raised by, right? And I think we mentioned this a  
6 little bit yesterday and it says gay or lesbian parents. My  
7 mistake and acronyms notwithstanding I talk about parents  
8 who have same sex relationship with no assumptions about  
9 their orientation. So when he talks about being raised by  
10 which implies some degree of time I assume and household  
11 presence I assume. But then he goes and uses gay or lesbian  
12 as an adjective which I don't think -- I mean, I don't have  
13 data on the orientation, it's harmful to children. I think  
14 the jury is out on this, figuratively speaking. What we  
15 need is -- the absence raises significant questions about  
16 children who grow up in families where a parent has a same  
17 sex relationship.

18 What it doesn't answer his question about  
19 orientation, and it didn't come design to answer political  
20 questions. It came design to address an intellectual  
21 question.

22 Q Okay. So he is correct in your view that -- sorry. He  
23 is correct that you said the study was not intended to  
24 either affirm or undermine the legal rights of same sex  
25 marriage?

1 A That's what I wrote in the original study, yes.

2 Q Okay. Okay. Great.

3 Now, are you aware that yesterday the Chair of  
4 the Sociology Department at the University of Texas, your  
5 department, issued a statement posted on its website  
6 stating the following:

7 "Like all faculty" --

8 MS. HEYSE: Objection, your Honor. Hearsay.

9 MS. COOPER: I'm happy to provide a copy if you  
10 like. I'm not seeking to admit it again -- happy to show a  
11 copy if you don't have it.

12 MS. HEYSE: I don't have a copy.

13 THE COURT: And, again, it's only for purposes of  
14 cross-examination.

15 MS. HEYSE: Thank you.

16 MS. COOPER: So I've marked this for  
17 identification as Exhibit 55.

18 BY MS. COOPER:

19 Q So, if you'll read along with me, the statement says,

20 "Like all faculty Dr. Regnerus has the right to  
21 pursue his areas of research and express his point of view.  
22 However, Dr. Regnerus' opinions are his own. They do not  
23 reflect the views of the sociology department of the  
24 University of Texas at Austin. Nor do they reflect the  
25 views of the American Sociological Association which takes

1 the position that the conclusions he draws from his study  
2 of gay parenting are fundamentally flawed on conceptual and  
3 methodological grounds and that findings from Dr. Regnerus'  
4 work have been cited inappropriately in efforts to diminish  
5 the civil rights and legitimacy of LGBTQ, partners and  
6 their families. We encourage society as a whole to evaluate  
7 his claims."

8 There's additional material but I just wanted to  
9 call your attention to that paragraph.

10 Were you aware of this statement?

11 A I saw it yesterday.

12 Q Okay. And what is your reaction to that?

13 A It's regrettable. I think the University has  
14 characterized my academic freedom. I guess they have been  
15 getting negative press probably about my appearance here,  
16 and decided to make a statement which they had not made  
17 before even though I had conducted the research -- the  
18 process a few years ago. The article came out a year and a  
19 half ago. I think they just wanted to distance themselves  
20 from me which is sad. And I heard from some of my  
21 colleagues that this was an inappropriate thing for the  
22 department to do.

23 Q And you are aware that The American Sociological  
24 Association did submit a brief, an amicus brief in the U.S.  
25 Supreme Court in the Windsor and Perry cases stating that

1 your study doesn't allow for conclusions about being raised  
2 by -- the impact of being raised by same sex parents; is  
3 that right?

4 A I'm aware of that.

5 Q Okay. And I want to switch gears away from NFSS now  
6 and your research and ask about another study.

7 You're familiar with a study done by Douglas  
8 Allen based on the Canadian Census that looks at high  
9 school graduation rates?

10 A I've read and I wrote a little summary piece about it  
11 but I'm not intimately familiar with that data. It cannot  
12 be replicated so far as I can tell because it was  
13 proprietary to the Canadian Census.

14 Q Okay. You mentioned that you wrote a little blog piece  
15 or a little article about that.

16 A Yes.

17 Q In that article you said that a limitation of this --  
18 actually, let me show it to you so we don't have any  
19 confusion here.

20 The document I've marked for identification as  
21 Exhibit 56 called "A Married Mom and Dad Really Do Matter:  
22 New Evidence from Canada" that's the blog piece you wrote  
23 about the Allen study?

24 A Yes.

25 Q Okay. If you could turn with me to the second page.

1 If you look at the third paragraph from the bottom, and  
2 read along. It says,

3 "Every study has its limitations and this one  
4 does, too. It is unable to track the household history of  
5 children nor is it able to establish the circumstances of  
6 the birth of the children whose education is evaluated,  
7 that is, were they the product of a heterosexual union,  
8 adopted, or born via surrogate or assisted reproductive  
9 technology."

10 You wrote that?

11 A I did.

12 Q Okay. And you have said that you would bet that given  
13 the time period in which these 17 to 22 year olds in  
14 Allen's study were born that many of the individuals who  
15 were in the same sex family group were the product of  
16 former heterosexual unions; right?

17 A Did I say that? I don't think I said that.

18 Q Well, let's take a look at your deposition.

19 A I may have said it. If you could point to the page?

20 Q Would you agree with that now?

21 A If you would repeat the question.

22 Q Sure. You would bet that given the time period in  
23 which the 17 to 22 year olds in Allen's study were born  
24 many of the individuals who were in the same sex family  
25 group were the product of a former heterosexual union.

1 A It's likely given the timing.

2 Q Sure.

3 A Again, we don't really have good data on sort of ART  
4 in the past. We really don't have good data on it at the  
5 present.

6 Q Okay. But you think it's likely.

7 A It's likely.

8 Q And you've said you suspect that planned same sex  
9 couple families were not what the Allen study evaluated on  
10 average.

11 A I don't think he could, yeah. I mean --

12 Q Okay. Now, there's been a lot of discussion about  
13 couple stability. So I want to ask you some questions about  
14 that.

15 First of all, can you tell us generally what the  
16 divorce rate for heterosexuals is in this country?

17 A What do you mean by divorce rate? Rate per year, I  
18 think it's two percent per year.

19 Q Isn't the data over sort of a ten-year period?

20 MS. HEYSE: Your Honor, I'm going to object.

21 THE COURT: Let him answer.

22 MS. COOPER: I'm sorry. I thought he was finished.  
23 My apologies. Go ahead.

24 A My recollection is the divorce rate is, you know, it's  
25 24,000 married women per year.

1 BY MS. COOPER:

2 Q Okay. And is there data showing the divorce rate over,  
3 say, you know, percentages of marriages that fail at, say,  
4 five years or ten years?

