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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY,)
SANDRA B. STIER, PAUL T. KATAMI,)
and JEFFREY J. ZARRILLO,)
)
Plaintiffs,)

VS.) NO. C 09-2292-VRW
)

ARNOLD SCHWARZENEGGER, in his)
official capacity as Governor of)
California; EDMUND G. BROWN, JR.,)
in his official capacity as)
Attorney General of California;)
MARK B. HORTON, in his official)
capacity as Director of the)
California Department of Public)
Health and State Registrar of)
Vital Statistics; LINETTE SCOTT,)
in her official capacity as Deputy)
Director of Health Information &)
Strategic Planning for the)
California Department of Public)
Health; PATRICK O'CONNELL, in his)
official capacity as)
Clerk-Recorder for the County of)
Alameda; and DEAN C. LOGAN, in his)
official capacity as)
Registrar-Recorder/County Clerk)
for the County of Los Angeles,)

) San Francisco, California
Defendants.) Tuesday
) January 19, 2010

TRANSCRIPT OF PROCEEDINGS

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Official Reporters - U.S. District Court

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P R O C E E D I N G S1
2 JANUARY 19, 2010

8:37 A.M.

3
4 **THE COURT:** Very well. Good morning, counsel.

5 (Counsel greet the Court.)

6 **THE COURT:** I trust you all had a pleasant 3-day
7 weekend.

8 (Laughter)

9 All right. What, if any, matters do counsel have to
10 take up with the Court?

11 Mr. Boutrous.

12 **MR. BOUTROUS:** Good morning, Your Honor. Two things
13 I wanted to put on the Court's radar screen, relating to the
14 discovery issues.15 The proponents filed a motion to amend Judge Spero's
16 January 8 order, to expand the core group for purposes of
17 discovery so that it would now reach all the way to
18 Massachusetts. And we have filed our opposition to that
19 motion.20 They -- as I understand it, proponents are
21 withholding something -- they are withholding documents that
22 would otherwise be responsive based on their expanded core
23 group.24 The second discovery issue that relates to that is,
25 we filed a motion a few minutes ago -- so I know the Court and

1 counsel haven't had a chance to review it -- seeking to reopen
2 Mr. Prentice's deposition. He is the executive director of
3 ProtectMarriage.com.

4 We received about 20,000 pages of documents from the
5 proponents over the last week, in response to Judge Spero's
6 order. And we would like the opportunity to depose
7 Mr. Prentice on those documents.

8 He is mentioned in -- there's at least 400, or so,
9 that we've identified so far, where he is a principal person on
10 those documents. And we're trying to narrow that down, but we
11 thought it would streamline things, if we do end up calling him
12 as a witness, to spare the Court our walking through all these
13 documents if we could -- if we could reopen the deposition.

14 Some of the documents, at a bear minimum, cast
15 serious doubt on his prior statements in his deposition,
16 disclaiming connections to various other groups. So we think
17 they are very relevant.

18 So those were -- those things have all just been
19 filed, on our side, this morning. And we thought it might make
20 sense, on these issues, for Judge Spero to take -- take a look
21 at them, because they relate to the proceedings that we last
22 had before Judge Spero.

23 **THE COURT:** Well, let's see. That first matter that
24 you raised, the motion re Magistrate Judge Spero's discovery
25 order, there are two -- let me see if I understand what it is

1 you are referring to specifically.

2 There is one motion which seeks to increase the core
3 group by adding -- I believe, it's four persons, three or four
4 persons: a Mr. Peterson, Richard Peterson; a Mr. Rob Worthlin,
5 who I assume is the individual we have seen in these television
6 advertisements; and a John Doe.

7 Now, is it that motion that you're referring to?

8 **MR. BOUTROUS:** Yes, Your Honor. I think it's
9 document 474 on the --

10 **THE COURT:** 474.

11 **MR. BOUTROUS:** -- Pacer system.

12 **THE COURT:** Right.

13 Now, there's also a motion challenging Magistrate
14 Judge Spero's general discovery order. That's separate.

15 **MR. BOUTROUS:** That's correct, Your Honor.

16 **THE COURT:** I think I'm ready to rule on that latter
17 motion based upon the papers. And I don't think we probably
18 need to hear anything further with respect to that.

19 But have you had an opportunity to file a reply to
20 the -- to docket number 474?

21 **MR. BOUTROUS:** Yes, Your Honor. We filed that this
22 morning.

23 **THE COURT:** All right. So why don't I take a look at
24 that, and either decide it myself or refer it to Magistrate
25 Judge Spero.

1 And are those, then, the two matters that you wish to
2 take up with the Court and have the Court rule upon, the
3 Prentice deposition and the motion that's embodied in docket
4 number 474.

5 **MR. BOUTROUS:** That's correct, Your Honor. Thank
6 you.

7 **THE COURT:** All right. Mr. Cooper. I assume you
8 want to reply to the motion to reopen the Prentice deposition.

9 **MR. COOPER:** Yes, Your Honor. We haven't seen that.
10 It's just now been --

11 **THE COURT:** Sorry?

12 **MR. COOPER:** I was advised when you were advised,
13 that it was filed. We haven't seen it and would like an
14 opportunity to look at it.

15 **THE COURT:** Of course.

16 **MR. COOPER:** And put a response in to the Court.

17 **THE COURT:** When do you think you can do that?

18 **MR. COOPER:** We can do it promptly, Your Honor.

19 **THE COURT:** "Promptly" means when?

20 **MR. COOPER:** No later than tomorrow.

21 **THE COURT:** All right. So I will have it tomorrow
22 morning?

23 **MR. COOPER:** Yes, sir.

24 **THE COURT:** All right. Well, I'll take a look at it
25 or send it to the magistrate.

1 Any other preliminary matters that we need to take up
2 at this time?

3 Hearing none, who's the next witness?

4 **MR. BOUTROUS:** Your Honor, I am going to turn it over
5 to City Attorney Dennis Herrera, who will call our first
6 witness of the day.

7 **THE COURT:** Very well. Mr. Herrera.

8 **MR. HERRERA:** Good morning, Your Honor.
9 Plaintiff-Intervenors call Mayor Jerry Sanders to the stand.

10 **THE COURT:** Who?

11 **MR. HERRERA:** Mayor Jerry Sanders.

12 **THE COURT:** By the way, I've read the deposition
13 taken by one of your deputies, Mr. Flynn. I think he needs
14 some counseling on proper objections in a deposition.

15 I think you really need to review that deposition,
16 Mr. Herrera, as the leader of your office, and do a little
17 woodshedding of some of the lawyers.

18 **MR. HERRERA:** Okay. We will take a look at it, Your
19 Honor.

20 **THE COURT:** All right.

21 **THE CLERK:** Raise your right hand, please.

22 **JERRY SANDERS,**
23 called as a witness for the Plaintiffs herein, having been
24 first duly sworn, was examined and testified as follows:

25 **THE WITNESS:** I do.

1 **THE CLERK:** Please have a seat.

2 State your name, please.

3 **THE WITNESS:** Pardon me?

4 **THE CLERK:** State your name.

5 **THE WITNESS:** Jerry Sanders.

6 **THE CLERK:** And spell your last name.

7 **THE WITNESS:** S-a-n-d-e-r-s.

8 **THE CLERK:** Your first name.

9 **THE WITNESS:** Jerry. J-e-r-r-y.

10 **THE CLERK:** Thank you.

11 **DIRECT EXAMINATION**

12 **BY MR. HERRERA:**

13 **Q.** Good morning, Mr. Sanders.

14 **A.** Good morning.

15 **Q.** You are currently the mayor of San Diego; is that correct?

16 **A.** Yes, I am.

17 **Q.** And what political party are you affiliated with?

18 **A.** I'm a Republican.

19 **Q.** How long have you been mayor, Mr. Sanders?

20 **A.** I have been mayor for four years.

21 **Q.** And what term are you in?

22 **A.** I'm in my second term.

23 **Q.** Prior to becoming mayor, did you have a career in public
24 service?

25 **A.** Yes, I did.

1 Q. What was your first job in public service?

2 A. I went onto the San Diego Police Department as a recruit
3 in 1973.

4 Q. And can you give us a brief description of the positions
5 you held in the San Diego Police Department.

6 A. I can. I graduated from the Police Academy in August of
7 1973, became a patrol officer in the city of San Diego, working
8 in many different areas and divisions of the city.

9 I was promoted to agent in 1978, and then to sergeant
10 in 1979, where I had a role in policing squads of officers in
11 different parts of the city. Also some administrative
12 assignments.

13 I became a lieutenant in 1981. Had a geographical
14 area. I also had assignments as the SWAT commander, as the
15 director of the San Diego Police Academy.

16 In 1986, I was promoted to captain, where I held two
17 assignments, two geographical areas in the city of San Diego,
18 where I was responsible for policing of about 160,000 people in
19 each of those.

20 I was promoted to commander in 1990, where I had
21 overall command of half of the city. And, then, also served as
22 an acting assistant chief in charge of internal affairs.

23 I was promoted to assistant chief, where I had
24 assignments in internal affairs, and some administrative
25 assignments. And then I was promoted to chief of police in

1 1993, and retired in 1999.

2 **Q.** Between 1999, when you retired, and 2005, when you became
3 mayor, did you have any other positions in public service?

4 **A.** Yes, I did. I was the president and CEO of the San Diego
5 County United Way, from 1999 until about 2002.

6 The United Way of San Diego took workplace donations
7 and distributed those to a wide variety of health and human
8 services throughout the San Diego region, making sure we funded
9 priorities for children, adults, all sorts of different issues.

10 I was then asked, after I left United Way, to
11 reconstitute the American Red Cross board in San Diego, which
12 had been removed by the national chapter.

13 I went on to become the chair of the board, and
14 served with the Red Cross for about two years, prior to going
15 on the national board of directors, right before I ran for
16 election.

17 **Q.** Mayor Sanders, are you gay?

18 **A.** No, I'm not.

19 **Q.** Are you married?

20 **A.** Yes, I am.

21 **Q.** For how long have you been married?

22 **A.** Been married for 16 years to my wife Rana Sampson.

23 **Q.** Do you have any children?

24 **A.** I do.

25 **Q.** How many?

1 A. I have two daughters. Lisa, 26, and Jamie, 23.

2 Q. Are your daughters from your marriage with Rana, or from a
3 previous marriage?

4 A. They are from a previous marriage.

5 Q. And you've only been married two times?

6 A. I've been married twice; the first time for 14 years.

7 Q. Are Lisa and Jamie lesbian or straight?

8 A. Jamie is straight. Lisa is a lesbian.

9 Q. What was your relationship like with Lisa, when she was
10 growing up?

11 A. Well, Lisa was my first daughter. We had a very strong
12 relationship. Excuse me. She was, basically, my shadow.

13 I was very busy on the police department, obviously,
14 with my career. I was a lieutenant when she was born. But
15 every weekend we did yardwork together, when she could barely
16 walk.

17 We'd go to Home Depot together. She probably knows
18 more about Home Depot than most kids.

19 (Laughter)

20 We would go to the dump together, on my promise that
21 I would buy her a doughnut and she could watch me remove all of
22 the trash from the truck.

23 We were pretty much inseparable over weekends, until
24 she went away to college. I actually had both daughters every
25 weekend, from the time I was divorced until they both went away

1 to college.

2 **Q.** And how did you first learn that Lisa was a lesbian?

3 **A.** Lisa called us in her -- trying not to look at my daughter
4 right now.

5 Lisa called me in her sophomore year of college, said
6 that she wanted to come home and talk with my wife and I, had
7 something she needed to discuss with us.

8 When I asked her what it was about, she said that she
9 would prefer to wait until she got home.

10 When she came home, she sat down with us and told us
11 she was a lesbian and that she was in a lesbian relationship.

12 **Q.** And what was your reaction?

13 **A.** Well, it was one where I felt overwhelming love. I
14 realized how difficult this was for her. I realized how
15 difficult it was to tell your parents that you were a lesbian.

16 I told her that I felt very strongly that we loved
17 her more than we ever would, and that we would be there to
18 support her in every step of the way.

19 But I also told her that I thought I had concerns,
20 and that I was -- I thought it was very tough on gay people in
21 society.

22 **Q.** Were you upset at all?

23 **A.** No. I was very proud of her for coming and letting us
24 know.

25 **Q.** And when you say you were concerned, why were you

1 concerned?

2 **A.** Well, I have been a police officer for 26 years. During
3 that time, I had seen what happened to people who came out, who
4 had either a gay or lesbian relationship.

5 I had -- go back to when I was a young police
6 officer. We had a sergeant on our squad. This was in the
7 early '70s. San Diego was very conservative at that time.
8 Very good sergeant.

9 He came to us and told us that he was gay. And it
10 wasn't long after that -- and I had talked with several squad
11 members. We still respected him tremendously. But that wasn't
12 long after that that he left the police department, literally
13 driven out.

14 (Simultaneous colloquy.)

15 **A.** I'm sorry. I also, through the years, have seen violence
16 against the gay community simply because people were gay.

17 We had a series of crimes that would occur in the
18 part of San Diego that had a lot of gay people there; the gay
19 bashings, the robberies. We had a death occur in the early
20 '90s, that was a part of a series of that.

21 I had seen a lot of that type of thing, and heard the
22 slurs and heard the comments that people make.

23 **Q.** Mr. Mayor, when you first ran for mayor, did you take a
24 position on the issue of marriage equality?

25 **A.** I did.

1 Q. And what was your position?

2 A. My position that I thought civil union was a fair
3 alternative.

4 Q. And why did you take that position?

5 A. Number one, to put it in context, I was running during a
6 very difficult time in San Diego's history. We were being
7 investigated by a range of federal authorities, by the SEC, by
8 the U.S. Attorney, by the attorney -- the district attorney.

9 We were facing huge financial problems. And I felt
10 that in the context of the election campaign that the issues of
11 gay marriage were not something that the city of San Diego or I
12 could have an impact on.

13 I also was a Republican, and felt that civil unions
14 was a fair alternative to marriage.

15 Q. Did there come a time when you changed your position on --

16 A. Yes.

17 Q. -- issue of marriage equality?

18 A. Yes, I did.

19 Q. And when was that?

20 A. It was in September of 2007. The City of San Diego, the
21 City Council passed a resolution to file an amicus brief on
22 behalf of the City of San Diego, supporting the City of San
23 Francisco on a lawsuit.

24 And that came to my desk, and I had to make a
25 decision whether to veto or whether to sign the resolution.

1 Q. And what was your decision?

2 A. My decision was to sign the resolution.

3 Q. Did you make a public announcement to explain the reasons
4 for your decision?

5 A. I did.

6 Q. And was that announcement videotaped?

7 A. Yes, it was.

8 Q. Is it your understanding that that videotape is widely
9 available?

10 A. It was on YouTube. I received letters and e-mails from
11 around the world, talking about seeing that on YouTube.

12 MR. HERRERA: Your Honor, at this point, I would like
13 to play Plaintiffs' Exhibit 186, which is a video recording of
14 the announcement.

15 THE COURT: Very well.

16 (Video played in open court.)

17 MR. HERRERA: I'd ask that Exhibit 186 be admitted
18 into evidence, Your Honor.

19 MR. RAUM: No objection.

20 THE COURT: 186 is admitted.

21 (Plaintiffs' Exhibit 186 received in evidence.)

22 BY MR. HERRERA:

23 Q. Mr. Mayor, you're obviously very emotional during that
24 press conference. Can you tell us why?

25 A. Well, now that we've established that I cry in public...

1 (Laughter)

2 I was extremely emotional, obviously, because of the
3 decision that I had made. I was emotional because of the fact
4 that I felt that I came very close to making a bad decision;
5 one that would affect, literally, hundreds of thousands of
6 people.

7 I came very close to showing the prejudice that I
8 obviously had to my daughter, to my staff, and to the community
9 in San Diego.

10 And I think that what hit me when I started
11 reflecting that night was that I had been prejudice, and I was
12 showing that prejudice in the position to veto that.

13 I was saying that one group of people did not deserve
14 the same dignity and respect, did not deserve the same
15 symbolism about marriage. And I was saying, in effect, that
16 their marriages were less than, were less important than the
17 marriages to heterosexual couples.

18 So all of those things came into it.

19 **Q.** Did your daughter, Lisa, talk you into signing the
20 resolution?

21 **A.** No. Quite to the contrary.

22 **Q.** What do you mean by that?

23 **A.** Lisa worked on my campaign. Lisa was with me every step
24 of the way, along with my wife and my other daughter.

25 Lisa felt that the position on civil unions was one

1 that she understood, was one that she thought the community
2 understood, and one that was probably politically palpable to
3 the base of support that I had.

4 And she felt that it was important that I be
5 reelected because I was a good mayor, in her estimation, and
6 that that was acceptable under those circumstances.

7 **Q.** What convinced you to sign the resolution?

8 **A.** Well, I -- as I said in this -- in the video, I struggled
9 with this from the time I took the position on civil unions.

10 The night before this press conference, though, I
11 invited a group of individuals from the gay/lesbian community;
12 some of them neighbors, some of them friends, some of them
13 acquaintances. And I wanted to give them the courtesy of
14 telling them that I intended to veto the resolution.

15 **Q.** And what did those individuals share with you?

16 **A.** Well, you know, I suppose what I expected was that they'd
17 say civil unions are fine. I guess I was absolutely shocked at
18 the depth of the hurt, the depth of the feeling, the depth of
19 the comments that came from them.

20 I remember one of our neighbors, who I have known for
21 quite some time, said, basically: I walk by here -- my partner
22 and I walk by here all the time, with our children. And you
23 always stop, when you are doing yardwork, and say hello to them
24 and talk to them. You know, we're a family just like you're a
25 family.

1 One of our other neighbors said that she had children
2 just like I did; they loved the children just as much; and
3 that they felt their children deserved parents, also, and they
4 deserved to have parents who were married.

5 The depth of the feeling was unbelievable. The depth
6 of the hurt. And also I could see the harm that I had done by
7 considering the veto.

8 **Q.** Did any of these individuals threaten you with any
9 political repercussions?

10 **A.** No. And this wasn't a night about politics. This was
11 literally a night where they showed the depth of their feelings
12 and the hurt.

13 And I think that's one of the things that created
14 part of the emotion the next day, as I realized how close I had
15 come to really closing the door on things that were
16 unbelievably important to them as a group of people.

17 **Q.** And as mayor, were there any other reasons why you decided
18 to sign the resolution?

19 **A.** I -- I think it's in the interest of government. And I go
20 back to being a police officer.

21 I know how easy it is to discriminate against people
22 when you hear discrimination or you hear slurs or you see
23 unequal treatment by the leadership of the department.

24 I felt very strongly that it was important we treat
25 everybody equally in our community policing, planning.

1 We went to every community in San Diego,
2 African American, Asian, Latino, gay/lesbian, and told them we
3 wanted to police them like they wanted to be policed; and we
4 wanted them to become part of that policing.

5 I know that it's also difficult if you're in a
6 relationship and you can't talk about it at work. You can't
7 tell people that you have a partner, or you can't tell people
8 that you're married and you have children, if you're a gay or a
9 lesbian.

10 All of those things, I think, are important on the
11 government's side, because if government tolerates
12 discrimination against anyone for any reason, it becomes an
13 excuse for the public to do exactly the same thing.

14 And I think that, as I look back on San Diego being a
15 fairly conservative place, very different than San Francisco,
16 discrimination took the form of violence against the gay
17 community. And I don't think that's in government's interest
18 for the community. I don't think it's in government's interest
19 for governing itself.

20 **Q.** Now, you testified that governmental discrimination could
21 possibly foster private discrimination.

22 In your experience as a police officer, are hate
23 crimes a form of private discrimination?

24 **A.** Well, I think hate crimes are the most extreme form of
25 discrimination. Hate crimes are perpetrated on people solely

1 because of their skin color, their religious beliefs, or their
2 sexual orientation. And that's frequently -- a hate crime is
3 frequently part of the violence. It's violence simply because
4 that person is not like somebody else.

