

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 3

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

100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
THURSDAY, FEBRUARY 27TH, 2014

APPEARANCES:

For the Plaintiffs:

Carole M. Stanyar, Esq.
Dana M. Nessel, Esq.
Kenneth Mogill, Esq.
Robert Sedler, Esq.

For the Defendants:

Richard Snyder,
Bill Schuette,

Tonya C. Jeter, Esq.
Kristin M. Heyse, Esq.
Joseph E. Potchen, Esq.

Lisa Brown

Beth M. Rivers, Esq.
Andrea J. Johnson, Esq.
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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

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PLAINTIFFS' CASE IN CHIEF

WITNESS:

GARY GATES

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1 Detroit, Michigan

2 Thursday, February 27th, 2014

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

4 -- -- --

5 THE COURT: Any preliminaries that we should be
6 talking about?

7 MS. STANYAR: Carole Stanyar on behalf of the
8 plaintiffs.

9 None that I know of, Judge.

10 Mr. Mogill is here. Dana Nessel is here.

11 THE COURT: And your clients are not here.

12 MS. STANYAR: Our clients are not here.

13 Vicki Henry is here also on behalf of plaintiffs.

14 THE COURT: Okay. Are your clients are they on
15 their way?

16 MS. STANYAR: They are not going to be -- we're
17 not waiting for them. They're not going to be here this
18 morning.

19 THE COURT: Okay. And they --

20 MS. STANYAR: They're good. They're fine with
21 that.

22 THE COURT: If we had to -- if they wanted to be
23 here, I would wait for them.

24 MS. STANYAR: They don't need to be here.

25 THE COURT: Okay. And we have all of the

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1 defendants.

2 MS. HEYSE: Good morning, your Honor.

3 We don't have any preliminary matters either.

4 Kristin Heyse on behalf of the State defendants.

5 Joseph Potchen, Michelle Brya and Tonya Jetter
6 are also here.

7 THE COURT: Super.

8 MS. HEYSE: Thank you.

9 THE COURT: And Mr. Pitt isn't here, but we'll
10 continue without him --

11 MS. STANYAR: No.

12 MS. JOHNSON: Andrea Johnson on behalf of Lisa
13 Brown.

14 THE COURT: Oh. Good morning.

15 MS. JOHNSON: Good morning.

16 THE COURT: How are you?

17 MS. JOHNSON: I'm good. How are you?

18 THE COURT: Good.

19 We had spoken with Mr. Pitt about seeing if Ms.
20 Brown was going to testify earlier. Any --

21 MS. JOHNSON: My understanding is she's planning
22 to testify on Monday.

23 THE COURT: Okay. That's fine. Good. Not a
24 problem.

25 Okay. Our first witness, please.

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1 If you would be kind enough to raise your hand.

2 Do you solemnly swear or affirm to tell the truth
3 in the matter now pending before this Court?

4 THE WITNESS: Yes.

5 THE COURT: If you could tell us your full name
6 and spell your last name.

7 THE WITNESS: My name is Gary J. Gates. G-a-t-e-s.

8 THE COURT: Okay. You may proceed.

9 MS. NESSEL: Okay.

10 G A R Y J . G A T E S , Ph.D.,

11 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. NESSEL:

14 Q Sir, if you could repeat your name, please?

15 A My name is Gary J. Gates.

16 Q Okay. And, sir, how are you currently employed?

17 A I am the Williams Distinguished Scholar at The
18 Williams Institute at UCLA School of Law.

19 Q Now, what exactly is the Williams Institute

20 A The Williams Institute is a research center at UCLA.
21 We study sex orientation law and public policy.

22 Q And what is your position within the Williams
23 Institute?

24 A So I'm one of the scholars at the Institute. I conduct
25 research on -- as I said, sex orientation and gender

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1 identity policy issues.

2 Q I'm sorry, you said you were a distinguished scholar?

3 A The Williams Distinguished Scholar.

4 Q Is there an approval process that you have to go
5 through in order to become a distinguished scholar with The
6 Williams Institute?

7 A Well, from my position it's a position with the
8 University of California system that are -- individuals who
9 are researchers who do not have tenure track faculty
10 positions but function at that level of research.

11 So I go through an approval process with the
12 faculty senate that is akin to allowing someone into a
13 tenure track faculty position.

14 Q Okay. Now, more specifically what is it that you do as
15 distinguished scholar at The Williams Institute?

16 A So I'm a demographer by trade, and I study the
17 demographic economic and geographic characteristics of the
18 lesbian, gay, bisexual and trans gender population.

19 Q Okay. And when you say lesbian, gay, bisexual and
20 trans gender is there an acronym that you typically use for
21 that?

22 A We often use LGBT.

23 Q Okay. So for the purposes of today's testimony is that
24 -- when you use the acronym of LGBT is that what you're
25 referring to?

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1 A Yes.

2 Q Okay. Now, in the course of your work in the field of
3 demographics are you focused on any specialized areas?

4 A Again, primarily looking at socio-demographic
5 characteristics. So things like race and age, as well as
6 geographic characteristics where people live, differences
7 in the laws in where they live and also economic
8 characteristics. So, you know, how money they make, what
9 kinds of health insurance they might have, what kinds of
10 poverty programs they participate in, those topics.

11 Q Okay. Why did your educational background lead you to
12 develop this focus on demography?

13 A So I'm trained -- I have a Ph.D. in public policy from
14 Carnegie Mellon University and as part of that training --
15 I was actually trained -- my thesis advisors were labor
16 economists one of whom was also a demographer. At Carnegie
17 Mellon the point of the degree is that you learn research
18 that has influence on public policy and the kind of
19 juxtaposition of research and public policy. So that's how
20 I got into that area.

21 Q All right. Can you just list your degrees that you
22 have?

23 A Sure. I have an undergraduate degree in computer
24 science, a Master of Divinity degree, and a Ph.D. in public
25 policy and management.

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1 Q Okay. Now, Dr. Gates, have you received any
2 professional honors of any type for your work?

3 A Yes. So at my -- my university Carnegie Mellon as a
4 graduate student I received an award for my work promoting
5 racial and social justice. Several years later after I
6 completed my Ph.D. I received a recent alumni award for
7 basically my distinction for my scholarship. Then I was
8 also named to the "Out 100" which "Out" is a magazine that
9 every year lists the most interesting LGBT people in the
10 country. I was designated as having been an academic
11 pioneer.

12 Q Now, have you authored any studies at all on the
13 subject matters that you've described?

14 A Yes. So particularly since my Ph.D., I've published
15 frequently including publications in peer review journals.
16 I wrote a book. I have written many book chapters. Then and
17 dozens of reports and research briefs.

18 Q Okay. What's your book about?

19 A My book is called "The Gay and Lesbian Atlas." It
20 looks at the geographic distribution of same-sex couples in
21 the United States using Census 2000 data.

22 Q All right. And if you had to quantify in terms of how
23 many say studies that you've done in the fields that you've
24 discussed how many studies would you say roughly?

25 A Well, I think I have nearly 20 peer review articles.

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1 As I said, maybe a half dozen book chapters and I think
2 it's more than 50 research briefs and reports.

3 Q All right. Of these various -- you may have mentioned
4 this so forgive me if you have, but in terms of actual peer
5 review publications how many of these have appeared in peer
6 review publications?

7 A It's approximately -- I have four or five in -- three
8 or four I should say in law review type environments, and
9 then another I believe it's a dozen or so in social science
10 peer review journals.

11 Q Okay. Do you ever perform reviews of other scholars'
12 works?

13 A I do. I'm a regular peer reviewer for a wide range of
14 journals including the major sociological journals, the
15 American Sociological Review, major economic journals,
16 American Economic Review, major public health journals,
17 American Journal of Public Health. So a wide range of
18 journals.

19 Q Okay. Now, do you ever present lectures or
20 presentations or give symposiums based on your work in the
21 field of demography as it relates to the LGBT community?

22 A Yes. I'm a frequent presenter at the main professional
23 organizations that I'm involved with, the Population
24 Association of America which is the professional
25 association for demographers. I present my own work and

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1 often am asked to discuss other work. I have presented at
2 the American Statistical Association and at the American
3 Public Health meetings. I'm also frequently invited to
4 present at -- often at research universities to do
5 seminars, present my work.

6 Q Is this a regular part of your employment as a
7 distinguished scholar at The Williams Institute?

8 A It is. Part of our mission is conducting rigorous and
9 objective research and doing that kind of work exposes our
10 research to other scholars so it's a way to get feedback
11 from other scholars, but's also a way obviously to get the
12 work that we do into both the scholarly dialogues as well
13 as into the public domain.

