

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 2 -- 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
WEDNESDAY, FEBRUARY 26TH, 2014

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I N D E X

PLAINTIFFS' CASE IN CHIEF

WITNESS:	PAGE:
MICHAEL ROSENFELD, Ph.D.	
Direct Examination (cont.) by Mr. Mogill	3
Cross-Examination by Ms. Heyse	14
Redirect Examination by Mr. Mogill	46
Stipulations Placed on Record	52
VIVEK S. SANKARAN, ESQ.	
Direct Examination by Ms. Nessel	66
Voir Dire Examination by Mr. Potchen	84
Direct Examination (cont) by Ms. Nessel	92

E X H I B I T S

	RECEIVED
Plaintiffs' Exhibit No. 53	58
Plaintiffs' Exhibit No. 400	77

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

3

1 Detroit, Michigan

2 Wednesday, February 26th, 2014

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

4 (Excerpt of Proceedings.)

5 -- --- --

6 THE COURT: Good morning, everybody.

7 Where's the rest of your team?

8 MS. STANYAR: The plaintiffs will not be here this
9 morning because they have to go to the doctors if that's
10 okay with Court.

11 THE COURT: Oh absolutely.

12 MR. MOGILL: Professor Sedler teaches on
13 Wednesdays.

14 THE COURT: That's fine. As long as everyone is
15 satisfied.

16 Professor, are you all ready to roll?

17 THE WITNESS: Ready to roll.

18 THE COURT: We left off with family stability. Why
19 don't we start --

20 MR. MOGILL: Yes, your Honor.

21 M I C H A E L R O S E N F E L D , PhD.,

22 having been previously sworn, testified as follows:

23 DIRECT EXAMINATION (CONTINUING)

24 BY MR. MOGILL:

25 Q Good morning, Professor.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

4

1 A Good morning.

2 Q At the point at which we broke yesterday afternoon I
3 was starting to ask you some questions about family
4 stability; do you recall?

5 A Right.

6 Q I'd like to ask you one that circles back to your
7 analysis of Professor Regnerus' study.

8 A Okay.

9 Q And then ask you a number of questions that relates to
10 what's on your slides.

11 With respect to Professor Regnerus' study have
12 you analyzed the percentage of family transitions in the,
13 quote, lesbian mother or, quote, gay father groups as
14 defined by Professor Regnerus that were attributable to
15 breakups of the same-sex couple?

16 A Yes. My analysis of all the family transitions that
17 those children went through shows that 7 percent of those
18 transitions were due to breakup of same-sex couple. So the
19 predominant factor is breakup of the heterosexual couple,
20 the biological mother and the biological father, and then
21 there's also the custody changes which are -- account for a
22 lot as well.

23 Q Okay. Now, with respect to stability issues you were
24 given some -- at end of yesterday you talked about general
25 statistics and I was about to ask you is there also a body

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

5

1 of data comparing stability of same-sex couples with the
2 stability of opposite sex couples?

3 A Indeed there is. So in this, I sort of surveyed some
4 of the literature that we have on this. There's older
5 literature that goes back to the 1970s. Probably the
6 classic citation is Blumstein and Schwartz. In the older
7 literature they generally found that same-sex couples were
8 less stable than heterosexual married couples. But of
9 course, we're talking about the 1970s and there wasn't any
10 root to formalization for same-sex unions.

11 So the more recent data shows quite a different
12 picture. There's the Andersson, et. al. study from Sweden
13 in the 1990s. There were registered partnerships for same-
14 sex couples and marriages for heterosexual couples. The
15 marriages were somewhat more stable than the registered
16 partnerships for same-sex couples, but the Rossett et. al.
17 study covers four years of civil partnerships in the United
18 Kingdom. And actually as far as I can tell it's a complete
19 record of all the civil partnerships from 2005 to 2008, and
20 then it follows them into 2009.

21 In the United Kingdom data which I think included
22 about 30,000 same-sex couples registered partnerships which
23 was all of the registered partnership they had at that time
24 the breakup rate of the same-sex registered partnerships
25 was actually lower than the breakup rate of heterosexual

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

6

1 marriages contracted at the same period. So that's a really
2 interesting and important piece of data.

3 And then for the United --

4 Q That's from the United Kingdom?

5 A That's from the United Kingdom. That's England and
6 Wales I think it covers.

7 Q Okay.

8 A And interesting -- I mean, it's a report that's put
9 out by their Office of National Statistics. So it's sort of
10 like the official data and it covers all -- you know they
11 have -- every breakup that's reported they have it recorded
12 and every civil partnership they have it reported. So it's
13 not even a sample. It's a hundred percent of the data.

14 Q With respect to the United States is there a body of
15 data?

16 A So with respect to the United States there's a couple
17 of data sources from the recent data. There's a really
18 interesting study by Balsam, et. al. On civil unions
19 contracted in Vermont around 2001. They went to the
20 registrar, you know, the public records of the civil
21 unions. They wrote to everybody. There were several
22 thousand people who had gotten the civil union in the early
23 days. They found several hundred people -- several hundred
24 same-sex couples to respond to the survey and then they
25 matched them with siblings who were in heterosexual

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

7

1 marriages and they followed them for three years. And they
2 also matched them with friends who were in same-sex unions
3 but hadn't gotten the civil union. So they didn't have a
4 formal union.

5 What they found was that the breakup rate of the
6 same-sex couples who had civil unions was very similar to
7 the breakup rate of the heterosexual couples. I think they
8 differed by about one percentage point. It was like three
9 percent compared to four percent. And the same-sex couples
10 who hadn't gotten civil union had a much higher breakup
11 rate, nine percent.

12 So the Balsam, et. Al., study showed a pattern
13 that my own data also shows which is that there's a very
14 similar breakup rate of same-sex couples in the United
15 States who have some kind of formal union compared to
16 heterosexual married couples. And that the same-sex couples
17 without the formal union have a much higher breakup rate
18 corresponding to the breakup -- in my data I actually also
19 have heterosexual couples who don't have formal unions. So
20 the data in my survey show that the same-sex couples
21 without a formal union and the heterosexual couples without
22 formal union are quite similar in breakup rates. And the
23 same-sex couples with formal union and the heterosexual
24 married couples are also quite similar in terms of breakup
25 rate.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

8

1 And -- you know, we show that actually formal
2 union has the same relation preserving effect for same-sex
3 couples as it always had for heterosexual couples. This is,
4 you know, the central -- you know, one of the central
5 values of marriage is preserving unions, and increasing
6 stability which is so important to children and from all
7 the data that we have so far it's clear that formal union
8 has the same preserving effect for same-sex couples.

9 There's one other key thing that I want to
10 indicate about all this literature which is that all of
11 this literature predates what we would think of as full
12 marriage equality for same-sex couples.

13 So in my data I'm following couples in 2009,
14 2010, 2011. None of those same-sex couples had marriages
15 that were recognized by the U.S. Federal Government. So
16 some of them had marriages recognized in their home state.
17 Some of them had domestic partnerships recognized in their
18 home state. Some of them had domestic partnerships
19 recognized in the state but they didn't live in that state
20 any more and the current state of residence didn't
21 recognize anything about their formal union. And some of
22 them had marriages that was consecrated between themselves
23 and their partner without any formal recognition.

24 So the formality of these same-sex unions in
25 terms of recognition by the state is substantially -- what

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

9

1 we know about the way formalization works among couples is
2 we would expect that as they have more recognition and more
3 legal rights that they would gain even more stability
4 benefit from that recognition.

5 So to a certain extent all the data that we have
6 from the past about same-sex couples stability is an
7 unequal test because the heterosexual married couples have
8 rights and benefits that the same-sex couples didn't have.
9 And even despite that unequal test the comparison shows
10 that they're quite comparable.

11 Q Thank you.

12 Professor, I want to ask you a couple of
13 questions -- a couple more questions on issues of stability
14 that go to the concern raised by the State defendants that
15 legalization of same-sex marriage could have negative
16 effects on opposite sex marriage. It's correct, is it not,
17 that we now have about a decade's worth of experience in
18 Massachusetts and growing experience in the other states
19 that have legalized same-sex marriage. Is there any
20 evidence in the research that legalization of same-sex
21 marriage has had any negative effect whatever on the
22 stability of or the rate of opposite sex marriage?

23 A Yeah, that's an interesting question and the answer is
24 fairly straightforward, there's no evidence whatsoever that
25 same-sex marriage has any effect on heterosexual marriage.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

10

1 We have a couple of interesting studies that look
2 at state-by-state data in the United States comparing when
3 there were changes in regime in terms of same-sex marriage
4 by state to what the state marriage rate for heterosexuals
5 was.

6 So the Dinno and Whitney is the most recent paper
7 in this area. It looked at year-by-year marriage rates for
8 heterosexual couples and then tried to see if there was any
9 impact on that year-by-year marriage rate by the
10 legalization of same-sex marriage and they determined very
11 emphatically that there was no such effect.

12 There's an earlier paper by Langbein and Yost
13 that used census data so they had three time points. The
14 Dinno and Whitney they have year-by-year-by-year which a
15 little more effective because these things change year-by-
16 year. But the Langbein and Yost had three time points and
17 they used the census data and they found the same thing
18 that that same-sex marriage didn't have any negative effect
19 on the marriage rate of heterosexuals.

20 And then in my own data -- so the Dinno and
21 Whitney and the Langbein and Yost they're looking at state
22 averages. So when they do their analysis they have 50
23 states over time.

24 In my data set I actually -- I'm looking at
25 individuals. So I'm looking at the individual heterosexual

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

11

1 couples living in the states that either do or don't have
2 same-sex marriage. And in my data set I've shown that the
3 divorce rate for heterosexual married couples is no
4 different whether they live in a state that has same-sex
5 marriage or don't. So I don't think there's any credible
6 evidence that same-sex marriage has any negative effects.

7 Q Thank you. I'd like to ask you a different question
8 now and that is you talked a little bit -- really more than
9 a little bit yesterday about statistical significance.

10 A Right.

11 Q And I anticipate that there will be testimony from at
12 least one of the State defendants' witnesses about a
13 distinction between an actual difference and a
14 statistically significant difference.

15 From the standpoint of someone who works with
16 statistics and data analysis is there a meaningful concept
17 of actual difference that doesn't have statistical
18 significance?

19 A I'd like to maybe address this with an example, I
20 think.

21 So let's say you have a coin and you want to know
22 if it's a fair coin, that is -- in other words just as
23 likely to give you heads or tails. And what you do is you
24 might is you might take this coin and flip it a hundred
25 times and see how many heads you get.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

12

1 So say you flipped it a hundred times and you got
2 51 heads. Now, 51 is more than 50. The question is what
3 have you learned in this experiment? The truth is if you
4 take the coin and you flip it a hundred times and you get
5 51 heads that's perfectly consistent with the coin being a
6 fair coin because there's random variation. You don't
7 expect to get exactly 50 heads every time. In fact, I think
8 the probability of getting exactly heads is only about
9 eight percent.

10 So -- what we have in samples is random
11 variation. So if you flip the coin a hundred times and you
12 got 51 heads that actually is perfectly consistent with the
13 coin being a fair coin just as likely to give you heads or
14 tails. Of course, if you flip the coin a hundred times and
15 you got 80 heads you would be sure that the coin was not a
16 fair coin. So it's a question of how close the result is to
17 what you were expecting to get and, you know, how many coin
18 flips you make.

19 And the other thing to add about this is that,
20 you know, there's a certain amount of uncertainty -- I
21 think the confidence interval around that coin flip goes
22 about ten percent in either direction if you flip it a 100
23 times. So you know more or less where you expect the next
24 coin flip percentage to be but you don't know exactly.

25 On the other hand, if 50 other people had done

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

13

1 the same experiment and they all got around 50 heads when
2 they flipped the coin you would be very confident that the
3 coin was a fair coin.

4 So just because 51 is more than 50 doesn't mean
5 that you can rule out that the coin is a fair coin. In
6 fact, the 51 heads is kind of confirming that the coin is a
7 reasonably fair coin.

8 Q Thank you. Just a couple of last questions.

9 A Sure.

10 Q On the basis of everything that you know from the
11 research in this area do you have an opinion as to whether
12 children are in any way disadvantaged with respect to
13 outcomes as a result of being raised by same-sex parents?