5 A The National Study of Family and Growth is able to do  
6 it. I've crunched it once. I don't recall offhand the  
7 numbers. But it varies by, you know, age at marriage and  
8 things like that.

9 Q But as a population as a whole looking at all  
10 marriages you don't have a sense of what the divorce rate  
11 is over --

12 A Over ten years, it would be guess work. Around 20 to  
13 30 percent -- over five years? No, it be over ten or 15  
14 years. It would really be guess work and it would be  
15 inappropriate for me to do that.

16 Q Okay. Now, you talked a lot about the issues of  
17 instability in the NFSS Study and the "lesbian mother" and  
18 "gay father" groups. But there are two concepts that I  
19 think got potentially blurred yesterday and I want to see  
20 if we can clarify. The concepts of household instability on  
21 the one hand, and couple instability on the other. So I  
22 have a couple of questions to help get at that.

23 So, I think your testimony made clear that  
24 individuals in the "lesbian mother" and "gay father" groups  
25 experienced significant household instability, you'd agreed



1 with that; right?

2 A Right.

3 Q For example, you noted that a majority of the  
4 individuals in this group had started out life in a  
5 heterosexual mother father family that broke up; right?  
6 That's household instability, that's not about couple  
7 instability.

8 A None of these are choices that children make, right?

9 Q Of course. But is that correct?

10 A That's who we are interviewing is the adult children.  
11 They're telling us who came and went.

12 Q Understood. So, again, that example, that in the  
13 majority of the families, you know, the individuals in  
14 "lesbian mother" and "gay father" group, the fact that they  
15 came from a prior heterosexual union that broke up that's  
16 an example of household instability but not an example of  
17 same sex couple instability; is that right?

18 A Correct. If, in fact, those -- what broke was the  
19 opposite sex relationship.

20 Q Which was a majority of the household --

21 A That was the majority of the circumstances around  
22 there origins.

23 Q Okay. Now, so, for example, in the NFSS the fact that  
24 a subject only spent say two years living in a same sex  
25 household that doesn't necessarily mean that the couple

1 relationship lasted two years; is that right?

2 A That is true, although I'm not sure why, you know, a  
3 live-in relationship would suddenly, you know, end and the  
4 partner would not be the household. They may have moved,  
5 but I would presume most of them that when a partner leaves  
6 the household of the mother and her child that the  
7 relationship has probably ceased, but I don't know that for  
8 sure.

9 Q Now, in some of the cases that you only count two  
10 years of living with the same sex partner because it was a  
11 change of custody, right, the kid went, say, to live from  
12 mom's house to dad's house. So in that particular case the  
13 couple may be together, may not be together; is that right?

14 A True. That would require one to go into the actual  
15 individual household rosters and look at what happened in  
16 different kids.

17 Q But is it correct that the fact that a particular  
18 individual reports living two years with the same sex  
19 couple and in some cases that has no bearing on the length  
20 of time of the couple, it may be that the child left;  
21 right?

22 A It could be, although it's uncommon and general for a  
23 mother to lose -- you know, cede custody of her child some  
24 --

25 Q So none of the children in the NFSS Study --

1 A Oh, I'm sure some of them did, but I don't know how  
2 many.

3 Q Let me start that again. Are you saying that none of  
4 the individuals in the "lesbian mother" group experienced a  
5 change of custody from mom's custody to dad's?

6 A I didn't say that, no. I'm just saying it's less  
7 common for a mother to lose custody in general. You can't  
8 really tell lose custody. You just know that a child lived  
9 with mom or didn't live with mom. The child would report as  
10 an adult who he lived with at different years.

11 Q So did any of the individuals in the "lesbian mother"  
12 group from the NSFF report a change from living with mom to  
13 living with dad?

14 A I believe there are some cases. I don't recall how  
15 many.

16 Q Okay. And also in some cases, you know, you stopped  
17 counting when the child was 18, right, so you -- the fact  
18 that an individual reports that mom's partner moved in when  
19 they were 16 and then at 18 you're done counting; right?

20 A Right.

21 Q Okay. Now, the individuals in the NSFF were all raised  
22 prior to marriage being an option for same sex couples  
23 anywhere in the United States; is that right?

24 A If we do the math I guess the youngest people in the  
25 NFSS were 18 in 2011. So they should have been cases -- I

1 don't think -- I don't know the state where they lived. But  
2 there should have been cases where they lived in states  
3 where their mothers could married, right?

4 Q Let me classify because I think I can be more precise  
5 in the question.

6 None of the individuals in the NSFF were born  
7 into families where couples, same sex couples could have  
8 been married; is that correct?

9 A That is correct.

10 Q Okay. And you agree that marriage helps promotes  
11 stability among heterosexual couples.

12 A In general I think it reflects stability. People who  
13 wish to make their union secure seek marriage. And marriage  
14 generally speaking entails -- reflects some security and it  
15 entails some security and puts up some barriers to break  
16 up.

17 Q So it does help stabilize couples.

18 A Conceptually, yes.

19 Q Conceptually.

20 A Yes.

21 Q In reality do you know?

22 A There's something called self-selectivity like the  
23 kinds of people who marry are the kind of people who are  
24 more apt to stay together anyway. But generally speaking  
25 it's understood that marriage both reflects and fosters

1 security.

2 Q Okay. So it reflects -- selects for stable couples and  
3 also fosters stability in those couples; is that right?

4 A Yes.

5 Q Okay. And you have said you would expect greater  
6 stability among married gay and lesbian couples than those  
7 even in civil unions; is that right?

8 A Can you point to where I said that?

9 Q Sure. Do you have your report?

10 A The report? I don't think I have the report.

11 Q I will mark this as 57. Again for identification only.

12 If you'll turn with me to paragraph 49 of your  
13 report. It's on page 13.

14 A Okay.

15 Q Now, just to give the context the previous paragraph  
16 you'll see is referencing a work by Michael Rosenfeld, a  
17 study by Rosenfeld. In 49 you say,

18 "In that study the highest stability rates appear  
19 among heterosexual married couples while notably better  
20 stability is located among married, gay and lesbian couples  
21 than among those in civil unions as would be expected."