14 Q Well, how many -- if you had to quantity, roughly how
15 many of these presentations have you given during the
16 course of your career?

17 A I think it's at this point several hundred.

18 Q Okay. Now, have you received any recognition of any
19 kind from the U.S. Census Bureau for your work?

20 A Yes. I was named by -- appointed by the Census Bureau
21 Director to be on the Census Scientific Advisory Committee.

22 Q When was that?

23 A Two years ago.

24 Q Okay. And have you received any other type of
25 recognition from the federal government for your work in

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1 demography?

2 A Yes, I was also appointed to a similar committee at
3 the Bureau of Labor Statistics, their Data User Advisory
4 Committee again by the Director the Bureau of Labor
5 Statistics.

6 Q Okay. And --

7 MS. NESSEL: Your Honor, may I approach for a
8 moment?

9 THE COURT: You may.

10 BY MS. NESSEL:

11 Q I'm showing you what's been marked as Plaintiffs'
12 Proposed Exhibit 300. Can you tell me if this is a true and
13 accurate copy of your CV?

14 A Yes, it is.

15 MS. NESSEL: Your Honor, at this time I'm going to
16 ask that Plaintiffs' Proposed Exhibit Number 300 be
17 admitted into evidence.

18 THE COURT: Any objection?

19 MS. BRYA: Yes, your Honor. We would object to the
20 admission of Plaintiffs' Proposed 300 with respect to the
21 introductory paragraphs of the CV where it states, for
22 example, that Dr. Gates is a recognized expert on the
23 geography and demographic -- and demography of the lesbian
24 gay bisexual and trans gender population. There's been no
25 testimony that he has been recognized as a legal expert in

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1 that field in any court proceedings. As you know, we
2 believe that to be a legal conclusion for this Court to
3 determine.

4 THE COURT: Any other objections?

5 MS. BRYA: No, your Honor.

6 THE COURT: Okay. Why don't we just redact that
7 part --

8 MS. NESSEL: That's fine, your Honor.

9 THE COURT: Everybody writes their CV a little
10 different way. I tend to agree with you. We'll redact that
11 -- just that first little portion and then we have all of
12 his qualifications, writings, teachings, and so forth.

13 MS. NESSEL: Very good, your Honor.

14 THE COURT: Objection is sustained and go from
15 there.

16 (Plaintiffs' Exhibit 300 received into evidence.)

17 BY MS. NESSEL:

18 Q All right. Can you give us a little bit more specific
19 information, Dr. Gates, on your training with your work on
20 economic characteristics data of the LGBT community that
21 you indicate you compile? Can you be more specific about
22 that?

23 A So, you know, I primarily study broadly demographics
24 of the LGBT community. As a demographer one of the major
25 pieces of demographic study is that you look at socio-

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1 economic characteristics. So one of my chapters in my
2 dissertation, for example, looked at wage differences
3 between gay men and other men. I've done many studies that
4 include looking at differences in household income for
5 same-sex couples or same-sex couples with children relative
6 to other couples. I recently did a study looking at food
7 vulnerability and use of food stamps among same-sex
8 couples. So all of those things are a fairly standard part
9 of the kind of analyses that a demographer would do.

10 Q And some of your studies that involve economic
11 characteristics have those been actually published in
12 economic journals?

13 A Yes. I've been published several times in peer review
14 econ journals.

15 Q Okay.

16 MS. NESSEL: Your Honor, at this time the
17 plaintiffs would like to offer Dr. Gates as an expert in
18 demography with a specific expertise in the study of the
19 demographic, geographic and economic characteristics of the
20 LGBT population.

21 THE COURT: Any objection or voir dire?

22 MS. BRYA: Your Honor, we don't have any objection
23 with respect to Dr. Gates being recognized as an expert in
24 the areas of geography and demography of LGBT population.
25 But we do have an objection with respect to the economics

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1 of the LGBT population. There's been no testimony that Dr.
2 Gates has a degree in economics, any specialized training
3 in economics and no testimony that he's ever been
4 established as an expert in the field of economics or
5 testified as an expert in economics.

6 THE COURT: Counsel, when you say economics do you
7 mean economics as it relates to the surveys and so forth
8 that he does or economics as to reaching conclusions as to
9 issues of economics?

10 MS. NESSEL: Your Honor, what it involves is him
11 presenting the data that sometimes involves economics
12 issues. Dr. Gates indicated that he was trained as a labor
13 economist at Carnegie Mellon --

14 THE COURT: I want to see what you intend to
15 offer. So you intend to offer the conclusions that are
16 reached as a result of his work in the demographics of
17 certain economic populations?

18 MS. NESSEL: Well, as it pertains to what his
19 findings were in these surveys because, of course, this is
20 surveyed information. So as it pertains to the numbers
21 which came back as a result of the surveys taken and the
22 data that he studied and compiled.

23 THE COURT: I'll allow him, but I know you have a
24 continuing objection anyhow but, again, this is a more
25 specific area. When we get into that area if you feel that

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1 it is not within his expertise let me know and I will rule
2 on it then. I'm not quite sure what he's going to say.

3 MS. BRYA: Thank you, your Honor.

4 THE COURT: Or how they're going to do it. I think
5 there is some limitations, but I'm not sure if he's going
6 to exceed any of those or not.

7 BY MS. NESSEL:

8 Q All right. Doctor Gates, can you please give the Court
9 a brief summary of the expert opinions that you intend to
10 offer to the Court today?

11 A Yes. I will be offering opinions showing that same-sex
12 couples in partnership and spousal relationships have
13 existed in the United States for at least several decades.
14 That there are many gay, lesbian and bisexual people and
15 same-sex couples who are raising children. That lesbian,
16 gay and bisexual individuals have a strong desire to adopt
17 children, and actually report stronger desires to do than
18 their heterosexual counterparts. And that same-sex couples
19 are more likely than their opposite sex married
20 counterparts to be raising children -- raising adopted
21 children and raising children in foster care.

22 I will also offer opinions that show that many
23 LGBT people want to marry and also want to have children,
24 and that their motivations for marriage are similar to
25 other adults in the U.S.

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1 And I will offer opinions showing that permitting
2 same-sex couples to marry could possibly alleviate some of
3 the economic disadvantages that they experience when they
4 are not able to marry.

5 Q Now, Dr. Gates, you're in a somewhat unique field
6 could you tell us generally speaking how it is that you go
7 about retrieving data in order to form these conclusions?
8 Can you tell us a little bit about the process of your
9 work?

10 A Sure. So I primarily utilize -- as a demographer I
11 focus most though not exclusively but most of my work on
12 what we call population base data sources. So sources that
13 when analyzed can be used to make inference about the
14 actual population of the group that you're studying.

15 I try to rely on studies that do actually cross
16 academic fields so I would potentially review studies in
17 demography and sociology and economics as well as
18 psychology.

19 I am trained as a social scientist so I generally
20 follow the norms of research the way you frame research and
21 the way you then analyze things using social science
22 research norms. Whenever possible, I try to consider
23 multiple sources of evidence, and then assess the
24 methodological rigor and whether the methodology was
25 appropriate. Again, that kind of relates back to those

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1 social science norms. And then finally, trying to assess
2 whether the research draws appropriate inference as a
3 result of the methodologies.

4 Q Okay. Now, I know you touched on this earlier about
5 The Williams Institute, but, again, what -- I think you
6 indicated that the purpose of this organization is what
7 specifically?

8 A So our mission is to conduct rigorous and objective
9 research, to inform debates around sexual orientation and
10 gender identity.

11 Q Okay. And how does The William Institute receive its
12 funding?

13 A We're funded by a variety of sources. We have funding
14 from private foundations. We have individual donors. We
15 also receive public funding from places like the National
16 Institutes of Health, and the Department of Health and
17 Human Services.

18 Q Okay. So you do receive government funding you
19 indicated then for some of your studies and projects?

20 A We do.

21 Q Okay. Now, what mechanisms do you have in place to
22 ensure that your data and the conclusions that you draw
23 from that data are accurate representations of the
24 information that's been assimilated?

25 A Well, certainly the senior scholars at The Williams

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1 Institute all try to regularly publish in peer review
2 journals as well as do the kinds of shorter research briefs
3 that we put out. So publishing in the peer review process
4 obviously provides a level of objectivity.

5 But even in the reports that we would put out,
6 for instance, on our website that are more focused we would
7 attempt to -- we certainly for smaller reports have
8 internal reviews where someone else besides the author
9 reviews the paper, and for larger reports we would involve
10 external reviewers outside the organization. We have a
11 faculty advisory committee that we would also just try to
12 find scholars outside of The Williams Institute who would
13 be willing to review and provide comments.