14 A It's clear that being raised by same-sex parents is no
15 disadvantage to children.

16 Q From your prospective as a sociologist is there any
17 rational basis at all for a claim that children develop
18 better with a mother and a father than when raised by same-
19 sex parents?

20 A There's no basis for that.

21 Q Stated another way, from your prospective as a
22 sociologist is there any reasonable basis for questioning
23 whether children raised by same-sex couples have outcomes
24 as good as children raised by opposite sex couples?

25 A I believe that the literature is really clear in that

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

14

1 the fundamental research social science consensus on this
2 issue hasn't been questioned in any reasonable way. That
3 there's no reasonable basis to question that scholarly
4 consensus.

5 MR. MOGILL: Thank you.

6 I have no further questions.

7 THE COURT: Thank you.

8 You may cross-examine, counsel.

9 You may move the podium where you would like it
10 if you don't like it there.

11 MS. HEYSE: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. HEYSE:

14 Q Good morning, Dr. Rosenfeld.

15 A Good morning.

16 Q How are you today?

17 A Excellent.

18 Q Doctor Rosenfeld, you understand that Ms. Deboer and
19 Ms. Rowse, the plaintiffs in this case, would like to get
20 legally married in the State of Michigan; correct?

21 A That's my understanding.

22 Q And you understand that no state in this country has
23 permitted same-sex marriage until 2004 in Massachusetts?

24 A That's my understanding as well.

25 Q So same-sex marriage is a relatively new concept in

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

15

1 the United States; correct?

2 A Okay.

3 Q And would you agree with me that the definition of
4 marriage in Michigan has always been understood to be
5 between a man and a woman?

6 A I don't know exactly how -- I don't know how the
7 definition is always been understood, but --

8 Q But it's currently between a man and a woman; correct?

9 A That's sounds correct, yes.

10 Q And have you no knowledge of it being any other
11 definition; correct?

12 A Correct.

13 Q Okay. Thank you.

14 Did you know that no country allowed same-sex
15 couples to marry until the Netherlands in 2000?

16 A That sounds correct.

17 Q And you support same-sex marriage; correct?

18 A I do.

19 Q I'm going to talk a little bit about your work.

20 A Okay.

21 Q You stated in your Direct Testimony that you've
22 published a number of articles; correct?

23 A Yes.

24 Q But you haven't published any in statistical journals;
25 correct?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

16

1 A That's correct.

2 Q And as to your publications none of them deal
3 specifically with same-sex marriage; correct?

4 A No, that's not correct. The -- my book on "The Age of
5 Independence" actually deals with same-sex marriage and its
6 history, yeah.

7 Q Sure. Do you recall giving a deposition in this
8 matter?

9 A I don't know if you asked me --

10 Q I didn't ask you that question. Do you recall giving a
11 deposition in this matter?

12 A Oh, yes, absolutely.

13 Q Was that sworn testimony?

14 A Yes.

15 MS. HEYSE: Your Honor, if I may approach the
16 witness?

17 THE COURT: Absolutely.

18 BY MS. HEYSE:

19 Q Do you recall me asking you questions at your
20 deposition?

21 A Certainly.

22 Q Okay. So if you'll look on page 64 of your deposition,
23 Dr. Rosenfeld. Actually it would be the last line of page 63.
24 I'll just read. My question to you is:

25 "And how many of your publications deal with

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

17

1 same-sex marriage?"

2 THE COURT: I don't think he has it yet. Do you?

3 MS. HEYSE: I apologize.

4 THE COURT: Can you find it, Professor?

5 THE WITNESS: Yes.

6 BY MS. HEYSE:

7 Q My question to you was:

8 "Okay. And how many of your publications deal
9 with same-sex marriage?"

10 A Right.

11 Q And your answer was,

12 "Well, "The Age of Independence" my book deals
13 with same-sex couples."

14 A Right.

15 Q Correct?

16 A Correct.

17 Q And then if you skip down to --

18 A Right, but what it says is --

19 Q No, I didn't -- that's what it says; correct?

20 MR. MOGILL: I'm sorry, the witness is not done
21 answering the question.

22 THE COURT: He has a right to read it for purposes
23 of completeness.

24 A Let me -- you said,

25 "How many of your publications deal with same-sex

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

18

1 marriage?"

2 And I said,

3 "Well, 'The Age of Independence' my book deals
4 with same-sex couples." And at the time there wasn't same-
5 sex marriage in the United States. But the book addresses
6 the question of same-sex marriage.

7 Q Okay. And if you look at the next question, it says,

8 "Any other of your publications deal with same-
9 sex couples or same-sex marriage besides your book"?

10 And you say --

11 A I say, "Right, 'The Searching for a Mate' also deals
12 with same-sex couples and heterosexual couples."

13 Q So that does not deal with same-sex marriage?

14 A Right.

15 Q Okay. So you have one publication that deals with
16 same-sex marriage?

17 A Okay.

18 Q Thank you.

19 So you're not an expert in the law; correct?

20 A That is correct.

21 Q And you're not an expert in child development;
22 correct?

23 A Well, I have some expertise in child development. I
24 think when I answered at the deposition was that it's not
25 my main area, but I have some expertise in it.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

19

1 Q And you've not been qualified as an expert in that
2 purposes of this case; correct?

3 A That sounds correct.

4 Q Okay. And you've conducted only one study regarding
5 outcomes on children raised by same-sex couples; correct?

6 A That's correct.

7 Q And you're aware that childrens' outcomes were at
8 issue in the same-sex marriage debate before you began your
9 research in that study; correct?

10 A That's correct.

11 Q And with your research you sought to contribute to
12 that debate; correct?

13 A That's correct.

14 Q Okay. Thank you.

15 Now, would you agree with me, Dr. Rosenfeld, that
16 families are diverse?

17 A That's sounds correct.

18 Q And that would include same-sex families; correct?

19 A Yes.

20 Q And as a social scientist you would agree that it's
21 important to make sure that your research reflects
22 diversity; correct?

23 A There are circumstances where your research can
24 reflect that diversity and there's other circumstances
25 where the diversity is not always accessible to you.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

20

1 Q Sure. But any time it's accessible and possible that
2 would be an important thing to make sure that your research
3 reflects that diversity; correct?

4 A That's -- you know, one of the reasonable goals.

5 Q And you would agree that heterosexual married couples
6 are the predominant system in the United States for raising
7 kids; correct?

8 A That's correct.

9 Q Okay. Now your opinions in this particular case are
10 based at least in part on review of others' literature
11 especially with regard to the small convenient sample
12 studies; correct?

13 A Well, as I answered at the deposition the convenient
14 studies and here we mean --

15 MS. HEYSE: Your Honor, I would ask that the
16 witness respond to the question.

17 THE COURT: I agree with you. If you would like a
18 yes or no answer ask him to answer yes or no.

19 Professor, if you can't answer it yes or no
20 because you're under oath in order to be complete let
21 counsel know so that she knows and then she can do whatever
22 she cares, but I agree with you.

23 MS. HEYSE: Thank you, your Honor.

24 BY MS. HEYSE:

25 Q Your opinions in this case are based at least in part

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

21

1 on review of others' literature especially with regard to
2 the same convenient sample studies, yes or no?

3 A I don't think I can answer that yes or no. I need to
4 qualify that.

5 THE COURT: That's fair.

6 A So --

7 THE COURT: Counsel will let you know if she wants
8 you to qualify that.

9 MS. HEYSE: I'll move on.

10 BY MS. HEYSE:

11 Q In preparing the report for this particular case you,
12 in fact, had assistance from plaintiffs' counsel in
13 determining what literature would be useful and relevant to
14 the Court; is that correct?

15 A They did help me figure out what issues --

16 Q Is that correct, yes or no?

17 A Yes.

18 Q And plaintiffs' counsel assisted you in determining
19 what issues were relevant for purposes of your report;
20 correct?

21 A Correct.

22 Q Thank you.

23 And your research is focused on large sample
24 nationally representative studies; correct?

25 A Correct.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

22

1 Q So you would agree with me that you're not as familiar
2 with the small sample convenient sample studies; correct?

3 A That's correct.

4 Q That's not really your area of expertise.

5 A That's right.

6 Q Okay. And you don't have a firm grasp on the details
7 of those small sample, convenient sample studies; correct?

8 A I'd like to qualify that and say that I don't have a
9 firm grasp on the details of them all.

10 Q Okay. Fair enough.

11 And you would agree with me that there are
12 limitations to small convenient sample studies; correct?

13 A I'd like to qualify that answer as well.

14 Q I don't think it requires a qualification.

15 THE COURT: If you can answer yes or no, fine. If
16 you can't, just say you can't.

17 A Yes.

18 BY MS. HEYSE:

19 Q And small sample convenient studies don't allow for
20 statistically powerful test of hypotheses; correct?

21 A The -- I'd like to qualify that as well.

22 Q Well, Dr. Rosenfeld --

23 A Well --

24 MR. MOGILL: If the witness says he can't answer
25 it yes or no --

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

23

1 THE COURT: If you can't answer it yes or no just
2 tell her.

3 BY MS. HEYSE:

4 Q If you could then turn to page 119 of your deposition?

5 A Sure.

6 Q Half way through the page there, there's a question
7 posed and I say to you,

8 "I think you mentioned in your testimony" --

9 MR. MOGILL: What page?

10 MS. HEYSE: I'm sorry, 119.

11 MR. MOGILL: Thank you.

12 BY MS. HEYSE:

13 Q I say to you,

14 "I think you mentioned in your testimony that you
15 acknowledge that there are some limitations with regard to
16 small sample studies. Can you identify me -- identify for
17 me what those limitations would be."

18 And your answer,

19 "Well, all research has limitations so the
20 limitations of small convenient studies is that they don't
21 allow for statistically powerful tests for all your
22 hypotheses."

23 That was your response; correct?

24 A That's correct.

25 MR. MOGILL: That was part of his response. The

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

24

1 rest of it needs to be read --

2 THE COURT: I'm sorry.

3 MR. MOGILL: I would object to taking it out of
4 context. I think the remainder of the response is necessary
5 --

6 THE COURT: Well, you'll have a chance on
7 Redirect.

8 MR. MOGILL: Thank you, your Honor.

9 BY MS. HEYSE:

10 Q In fact, Dr. Rosenfeld, you noted in your demography
11 article -- you noted that in your demography article;
12 correct?

13 A I think if you want me to agree to something in the
14 demography article, I'd like to see the quote.

15 Q Sure.

16 MS. HEYSE: May I approach, your Honor?

17 THE COURT: Absolutely.

18 A Do you have a page for me?

19 BY MS. HEYSE:

20 Q You stated that you don't recall discussing these
21 small convenient samples in your demography article?

22 A Well, I remember discussing it, but I would like you
23 to refer me to a specific so I can get the context of what
24 I said in the article.

25 Q Okay. It would be on page 756 to 757 of your article.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

25

1 A Yes.

2 Q The answer to the question is yes or you're ready?

3 A Repeat the question.

4 Q Sure. We were talking about the small sample studies
5 not allowing for statistical powerful test of hypotheses,
6 and I said, in fact, you noted that in your demography
7 article --

8 A What I noted was that -- that critique exists in the
9 literature.

10 Q But it's noted in your demography article; correct?

11 A It's noted that that critique exists in the
12 literature, but that's distinct from saying that's my
13 critique.

14 Q Okay. And you would agree that when the APA issued its
15 statement in 2005 it did so relying almost exclusively on
16 these small convenient sample studies; correct?

17 A That's correct.

18 Q And with these convenient sample studies instead of
19 using a survey as you discussed in your studies the
20 researchers find people to study that are closest to them;
21 correct?

22 A Correct.

23 Q Okay. And it's true, isn't it, that small sample
24 studies have many more studies of lesbian mothers than of
25 gay men; correct?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

26

1 A That's correct.

2 Q Now, Dr. Rosenfeld, are you familiar with Gary Gates?

3 A I am.

4 Q And isn't it true that both of you analyze census
5 data?

6 A That's correct.

7 Q And you would agree with me that Gary Gates is the
8 predominant expert in census data; correct?

9 A He's one of the predominant experts in census data as
10 it relates to same-sex couples for sure.

11 Q And are you aware if you qualified that answer in your
12 deposition?

13 A I don't remember.

14 Q In fact, you consulted him with regard to your study
15 on "How Couples Meet and Stay Together"; correct?

16 A That's correct.

17 Q So you would agree with me that he knows the census
18 data better than you; correct?

19 A I don't believe I said that.

20 Q Okay. If you could turn to page 41 of your deposition.

21 A Can I continue my answer?

22 Q I'm going to read this to you,

23 "Gary Gates has a lot of expertise in the census
24 data and I think probably knows the consensus data better
25 than I do."