5 And I think that when a city, when leadership talks
6 in disparaging terms about people, or denies the rights that
7 everybody else have, the fundamental rights, then I think some
8 people in the community feel empowered to take action in hate
9 crimes and in other ways.

10 **Q.** And during the time that you were police chief, what was
11 your experience with how the police department dealt with hate
12 crimes in San Diego?

13 **A.** Well, I think our department, like a lot of departments,
14 didn't like to admit that there were hate crimes.

15 We came a long way during that period of time, where
16 we created a hate crimes unit, where the district attorney did.

17 But, I have to tell you, in the early days there were
18 a lot of hate crimes. There were gay bashings, where young men
19 would go out and get drunk and feel no problem at all with
20 bashing people who they thought were gay people, whether they
21 were or not.

22 I can remember one circumstances where we had a
23 series of robberies that culminated in the death of a young gay
24 man simply because he was gay.

25 I can remember after 2006, after the pride parade,

1 the pride celebration, an individual who decided that he could
2 take it upon himself to punish the entire community by bringing
3 a baseball bat and literally beating one man almost to death,
4 and beating several others.

5 Q. And that hate crime that you just referred to in 2006,
6 that was during your term as mayor, correct?

7 A. Yes, it was.

8 Q. Mr. Mayor, at the beginning of your public career, were
9 you as sensitive to the concerns of the gay and lesbian
10 community as you are now?

11 A. No, I wasn't.

12 Q. How were you different?

13 A. Well, I -- I can't say that I was different from a lot of
14 other people. I was a young cop in the early '70s. I
15 participated in the slurs in the locker room and line-ups.

16 I think what really turned my opinion was when I saw
17 the sergeant -- excuse me, the sergeant who admitted he was
18 gay, was a good sergeant, was a good police officer, and then
19 felt the -- the discrimination from the rest of the department
20 that literally drove him out. I felt that, fundamentally, that
21 was not right.

22 Throughout my career on the police department, it was
23 not easy to come out of the closet for gay and lesbians.
24 People we knew were gay and lesbian would not come out of the
25 closet. They felt that their careers would be over. They felt

1 that they would be treated differently.

2 My chief of staff came to me when I became the chief
3 of police and said, "There's something I need to tell you. And
4 I don't know whether it's going to affect your decision on
5 whether to have me or not, but I'm a lesbian. And I'm not
6 going to come out of the closet because I don't think it's in
7 my best interest, because people will see me only as a lesbian
8 and not as your chief of staff."

9 So I think it was very tough for people on the police
10 department, as it was in the rest of society.

11 **Q.** Mr. Mayor, earlier you said that the reason -- one of the
12 reasons, at least, that you were so emotional at the press
13 conference is that you felt like you had been prejudiced.

14 And I just have to ask you, how can someone who has
15 been as committed to equality for all people be prejudiced
16 against anyone?

17 **A.** I guess that was really a defining moment for me. I had
18 been on the National Conference for, at the time, Christians
19 and Jews, for ten years on the board directors. Later became
20 the National Conference for Community and Justice. I had been
21 the board chair for two years. I had participated in diversity
22 workshops, diversity weeks, with high schools. I had gone
23 through all these issues.

24 I had participated in two rounds of diversity
25 training with the City, 4-day workshops, where we talked about

1 all these issues. And, yet, the fact that I still believed
2 that civil unions were equal to marriage, I think, really kind
3 of shook me, because I think that the decisions I made on that
4 were grounded in prejudice.

5 It didn't mean I hated gay people. Didn't mean I
6 didn't think the community was equal in every way. It simply
7 meant that I hadn't understood the issue clearly enough, and I
8 was discriminating even against my own daughter by saying that
9 her relationship was less than the relationship and marriage my
10 wife and I had.

11 **Q.** Is your daughter, Lisa, in a romantic relationship now?

12 **A.** Yes.

13 **Q.** With whom?

14 **A.** With Meagan.

15 **Q.** And how long have you known Meagan?

16 **A.** Known Meagan for two or three years.

17 **Q.** And can you describe your relationship with her?

18 **A.** I love being with Meagan. She is like a third daughter.
19 She is great to be around. She's smart. She's resourceful.
20 She's energetic. She's hardworking.

21 She has been an excellent partner for my daughter.
22 And I love being around both of them. But Meagan is like
23 another piece of the family, and has been.

24 **Q.** Did Lisa and Meagan ever become domestic partners?

25 **A.** They did.

1 Q. Do you know when that was?

2 A. It was in July of 2009.

3 Q. And do you know if they had a ceremony to celebrate their
4 domestic partnership?

5 A. No, they didn't.

6 Q. Did they tell you beforehand that they were going to
7 become domestic partners?

8 A. No. I got a text from Lisa one day, saying that they had
9 got the DP taken care of a couple of days ago.

10 (Laughter)

11 And I texted back saying, What in the world is a DP?
12 That's when I learned that they had gone down to either the
13 state or county -- I'm still not sure -- to get a domestic
14 partnership paperwork filled out so that they could share
15 benefits.

16 Q. So you didn't go with them to register as domestic
17 partners?

18 A. You know, I don't think that's really an exciting thing to
19 do...

20 (Laughter)

21 ... to go to a state or county building and watch
22 someone fill out forms.

23 Q. Did Lisa and Meagan send out announcements when they
24 became domestic partners?

25 A. No.

1 Q. Did anyone congratulate you on the fact that they had
2 become domestic partners?

3 A. No.

4 Q. Let me ask you, as Lisa's father, do you believe domestic
5 partnership is sufficient for her?

6 A. No, I don't.

7 Q. Why not?

8 A. I believe my daughter deserves the same opportunity to
9 have a wedding in front of family and friends and co-workers.
10 I believe she has -- she should have the same opportunity to
11 have that recognized lawfully. I believe that as a gay couple
12 they should have the same right as a heterosexual couple in the
13 marriage. I think we deserve or she deserves to have that.

14 Q. Did Lisa and Meagan ever get married?

15 A. They did, in December of 2009, about a month ago.

16 Q. Where did they get married?

17 A. They got married in Vermont. They went back to visit
18 Meagan's parents in upstate New York. And they felt strongly
19 they wanted some marriage certificate from some government,
20 acknowledging that they were a married couple.

21 And they went to Vermont, the two of them went to the
22 county courthouse in a city there. The city clerk said, I'll
23 have to find somebody to marry you, a justice of the peace. He
24 said, basically, we have a justice of the peace who has a
25 funeral in the afternoon, but I think she can do a wedding in

1 the morning.

2 (Laughter)

3 And they went over to her house. She was prepared
4 for the funeral, but didn't have her shoes on. And she married
5 the two of them in her front room.

6 Q. Were you there?

7 A. No, I wasn't.

8 Q. How did you learn of it?

9 A. Lisa phoned me and told me that they had gotten married.

10 Q. And how did that make you feel?

11 A. It made me feel pretty bad that they had to go across the
12 country and be married in somebody's front room, by somebody
13 who was preparing to do a funeral; be married without family
14 and friends.

15 Q. Did anyone congratulate you on your daughter getting
16 married?

17 A. A lot of people congratulated me. I believe Mr. Chandler
18 congratulated me during the deposition. I appreciated
19 Mr. Chandler's congratulations.

20 Q. Has the marriage between Lisa and Meagan harmed your
21 marriage in any way?

22 A. Uhm, I think that what it has done is make my wife and I
23 stronger. But it has not harmed our marriage. It's not harmed
24 anybody in our family's marriage. I don't believe it's harmed
25 anybody in the world.

1 I think Lisa and Meagan have been an excellent
2 example for us of persevering, loving each other, and being
3 willing to go to great lengths to show that.

4 **Q.** Mr. Mayor, during the course of the Proposition 8
5 campaign, did you see any Yes On 8 campaign signs that made
6 reference to protecting the children?

7 **A.** Yes, I did.

8 **Q.** What did you see?

9 **A.** I suppose what I saw was what everybody else saw, signs
10 that said "Yes On 8" and then showed little children, cutouts,
11 paper dolls. I'm not sure what the symbolism was involved.
12 But that's what I saw.

13 **Q.** And how did that make you feel?

14 **A.** Well, I couldn't imagine why anyone would think that
15 children would be harmed by marriage. I couldn't imagine how
16 Lisa and Meagan would -- could by any way harm anybody else.

17 I couldn't imagine why children would have to be
18 protected from my daughter, Lisa, who is one of the kindest and
19 most compassionate people that I know.

20 So that was the feeling I had, was, I have a loving
21 daughter, kind, compassionate, and yet somehow society has to
22 be protected -- the children in society need to be protected
23 from her.

24 **Q.** Are Lisa and Meagan planning to have children?

25 **A.** I don't know. But I would certainly like to be a

1 grandfather.

2 (Laughter)

3 **MR. HERRERA:** Nothing further, Your Honor.

4 **THE COURT:** Very well. Cross-examine, Mr. Raum.

5 **MR. RAUM:** Thank you, Your Honor. We've got a few
6 binders to distribute.

7 **CROSS EXAMINATION**

8 **BY MR. RAUM:**

9 **Q.** Good morning, Mayor Sanders.

10 **A.** Good morning.

11 **Q.** My name is Brian Raum. It's nice to meet you.

12 Mr. Mayor, you spent the first 26 years or you spent
13 26 years of your career involved with the San Diego Police
14 Department; is that right?

15 **A.** That's correct.

16 **Q.** And during that 26 years, you saw a decrease in the amount
17 of discrimination within the department against gays and
18 lesbians. Would that be fair to say?

19 **A.** That would be fair to say, that we worked very hard on
20 that issue, and I believe that's true.

21 **Q.** And, in fact, you made specific efforts to improve the
22 Department's relationship with the gay and lesbian community?

23 **A.** Yes, I did.

24 **Q.** And the San Diego Police Department's relationship with
25 the gay and lesbian community improved over time?

1 **A.** Yes, I believe it has.

2 **Q.** And, currently, you would acknowledge that the San Diego
3 Police Department is supportive of the gay and lesbian
4 community?

5 **A.** I would say that they're fair in their treatment of the
6 gay and lesbian community, as we are with treatment in every
7 community in San Diego.

8 **Q.** Would you agree that, in a broad sense, generally
9 speaking, that the San Diego government is more accepting of
10 the gay and lesbian community today than it was in the past?

11 **A.** I believe that it is more accepting, yes.

12 **Q.** And the City has specifically trained and worked with its
13 employees to make sure that they convey respect and dignity to
14 the gay and lesbian community?

15 **A.** Uhm, we have worked to make sure that we have our
16 employees convey dignity and respect to every community in
17 San Diego, whether it's the African American community, the
18 Latino community, the Asian community, or the gay and lesbian
19 community.

20 **Q.** And there are several open-gay politicians in San Diego;
21 is that fair to say?

22 **A.** I would say that there are two on the city council. One
23 in the state senate.

24 **Q.** And Mr. -- I'm sorry, Ms. Kehoe, she is in the state
25 senate?

1 A. She is our senator.

2 Q. Toni Atkins is on the city council?

3 A. No, she is not. She was on the previous council.

4 Q. In fact, she termed out. That's why she's not on the
5 council anymore?

6 A. Right.

7 Q. What about Todd Gloria, is that one of the other
8 individuals that you were referring to on the city council?

9 A. Todd Gloria is on the city council, yes.

10 Q. And Carl DeMaio?

11 A. Carl DeMaio is on the city council, also.

12 Q. So out of the eight current members, two of those members
13 identify as gay?

14 A. Yes, they do.

15 Q. You would say, as a whole, the city council is responsive
16 to the needs of the gay and lesbian community, correct?

17 A. I would say, as a whole, that each city council member
18 individually decides the issues that are important to that
19 person and their community.

20 Q. I'd like to draw your attention to tab 1, which is your
21 deposition transcript, dated January 5th, 2010. Do you see
22 that?

23 A. Yes, I do.

24 Q. And if you could turn to page 38.

25 A. Yes, sir.

1 Q. Starting on line 22, you were asked:

2 "QUESTION: As a whole, do you think that the
3 council is responsive to the needs of the gay
4 and lesbian community?"

5 A. I do, along with every other community.

6 Q. And your answer was:

7 "I do."

8 A. I do.

9 Q. Now, Bonnie Dumanis --

10 A. Yes.

11 Q. -- she serves as the district attorney for San Diego?

12 A. Yes, she is.

13 Q. And she identifies as a lesbian?

14 A. Yes, she does.

15 Q. And you've indicated that you've met a couple of state
16 assembly members who also identify as gay; is that correct?

17 A. That's correct.

18 Q. Would you agree with that activists for the gay and
19 lesbian community have been effective in some of their
20 political efforts in San Diego?

21 A. I don't know that those came because of activism. I only
22 know of one issue that's really come before us, and that's been
23 the gay marriage issue.

24 Q. I'd like to draw your attention to page 41 of your
25 deposition transcript, starting with line 6:

1 **"QUESTION:** You talked earlier about some
2 community activists in the gay and lesbian
3 community that you know. Would you describe
4 their efforts as being effective within the
5 San Diego community?"

6 And your answer was:

7 "You know, I suppose, on certain issues they
8 have been effective. Certainly, on some
9 issues they haven't been."

10 Do you remember testifying to that?

11 **A.** I do.

12 **Q.** And you would agree that on certain issues that certain
13 activists have been effective in their efforts to support the
14 gay and lesbian community?

15 **A.** I'll go back to what I just said. There has only been one
16 issue that's come before the council that was directly gay or
17 lesbian related, since I've been there. And that is this
18 issue.

19 **Q.** I see. What were you referring to in your deposition when
20 you said they have been effective on certain issues?

21 **A.** I think that they represent a class of people. But I
22 don't know of anybody -- I mean, we don't provide health and
23 human services in the city of San Diego. We are not a county.
24 We don't provide funding for those services.

25 So when I was talking about this, we have seen

1 activism in the community. But, really, issues don't come in
2 front of the City of San Diego. They would go in front of the
3 County of San Diego, because they do the funding for the
4 HIV/AIDS programs, for all these other programs.

5 **Q.** So were you referring to activists being effective at the
6 county level; is that what you were referring to?

7 **A.** Well, I'm talking about overall. I don't know how
8 effective they are at the county. That's not within my area.

9 But I think that they have brought forward issues --
10 or, excuse me, on this issue. I know that they have brought
11 forward issues at other levels, on terms of health and human
12 services.

13 **Q.** And you indicated that in some respect they have been
14 effective and in other respects they haven't been effective.
15 That's what you testified to earlier, correct?

16 **A.** That's correct.

17 **Q.** Just like any other political group, some issues they are
18 effective and some issues they are not?

19 **A.** We are not talking about politics here. We are talking
20 about people who are trying to get health and human services.

21 **Q.** Well, I'm asking you specifically about your testimony.

22 (Simultaneous colloquy.)

23 **A.** And what I guess what I'm saying is, I'm not saying it's a
24 political group.

25 **Q.** I see. You are referring to activists as separate and

1 apart from political groups?

2 **A.** I believe you just said "as a political group."

3 **Q.** I'm asking you what you think. Do you think that the
4 activists that you referred to in your deposition, at page 41,
5 are separate and apart from political groups?

6 **A.** I do.

7 **Q.** You would agree that most of the organizations that you've
8 been involved with are generally supportive of the gay and
9 lesbian community, correct?

10 **A.** No, I wouldn't.

11 **Q.** You would not?

12 **A.** No.

13 **Q.** I'd like to draw your attention to page 45 of your
14 deposition transcript. Starting at line 24:

15 **"QUESTION:** The other organizations that
16 you've been involved with, either working for
17 or on the board, have any of them not been
18 supportive of the gay and lesbian community?

19 **"ANSWER:** I don't know that some of them
20 serve or don't serve. I believe most of
21 them. If asked, they are generally
22 supportive."

23 You stated that in your deposition; did you not?

24 **A.** I did.

25 **Q.** Mayor Sanders, for three years you served as the chief

1 executive officer of and president of the United Way of
2 San Diego, correct?

3 **A.** That's correct.

4 **Q.** And during that time, the United Way contributed funds to
5 nonprofit organizations that worked with the gay and lesbian
6 community, among other things?

7 **A.** We provided funding for a wide variety of health and human
8 services throughout San Diego County.

9 **Q.** Including services that help the gay and lesbian
10 community, correct?

11 **A.** Including services that helped every community, including
12 the gay and lesbian community.

13 **Q.** Thank you.

14 And you participated in the campaign against
15 Proposition 8, correct?

16 **A.** Yes, I did.

17 **Q.** In fact, you went to a couple of fundraisers in support of
18 No On 8?

19 **A.** I did.

20 **Q.** And you went to a few rallies in support of No On 8?

21 **A.** I did.

22 **Q.** And, in addition to yourself, there were other state and
23 local politicians who campaigned against Proposition 8,
24 correct?

25 **A.** I know of a couple. I don't know how many.

1 Q. You would also agree that there were particular religious
2 leaders who campaigned against Proposition 8?

3 A. Campaigned against Proposition 8?

4 Q. Yes.

5 A. I don't know the names of those. I know there were a few
6 religious leaders. Very few.

7 Q. Now, there was a time that you supported civil unions, as
8 you previously testified, correct?

9 A. That's correct.

10 Q. And that was your position when you were elected in 2005?

11 A. That's correct.

12 Q. And during that campaign in 2005, you made specific
13 efforts to reach out to the gay and lesbian community, correct?

14 A. Yes.

15 Q. For example, you appeared at the San Diego Gay Pride
16 Parade?

17 A. Yes, I did.

18 Q. In fact, you had done that approximately ten times,
19 correct?

20 A. Yes.

21 Q. And during the 2005 campaign, you participated in two
22 debates at the San Diego Gay Bisexual Community Center?

23 A. Yes.

24 Q. And after you were elected, you appointed three openly-gay
25 individuals to your personal staff?

1 A. I did.

2 Q. That was Fred Sainz?

3 A. Fred Sainz.

4 Q. Jeff Gattas?

5 A. Yes.

6 Q. And George Biagi?

7 A. Yes.

8 Q. And you also, in 2006, selected an openly-gay fire chief,
9 a Tracy Jarman, correct?

10 A. I did.

11 Q. And Ms. Jarman was unanimously approved by the city
12 council?

13 A. Yes.

14 Q. And, at that time, during 2005 and 2006, when you were a
15 mayor, you respected the gay and lesbian community?

16 A. I respected every community.

17 Q. Including the gay and lesbian community?

18 A. Including the gay and lesbian community.

19 Q. And you seriously considered and attempted, at least, to
20 address the needs of the gay and lesbian community?

21 A. In what way are you talking about?

22 Q. Well, I'm asking. Did you, during your time as mayor
23 during 2005 and 2006, attempt to address the needs of the gay
24 and lesbian community?

25 A. I attempted to address the needs of every community. I --

1 we don't have a monolithic community. We have issues in every
2 community; whether it's planning, whether it's housing, whether
3 it's resources. I worked with every single community in
4 San Diego, to try to address their needs.

5 **Q.** And you were willing to consider the needs that were
6 brought to you from the gay and lesbian community at that time,
7 correct?

8 **A.** I'm sorry?

9 **Q.** Were you willing to address the needs that were brought to
10 you by the gay and lesbian community, at that time in 2005 and
11 2006?

12 **A.** You know, I talked to individuals. I don't know that
13 there's a gay/lesbian coalition. I met with individuals who
14 may have been gay or lesbian, who brought forward issues. But
15 I was always willing to work on issues from any individuals who
16 brought those in.

17 **Q.** I would like to draw your attention to page 53 of your
18 deposition transcript, starting on line 17. Do you see that?
19 Are you there?

20 **A.** Yes.

21 **Q.** You were asked the question:

22 "So at that time, at the time you were
23 elected in 2005, did you consider yourself an
24 ally of the gay and lesbian community?