14 Q Okay. And, again, the federal government actually
15 comes and provides funding for some of these studies that
16 you speak of.

17 A Yes. So -- yes, we have had several grants from the
18 National Institutes of Health and we've had both grants and
19 contracts with Health and Human Services.

20 Q Okay. And in formulating the opinions that you're
21 going to testify about today what sources or materials did
22 you rely upon?

23 A I rely on a variety of sources including data, studies
24 -- you know, various research studies as well as my own
25 analyses of census -- primarily census bureau data but also

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1 a few other surveys as well.

2 MS. NESSEL: May I approach, your Honor?

3 BY MS. NESSEL:

4 Q I'm going to show you what's been marked as
5 Plaintiffs' Proposed Exhibit 301. Can you tell me if this
6 is an accurate representation of all the studies that you
7 relied upon in order to form your opinions that you're
8 willing to testify about in court?

9 A Yes, it is.

10 MS. NESSEL: Your Honor, I'd ask that Plaintiffs'
11 Proposed Exhibit 301 be entered into evidence.

12 THE COURT: Any objection?

13 MS. BRYA: Your Honor, we don't have a copy of
14 that exhibit at all.

15 THE COURT: Do you have an extra copy?

16 MS. NESSEL: Certainly, your Honor.

17 MS. BRYA: If I can just have a minute to take a
18 look at it?

19 THE COURT: Absolutely. Take a look.

20 MS. BRYA: I don't have any objection, your Honor.

21 THE COURT: It will received.

22 (Plaintiffs' Exhibit 301 received into evidence.)

23 BY MS. NESSEL:

24 Q All right. Doctor Gates, let us talk about some of the
25 findings that you made as it pertains to the area of LGBT

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1 demographics. Now, were you able to determine the number of
2 people in the United States who identify as LGBT?

3 A Yes, through some work I did with the Gallup
4 Organization. Those data that they collected found that it
5 would be an estimated about 8.3 million -- it's actually
6 adult Americans self-identified themselves as lesbian, gay,
7 bisexual or trans gender.

8 Q Okay. In your work were you able to identify what
9 percentage of the overall population in the United States
10 identify as being gay, lesbian, or bisexual?

11 A This is showing actually two different studies by the
12 University of Chicago over a 20-year time period. They --
13 you see that in both men and women there's been an increase
14 in the portion of adults who self-identify as -- in this
15 case it's lesbian, gay or bisexual. So it was 1.1 percent
16 of women in '92. It's now 3 -- as of 2012, in a similar
17 survey it was 3.4 percent. For men it went from 2.5 percent
18 to 4 percent.

19 Q Okay. And were you able to make a similar
20 determination in regard to the number of people in the
21 State of Michigan that identify as LGBT?

22 A Yes. So, this is again -- now the Gallup data that I
23 worked with which the estimate from those data would imply
24 that there are about 287,000 adults in Michigan who
25 identify as LGBT.

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1 Q Okay. And you said that was for 2012?

2 A 2012, I'm sorry, yes.

3 Q Okay. And, Dr. Gates, is there any census data that
4 gives us information regarding the number of people who
5 have identified themselves as having formed a same-sex
6 couple in the United States?

7 A Yes. Since 1990, on the U.S. decennial census there's
8 been a way that you can identify same-sex cohabiting
9 couples who are not simply roommates, who identify
10 themselves as spouses or partners.

11 In 1990, it's actually only those who were
12 partners, it was about 145,000 same-sex couples were
13 identified. In 2000, this would be couples who identified
14 as both spouses and partners, it was more than 358,000. And
15 by 2010, it was nearly 650,000 same-sex couples.

16 Q Okay. And you're competent in the accuracy of these
17 figures?

18 A Yes.

19 Q Okay. Now, let's focus on the State of Michigan. Is
20 there census data that would give us information regarding
21 the number of people who identified themselves as having
22 formed same-sex couple here in the State of Michigan?

23 A Yes. So, again, drawing from those same decennial
24 census sources in 1990, the census reported almost 3400
25 same-sex couples in Michigan. In 2000, it was 7,300 same-

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1 sex couples. And in the latest census, 2010, it was almost
2 14,600 same-sex couples.

3 Q All right. May I ask you: Have you ever been
4 criticized as being too conservative in your overall
5 numbers?

6 A Yes, in general it's a very common -- probably the
7 biggest single critique of my work is those who believe
8 that most of these surveys are actually undercounting and
9 that reporting that is not taking into account the
10 possibility that some people may be uncomfortable
11 identifying either as LGBT, or identifying as part of a
12 same-sex couple. So I'm fairly regularly criticized for
13 that.

14 Q I mean, when you talk about obtaining these figures,
15 of course, you say this is self-identified; correct?

16 A That's correct. So, you know, it's -- in the case of
17 couples you've identified someone, another adult in your
18 household as being the same-sex as you and also as being
19 either your spouse or your unmarried partner. So that's a
20 self-identification.

21 And in the case of most other surveys the
22 question is something aligned of "do you consider yourself
23 to be" and you choose an option that would be gay, lesbian,
24 bisexual or trans gender.

25 Q Okay. Are there some people that don't feel

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1 comfortable indicating that they are LGBT?

2 A Yes. I mean there's evidence from social science that
3 social stigma perhaps creates situations where some people
4 who may think they are gay or lesbian or bisexual would be
5 unwilling on a survey because of concerns around
6 confidentiality to identify.

7 Q Okay. But, again, to be clear, all of these numbers
8 are based on the people who have self-identified; correct?

9 A That's correct.

10 Q Now, are these categories, when you refer to LGBT are
11 these specific categories lesbian, gay, bisexual, trans
12 gender are they actually defined in the studies?

13 A Generally no. You know, I think of all the studies I
14 present here, no. There are occasionally surveys that try
15 to add language to explain. But for the most part the
16 questions of the surveys that I'm showing would simply --
17 phrasing would be something like do you consider yourself
18 to be, or do you identify as. There's no explanation as to
19 defining those terms.

20 Q Okay. Can you tell us why bisexuals and trans gender
21 people are included in these surveys?

22 A Well, bisexuals are included because that's one way in
23 which we identify sexual orientation. And bisexuals, you
24 know, generally the idea is that bisexuals would be people
25 have attractions to both same-sex and different sex

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1 partners. And trans gender, again, in some surveys is often
2 included. The LGBT community is often thought of as a
3 group. So the trans gender population is often included in
4 these measurements.

5 Q Okay. And would laws that discriminate against same-
6 sex couples such as the Michigan Marriage Amendment and the
7 Michigan Adoption Code would they also affect potentially
8 bisexual and trans gender people?

9 A Yes.

10 MS. BRYA: Objection, your Honor. I don't think
11 Dr. Gates has been qualified as a legal expert to make such
12 a conclusion. I think it's also speculation.

13 MS. NESSEL: Well --

14 THE COURT: Why don't you lay a foundation,
15 please?

16 MS. NESSEL: Well, your Honor, in terms --

17 THE COURT: Just ask him if he --

18 MS. NESSEL: Sure.

19 THE COURT: Lay a foundation.

20 MS. NESSEL: Sure.

21 BY MS. NESSEL:

22 Q Do you have any reason through the course of your work
23 that you would know whether or not laws which place
24 restrictions on people who are same-sex couples, people in
25 a same-sex couple, whether those laws would affect also

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1 people who identify as bisexual or trans gender?

2 MS. BRYA: I renew my objection as to speculation
3 and asking him for a legal conclusion.

4 THE COURT: Overruled. He can answer that.

5 A There are surveys that suggest that there are both
6 bisexually identified people and trans gender people who
7 are in same-sex partnerships.

8 BY MS. NESSEL:

9 Q So then they would be affected by restrictions --

10 A Presumably they would, yes.

11 Q Okay. Now, what does the data show about the
12 relationship between age and people's willingness to
13 identify as LGBT?

14 A So in general this is data from the U.S. Particularly
15 under -- individuals under age 30 are much more, twice as
16 likely to identify as LGBT as those 30 and older. So the
17 figures from the Gallup data for under age 30 were 6.4
18 percent while over age 30 they were, you know, 3.2 percent
19 and even lower as individuals got older.

20 Q Okay. Now, have you performed or have you analyzed any
21 studies that would speak to public acceptance of same-sex
22 relationships in the United States by general population?