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

27

1 A The "Canadian census data."

2 Q Pardon, "Canadian census data better than I do. I
3 haven't done my own research on the Canadian census data."

4 Let me qualify my question then. So Gary Gates
5 knows the Canadian census data better than you; correct?

6 A Yeah, that's an important qualification because my
7 research with the U.S. census.

8 Q Absolutely, and I apologize for misstating that. He
9 does, in fact, know the Canadian census data better than
10 you.

11 A I would expect so.

12 Q Thank you.

13 Now, Dr. Rosenfeld, you have some criticisms of
14 Dr. Allen's study analyzing the Canadian census data;
15 correct?

16 A Yes.

17 Q And, again, from that deposition testimony, you've not
18 done your own research with regard to the Canadian census
19 data; correct?

20 A That's correct.

21 Q Okay. Now, you criticize Dr. Allen's study of
22 children's progress through school using the Canadian
23 census data because it was limited to five years; correct?

24 A The window of what we know about the past of the
25 family was limited to five years.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

28

1 Q Thank you.

2 A In fact, in the heart of the paper as far as I can
3 tell he only used a one-year window.

4 Q Thank you, but I think you've answered my question.

5 But the same is true of the U.S. Census data that
6 you rely on; correct, you get that five-year window.

7 A Right.

8 Q Okay. So outside of the five-year period that -- for
9 lack of a better term I'm going to call it the five-year
10 snapshot, if you will, in both the United States and the
11 Canadian census data that data cannot tell you the family
12 makeup outside of that five years; correct?

13 A Well, I'd like to qualify the answer which is that
14 it's true that you have the same five-year window in the
15 Canadian census and the U.S. census but I was looking at
16 progress through the primary school for which the five-year
17 window covers most or all.

18 Q That doesn't answer my question. My question to you
19 is: outside of that five-year period in both of the United
20 States census data and the Canadian census data that data
21 is not going to tell you about anything outside of that
22 five-year period; correct?

23 A That's correct.

24 Q Thank you. And you would agree with me that five years
25 is not long enough to actually raise a child; correct?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

29

1 A That's correct.

2 Q Thank you. Now, you also have some criticisms of Dr.
3 Regnerus' study; correct?

4 A Yes.

5 Q And you believe that Dr. Regnerus' New Family
6 Structure Study, NFSS, his data is high quality though;
7 correct?

8 A I think it's high quality data.

9 Q Thank you. And you would agree with me that the
10 underlying data gathering process that Dr. Regnerus' study
11 used is mainstream social science; correct?

12 A That's correct.

13 Q In fact, there are certain strengths to the data in
14 the NFSS study; correct?

15 A I'd like to qualify what those are if I may.

16 Q We're going to go through them so if you could just
17 answer my question that would be perfect.

18 A All right.

19 Q There are strengths to the NFSS data; correct?

20 A Yes.

21 Q Okay. And those strengths include that it has a
22 nationally representative -- is nationally representative
23 data which is an advantage over many data sources used to
24 study same-sex couples; correct?

25 A What I would say about the advantage of national

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

30

1 represent-sensitivity is it has some advantages and some
2 disadvantages as well.

3 Q Well, didn't you, in fact, state those explicit words
4 in a re-analysis that you did of Dr. Regnerus' study?

5 A Yes.

6 Q So in other words, you specifically stated -- and I
7 quote. I mean, this is directly from your work,

8 "Those strengths include it has a nationally
9 representative data which has an advantage over many data
10 sources used to study same-sex couples."

11 A Correct.

12 Q Okay. And another strength of that data is that the
13 NFSS over sampled children raised at least in part by same-
14 sex couples allowing researchers statistical leverage;
15 correct?

16 A That's correct.

17 Q Okay. And another advantage is that it contains a
18 detailed year-to-year family calender from which
19 respondent's childhood family structure history can be
20 reconstructed; correct?

21 A Correct.

22 Q Thank you. And it also asks many questions about a
23 variety of childhood and adult outcomes; correct?

24 A Correct.

25 Q Thank you. Now you did your own re-analysis of Dr.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

31

1 Regnerus' data; correct?

2 A Yes.

3 Q And with your re-analysis of Dr. Regnerus' data you
4 find no disadvantages for child being exposed to same-sex
5 relationships; correct?

6 A Correct.

7 Q But to reach that finding you had to add an additional
8 control for family stability; correct?

9 A Correct.

10 Q But you would agree with me that family transitions
11 which translates to family instability; correct?

12 A Could you say --

13 Q Family transitions would be the same thing as family
14 instability?

15 A Okay.

16 Q But you would agree with me that those transitions
17 dominate same-sex couplehood in the study of family
18 effects; correct?

19 A No, the --

20 Q You don't believe that transitions dominate same-sex
21 couplehood in the study of family effects?

22 A Okay, yes, I agree.

23 Q Thank you. Now, children of same-sex couples often
24 have a prior family; right?

25 A Right.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

32

1 Q Either have been in the foster system or potentially
2 the product of a failed heterosexual union; correct?

3 A Correct.

4 Q And you would agree with me that Dr. Regnerus' results
5 were correctly reported.

6 A Given the limitations of his --

7 Q I understand you don't agree with the findings, but
8 when you ran the numbers they were correctly reported.

9 MR. MOGILL: Excuse, Ms. Heyse is continually
10 interrupting Professor Rosenfeld's answers. I think it's
11 inappropriate. I think the witness needs to be allowed to
12 complete his answer.

13 THE COURT: I'm not sure that's happening. I
14 didn't quite notice that, but, yes, let's move on. I didn't
15 see that --

16 MS. HEYSE: I'll certainly try to pay attention,
17 your Honor.

18 THE COURT: Good.

19 BY MS. HEYSE:

20 Q Okay. Backtracking for a moment, Dr. Rosenfeld, we
21 were discussing the family transitions dominating same-sex
22 couples. I just want to restate my question to make sure --

23 A Well --

24 Q Let me restate the question because I don't have a
25 question posed before you and then you'll have an

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

33

1 opportunity to answer; okay. It goes a lot better that way.

2 But you agree that family transitions dominate
3 same-sex couplehood in the study of family effects;
4 correct?

5 A No. Same -- family transitions dominate having lived
6 with same-sex couples in the prediction of negative
7 outcomes in the data.

8 Q So this is not a quote -- you've not stated this in
9 writing anywhere, yes or no?

10 A It's hard for me -- I don't have the text in front of
11 me.

12 Q I have a copy which I would be happy to provide.

13 A Please.

14 Q Looking at your quote let me restate the quote --

15 MR. MOGILL: Do you have a page?

16 MS. HEYSE: Yes, page 5. It would be the first
17 paragraph under the "Same-sex Couples" heading there.

18 Let me restate my question because I have a
19 little different one so I want to make sure we get this
20 correct; okay?

21 BY MS. HEYSE:

22 Q "But you would agree with me that family transitions
23 dominate same-sex couplehood in the study of family effects
24 on children."

25 A Well, the quote if I can read --

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

34

1 Q Well, first of all, is that an accurate quote from
2 your -- this is your writing?

3 A Yes, but I don't think you read it correctly so I just
4 want to read it.

5 Q Okay.

6 A "Just as family transitions have been shown to
7 dominate the effect of single parenthood on children's
8 outcomes so too has research shown that family transitions
9 dominate same-sex couplehood in the study of family's
10 effects on children."

11 Q So you would agree with me, again, that part of that
12 quote says,

13 "Research has shown that family transitions
14 dominate same-sex couplehood in the setting of family
15 effects on children."

16 A That's correct.

17 Q Thank you. And, again, getting back to the question
18 with regard to Dr. Regnerus' study, again, his results were
19 correctly reported?

20 A Yes, I replicated his results given --

21 Q Okay.

22 A I'd just like to finish this.

23 Q Is it responding to my question?

24 A Given the limitations of his study design which I
25 think are fundamental the results are correct in the

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

35

1 report.

2 Q Okay. You disagree with the fact that he didn't
3 control for stability.

4 A Right.

5 Q Aside from that his findings were correct.

6 A That's correct.

7 Q Okay. You've also criticized the work of Price, Allen
8 and I'm probably going to mispronounce this but Pakaluk.
9 They replicated your study regarding children's progress in
10 school; correct?

11 A Correct.

12 Q You both reached different results when analyzing that
13 data; correct?

14 A That's correct.

15 Q Okay. You found no difference between the children
16 being raised by same-sex couples and they found there were
17 differences; correct?

18 A Well, not exactly because they didn't rely on the
19 children who were actually raised by same-sex couples the
20 same way I did.

21 Q Okay. I'm speaking of their outcome.

22 A I want to finish my answer.

23 When I analyzed the data I was relying
24 exclusively on the children who were really raised by the
25 same-sex couples because I only included the children whose

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

36

1 families through school we really knew. They added in the
2 children whose family through school we didn't know.

3 So while I was analyzing children raised by same-
4 sex couples they were doing something else.

5 Q Sure. I understand that you don't agree that. We heard
6 all about that yesterday. My question to you was: You
7 reached different conclusions with regard to these studies;
8 correct?

9 A We reached different conclusions.

10 Q And just to be clear there were two things that you
11 controlled for I think you called it restricted for that
12 they didn't; correct?

13 A Correct.

14 Q Okay. You restricted the study to biological children
15 of the household head; correct?

16 A Yes.

17 Q So that excluded other children living in the home if
18 they weren't biological children of the household head;
19 correct?

20 A Correct.

21 Q And you also restricted the study to children who were
22 living in the same home with the same parents for that
23 five-year period; correct?

24 A Correct.

25 Q Okay. I want to talk you a little bit about -- let me

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

37

1 -- now, there's no question on the survey for the census
2 data that asks whether a child was held back in school;
3 correct?

4 A Correct.

5 Q So you're making an inference or an assumption based
6 on the age of the child and his her grade; correct?

7 A Correct.

8 Q Okay. And you testified that you know from the census
9 data that the members of the household were living in the
10 same household for five years; correct?

11 A Correct.

12 Q But you can't actually tell from that data that the --
13 what the status of the relationship was between the parties
14 in the household; correct?

15 A Correct.

16 Q Okay. Now, I want to talk a little bit about figure 2
17 because you spent time on that yesterday. I just want to
18 make clear you made some statements with regard to Dr.
19 Allen's intentions in drafting that figure. I just want to
20 make clear that you don't actually know why Dr. Allen
21 drafted figure 2 the way he did; correct?

22 A I don't have any information about his intentions
23 other than what he wrote in his expert report. And in that
24 expert report he said -- I don't have it in front of me,
25 but that the figure 2 shows what Rosenfeld's results -- I

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

38

1 mean -- do you want to pull up the quote?

2 Q No, I think you answered my question sufficiently.

3 Again, you don't actually know what he was
4 thinking when he drafted that particular figure that way;
5 correct?

6 A I don't know what he was thinking.

7 Q And you don't know exactly what he was trying to
8 portray with that figure; correct?

9 A Well, let me go back to --

10 Q Well, do you know with any certainty what he was
11 trying to convey with that figure?

12 A I know that he wrote what Rosenfeld actually found is
13 represented in figure 2. So that's -- I take that
14 seriously.

15 Q Okay. Fair enough.

16 But you have no way of knowing that he actually
17 intended to exaggerate that figure as you stated on the
18 record yesterday; correct?

19 A Well, there's two parts there. I don't know if I --
20 that he intended to exaggerate. What I said was that he did
21 exaggerate. I can't speak to his intention.

22 Q So you have no way of knowing if that was his
23 intention to exaggerate; correct?

24 A That's correct.

25 Q And, again, your study relies on U.S. Census data.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

39

1 A Yes.

2 Q And you've acknowledged that the U. S. Census data
3 suffers from limitations; correct?

4 A Certainly.

5 Q Normal progress through school is the only outcome
6 that can be measured and that's with less precision than
7 you would like; correct?