25 **"ANSWER:** I considered myself to be someone

1 who respected the community.

2 **"QUESTION:** And were you willing to consider
3 the needs that they brought to you?

4 **"ANSWER:** Yes."

5 You made that -- you gave that testimony; did you
6 not?

7 **A.** I did.

8 **Q.** Now, during that time, also, you had good friends from the
9 gay and lesbian community, correct?

10 **A.** I'm sorry, I didn't understand the question.

11 **Q.** Sure. During 2005 and 2006, you had good friends from the
12 gay and lesbian community?

13 **A.** I do.

14 **Q.** And in 2003, you had found out that your daughter, Lisa,
15 identified as a lesbian?

16 **A.** Yes, I did.

17 **Q.** And you weren't disappointed with that?

18 **A.** No. As a father, I was happy that she found somebody that
19 she was close to and had a relationship. I think that's the
20 way fathers feel.

21 **Q.** You weren't upset in any way?

22 **A.** I was upset only from the perspective that I expressed
23 earlier that I was concerned about how tough it is to be a gay
24 or a lesbian in a relationship or to be open and out.

25 **Q.** You indicated that you were fine with it?

1 **A.** I was absolutely -- I loved my daughter very much, and I
2 respect her as an individual, and I love her. And whatever
3 choice she makes is one that I would be willing to support.

4 **Q.** The fact is, you were comfortable with it, and your
5 primary concern was that she was happy, right?

6 **A.** Right.

7 **Q.** But, at the same time, during that period, you supported
8 civil unions as a reasonable alternative to same-sex marriage,
9 correct?

10 **A.** I did.

11 **Q.** And you didn't think that was a position that was hostile
12 to the gay and lesbian community, did you?

13 **A.** No, I didn't.

14 **Q.** And your daughter, Lisa, understood your position,
15 correct?

16 **A.** My daughter, Lisa, said she understood it, yes.

17 **Q.** And despite the fact that you supported civil unions as a
18 reasonable alternative to same-sex marriage, you don't believe
19 that you communicated hatred to the gay and lesbian community,
20 do you?

21 **A.** I don't believe -- I feel like my thoughts were grounded
22 in prejudice. But I don't believe I felt hatred. I don't
23 believe that I communicated hatred. But, in retrospect, I do
24 believe it was grounded in prejudice.

25 **Q.** Instead, you thought that civil unions were a fair and

1 reasonable alternative to marriage, correct?

2 **A.** At the time, yes.

3 **Q.** And your belief that civil unions were a reasonable and
4 fair alternative to same-sex marriage, it wasn't based on any
5 moral disapproval of gays or lesbians, right?

6 **A.** No. As I said, it was grounded in prejudice, from my
7 perspective now.

8 **Q.** And you indicated earlier that you thought that civil
9 unions were a reasonable alternative because, at that time at
10 least, you believed that they were equal to marriage?

11 **A.** Yes.

12 **Q.** And you believed that even today people can distinguish
13 between civil unions and same-sex marriage on reasonable
14 grounds that are not based in animus or ignorance?

15 **A.** I'm not sure what you mean by "animus." You would have to
16 help me with that.

17 **Q.** What do you mean by "animus"?

18 **A.** I consider animus --

19 **MR. HERRERA:** Objection, Your Honor. Calls for a
20 legal conclusion.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** I consider animus to be hatred or
23 bigotry.

24 **BY MR. RAUM:**

25 **Q.** And you believe that reasonable people can disagree on the

1 issue of civil unions versus same-sex marriage, and that
2 disagreement is not necessarily based on animus or ignorance?

3 **A.** I believe it's not based on -- it can be a situation where
4 it's not based on animus. That doesn't mean that I don't
5 believe it's grounded in prejudice.

6 **Q.** And you believe that prejudice is when you treat a class
7 of people differently, correct?

8 **A.** Yes.

9 **Q.** Now, you also believe that people voted in favor of Prop 8
10 because they, like you in 2005, viewed civil unions as a fair
11 and reasonable alternative to marriage, correct?

12 **A.** I don't believe that that's exactly what I said.

13 **Q.** Well, let's look at what you said in your deposition, at
14 page 68. Starting in line 4:

15 **"QUESTION:** Okay. Do you think it's possible
16 that -- that someone could" --

17 **A.** I'm sorry, I'm not on the same. I've got -- you said 58?

18 **Q.** No, page 68.

19 **A.** Okay.

20 **Q.** Starting on line 4, you were asked:

21 **"QUESTION:** "Okay. Do you think it's
22 possible that -- that someone could have
23 voted in favor of Proposition 8 because they
24 believed that civil unions were a fair
25 alternative to marriage?"

1 You answered:

2 "I do believe some people did.

3 **"QUESTION:** Okay. Let's step back for a
4 minute. Did you participate in any way in
5 campaigning for or against Proposition 8?

6 **"ANSWER:** Yes.

7 "In what way did you participate?

8 "I participated trying to make sure that
9 Proposition 8 was defeated."

10 Now, in your participation in opposing Prop 8, did
11 you encounter people who believed that civil unions were a fair
12 and reasonable alternative to same-sex marriage?

13 **A.** I believe I probably encountered some. And I still
14 believe that their feelings were grounded in prejudice. I
15 don't believe that they realized what they were saying.

16 I don't see that that makes them hate people. I
17 don't think it makes them a bigot. But I think that what
18 they're saying is that an entire class of people do not deserve
19 the same relationship as a heterosexual couple.

20 **Q.** But in 2005, you didn't hold that view, did you?

21 **A.** No, I didn't. I felt that civil unions were a reasonable
22 alternative.

23 **Q.** And a big part of the base that you were relying on for
24 your election in San Diego felt that civil unions were a
25 reasonable alternative to same-sex marriage, correct?

1 **A.** I believe so. Some of them did, at least.

2 **Q.** Well, you indicated that you thought a big part of the
3 base believed that?

4 **A.** I believe a large part of the base did, yes.

5 **Q.** And you would also agree that some people can be
6 religiously opposed to same-sex marriage, without having any
7 hostility or animus towards gays or lesbians?

8 **A.** That is absolutely right. They don't have to have animus
9 or hostility. That doesn't mean that decision is not grounded
10 in prejudice, though.

11 **Q.** And you would agree that there are people who have sincere
12 religious beliefs on both sides of this debate, correct?

13 **A.** I do.

14 **Q.** I would like to draw your attention to what's been marked
15 as DIX1475. It's at tab 3 in your binder.

16 Did you find that?

17 **A.** Yes, I did.

18 **Q.** And do you recall having been shown this particular
19 document at your deposition?

20 **A.** Briefly, yes.

21 **Q.** Okay. And this document was written by Mr. Blankenhorn.
22 Do you recall that?

23 **A.** I do.

24 **Q.** Now -- and you read this at the deposition. You were
25 asked some questions about it, correct?

1 **A.** I was asked some questions. I don't know that I read it
2 thoroughly. It was presented to me, and then I was asked
3 questions.

4 **Q.** Okay. Now, I represent to you that Mr. Blankenhorn, who
5 is the author of this article, argues that redefining marriage
6 to include same-sex couples would undermine the purposes of
7 ensuring that, insofar as possible, children would be raised by
8 the man and woman whose sexual union brought them into the
9 world.

10 Do you recall that being the subject of this article?

11 **A.** Generally, yes.

12 **Q.** Okay. And would you agree that it's possible that people
13 voted for Proposition 8 based on the reasons that are
14 articulated in this particular article?

15 **A.** I believe that some people could say that. Once again, I
16 believe that their feelings would be grounded in prejudice and,
17 obviously, misinformation.

18 **Q.** Because you disagree with the premise that's put forward
19 in this particular article?

20 **A.** Well, it's not the premise. It's what we see in reality.
21 Many children are not raised by biological parents. They are
22 raised by one parent or another, or they are foster children.

23 So, I mean, this is supposing that everybody had had
24 a marriage, where both partners were there throughout the
25 upbringing of their children, all through the children's life.

1 Q. Well, this article puts forth the idea that, all things
2 being equal, that the best-case-scenario for kids is to be
3 raised with their biological mother and father.

4 You disagree with that premise?

5 A. You know, I think all things equal. But I also was a cop
6 for 26 years, and I know there are a lot of children who did
7 not benefit from child abuse, from child neglect, by biological
8 parents. So I don't know that we can say "all things being
9 equal."

10 Q. Okay. So you disagree with the premise that's being put
11 forth by Mr. Blankenhorn?

12 A. I do.

13 THE COURT: Is DIX1475 in?

14 MR. RAUM: This is --

15 THE COURT: Is it in evidence?

16 MR. RAUM: Yes, it is, Your Honor. It was admitted
17 into evidence on Thursday, in connection with Dr. Cott.

18 THE COURT: Very well.

19 MR. RAUM: Professor Cott, I should say.

20 BY MR. RAUM:

21 Q. Would you also agree that some people who voted in favor
22 of Proposition 8 did so simply to preserve the historical
23 tradition of marriage in this country?

24 A. I would believe that some people possibly voted that way.
25 I don't really know.

1 But, once again, if they did, I would think that
2 would be grounded in prejudice.

3 **Q.** And some people may have voted for Proposition 8 because
4 they feel that marriage is tied to procreation. Would you
5 agree with that?

6 **A.** I would agree that some people could say that. I don't
7 really know their reasoning behind that.

8 **Q.** And you agree that there are many reasons why people voted
9 for and against Proposition 8?

10 **A.** I do.

11 **Q.** And among these many reasons are reasons that are grounded
12 in good faith beliefs in marriage between a man and a woman?

13 **A.** I believe that good faith beliefs don't negate the fact
14 that they are grounded in prejudice, which means that one group
15 of people are being treated entirely differently simply because
16 of their sexual orientation.

17 Whether you have a grounded belief or not, I don't
18 think negates that.

19 **Q.** And I understand that's your position. But, nonetheless,
20 you believe that certain people, in good faith, could disagree
21 with that position that you've just articulated?

22 **A.** I believe that some people could. But I can't interpret
23 what they do.

24 **Q.** In fact, you shared that sentiment at one time; did you
25 not?

1 **A.** I proposed civil unions as being a reasonable alternative,
2 and admitted earlier that that was grounded in prejudice.

3 **Q.** But at the time that you believed it, you didn't think it
4 was prejudice, did you?

5 **A.** No, I didn't.

6 **Q.** Now, you're currently serving your second term as mayor of
7 San Diego, right?

8 **A.** Yes, I am.

9 **Q.** And you've been involved in at least two political
10 campaigns, running for mayor.

11 **A.** Yes, I have.

12 **Q.** And you've also been involved in, to some degree, the
13 Proposition 8 campaign?

14 **A.** Very peripherally.

15 **Q.** Well, you indicated that you spoke at -- attended rallies?

16 **A.** I think attending a couple of rallies and going to a
17 couple of fundraisers is peripherally. I wasn't an advisor. I
18 didn't participate in the campaign in that way.

19 **Q.** I see. I would like to draw your attention to tab 4.

20 This has been marked as DIX2618. It's an article
21 dated October 14th, from the *San Francisco Chronicle*, entitled
22 "A Lesson in Political Naivete."

23 Do you recall seeing this particular article at your
24 deposition?

25 **A.** Yes, I do.

1 Q. Do you recall that this article recounts an event where
2 first grade students were taken out of their class and brought
3 to a lesbian wedding during school hours?

4 A. Uhm, as I recall -- and I'm going to tell you, I read this
5 very briefly when questioning occurred at the deposition --
6 that the mayor conducted a wedding, and a first grade class of
7 the teacher also attended.

8 Q. And when you say "the mayor," you are talking about
9 Mayor Gavin Newsom, correct?

10 A. Yes.

11 Q. And you don't think that this particular event, in other
12 words, taking a class of first grade students to a same sex
13 wedding, was a good public relations move for the No On 8
14 campaign; do you?

15 A. I don't think the way it was portrayed was, no.

16 Q. Because you think it was portrayed as -- in a way that
17 didn't give the proper image to the sanctity of marriage,
18 correct?

19 A. That's correct.

20 Q. And you would agree that this event could have hurt the No
21 On 8 campaign in its efforts to oppose Proposition 8, correct?

22 A. I think in the way it was presented it could have.

23 Q. Now, you testified earlier about your support of what's
24 been referred to as hate crimes legislation?

25 A. Yes.

1 Q. And at the time you indicated that, today when you
2 testified, you indicated that crimes that are committed because
3 of someone's race and sexual orientation should be given
4 additional punishment, correct?

5 A. No, I didn't. And I didn't say that -- I'm sorry. I
6 didn't say that I supported hate crimes legislation. I said I
7 was opposed to the hate crimes, and we worked very hard to
8 eliminate those.

9 Q. So you don't support hate crimes legislation?

10 A. I certainly do. But I didn't say that earlier --

11 Q. Oh.

12 A. -- is what I'm saying.

13 Q. Excuse me. Excuse me.

14 And you would also agree that crimes should not be
15 committed against individuals because of their religion,
16 correct?

17 A. I would.

18 Q. I'm sorry?

19 A. I would.

20 Q. I'd like to draw your attention to Exhibit DIX1107.

21 It is a video that was produced by
22 ProtectMarriage.com.

23 **MR. HERRERA:** I'm going to object to this, Your
24 Honor, on the grounds of, I really don't understand what the
25 relevance is of it.

1 **THE COURT:** Is this already in evidence?

2 **MR. RAUM:** No, Your Honor.

3 **THE COURT:** Okay.

4 **MR. RAUM:** The mayor testified to the fact that he
5 absolutely opposes any kind of violence against individuals
6 because of their particular race or sexual orientation. He
7 also agrees that that would include crimes that are committed
8 in connection with religion.

9 And we'd like to just show him this particular video,
10 because he's indicated that he's watched particular
11 advertisements in connection with the Prop 8 campaign and has
12 been upset by certain things that ProtectMarriage.com put out.

13 And this is one of the things that
14 ProtectMarriage.com put out, and we would like to get his view
15 on what's depicted in this particular video.

16 **THE COURT:** Is this a video that he has already seen?

17 **MR. RAUM:** Yes.

18 **THE COURT:** He has seen it?

19 **MR. RAUM:** Yes, he has seen it in his deposition.

20 **MR. HERRERA:** I don't know if that's true, Your
21 Honor.

22 **MR. RAUM:** I will represent to the Court that he was
23 played this in his deposition. And it's at page 87.

24 **THE COURT:** All right.

25 **MR. RAUM:** Line 12.

1 **THE COURT:** All right. It appears to have been
2 played at the deposition.

3 You may proceed.

4 **MR. RAUM:** Thank you, Your Honor.

5 (Audio recording played in open court.)

6 **THE COURT:** Excuse me. Is this a video, or just an
7 audio?

8 **MR. RAUM:** No, it's a video. It's just not coming up
9 on the screen.

10 **THE COURT:** Let's back it up and play it again.

11 (Audio played in open court.)

12 **MR. HERRERA:** Your Honor, I'm going to renew the
13 objection on the ground the only -- I don't know what the
14 relevance is. And the witness only saw it at his deposition,
15 and at no other time.

16 **THE COURT:** Objection overruled.

17 **BY MR. RAUM:**

18 **Q.** Mayor Sanders, you would agree that it's wrong for people
19 to suffer violence as a result of their political views; would
20 you not?

21 **A.** I would.

22 **Q.** And, in fact, you would think that -- you do think that
23 violent behavior against someone who disagrees with your
24 political position is not a political -- politically effective
25 strategy, correct?

1 **A.** Correct.

2 **Q.** And you don't think that vandalizing the property of
3 someone who disagrees with your political position is an
4 effective political strategy, either; do you?

5 **A.** That's my personal belief, yes.

6 **Q.** And you would advise people involved in a political
7 campaign that they shouldn't steal campaign signs, right?

8 **A.** On both sides.

9 **Q.** And you would advise the people involved with the No On 8
10 campaign not to engage in any violent behavior or intimidation
11 against political opponents, correct?

12 **A.** I didn't advise either campaign.

13 **Q.** That wasn't my question.

14 But, you would have advised the No On 8 campaign
15 people not to engage in any violent -- in any violent or
16 intimidation against the supporters of Prop 8, correct?

17 **A.** I would have advised both groups not to do that.

18 **Q.** And the reason that you would have advised against the use
19 of violence or intimidation, in connection with a political
20 campaign, is because you don't think that those are effective
21 political strategies, correct?

22 **A.** I said personally that. But I am not a political
23 scientist. I am not a political consultant. I know you may
24 consider me a politician, after running twice. I consider
25 myself a cop. So I don't consider myself sophisticated enough

1 to be able to tell what sells and what doesn't.

2 I personally don't believe violence or stealing
3 signs, or any of that, is effective either way.

4 Q. You ran two campaigns?

5 A. I did.

6 Q. And you had political consultants in connection with those
7 campaigns?

8 A. And I hired them and paid them to make those type of
9 political decisions.

10 Q. And you learned a little bit during those campaigns;
11 wouldn't you say?

12 A. I think I did.

13 Q. And you were successful in those campaigns?

14 A. I was.

15 Q. And you ran for your reelection in 2008?

16 A. Yes, I did.

17 Q. And, at that time, you ran as a Republican?

18 A. I did.

19 Q. And in 2008, you openly advocated against Proposition 8
20 and in favor of same-sex marriage; is that correct?

21 A. That's correct.

22 Q. During your reelection campaign, you again -- you again
23 made specific efforts to reach out to the gay and lesbian
24 community?

25 A. I made specific efforts to reach out to every community in

1 San Diego, yes.

2 **Q.** Right. But my question is, you made specific efforts to
3 reach out to the gay and lesbian community, including and among
4 other communities?

5 **A.** Yes.

6 **Q.** For instance, you spoke at the Log Cabin Republicans
7 convention; did you not?

8 **A.** Yes, I did.

9 **Q.** And the Log Cabin Republicans is a national gay and
10 lesbian Republican grassroots political organization, correct?

11 **A.** Uhm, yes, they are. I'm sorry.

12 **Q.** And during your reelection campaign, you had the approval
13 and endorsement of the -- of this national Republican group,
14 correct?

15 **A.** Well, I'm not sure that this didn't -- me speaking to them
16 didn't come after the primary where I was elected. I can't
17 find a date on this, to be very honest with you.

18 **Q.** I see. Now, you ran against five other candidates for
19 mayor, in 2008?

20 **A.** Yes, I did.

21 **Q.** And that was during the primary?

22 **A.** Yes.

23 **Q.** And during the primary, you received 54 percent of the
24 total vote?

25 **A.** I suppose approximately, yes.

1 Q. And because of that strong support that you received
2 during the primary, you didn't have to run in a general
3 election, did you?

4 A. San Diegans reelected me in the primary.

5 Q. Would it be fair to say that your support of same-sex
6 marriage in 2008 didn't cause you to lose the election as
7 mayor?

8 A. It didn't cause me to lose it. I can't say it made it
9 easy.

10 Q. Now, your views on same-sex marriage have evolved
11 substantially, haven't they --

12 A. Yes, they have.

13 Q. -- since 2005?

14 A. Yes, they have.

15 Q. At this point, you believe that the government should
16 endorse and regulate same-sex marriage in the same way that it
17 regulates marriage between a man and a woman?

18 A. I -- I believe that the government should allow every
19 group of people to be married in exactly the same way, and
20 enjoy the same rights and privileges, and recognize the
21 marriage in the same way.

22 Q. There was a point in your political career, however, that
23 you didn't think government belonged in the marriage business
24 at all; you believed that marriage, as an issue, should be left
25 up to the churches. Do you remember saying that?

1 A. I do.

2 Q. And do you still believe that?

3 A. No.

4 Q. When did you hold that view?

5 A. I believe I held that view as part of my ignorance on the
6 whole issue, when I first started out.

7 Q. And you've been enlightened now, and you believe that the
8 government should be in the marriage business, correct?

9 A. I believe that the government should allow everybody to
10 get married in exactly the same way; not treating heterosexual
11 couples different than treating gay and lesbian couples.