23 A Yes. So this is data from again a survey conducted by
24 the University of Chicago, the National Opinion Research
25 Center. They've been asking a question for more than two

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1 decades about whether individuals -- adults in the U.S.
2 think that same-sex relationships are wrong, or not wrong,
3 and it's actually a 5 point scale.

4 So when asked what portion -- so the portion of
5 the population who say that same-sex couples are not wrong
6 at all has increased. From 1990, it was a little less than
7 13 percent. In 2000, it was 29 percent. And by 2010, it has
8 increased to 43 percent. So that's a signal of greater
9 social acceptance of same-sex relationships.

10 Q Okay.

11 A But I think it's still important to point out that
12 while social acceptance has increased that a majority, 56
13 percent of Americans in 2012, still thought there was at
14 least something wrong with same-sex relationships. So there
15 is still not complete social acceptance by any means.

16 Q Okay. Do you see any correlation between the number of
17 people who self-identify as LGBT and public acceptance of
18 LGBT people?

19 A Well, certainly in terms of identification through the
20 same-sex couple -- you showed on a slide earlier there's
21 been an increasing portion of the population identifying as
22 LGBT. There's also been a similar increase in the portion
23 of the population or the numbers identifying as same-sex
24 couples and that has been, you know, tracks very closely to
25 increase social acceptance. So it's likely that as social

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1 acceptance has improved that people are more willing both
2 to identify themselves as same-sex couples and perhaps to
3 identify as LGBT.

4 Q Okay. Now, based on your analysis on the relevant data
5 over the last several decades do you expect the number of
6 Americans and the number of Michigan residents who identify
7 as LGBT to rise in the future?

8 A Yes. I mean, for one thing the younger generation has
9 a higher proportion. So you would assume that will remain
10 higher than folks as they get older. So the anticipation
11 would be that there would be a larger proportion of those
12 identifying as LGBT in the future.

13 Q Just so I understand this graph a little better, are
14 you saying that people -- does this mean in your view that
15 people when they're young they will identify as LGBT and
16 then they stop when they get older, how does this work?

17 A No, no. The evidence would suggest that people who
18 identify as LGBT, you know, persist in that identification.
19 So the fact that high of a percentage at that age
20 identifies likely that percentage would remain similar as
21 that group gets older.

22 Q Okay. So it's just as time as gone on people in those
23 age groups as -- currently, as of right now, are more
24 willing to identify as LGBT the younger they are?

25 A Correct.

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1 Q Okay. And in your opinion will this result as time
2 goes then in the event that there remains restrictions on
3 same-sex couples such as the ability for same-sex couples
4 to marry and the ability of same-sex couples to jointly
5 adopt or second party adoptions as we have in Michigan will
6 this result looking at this graph will it result in a
7 larger number of Americans who -- and people in the State
8 of Michigan who are going to be subjected to this type of
9 discrimination?

10 MS. BRYA: Your Honor, I would object as to
11 speculation.

12 THE COURT: Also, there were a couple questions in
13 there. Why don't you rephrase it?

14 MS. NESSEL: All right.

15 BY MS. NESSEL:

16 Q Will more and more people be affected by the types of
17 laws that we're talking about in court here today such as
18 the Michigan Marriage Amendment and the Michigan Adoption
19 Code?

20 A Yes, there likely will be more people who identify as
21 same-sex couples and more people who identify as LGBT in
22 Michigan in the future.

23 Q Okay. Let's talk about the number of gay, lesbian and
24 bisexual people and same-sex couples who are raising
25 children. Have you analyzed data which would allow you to

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1 determine the number of LGBT people raising people in the
2 United States?

3 A Yes, so there are several surveys that simply ask
4 whether you've had a child in your life. Based on those
5 surveys the estimate that there are about 3 million LGBT
6 Americans who have ever had a child.

7 Via the census bureau data we can look at the
8 portion of same-sex couples so again these are couples who
9 either identified as spouses or partners who have children
10 under age 18 in their home. That portion is -- more than 19
11 percent are raising children under age 18 in the home. That
12 would imply that there an estimated 200,020 children under
13 age 18 who are being raised by same-sex couples.

14 Q Are these numbers specific to states that have
15 marriage equality laws and --

16 A No, these are figures for the nation. So this would be
17 a cross --

18 Q So this includes every state in the nation.

19 A Correct.

20 Q Okay. Have you also analyzed the same data for the
21 State of Michigan?

22 A Yes. So a similar analysis in Michigan this is based
23 on Census 2010 data would find that there are about 20 --
24 2,650 same-sex couples in Michigan who are raising
25 approximately 5300 children who are under age 18.

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1 Q Okay. Now, Dr. Gates have you analyzed specific data
2 that indicates the willingness of lesbian and bisexual
3 women to adopt children or to foster children in relation
4 or compared to heterosexual women?

5 A Yes. So the federal government conducts a survey
6 called the National Survey of Family Growth in which women
7 -- unfortunately they don't ask these questions of men, but
8 women are asked whether they have considered adopting. And
9 you also know the sex orientation identity of women. In
10 both the 2002 version of that survey and in the 2006
11 through 2010 version lesbian and bisexual women were much
12 more likely than heterosexual identified women to say that
13 they had considered adoption. So in 2002, it was 46 percent
14 versus 32 percent. And in the latter survey it was 48
15 percent versus 36 percent.

16 Q What about just lesbian women?

17 A So if you look, only lesbian identified women it was
18 slightly higher. More than half of lesbians said they were
19 willing to consider adopting a child again compared to
20 about 36 percent of heterosexual women.

21 Q Okay. And you indicated there's no such similar survey
22 that indicates the contrasting bisexual men with
23 heterosexual men?

24 A They surveyed men in the survey but they don't ask
25 this question of them.

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1 Q Okay. Do you know of any studies, Dr. Gates, and if
2 so, have you utilized any studies in forming conclusions
3 about the number of same-sex couples who have adopted a
4 child in the United States compared to the number of
5 heterosexual or opposite sex couples who have adopted a
6 child in the U.S.?

7 A Yes. So, again in the census data you can measure
8 whether a child in a household is identified as an adopted
9 child. And among couples with children, 14 percent of same-
10 sex couples have -- one of those children is identified as
11 an adopted child versus 3 percent of opposite sex couples.

12 And in Michigan it's about 11 percent of same-sex
13 couples with children include an adopted child versus 4
14 percent of opposite sex couples.

15 Q And do you know of any studies that indicate the
16 number of same-sex couples that are raising foster children
17 in the United States?

18 A Yes. So nationally same-sex couples are twice as
19 likely as their opposite sex couple counterparts to be
20 raising a foster child.

21 Q Okay. Do you have any similar data involving same-sex
22 couples versus opposite sex couples raising foster kids
23 here in the State of Michigan?

24 A No, unfortunately -- foster care and having a foster
25 child is a relatively rare event. Even though there are

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1 data from the census bureau they are still sampled data and
2 the data on same-sex couples with foster children there
3 isn't a sufficient sample to make a reliable estimate.

4 Q Okay. Do you know if there is a difference in the
5 number of children adopted in states where the adoption
6 policies permit both partners in a same-sex couple to be
7 legal parents first in states that have restrictions or
8 bans on same-sex couples both adopting like those here in
9 Michigan?

10 A Yes. So, again I used census bureau data. It's called
11 the American Community Survey from 2012. I separated the
12 country into three groups. The states those where second
13 parent adoption is by state law or regulation made
14 available to all same-sex couples. States where there's a
15 specific provision that such second parent adoptions are
16 not available to same-sex couples statewide. And then the
17 largest group of states actually doesn't specify one way or
18 another. What you see is that in the states that permit
19 second parent adoption for same-sex couples there's a much
20 higher portion of the same-sex couples with children have
21 adopted children, 18 percent compared to, for instance, the
22 states that have -- that do not permit second parent
23 adoption at all, the figure is only 7 percent.

24 Q Like the State of Michigan would fit in the third
25 category then.

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1 A Michigan would have been one of the states in the
2 third category, yes.

3 Q Let's talk about some motivations that LGBT people
4 have to marry and to have children. Have you studied and
5 were you able to make any assessments as the percentage of
6 the LGBT community who has or who want to have children?

7 A Yes. So this is from a study by the Pew Research
8 Center which is a policy research center in Washington,
9 D.C. They surveyed LGBT people last year in the United
10 States, and found that 50 percent of LGBT identified
11 Americans either already have children or say they want to
12 have children at some point.

13 Q And is there any way to determine the number of LGBT
14 people who are already -- who marry when they're provided
15 with the legal opportunity to do so?