8 A That's correct.

9 Q And identifying same-sex couples is less precise than
10 you would like; correct?

11 A That's also correct.

12 Q And that's because in the 2000 census data there were
13 survey errors and recoding with regard to the household
14 roster; correct?

15 A Correct.

16 Q And the census data also cannot tell you the
17 relationship between the head of the household, the person
18 filling out the form in other words, and the child or the
19 relationship between the child and the partner; correct?

20 A No, I think the survey form tells you the relationship
21 between the head of the household and the child.

22 Q Okay. Does it tell you about the relationship with
23 this child and anyone else in the home?

24 A No.

25 Q Thank you. It also doesn't tell you about -- how many

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

40

1 previous relationships a particular couple has had;
2 correct?

3 A That's correct.

4 Q So you would agree with me then that the census data
5 provides limited information regarding family stability;
6 correct?

7 MR. MOGILL: I'm sorry, I didn't hear that one,
8 I'm sorry.

9 BY MS. HEYSE:

10 Q You would agree with me that the census data provides
11 limited information regarding family stability; correct?

12 A I'm going to qualify this answer and say that the
13 census is a cross-sectional survey so it has limited
14 information about family stability as cross-sectional
15 surveys tend to have.

16 Q Now, you would agree with Mr. Dr. Rosenfeld, that the
17 same-sex community has a small population for purposes of
18 research; correct?

19 A That's correct.

20 Q In fact, same-sex couples compromise between one and
21 two percent of all couples in the United States; correct?

22 A That's correct?

23 Q And the percentage of children raised by same-sex
24 couples is less than one percent; correct?

25 A That's correct. And I'd like -- if I could expand on

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

41

1 this answer just a little bit and say that part of the
2 reason that we have convenient sample studies and that the
3 convenient sample studies are valuable --

4 MS. HEYSE: Your Honor, I don't believe that's at
5 all responsive to my question.

6 THE COURT: Your attorney -- plaintiffs' attorney
7 will have an opportunity.

8 BY MS. HEYSE:

9 Q In fact, children raised by same-sex couples and I
10 quote, "are a needle in the haystack population"; correct?

11 A Correct.

12 Q And as a result, large sample nationally
13 representative studies of children raised by same-sex
14 couples are few; correct?

15 A That's correct.

16 Q I'm going to turn now to the stability of same-sex
17 couples. There's a small body of research regarding the
18 stability of same-sex couples; correct?

19 A Okay, that's correct.

20 Q You testified earlier that research is mixed with
21 regard to stability. Some studies say less stable, some
22 studies say more stable; correct?

23 A Yes.

24 Q And those studies are of short duration; correct?

25 A The studies -- for instance, the study from the United

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

42

1 Kingdom followed couple for four years.

2 Q The Balsam study for three years?

3 A The Balsam study for the years. The data that I
4 published was following couples for two years. So that's a
5 modest duration.

6 Q Okay. I do want to talk a little bit about your study,
7 "How Couples Meet and Stay Together."

8 A Right.

9 Q You acknowledge that's a small data set when you're
10 looking at longitudinal studies; correct?

11 A I guess it depends on -- small compare to what? It's a
12 modest sample size, but it actually has a substantial
13 number of same-sex couples in it.

14 Q And you actually used the same data source for that
15 study as Dr. Regnerus did for his; correct?

16 A Not exactly. We used the same survey company.

17 Q You're right. The same survey company. Okay.

18 And where do you get your data from for that
19 particular study?

20 A The company is Knowledge Networks. I think it's -- has
21 a newer name which is GFK.

22 Q Sure, but my point is, doesn't the data in fact come
23 from the survey?

24 A They are different surveys. In other words, my study
25 is a survey that I designed and his study was a survey that

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

1 he designed.

2 Q Sure by the same -- done by the same entity. You
3 designed it and it's implemented by the same entity;
4 correct?

5 A Yes.

6 Q And that's where the data comes from.

7 A That's correct.

8 Q So, in fact, your data source is the same --

9 A No, the data sets are different, but the company that
10 asks the questions of the subjects is the same. But the
11 data source -- usually when we think about data source
12 we're thinking about the data itself so the data itself are
13 different. Two different data.

14 Q Okay. Thank you. You're not aware of any data that
15 tracks the stability of same-sex married couples beyond
16 that five-year period; correct?

17 A That's correct.

18 Q And you would agree with me that we'll know more in
19 the future about the stability of same-sex married couples;
20 correct?

21 A That's correct.

22 Q And you also agree with me that research is a long
23 process; correct?

24 A That's correct.

25 Q And you would also agree with me that because of the

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

44

1 effect -- government recognition -- because the effect of
2 government recognition on longevity -- I'm sorry. Strike
3 that, please.

4 You would agree with them that the effect of
5 government recognition on longevity of same-sex formal
6 unions is not measurable in your study of "How Couples Meet
7 and Stay Together"; correct?

8 A My study predates federal recognition of marriage so
9 there's

10 Q Sure --

11 MS. HEYSE: Your Honor, may I ask --

12 THE COURT: Yes.

13 MS. HEYSE: It's a yes or no question.

14 BY MS. HEYSE:

15 Q You agree with me that the effect of government
16 recognition on longevity of same-sex formal unions is not
17 measurable -- I'm not asking you why, but just that it is
18 not measurable in "How Couples Meet and Stay Together";
19 correct?

20 A I'm not sure I can answer yes or no because there are
21 differences in -- there are couples in the data set who
22 have government recognition, they have domestic
23 partnerships, or they're married in a state that recognizes
24 marriage. So there are some differences in government
25 recognition. You know, it's possible to test whether those

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

45

1 differences have an effect of couples' longevity.

2 Q Given all that you said there that is actually a
3 statement that you made in your paper; correct?

4 A Will you show me a page?

5 Q Sure, happy to do that.

6 It's going to be on page 19. It will be the next
7 to last sentence there before you get to the second
8 section.

9 If you can read along with me,

10 "Because the effect of government recognition on
11 longevity of same-sex unions is not measurable in "How
12 Couples Meet and Stay Together."

13 So again taking that language right from --

14 A Now, I see what it means. The context is important.

15 Q So that is a quote.

16 A That is a quote.

17 Q And you would agree with me, Dr. Rosenfeld, that
18 studies of family structure and children's outcomes almost
19 universally find advantage for children raised by their
20 biological parents; correct?

21 A So this is a quote I believe from my demography paper,
22 from the first page of it.

23 Q First, can you answer my question as to whether you
24 agree with that?

25 A Well, so it's a quote from my paper but what the

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

46

1 context is, if you look at the quote is that it's
2 heterosexual married couples compared to other heterosexual
3 families. So single parents, unmarried couples and so on.

4 Q But regardless of your qualification there you've
5 stated here that there is an advantage; correct?

6 A But the context is important. It's an advantage
7 compared to the other heterosexual families.

8 Q But there is an advantage.

9 A Of the children raised by heterosexual married couples
10 compared to the children raised by heterosexual single
11 parents, and unmarried heterosexual couples.

12 Q But there is an advantage to being raised by your
13 biological parents in those comparison groups.

14 A With those comparison groups.

15 MS. HEYSE: If I may have a moment to confer with
16 counsel?

17 THE COURT: Sure.

18 MS. HEYSE: Thank you.

19 I think I'm all set, your Honor.

20 MR. MOGILL: Very briefly.

21 THE COURT: Very well.

22 REDIRECT EXAMINATION

23 BY MR. MOGILL:

24 Q Good morning, Dr. Rosenfeld.

25 A Good morning.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

47

1 Q Let's start with a couple questions about -- some
2 phrases that Ms. Heyse used. Is a five-year look back a,
3 quote, snapshot, unquote?

4 A The importance of the length of the five years is
5 relative to the age of the children. If you're talking
6 about children who are 22 years old then if you have only
7 five years of information about their family five years is
8 not enough. But if you're talking about children who are
9 nine years old and you're talking about their progress
10 through school five years covers their entire progress
11 through school. For childhood outcomes, for primary school
12 outcomes, a five-year window is very good. For high school
13 graduation outcome, five-year window is not sufficient
14 which is why I didn't look at high school outcomes in the
15 U. S. Census it didn't really make sense.

16 Q With respect to the status of the relationship of
17 children living in the home that you looked at in the U. S.
18 Census in your demography study, is it correct that the
19 United States Census unlike the Canadian Census
20 specifically asks category of relationship -- own child,
21 step child, adopted child, foster child?

22 A That's correct. The U.S. Census of 2000 distinguished
23 natural born children from adopted children, from foster
24 children, from step children where as the Canadian census
25 had only one category for child.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

1 Q Lumped them all together.

2 A Lumped them all together.

3 Q Ms. Heyse asked you a question about small samples and
4 statistical power.

5 A Right.

6 Q If I understand you correctly an individual small
7 sample does not have a lot of statistical power; is that
8 correct?

9 A That's correct.

10 Q So the question is: is there a way to have statistical
11 power from the fact of small sample studies?

12 A So what we have in the literature is many small sample
13 studies. So it's not -- if we only had one then a sample
14 size of that one if it was 40 or 50 subjects would be, you
15 know, problematic. But if you have 50 samples of 40 or 50
16 subjects even though the individual studies have small
17 sample size the group of studies is relying on fairly large
18 sample size. So the sample size of the study may be small
19 but in the literature there are many such studies.

20 Q And what's the significance of that in terms of
21 statistical power?

22 A Well, the more sample size you have across the studies
23 the more power you have. It's really the total sample size,
24 not the sample size of one individual study that's relevant
25 because it's the total body of literature we're considering

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

1 not a single study.

2 Q If I understand you correctly, is it essentially that
3 a small sample study or two small sample studies you can't
4 really be confident of the conclusion but if there's
5 replication across a broader number of studies that's where
6 the power comes from?

7 A That's where the power comes from. It's replication.

8 And the other thing I would say is that the
9 larger survey data and the convenient sample studies both
10 have strengths and weaknesses. So one of the things we
11 talked about yesterday was that the survey data have a
12 difficult time identifying, for instance, couples who have
13 been raising the child, same-sex couples who been raising
14 the child from birth, right, there's very few of those. But
15 in the convenient sample studies you can actually find
16 those populations and study them directly. So there are
17 advantages to both.

18 Q Let's talk about difficulty of identification which
19 goes to the question Ms. Heyse asked you about errors in
20 the U.S. Census, the U. S. 2000 Census. In the course of
21 conducting your demography study were you aware of and did
22 you account for the likelihood of -- or fact of errors?

23 A Yes.

24 Q And would you tell the Court, please, what you did
25 because you knew they were there and you wanted to make

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

50

1 sure you didn't contaminate your data.

2 A Right. So there's the -- the research and this is more
3 research subsequently but there was some of it available at
4 the time when I was writing that paper suggested that among
5 the people who identified themselves as same-sex married
6 couples in 2000 there were more errors of identification
7 because there were many, more heterosexual married couples
8 than same-sex married couples. So small error in the larger
9 group.

10 Q Well, in 2000 no same-sex married couples.

11 A Right. But even the government didn't recognize same-
12 sex marriage, people identified themselves as married.

13 So one of the things that I did in my analysis is
14 I redid the analysis without any of the people who
15 identified themselves as married and I got the same
16 results. So I'm confident that whatever identification
17 problems there were don't impact my results.

18 Q Would this be an example of being careful to control
19 for contamination of the data?

20 A It's an example of checking that the results are
21 robust to potential limitations of the data and all data
22 have limitations.

23 Q Now, I'd like to ask you some questions just to
24 clarify with respect to your analysis of Professor
25 Regnerus' study. You agreed with Ms. Heyse that the data

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

51

1 itself is real data.

2 A Right.

3 Q Is it correct to say that your concern with Professor
4 Regnerus is not with the data but what he did with it.

5 A That's right. The data are perfectly reasonable but
6 the analysis performed by Professor Regnerus doesn't relate
7 to the question that we're studying here because it didn't
8 really relate to outcomes for children raised by
9 same-sex couples and it had many more of the subjects who
10 had never lived with same-sex couples at all.

11 The failure to control for family transitions is
12 a huge omission. So it's the analysis that I take issue
13 with, not the data. The data are perfectly good.