12 Q. If the government decided to get out of the marriage
13 business, do you think that would be fair to all people?

14 A. I don't believe that the government is going to get out of
15 the marriage business.

16 If the government said we are no longer going to
17 sanction marriage in any way, and it's up to individuals to
18 decide that, then I suppose that would be fair to everybody
19 involved.

20 MR. RAUM: Thank you.

21 THE COURT: Very well. Redirect?

22 REDIRECT EXAMINATION

23 BY MR. HERRERA:

24 Q. Mayor Sanders, Mr. Raum made mention of you marching in a
25 number of pride parades, correct?

1 **A.** Yes.

2 **Q.** Did you march or have you marched in any other parades
3 during your tenure as police chief or mayor?

4 **A.** Yes. I've marched in the Martin Luther King parade every
5 year. I marched in the St. Patrick's Day parade. Certainly
6 have been in parades around Christmas, in San Diego. The
7 Fourth of July parades. The Veterans Day parade. There are
8 numerous parades I am part of every single year.

9 **Q.** And he also asked you about two debates that, apparently,
10 you attended at the center. Can you give us some example of
11 other debates that you attended during the course of that 2005
12 election campaign?

13 **A.** Well, during the 2005 election campaign, I believe there
14 were close to 75 different debates throughout San Diego, in
15 neighborhoods, at television stations. It was a very
16 debate-heavy mayor's election.

17 **Q.** Mr. Mayor, have you ever made a decision based on fear of
18 political repercussions from the gay community?

19 **A.** No, I haven't.

20 **Q.** Have you seen any other policymaker in San Diego make a
21 decision or cast a vote based on fear of political
22 repercussions from the gay community?

23 **A.** No. And, in fact, I think it's easier to go the other
24 way, especially in San Diego. It's easier to make a decision
25 against the gay and lesbian community than it is to make it for

1 them.

2 Q. Why do you say that?

3 A. Because I -- I think that political ramifications are much
4 stronger from the Republican party and from others.

5 Q. How did the Republican party react to your decision to
6 support marriage equality?

7 A. They were very unhappy.

8 Q. And how did they express that displeasure?

9 A. Well, they expressed that displeasure by I was a sitting
10 Republican mayor. They expressed the displeasure by saying
11 that they were considering withdrawing their endorsement.

12 I had to go to several party meetings and talk to
13 party members. I think that it was a difficult issue.

14 I think that what I also saw in the kickoff of the
15 campaign, a lot of the people weren't there. That was the very
16 next night, from the press conference that I held.

17 Q. In your experience, has the Republican party in San Diego
18 been responsive to the needs of the gay and lesbian community?

19 A. I don't believe that's first and foremost in their minds.

20 Q. Why do you say that?

21 A. Well, I think that their national platform and local
22 platform has said that marriage is between a man and a woman.

23 Q. Mr. Raum made mention of the Log Cabin Republicans. Are
24 you aware of how large the Log Cabin chapter in San Diego is?

25 A. Well, I spoke to them during one of the election cycles,

1 and there were four members.

2 (Laughter)

3 **Q.** Do the log cabin Republicans have any influence in the
4 broader Republican party in San Diego?

5 **A.** No. I would say that they don't.

6 **Q.** Mr. Raum had you watch a video, DIX1107. Do you have any
7 reason to believe that what was represented in that video was
8 true and actually happened?

9 **A.** Well, I have absolutely no idea. I was just shown a video
10 that was produced by a campaign. And then, I suppose, I'm
11 supposed to believe everything that's in it. I don't have any
12 grounding in that. I didn't hear those instances. I didn't
13 see those instances.

14 My wife and I do not watch television. We do not
15 watch television news. We have not watched it for years. And
16 I didn't see any campaign ads, on either side.

17 When I said that I saw a campaign sign that portrayed
18 little children, I'm talking about a bumper stick or a sign.
19 So I would have no idea if these things occurred or if they
20 didn't occur, on either side.

21 **Q.** Do you have any knowledge or experience with any No On
22 Proposition 8 signs being vandalized?

23 **A.** Well, I have a personal experience, where somebody wrote
24 on chalk, in front of my house, because we had a No On 8 sign
25 out. That said, "God's law. Vote Yes On 8."

1 Now, I don't believe we were the only household. I
2 walk in the mornings, before people are out. And I saw those
3 on other sidewalks, where proposition -- No On 8 proposition
4 signs were out.

5 **Q.** And this was in your neighborhood?

6 **A.** Yes.

7 I'd like to clear up one thing, though. I do watch
8 the Charger and the Padre games, periodically.

9 (Laughter)

10 That is the only television I watch.

11 **MR. HERRERA:** I think you could have brought a little
12 better luck to them on Sunday, Mr. Mayor.

13 Your Honor, I just want to offer one thing. A note
14 was passed that DIX1475 was not admitted into evidence. It was
15 only judicially noticed.

16 **MR. RAUM:** Your Honor, my understanding is, when
17 something is usually noted, it becomes part --

18 **THE COURT:** Well, there is a difference. But, all
19 right. Thank you for pointing that out. 1475 was subject to
20 judicial notice. Thank you.

21 **BY MR. HERRERA:**

22 **Q.** Mr. Mayor, in your experience, can you think of a group of
23 Americans that has faced stronger political opposition in
24 recent years, than the gay and lesbian community?

25 **A.** No, I can't.

1 Q. Why is that?

2 A. I believe it has been okay to discriminate against gays
3 and lesbians. I think it's been okay to not offer them the
4 same rights and responsibilities, until just very recently.

5 I still think people think it's okay for them to
6 judge that their relationships, that their love for each other
7 is different, is somehow less than the love or the relationship
8 that a heterosexual couple has.

9 And I think that's most -- manifested most
10 prominently in the fact that they are not allowed to get
11 married in the state of California.

12 And I believe what's being said is, we don't think
13 that you folks have the same type of relationship or that you
14 love each other as much, so we're not going to allow you to be
15 married.

16 MR. HERRERA: Thank you, Mr. Mayor.

17 Nothing further, Your Honor.

18 THE COURT: Thank you. Very well, Mr. Herrera.

19 And I trust you will --

20 MR. HERRERA: I take your guidance.

21 THE COURT: -- go through those depositions. I
22 noticed some of the same problems in this deposition, of this
23 witness. And I think your office needs a little counseling on
24 that subject, of how to defend and take depositions.

25 MR. HERRERA: Thank you, Your Honor.

1 **THE COURT:** Thank you very much, Mr. Sanders. You
2 may step down.

3 And who's the next witness?

4 **MR. BOIES:** Your Honor, we next call Professor Lee
5 Badgett.

6 **THE CLERK:** Raise your right hand.

7 LEE BADGETT,

8 called as a witness for the Plaintiffs herein, having been
9 first duly sworn, was examined and testified as follows:

10 **THE WITNESS:** I do.

11 **THE CLERK:** Thank you. State your name, please.

12 **THE WITNESS:** It's Lee Badgett.

13 **THE CLERK:** And spell your last name.

14 **THE WITNESS:** It's B-a-d-g-e-t-t.

15 **THE CLERK:** And your first name.

16 **THE WITNESS:** Lee. L-e-e.

17 **THE CLERK:** Thank you.

18 DIRECT EXAMINATION

19 **BY MR. BOIES:**

20 **Q.** Good morning, Professor Badgett.

21 **A.** Good morning.

22 **Q.** We will, as is the custom, have some binders to pass out
23 to you and the Court. But let me begin by just asking you some
24 background questions.

25 Where are you presently employed?

1 **A.** I'm employed at the University of Massachusetts Amherst.

2 **Q.** And what is your position there?

3 **A.** I am both a professor of economics, and I direct the

4 Center for Public Policy and Administration.

5 **Q.** And do you have any other positions?

6 **A.** I am also the research director of the Williams Institute

7 at UCLA School of Law.

8 **Q.** How long have you been the research director at the

9 Williams Institute?

10 **A.** It's been about four years.

11 **Q.** And how long have you been at the University of

12 Massachusetts, at Amherst?

13 **A.** I have been there since 1997.

14 **THE COURT:** Be sure to keep your voice up.

15 **THE WITNESS:** Okay. I'm sorry.

16 **BY MR. BOIES:**

17 **Q.** And I assume that you have a bachelor's degree?

18 **A.** I do have a bachelor's degree from the University of

19 Chicago, and a Ph.D. in economics from the University of

20 California at Berkeley.

21 **MR. BOIES:** Your Honor, we have given counsel for the

22 defendants a list of exhibits which I would, at this time,

23 offer, unless there is some objection.

24 **MR. COOPER:** Your Honor, I do have an objection to

25 some of these exhibits. It appears that a few of them have not

1 been cited or relied upon by Professor Badgett, in connection
2 with her expert -- development of her expert opinion in this
3 case, and were not available and not used in her deposition.

4 Now, perhaps, if Mr. Boies is going to cite them and
5 rely on them as testimony unfolds, I can offer an objection at
6 that time.

7 But I am concerned that these -- that there are four
8 or five exhibits that were not -- were not available.

9 **THE COURT:** Can you identify the four or five, so
10 that we can then exclude those, for the moment, and take care
11 of the rest of them?

12 **MR. COOPER:** Yes, Your Honor. PX0188.

13 **THE COURT:** 0188.

14 **MR. COOPER:** PX0189. PX1296. PX1298. And PX1309.

15 PX234- --

16 **MR. BOIES:** I'm sorry, what was the --

17 **MR. COOPER:** PX1309.

18 **MR. BOIES:** 1309.

19 **MR. COOPER:** PX2345. PX2346. And PX2347.

20 **THE COURT:** Read the last one, please.

21 **MR. COOPER:** PX2347.

22 **THE COURT:** All right. Then a possible objection is
23 noted as to those exhibits. And I gather there's no objection
24 as to the remainder that Mr. Boies intends to offer; is that
25 correct?

1 **MR. COOPER:** I believe not, Your Honor.

2 **THE COURT:** Very well. Then, Mr. Boies, if you
3 would --

4 **MR. BOIES:** Thank you, Your Honor.

5 **THE COURT:** If you would be so good as to give the
6 list of those exhibits that you're moving in, to the clerk,
7 with the note that with the exception of those referred to by
8 Mr. Cooper the remainder shall be admitted.

9 (Plaintiffs' Exhibits 1259, 1260, 1261, 1262, 1263,
10 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272,
11 1274, 1275, 1276, 1279, 1280, 1281, 1282, 1283, 1284,
12 1285, 1286, 1287, 1289, 1290, 1291, 1292, 1293, 1294,
13 1300, 1301, 1302, 1303, 1304, 1305, 2321, 2342
14 received in evidence.)

15 **MR. BOIES:** Yes, I will, Your Honor, if I can get --

16 **THE COURT:** If you can get some attention from your
17 colleagues.

18 **MR. BOIES:** -- attention from my helpers.

19 (Laughter)

20 (Pause)

21 **THE COURT:** Perhaps this is a good time to take a
22 break. Why don't we take until 25 after the hour.

23 **MR. BOUTROUS:** Thank you.

24 (Recess taken from 10:09 to 10:32 a.m.)

25

1 **THE COURT:** Very well. Did we get all of the
2 documents straightened out?

3 **MR. BOIES:** We did, your Honor. And we have given
4 the Court a list of the documents to be admitted.

5 **THE COURT:** Very well.

6 **MR. BOIES:** I would offer them at this time.

7 **MR. THOMPSON:** And, your Honor, and we have
8 straightened out a lot of the confusion. There are still two
9 documents remaining on the list, which my previously-stated
10 objection still stands to, and that's PX-2345 and PX-2346.

11 **THE COURT:** Do I understand as to the others, the
12 objection is withdrawn?

13 **MR. THOMPSON:** It is withdrawn as to the others, but
14 only provisionally with respect to PX-0188 and PX-0189.

15 The representation has been made by Mr. Boies's
16 colleagues that although those documents were not cited in the
17 materials relied upon by the witness before the deposition,
18 they apparently were provided to my colleague before the
19 deposition through a different transmission. I have no doubt
20 that that's correct. Once we do confirm that, this provisional
21 concern will be withdrawn.

22 **THE COURT:** All right. Very well. Well, that was
23 time well spent then.

24 Proceed, Mr. Boies.

25 **MR. BOIES:** Thank you, your Honor.

1 **BY MR. BOIES:**

2 **Q.** Professor Badgett, have you written a number of
3 peer-reviewed articles on the subject of gay and lesbian
4 relationships and gay and lesbian marriage?

5 **A.** Yes. I have five or six peer-reviewed articles in several
6 science journals and about the same number in law reviews.

7 **Q.** And are some of those listed on PX-2321, which was your
8 resume which was admitted into evidence.

9 **A.** Yes. Those should have all been cited there.

10 **Q.** Now, in addition to articles, have you written any books?

11 **A.** I have. I have written two books and co-edited a third.
12 One was called *Money, Myths and Change*. That was published by
13 the University of Chicago Press, which is also a peer-reviewed
14 process.

15 And then most recently the book, *When Gay People Get*
16 *Married*, which was published by New York University Press, also
17 a peer-reviewed process.

18 **Q.** *When Gay People Get Married - What Happens When The*
19 *Societies Legalize Same-Sex Marriage*, is this the book you are
20 referring to?

21 **A.** Yes.

22 **Q.** And this is Plaintiffs' Exhibit 1273, which has been
23 admitted.

24 Now, in 2008 did you co-author any materials relating
25 to the impact of same-sex marriage?

1 **A.** Yes. Well, in 2008 I probably authored -- co-authored
2 quite a few, but some in particular related to California.

3 **Q.** And what was that?

4 **A.** A colleague and I estimated the fiscal impact of allowing
5 same-sex couples to marry on the State of California's budget.

6 **Q.** And that is marked as Plaintiffs' Exhibit 1268, which was
7 admitted without objection.

8 And in 2005, did you co-author an article in the
9 *Stanford Law and Policy Review*?

10 **A.** Yes. That one was an earlier effort to make more or less
11 the same analysis, looking at what the impact would be of
12 allowing same-sex couples to marry on the California budget at
13 that time.

14 **Q.** And that is Plaintiffs' Exhibit 1283, correct?

15 **A.** Oh, should I take a look?

16 (Brief pause.)

17 **A.** Yes, that's at the time article.

18 **Q.** Now, have you, in addition to your reaching duties at the
19 universities that you have identified, been invited to speak
20 and make presentations at other universities?

21 **A.** Yes, I have. I have been invited to speak on this topic
22 and related topics at many universities in the U.S. and in
23 other parts of the world.

24 Here in the U.S. in the last few years I have spoken
25 at the University of Illinois, Chicago, University of

1 Minnesota, Duluth, Yale University, University of Kentucky,
2 U.C.L.A., University of Massachusetts, Smith College, Amherst
3 College, probably some others that I can't remember.

4 In other countries -- and, actually, I have been
5 invited to speak at law schools as well here in the U.S. I
6 should mention those at this point. I have given talks on this
7 issue at Yale Law School, Temple University Law School,
8 University of Connecticut Law School, Washington and Lee Law
9 School, all in the last few years.

10 I have spoken at the University of Toronto in Canada;
11 Kings College in London, University of Amsterdam; University of
12 Stockholm; Linz University in Austria; all on the subject for
13 same-sex couples.

14 **Q.** Now, you're familiar with the American Psychological
15 Association, correct?

16 **A.** Yes, yes. I'm not a member, but I am familiar.

17 **Q.** What is Division 44? You have made reference to that
18 before.

19 **A.** Division 44 is the section of the A.P.A. that focuses on
20 lesbian, gay, bisexual and transgender concerns.

21 **Q.** And have you ever spoken to that group?

22 **A.** I have on several occasions, but on one occasion I gave an
23 invited presidential address to that -- to A.P.A. It was the
24 president of Division 44 who invited me.

25 **Q.** And what is an invited presidential address?

1 **A.** The president of the division has the option -- well, has
2 the ability to choose a person that they would like to come
3 speak on a topic before the entire A.P.A. convention
4 potentially. So it's not just limited to division 44 members.

5 **Q.** Now, have you had papers accepted for conferences
6 organized by various professional associations?

7 **A.** Yes. I have submitted papers for review and I have had
8 them accepted at many conferences related to economists; the
9 Allied Social Science Associations, which is the big gathering
10 each year. I have spoken at the American Political Science
11 Association.

12 Other presentations at the American Psychological
13 Association. I was asked to give an invited talk to the
14 National Council on Family Relations.

15 I have spoken before the Canadian Population Society,
16 the American Statistical Association, and some others.

17 **Q.** Now, have you been asked to peer review articles that have
18 been proposed for publication in journals related to same-sex
19 couples and the effect of same-sex marriage or the absence of
20 same-sex marriage?

21 **A.** Yes. I have been asked to review papers like that in many
22 journals, including *Demography*, the *Journal of Marriage and*
23 *Families*, *The American Journal of Sociology*.

24 Some economics journals, including *Industrial and*
25 *Labor Relations*, *Industrial Relations*, a bunch of others as

1 well.

2 **Q.** Do those others include *The American Sociological review*?

3 **A.** Yes, I believe I have reviewed papers for them as well.

4 **Q.** And *The American Journal of Sociology*?

5 **A.** Yes.

6 **Q.** Have you ever testified before any government bodies?

7 **A.** Yes. In the last couple years I have testified twice
8 before Congress. Once was in front of the House Education and
9 Labor Committee on the Employment Nondiscrimination Act.

10 And more recently, last summer I testified before the
11 House Committee on Oversight and Government Reform on the
12 question of domestic partner benefits for federal employees.

13 And I have testified before several other state
14 legislative bodies on different matters related to same-sex
15 couples.

16 **Q.** Can you give me some examples of the state governmental
17 bodies before which you have testified?

18 **A.** I have testified before the California Senate Taxation and
19 Finance Committee, I believe it's called.

20 I have testified before committees in Alaska, in
21 Massachusetts, in Hawaii, in New Hampshire, Maryland, I
22 believe, on these issues.

23 **MR. BOIES:** Your Honor, we would offer Professor
24 Badgett as an expert on demographics information concerning
25 gays and lesbians, same-sex couples, and children raised by

1 gays and lesbians; as an expert on the effects of the exclusion
2 of same-sex couples from the institution of marriage; and as an
3 expert on the effect of permitting same-sex couples to marry on
4 heterosexual society and the institution of marriage.

5 **THE COURT:** Mr. Cooper, voir dire?

6 **MR. COOPER:** No, your Honor.

7 **THE COURT:** Very well. You may proceed.

8 **BY MR. BOIES:**

9 **Q.** Professor Badgett, let me ask you to look at demonstrative
10 10, and in connection with that, ask you to tell the Court what
11 basic opinions you are offering today?

12 (Document displayed)

13 **A.** This demonstrative summarizes those opinions.

14 The first one is that Prop 8 as inflicted substantial
15 economic harm on same-sex couples and their children who live
16 here in California.

17 I have the opinion that letting same-sex couples
18 marry would not have any adverse effect on the institution of
19 marriage or on different-sex couples.

20 And that same-sex couples are very similar to
21 same-sex couples in most economic and demographic respects,
22 related to marriage in particular (sic).

23 And then, finally that Proposition 8 has imposed some
24 economic losses on the State of California and on counties and
25 municipalities.

1 Q. With respect to the third opinion, could you state that
2 third opinion again?

3 A. Yes. I am -- my opinion is that same-sex couples are very
4 similar to different-sex couples in most economic and
5 demographic characteristics.

6 Q. Let me turn to the first opinion that you have identified,
7 which is your opinion that Proposition 8 inflicts substantial
8 economic harm on same-sex couples and their children in
9 California.