16 A So measuring marriage -- I should start by saying that
17 measuring these statistics is a little challenging because
18 some of the states that were same-sex couples are permitted
19 to get married don't actually collect the gender of the
20 spouses. And so you wind up using a combination of some
21 survey data and administrative data to come up with
22 estimates. We also then don't have a great way to know how
23 many couples might have been married outside of the
24 country. So, again, I think these estimates are probably
25 somewhat conservative because of that.

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1 But the "New York Times" did analyses of state
2 administrative data and in 2012, had found there were
3 82,500 same-sex couples who had been married in one of the
4 states in the U. S. That allowed same-sex couples to marry.

5 In the recent Pew data they asked gay and lesbian
6 people specifically whether they were legally married. If
7 you assumed that those gay and lesbian individuals were
8 married to a same-sex spouse it would have implied there
9 were about 92,000 same-sex couples who are married in the
10 United States.

11 Q Okay. What about surveys regarding LGBT people who,
12 again, are already married or who wish to marry? Do you
13 have any surveys in regard to that?

14 A Yes. So again the Pew data when it looked at all LGBT
15 people found that 60 percent were either currently married
16 or said that they wanted to marry at some time.

17 Q Okay. Now, in states where the prohibitions on same-
18 sex marriage were lifted what was the reaction of the LGBT
19 community in regard to their newfound ability to marry?

20 Let me ask you another question first. Strike
21 that.

22 Were you able to determine in your surveys did
23 you analyze the reasons that same-sex couples or LGBT
24 people wanted to marry?

25 A Yes. So, again, the Pew Research did a survey of LGBT

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1 and asked them the same questions that they had asked on
2 another survey that they did of all adults in the United
3 States about why people want to get married. And there was
4 a high degree of consistency in what both LGBT people and
5 the general population said were the important factors in
6 wanting to marry. The three most important were love,
7 companionship and making a lifetime commitment.

8 The one area where there actually was some
9 difference was that LGBT people were more likely to say
10 that legal rights and benefits were an important reason to
11 marry than the general population was.

12 Q And based on your research were you able to develop a
13 theory for the difference where people wanted benefits?

14 A I think the simple explanation is it's a group that
15 historically has not been able to marry so it could simply
16 be that they're more aware because of not having and simply
17 because of media coverage around marriage cases that they
18 would potentially simply be more aware than the general
19 population of the rights and benefits associated with
20 marriage.

21 Q Okay. Now, let's get back -- in states in where there
22 was a ban on same-sex marriage and then that ban was lifted
23 what was the reaction of the LGBT community to their
24 newfound ability to marry?

25 A Well, The Williams Institute conducted several

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1 analyses to look at the proportion of same-sex couples who
2 were married and there was a fair degree of consistency
3 across some of the early states that within a year of
4 marriage being legal for same-sex couples that -- about 30
5 percent of same-sex couples got married in the first year.

6 In two states, Connecticut and New Hampshire, we
7 have three years worth of data. In Connecticut, it's more
8 than half of same-sex couples appear to be married. In New
9 Hampshire, it's about 37 percent of couples. And after six
10 years of marriage in Massachusetts it's nearly seven out of
11 ten same-sex couples are legally married now.

12 Q Let's talk more specifically about the State of Utah.
13 Is there anything, to your knowledge, of any interest that
14 occurred back in December in regard to the ban on same-sex
15 marriage in the State of Utah?

16 A Yes. Utah is an interesting case because the window of
17 when same-sex couples were allowed to get married was very
18 short, only a little over two weeks. But I believe there
19 were more 1300 same-sex couples who were married in Utah in
20 that time which would -- when you compare that to the
21 census bureau data would imply that a third. So a similar
22 proportion that got married after a year in some of the
23 other states that a third of same-sex couples were married
24 just in those two weeks.

25 Q So just in 17 days following the court's decision,

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1 before a stay was implemented a third of all those same-sex
2 couples in that state married?

3 A Correct.

4 Q Okay. Now, can you tell us, Dr. Gates, in your many
5 studies and your review of the research in this area, are
6 there any economic advantages when a same-sex couple can
7 legally marry?

8 MS. BRYA: Your Honor, I would renew my objection
9 as to Dr. Gates' testimony with respect to economics. In
10 addition, I'd like to raise an additional objection and
11 that's as to relevance. I don't think any economics goes to
12 whether or not the state has a rational basis for its
13 marriage amendment.

14 THE COURT: As to your second I'll deal with it.
15 Let's get the first one out of the way.

16 Ask him a leading question so that I know what
17 you're looking for. I still don't know what you're looking
18 for.

19 Go on.

20 BY MS. NESSEL:

21 Q Were you able to determine when you analyzed the data,
22 Dr. Gates, were you able to determine that there were
23 economic advantages for same-sex couples and their family
24 members when the couple was allowed to marry versus when
25 they were not permitted to marry?

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1 A Well --

2 THE COURT: Wait. The answer is what? Were you
3 able to do so?

4 THE WITNESS: Yes. But --

5 THE COURT: Go on, tell me.

6 THE WITNESS: I mean, if by economic advantages
7 you mean things like, for instance, access to health
8 insurance. There's evidence that married couples are more
9 likely to have health insurance than non-married couples.

10 THE COURT: But -- you're not going to get into
11 economics in terms of the family dynamics of economics or
12 anything.

13 THE WITNESS: No.

14 THE COURT: Okay. I will allow him to testify as
15 long as it's limited to that.

16 And as to relevancy I will take your objection
17 under advisement because I have some doubts as to its
18 relevancy but since he's here today I'll allow him to
19 testify. But I certainly -- I do have some doubts -- I'm
20 not sure how much weight, if any, or if I'm going to even
21 consider it, but since he's here we might as well listen to
22 him.

23 MS. BRYA: Thank you, your Honor.

24 BY MS. NESSEL:

25 Q So, Dr. Gates, in terms of economic advantages for

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1 same-sex couples and their family when they're permitted to
2 legally marry what were your findings?

3 A So in general, both married individuals and children
4 with married parents are more likely to have health
5 insurance. So, for instance, when you compare health
6 insurance of married couples to same-sex couples, same-sex
7 couples and their children tend to report being less likely
8 to have health insurance.

9 Marriage can come with a range of differences in
10 tax policy and how you're treated for taxes and those can
11 often be benefits associated, you know, better treatment
12 for married couples.

13 And, also there's general evidence that married
14 individuals tend to do better in terms of earnings and
15 income when you compare them to unmarried individuals.

16 Q Okay. Now, Dr. Gates, as a result of having looked
17 into all the different areas that you discussed today were
18 you able to form any conclusions in regard to the LGBT
19 community in regards specifically to the areas of same-sex
20 marriage and adoption for LGBT couples?

21 A Yes. So this summarizing what I've said here that
22 there are a significant number of LGBT people in the United
23 States and in the State of Michigan. There are an
24 increasing number who are willing to identify both as same-
25 sex couples and as LGBT individuals. More same-sex couples

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1 appear to be forming. Same-sex couples, many same-sex
2 couples have children, and a large portion say that -- of
3 LGBT people say they wish to have children. There are many
4 same-sex couples who are married and want to marry
5 including in places where that's prohibited.

6 More children in same-sex couples are adopted
7 when barriers to adoption for same-sex couples are lower.

8 There are numerous economic advantages to being
9 married and that potentially would apply to same-sex
10 couples and their families.

11 MS. NESSEL: I have nothing further.

12 THE COURT: You may cross-examine.

13 MS. BRYA: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MS. BRYA:

16 Q Good morning, Dr. Gates.

17 A Good morning.

18 Q How are you today?

19 A Good.

20 Q Good.

21 There are some challenges to trying to convince
22 people who draft surveys to include questions regarding
23 sexual orientation and gender identity; correct?

24 A Correct.

25 Q And there are some challenges in trying to analyze the

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1 results from those surveys because of the limited data
2 that's available; correct?

3 A Yes, when data is limited obviously.

4 Q In working with small sample sizes is challenging;
5 correct?

6 A Yes.

7 Q One of the reasons that working with small sample
8 sizes is challenging is because the smaller the sample size
9 the harder it gets with any confidence level to say that
10 there are genuine differences across groups because the
11 margins of error are larger; correct?

12 A Yeah, that means you need to observe bigger
13 differences in the groups to claim statistical
14 significance, yes.

15 Q You don't have any research on the duration of same-
16 sex relationships in Michigan; correct?

17 A In Michigan, no.

18 Q You aren't aware of any studies that show what
19 percentage of same-sex couples that are raising children
20 under the age of 18 were children born from prior
21 heterosexual relations; correct?

22 A There are very few surveys that you could identify
23 that explicitly, correct.

24 Q And you've never analyzed any data regarding the
25 outcomes of children of same-sex couples based on census

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1 data; correct?