14 MR. MOGILL: Nothing further.

15 THE COURT: You may step down.

16 Thank you, Professor. We appreciate it.

17 Next witness, please.

18 MS. STANYAR: Your Honor, we have some -- we're
19 still waiting for a witness.

20 THE COURT: I'm sorry, I can't hear you. You have
21 to go to the microphone.

22 MS. STANYAR: We are waiting for a witness, but we
23 have some housekeeping matters, some stipulations that we
24 can read into the record to --

25 THE COURT: Okay. And your next witness is who?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

52

1 MS. STANYAR: Vivek Sankaran.

2 THE COURT: Oh, okay. I thought Dr. Gates --

3 MS. STANYAR: We've switched them in order.

4 THE COURT: Oh, okay.

5 So do you have -- I don't know. We were talking
6 about filling some spots. Who are your witnesses for today?

7 MS. STANYAR: Today is just Vivek Sankaran. Doctor
8 Gates comes in tonight.

9 THE COURT: Okay. Let's put the stipulations on
10 the record. We're waiting for him to come? He's on his way?

11 MS. STANYAR: He will be here at 11:00 o'clock.

12 THE COURT: Okay. So we'll take a break until
13 11:00. Let's put the stipulations on the record.

14 MS. STANYAR: Okay.

15 THE COURT: Oh, here is your transcript from
16 yesterday.

17 MS. STANYAR: Okay. Your Honor, the parties have
18 reached stipulated facts regarding the plaintiffs. This
19 will be Plaintiffs' Exhibit Number 53.

20 THE COURT: Do you want to read them into the
21 record, please?

22 Is it long?

23 MS. STANYAR: It's not that long. This one is not
24 that long.

25 MR. POTCHEN: We gave you our copy.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

53

1 THE COURT: Okay. Why don't you read them into the
2 record.

3 MS. STANYAR: Well, actually, it's seven pages.

4 THE COURT: Go for it.

5 MS. STANYAR: Okay.

6 THE COURT: Go for it. We have a lot of people
7 here, they won't get a chance to see it --

8 MS. STANYAR: I know, exactly.

9 THE COURT: And they should know what the
10 stipulation is. Seven pages isn't bad.

11 MS. STANYAR: Okay.

12 THE COURT: Read it into the record. You can read
13 over her shoulder, she won't mind.

14 MS. STANYAR: The parties and their respective
15 attorneys stipulate to the following facts in lieu of the
16 adult plaintiffs testifying at trial.

17 Plaintiffs are an unmarried same-sex couple
18 residing in Hazel Park, number one.

19 Number Two, plaintiffs had a commitment ceremony
20 in 2007. They have lived together for the past eight years
21 and jointly own their own residence.

22 Number Three, Deboer is a nurse in the neo-
23 intensive care unit at Hutzel Hospital, and Rowse is an
24 emergency room nurse at Henry Ford Hospital both located in
25 Detroit.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

54

1 Number Four, in November of 2009, Rowse, as a
2 single person legally adopted child "N." Thereafter also as
3 a single person she legally adopted child "J."

4 Number Five, in April of 2011, Deboer as a single
5 person adopted child "R."

6 Number Six, "R" and "J" were and are "special
7 needs children.

8 And just a footnote to that, "R" has required
9 physical therapy for delays in her growth motor skills. "J"
10 requires occupational and physical therapy for his many
11 medical complications. Rowse and Deboer have shared in the
12 responsibility of caring for "J's" continuing special needs
13 and for "R's" need for physical therapy with both of them
14 rotating and bringing the children to their various medical
15 appointments, physical and occupational therapy
16 appointments. Both Rowse and Deboer share in carrying out
17 the children's prescribed therapies in their home.

18 Number Seven, before the adoption of the children
19 the State of Michigan licensed the adult plaintiffs' home
20 as a foster home and approved both adult plaintiffs as care
21 givers for the children.

22 Number Eight, before Rowse and Deboer could adopt
23 any of the children, A, they had to petition the circuit
24 court for permission to adopt.

25 B, both Rowse and Deboer were interviewed

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

55

1 extensively for each adoption.

2 C, both were screened by the State for criminal
3 history and through the Department of Human Services for
4 any history of abuse or neglect.

5 D, an assessment was conducted through the county
6 where the adoptions were to take place.

7 E, their home was inspected.

8 F, a temporary placement of each child was made
9 in their home.

10 G, they were monitored by the state in their home
11 with visits by social workers and in "J's" case nurses.

12 H, a determination was made by the circuit court
13 of applicable jurisdiction that they were suitable parents
14 and that in each case the child being adopted was being
15 properly cared for while in a temporary placement.

16 As to two of their children, "R" and "N" at the
17 time of the adoption the circuit court also had to make
18 "the best interesting of findings" in order terminate the
19 rights of the birth parents.

20 Number Nine, Deboer and Rowse are responsible and
21 caring parents who are providing a stable and loving home
22 for their children.

23 Number Ten, in the absence of a legal document
24 granting decision-making authority and because their
25 children have many special needs, it continues to be

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

56

1 problematic for Rowse and Deboer that Rowse is not
2 recognized as "R's" parent by medical personnel and other
3 care givers, and that Deboer is not recognized as "J" and
4 "N's" parent. This is a recurring issue as they approach
5 each new treating facility or care giver is Deboer is
6 unable to accompany "R" or if Rowse is unable to accompany
7 "J" and "N."

8 This is especially true with unexpected emergency
9 medical situations where time is of the essence and
10 decisions have to be made quickly.

11 Number 11, Deboer cannot cover Rowse's sons, "M"
12 and "J" on her insurance. She would have to buy insurance
13 for them.

14 Number 12, Rowse and Deboer have been advised
15 that if Deboer were to die while the children are still
16 minors Rowse would be treated as an unrelated adult to "R"
17 in the eyes of Michigan's legal system. She would have to
18 start from scratch to be either their foster or adoptive
19 parent. She has been advised that she would have no legal
20 right to visitation or custody of "R" without pursuing
21 legal action.

22 Rowse and Deboer have also been advised if Rowse
23 were to die while the children were still minors, Deboer
24 would be treated as an unrelated adult to "J" and "N" in
25 the eyes of Michigan's legal system, and she would have to

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

57

1 start from scratch to either be their foster or adoptive
2 parent.

3 She's been advised that she would have no legal
4 rights to visitation or custody of "J" and "N" without
5 pursuing legal action.

6 Number 13, Deboer and Rowse have been further
7 advised that if Deboer dies without a will "N" and "J" have
8 no legal rights to inheritance, and if Rowse dies without a
9 will "R" has no legal rights to inheritance.

10 Number 14, it is Deboer and Rowse's understanding
11 that if Deboer dies or becomes disabled, "N" and "J" are
12 not eligible for social security benefits through her, and
13 if Rowse dies "R" is not eligible for social security
14 benefits through her.

15 Number 15, Deboer and Rowse have also been
16 advised that if they separated as a couple under Michigan
17 Deboer would have no automatic lawful right to custody or
18 even visitation for "N" and "J," and Rowse would have no
19 automatic lawful right to custody or even visitation for
20 "R."

21 Number 16, the fact that Deboer currently has no
22 legal relationship over "R" and that Rowse currently has no
23 legal relationship over "N" and "J" creates stress and
24 anxiety in their lives, and they believe it creates risks
25 and instability to their children.

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

58

1 Number 17, if they were legally able to do so,
2 Rowse and Deboer would marry each other in the State of
3 Michigan.

4 It is so stipulated, signed by the parties.

5 THE COURT: Correct, counsel?

6 MS. HEYSE: Yes, that is correct.

7 THE COURT: And what exhibit it, please?

8 MS. STANYAR: Exhibit Number 53 and we'll make
9 sure everybody has a copy.

10 THE COURT: Exhibit 53 will be admitted. The Court
11 will accept those stipulations of fact, and considering the
12 facts in this matter.

13 We will stand --

14 MS. STANYAR: I have two more stipulations.

15 (Plaintiffs' Exhibit No. 53 received into
16 evidence.)

17 THE COURT: Oh, I'm sorry. Sure.

18 MS. STANYAR: There's a stipulation between the
19 parties regarding a witness named Leslee Fritz. It's
20 spelled L-e-s-l-e-e. Fritz is spelled F-r-i-t-z.

21 The parties through their respective attorneys
22 stipulate and agree to the following:

23 Number One, that if witness Leslee Fritz were
24 call to testify she would testify that she employed with
25 the Michigan Department of Civil Rights, and that she is an

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

59

1 authorized records custodian for a document entitled "The
2 Michigan Department of Civil Rights Report on LGBT
3 Inclusion." This is a record kept in the ordinary course of
4 business within her department.

5 Number Two, that the State defendants will not
6 object to the admissibility of this document based upon
7 authenticity. The State defendants may have an objection
8 based upon relevance.

9 Number Three, the parties agree that Fritz need
10 not be deposed in anticipation of trial, and she was not
11 deposed.

12 Number Four, the parties agree that Fritz will
13 not testify at trial.

14 It is stipulated between the parties.

15 I move for the admission of that stipulation.

16 THE COURT: Any objection?

17 MR. POTCHEN: Yes, we object on relevance.

18 THE COURT: You object not to the stipulation, but
19 you object to the document that she would authenticate?

20 MR. POTCHEN: Yes. It's an authenticate document,
21 no objection to that. We object on relevance grounds.

22 THE COURT: Very well. I'm not going to receive
23 the document itself. I'll receive the stipulation so that
24 she does not have to testify.

25 MS. STANYAR: The stipulation was for the

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

60

1 stipulation and the document.

2 THE COURT: The document -- the way I heard it, it
3 was not that the admissibility of the document as to
4 relevance and so forth, but that they are not going to --
5 is that -- you're not going to challenge the authenticity
6 or any --

7 MS. STANYAR: Right, they're not challenging
8 authenticity --

9 MR. POTCHEN: We're not challenging the
10 authenticity, correct, your Honor. We are objecting to the
11 admittance based on relevance.

12 THE COURT: You'll do that at such time as they
13 offer it?

14 MR. POTCHEN: Yes, I guess.

15 MS. STANYAR: The proponent of that has left the
16 room so we'll offer that later --

17 THE COURT: That's fine.

18 MS. STANYAR: But that's the stipulation.

19 There's a third stipulation.

20 This is Plaintiffs' Exhibit Number 51. This is a
21 stipulation regarding witness George Chauncey.

22 The parties by their respective attorneys hereby
23 stipulate and agree to the admission at trial of the expert
24 witness report of Dr. George Chauncey in lieu of presenting
25 his testimony. In addition they agree and stipulate as

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

61

1 follows:

2 Number One, the State defendants have previously
3 objected based upon grounds of relevance to the inclusion
4 of the Chauncey evidence in Phase One of the trial.

5 The State defendants have also objected to the
6 Chauncey evidence as leading to a "confusion of the
7 issues."

8 The parties agree and stipulate that both
9 objections are renewed and preserved.

10 The parties agree that Professor Chauncey will
11 not testify at trial.

12 It is so stipulated between the parties.

13 And then we would be -- subject to the State
14 defendants' objection, we would be admitting the report of
15 -- the expert witness report of George Chauncey, Ph.D..
16 That is a 48-page report which I will not read.

17 THE COURT: No, I don't want you to read that.

18 Two questions though: What's the exhibit number
19 for that report, please, or is it attached to the
20 stipulation?

21 MS. STANYAR: The exhibit is an attachment to the
22 stipulation.

23 THE COURT: Which is Exhibit 51?

24 MS. STANYAR: Fifty-one.

25 THE COURT: Okay. Any other stipulations?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

62

1 MS. STANYAR: Those are the only three
2 stipulations that we have.

3 THE COURT: Okay. Let's talk about two other
4 things: Number one, as soon as that witness gets here, let
5 me know and we can reconvene. I assume it won't be much
6 before 11:00 since he's not due here until 11:00.

7 Just for the record, Dr. Chauncey's -- what's his
8 expertise?

9 MS. STANYAR: An expert on discrimination of gay
10 and lesbian people in this country.

11 THE COURT: Is he a sociologist, a psychologist?

12 MS. STANYAR: He's a historian.

13 THE COURT: Historian. That's fine. I think for
14 those folks that are here should know, and go from there.

15 MS. STANYAR: Just for the record, he had a family
16 emergency.

17 THE COURT: That's fine.

18 MR. POTCHEN: And just for the record, we're clear
19 the document itself is not admitted, just the stipulation
20 right now because we do have objections to the admission of
21 the report.