10 First, what is the benefit, if any, that marriage
11 confers on couples who marry and their children?

12 A. Economists have long identified several different economic
13 benefits of marriage, and most of them relate to the fact that
14 marriage is about commitment of two people.

15 So in the context of a family, marriage and that
16 commitment allows them to organize their lives more
17 efficiently, dividing up labor in ways that improves the
18 well-being of same-sex couple -- or of any couple and their
19 children. And it might enhance their economic well-being, both
20 through increasing the income for their family and the time
21 that's available for the family.

22 It also has an important role in reducing what
23 economists call transaction costs. That's the cost involved in
24 making agreements of one kind or another. Probably the best
25 example with regard to marriage is the -- two people who are

1 married can avoid the cost, for instance, of hiring an attorney
2 to write a will, because inheritance rights come along with
3 giving -- having a marriage.

4 There are other specific benefits that sometimes come
5 from third parties, such as the state or employers who might
6 offer specific benefits that are given to people who are
7 married, but are not provided to couples who are not married.

8 So those are some specific examples of how marriage
9 has some very clear economic benefits for families.

10 **Q.** Let me ask you to look at demonstrative 11, which is a
11 list that you prepared of how the inability to marry inflicts
12 economic harm on same-sex couples in many ways.

13 (Document displayed)

14 **Q.** Do you see that?

15 **A.** Yes.

16 **Q.** I would like to take you through that and ask you to
17 explain what you mean by some of these points.

18 You say at the beginning that:

19 "Marriage confers numerous economic benefits,
20 many of which are not provided by domestic
21 partnership."

22 Do you see that?

23 **A.** Yes.

24 **Q.** And the first one there is:

25 "Greater specialization of labor."

1 Can you explain what you mean by that?

2 **A.** People in -- the way economists look at families and
3 couples is as an economic unit, kind of a little factory of
4 sorts. And they take their time and money to produce the
5 things that their families need, whether that's meals or
6 entertainment or care for children. And families that can do
7 that more efficiently are going to be better off economically.

8 And the way to make that kind of division of labor
9 more efficient is to have some people in these couples to
10 actually specialize in certain types of labor, whether that's
11 labor -- getting training to enhance your job possibilities or
12 other sorts of training that would make you more productive in
13 other ways.

14 **Q.** The second item that you identify is:

15 "Reduced transaction costs."

16 Could you explain what you mean by that?

17 **A.** The example that I gave earlier about wills is a good
18 example. So it's reducing the cost of making some kind of
19 agreement. So that's one very clear-cut one that might just
20 happen once otherwise.

21 But as family's economic fortunes might change, a
22 partner might become unemployed or might get a big raise or
23 other circumstances change, then the fact that the couple is
24 married means that they don't have to renegotiate whatever deal
25 they might have had as unmarried partners. So they just don't

1 have to keep talking about these different agreements. They
2 have a marriage and understand what that means.

3 **Q.** The next item that you identify is:

4 "Additional health and other insurance
5 benefits."

6 And I think there has been a lot of testimony about
7 that already.

8 The next item that you identify is:

9 "Greater economies of scale."

10 Can you explain what you mean by that?

11 **A.** Yes. Marriage is an institution that pulls two people
12 together; two people who might very well have been living
13 separately. And when they move in together, they can have what
14 economists call greater economies of scale, which basically
15 means that they -- they can live together as two people more
16 cheaply, more efficiently than they would as two separate
17 individuals in two separate homes.

18 **Q.** The next item says:

19 "Stronger statement of commitment."

20 Can you explain what you mean by that?

21 **A.** Well, in this case we are getting to where marriage is
22 quite different from domestic partnership. The value of
23 marriage as a statement of commitment is something that is very
24 important and underlies all of these other kinds of benefits,
25 of economic benefits.

1 So marriage is something that allows the two
2 individuals to say to each other that they are committed. It's
3 a strong signal of commitment in that sense to each other.

4 And, secondly, it's a statement that is recognized
5 and reinforced by people outside of the marriage as a statement
6 of commitment, an expectation that the two individuals will be
7 committed. And that is -- as I said earlier, that's what makes
8 a lot of these other kinds of economic benefits of marriage
9 possible.

10 **Q.** The next item that you have identified is:

11 "Greater validation and social acceptance of
12 relationship."

13 Can you explain what you mean by that?

14 **A.** I think I kind of combined that a little bit with the
15 previous one, but the idea here is that marriage is not just a
16 commitment between two individuals like a contract, but it's
17 something that has in a social context quite a few other
18 meanings that come from the fact that other people view it and
19 might treat the couple differently as a result of their being
20 married.

21 **Q.** The next item is:

22 "More positive workplace outcomes from
23 reduced discrimination."

24 Can you explain what you mean by that?

25 **A.** We have some research, in psychology in particular, that

1 suggests that people who -- gay and lesbian people in
2 workplaces who believe they are being treated differently or
3 are facing some sort of discrimination might actually have
4 different kinds of work experiences and economic gains from the
5 workplace.

6 And in the case of a group of people like same-sex
7 couples who are not allowed to actually marry, they may feel in
8 the workplace context that they are being treated differently
9 from their heterosexual coworkers who are allowed to marry and,
10 perhaps, are married. And that effects of that feeling of
11 discrimination might have an adverse effect on their -- on
12 their work performance and, therefore, on their ability to
13 make, you know, future economic gains, get promotions, get
14 raises, that sort of thing. So that could have a adverse
15 effect on their economic well-being.

16 **Q.** Now, you say at the end that:

17 "Some of these costs may not be quantifiable,
18 but they are substantial." What do you mean
19 by that?

20 **A.** These are costs that are -- these are effects of marriage
21 that are well known in economics, but they are very difficult
22 to quantify specifically.

23 But, in my opinion, they could be quite large, and
24 some of these -- we can come up with some approximations for
25 the costs, such as the health and other insurance benefits, but

1 in other cases it's very difficult to actually come up with
2 this precise dollar value.

3 **Q.** You say at the end that:

4 "These costs are imposed on virtually all
5 California same-sex couples who would marry
6 if they could."

7 What do you mean by that?

8 **A.** Well, I have thought about this from the perspective of
9 two different groups of same-sex couples in California.

10 One would be couples who have a domestic partnership,
11 and the other group would be couples who don't have a domestic
12 partnership. And I think the harmful effects will be similar
13 for both groups.

14 The couples who don't have a domestic partnership now
15 have -- do not have any of the kinds of legal protections that
16 marriage provides; but even those couples who do have a
17 domestic partnership, in my opinion, are not getting the same
18 kind of statement of commitment and social validation that
19 would give rise to the full -- the full effect of the other
20 possible benefits, that would -- that they would experience if
21 they were allowed to marry.

22 **Q.** Did you say in that last answer that there were people who
23 had domestic partnerships, but would -- but nevertheless
24 suffered costs because they could not marry?

25 **A.** Yes.

1 Q. You also said, I think, in that answer that there were
2 people who chose not to have domestic partnerships, but would
3 marry; did you say that?

4 A. That's correct.

5 Q. And what is your basis for that?

6 A. Well, I have looked at quite a bit of data here in the
7 United States about this issue and have seen very clear
8 evidence that there are many people who would marry, but would
9 not become domestic partners.

10 Q. Let me ask you to look at demonstrative 12.

11 (Document displayed)

12 Q. And could you explain what this demonstrative shows?

13 A. This is an example of one of those pieces of evidence that
14 I just mentioned.

15 Here we are looking at the numbers of couples who --
16 of same-sex couples who married in the time period when they
17 were allowed to marry in 2008, and comparing that to the number
18 of couples who registered domestic partnerships in that same
19 time period. And you can see, they are quite different.

20 Our estimate is that about 18,000 same-sex couples
21 married during this time period and only about 2,000 actually
22 registered their domestic partnerships. And, in fact, some of
23 those were probably different sex couples who are also allowed
24 -- a small group of different-sex couples are allowed to
25 register domestic partnerships.

1 Q. In order to register as a domestic partnership if you are
2 a different sex couple, is there any special requirement?

3 A. Yes. At least one of those individuals has to be over 62.
4 So couples in that situation actually have a choice: They can
5 either marry or they can get a domestic partnership.

6 Q. Let me ask you to look next at demonstrative 13.

7 (Document displayed)

8 Q. And could you explain what this means?

9 A. Yes. This is from a study I did a year or so ago where we
10 gathered data from across the United States from different
11 states that allow same-sex couples to either marry or have
12 civil unions or domestic partnerships, and we looked at the
13 rate of take-up, is what we call it, a take-up rate for those
14 different legal statuses.

15 We compared the numbers of couples marrying in
16 Massachusetts to the number of same-sex couples in
17 Massachusetts over just that first year, to take into account
18 the fact that these statuses have been available for different
19 periods of time.

20 And so what you see here is that 37 percent of
21 same-sex couples in Massachusetts got married in the first year
22 that they were allowed to do so.

23 When we look at the states that allow civil unions,
24 only 12 percent of same-sex couples chose to enter a civil
25 union in that first year.

1 And in looking at domestic partnerships in the states
2 that offered those, we found that only 10 percent of same-sex
3 couples in those states actually signed up for a domestic
4 partnership.

5 And right below there, actually, we looked more
6 specifically at California, which started allowing same-sex
7 couples to register in 2000. And in that first year, only
8 five percent of same-sex couples here in California registered
9 as domestic partners. That's in the first year.

10 And, actually, if you think back to that previous
11 slide, in just six months of having marriage available in 2008,
12 about 21 percent of same-sex couples married. And, in fact, if
13 you kind of annualized that, you end up with a rate of marrying
14 over the first year that would have been very similar to what
15 we saw in Massachusetts, here in California though.

16 **Q.** Now, let me turn to those same-sex couples that are -- are
17 not registered, the ones that you're talking about.

18 In that connection let me ask you to look at
19 demonstrative 14.

20 (Document displayed)

21 **Q.** And am I correct that you are dealing here with those
22 same-sex couples that for one reason or another would marry,
23 but will not register as a domestic partner?

24 **A.** Yes, yes. That's what I'm thinking about for this slide.

25 **Q.** And can you explain what points you were making in this

1 demonstrative?

2 **A.** In thinking about the economic harm that those couples
3 suffer from not being able to marry, the very -- some very
4 specific, tangible financial effects would be that they may
5 lack access to health insurance and other employment benefits
6 because their relationship would not be recognized by their
7 employers.

8 They are likely to be paying higher state income
9 taxes. If they are fortunate enough to have an employer who
10 covers their domestic partner's benefits -- or their
11 unregistered domestic partner's benefits, I should say, then
12 they will have to pay income taxes on that, that benefit.

13 They will not be able to file jointly. And the
14 calculations that I have done suggest that a substantial number
15 of couples would pay higher taxes because they are not allowed
16 to file jointly.

17 And then they will have these increased transactions
18 costs that, you know, further add to the cost of not being able
19 to marry, and --

20 **Q.** I'm sorry. Had you finished?

21 **A.** Yes.

22 **Q.** Can you quantify the economic and non-economic costs to
23 same-sex couples who are not domestic partners from not being
24 able to marry?

25 **A.** As I mentioned earlier, it's very hard to actually

1 quantify some of these costs, but the ones that we can
2 quantify, like the access to health insurance and the tax
3 burdens, are very likely to be in the thousands of dollars per
4 year for each couple who has to bear them.

5 We can get a sense of how many couples we're talking
6 about here by thinking about the differences in the take-up
7 rights between marriage and domestic partnership, and that is
8 likely to mean that thousands of same-sex couples in California
9 are not registered partners and cannot marry.

10 So if you were to multiply those thousands of dollars
11 by the thousands of couples, you'd have tens of millions of
12 dollars in quantifiable costs for those couples, if we added
13 them up for the whole state.

14 **Q.** Based on your research, can you explain why same-sex
15 couples who would marry might not register as domestic
16 partners?

17 **A.** There are a variety of reasons that I have seen in some
18 academic research. Some of them have to do have the fact that
19 individuals might see registered domestic partnership as a
20 second class status, because they don't have the choice as
21 same-sex couples, older same-sex couples do here in California,
22 and so they might reject it for that reason. They also might
23 see -- there just being less value as a whole.

24 In economics, we think about people making choices
25 based on the value that they perceive of their different

1 alternatives. The data suggests that when people have a
2 choice, as they do in Massachusetts, they are just much more
3 likely to get married than they are to get a civil union or a
4 domestic partnership. And that value, the difference in the
5 value, the literature tells us, is that -- that marriage is an
6 institution that is recognized by many other people outside of
7 the couple and so it has that social validation that we talked
8 about earlier.

9 And, also, to the couple, to the two individuals and
10 the couple themselves, marriage has much more meaning than
11 something like domestic partnership, which has a much more
12 clinical and business-like kind of sound to it to many couples.

13 **Q.** Now, you said earlier, in your opinion, that the inability
14 of same-sex couples to marry adversely affected the children
15 raised by those couples; do you recall that?

16 **A.** Yes.

17 **Q.** Could you explain how that happens?

18 **A.** There are different -- different ways that marriage can
19 help children from an economic perspective.

20 One is just the question of resources. If it's
21 costing couples thousands of dollars a year in additional costs
22 because they can't marry, then that's thousands of dollars that
23 will not be available to spend on children or to save for their
24 college education or whatever parents might want to actually do
25 with that, with that money.

1 So that's one very important way that it hurts
2 children.

3 **Q.** Let me ask you to look at demonstrative 15 where you talk
4 about the beneficial effects of same-sex marriage to couples
5 and their children.

6 (Document displayed)

7 **Q.** And here you refer to a publication that is Plaintiffs'
8 Exhibit 1267 in evidence, correct?

9 **A.** Yes, that's correct.

10 **Q.** What is that publication?

11 **A.** That was a publication that describes the results of a
12 survey that my colleagues and I did of married people -- people
13 who are married to same-sex partners in Massachusetts.

14 **Q.** And how large was this survey?

15 **A.** We found -- we did a survey with the Department of Public
16 Health and it was of a large group of people. We were
17 interested in looking at the subsample of people who said that
18 they were married to a same-sex partner. And I believe we had
19 558 individuals in that part of the survey.

20 **Q.** Now, was this a representative sample?

21 **A.** No, it wasn't a representative sample, but this was a
22 sample that we got by drawing on a mailing list of a group in
23 Massachusetts that was working with the Department of Public
24 Health.

25 **Q.** Despite the fact that it was not a representative sample,

1 do you believe it provides a helpful point of reference?

2 **A.** Absolutely, yes. I mean, we have 558 people who are
3 married to a same-sex partner in Massachusetts. That's a large
4 group of people.

5 And there are some indications that they are not very
6 different from the larger group of married same-sex couples in
7 Massachusetts.

8 But as we point out in the publication, we know that
9 this is not a random sample, so there might be some differences
10 overall, but -- but the overlap of experiences is likely to be
11 there.

12 **THE COURT:** You referred to it as not a
13 representative sample. Does that mean it was not a random
14 sample or a sample in which the exemplars were drawn randomly?

15 **THE WITNESS:** That's right. That's right. It was
16 not a random sample or a probability sample, as we sometimes
17 call it.

18 **BY MR. BOIES:**

19 **Q.** You say from the survey over 72 percent of the respondents
20 felt more committed to their partners as a result of marrying;
21 do you see that?

22 **A.** Yes.

23 **Q.** What's the significance of that?

24 **A.** That, I believe, speaks to the issue that I talked about
25 earlier; that marriage is a way for two individuals to form a

1 more strongly-committed relationship.

2 And this survey, we asked individuals whether or not
3 they felt more committed to their partners, whether they agreed
4 or disagreed with that statement, and almost three-quarters
5 agreed; that they felt more committed to their partners.

6 **Q.** The next statement that you make here is that:

7 "Almost 70 percent felt more accepted by
8 their communities."

9 Do you see that?

10 **A.** Yes.

11 **Q.** What did you mean by that?

12 **A.** Again, that's a clear indication that the same-sex couples
13 that we surveyed were experiencing that larger kind of social
14 validation of their relationship that I talked about earlier,
15 which is something that might well enhance the commitment.

16 **Q.** The last statement here says that:

17 "93 percent of the respondents that were
18 raising children in their homes agreed or
19 somewhat agreed that their children were
20 happier and better off as a result of their
21 marriage."

22 Do you see that?

23 **A.** Yes.

24 **Q.** And can you explain the significance of that?

25 **A.** Yes. Twenty-eight percent of the people who answered this

1 survey had children that they were raising in their homes, and
2 almost all of them agreed that -- that their children were
3 better off, in the opinion of the parents.

4 We also asked an open-ended question to allow parents
5 to say more about why that might be, but -- what sort of effect
6 there might be. And many of them spoke of the value to their
7 children of now being part of a family that looked like the
8 families of the kids that they went to school with or other
9 kids in the neighborhood.

10 The parents said that they, themselves, had actually
11 found it easier to deal with the people who are important
12 people in their children's lives, whether that's teachers or
13 healthcare providers, who had a clearer idea of what it meant
14 to the -- to be a parent, to be a same-sex couple who are the
15 parents of children, they were now able to see they are, you
16 know, married couples and that the -- and in that context they
17 believe that they had an easier time in dealing with the people
18 in their children's lives.

19 **Q.** Now, this survey related to same-sex couples who married
20 in Massachusetts, is that correct?

21 **A.** Yes, that's correct.

22 **Q.** Now, does that have any relevance to the question of
23 same-sex couples and their children in California?

24 **A.** I think it does.

25 **Q.** Why?

1 **A.** For several reasons. One is the fact that it's in the
2 United States, which has very similar -- relatively similar
3 laws about marriage across the different states, to my
4 understanding. Of course, I'm not a lawyer.

5 But Massachusetts and California have very similar
6 marriage rates. About six people per thousand in the
7 population get married every year. So those are very similar.

8 The same-sex couples in Massachusetts and in
9 California look very similar in terms of their demographics of
10 raising children and income levels, education levels.

11 There are many similarities that lead me to believe
12 and to have the opinion that I can apply similar findings from
13 Massachusetts to California.

14 **Q.** Let me ask you to look next at demonstrative 16.

15 (Document displayed)

16 **Q.** And this focuses directly on California, correct?

17 **A.** Yes.

18 **Q.** And you talk about here how, in your opinion, Proposition
19 8 harms children being raised by same-sex couples in
20 California, is that correct?

21 **A.** Yes, yes.

22 **Q.** First thing you say here is that:

23 "Same-sex couples in California are raising
24 37,300 children under the age of 18."

25 Do you see that?

1 A. Yes.

2 Q. First, where does that come from?

3 A. That comes from an analysis I did of public use data from
4 census 2000.

5 Q. And you say one in ten of California's adopted children
6 live with a lesbian or gay parent; do you see that?

7 A. Yes.

8 Q. What's the significance of that?

9 A. Will, that suggests that -- that many adopted children
10 have a lesbian or gay parent who might want to marry at some
11 point, and those children are likely to be better off if their
12 parents are allowed to marry.

13 Q. And do you have an estimate of what the number is of
14 adopted children living with lesbian and gay parents?

15 A. I don't remember the exact figure in California. I
16 believe it was somewhere around 10,000 or so.

17 Q. Let me ask you to look at Plaintiffs' Exhibit 1264, which
18 is in your binder. And when you have it, can you tell me?

19 And particularly page 10, table five, and see if it
20 refreshes your recollection?

21 A. I'm sorry. Which page was that?

22 Q. Page 10, which was table five.

23 A. Okay.

24 (Brief pause.)

25 A. I think I underestimated it. So, yeah, we estimated that

1 about 16,000, 16,460 or so adopted children were living with
2 gay or lesbian parents.

3 **Q.** Are you aware of professional organizations who have taken
4 the position that depriving same-sex couples of the right to
5 marry harms the children raised by those couples?

6 **A.** Yes. I have seen a report by a committee of the American
7 Medical Association that makes that conclusion related to
8 healthcare disparities that stem from reduced access to health
9 insurance, in particular.