22 You wrote that?

23 A Yes.

24 Q Okay.

25 A Which is a reflection of people who wish to have

1 relational stability tended to track towards, you know,  
2 greater legal stability.

3 Q But for heterosexuals you recognize that it's not just  
4 the matter of selecting the most stable, marriage also  
5 helps foster stability.

6 A On average, yes.

7 Q Okay. Now, you mentioned yesterday that in the NFSS  
8 the household rosters, those are the calendars that you  
9 talked about, right, they are complicated not just among  
10 the individuals in the "lesbian mother" and "gay father"  
11 group but also in other groups like the step family group  
12 and single parent family group; is that right?

13 A Yes.

14 Q So there was instability for those individuals as  
15 well?

16 A Yes.

17 Q So there was instability in all the groups in the  
18 study except for the one that was defined by the stability  
19 that would be the intact biological family group.

20 A Right.

21 Q Okay. Now, you talked yesterday about your decision  
22 not to control for family instability, that you didn't  
23 think it was appropriate to do that, but you did  
24 effectively control for stability among the exclusively  
25 heterosexual parent groups by creating the intact

1 biological family group; right? You separated out all the  
2 stable ones.

3 A I didn't control for it. It is reflected in the  
4 category.

5 Q Okay. Still talking about the topic of couples  
6 stability yesterday you cited some data from the UK where  
7 you said I think there were higher dissolution rates of  
8 civil partnerships of lesbians compared to gay men --

9 A Yesterday, I don't saying anything about the UK  
10 yesterday.

11 Q Oh, okay. I thought you did. My notes may be bad.

12 You also talked yesterday about Michael  
13 Rosenfeld's study on school progress using the US Census;  
14 right?

15 A Yes.

16 Q And you identified this study as relevant to couples'  
17 stability I think the language you used, you said the study  
18 controlled the way instability.

19 A Controlled for, yes.

20 Q But just to clarify what he controlled for was whether  
21 the child actually lived in the particular family structure  
22 at issue during the past five years; right?

23 A Right.

24 Q He didn't actually control for couple breakups.

25 A Right.

1 Q I mean, the Census data doesn't provide that  
2 information; does it?

3 A So far as I know.

4 Q Okay. Now, you raised the issue of stability in same  
5 sex couple relationships but I think you started to touch  
6 on it before that there's a variety among groups in the  
7 United States about divorce rates when I asked you a  
8 question about the divorce rate.

9 A Yes.

10 Q So, for example, there are differences in divorce  
11 rates associated with race?

12 A Generally speaking, yes.

13 Q Different racial groups have different rates of  
14 divorce.

15 A Right.

16 Q So is it correct that African-Americans have a higher  
17 rate of divorce than other racial groups?

18 A On average.

19 Q And it is correct that interracial couples have higher  
20 risk of divorce than same race couples?

21 A On average although I'm not entirely -- I mean, I'm  
22 less clear with that.

23 Q Okay. And I think you mentioned yesterday that  
24 remarriages by what -- I understood it means second  
25 marriages?



1 A Yes.

2 Q That remarriages fail at a higher rate than first  
3 marriages.

4 A Correct.

5 Q Do you favor excluding African-Americans from marriage  
6 based on the elevated rate of divorce in that group?

7 A I don't.

8 Q In fact, if there were population base data showing  
9 that African-Americans had a breakup rate that was higher  
10 than that of same sex couples you would not favor excluding  
11 African-Americans from marriage.

12 MS. HEYSE: Objection, your Honor. Calls for  
13 speculation.

14 THE COURT: He's an expert. He can answer if he  
15 has an opinion.

16 A I don't.

17 BY MS. COOPER:

18 Q Okay. And do you favor excluding people who have  
19 previously already been married and divorced from  
20 remarrying given the elevated rate of divorce for  
21 remarriages?

22 A I have no strong opinion on that. I tend to wish  
23 people would try to work it out. It's not always possible I  
24 understand that, their original marriages. But I don't hold  
25 a strong opinion on that.

1 Q So you don't have an opinion about whether prior  
2 divorce people should be allowed to get married?

3 A I mean it exists. I don't think much about it. I don't  
4 have a strong opinion about that.

5 Q So if Michigan were to pass a law barring marriage by  
6 people who had been divorced you wouldn't have an opinion  
7 about that?

8 MS. HEYSE: Objection, your Honor. It calls for  
9 speculation and he's answered the question.

10 THE COURT: Sustained.

11 BY MS. COOPER:

12 Q Okay. It's not view then is it that groups -- the fact  
13 that a group has an elevated divorce rate is a reason to  
14 exclude the group from marriage.

15 A Correct.

16 Q Switching gears and focusing on issues of biological  
17 relatedness what I think you called diminished kinship  
18 yesterday. Just to make sure I'm clear with your terms when  
19 you talk about diminished kinship you mean the lack of a  
20 biological relationship between parent and child; is that  
21 right?

22 A Between mother, father and child, yes.

23 Q Between each parent and the child.

24 A Right.

25 Q Okay. And you assert that diminished kinship poses

1 risks to children; is that right?

2 A On average.

3 Q On average. Okay. An example that you've given of  
4 diminished kinship would include couples who have children  
5 through donor sperm or donor ova; right?

6 A It depends on -- I mean -- if it's a donation from  
7 outside the couple, that would be a diminished kinship.

8 Q Right. Somebody goes to a sperm bank or an egg donor  
9 --

10 A Some form of assisted reproductive technology are  
11 within the biological parents.

12 Q That would be an example of diminished kinship?

13 A Not if it's within the biological parents.

14 Q Right, but if it's outside of.

15 A Correct.

16 Q And that includes both for heterosexual couples and  
17 same sex couples who have children in this way; is that  
18 right?

19 A Yes.

20 Q And you said the majority of children born through  
21 assisted reproductive technology are raised by heterosexual  
22 parents; is that right?

23 A By the numbers that should be the case, yes. Only one  
24 to one and a half percent of all children born today are  
25 born via assisted reproductive technology. I don't know

1 that we have data about whether that's outside the  
2 biological couple or not. We're talking about pretty small  
3 numbers though.

4 Q But the majority are heterosexual couples not same sex  
5 couples.

6 A Yes.

7 Q And you don't have an opinion on whether the use of  
8 donor sperm, again, donor from outside the family whether  
9 the use of donor sperm or ova should be prohibited.