22 MS. STANYAR: Well, we'll argue that later.

23 I just wanted to read the stipulation into the
24 record.

25 THE COURT: Okay. I guess we're going to have to

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

63

1 take a look at it. I guess I'm going to have to read the
2 report because I don't know anything about Dr. Chauncey so
3 it would be hard for me to make any kind of ruling unless
4 you want -- you can argue it later. Don't worry about it.
5 We've got lots of time.

6 MS. STANYAR: Yes, we can argue that later.

7 THE COURT: The other question is -- let's talk
8 about timing so that everybody knows. My understanding is
9 Dr. Gates is due here tomorrow morning?

10 MS. STANYAR: Doctor Gates will be here tomorrow
11 morning.

12 THE COURT: And who else is due here tomorrow?

13 MS. STANYAR: That's all we have for tomorrow.

14 Just so you understand, we had laid out the
15 schedule --

16 THE COURT: No, I understand.

17 MS. STANYAR: Doctor Chauncey was going to be a
18 lengthy witness so that's what kind of let us with not as
19 many witnesses. We would have taken up the whole week --

20 THE COURT: I don't have any problems with that.
21 I'm just trying to get my schedule together, too.

22 So tomorrow, we have Dr. Gates.

23 MS. STANYAR: Right.

24 THE COURT: In the morning. How long do you
25 anticipate Dr. Gates taking?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

64

1 MS. STANYAR: Two hours on Direct.

2 THE COURT: Okay. That's fine.

3 Tell me then who -- do you have somebody for
4 Friday?

5 MS. STANYAR: At that point we're up to our last
6 witness who would be Dr. Cott and she's not coming until
7 Friday.

8 THE COURT: Okay. And how long do you anticipate
9 her testimony to be, about?

10 MS. STANYAR: I think she's going to be somewhere
11 between Rosenfeld and Brodzinsky, I would say.

12 THE COURT: She's going to take up the morning --

13 MS. STANYAR: She'll be done on Friday, within the
14 Court's schedule, not going past --

15 THE COURT: I think we're going to around 2:00 or
16 something.

17 MS. STANYAR: She'll be done I think. I'm almost
18 positive.

19 THE COURT: I'm just trying to get the schedule.

20 And then Monday the Government will be -- who's
21 first witness on Monday?

22 MS. HEYSE: Our first witness will be Sherif
23 Girgis.

24 THE COURT: Okay. And then you have them lined up
25 in order?

BENCH TRIAL - VOLUME 2, PART A
WEDNESDAY, FEBRUARY 26TH, 2014

1 MS. HEYSE: We do.

2 THE COURT: If there's a problem you'll let us
3 know?

4 MS. HEYSE: Yes, we will.

5 We may have one slight glitch. We're trying to
6 make travel arrangements right now. We may have a short
7 gap, but we're trying to make --

8 THE COURT: I have no problems. We're moving on
9 time. I just want to make sure everybody is on the same
10 page.

11 We'll stand in recess until such time as that
12 witness gets here. If not before, at 11:00 o'clock.

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

14 (End of Part A)

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1 THE CLERK: All rise.

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

3 Okay. Next witness, please?

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

5 THE COURT: Oh, good. I hope the appointment went
6 well this morning.

7 MS. DEBOER: Thank you.

8 THE COURT: Would you be kind enough to raise your
9 right hand.

10 (Witness is sworn.)

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

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

17 THE COURT: Thank you.

18 I have to make sure we have our reporter. Sometimes I
19 start without the reporter.

20 Thanks. You may proceed.

21 MS. NESSEL: Thank you, your Honor.

22 VIVEK SANKARAN

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

24 DIRECT EXAMINATION

25 MS. NESSEL:

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

3 A. Yes.

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

5 A. I graduated from the University of Michigan Law School in
6 2001. And before that, I got my Bachelor's degree from the
7 College of William & Mary in 1998.

8 Q. And where are you currently employed?

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

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

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

19 I also direct a project here in Detroit called the
20 Detroit Center for Family Advocacy, which is aimed at reducing
21 the number of kids in foster care by prevention and trying to
22 prevent kids from entering care.

23 Q. Now, let's start with your work at the Child Advocacy Law
24 Clinic. Can you be more specific as to what your
25 responsibilities and your obligations are with the Child

1 Advocacy Law Clinic?

2 A. Sure. So the law clinic is a program, an offering for
3 students at the law school who are my students, are
4 representing children and parents in Michigan's foster care
5 system.

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

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

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

16 A. These are all, almost all foster care cases. They are all
17 cases where kids have been removed from their parents, placed
18 in foster care.

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

21 Q. All right. So but as it pertains to kids in foster care,
22 what is it that you're doing? What kinds of court procedures
23 are you involved in?

24 A. These are procedures dealing with the placement of
25 children, whether they should be returned home, whether they

1 should be placed with licensed foster parents. There may be
2 issues involving the adoption of the children out of the foster
3 care system, guardianship of children out of the foster care
4 system. Really, the issue of what should happen to these
5 children and what outcomes we should be pursuing.

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

9 A. Correct.

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

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

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

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

21 So I oversee the project, consult with the attorneys
22 there when issues come up on their cases, fundraise, grant
23 writing, and provide whatever technical assistance the
24 attorneys in the office need.

25 Q. Okay. And again, when you use the word cases, handling

1 their cases, what specifically are you doing relevant to these
2 foster -- I assume they are foster care kids?

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

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

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

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

22 Since 2003, I've been doing exclusively foster care
23 work. So I did the foster care work at the Children's Law
24 Center as well, representing kids in the D.C. foster care
25 system.

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

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

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

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

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

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

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

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

25 Q. Okay. Well, Professor Sankaran, we've had some, some prior

1 testimony from sociologists and psychologists.

2 In terms of getting articles published, what is the
3 process that you have? Is that different than other fields of
4 academia?

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

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

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

19 THE COURT: Can you move the microphone just a little
20 bit closer?

21 MS. NESSEL: Closer? Okay.

22 THE COURT: There you go.

23 BY MS. NESSEL:

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

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

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

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

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

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

14 A. Correct.

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

17 A. I do. So I do trainings for other states. So I've been
18 asked typically by their own -- every state has a state court
19 administrative office. It has a child welfare division within
20 that office. And I'm typically invited by those offices to
21 come train their judges and attorneys. In addition, I'm doing
22 work as a consultant for the National Center for State Courts
23 as part of a judicial engagement project.

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

25 A. It's a nonprofit that provides technical assistance for

1 state courts across the country on a wide variety of issues.

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

5 Q. Do you recall what those states are?

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

8 Q. Okay.

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

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

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

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

21 Q. Okay. Now, have you ever been certified by any national
22 associations as a specialist in the field of child welfare?

23 A. I have. So, so the National Association of Counsel for
24 Children has a specialization program for child welfare
25 attorneys. And I was one of the first attorneys specialized

1 through that program. That requires you to take an exam, and
2 also to fill out an application, and collect up to six
3 references, including judges, attesting to your qualifications
4 in the field.

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

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

10 A. Correct.

11 Q. Is that your testimony? Okay.

12 Now, have you ever received any appointments from the
13 Michigan courts in regard to issues pertaining to child welfare
14 issues?

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

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

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

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

7 I was also appointed by Governor Synder on two
8 occasions, to serve on our Child Abuse Prevention Board, which
9 is also known as the Michigan's Trust Fund.

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

12 A. Correct.

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

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

18 Q. And who presented you with that award? Who was that -- who
19 assigned that to you?

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

21 Q. So is that Maura Corrigan?

22 A. Correct.

23 Q. The Director of DHS, of the Department of Human Services
24 from Michigan?

25 A. Correct.

1 Q. All right. And she gave you the Attorney of the Year
2 Award?

3 A. Correct.

4 Q. All right.

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

8 THE COURT: Any objection?

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

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

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

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

15 BY MS. NESSEL:

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

22 A. I have. So, on almost a daily basis in our clinic, we have
23 a psychologist who is a co-faculty member of mine. So to take
24 a step back, sort of inherent in the nature of this work, it's
25 a multi-disciplinary practice, where lawyers are often called

1 to make non-legal decisions in this work about what's best for
2 a child regarding placement and services. And so the nature of
3 this work involves reaching out to professionals all the time
4 to understand issues involving attachment and child
5 development, child psychology.

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

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

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

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

19 Q. Okay. And on how many occasions -- you said routine
20 interactions, I think. But I mean, how many occasions would
21 you say that you've consulted with these type of experts,
22 meaning psychologists, social workers, child welfare workers,
23 doctors?

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

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

4 A. It could range from issues involving placement of where the
5 child should be placed, to what type of services the child
6 should, should receive. Really, you know, the overall
7 well-being of a child.

8 So as a result of that, I've had trainings on
9 attachment, child development, child psychology, the needs of
10 kids aging out of foster care. There's a wide variety of
11 issues.

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

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

20 Q. All right. And have you done any work which specifically
21 involves researching and investigating the cost to the State
22 involving children in the foster care system, and the cost to
23 the State of children aging out of the foster care system?

24 A. So as part of my work as the director of the Detroit Center
25 for Family Advocacy, at the end of our three-year evaluation

1 period, we had to document our outcomes and cost savings to
2 funders, to the State. And so that's where I did investigation
3 into the costs of foster care, the costs of preventing kids
4 from entering foster care, and also the costs of having kids
5 age out of the foster care system.

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

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

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

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

19 In every single case that I've handled, this is the
20 process that, that happens, that we're really sort of inquiring
21 about where the child should be placed and who the child should
22 be placed with. And so I know it very, very well.

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

1 adoption.

2 A. Sure. So the difference between a public and private
3 adoption is a public adoption involves the child being adopted
4 out of the foster care system.

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

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

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

19 Q. Okay. Now, what's your familiarity with the process of an
20 adult becoming a guardian for a child, where a child only has
21 one legal parent, and then that legal parent dies or becomes
22 incapacitated, and so cannot care for that child anymore?

23 A. So I'm quite familiar with it. Primarily through my work
24 with the Detroit Center For Family Advocacy, guardianships
25 comprise the bulk of what we do. As I stated before, we've

1 done, I believe, 54 guardianship cases since 2009.

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

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

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

19 MS. NESSEL: And, your Honor, I'm going to ask at this
20 time, that Professor Sankaran be qualified as an expert on
21 Michigan's foster care system, and economic issues relative to
22 the foster care system; the placement of foster and adopt --

23 THE COURT: Slow down.

24 MS. NESSEL: I'm sorry.

25 THE COURT: Go on.

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

2 MR. POTCHEN: What was -- I'm sorry. Michigan's
3 foster care system is one.

4 MS. NESSEL: And economic issues relative --

5 MR. POTCHEN: And economic issues, okay.

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

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

12 MS. NESSEL: About economic issues relative to the
13 foster care system.

14 THE COURT: That qualification is relative in terms
15 of?

16 MS. NESSEL: In terms of the cost of children who are
17 in the foster care system, the cost to the state, as well as
18 the cost to the state's -- the state associated with those
19 children --

20 THE COURT: Okay. Now I understand.

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

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

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

25 THE COURT: Absolutely.

1 VOIR DIRE

2 BY MR. POTCHEN:

3 Q. Good morning.

4 A. Good morning.

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

6 A. Correct.

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

8 A. Correct.

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

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

11 Q. So that's correct?

12 A. Correct.

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

14 A. Correct.

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

18 A. Correct.

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

21 A. That's not correct. So, so as I stated in my direct
22 testimony, a number of the journal articles I have read --
23 depends on how you define peer review.

24 So a number of the journal articles have been reviewed
25 by the professionals in the field and they have decided to

1 accept that publication.

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

4 A. Correct.

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

7 A. Correct.

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

10 A. Correct.

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

13 A. Correct.

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

16 A. That's correct.

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

19 A. Correct.

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

22 A. Correct.

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

25 A. Correct.

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

3 A. Correct.

4 Q. You have no specialized training in the area of psychology,
5 correct?

6 A. I've received trainings in areas of child development and
7 attachment.

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

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

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

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

13 THE COURT: Yes.

14 BY MR. POTCHEN:

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

17 A. I do.

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

20 A. Correct.

21 Q. And I'm going to read from your deposition. And I'm
22 starting at 7, on page 7, line number 8.

23 "Question: Do you have any specialized training in
24 the area of statistics?