10 **Q.** I want to turn now to your opinion that you stated
11 earlier; that permitting same-sex couples to marry would not
12 have any adverse effects, including any adverse effects on
13 heterosexual marriage or the institution of marriage.

14 Can you summarize the basis for that opinion?

15 **A.** Yes. I have looked at several different sources of data
16 from different angles, looking to see if any adverse impact has
17 happened in the places where same-sex couples are allowed to
18 marry.

19 I have looked at demographic data. I have looked at
20 the reasons for the -- that same-sex couples give for marrying.
21 I have looked at how they are treated after they are married by
22 their heterosexual communities and families.

23 I have looked at behavior of heterosexual individuals
24 before and after same-sex couples were allowed to marry, and I
25 have seen no evidence of any harmful effect of allowing

1 same-sex couples to marry.

2 **Q.** Now, in looking at the statistical experience of various
3 jurisdictions in which same-sex couples have been allowed to
4 marry, is it possible to translate that directly into a
5 prediction of what would happen in California?

6 **A.** It's important to be careful in doing that. There may be
7 particular trends that are already well underway for certain
8 kinds of measures that you would want to take into account.
9 You want to be sure that the data that you use is the right
10 data.

11 It's important to take into account changes, other
12 changes that are happening at the same time that might
13 influence the measures that you are looking at.

14 So I do believe that it's important to proceed
15 carefully.

16 **Q.** Let me ask you to look at demonstrative 32, which is a
17 statement from Professor Douglas Allen, who is one of the
18 defendants' experts.

19 (Document displayed)

20 **Q.** And did you review this statement by Professor Allen?

21 **A.** Yes. I remember reading it in his report.

22 **Q.** And professor -- Professor Allen is one of the defendants'
23 experts and he presented an expert report, is that correct?

24 **A.** Yes.

25 **Q.** And would you read this portion of his expert report?

1 **A.** (As read)

2 "In the Netherlands the total number of
3 heterosexual marriages has slowly fallen
4 since the introduction of same-sex marriage.
5 Like most western countries, this is no doubt
6 part of a larger secular trend."

7 **Q.** And is that an example --

8 **MR. COOPER:** Your Honor, excuse me.

9 I'm going to object to this testimony. It relates to
10 Professor Allen, as you have heard.

11 Professor Allen was withdrawn as a witness early on
12 in these proceedings and we don't believe it's appropriate to
13 introduce Professor Allen's opinions as though they are binding
14 on the defendant-intervenors.

15 **THE COURT:** Well, Mr. Boies?

16 **MR. BOIES:** Your Honor, I wasn't suggesting that this
17 is binding as a party admission. I was introducing it as
18 evidence from the defendants' expert.

19 Now I think the fact that it comes from the
20 defendants' expert may lead the Court to give it greater weight
21 than it might otherwise, but I -- I do agree that the weight to
22 be given this is within the Court's discretion?

23 **MR. COOPER:** Your Honor, I would only respond, it
24 doesn't come from the defendants' expert.

25 The defendants considered using Mr. Allen, Professor

1 Allen as an expert, withdrew Professor Allen before this trial
2 commenced, and he is no longer an expert of the
3 defendant-intervenor.

4 **THE COURT:** Is it not appropriate to place before the
5 witness an opinion of another person in the same field that
6 disagrees with the opinion being expressed by the witness and
7 to ask the witness her response to that contrary opinion?

8 That's a fairly conventional way of dealing with an
9 expert witness, is it not, Mr. Cooper?

10 **MR. COOPER:** Yes, your Honor. And if presented in
11 that fashion, I have no objection to it.

12 **THE COURT:** Very well. Then you may proceed, Mr.
13 Boies.

14 **MR. BOIES:** Your Honor, the only thing I would say is
15 that I'm presenting it in a slightly different context in the
16 sense that I believe that the witness will agree with this
17 statement as opposed to disagree with the statement.

18 But I still think it's appropriate to put in front of
19 her a statement by another person in the field and ask her how
20 she relates to that statement.

21 **THE COURT:** That's what I understand you are doing
22 and can do without objection from Mr. Cooper.

23 **MR. BOIES:** Thank you, your Honor.

24 **BY MR. BOIES:**

25 **Q.** Professor Badgett, the statement that was previously read

1 from Professor Allen, which I won't repeat, do you agree or
2 disagree with that statement?

3 **A.** I agree with the statement.

4 **Q.** And is that an example of what you were talking about
5 before of something that has to be taken into account in
6 applying the experience in other countries to what would happen
7 in, for example, California?

8 **A.** Yes, that's a very good example of applying the experience
9 from the Netherlands or even from Massachusetts.

10 **Q.** Now, can I ask you to give some other just examples of
11 trends or facts that you would have to take into account if you
12 were applying statistical information from a jurisdiction other
13 than California to predict what might happen in California?

14 **A.** I can think of a few examples of other changes that have
15 taken place that show kind of unusual -- unusual effects and
16 demographic trend data.

17 For instance, in 2005 when Spain began to allow
18 same-sex couples to marry, they also changed their divorce laws
19 and made it easier to divorce.

20 **MR. COOPER:** Your Honor, if I may. I'm going to have
21 to object to this.

22 This testimony that we are now hearing has not been
23 testimony or in any way disclosed in the witness's expert
24 report, in any of the expert reports. I believe I'm confident
25 in saying that.

1 **THE COURT:** Is the objection that it goes beyond the
2 scope of the witness's expertise?

3 **MR. COOPER:** No, your Honor, it's not. It is that
4 this information and this basis for her opinion was not
5 disclosed prior to the time that she was deposed, and there was
6 never an opportunity to depose the witness with respect to this
7 information. This is the first time that the
8 defendant-intervenors are hearing about this.

9 **THE COURT:** And by "this information" you mean what,
10 Mr. Cooper?

11 **MR. COOPER:** The information with respect to Spain
12 and the --

13 **THE COURT:** Divorce laws in Spain?

14 **MR. COOPER:** Yes.

15 **THE COURT:** Mr. Boies?

16 **MR. BOIES:** Your Honor, what was clearly disclosed
17 was the fact that the evidence, including the evidence from
18 other jurisdictions, confirmed the witness's general view that
19 there would be no adverse effect on same-sex couples, and that
20 you had to look at those experiences to see their
21 applicability.

22 Now, all I am doing here is giving -- having the
23 witness give some examples of that.

24 A expert report is not intended to be word-for-word
25 all of the things the witness is going to say or to give all of

1 the evidence that the witness is going to rely on.

2 What the expert report does is -- under Rule 26 is it
3 provides them with notice of what those opinions are and what
4 the bases are. It doesn't purport to give them a word-for-word
5 description of everything she's going to testify to.

6 **THE COURT:** Mr. Cooper?

7 **MR. COOPER:** Thank you, your Honor.

8 Your Honor, the expert's witness reports identified a
9 number of pieces of information of this kind. Primarily from
10 the Netherlands, which is her expertise and on which she wrote
11 a book and which is repeatedly referred to throughout her
12 expert reports.

13 And we had an opportunity, a fair opportunity, to
14 cross examine with respect to the particular empirical data on
15 which she based her expert opinions as presented in her expert
16 report. I have not heard of this empirical data before and I
17 have had no opportunity to examine into its bona fides.

18 **THE COURT:** Well, I understand the objection is not
19 that this testimony goes beyond the expertise that the witness
20 has been qualified to offer opinions on and, therefore, I think
21 it's an appropriate subject to which the witness can explore.

22 I will permit Mr. Boies to pursue the matter, allow
23 you to cross examine the witness with respect to this and, if
24 appropriate you believe, you may make a motion to strike that
25 part of her testimony.

1 But let's hear the testimony, see what the response
2 is, and give you a crack at trying to shake the witness from
3 her opinions in this regard, Mr. Cooper.

4 **MR. COOPER:** Very well, your Honor.

5 **BY MR. BOIES:**

6 **Q.** Professor Badgett, I've not sure you completed your
7 description of the example that you were drawing from Spain.

8 Could you summarize that briefly?

9 **A.** Yes. So Spain made divorce easier at about the same time
10 they allowed same-sex couples to marry. So you do see as
11 divorce rate in Spain around 2005.

12 So that's one example of a kind of a confounding
13 effect that might occur that would -- you would want to take
14 into account when looking at data on trends, demographic
15 trends.

16 **Q.** Now, Mr. Cooper mentioned the Netherlands. Can you give
17 us an example from the Netherlands?

18 **A.** Yes. There are two good examples.

19 In 2001 the Netherlands started allowing same-sex
20 couples to marry. At that time the law related to that -- that
21 change also allowed people who were in marriages to convert
22 their marriages into registered partnerships, which made it
23 possible then for those relationships to be dissolved more
24 easily than a marriage could be dissolved.

25 And there was a second change in that same year that

1 increased the parental responsibilities of people who were in
2 registered partnerships.

3 So those are two fairly significant changes to the
4 law that you would want to take into account when looking at
5 data on trends and both marriage and registered partnerships in
6 the Netherlands.

7 **Q.** Now, Mr. Cooper had mentioned that you had talked about
8 Massachusetts in your report.

9 Is there any difference in applying experiences from
10 Massachusetts, which is obviously another state, as opposed to
11 applying the experience of other countries, like the
12 Netherlands or Spain or Belgium?

13 **A.** In my opinion, it would be more appropriate to look at
14 Massachusetts because of the similarities, cultural
15 similarities between different states here in the U.S. There
16 would be less you would have to take into account than doing a
17 simple comparison to the Netherlands.

18 **Q.** Now, in looking at Massachusetts first, did you discern
19 any evidence of adverse impact of permitting same-sex couples
20 to marry in that state?

21 **MR. COOPER:** Your Honor -- forgive me, Mr. Boies, but
22 I have to assert an objection similar to the ones I have in the
23 past.

24 There was nothing in this witness's expert reports
25 which referred to any kind of demographic data or any kind of

1 analysis of the harm or lack of harm from same-sex marriage in
2 Massachusetts.

3 I think this is going to relate to a couple of the
4 exhibits that I objected to earlier, exhibits concerning
5 population statistics from the CDC relating to --

6 **THE COURT:** Population statistics in?

7 **MR. COOPER:** From the CDC, the Centers for Disease
8 Control.

9 But my point here is that the witness's expert
10 report, her testimony at her deposition, focused solely on her
11 assessment of the lack of harm from same-sex marriage as she
12 had studied that issue in the Netherlands.

13 It did not relate to any empirical data or
14 demographic data from Massachusetts.

15 **MR. BOIES:** Your Honor, first, we disclosed -- gave
16 them her studies in Massachusetts that she testified about. At
17 her deposition at page 181 line five.

18 **"QUESTION:** Do you think the consequences for
19 heterosexuals in California will be identical
20 to the consequences for heterosexuals in
21 Massachusetts from same-sex marriage?"

22 The answer was:

23 **"ANSWER:** To my knowledge, there have not
24 been any changes for heterosexual couples in
25 Massachusetts. I would not predict any for

1 heterosexual people in California. So in
2 that sense, yes, I think it would be the
3 same."

4 That's an example. They had every opportunity to ask
5 her why she thought that.

6 And, again, the fact of the opinion is disclosed.
7 The materials that she relied on for that has been disclosed.
8 And all I'm doing is asking her to put the two together. There
9 is no surprise here.

10 **THE COURT:** I assume the quotation from the
11 deposition transcript is accurate, Mr. Cooper?

12 **MR. COOPER:** I don't deny its accuracy, your Honor.
13 I do --

14 **THE COURT:** It does appear the subject was explored
15 at her deposition.

16 **MR. COOPER:** Your Honor, it is not true that the
17 materials were disclosed relating to divorce and marriage
18 statistics with respect to Massachusetts and other American
19 jurisdictions. It was limited to these types of data
20 concerning the Netherlands.

21 **THE COURT:** But it does appear from the question --
22 question and answer that Mr. Boies read, that the subject
23 matter was explored at the witness's deposition and that would
24 appear to have put you on notice that this was within the realm
25 of the testimony that this witness was prepared to give.

1 Very well. The objection will be overruled.

2 **MR. BOIES:** Let me see if I can remember where I was,
3 your Honor.

4 **BY MR. BOIES:**

5 **Q.** Professor Badgett, I may have asked you this question or I
6 may not have, but I think it's a good place to continue the
7 examination.

8 Did you see any evidence of any adverse impacts in
9 Massachusetts on same-sex couples or different-sex couples or
10 the institution of marriage or on children resulting from --

11 **THE COURT:** Maybe you better start over.

12 **MR. BOIES:** Yes, your Honor. I agree with you.

13 **BY MR. BOIES:**

14 **Q.** Did you see any evidence of any adverse impacts in
15 Massachusetts of permitting same-sex marriage on heterosexual
16 marriage or the institution of marriage?

17 **A.** No, I saw no such adverse effects.

18 **Q.** Did you see any evidence of adverse effects in
19 Massachusetts of permitting same-sex marriages on children,
20 either children being raised by same-sex couples or children
21 being raised by different-sex couples?

22 **A.** No. I see no evidence of any such adverse effects.

23 **Q.** What does the Massachusetts experience lead you to
24 conclude about whether there would be adverse effects of
25 permitting same-sex couples to marry in California?

1 **A.** I believe that the same effect would occur here in
2 California; that is, that there would be no adverse effect on
3 different-sex couples or on the institution of marriage here in
4 California.

5 **Q.** You also testified that one of your opinions was that
6 there were many more similarities among same-sex couples and
7 different-sex couples than there were differences between the
8 two groups, and that any differences were marginal, is that
9 correct?

10 **A.** Yes, that's correct.

11 **Q.** And what is that based on?

12 **A.** That's based on my analysis of census data for the State
13 of California, comparing same-sex couples to marry
14 different-sex couples.

15 **Q.** Let me ask you to look at demonstrative 37.

16 (Document displayed)

17 **Q.** And you say here that:

18 "Same-sex couples wish to marry for many of
19 the same reasons that opposite-sex couples
20 marry."

21 **A.** Yes.

22 **Q.** And you then list reasons and I would like to ask you
23 about that.

24 You say:

25 "Just as with different-sex couples, same-sex

1 couples are raising children."

2 Do you see that?

3 **A.** Yes.

4 **Q.** And you already described the extent to which that is
5 being done, correct?

6 **A.** Yes.

7 **Q.** You then say that:

8 "Just as with different-sex couples, same-sex
9 couples are engaged in positive assortative
10 matching."

11 Do you see that?

12 **A.** Yes.

13 **Q.** What does that mean?

14 **A.** Well that's a fancy economics and sociological concept,
15 which basically boils down to similar people -- people seek
16 partners who are similar to them in many ways.

17 So we see the same kinds of patterns for same-sex
18 couples as we do for different-sex couples. People are
19 partnering with people who have similar levels of education,
20 similar race, similar age, and similar economic positions as
21 well.

22 **THE COURT:** Birds of a feather?

23 **THE WITNESS:** That would succinctly sum it up, yes.

24 **BY MR. BOIES:**

25 **Q.** And you say that different-sex couples and same-sex

1 couples are seeking the same benefits associated with marriage,
2 correct?

3 **A.** Yes, yes. And that's quite clear from the research from
4 our study in Massachusetts. So that's one reason why couples
5 are seeking to marry there in Massachusetts.

6 **Q.** I would ask you to turn next to a statement that you made
7 earlier about how preventing same-sex marriages imposes some
8 quantifiable cost in losses on California and its subdivisions;
9 do you recall that?

10 **A.** Yes.

11 **Q.** And I would like to ask you how you would go about making
12 that kind of quantification? Because you said earlier that
13 some of these costs were substantial, but not quantifiable.
14 Now you are talking about quantifying things.

15 **A.** Yes. It is possible to quantify those particular harms.
16 People spend a lot of money on weddings typically, and so we
17 tried to figure out how much money would be spent by same-sex
18 couples here in California if they were allowed to marry; both
19 couples who live here in the state, and couples who would
20 travel here from other states in order to get married.

21 And we used data from the census to get estimates of
22 couples. We looked at the rate of couples getting married in
23 the first few years in Massachusetts. About half of the
24 couples there had gotten married within, roughly, the first
25 three years. And we looked at that for couples in the state

1 and estimated that about half of the couples here in the state
2 would get married over that time period.

3 We made estimates about how many couples from other
4 states would come here based on the numbers of couples in those
5 states.

6 And, again, although we think that about half of the
7 couples might want to marry from other states if they were
8 allowed to do so in the first three years, we know that not all
9 of them will travel to California to do that. So we made
10 various adjustments to take into account the fact that
11 California draws tourists, heavily draws tourists from certain
12 states. So in those states we estimated higher numbers would
13 be coming here. Higher proportions of the couples who want to
14 marry would be coming here.

15 We took into account the fact that now -- well, if
16 California did allow same-sex couples to marry, they would have
17 some competition from not only Massachusetts, but now Iowa,
18 Vermont, New Hampshire and Connecticut. So we tried to make
19 some adjustments about couples who might go there instead. In
20 particular, we think couples from New York are much more likely
21 to travel to one of those states that are very close by. So we
22 all but eliminated New York from our calculations.

23 And then used data from the state bureaus here in
24 California that estimate spending by tourists. And we looked
25 at some studies on estimates of spending on weddings. And we

1 took the number of couples who are likely to come here to get
2 married and we multiplied them by those different figures for
3 the spending that we would expect them to have if they were to
4 come here. And we then came up with one big number. I believe
5 it was about \$490 million over three years of increased
6 spending here in California.

7 And then we estimated how much of that spending would
8 generate in sales tax revenues and hotel occupancy tax revenues
9 that go to the state and to the counties and municipalities
10 here in the state. And that figure was about \$40 million.

11 **Q.** Let me ask you to look at demonstrative 38.

12 (Document displayed)

13 **Q.** And this shows that the \$40 million over three years that
14 you just talked about.

15 It then says:

16 "There are other costs to state and local
17 governments."

18 Do you see that?

19 **A.** Yes.

20 **Q.** And the first is "general productivity losses"?

21 **A.** Yes.

22 **Q.** And can you explain what you mean by that?

23 **A.** That relates back to my earlier point; that if gay and
24 lesbian people or people in same-sex couples feel like they are
25 being treated differently, they may not be as productive in the

1 workplace and that has potential broad economic harms to the
2 state that will filter down to harmful impacts on state
3 governments in the same way that -- that we talked about for
4 the larger business spending and the economy.

5 **Q.** Another cost to state and local governments, which you
6 identify but do not quantify, is "higher speaking on
7 means-tested programs."

8 Can you explain what you mean by that?

9 **A.** Yes. The state has some safety net programs for people
10 who have low incomes. And if some of the effects on same-sex
11 couples tend to reduce their incomes, then that will make them
12 more likely to need and be eligible for those means-tested
13 programs that are paid for by the state.

14 **Q.** Another cost to state and local governments that you
15 identify, but do not quantify, is stated to be higher costs for
16 healthcare of uninsured same-sex partners.

17 Can you explain what you mean by that?

18 **A.** Yes. As I mentioned earlier, one of the important
19 benefits of marriage from employers is the coverage of spouses
20 on health insurance plans. And to the extent that couples are
21 not given -- that same-sex couples cannot have access to those
22 same benefits, then there will be uninsured people who might
23 need to sign up for some of the -- for the state's version of
24 Medicaid or the state children's health insurance program, and
25 that will increase costs to the state; or uncompensated care by

1 uninsured individuals might also be costly to the state.

2 **Q.** Another cost to state and local governments that you
3 identify, but do not quantify, that results from not permitting
4 same-sex marriage is said to be loss of workers; do you see
5 that?

6 **A.** Yes.

7 **Q.** And can you explain what you mean by that?

8 **A.** People, gay or lesbian people, who either want to marry
9 their current partner or want to have that option in the future
10 might decide that California is not a good place for them to
11 live and they may move elsewhere in order to have that right.

12 **Q.** And are you aware of any data or experience that supports
13 the statement that you just made?