10 A From outside the family?

11 Q Meaning from a sperm bank let's say.

12 A I'm not a fan of that. I don't have a strong opinion.  
13 I've never weighed in on the subject.

14 Q Okay. You don't have an opinion about whether it  
15 should be prohibited?

16 A I'm not of fan of it, I'll tell you that. I don't have  
17 a strong sense about the legal permission around it. I  
18 think it diminishes kinship so we should privilege that  
19 which enhances kinship between a mother, father and child.

20 Q Now, in support of the proposition that the lack of  
21 biological relationship between parents and child poses a  
22 risk to children you testified yesterday about comparative  
23 rates of abuse by step parents compared to biological  
24 parents; right?

25 A Can you say that one more time?

1 Q Sure. That you -- in support of your proposition that  
2 lack of biological relationship between parents and child  
3 poses a risk to children in support of that proposition you  
4 testified about comparative rates of abuse by step parents  
5 and biological parents; right?

6 A Yes.

7 Q Now, you testified there's an elevated risk of abuse  
8 by step parents, right, compared to biological parents?

9 A Right, and --

10 Q But you don't favor prohibiting marriage by people who  
11 already have children, right? In other words, people who  
12 are going to create step families despite the heightened  
13 risk to children in step families?

14 A Step families come from different kinds of places. I  
15 mean, sometimes a parent dies and somebody remarries so  
16 they remarry into a step family, but through divorce, but  
17 through death. So step families are complicated as well.

18 Q So is it your understanding then that step families  
19 that form, you know, after a parent is widowed versus  
20 divorce that they don't have the same kind of risks?

21 A I don't know if there's a difference in how those  
22 outcomes work. I do know that, you know, it can be more  
23 difficult to -- on a child to navigate step families and  
24 different custody arrangements which is not the case  
25 typically when the parent dies and the surviving parent

1 remarries.

2 Q Okay.

3 A And in the -- the group of people for whom the child  
4 outcomes looked next best where kids for whom their mothers  
5 and fathers were married until one of them passed away.

6 Q Okay. So, again, you identified data showing elevated  
7 risk of abuse in step families compared to biological  
8 families --

9 A Outside the study. Not the NFSS.

10 Q Understood.

11 So you cited data showing elevated risk abuse in  
12 step families compared to biological parent families, but  
13 you don't favor excluding people who are going to create  
14 step families, in other words, people who already have  
15 children from remarrying.

16 A What do you mean by people who are going to create  
17 step families?

18 Q People who have children --

19 A Right.

20 Q -- and want to marry someone.

21 A Right. Generally not, although, you know -- it is more  
22 sympathetic when people have -- when a parent has died than  
23 -- as I said earlier it's nice when people try to work out  
24 their arrangements and not get a divorce in the first place  
25 because that creates hostile instability for children. But,

1 in general, no.

2 Q So even a parent who has divorced, have children,  
3 divorced, they'd like to remarry a new person, you don't  
4 think that should be barred.

5 MS. HEYSE: Objection, your Honor. I believe  
6 that's been asked and answered.

7 THE COURT: I'm not sure. He may answer.

8 A I have no, you know, strong opinion on the legality of  
9 that. I mean, it's been around for time and memorial. So I  
10 don't have a strong opinion about it.

11 Q Okay. Now, I'd like to turn to your report, paragraph  
12 28. Let me get you the page. It's at the bottom of page  
13 7, it begins. Paragraph 28. You got it?

14 A Yes.

15 Q You say,  
16 "Yet, every child born to a couple via ART" and  
17 let me pause, by that you mean if it's a reproductive  
18 technology?

19 A Yes.

20 Q Okay. So, I'll start again.

21 "Yet, every child born to a couple via ART  
22 ('planned' gay or lesbian family) retains at least one non-  
23 biological 'step' parent suggesting the more favorable  
24 comparison group would not be the biologically intact  
25 mother-father household, but heterosexual step families."

1                   Did I read that right?

2           A     Right.

3           Q     Okay. Now, you agree that most heterosexual step  
4           families are blended families; is that right?

5           A     Meaning children come from both the marrying woman and  
6           the marrying father?

7           Q     Well, by "blended" -- we can look at your deposition  
8           if you'd like, but let me ask you this way, by "blended" do  
9           you understand that term to mean the creation of a  
10          household out of previous failed households, or failed  
11          union?

12          A     Some of them fail. Some of them, you know, one person  
13          was never married, and they marry somebody who had been  
14          married before, and they're blending something. They're not  
15          always blending completely, you know, new families.  
16          Sometimes one partner has children, sometimes they both  
17          have children.

18          Q     Understood.

19          A     Sometimes blended marriages with no children.

20          Q     But it's blending two prior families whether they had  
21          children --

22          A     One of them might have been single.

23          Q     And in heterosexual step families you're generally  
24          talking about a new person coming in to somebody -- an  
25          existing family.



1 A If there are children -- yeah.

2 Q Okay. Now, you wouldn't use the term "step family" if  
3 you had two single people who got married and neither had  
4 children; right? Step families --

5 A Two single parents who --

6 Q Two single people with no children.

7 A Two people.

8 Q You have to have children, excuse me, to have a step  
9 family; right?

10 A Correct.

11 Q Okay. So step family among heterosexuals are, you  
12 know, a new person coming into an existing family with  
13 children.

14 A Right.

15 Q Okay. And in planned same sex parent families you  
16 don't have that circumstance; correct?

17 A "Planned" as in assisted reproductive technology.

18 Q Correct.

19 A Right.

20 Q Okay. Now --

21 A But you still do have -- you know, somebody's not a  
22 biological parent of the child.

23 Q That's the analogy, right, that's one is non-  
24 biologically related but --

25 A So there's still diminished kinship.

1 Q You have diminished kinship but you don't have the  
2 circumstances of the disruption of an existing family unit.

3 A It's a little bit different, right.

4 Q Okay. Now, you -- I believe in your deposition you  
5 were not aware of research that looks at the well-being of  
6 children conceived through assisted reproduction using  
7 donor sperm or ova; is that right?

8 A Population base data.

9 Q Right. You're not aware of studies on that?

10 A Assisted reproductive technology, large population  
11 basis, no, I'm not.

12 Q What about other studies? Non-probability.

13 A Non-probability ones, you know, where they're kind of  
14 snowballed samples or something --

15 Q You're aware --

16 A Right. NLFS is like that as far as I can tell.

17 Q Have you reviewed the research, the non-population  
18 base research that body of research on assisted  
19 reproduction whether it's heterosexual or same sex couples?