2 A No, I've not done child outcomes, no.

3 Q Previously you testified you discussed the percentage
4 of same-sex couples who decided to marry after marriage was
5 legalized in the states where they lived; correct?

6 A Correct.

7 Q There was no data on how long these marriages lasted;
8 correct?

9 A That's correct.

10 Q And there's no data on whether these same-sex couples
11 were previously married; correct?

12 A It's available because individuals usually have to
13 report if they've had a divorce on the marriage licence but
14 I've not actually seen an analysis of that, no.

15 Q So there is no analysis that you're aware of.

16 A Not that I'm aware of.

17 Q You also testified on Direct Examination about the
18 percentage of women considering adoption; is that correct?

19 A That's correct.

20 Q And the study you analyzed is from the National Survey
21 of Family Growth; is that correct?

22 A That's correct.

23 Q And it asked women to identify themselves as
24 heterosexual, lesbian, gay or bisexual; correct?

25 A That's correct.

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1 Q And one question that was asked was whether or not the
2 respondent would consider adopting a child; correct?

3 A That's correct.

4 Q And another question asked whether or not the
5 respondent would consider fostering a child; correct?

6 A I actually am not sure about that. I don't know.

7 Q So you indicated previously that -- one of the
8 questions asked whether or not the respondent would
9 consider adopting a child; correct?

10 A That's correct.

11 Q But the survey itself does not give a definition of
12 what it means to adopt a child; correct?

13 A The survey asks a long series of questions about
14 adoption. I don't actually know the exact order and how
15 those are discussed in the survey but there are many
16 questions in the survey about adoption, but I'm actually
17 not sure what kind of information the surveyor might
18 provide to explain that.

19 MS. BRYA: Your Honor, may I approach the witness?

20 THE COURT: Of course.

21 BY MS. BRYA:

22 Q Do you recall, Dr. Gates, taking a deposition on
23 January 21st, 2014?

24 A Yes.

25 Q And you were under oath when you were answering

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1 questions during your deposition?

2 A Yes.

3 So, yes, I said that "I'm not aware of."

4 MS. NESSEL: I'm wondering if we can get a
5 reference to the page number that counsel is referring to?

6 THE COURT: Sure.

7 MS. BRYA: Sure, I was just going to do that.

8 It's page 113, and it's line 16.

9 BY MS. BRYA:

10 Q Does that refresh your recollection, Dr. Gates?

11 A Yes, I think it's what -- it's consistent with what I
12 just said which is I'm not sure -- I'm not aware that they
13 provided a definition.

14 Q Thank you.

15 You also concluded on your Direct Examination
16 that same-sex couples are more likely to adopt than
17 heterosexual couples; correct?

18 A That's correct.

19 Q Have you ever done any research to determine why this
20 may be the case?

21 A No.

22 Q Is it possible that heterosexual women would be less
23 likely to adopt than lesbian women because heterosexual
24 women could have a biological child of their own?

25 MS. NESSEL: Your Honor, I'm going to object to

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1 the speculation.

2 THE COURT: Sustained. He hasn't done any research
3 unless you want his own personal opinion.

4 MS. BRYA: I'll withdraw the question.

5 THE COURT: Okay.

6 BY MS. BRYA:

7 Q You discussed on Direct Examination some of the
8 conclusions that you drew from the Pew Research, can you
9 tell me what that research was about again?

10 A Yes. So they conducted a survey of -- a population
11 base survey of LGBT adults in America and they not
12 exclusively but compared many of the -- they asked similar
13 questions to that LGBT group as they asked in other
14 population surveys that they've done.

15 Q And from that research you've concluded that just over
16 half of the respondents either had a child or would like to
17 have a child at some point in their lives; correct?

18 A Of LGBT respondents, yes.

19 Q On that survey there wasn't any definition of what the
20 phrase "had a child" means; correct?

21 A As far as I understand, yes -- yes, there wasn't a
22 definition.

23 Q And there was no definition of the phrase "have
24 children"; correct?

25 A Correct.

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1 Q So there was no way to identify whether a child of the
2 respondent was a biological child or a foster child for
3 example; correct?

4 A Correct.

5 Q And there was no way to identify if the child was an
6 adoptive child; correct?

7 A That's correct.

8 Q And there was no way to know whether a respondent who
9 indicated that they wanted to have children wanted a foster
10 child, adoptive child, or biological child; correct?

11 A That's correct.

12 Q I want to talk to you for a few minutes about the U.S.
13 Census data and I guess when I'm referring to the census
14 data I'm referring to the U.S. Census data. That's the
15 census data that you derived your conclusions in this case;
16 correct?

17 A Yes. Those data are from both the Decennial Census and
18 another survey that the census does called The American
19 Community Survey.

20 Q Thank you. When you're reviewing the data from the
21 U.S. Census Bureau you don't actually review the census
22 forms collected by the Census Bureau; correct?

23 A Well, in the American Community Survey you do review a
24 sample of individual respondent forms, but --

25 Q But with the census data --

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1 A The Decennial Census, no, you're not reviewing the
2 forms, no.

3 Q And one assumption that must be made when reviewing
4 the U.S. Census forms is that the person that's filling out
5 the form is doing so accurately; correct?

6 A That's correct, yes.

7 Q And you agree that some people when they fill out the
8 census forms make unintentional errors when filling out the
9 forms.

10 A That does occur, yes.

11 Q And the quality of data from the U.S. Census Bureau
12 depends on the responses that are provided on the census
13 forms; correct?

14 A Yes, although the Census Bureau does a variety of
15 procedures to try to make sure that what goes out is as of
16 highest quality as they can. So they try to actually
17 correct for some of the potential problems.

18 Q That's known as data cleaning or data cleansing?

19 A Correct.

20 Q When completing the census form the Census Bureau asks
21 that the householder complete the form when it arrives at
22 their home; is that correct?

23 A Correct.

24 Q And an example of a householder is someone who perhaps
25 has the mortgage on the home or the rent is in their name;

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1 correct?

2 A Those are the instructions. In theory it could be
3 whoever the household chooses, but, yes the instructions
4 say typically it should be the person in whom the house is
5 rented or owned, whose name is rented or owned.

6 Q And the Census Bureau asks for the relationship the
7 householder and the other individuals in the household;
8 correct?

9 A Correct.

10 Q And one question on the form asks for the gender of
11 each person in the household; correct?

12 A Correct.

13 Q And another question asks for the relationship between
14 the householder and each individual member of the
15 household; correct?

16 A That's correct.

17 Q And for the possible responses that someone could
18 provide they could choose from categories including husband
19 or wife, unmarried partner, housemaid or roommate, those
20 are examples; correct?

21 A Those are examples of options, yes.

22 Q And I believe you testified to this on Direct
23 Examination since 1990, the Bureau has included the phrase
24 "unmarried partner" as one of the categories that the
25 householder could choose in identifying his or her

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1 relationship with someone else in the household; correct?

2 A Yes, in 1990, it was first time they separately put
3 unmarried partner as a separate category.

4 Q If a person completing the census form indicates that
5 he or she is one gender and indicates that another adult of
6 the same gender in their household is their husband or wife
7 or unmarried partner then the Census Bureau codes them all
8 as unmarried partners; correct?

9 A Currently that is their procedure, yes.

10 Q And you assumed -- I'm sorry. Strike that.

11 There is no way for the Census Bureau to identify
12 a same-sex couple if one is not the householder; correct?

13 A Correct.

14 Q So, for example, if there is a male householder
15 completing the census form and he indicates that there are
16 two adult females in his household that are roommates, his
17 roommates there's no way for the Census Bureau to know what
18 relationship those two adult females have; correct?

19 A That's correct.

20 Q And likewise if a single man lives only with his
21 children and completes the census form there's no way to
22 know whether or not that single man is in a same-sex
23 relationship; correct?

24 A That's right.

25 Q And the same thing would apply for a single female

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1 living with her children; correct?

2 A That's right.

3 Q And the Census Bureau doesn't know the sexual
4 orientation of the individuals that the Bureau classifies
5 as same-sex couples; correct?

6 A That's right, they don't ask about sexual orientation.

7 Q If we're talking about the 1990 census data, if the
8 householder referred to someone of the same-sex as their
9 husband or wife the Census Bureau automatically assumed
10 that the householder made an error when they checked the
11 box regarding what their sex was; correct?

12 A Yes. So they assumed that was likely an out of the sex
13 married couple who inadvertently checked the wrong sex box
14 for one of the -- for the spouse or the partner.