14 **A.** Yes. There are two pieces of information that a colleague
15 of mine analyzed. One came from census data that shows that
16 after Massachusetts started allowing same-sex couples to marry,
17 there was an influx, a net influx of people in same-sex couples
18 who come from the so-called creative class. Those are people
19 who are more likely to be scientists or inventors or artists,
20 people who -- according to some models of economic growth, are
21 some of the drivers of economic growth. And those individuals
22 appeared to be attracted to Massachusetts, perhaps because they
23 are allowed to marry this.

24 In the survey that we talked about earlier of the
25 married couples, married individuals in Massachusetts, some of

1 those individuals had moved recently since same-sex couples
2 were allowed to marry, and they reported that that was one
3 reason why they moved to Massachusetts, was in order to have
4 the right to marry.

5 **MR. BOIES:** Your Honor, I have no more questions.

6 **THE COURT:** Very well. You may cross examine,
7 Mr. Cooper.

8 **MR. COOPER:** Thank you, your Honor, has a binder been
9 up the presented to the witness?

10 Fine. Okay.

11 **CROSS EXAMINATION**

12 **BY MR. COOPER:**

13 **Q.** Good morning, Professor Badgett.

14 **A.** Good morning.

15 **Q.** My name is Charles Cooper. I represent the
16 defendant-intervenors in this case. It's a pleasure to meet
17 you.

18 Professor, you have -- you have long been an advocate
19 for legalizing same-sex marriage, have you not?

20 **A.** I'm not sure what you mean by "advocate."

21 **Q.** Well, you have supported the legalization of same-sex
22 marriage for many years, correct?

23 **A.** Yes, I have. I have been doing research on this topic for
24 many years, and have been a supporter of the issue -- of the --

25 **THE COURT:** Be sure you keep your voice up.

1 **THE WITNESS:** I'm sorry.

2 **THE COURT:** What was the answer?

3 **A.** The answer was, yes, I have studied this issue for many
4 years and that influenced my opinion, and I do have the opinion
5 that same-sex couples should be allowed to marry.

6 **BY MR. COOPER:**

7 **Q.** And would it be fair to call you a gay rights activist?

8 **A.** I'm not sure, again, exactly what you mean by that term.
9 There have been opportunities that I have had to state my
10 opinion on subjects and I -- as I said, I do believe same-sex
11 couples should be allowed to marry.

12 **Q.** Well, your CV identifies that the *Advocate* magazine
13 awarded you or bestowed upon you an award for being "one of our
14 best and brightest activists," is that right?

15 **A.** They did. That was not something I applied for or sort of
16 sought in any way, but that was their opinion.

17 **Q.** But your activity in this field qualified you for that,
18 for that award?

19 **A.** Well, my activity was to have done research on these
20 topics for almost 20 years, yes.

21 **Q.** And you contributed to No On 8, Equality For All in the
22 Proposition 8 campaign, you did not?

23 **A.** I did.

24 **Q.** Now, your primary academic focus, Professor Badgett, is
25 essentially sexual orientation and economics, is that correct?

1 **A.** There are different ways to define it. I'm a labor
2 economist by training. That's sort of the broad field that I'm
3 in.

4 My specialty within that has been in terms of
5 thinking about sexual orientation differences. That's one
6 piece of it, yes.

7 **Q.** And what does the term "sexual orientation" mean?

8 **A.** It has different meanings in academic research. I'm not
9 sure what kind of context you are asking about.

10 **Q.** Well, are there definitional problems with the concept of
11 sexual orientation?

12 **A.** No. I don't think there are problems with it.

13 **Q.** Are there different dimensions of the concept of sexual
14 orientation?

15 **A.** Yes, yes. There are different dimensions.

16 **Q.** Would you describe them?

17 **A.** The dimensions that -- that are often found in the
18 research that I'm aware of concern differences in
19 self-identity.

20 There's a dimension related to behavior, whether
21 someone's -- the sex of someone's sex partners. There are
22 dimensions related to attraction.

23 **Q.** Would you turn to Tab 4 in your binder?

24 (Witness complied.)

25 **Q.** That is a document published by the Williams Institute

1 called *Best Practices For Asking Questions About Sexual*
2 *Orientation On Surveys*. It appears to have been published in
3 November, 2009.

4 Are you familiar with that?

5 **A.** Yes, I am.

6 **Q.** And did you have anything to do with its development and
7 publication?

8 **A.** Yes. I was a member of the group of scholars who prepared
9 it, and I was one of the editors of this document.

10 **MR. COOPER:** Your Honor, I would like to move the
11 document, which is --

12 **THE COURT:** DX-1108.

13 **MR. COOPER:** Yes, your Honor, into evidence.

14 **MR. BOIES:** No objection.

15 **THE COURT:** Very well. DIX-1108 is admitted.

16 (Defendants' Exhibit 1108 received in evidence.)

17 **BY MR. COOPER:**

18 **Q.** Dr. Badgett, I would like to refer your attention to page
19 six of the document.

20 And in the middle of the page the heading reads:

21 "Conceptually sexual orientation has three
22 major dimensions."

23 And then it lists the three major dimensions in
24 succeeding paragraphs: Sexual attraction, sexual behavior and
25 self-identification.

1 Are those the dimensions that you were referring to a
2 moment ago in your testimony?

3 **A.** Yes, those are the same ones.

4 **Q.** Now, it's true, then, that self-identification is not
5 always in concordance with sexual attraction or sexual
6 behavior, is that correct?

7 **A.** It is for most people.

8 **Q.** And, again, referring now to the bottom of page six where
9 the report states:

10 "Sizeable numbers of people reporting only
11 same-sex attraction and/or behavior
12 self-identify as heterosexual or bisexual.
13 Similarly, sizeable numbers of those who
14 identify as gay or lesbian report some sexual
15 partners of a different sex and/or some level
16 of attraction to different sex partners.
17 Some people may not be currently sexually
18 active, yet have an orientation identity when
19 asked. Self-identification is particularly
20 important for social, political and economic
21 studies."

22 You agree with those propositions, don't you?

23 **A.** Yes.

24 **Q.** Now, how does a conscientious researcher determine what to
25 ask in a survey question in the light of these different

1 dimensions of sexual orientation?

2 **A.** It might vary as to the subject that you are studying.

3 There is no single answer to that question.

4 **Q.** But one would have to assess the purpose of the survey and
5 determine the questions based upon the dimension of sexual
6 orientation that is most pertinent to that survey, is that
7 accurate?

8 **A.** In my experience if one is fortunate enough to have
9 options, then, yes, you would have to think about those kinds
10 of questions.

11 **Q.** Now, are you familiar with the 1992 National Health and
12 Social Life Survey?

13 **A.** Yes.

14 **Q.** Okay. Could you -- do you recall it well enough to
15 describe its reflection on this issue, the different dimensions
16 of sexual orientation?

17 **A.** Well, I definitely recall that they asked about those
18 different dimensions in separate questions.

19 **Q.** All right. Would you turn to exhibit -- or tab five in
20 your binder?

21 (Witness complied.)

22 **MR. COOPER:** And, for the record, your Honor, this is
23 a book -- or at least some excerpts from a book called *Sexual*
24 *Orientation Discrimination in an International Perspective*.

25

1 BY MR. COOPER:

2 Q. And you recognize that document?

3 A. Yes. I co-edited this book.

4 Q. And this was published when?

5 A. I believe in 2007.

6 Q. Now, could I ask you to turn to page 21, which is -- which
7 is one of the excerpts behind tab five there?

8 (Witness complied.)

9 Q. And the first full paragraph reads as follows.

10 "The first complication is defining what one
11 means by sexual orientation, on being gay,
12 lesbian, bisexual or heterosexual. Sexuality
13 encompasses several potential distinct
14 dimensions of human behavior, attraction and
15 personal identity as decades of research on
16 human sexuality have shown."

17 And in the next passage you refer to the study that
18 we have been discussing, the National Health and Social Life
19 Survey.

20 Allow me to read on:

21 "Perhaps the findings from the 1992 National
22 Health and Social Life Survey reveal the
23 complexity most clearly. One group of
24 respondents, 6.2 percent of men and
25 4.4 percent of women, report feeling sexual

1 attraction to people of the same sex. A
2 smaller group, 4.1 percent of women and
3 4.9 percent of men, have engaged in sexual
4 behavior with someone of the same sex since
5 the age of 18. An even smaller group,
6 2.8 percent of men and 1.4 percent of women,
7 reported that they think of themselves as gay
8 (or lesbian for women) or bisexual, and the
9 potential nesting is not necessarily complete
10 or consistent. Some people who have same-sex
11 desires have never acted on them. And even a
12 small number of men who think of themselves
13 as gay or bisexual report no same-sex
14 behavior or attraction, for instance."

15 So, Professor Badgett, there is -- can be a wide
16 variation in the classes of individuals who -- whose sexual
17 orientation is being identified depending upon whether the
18 dimension being used is the self-identity, the attraction or
19 the behavior, is that correct?

20 **A.** They are different numbers. There is overlap, as I note
21 here. Although there is some lack of overlap, as well, for
22 this group.

23 It's not inconsistent with my earlier statement. I
24 mean, most people don't fall into any of those categories.
25 Most people are heterosexual in terms of both their identity

1 and their behavior and their attractions.

2 **Q.** And these survey problems or issues with sexual
3 orientation are generally not present in studying race and sex
4 discrimination, are they?

5 **A.** No. I wouldn't agree with that at all.

6 **MR. BOIES:** I object.

7 **THE COURT:** I beg your pardon?

8 **MR. BOIES:** I object. It's outside the scope. I'm
9 not sure that he is doing this in order to save time; that is,
10 it's not totally relevant to the case, but it's certainly
11 outside the scope of what this witness has talked about.

12 **THE COURT:** Well, it is outside the scope, but I
13 think it's appropriate.

14 You may proceed on the matter, Mr. Cooper.

15 **MR. COOPER:** Thank you, your Honor.

16 **BY MR. COOPER:**

17 **Q.** I'm sorry. Did you answer my question?

18 **A.** I started to. I said, no, I don't agree with that
19 statement that you just made.

20 **Q.** Okay. Could you turn to page 23 of the excerpt from your
21 book?

22 (Witness complied.)

23 **Q.** And the sentence before the last paragraph reads:

24 "Such issues are generally not present in
25 studying race and sex discrimination, since

1 those characteristics are more reliably
2 observed or reported."

3 Do you not agree with that?

4 (Brief pause.)

5 **A.** I believe the context is different from what you were
6 looking at earlier where we were just looking at different
7 definitions.

8 I think in this case we're thinking about the context
9 of doing certain kinds of -- the context and interpretation of
10 certain sorts of tests, which are asking a somewhat different
11 question actually.

12 **THE COURT:** A word that you use or that is used in
13 that paragraph that Mr. Cooper pointed out is endogeneity.

14 **THE WITNESS:** Yes.

15 **THE COURT:** What is endogeneity?

16 **THE WITNESS:** Another one of those \$2 terms.

17 It basically means that some of the factors that we
18 are looking at all at the same time might be influencing each
19 other.

20 So in this particular case a good example would be
21 the possibility that -- that one's -- this is a broad example;
22 that one's sex -- if you were looking at the impact of a lot of
23 factors that influence wages, for instance, we often include
24 things like education and experience and race and sex and
25 occupation, because we know all those things matter in the

1 context of explaining the variation in wages.

2 But it also turns out that there might be some
3 relationship between these things. So, for instance, a
4 person's sex has a big impact on the occupation that they are
5 in, which we know from other sorts of studies.

6 So in this case my argument was simply that some of
7 these other factors might influence whether or not someone
8 identifies as gay, lesbian or bisexual in a way that we
9 wouldn't sort of argue for whether or not someone says that
10 they are male or female.

11 **THE COURT:** I see. So one's occupation may affect
12 how one identifies to other people with respect to sexual
13 orientation; is that what you are saying?

14 **THE WITNESS:** Well, I was thinking about it more with
15 regard to sex, looking at the impact of being female on wages.

16 So I'm sorry if I confused the matter by bringing
17 that other subject in, but that's the overall context.

18 I mean, I'm looking at this now, I think, because my
19 main concern in this article really didn't have very much to do
20 with race or sex discrimination, I did not talk about some of
21 the very important complications and difficulty in some cases
22 of measuring race. For instance, our census has changed its
23 racial categories in almost every single census that we've had.

24 So this is -- obviously, these kinds of questions
25 about measurement also come up in that particular context as

1 well. It's just not questions about the measurement of sexual
2 orientation, but, also, questions about the measurement of many
3 different categories, including race, even though I didn't
4 mention that here.

5 **THE COURT:** Mr. Cooper?

6 **MR. COOPER:** Thank you.

7 **BY MR. COOPER:**

8 **Q.** Professor Badgett, in your expert report, which I believe
9 is -- it's behind tab -- behind tab one of the binder in front
10 you, and it was one of the tabs in your -- in the binder that
11 Mr. Boies used with you, and was one of the documents that was
12 now introduced into evidence, you discuss the varying rates of
13 domestic partnerships in the Netherlands.

14 And in the Netherlands you -- you state in this
15 paragraph that:

16 "The number of registered partnerships
17 dropped dramatically from 1500" -- excuse
18 me -- "from 1500 to 3,000 per year to around
19 500 to 700 per year when same-sex couples
20 were allowed to marry in 2001, while annual
21 marriages of same-sex couples were twice that
22 number."

23 So in the Netherlands since 2001 domestic
24 partnerships did drop, but they remain -- they remain roughly a
25 third or so of the number of same-sex marriages, is that right?

1 **A.** Well, they aren't marriages. I would refer to them as
2 formalizations.

3 Yes. Same-sex couples with a choice in the
4 Netherlands of which of those two they would prefer to have.

5 **Q.** And same-sex couples are continuing to select, as you say,
6 domestic partnership or registering as domestic partners, at
7 the rate of about 500 to 700; and that's about, again, a third
8 of the number of same-sex marriages?

9 **A.** Yes. Registered partnerships, yeah, that's the term. I
10 don't know the exact paragraph you are referring to, but that
11 is my memory of --

12 **Q.** Paragraph 35 -- I'm sorry. I didn't mean to rush you.

13 Paragraph 35. I was quoting from the bottom of the
14 page on 11.

15 And you also say again in Paragraph 35 that:

16 "Different sex-couples are also more likely
17 to marry than to have a registered
18 partnership".

19 And, Professor, I would like you to turn to your tab
20 number seven in your binder, and I would like to publish to the
21 screen a demonstrative.

22 (Document displayed)

23 **Q.** Now, tab seven of your binder contains census data from
24 the Netherlands on the subject of opposite-sex relationships.

25 And I would like you to take a look at the

1 demonstrative on the screen, if you will, Professor Badgett,
2 which tracks the total number of opposite-sex relationships.
3 And the demonstrative indicates same-sex marriages for --
4 excuse me, opposite-sex marriages have declined since 2001 at
5 the same time that opposite-sex new registered partnerships
6 have continued to increase over that period of time; is that
7 correct?

8 **A.** These are the numbers of actual marriages -- well, I think
9 in the first place, I'm not sure that what you just said is
10 correct. If you look at 2001 data and then look at 2002 data,
11 you see a clear increase in the number of marriages. So it
12 does depend somewhat on which of these numbers that you want to
13 look at.

14 But overall, in my opinion, this doesn't tell you
15 anything about what the impact of allowing same-sex couples to
16 marry is.

17 **Q.** Does this not indicate that opposite sex couples are
18 subscribing and using registered partnerships at continuing --
19 at increasing rates since 2001 and that -- and that
20 opposite-sex marriages have actually declined from that period,
21 at least in their trend with some variation?

22 **A.** Okay. I'm going to have to just stop and compare the data
23 that you have in more detail and the exhibit to what you have
24 on the screen to make sure I understand it.

25 (Brief pause.)

1 **THE COURT:** Question, Mr. Cooper?

2 **MR. COOPER:** I thought the witness was...

3 **THE WITNESS:** Okay. I think I almost understand what
4 you have here.

5 (Brief pause.)

6 **A.** I'm sorry. Could you repeat the question, please?

7 **BY MR. COOPER:**

8 **Q.** I'm simply asking for your confirmation that opposite-sex
9 couples have used registered partnerships since 2001 in
10 increasing and steadily increasing numbers since that period;
11 and that, as well, the numbers of marriage have trended
12 downward at the same time, since 2001?

13 **A.** They have clearly trended downward since 1998, the first
14 year you have on here as well, in terms of the number of
15 opposite sex marriages. That's what I see in these data.

16 In looking at the new registered partnerships and
17 assessing, you know, what's happening here, I think you would
18 have -- as I said earlier, you would want to look at
19 preexisting trends, which is the issue for the marriages. You
20 would want to look at other kinds of things that have changed.
21 There was a big change in 2001 for registered partnerships
22 before interpreting what this --

23 **Q.** Professor Badgett, this is just a real "yes" or "no"
24 question. Your counsel can ask you to explain anything that
25 you would like to explain, but I'm simply asking a "yes" or

1 "no" question.

2 Have -- have opposite-sex couples registered
3 partnerships at year 2001 at the number of 1670, and a number
4 that has increased steadily to 2008 to 7,450?

5 **A.** Those appear to be numbers that are -- that reflect the
6 numbers that you have given me here if these, in fact, come
7 from the source that you have cited.

8 **Q.** Thank you.

9 Now, in Paragraph 37 of your expert report, you refer
10 to a qualitative data from the Netherlands that you relied upon
11 for the proposition that alternative statuses are viewed as
12 inferior in the Netherlands; that is, registered partnerships
13 are viewed as inferior to marriage.

14 And you referred to some interviews that you did in
15 the Netherlands. Would you describe those, please?

16 **A.** Interviews?

17 **Q.** Yes, please?

18 **A.** I did interviews of same-sex couples to ask them about why
19 they chose to marry or to register as partners or to remain
20 unmarried.

21 **Q.** And at least with respect to this paragraph, it was
22 those -- on those -- the basis of those interviews that you
23 developed your conclusion that "registered domestic
24 partnerships are viewed as socially and culturally second rate
25 when compared to marriage," is that right?

1 **A.** I'm sorry. Could you tell me the paragraph you are
2 looking at again?

3 **Q.** It's 37.

4 **A.** Okay.

5 **MR. BOIES:** Your Honor, I am told that this exhibit
6 actually is not yet in evidence. It's Plaintiffs' Exhibit
7 1257.

8 We have no objection to it being in evidence, but --

9 **THE COURT:** All right. The exhibit number is?

10 **MR. BOIES:** 1257.

11 **THE COURT:** Very well.

12 **MR. COOPER:** The expert report, your Honor.

13 **THE COURT:** I beg your pardon?

14 **MR. COOPER:** The expert report. The initial expert
15 report.

16 **THE COURT:** Oh, you are entering the expert report?

17 **MR. COOPER:** That's what I understood Mr. Boies to be
18 doing.

19 **THE COURT:** It's not usually done, is it, Mr. Boies?

20 **MR. BOIES:** No, it's not.

21 Counsel had said this document was already in
22 evidence in response to the Court's question. My observation
23 is simply that it was not in evidence and I have no objection
24 to it being in evidence. I also have no objection to it not
25 being in evidence.

1 (Laughter.)

2 **MR. BOIES:** I thought the record ought to be clear as
3 to whether it's in evidence or not.

4 **THE COURT:** Well, we don't ordinarily introduce the
5 expert report when the witness testifies.

6 Is there any reason why we should make an exception
7 in this case?

8 **MR. COOPER:** Not on my account.

9 **THE COURT:** Apparently, not on Mr. Boies's, so let's
10 just move on.

11 **MR. COOPER:** I was misinformed.

12 **BY MR. COOPER:**

13 **Q.** Again, we are referring to Paragraph 37.

14 **A.** Uh-huh.