20 A By "review" you mean --

21 Q Read.

22 A Some of the NLFS studies I've read, not all of them.  
23 There's a bunch of them.

24 Q Outside of the NLFS have you read the research that  
25 looks at -- compares children raised by donor -- let me ask

1 it this way.

2 Studies looking at a class of donor conceived  
3 children and naturally conceived children, heterosexual  
4 families? Have you read that body of research?

5 A Can you cite a particular author?

6 Q I'm just asking if you've read a body of research?

7 A I've read some examples I think out of England.

8 Q And are you aware of research showing then that  
9 children conceived by donor insemination whether  
10 heterosexual parents or same sex parents fair no  
11 differently than naturally conceived children in those  
12 studies?

13 A I don't recall comparison categories. I wouldn't want  
14 to speak about any particular study unless I was looking at  
15 it in front of me and looking at the sample sizes, and  
16 looking at how the comparison categories were constructed.  
17 Sometimes you can detect no differences in some of these  
18 small non-probability samples. And it's a function of  
19 diminished ability to detect real differences that exists.  
20 I often will look at the raw scores, right, and at least  
21 see how the differences are in the simple difference level  
22 even if they're not detecting any statistically significant  
23 difference because they may not have the statistical power  
24 to do so. But I don't want to claim I know about a  
25 particular study unless I'm looking at it in front of me.

1 Q Can we turn to your deposition? If you will look at  
2 page 43, please? If you would go to line 10 and I'll read  
3 with the question, beginning,

4 "Question: Are you familiar with the research on  
5 children conceived through ART using donor egg or sperm  
6 with a heterosexual or gay parent family?

7 "Answer: I don't believe there's any population  
8 base data doing that.

9 "Question: Are you aware of any research looking  
10 at such families?

11 "Answer: I'm not. It may exist."

12 A Right. I think I was referring to that, the population  
13 base data. I was not aware of anything. I have looked at  
14 some non-population base data.

15 Q Okay.

16 A Referring to the population base aspect of it.

17 Q If you'll turn to page 44, line 2,

18 "Question: Sure. Do you know whether the non-  
19 biological parent" -- I'm sorry. Withdrawn.

20 Moving away from assisted reproduction, focusing  
21 on adoption. You are aware of research showing that in  
22 adoptive families where the parents lack, both parents lack  
23 a biological relationship with the children, that there's  
24 research showing that adoptive parents invest more time in  
25 their children than two biological parent families.

1 A There's some research that suggest that, yes. I don't  
2 know if the research would all conclude that.

3 Q Okay. Now, you cite uncertainty about outcomes for  
4 children of same sex parents as a basis to limit marriage  
5 to heterosexual couples, but you have no opinion do you  
6 whether lesbian and gay couples should be allowed to be  
7 adopt children?

8 A Can you state that again?

9 Q You cite uncertainty about the outcomes for children  
10 of same sex parents as a basis to limit marriage to  
11 heterosexual couples, but you have no opinion on whether  
12 lesbian and gay couples should be allowed to adopt  
13 children.

14 A The uncertainty about -- I'm still trying to find the  
15 first part of that clause.

16 Q I can ask it differently. I can streamline this  
17 question for you.

18 A Okay.

19 Q Do you have an opinion on whether lesbian and gay  
20 couples be allowed to adopt children?

21 A I don't have a strong opinion that, no.

22 Q Do you have any opinion?

23 A The State looks to place children with families as a  
24 means helping kids who are, you know, orphans -- looking --  
25 it's a concession. The State looks to do that. I don't have

1 a strong opinion on -- I've thought very hard about it, who  
2 should they go to, to one parent, two parents, single, I  
3 mean --

4 Q So, do you have an opinion -- you said you don't have  
5 a strong opinion, do you have any opinion about whether  
6 lesbian and gay couples ought to be allowed to adopt  
7 children?

8 A I just haven't fashioned one.

9 Q You don't have one; is that right?

10 A Yes.

11 Q Okay. So you have no opinion about whether a child  
12 would be better off staying in the foster care system  
13 rather than being adopted by two parents of the same sex?

14 A When you think about the State's interest in  
15 sheltering children, most people think it's better to be  
16 out of the foster care system than in the foster care  
17 system. Otherwise -- some kids fair okay in the foster  
18 system, but it's not the ideal.

19 Q So you do have an opinion about whether children would  
20 better off staying in foster care than being adopted by two  
21 parents of the same sex?

22 A I think you asked me that at the deposition, I don't  
23 recall what I said. I think I probably had no strong  
24 opinion on it.

25 Q Do you have any opinion?

1 A No, I don't think so.

2 Q Okay. Now, in cases like the situation for plaintiffs  
3 in this case where you have a child who is adopted into a  
4 family headed by a same sex couple is that right that you  
5 have no opinion about whether it's better for the child to  
6 be adopted by just one of the adults or both?

7 A Given that it's a concession in the first place and  
8 not an ideal -- not ideal for the child to be apart from  
9 its biological parents, but sometimes it's a necessary  
10 concession, I don't believe I made a statement about the --  
11 whether it's one or two. Is that what you're asking?

12 Q I'm just asking do you have an opinion about in such  
13 situations is it better for the child to be adopted by just  
14 one of the two adults raising him or her --

15 A Well, sometimes it's the biological child of one of  
16 the two adults.

17 Q Okay. So a child who is adopted out of the foster care  
18 system not related to either partner --

19 A Right.

20 Q -- adopted into a family headed by a same sex couple  
21 do you have an opinion whether it's better for that child  
22 to have -- to be adopted by just one of those adults or  
23 both of those adults?

24 A I think I said at the deposition I didn't have an  
25 opinion on that.

1 Q Okay. And is that correct, you don't have an opinion  
2 on it?

3 A Yeah, I haven't thought through all the permutations  
4 and combinations so I don't.

5 Q So you don't have an opinion.

6 A Right.

7 Q Okay. And similarly in situations where a child is  
8 conceived into a lesbian couple family through assisted  
9 reproduction you have no opinion about whether it's better  
10 for the child to be able to adopted by the non-biological  
11 parent to have a legal tie with both parents in the family?

12 A I think you asked me again at the deposition I don't  
13 have a strong formulated opinion on that.

14 Q I'm sorry, I didn't hear you.

15 A I don't think I have a strong formulated opinion on  
16 who should have legal connections and -- when kinship is  
17 diminished.