15 Q And so the Census Bureau actually changed the sex of
16 the husband and wife and listed the couple as an opposite
17 sex married partner --

18 A That's correct.

19 Q Married couple; correct.

20 A That's correct.

21 Q And then for this 2000 census data the Bureau decided
22 that if someone -- if the householder reported that he or
23 she was the husband or wife of someone else in the home and
24 indicated that that person had the same gender as the
25 householder the Bureau reported that was an unmarried

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1 partner --

2 A That's right. So instead of changing the sex to make
3 them an opposite sex married couple they changed the
4 household relationship and took this what appeared to be a
5 same-sex couple that were husband or wife and made them an
6 unmarried partner.

7 Q And by doing that by the Bureau classifying those
8 people as a same-sex couple that could have been incorrect;
9 right?

10 A They introduced a bigger measurement challenge into
11 the data, yes.

12 Q So, yes, it could have been incorrect.

13 A It could have been incorrect, sure.

14 Q So based on the Bureau's actions any opposite sex
15 couple including a married couple could have been mis-
16 classified as a same-sex couple; correct?

17 A If they mis-coded the sex they would then now be
18 classified -- if an opposite sex married couple -- well,
19 actually either married or unmarried partner, but if an
20 opposite sex married couple mis-coded the sex and appeared
21 to be a same-sex couple they would now be counted amongst
22 the same-sex couples, yes.

23 Q And the Bureau's classification of some opposite sex
24 couples as same-sex couples could have a large affect on
25 the number of same-sex couples that exists; correct?

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1 A Yes. So if there's error obviously then it's possible
2 that some of the same-sex -- what's being reported to be
3 same-sex couples are actually mis-classified different sex
4 particularly married couples.

5 Q Okay. And it could have a large affect --

6 A And it would inflate the figures, yes.

7 Q And even a small error could become a large portion of
8 same-sex couples because they're not a large group to begin
9 with; correct?

10 A Yes. So because there's so many different sex married
11 couples even if a very few make an error if that -- if all
12 those errors get classified as same-sex and the group of
13 same-sex couples is relatively small, yes, it could
14 comprise a fairly large portion of same-sex couples.

15 Q And after the 2000 Census the Census Bureau looked at
16 the name, the first name on the census form and tried to
17 determine whether this person was a male or a female based
18 on the percentage of the population that said this name was
19 more closely associated with either males or females.

20 A Yes. That analysis actually occurred after the 2010
21 Census but they analyzed both 2000 and 2010 data and looked
22 at the first names to assess what they thought might be the
23 accuracy of the sex of the couple.

24 Q And then the Bureau went ahead and changed the
25 response to either male or female based on whether or not

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1 there was a high probability of that name being more
2 closely associated with male or female; correct?

3 A Right. So in their analyses they estimated what
4 portion of those that were reported as same-sex that they
5 thought might in fact look to be different sex couples;
6 yes.

7 Q The Census Bureau then re-issued tabulations for the
8 2000 and 2010 Census as a result of this; correct?

9 A Yes, they issued new what they referred to as
10 preferred estimates for same-sex couples.

11 Q And I understand that's what you rely on for purposes
12 of your --

13 A And those are the figures -- when I reported on
14 Decennial figures, yes, those are the numbers I used.

15 Q Some of your analysis and the conclusions that you
16 draw focus on same-sex couples who raise children; correct?

17 A That's right.

18 Q On the census form the householder must classify his
19 or her relationship with children under 18 in the
20 household; correct?

21 A Correct.

22 Q And of the options that the household can choose they
23 can choose biological child, adopted child, foster child or
24 step child; correct?

25 A Those are amongst the options, yes.

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1 Q And when you refer to a same-sex couple raising a
2 child in your testimony or your conclusions by the term
3 "raising" you mean that there's a householder and an
4 unmarried partner in the home where there are children
5 under 18; correct?

6 A That's correct.

7 Q There's no specific question on the census form asking
8 whether or not the householder is raising a child; correct?

9 A There's no question -- I guess I'm not sure what
10 you're asking me.

11 Q The census form doesn't use the term "raising a
12 child," they don't --

13 A Oh, correct, yes. They do not use that term, no.

14 Q And you're assuming that when a householder completes
15 the census form indicating that he or she has a spouse or
16 an unmarried partner and that there are children under 18
17 in that home that they're actually raising those children;
18 correct?

19 A Yeah, I mean I think -- yes, that's an implied
20 assumption, yes.

21 Q And there is no way to determine whether an adoptive
22 child living in the home is a blood relative to the
23 householder; correct?

24 A No, the householder identified the child as adopted --
25 as their adopted child because they're asked how that child

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1 is related to you. So the householder would be -- I think
2 you're assuming that when the householder says that child
3 is adopted that they've adopted that child, it's my adopted
4 child because -- it's how is that child related to? Through
5 adoption.

6 Q But, for example, you would have no idea if the
7 householder adopted a grandson or a granddaughter; correct?

8 A Oh, you actually would not know that. Although they
9 could refer to the child as a grandchild as well in your
10 example. So you wouldn't know whether they would call the
11 child adopted or a grandchild.

12 Q And there's no way from the census form to determine
13 whether a child in the household was produced by some
14 artificial reproductive means; correct?

15 A No, there's no way to determine that.

16 Q And there's no way to know whether the child was
17 produced by a surrogate; correct?

18 A Correct.

19 Q You testified on Direct Examination regarding the
20 American Community Survey data and that was from 2011; is
21 that correct?

22 A Yes, I did some analyses of 2012 as well but yes.

23 Q And that was with respect to same-sex couples raising
24 children; correct?

25 A Yes.

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1 Q And when you use the term same-sex couples with
2 respect to that survey you're including people that could
3 be classified as gay, lesbian, bisexual or trans gender;
4 correct?

5 A Well, we don't know their sexual orientation or their
6 gender identity so I'm including couples who identified a
7 same-sex adult in the household as their husband and wife
8 or unmarried partner.

9 Q But they could be any of those -- they could be any of
10 those classifications, correct, gay --

11 A They could be any of those classifications.

12 Q And you stated that the American Community Survey
13 doesn't ask about the sexual orientation of the respondent;
14 correct?

15 A That is correct.

16 Q Thank you.

17 You testified for a few moments on Direct
18 Examination with respect to second parent adoption;
19 correct?

20 A Only to the extent that I looked at the differences in
21 states' laws around second parent adoption, yes.

22 Q Sure. And isn't it true that in states that allow
23 second parent adoption two unmarried heterosexual people
24 can adopt?

25 A Correct, yes.

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1 Q So in second parent adoption states both unmarried,
2 same-sex people and unmarried heterosexual people can
3 adopt; correct?

4 A As a second parent, yes.

5 Q I believe you testified on Direct Examination that you
6 work for The Williams Institute at UCLA College of Law;
7 correct?

8 A That's right.

9 Q And you testified that The Williams Institute focuses
10 on individual sexual orientation; correct?

11 A Studying sexual orientation and gender identity
12 issues, yes.

13 Q The Williams Institute is paying for your
14 participation in this case; correct?

15 A They're supporting my travel expenses, yes, and time.

16 Q And by that you mean that they are paying you your
17 normal salary to be here and to testify?

18 A Correct.

19 Q And for your participating as an expert on behalf on
20 behalf of the plaintiffs?

21 A That's correct.

22 Q You refer to your book, "The Gay And Lesbian Atlas" on
23 Direct Examination. That book was funded by The Williams
24 Institute; correct?

25 A No, actually that was funded by The Urban Institute

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1 which was where I was employed at the time.

2 Q You donated money to the campaign in the State of
3 Washington to allow same-sex couples to marry; correct?

4 A I did.

5 Q And you donated money to the campaign in California to
6 allow same-sex couples to marry; correct?

7 A I did.

8 Q And you donated money to the Human Rights Campaign;
9 correct?

10 A In the long distant past, but, yes.

11 Q And the Human Rights Campaign is a lesbian, gay,
12 bisexual trans gender advocacy organization?

13 A It is.

14 Q And you've written amicus briefs in other lawsuits
15 regarding same-sex marriage in other states; correct?

16 A I have.

17 Q And writing amicus briefs is part of your employment
18 duties at The Williams Institute; correct?

19 A It is.

20 Q And in all the cases in which you wrote amicus briefs
21 you wrote them in favor of allowing same-sex marriage;
22 correct?

23 A Yes.

24 Q You believe that people in the State of Michigan
25 should -- I'm sorry. Same-sex individuals in the State of

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1 Michigan should be allowed to marry?