25 I don't."

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

2 On number 11, line 11 I'm starting with. Are you
3 there?

4 A. I am there.

5 Q. "Do you have any specialized training in the area of
6 psychology?

7 Answer: I don't."

8 Did I read that correctly?

9 A. You did read that correctly.

10 Q. Thank you.

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

13 A. I don't.

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

16 A. Correct.

17 Q. You are not a psychiatrist, correct?

18 A. Correct.

19 Q. You are not a psychologist, correct?

20 A. Correct.

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

22 A. Correct.

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

25 A. Correct.

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

3 A. Correct.

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

6 A. Personally, that's correct.

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

9 A. Personally, that's correct. But the way our program
10 operates is that my, my main responsibilities involve students
11 handling cases, and I directly oversee the work of our
12 students.

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

16 A. Could you repeat the question, please?

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

20 A. No.

21 MR. POTCHEN: Your Honor, at this point, I mean I --
22 Mr. Sankaran can only offer any unnecessary and irrelevant
23 legal opinions, it appears. He's not going to testify on
24 same-sex marriage. He's not going to be testifying on joint
25 adoption of same-sex couples. He's not qualified to offer any

1 opinions on Michigan's budget or the State's economics for
2 issues relating to Michigan's budget.

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

7 THE COURT: Thank you. Ms. Nessel?

8 MS. NESSEL: Your Honor, Professor Sankaran's
9 testimony is very, very relevant to the situation at hand. And
10 --

11 THE COURT: Are you near the microphone?

12 MS. NESSEL: Sorry.

13 THE COURT: Come on. There you go.

14 MS. NESSEL: All right.

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

22 And obviously, his testimony, we've limited it. First
23 of all, I would say I don't know why you have to be a
24 statistician in order to testify to budgetary issues. You
25 don't need to have an advanced degree in that if you're

1 involved enough in the field that you are familiar with all the
2 stats as it pertains to economic issues with the State and with
3 foster care. So there's no requirement for that. Clearly,
4 Professor Sankaran is very well versed in those areas.

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

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

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

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

18 MR. POTCHEN: Pardon?

19 THE COURT: Did you want to say something?

20 MR. POTCHEN: Just one more thing quickly.

21 THE COURT: Please. Absolutely.

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

25 THE COURT: Okay. In this matter, I'm not so sure

1 about the relevance, but I don't have to deal with relevance
2 right now because I haven't heard the testimony yet. And I
3 would not want to cut the plaintiffs off if they have a --
4 later on, it becomes relevant and can put it together. And
5 since there's no jury, the Court can ferret out those things
6 that are necessary.

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

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

19 I believe that listening to Professor Sankaran, that
20 he is immanently qualified in terms of his field, I think both
21 by education, but even more, more important than education, I
22 think his long experience, his long involvement with both
23 academia, as well as his practical experience and his clinical
24 situation leads me to believe, and I think the record is clear,
25 that he does have the expertise in the foster care areas and

1 placement areas and the adoptive areas.

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

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

14 Okay. You may proceed.

15 MS. NESSEL: Thank you, your Honor.

16 BY MS. NESSEL:

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

20 A. Yes.

21 Q. Okay. Have you reviewed the pleadings?

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

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

25 A. I've reviewed just some basic court orders, describing how

1 the children were adopted by each of the plaintiffs.

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

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

9 Two of the children were adopted through a private
10 adoption, where the Department of Human Services wasn't
11 involved. One of the children was adopted through the foster
12 care system.

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

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

20 A. Sure. So first, I'd like to talk about the process of
21 becoming a foster parent in Michigan. It's a lengthy,
22 complicated process with lots of checks, a high level of
23 scrutiny.

24 I'd like to talk about the process in which a court
25 determines that a person is fit, or the department determines a

1 person is fit through the licensing process, and my own opinion
2 that that process is so thorough, that the person who undergoes
3 that thought process, should not be deemed to be unfit to adopt
4 a child.

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

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

17 I'd like to talk about what happens to these children
18 when we don't, when we fail, and we have these kids age out of
19 the foster care system without adoptive homes; and the outcomes
20 for these children, not just in the outcomes for themselves,
21 but for the costs of the system and the incredible public costs
22 created by our failure to provide these children with, with
23 permanency. And my own opinion, that reducing barriers to
24 adoption and expanding a pool of adoptive applicants could
25 really benefit these children that are aging out of foster

1 care.

2 Q. Okay. Thank you.

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

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

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

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

16 Then afterwards, foster parents will go through an
17 orientation to learn about just the basics of the system, the
18 purposes of foster care, the characteristics of the children,
19 attachment and child development issues, the impact of
20 fostering another family, the role of the foster family, the
21 licensing process, the grievance procedure, the importance of
22 the child's family, parent and sibling visits, policies and
23 procedures of the child welfare agency, supportive services and
24 resources, and provisions on the Child Protection Act.

25 So the first step is really to ensure that foster

1 parent have a thorough sense of what it is that they are, that
2 they are about to embark on.

3 Q. Okay.

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

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

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

15 A. Correct. And once the, the application is signed and
16 received, there's really a two-step process. The agency has to
17 do a very thorough home assessment, which involves things like
18 criminal clearances, child protection clearances, getting
19 medical statements from everyone in the house, collecting
20 references from members, from non-related sources, water
21 inspections. There's sort of a subjective assessment that's
22 done by a social worker about the nature of the home and the
23 strengths and weaknesses, assessing the foster parent's
24 parenting skills. Also the physical home, the adequacy of
25 space, cleanliness, general safety.

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

5 Q. Okay. Anything else?

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

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

15 THE COURT: Six hours?

16 THE WITNESS: Correct.

17 BY MS. NESSEL:

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

20 A. So at the end of that process, the agency will evaluate all
21 the information, will make sure that the foster parent has gone
22 through the training, and then will make a recommendation as to
23 whether to approve or deny the license.

24 If the recommendation is made to approve the license,
25 the agency retains the discretion to, to document how many

1 children can live in the home, if the home is licensed for
2 special needs children, the ages of the children. Those things
3 will be specified within the foster care license itself.

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

8 A. Correct.

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

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

19 And then it could depend on the cooperation of family
20 members and how quickly paperwork is completed, but also how
21 quickly it may take for the family to complete the classes,
22 which is a pretty significant requirement, particularly when
23 families may have kids themselves, they have to -- most of the
24 classes are at night, on a weekend. And so families would have
25 to arrange for child care during those times.

1 Q. Okay. Now, how long is this certification? Once someone,
2 a couple or individual receives this certification, how long is
3 that certification good for?

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

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

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

15 Getting the children to school; taking them to
16 doctor's appointments; taking them to therapy appointments.
17 They really are rearing these children while the agency is
18 working with, with the parents.

19 In addition to that, the foster parents are also
20 responsible for bringing the child to visits with, with the
21 biological parents. They are responsible for taking the child
22 to those things that may be sort of unique to kids in foster
23 care: Intense therapy, doctors' appointments above and beyond
24 what normal -- ordinary parents of ordinary children who have
25 not experienced abuse and neglect go through.

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

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

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

14 A. Correct.

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

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

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

21 A. Correct. You cannot become a licensed foster parent in
22 Michigan without taking these steps.

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

25 A. Correct.

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

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

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

12 The next step then would be the Department of Human
13 Services would look to the foster parents to see if they are
14 willing to adopt the child.

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

20 If the foster parents are willing, and the foster
21 parent would sign an intent to adopt, and almost akin to the
22 licensing process, it starts everything and the scrutiny and
23 the checks all over again; that they have to complete an
24 application, criminal history checks, central registry checks,
25 references, employment status. And this is for all the members

1 of the household. It's almost starting the entire process
2 again.

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

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

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

18 A. No. So what DHS is doing right now is making a
19 recommendation internally as to whether or not to approve the
20 adoption.

21 For kids in foster care, the next step is there's an
22 entity called the Michigan Children's Institute which basically
23 becomes the *de facto* parent for a child when the rights of the
24 parent are terminated. And the line worker will make a
25 recommendation to the Michigan Children's Institute as to

1 whether the adoption should be approved. But then the next
2 step is for the Michigan Children's Institute to consider
3 whether to accept that recommendation or not.

4 But ultimately, they need to, as the parent, as the
5 entity that's standing in the shoes of the parent, the
6 institute then makes a recommendation or makes a decision about
7 whether to give consent to the adoption as well.

8 THE COURT: Is the institute a state --

9 THE WITNESS: Correct.

10 THE COURT: -- organization?

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

12 THE COURT: Institute is just a name?

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

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

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

23 THE WITNESS: Correct.

24 THE COURT: Okay.

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

1 THE COURT: Got you.

2 BY MS. NESSEL:

3 Q. And is there anything following that? Let's say that there
4 is consent given by the Michigan's Children Institute. What
5 next?

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

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

16 A. So it's MCL 710.22 is the Adoption Code. And in the
17 Adoption Code itself, it lists a number of factors that the
18 court has to consider, including the love and affection between
19 the adoptive child and the adoptive parents, the capacity of
20 the adoptive parents, the length of time the child has lived in
21 the home, the permanency of the family unit, the moral fitness
22 of the adoptive parents, the mental and physical health of the
23 adoptive parents, the home, school and community record of the
24 child. If the child is 14 years or older, the preferences of
25 the child, the ability and willingness of the adopting

1 individual to adopt the siblings. And then it has a catch-all
2 of any other factors that a court wants to take into account.

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

6 A. Correct.

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

9 MS. HEYSE: Not identifying the name?

10 MS. NESSEL: We actually sought specific permission
11 from the Court.

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

16 MR. POTCHEN: That's fine.

17 THE COURT: It was their, their protection.

18 MR. POTCHEN: It struck me.

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

22 MS. NESSEL: They have, your Honor.

23 THE COURT: Okay. That's fine.

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

25 THE COURT: Okay.

1 BY MS. NESSEL:

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

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

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

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

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

22 So in private adoptions, the case will go directly the
23 court system where the information will be presented to the
24 court.

25 From my own experience, judges in private adoptions

1 will make the additional inquiries, order the home studies,
2 order the assessments to really make sure that, that the home
3 is suitable for a child.

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

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

11 A. Correct.

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

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

21 Q. Okay. Now, in your understanding of the Michigan Adoption
22 Code, are there any circumstances that would allow for both
23 April and Jayne to have legal rights as parents to their three
24 kids?

25 A. As adoptive parents, no.

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

2 Can you tell us, who is eligible in Michigan to adopt
3 a child?

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

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

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

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

21 A. Correct.

22 Q. Wanting to adopt together. All right.

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

25 MR. POTCHEN: Your Honor, I'm going to object to any

1 testimony regarding our arguments. He's not
2 testifying regarding --

3 THE COURT: Sustained.

4 MR. POTCHEN: Thank you.

5 THE COURT: You can ask him questions, but you
6 can't --

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

8 BY MS. NESSEL:

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

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

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

19 THE COURT: Sustained.

20 MR. POTCHEN: Thank you.

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

22 BY MS. NESSEL:

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

25 THE CLERK: Counsel, I've just been told, can you just

1 move a little closer to the mic? Yeah.

2 MS. NESSEL: Okay.

3 THE CLERK: There you go.

4 BY MS. NESSEL:

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

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

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

12 MS. NESSEL: Okay.

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

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

15 BY MS. NESSEL:

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

21 A. Yes. No adoption can be finalized without the court going
22 through each of those best interests factors and making a
23 determination based on facts of the case that the adoption is
24 in the best interest of the child.

25 Q. Okay. So for instance, this third prong here about half of

1 a married person, a married person with -- without his or her
2 spouse, that just occurred recently, right?

3 A. Correct.

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

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

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

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

16 THE COURT: Was there something that caused the
17 legislature to change it? Was there some kind of -- why did
18 they change it?

19 THE WITNESS: To my understanding --

20 THE COURT: If you know.

21 THE WITNESS: My understanding is there were kids in
22 foster care that we are seeing, a significant numbers of cases
23 where people were legally married but had not seen their
24 spouses in years.