18 Q Do you have any opinion?

19 A I don't believe I listed one last time.

20 Q Do you have one now?

21 A No.

22 Q Okay. Now, in situations where a heterosexual couple  
23 conceives using, say, donor sperm from a sperm bank, is it  
24 right you have no opinion about whether it's beneficial to  
25 the child to have a legal parent-child relationship with



1 both parents in that family?

2 A I don't know the legalities of these things in terms  
3 of whose accorded legal status when the mother and father  
4 are already married and they go get assisted reproductive  
5 technology, a donor insemination, I don't purport to know  
6 at all about how the legal parental rights work in that  
7 case. I mean, as I said before, I think it's less optimal  
8 to get donor inseminated because then you are giving --  
9 taking in a diminished kinship, right, you're taking on  
10 that rather than working with parents to -- even by ART to  
11 retain the genetic connection between mother, father and  
12 child. That's optimal.

13 Q So going back to the question for heterosexual couples  
14 who are infertile and the way they have a child is to get  
15 sperm from a sperm bank do you have an opinion about  
16 whether the non-biological father in that family should be  
17 recognized as the legal father to the child born?

18 A I've never fashioned an opinion on that. I presume  
19 they are recognized, but I don't -- I'm not an expert in  
20 ART or adoption law.

21 Q So you have no opinion.

22 A Generally speaking, no.

23 Q Okay. Now --

24 A My only opinion is that states have interest in  
25 reducing diminished kinship, and seeking to heighten the

1 link mom, dad and child biologically as well as socially.

2 Q But you understand that there are families where's  
3 that's not the case.

4 A I understand that.

5 Q And you have no opinion about whether legal ties  
6 should be established with both parents --

7 MS. HEYSE: Objection, your Honor. This has been  
8 asked several times.

9 THE COURT: I'll sustain the objection.

10 BY MS. COOPER:

11 Q Moving on, switching gears, your position in favor of  
12 limiting marriage to heterosexual couples is not based  
13 solely on the scientific research related to child outcomes  
14 or couple stability; is it?

15 A Correct.

16 Q You've never been a fan of same sex marriage; isn't  
17 that right?

18 A Correct.

19 Q And you were not a fan of same sex marriage before you  
20 even started your work on the NFSS; is that right?

21 A Correct.

22 Q And that's because in your view marriage in much of  
23 human history has privileged expectation of permanency,  
24 fidelity, and generally the anticipation of children and  
25 you believe that doesn't comport with same sex marriage; is

1 that right?

2 A Yes.

3 Q And you also agree as a matter of religious  
4 affiliation that sexual relationship outside of marriage  
5 between a man and a woman are wrong; is that right?

6 A Can you state that last part again?

7 Q Sure. That you also agree as a matter of our religious  
8 affiliation that sexual relationships outside of a marriage  
9 between a man and a woman are wrong?

10 A Yes.

11 Q Okay.

12 A That doesn't really shape how I go about doing my  
13 social science, but I do hold that to be true.

14 MS. COOPER: Non-responsive, your Honor.

15 THE COURT: Okay.

16 BY MS. COOPER:

17 Q This is marked for identification -- I believe we're  
18 at Exhibit 59, another document.

19 Professor Regnerus, this document marked for  
20 identification as Exhibit 59, is that an alumni profile  
21 from your alma mater?

22 A It is.

23 Q An alumni profile about you.

24 A It is.

25 Do you know when that was published?

1 Q I can't answer that, but you recognize this an alumni  
2 profile.

3 A Yes, it's not recent.

4 Q Okay. I want to read some quotes attributable you in  
5 this profile.

6 A Sure.

7 Q And you'll scroll down to -- six paragraphs down and  
8 read along with me.

9 "As Christians our lives should reflect our  
10 relationship with God and our desire to glorify him."

11 Regnerus says,

12 "I've noticed that some Christian professors see  
13 a disconnect between their faith and their profession. I  
14 believe that if your faith matters it should inform what  
15 you teach and what you research."

16 First of all, did I read that correctly?

17 A Yes.

18 Q Okay. If you go onto the next paragraph, it says,

19 "I've had students here tell me that I'm the only  
20 Christian professor they've had. I'm not approved to share  
21 the Gospel, but I don't necessarily hide my beliefs either.  
22 When I teach, I don't seek to break down or build any  
23 particular faith, but my world view colors what I do in the  
24 classroom."

25 I want to skip down to a quote, again, in the

1 last paragraph of the page,

2 "That's what I want my students to recognize the  
3 connection between my faith and my work."

4 If we could stop there and I just want to ask  
5 you, is it right that your faith shapes your interest in  
6 researching sexual decision-making family and  
7 relationships?

8 A Yeah, it's a source of interest, although, the genesis  
9 of my interest in sexual behavior came from a chapter in a  
10 book I was writing when the chapter got really long and  
11 very interesting. Prior to that I hadn't been all that  
12 interested in studying sexual decision-making.

13 Q But you have said that your faith shapes your interest  
14 in those topics?

15 A Yeah, a lot of people when they get interested in  
16 research topics it has some sort of personal connection to  
17 them.

18 Q I want to --

19 A This is fairly an old document though. It doesn't  
20 really -- I've changed a little bit over ten plus years.  
21 I'm probably not as -- I'm not as open about my faith as I  
22 might have once been.

23 Q Okay. Now, the idea for the NFSS Study emerged from a  
24 series of conversations you had with various people about  
25 what research projects could be done. I think you touched

1 on that yesterday; is that right?

2 A Right.

3 Q Those people included Luis Tellez?

4 A Yes.

5 Q He was the President of the Witherspoon Institute?

6 A Yes.

7 Q And you presume that the Witherspoon Institute is  
8 against marriage for same sex couples?

9 A I presume so.

10 Q Tellez is also involved with the National Organization  
11 for Marriage?

12 A I have heard that. I have never -- I'm not familiar  
13 with all the connections, but he has an affiliation of some  
14 sort, yeah.

15 Q Now, that's an organization that advocates for  
16 limiting marriage to opposite sex couples?

17 A They do.

18 Q One of the people involved in these conversations that  
19 you refer to about research possibilities was Maggie  
20 Gallagher; is that right?