2 A I do.

3 MS. BRYA: If I could just have a moment, your
4 Honor?

5 THE COURT: Absolutely.

6 MS. BRYA: Your Honor, I have no further questions
7 for the witness.

8 THE COURT: Any Redirect?

9 MS. NESSEL: Yes, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. NESSEL:

12 Q Doctor Gates, I asked you when we were looking at some
13 of the slides earlier about your confidence in the figures
14 that you were presenting here in court today.

15 Now, you've identified that there are at times
16 some errors that result in terms of compiling data from say
17 the U.S. Census; correct?

18 A Yes.

19 Q Now, what effort is made if you can tell us more
20 specifically and I know you went into this a little bit on
21 Cross but if you could tell us what efforts are made in
22 order to minimize the errors that are sometimes made when
23 people are filling out these forms?

24 A Well, again, I think -- I've been one of the leading
25 scholars in trying to first convince the Census Bureau that

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1 there were issues and problems related with the same-sex
2 couple data and a proponent of ways to improve the quality
3 of those data. So as a result of those efforts as we said
4 after the 2010 Census the Bureau did a very sizeable
5 analysis using first names to try to come up with a better
6 way to estimate the number of same-sex couples. When you're
7 using the American Community Survey data I've developed
8 ways in which individuals using those data can restrict the
9 sample to minimize the problems. Some of those are quite
10 technical but nonetheless there are methodologies that
11 we've developed that are designed to try to improve the
12 quality of the data.

13 Q Well, who's involved in these efforts in order to
14 ensure that this data that's collected is actually accurate
15 or is an accurate reflection of the communities that you're
16 attempting to survey?

17 A I mean, that's the purpose of the Census Bureau. So
18 they take that very seriously. And, again, you know, I
19 serve on this scientific advisory committee, the Census
20 Bureau will often come to the full committee with a group
21 to have them review the procedures that they're doing to
22 try to enhance the overall quality of the data including
23 the quality of same-sex couple data.

24 Q Okay. And, of course, we keep talking about the Census
25 Bureau, but who makes up the Census Bureau? I mean, is that

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1 an arm of the federal government?

2 A Yes, it's an arm of the federal government. It's
3 within the Department of Commerce. I think it's the biggest
4 statistical agency in the federal government.

5 Q Okay. And does the United States Government rely upon
6 the data that is compiled as a result of the efforts made
7 by the Census Bureau?

8 A Yes, the Census Bureau data -- I mean the Census
9 Bureau -- the census is the only constitutionally required
10 data collection effort in the United States and it's
11 collected in order to apportion Congress every ten years.

12 Q And do you know if the State of Michigan relies on
13 data that is collected from the U.S. Census Bureau?

14 A Yes. All the states that -- apportionment is
15 ultimately a state level function and all of them use the
16 census data to assist in that way.

17 Q And with all the mechanisms that have been put in
18 place to ensure the accuracy of the data that you've
19 indicated is there any reason that you have to believe that
20 the numbers that you've presented to the Court today are
21 flawed or inaccurate?

22 A I have no reason to believe they're overtly flawed. If
23 anything, I would argue that they tend to be conservative
24 in the sense that we try to make efforts to as much as we
25 can improve the quality of the data and in doing that, you

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1 know, we've actually reduced the number of same-sex
2 couples. And in that sense I would argue they tend to be
3 conservative estimates.

4 Q So it's your belief that, if anything, the numbers
5 you've presented today regarding the number of same-sex
6 couples, the number of LGBT people that exist in the United
7 States and in the State of Michigan is, if anything, too
8 low.

9 A If anything I -- in my research I attempt to present
10 data that I believe presents the conservative estimates,
11 yes.

12 MS. NESSEL: Thank you, your Honor.

13 THE COURT: Okay. Doctor Gates, you may step down.
14 Thank you.

15 It's my understanding that the plaintiffs next
16 witness is Dr. Cott and that's scheduled for tomorrow; is
17 that correct?

18 MR. MOGILL: That's right.

19 THE COURT: Any other matters for today?

20 MS. STANYAR: There's a couple of things that we
21 can tie up.

22 THE COURT: Okay. Let me just talk to those that
23 have come to watch the trial and those that were not here
24 in the days past why we have such a lull.

25 There was a witness that the plaintiff was going

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1 to call, a Dr. Chauncey. He was unexpectedly unavailable
2 but they have offered his testimony through his report. His
3 report is an exhibit in this case. I have not had a chance
4 to read it. But for those who are interested I will ask and
5 cause it to be placed on our public internet site so
6 everyone can read it. It's Exhibit 51. It's now a public
7 document since it's been placed into evidence. Since those
8 who are here to learn about the case, to listen to the
9 case, whatever interest you have I think it would be only
10 fair to -- and that's why we're quitting early today to
11 allow you to read it. So it will be on our -- Exhibit 51.
12 I'm not sure how they put it on there. I haven't looked at
13 the public website in probably five years, but I know
14 there's spot there and we will put it on there and you can
15 read it.

16 We have a few other matters we'll talk about in
17 one second.

18 Tomorrow it's my understanding that Dr. Cott will
19 be coming in. We will start at 9:00 o'clock, and we're
20 going to adjourn around 2:00 o'clock. Tomorrow we probably
21 won't take a regular lunch hour. We'll take our normal
22 morning break. We'll take -- well, we'll need breaks for
23 both the court reporters and the attorneys. We'll finish
24 around 2:00 o'clock, give or take on both sides. We're in
25 no hurry. I don't want to rush anybody but I think people

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1 who come to watch should have an idea what we have on our
2 minds.

3 With that said, Ms. Stanyar you said there's some
4 other miscellaneous matters?

5 MS. STANYAR: Your comment kind is in keeping with
6 my understanding --

7 THE COURT: You've got to get to the microphone
8 because we have the news media upstairs.

9 MS. STANYAR: The Attorney General had an ongoing
10 -- and despite the stipulation regarding Dr. Chauncey, the
11 Attorney General had an ongoing relevancy objection that
12 they renewed here and it was my understanding that the
13 Court had already resolved that. There was an in limine to
14 try to keep Dr. Chauncey --

15 THE COURT: I didn't really rule on the relevancy.
16 I ruled the fact -- I haven't read his report. I haven't
17 listened to his testimony. It would be hard for me to
18 determine relevancy. But I indicated that I would allow him
19 to testify. And since -- they would have renewed their
20 motion for relevancy as he testified I'm sure. So it's not
21 waived. It would be hard for them to make until I've read
22 the report and so forth. So they have not waived -- I'm not
23 making them waive that.

24 MS. STANYAR: At whatever point you want us to
25 argue that we'll be ready to argue.

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1 THE COURT: I have not read it so I can't even
2 begin to tell you what he has to say. In fact, I just
3 looked just now realized that he's a historian. I didn't
4 even know anything about him.

5 MS. STANYAR: But we have briefed this and --

6 THE COURT: I understand. I've read the brief and
7 as I say -- okay, anything else?

8 MR. MOGILL: The State defendants also have an
9 objection as to relevancy objection to the admission of the
10 State of Michigan Department of Civil Rights report on LGBT
11 inclusion. They have stipulated to authenticity and
12 foundation. I'm prepared to address that at this point.

13 THE COURT: Again, I have it right here. I have
14 not read it. I haven't looked at it. I think it's Exhibit
15 50 if I'm not mistaken. It's part of Exhibit 50 which is
16 the stipulation regarding --

17 MR. MOGILL: Leslee Fritz.

18 THE COURT: Who was just going to authenticate it.

19 MR. MOGILL: Yes.

20 THE COURT: As soon as I get a chance to read it
21 I'm hoping -- since I have a lot of time this afternoon. In
22 fact, I have Dr. Chauncey's report right here and I was
23 going to come back and this one next so I will be prepared
24 to argue it.

25 MR. MOGILL: As Ms. Stanyar said we're prepared to

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1 argue when the Court wants to argue.

2 THE COURT: I haven't looked at it.

3 MR. MOGILL: Thank you, very much.

4 THE COURT: Then it's my understanding that after
5 Dr. Cott some time in the late afternoon tomorrow we will
6 recess for the weekend. It's my understanding that the
7 defendants in this matter intend to call -- the Oakland
8 County Clerk, Lisa Brown, will have the opportunity to go
9 first, put their case in. Then after the State will put in
10 their case and their first witness is Doctor --

11 MS. HEYSE: Sherif Girgis, your Honor.

12 THE COURT: Okay. So we're on schedule.

13 If there's nothing else, we will stand in recess.

14 (Proceedings concluded, 10:30 a.m.)

15 -- -- --

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CERTIFICATE

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

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

February 28th, 2014