25 THE COURT: I see. Okay.

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

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

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

12 THE COURT: I got it. Okay.

13 BY MS. NESSEL:

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

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

20 A. It would depend on a decision subsequently made by a court
21 in a guardianship case.

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

1 So they've indicated in this brief, the State, and
2 I'll --

3 MR. POTCHEN: I'm going to object to this testimony as
4 well.

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

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

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

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

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

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

19 Guardianships, conservatorships, wills, durable
20 medical and financial powers of attorney, durable powers of
21 attorney, permitting Plaintiffs to designate each other as
22 agent for purposes of parental decisions, and testamentary
23 trusts, allowing Plaintiffs to list each other as primary
24 beneficiaries, and the child as ultimate beneficiaries that can
25 provide security for the children, without undermining the

1 institutions of marriage and family or creating untenable
2 relationships.

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

5 THE COURT: Is it accurate as to?

6 MS. NESSEL: As it pertains to --

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

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

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

11 MS. NESSEL: Sure, your Honor.

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

14 MS. NESSEL: Let me, let me rephrase the question,
15 your Honor. I understand.

16 BY MS. NESSEL:

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

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

24 THE WITNESS: No. It does not ensure that the
25 children would necessarily remain with the surviving non-legal

1 parent.

2 BY MS. NESSEL:

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

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

6 BY MS. NESSEL:

7 Q. All right.

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

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

18 A. Correct.

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

22 A. So within the guardianship code itself, the probate code,
23 there is a similar best interest test. So the court would have
24 the obligation to figure out what was best for the child,
25 looking at the relationship between the adoptive parent and the

1 surviving non-legal parent and the child, the capacity of the
2 surviving non-legal parent, the length of time the child lived
3 in the home, the permanence of the family unit, the mental and
4 physical health of the parties involved, the child's home,
5 school and community record, the child's preference, the
6 party's willingness and stability to facilitate relationships
7 between siblings and between the child and the parent, maybe
8 domestic violence in the home, and any other, there's a
9 catch-all, any other factor that may be relevant.

10 But the burden would be on the surviving parent to put
11 on evidence to demonstrate to the court that these factors have
12 been, have been met.

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

17 A. It doesn't explicitly say that.

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

19 A. No.

20 Q. So does the court even have to consider that as a factor,
21 what the deceased parent would have wanted in terms of her
22 child?

23 A. Not explicitly, no.

24 Q. All right. What is the process for the non -- for the
25 surviving non-legal parent, what do they have to go through in

1 order to be appointed guardian of, and what is the exact
2 process they have to go, to be appointed guardian for the
3 children of their now-deceased spouse?

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

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

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

18 A. Correct.

19 Q. Okay. So say something were to happen to, to Jayne, and
20 April wanted to get guardianship of Nolan and Jacob, is, is
21 this the process then that she would have to go through in
22 order to get guardianship?

23 A. Correct.

24 Q. Okay.

25 A. And then so the first step would be that she would have to

1 file for guardianship, have the court assess it, make a
2 finding.

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

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

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

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

21 But the guardianship procedures, procedures are all
22 open. So nothing would prevent relatives from hearing about it
23 to -- from coming to court.

24 Q. Okay. Now, in terms of this guardianship, say that this
25 guardianship is, the appointment is made by the court through

1 either April or Jayne. Is this a permanent guardianship?

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

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

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

18 A. Yes. And even after the guardianship is created, any
19 person could challenge and request that the guardianship be
20 rescinded.

21 You know, guardianships, if you look at the statutes,
22 they really are -- they were never intended to be a permanent
23 option in the sense that they were typically -- they are
24 typically used when you have a biological parent trying to get
25 their, sort of address whatever issues they have, and, and the

1 child lives temporarily with a relative or somebody else, which
2 is why, you know, in foster care cases, the Department of Human
3 Services and the courts and the laws puts guardianship as a
4 very secondary goal to adoption, because there's a sense of
5 impermanence with the guardianship process, that at any time it
6 can be set aside. And so the sort of the predominant sort of
7 concept in child welfare cases is one of permanency, trying to
8 get these kids who have been bouncing around from home-to-home
9 a sense of stability; that this is where you're going to be.

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

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

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

18 BY MS. NESSEL:

19 Q. Can I ask you this, though? Could the children
20 theoretically, under the laws that exist right now, could they
21 be placed back into foster care instead of staying with their
22 non-legal parent? Could that happen?

23 A. Yes. So in a situation where a child is left with a person
24 who does not have legal authority over the child, which could
25 happen if, if the legal parent is deceased and there's some

1 delay caused by the funeral, or sort of the inherent chaos that
2 may take place after someone dies, then the department could
3 petition, one of the grounds, is when a child is left without
4 proper care.

5 Q. Sure. Let me stop you there.

6 Are there other -- are there any other issues in
7 regard to guardianships that place them not on par with having
8 adoptive legal rights?

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

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

19 A. Yes. There's filing fees. For example, in Oakland County,
20 it's \$150. It's very similar in many counties. There could be
21 a home study fee the court could order, if the court orders a
22 home study, which could range, it varies quite a bit from a
23 couple hundred dollars to a couple of thousand dollars,
24 depending on the structure of the court.

25 If the proposed guardian wants an attorney, there are

1 fees associated with that. And then there's a cost of going to
2 court. And there can be child care costs and lost wages as a
3 result of missing work.

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

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

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

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

20 THE COURT: I don't think it's speculation, but we've
21 covered it once. He's indicated all these things. And I think
22 that again, he's covered it, number one, in various ways. So
23 why don't we move on.

24 MS. NESSEL: All right.

25 THE COURT: And see where you, you know, if you have

1 another area, that's great. If you don't, then...

2 MS. NESSEL: All right.

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

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

6 BY MS. NESSEL:

7 Q. In terms of the State's own advice that they give to
8 prospective parents, do they indicate, does the State of
9 Michigan indicate that guardianships are on par with securing
10 adoptive rights?

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

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

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

18 BY MS. NESSEL:

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

21 But what is the State of Michigan and the Department
22 of Human Services, in their Child Welfare Manual, what do they
23 indicate about this?

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

25 --

1 THE COURT: Yeah.

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

3 THE COURT: Let's move on.

4 MS. NESSEL: All right. Moving on.

5 THE COURT: Plus, we heard it already.

6 MS. NESSEL: Okay.

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

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

10 BY MS. NESSEL:

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

15 A. There is a pretty significant need based on the high number
16 of kids we have in foster care. We have roughly just under
17 14,000 kids in foster care.

18 The latest statistics that I saw is of those under
19 14,000 children in foster care, roughly 3,500 kids are children
20 that we refer to as legal orphans, kids whose, the rights of
21 the parents have been terminated, but they don't have -- they
22 haven't achieved permanency through adoption. The latest
23 statistics that I reviewed, I believe in 2012, was that over
24 800 children aged out of our foster care system.

25 What's particularly troubling, is that that number has

1 risen from a little over 500 children, back in 2005, to a
2 little over 800 children now of kids aging out of foster care
3 at a time when our foster care population itself has declined
4 significantly in the state of Michigan.

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

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

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

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

16 MR. POTCHEN: We've heard testimony on the population,
17 your Honor.

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

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

22 THE COURT: But it's cumulative. I find it very
23 interesting and I think he's very knowledgeable, but number
24 one, it's cumulative. There's no reason to continue it, number
25 one. Number two, that's --

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

2 BY MS. NESSEL:

3 Q. All right. So generally without going through these
4 numbers --

5 THE COURT: No. No. Move on. Move on.

6 MS. NESSEL: Okay.

7 BY MS. NESSEL:

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

11 A. I do.

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

16 THE COURT: He said no. He hasn't gotten into that
17 area.

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

21 THE COURT: He's already answered the question. He
22 said yes.

23 BY MS. NESSEL:

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

25 A. Yes. Because it leaves the one parent in the relationship

1 without any legal right to the child.

2 Q. All right.

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

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

9 A. Yes.

10 THE COURT: Permanent homes. Go on.

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

17 BY MS. NESSEL:

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

20 If the Adoption Code were to be changed, for instance,
21 to allow same-sex couples to adopt, how would that allow -- how
22 would allowing both parties to have adoptive legal rights to a
23 child increase the pool of applicants to adopt foster care
24 children?

25 MR. POTCHEN: I'm going to object, your Honor. It

1 calls for speculation, a legal conclusion and it's irrelevant
2 here, I guess.

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

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

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

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

21 BY MS. NESSEL:

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

25 A. Correct.

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

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

7 THE COURT: Well, as to specifics, I sustain your
8 objection.

9 MR. POTCHEN: Thank you.

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

13 BY MS. NESSEL:

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

20 A. Yes. It's an unsettled -- I mean, it's an undisputed fact
21 that foster care is expensive both in terms of direct costs of
22 care involving housing the children, the professionals involved
23 in the cases, but also the indirect costs involved with high
24 rates of incarceration for kids aging out of foster care,
25 homelessness, mental health costs. So I would expect that if

1 we were able to get more kids adopted, it would save the State
2 a significant amount of money.

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

9 A. No.

10 MR. POTCHEN: Objection, your Honor.

11 THE COURT: He can answer that. He says no, he knows
12 no reason.

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

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

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

18 MS. NESSEL: It feels responsive.

19 (Laughter in courtroom.)

20 THE COURT: You may continue.

21 THE WITNESS: The State of Michigan license same-sex
22 parents to foster children. And as I stated before, foster
23 parents have a significant amount of responsibility on the
24 day-to-day basis to care for children in the foster care
25 system. So for me, that's telling as any fact that I know.

1 BY MS. NESSEL:

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

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

14 MS. NESSEL: All right. Thank you, very much, your
15 Honor.

16 THE COURT: You may cross-examine.

17 CROSS-EXAMINATION

18 BY MR. POTCHEN:

19 Q. Hello again.

20 A. Hello again.

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

22 Okay. Go on.

23 BY MR. POTCHEN:

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

1 A. Correct.

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

5 A. Correct.

6 Q. -- that occurred?

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

9 A. Correct.

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

13 A. Correct.

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

17 A. Correct.

18 Q. So DHS can approve multiple caregivers in a foster home,
19 correct?

20 A. Correct.

21 Q. A brother and a sister can apply to be caregivers in a
22 foster home, correct?

23 A. Correct.

24 Q. And the caregiver or foster parent is not the legal parent,
25 correct?

1 A. (No response.)

2 Q. We're talking about foster homes.

3 A. Correct.

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

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

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

9 A. I would say that in a foster care situation, the biological
10 parent, the court, and then the foster parent share
11 responsibilities. But I think your -- but the primarily
12 responsibility hinges with the court and the biological parent.

13 Q. Right. It's not the foster parent. They were not the
14 legal parent. It's either the biological parent or the court
15 or both the court and the biological parent --

16 A. Right.

17 Q. -- together, correct?

18 A. Correct.

19 Q. Now, later, the foster parent can become the legal parent,
20 correct?

21 A. Correct.

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

25 A. Correct.

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

4 A. And the court, correct.

5 Q. And the court.

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

9 A. Correct.

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

13 A. Correct.

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

16 A. Correct.

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

19 A. She could, correct.

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

22 A. She could.

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

24 A. I don't.

25 Q. And you indicate, even if they are designated as such, the

1 other person still has to go to court and file an acceptance of
2 that appointment, correct?

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

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

8 A. I don't.

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

12 A. I don't.

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

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

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

20 A. So I can't speak to that. So I have not had sort of
21 extensive experience with the -- in situations where a decedent
22 has died. I mean --

23 Q. You wouldn't --

24 A. -- one would hope.

25 Q. You wouldn't expect a court to ignore a decedent's will,

1 expressing their desire to have somebody else care for their
2 children, would you?

3 A. I wouldn't expect it.

4 Q. Okay.

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

6 THE COURT: Of course.

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

8 THE COURT: Thank you. Anything further?

9 MS. NESSEL: No, your Honor.

10 THE COURT: Thank you, Professor.

11 THE WITNESS: Thank you.

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

16 MS. NESSEL: Correct, your Honor.

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

19 MR. MOGILL: That's correct.

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

22 MR. POTCHEN: The State.

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

1 o'clock, too.

2 Okay. We'll stand in recess.

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

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CERTIFICATE OF REPORTER

We, Joan L. Morgan and Christin E. Russell, as official court reporters for the United States District Court, appointed pursuant to provisions of Title 28, United States Code, Section 753, I do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Joan L. Morgan, CSR

s/ Christin E. Russell, CSR

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