21 A Correct.

22 Q Maggie Gallagher is a prominent advocate against  
23 marriage for same sex couples; is that right?

24 A Correct.

25 Q Now you attended a meeting in Washington, D.C., a group

1 of people including Luis Tellez from Witherspoon and Maggie  
2 Gallagher among others; is that right?

3 A Right.

4 Q And the purpose of that meeting was to discuss or to  
5 think about study possibilities in the area of marriage and  
6 relationships?

7 A Generally speaking what kind of research questions are  
8 -- are good to be asked and answered in the broader domain.  
9 I think that was -- do you have a date on that?

10 Q If you remember --

11 A I think in the deposition we said in the fall of 2009,  
12 I think.

13 Q By the way was that the Heritage Foundation, that  
14 meeting?

15 A I don't think it was.

16 Q Where was it?

17 A Some hotel.

18 Q Hotel, okay.

19 Now, the Witherspoon Institute paid the expenses  
20 of the meeting attendees of that D.C. meeting that you  
21 attended?

22 A I believe so.

23 Q Ultimately you submitted a proposal to Witherspoon to  
24 fund the NFSS Study.

25 A Right.

1 Q Okay. They accepted it?

2 A They did.

3 Q And they funded the study.

4 A They did.

5 Q Okay. I'd like to mark again for identification

6 Exhibit 60.

7 Have you had a chance to take a look?

8 A Could you give me a minute?

9 Q Sure.

10 MS. HEYSE: Your Honor, I just want to make clear  
11 you're not moving to admit?

12 MS. COOPER: No.

13 MS. HEYSE: Okay. Thank you.

14 A Okay.

15 BY MS. COOPER:

16 Q So this document that's been marked as Exhibit 60 for  
17 identification is this an email in which Brad Wilcox is  
18 responding to some questions you wrote him on September  
19 21s, 2010 about the NFSS Study?

20 A Right. So this would be roughly -- yeah. Several  
21 months before we fashioned the first meeting of people in  
22 Austin.

23 Q And just to be clear, Wilcox he's the person who  
24 introduced you to Luis Tellez of Witherspoon; is that  
25 right?



1 A Right, roughly a year before that or something.

2 Q Okay. I think you need to speak up just a bit.

3 A I'm sorry.

4 Q I saw people leaning.

5 A Some share of time before that, roughly a year.

6 Q Okay. I want to call your attention to the bottom  
7 paragraph. And, again, just before I read it, this is an  
8 email you wrote to Brad Wilcox, right, September 21<sup>st</sup>,  
9 2010?

10 A Yes.

11 Q Okay. Bottom paragraph says,

12 "I would like at some point to get more feedback  
13 from Luis and Maggie about the 'boundaries' around this  
14 project, not just costs but also their optimal time lines  
15 (for the coalition meeting, the data collection, et.) And  
16 their hopes for what emerges from this project including  
17 the early report we discussed in D.C. Feel free to forward  
18 this to them."

19 Did I read that right?

20 A Yes.

21 Q Now the Luis that refers to Luis Tellez of  
22 Witherspoon?

23 A Right.

24 Q And Maggie is Maggie Gallagher, the advocate against  
25 same sex marriage?

1 A I presume so.

2 Q Okay.

3 A I don't believe I ever -- I don't believe I ever got  
4 feedback after that.

5 Q I'm just asking whether you wrote this.

6 A Yes.

7 Q Okay. And these are the same individuals, Luis Tellex  
8 and Maggie Gallagher who were among others at the meeting  
9 in Washington, D.C. you mentioned where you talked about  
10 ideas for studies?

11 A Right.

12 Q Okay. So you wanted to know what hopes Luis Tellez and  
13 Maggie Gallagher had for your research project?

14 A I wanted to know what they -- when they anticipated  
15 the results from this, and what it -- what they thought it  
16 would like because we hadn't even met yet in January of  
17 2011, to start hammering out how are we going to sample  
18 people, etc.

19 I was aware of, you know, what Witherspoon  
20 thought about same sex marriage, but I was a skeptic at any  
21 data analysis project we took on could tackle what they  
22 might expect. So I wanted to know like if they had false  
23 expectations for what this is capable is doing. It was  
24 really intended to be a -- it's an intellectual question we  
25 were answering. I think they would be surprised if -- I

1 didn't know if they would expect that it could answer a lot  
2 more questions than I had a feeling it could.

3 Q At this point had Witherspoon already agreed to fund  
4 your study?

5 A I don't honestly know. I'm -- I think the formal  
6 funding came later. I don't recall.

7 Q Will it help you refresh your recollection if you  
8 looked to what's numbered as point one, towards the top of  
9 the mail?

10 A I think they probably had given me a voice go ahead,  
11 but we hadn't gotten cost estimates yet or anything like  
12 that. I mention it at the bottom that, you know, costs. I  
13 didn't know how much it was going to cost and how much they  
14 thought they were capable of funding.

15 Q In point one, you're asking we want to run this  
16 project through UT's PRC. I'm presuming 10 percent overhead  
17 is acceptable to Witherspoon. You're asking about details  
18 of costs and funding; right?

19 A Right.

20 Q Okay. Now in the paragraph at the bottom we were  
21 looking at a moment ago, you reference the coalition  
22 meeting. What coalition meeting were you referring to?

23 A The only coalition meeting I can recall is -- was in  
24 the fall of 2009, the one I mentioned at the hotel. But I  
25 don't know about -- I'm not sure what coalition meeting

1 this referring to. I honestly don't.

2 Q You don't know what you meant when you wrote that?

3 A I don't. Unless it means -- it's probably a reference  
4 to the pooling together of consultants and getting together  
5 which we did in January of 2011. That's my best guess.

6 Q Consultants --

7 A I don't know what coalition meant to me at the time  
8 here. We did meet, a body of consultants in January of 2011  
9 to hammer out like how we're going to do this study.

10 Q And you might --

11 A It might have been that, I'm not sure.

12 Q You would have called the consultants on your study a  
13 coalition?

14 A A coalition of consultants, yeah, I don't know.

15 Q Okay.

16 A That would have made sense.

17 Q There's not a question pending.

18 A Okay.

19 Q I'm going to mark for identification Exhibit 61.

20 So what's been marked as Exhibit 61 is this an  
21 email you received from Luis Tellez of the Witherspoon  
22 Institute?

23 A On the bottom

24 Q I'm sorry, yes. Below the line there are two emails on  
25 this page. Thanks for clarifying. The bottom email.

1 A Yes, I believe so.

2 Q And it's dated September -- sorry. September 22<sup>nd</sup>,  
3 2010?

4 A Right.

5 Q Okay. Now, in the body of it, are you talking about  
6 the NFSS Study they were funding?

7 A Yeah. I mean, it didn't have a name yet. I don't think  
8 it had a name. It was an idea at the time. The project that  
9 was going to get rolling starting in January of 2011.

10 Q Okay. Now -- let's see. If you look he says,

11 "Move on it. Don't dilly dally etc. It would be  
12 great to have this before a major decision of the Supreme  
13 Court"; is that right?

14 A Right, and before that he said don't get hung up with  
15 deadlines. Do it as right and best and think how you would  
16 want it done which is always what I did.

17 Q I think you mentioned yesterday that you approached  
18 Jim Wright at The Journal Social Science Research and asked  
19 him if he would consider reviewing your manuscript of the  
20 NFSS Study and if he be speedy about it?

21 A Right, in part because I had a report that I intended  
22 to write. I had my own internal deadlines around it. It  
23 just kept getting shifted in the future and I wanted to get  
24 back to my other research projects.

25 Q So you were so eager to have this published speedy

1 that you submitted the manuscript to the Journal before the  
2 data collection was completed; isn't that right?

3 A Ninety-eight percent completed basically and the  
4 findings were fairly robust. I mentioned when -- I sent  
5 Paul Amato a copy of the manuscript after I submitted it,  
6 and said, I didn't think it was a big deal, put it in the  
7 cue at the social science research. We were waiting on data  
8 trickling in from Knowledge Networks, just a handful of  
9 cases. If Social Science Research was going to reject it  
10 then I wanted to know that sooner rather than later.

11 Q Because you had an internal deadline in your head;  
12 right?

13 A Right, because I inserted this study -- before our  
14 report I was intending to write which I never did write.

15 Q Okay. So the study is published in July, 2012, and  
16 online in June of that year; is that right?

17 A June 12 I think or 11.

18 Q So this was before the Windsor and Perry cases were  
19 heard in the U.S. Supreme Court?

20 A I don't know the time tables of all that stuff.

21 Q But you were able cite to the study --

22 A Right.

23 Q -- in the amicus brief that you wrote --

24 A I don't remember --

25 Q Let me finish the question.

1 THE COURT: Let her finish the question.

2 MS. COOPER: It's confusing for the reporter.

3 BY MS. COOPER:

4 Q Okay. So you were able to cite and discuss the study  
5 in the amicus brief that you wrote to the Supreme Court in  
6 Windsor and Perry in opposition to same sex marriage; is  
7 that right?

8 A True. It was a component of the amicus brief.  
9 There were more components to it than just this.

10 Q A day or two before the NFSS Study was to be published  
11 by the Journal, you gave a presentation at the Heritage  
12 Foundation about the findings of that study; is that right?

13 A Yes, maybe a day before that or something like that.

14 Q Heritage Foundation is a conservative think tank in  
15 Washington?

16 A Right.

17 Q By the way, were they part of -- does that help  
18 refresh your recollection about the coalition you  
19 referenced earlier?

20 A I don't believe that was the coalition I referring to.  
21 That was -- I gave a talk I think Luis probably invited me  
22 to do. I don't know for sure, I don't recall. But that  
23 would not have been on my radar back in 2010. That was not  
24 the coalition meeting. It was here's a study coming out,  
25 would you like to give a talk at Heritage about it and I

1 said fine.

2 Q So you gave that talk a day or so, a day or two before  
3 the study was published, and Heritage gave you immediate  
4 training document suggesting talking points for you to use  
5 when talking about the study?

6 A They gave it to me or sent it to me and I largely  
7 ignored it.

8 Q I've marked for identification Exhibit 62.

9 MS. HEYSE: Your Honor, I'm going to object on a  
10 line of questions. Doctor Regnerus just -- if that's what  
11 she intends to do, Dr. Regnerus just testified that he  
12 largely ignored this document.

13 THE COURT: You may renew your objection. I  
14 haven't her question yet so it's hard for me to rule at  
15 this point.

16 MS. COOPER: I will just clarify, he largely  
17 ignored it, doesn't seem to take it off the table.

18 BY MS. COOPER:

19 Q I want to just first ask you is this the -- this  
20 document has a few pages, four pages, and I want to focus  
21 on the first two pages of the document. Is that the media  
22 training document provided to you by Heritage?

23 A I presume so, but as I said I don't believe I used it.  
24 It was recovered in some Freedom of Information Act request  
25 out of some computer file of mine, but it was filed away



1 and -- it's their words, not mine.

2 Q If you look down on paragraph -- six paragraphs down  
3 one of the key points to make that they provided for you  
4 is,

5 "For many years" --

6 MS. HEYSE: Objection, your Honor.

7 THE COURT: Sustained.

8 MS. HEYSE: Thank you.

9 THE COURT: You can't read from it. I think you  
10 need a little more foundation in terms of the document.

11 BY MS. COOPER:

12 Q I understood, Professor Regnerus, you say you largely  
13 ignored it. I didn't understand you to be saying you did  
14 not read it, you did not consider it at all.

15 A Came over email because that's where it was had. I  
16 filed it in some folder that eventually got discovered and  
17 -- I mean, it's their words, not mine.

18 Q So you're saying you never read it?

19 A I have no recollection if I read it or not.

20 Q Okay.

21 A It's almost two years ago, a year and a half ago.

22 Q Now, apart from your interactions with Luis Tellez of  
23 Witherspoon regarding the meeting in D.C. that you  
24 discussed and the funding of your NFSS Study, you mentioned  
25 yesterday that you also worked with him to create an

1 organization called the Austin Institute; is that right?

2 A Yes.

3 THE COURT: Excuse, I'm sure you have some more to  
4 go. We have to switch court reporters. That's why we take a  
5 break at 11:00. That's how they have their thing. Is that  
6 okay?

7 MS. COOPER: Of course.

8 THE COURT: I mean, do you want to finish real  
9 quick? I don't know how much you have.

10 MS. COOPER: If you need to take a break, let's  
11 take a break.

12 THE COURT: We don't need to, but I think it's a  
13 good time.

14 Okay. We'll take 15 minutes, and we'll reconvene  
15 at a quarter after.

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

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CERTIFICATE

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

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

March 4<sup>th</sup>, 2014