15 **Q.** And it was on the basis of those interviews that you
16 relied for the conclusions that you have identified in
17 paragraph 37 that I have quoted previously?

18 **A.** No. I actually cite three other sources in that paragraph
19 as well.

20 **Q.** Okay. But this was part of your basis for your opinion?

21 **A.** Yes, that's correct.

22 **Q.** And when did you conduct those interviews?

23 **A.** I conducted them in 2004.

24 **Q.** And how many interviews did you conduct?

25 **A.** I interviewed, I believe it was 34 people and 19 different

1 couples.

2 Q. Nineteen couples?

3 A. Yes.

4 Q. And how were the 19 same-sex couples selected?

5 A. They were selected in a very common procedure for people
6 doing qualitative interviews like this. I recruited subjects
7 by tapping into some of my professional networks and my
8 personal networks to start, and then I asked the couples
9 themselves to suggest other couples whom I might interview.

10 Q. Do you recall the gender breakdown of the couples?

11 A. There were more female than male couples. I don't
12 remember the exact numbers.

13 Q. Would it refresh your recollection if I suggested there
14 were six male couples and 13 females?

15 A. That's quite plausible.

16 Q. And how long did you conduct these interviews?

17 A. The interviews lasted roughly an hour to an hour and a
18 half in most cases, sometimes a little bit more.

19 Q. And it's true, isn't it, that almost all of the couples
20 had been formed well before 2001, when the Netherlands
21 legalized same-sex marriage?

22 A. Yes, that's correct.

23 Q. Now. All but two of the participants had post secondary
24 education, is that correct?

25 A. I believe that -- that to be the case. I don't recall

1 exactly, but that sounds right.

2 **Q.** But you -- you would agree that the sample itself was
3 probably then skewed towards middle or even upper class
4 couples?

5 **A.** The sample -- it was, again, not a random sample. So it
6 might have some of the characteristics of my own personal and
7 professional networks. Yes, as I discuss in the book, in the
8 methodology section.

9 **Q.** Do you remember the dominant age cohort?

10 **A.** They were mostly in their 30's and 40's, some in their
11 50's.

12 **Q.** So you don't make any claims about how common the
13 experiences of these couples are, do you?

14 **A.** Not in terms of the commonness or frequency, no.

15 **Q.** And that's because it would be inappropriate to do so
16 given the non-random sampling, development of this grouping?

17 **A.** That is a very -- it's a very common issue with this
18 particular type of research. It's not designed to be
19 generalizable.

20 **Q.** Now, none of the same-sex couples that you interviewed had
21 registered a partnership after 2001, is that correct?

22 **A.** I think one couple had shortly after they were allowed to
23 marry, but for some reason they said they decided to go ahead
24 with the registered partnership.

25 **Q.** Now, if you had interviewed some same-sex couples who had

1 registered partnerships after marriage became available, do you
2 think they would have told you that they chose registered
3 partnerships -- a registered partnership over marriage because
4 they believed it to be culturally and socially second rate to
5 marriage?

6 **A.** Would I have expected them to say that that was the
7 reason? No, no.

8 **Q.** Professor Badgett, what was AB-205? Do you recognize
9 that?

10 **A.** I -- as I recall, that was the law that added to the
11 rights and responsibilities of registered partnership here in
12 California.

13 **Q.** And you analyzed that law in a report, didn't you, back in
14 2003?

15 **A.** Yes. I looked at the fiscal impact of that law, of that
16 legislation.

17 **Q.** And was the purpose of that report to support passage of
18 AB-205?

19 **A.** The purpose of the report was to find out whether or not
20 it would cost the state money on net.

21 **Q.** And have you analyzed domestic partnership legislation and
22 the fiscal impacts of proposed domestic partnership legislation
23 in other states?

24 **A.** Yes, I have.

25 **Q.** And where and when did you do that?

1 A. The actual domestic partner legislation, we analyzed that
2 in the State of Washington.

3 Q. And when was that?

4 A. A few years ago. I don't remember the exact year.

5 We looked at that same kind of legislation in New
6 Mexico, also, 2005-2006, sometime in that time period.

7 Other -- those are the two that I can recall right
8 now.

9 Q. Did you prepare a report in connection with the proposal
10 in Oregon?

11 A. Yes, that's right. That was also a domestic partnership.
12 I think we did do one there, too.

13 Q. Do you recall when that was?

14 A. That was more recent, in the last couple of years.

15 Q. Would you look at tab 18 of your binder?

16 (Witness complied.)

17 Q. And is that the document that was prepared by the Williams
18 Institute in connection with --

19 A. Yes.

20 Q. (Continuing) -- with the Oregon proposal?

21 A. Yes, it is.

22 Q. And you participated in that?

23 A. I did.

24 MR. COOPER: And that's DIX-2679, your Honor. I
25 would like to move it into evidence.

1 **MR. BOIES:** No objection, your Honor.

2 **THE COURT:** Very well. 2679 DIX is admitted.

3 (Defendants' Exhibit 2679 received in evidence.)

4 **BY MR. COOPER:**

5 **Q.** And in connection with proposals for enactment of domestic
6 partnership legislation, you have supported those, have you
7 not?

8 **A.** Me, personally?

9 **Q.** Yes.

10 **A.** I might have thought they were a good idea. I don't know
11 that I actually supported them in any other kind of meaningful
12 way.

13 I did research on them. That's a different issue.

14 **Q.** You don't recall writing any type of newspaper articles
15 about pending domestic partnership legislation?

16 **A.** As I said, I might have. I don't -- I know I have written
17 op-ed pieces. Sometimes they were related to specific pieces
18 of legislation and in some cases I said I thought it was a good
19 idea. Most of the time I simply said, here's what effect it
20 was going to have.

21 **Q.** But you have said that passage of the domestic partnership
22 law was a good idea, have you not?

23 **A.** I might have. I haven't looked at those essays for
24 awhile.

25 **Q.** Would you return to tab 19 of your binder?

1 (Witness complied.)

2 **Q.** And that is a reprint from the Williams Institute's
3 website of an op-ed piece that you wrote in October of 2006
4 entitled *What's Good For Same-Sex Couples Is Good For Colorado*.

5 Do you recall that now?

6 **A.** Yes. That was another example of domestic partnership
7 legislation that we did some research on.

8 **Q.** And you did support that?

9 (Brief pause.)

10 **A.** Actually, in this -- I don't say that I support it
11 anywhere in this essay.

12 **MR. COOPER:** Your Honor, I would like to move that
13 document into evidence. It's --

14 **MR. BOIES:** No objection.

15 **MR. COOPER:** DIX-2680.

16 **THE COURT:** DIX-2680 is admitted.

17 (Defendants' Exhibit 2680 received in evidence.)

18 **MR. COOPER:** Thank you, your Honor.

19 **BY MR. COOPER:**

20 **Q.** If you would turn now, Professor Badgett, to the document
21 behind tab nine, please?

22 (Witness complied.)

23 **Q.** Professor, I would represent to you that these are the
24 domestic partnership statistics for 2000 to 2009 that were
25 provided to us on a certified copy basis by the Secretary of

1 State's office.

2 **MR. COOPER:** And this is DIX-2647, your Honor. I
3 have would like to move that into evidence.

4 **MR. BOIES:** Your Honor, subject to the ability to
5 check the authentication, we have no objection.

6 **THE COURT:** Very well. And so subject, DIX-2647 is
7 in.

8 (Defendants' Exhibit 2647 received in evidence.)

9 (Brief pause.)

10 **BY MR. COOPER:**

11 **Q.** I want to invite your attention, Professor Badgett, to the
12 statistics. Again, these are for domestic partnership
13 registrations, statistics for 2008.

14 Do you see the row of statistics for 2008?

15 **A.** Yes.

16 **Q.** And they align with columns for each month, right? And so
17 each month the number of domestic partnership registrations is
18 recorded in the appropriate location for the year, correct?

19 **A.** Well, I don't know that these are correct, but I
20 understand the principle, yes.

21 **Q.** Okay. And I want to invite your attention to the months
22 during which marriage was legal in California. And that began
23 when; do you recall, Professor?

24 **A.** In June of 2008.

25 **Q.** Okay. June of 2008. And it essentially ended on election

1 day or the day after election, November 4th of that year,
2 correct?

3 **A.** Yes.

4 **Q.** And so the first full month that marriage was available,
5 how many domestic partnerships were registered? That's July of
6 that year.

7 **A.** 356.

8 **Q.** When you look right above it for the number of domestic
9 partnerships that were registered in 2007, you see that the
10 number there is 510, correct?

11 **A.** Yes.

12 **Q.** Okay. And so, indeed, the domestic partnership
13 registrations did decline from the previous month, but they
14 still maintained at roughly 70 percent, if my math is correct,
15 of the previous month's -- of the previous year's, I beg your
16 pardon, previous year's domestic partnership registrations,
17 correct?

18 **A.** Whatever the percentage is, yes, on some portion.

19 **Q.** If you look at the number directly beneath the number of
20 registrations for July of 2008 -- and that is the number for
21 July of 2009 -- you see that the number there is 332 domestic
22 partnerships, which is actually about 24 fewer than had been
23 registered in July of 2008, when marriage was an alternative
24 for these domestic partnerships, correct?

25 **A.** It was an option in July of 2008, but not in July of 2009,

1 right.

2 **Q.** That's right.

3 And the number of registered partnerships actually
4 declined from the number that were registered in July of 2008
5 to July of, 2009, correct?

6 **A.** Yes.

7 **Q.** And in the next month, August, we see the figure 286
8 domestic partnerships were registered, which was about
9 60 percent or so, if my math is correct, of the 489 from the
10 previous year, the August of 2007, and about 70 percent of the
11 number the following year, 412.

12 So there were still a very substantial number of
13 registered partnerships in August of 2008, correct?

14 **A.** There were 286, yes.

15 **Q.** And if you -- and we could compare these relationships for
16 the other two months, the two full months in the period when
17 same-sex marriage was lawful.

18 But if you look -- if you just look at the numbers,
19 for example, for all 11 months in 2008 -- excuse me. If you
20 look at the numbers for all 12 months in 2008, you see there's
21 4,489 throughout that year. And the number for just 11 months
22 in 2009 is 4,067 registered domestic partnerships, correct?

23 **A.** That's the number, yes.

24 **Q.** And if you -- and I -- I ask you to accept my math on
25 this. But if you eliminate December of 2008 from the number of

1 domestic partnerships registered in that year and you compare
2 the 11 -- first 11 months of 2008 to the first 11 months of
3 2009, the number of registered partnerships is 4,065 in 2008
4 versus 4,067 in 2009. I ask you to accept my mathematical
5 representation.

6 **A.** Okay.

7 **Q.** So the rate of registration of domestic partnership was
8 quite substantial during the period when marriage was available
9 and, in fact, is completely comparable to the number of
10 registered partnerships in 2009; is that not correct?

11 **A.** That's the number that I calculated earlier with just sort
12 a different time period of 2007.

13 Yes, I acknowledge that there were registered
14 partnerships during the time that marriage was an option, also.

15 **Q.** Do you believe that these California same-sex couples
16 chose domestic partnerships over marriage because they believed
17 it to be culturally and socially second rate when compared to
18 marriage?

19 **MR. BOIES:** Objection, your Honor. Misstates the
20 exhibit.

21 **THE COURT:** Objection overruled.

22 **A.** Well, I don't know that some of those of 18,000 couples
23 who married didn't also register a domestic partnership in
24 order to hedge their bets against the outcome of the election.

25 So I don't know exactly conclusion we could draw from

1 comparing 2008 to 2009.

2 **Q.** I would like you to turn now back to your expert report,
3 please, and paragraph 40.

4 (Witness complied.)

5 **Q.** Now, in your testimony, and in this report, you argue that
6 there are a number of same-sex couples who will not register a
7 domestic partnership, but who would get married if they had the
8 option to do so?

9 **A.** Yes.

10 **Q.** And this is the place in your expert report where you --
11 where you attempt to quantify what that number is, is it not?

12 **A.** Yes.

13 **Q.** Okay. And I would like to just go through that paragraph
14 with you.

15 "It is possible to estimate the increase in
16 the number of currently non-registered
17 same-sex domestic partners who would marry if
18 they could and, thereby, gain the legal
19 protections of marriage. To estimate the
20 eventually count of married same-sex couples
21 I multiplied the proportion of couples
22 marrying in Massachusetts between 2004 and
23 2008 calculated earlier, which is 64 percent,
24 by the number of same-sex couples in
25 California, 84,397, to get the number of

1 same-sex couples likely to marry in
2 California, which is 54,014. That is
3 64 percent of the 84,400.

4 "Next I subtract the number of currently
5 registered same-sex domestic partnerships in
6 California, calculated earlier as 46,266.

7 The difference between likely marriages and
8 current domestic partnerships is 7,748."

9 Now, Dr. Badgett, you calculate this off the number
10 of same-sex couples in California, right? And where does that
11 figure come from?

12 **A.** That 84,000, that came from the American Community Survey
13 in 2008.

14 **Q.** In 2008?

15 **A.** Yes.

16 **Q.** And that -- that number was a -- was, apparently, an
17 improvement in previous numbers of calculations of same-sex
18 couples, is that correct?

19 **A.** In the 2008 American Community Survey the Census Bureau
20 made some improvements to their processing of old data that I
21 think led to better counts of couples, yes.

22 **Q.** And it reduced significantly the previous estimates, did
23 it not, of is same-sex couples?

24 **A.** In both Massachusetts and California, yes.

25 **Q.** Professor, of the 84,400 same-sex couples in California,

1 how many of those are married?

2 **A.** I'm sorry. Could you ask that again?

3 **Q.** I'm asking: How many of the -- how many of the 84,400
4 same-sex couples in California, according to the A.C.S. 2008
5 survey, how many are married?

6 **A.** How many are actually married or how many --

7 **Q.** Well, wasn't it your estimate, I think you testified to
8 earlier, that there are 18,000 same-sex couples who were
9 married during that period in 2008?

10 **A.** That was the estimate of the number who married in that
11 time period. There may be couples in California who married in
12 other places, too; Canada, Massachusetts.

13 **Q.** Well, now, shouldn't those individuals be deducted from
14 the 84,400 before you arrive at your 7,750 estimate of people
15 who would -- who would get married but will not enter a
16 domestic partnership?

17 That is, before you actually apply your 64 percent
18 multiplier from Massachusetts, shouldn't they be deducted?

19 **A.** No, no. They would just be part of the -- that 64 percent
20 of couples who actually did marry. That's where those 18,000
21 would be.

22 **Q.** Well, what you are saying here, as I read the paragraph,
23 is that there are non-registered domestic partners who, if
24 permitted, would get married, and that those non-registered
25 domestic partners are the number that you derive when you

1 subtract 64 percent of 84,000, that is 54,000, from the 84,000,
2 correct?

3 **THE COURT:** I'm afraid I got lost in the numbers.

4 (Laughter.)

5 **MR. COOPER:** This is --

6 **THE WITNESS:** We need a blackboard.

7 **THE COURT:** I'm sure the witness has figured it out
8 though.

9 **MR. COOPER:** This is, indeed, a complicated
10 methodology that the witness has used.

11 **A.** So 64 percent of the 84,000 couples in California are the
12 number likely to marry, about 54,014?

13 **BY MR. COOPER:**

14 **Q.** Yes.

15 **A.** And it's within that that the 18,000 couples who actually
16 ended up being able to get married would fall into? They would
17 be part of that 54,000?

18 **Q.** But they are already married. They are already married.
19 Of the 84,000 same-sex couples, 18,000, according to your
20 estimate, are already married?

21 **A.** Yes.

22 **Q.** And so they certainly wouldn't be marrying again, would
23 they?

24 **A.** No. They wouldn't be marrying again, but there's still a
25 substantial group that would be part of that 54,000 who are not

1 currently registered domestic partners.

2 So there may be an additional 36,000 or so who would
3 get married, if they could, on top that 18,000. Adding those
4 two groups together and subtracting off the number of currently
5 registered domestic partnerships, it would give you about 7,000
6 people who would get married if they were able to.

7 **Q.** If you deducted the 18,000 from the 84,000, you would not
8 get 7,750, would you, Dr. Badgett?

9 **A.** No, but I think it's appropriate to include the 18,000 who
10 not only want to get married, but happened to be able to get
11 married and did get married during that period of time as part
12 of the prediction of the number of same-sex couples likely to
13 marry in California.

14 **Q.** You think it's appropriate to include them in the number
15 of people who would get married if they could, the ones --

16 **A.** They have shown that they already would, yes.

17 **Q.** Okay, okay. They already are?

18 **A.** That's right. That's a pretty good measure.

19 **THE COURT:** How are you doing on time, Mr. Cooper?

20 **MR. COOPER:** Your Honor, this would be a perfectly
21 fine place to take our lunch break.

22 **THE COURT:** Well, that would be fine. How much
23 longer do you think you have with this witness?

24 **MR. COOPER:** I think I have a couple of hours, your
25 Honor.

1 **THE COURT:** Another couple of hours?

2 **MR. COOPER:** I do.

3 **THE COURT:** Well, then, we better proceed on a full
4 stomach. So we will take our luncheon recess at this time and
5 let's resume at 1:30.

6 **MR. COOPER:** Thank you.

7 (Whereupon at 12:33 p.m. proceedings
8 were adjourned for noon recess.)

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P R O C E E D I N G S

JANUARY 19, 2010

1:32 P.M.

THE COURT: Mr. Cooper, you may continue your cross-examination of the witness.

MR. COOPER: Thank you, Your Honor. And good afternoon.

CROSS-EXAMINATION RESUMED

BY MR. COOPER:

Q. Good afternoon, Professor Badgett.

Would you turn to the document behind tab 11 of your binder, please. This is PX1271. I think it's also listed as PX1039. I do believe it's been introduced, by now, into evidence.

But this is a document entitled "Same-Sex Spouses and Unmarried Partners in the American Community Survey 2008." It's a Williams Institute document.

Do you recognize it?

A. Yes, I do.

Q. Okay. And it's by your colleague, Gary Gates; is that right?

A. Yes, it is.

Q. October 2009.

And I want you to turn to page i, little i, the executive summary, and the first bullet point on that page.

1 And I'll read it, if I may.

2 "The 2008 estimate of nearly 565,000 same-sex
3 couples marked a decline from the peak
4 estimate of 780,000 couples in 2006. This is
5 likely a result of improvements made to the
6 2008 ACS survey instrument and in
7 data-processing procedures."

8 And then the next little bullet under that says:

9 "The entire decline was in the number of
10 reported same-sex spousal couples."

11 Now, we had a short exchange about this earlier this
12 morning, Dr. Badgett. Could you describe what the nature of
13 the census of the ACS improvement or at least revision of
14 its -- of its instrument and the process that brought about
15 this reduction in the estimates from previous years?

16 **A.** Yes, I'd be happy to.

17 My understanding is that the Census Bureau made two
18 changes that resulted in this change in the number.

19 One of them -- well, actually, maybe I should just
20 describe the -- the issue overall.

21 The question is: What happens when a same-sex couple
22 says that one of the parties is the husband or wife of the
23 other person.

24 And in the case of -- the concern here is that some
25 of those individuals might be actually different-sex couples,

1 who had marked the "sex" box wrong.

2 Q. Just miscoded the --

3 A. That's right.

4 Q. -- the box?

5 A. That's right. So the two things the Census Bureau did
6 were designed to reduce the number of inadvertent markings of
7 that box, of the "sex" box. And the -- the -- okay. So
8 that's -- that's the sort of general thing that they were
9 trying to do.

10 So they did two things. First, they said, We're
11 going to change the form. Instead of having a fairly complex
12 form, that seemed to give some respondents trouble, they
13 streamlined it. It actually ends up looking more like the
14 Census form now, where each individual in the household is
15 marked in relationship to the household -- or reference person
16 in the household.

17 The second thing they did was to note that sometimes
18 respondents actually made a mistake on the form, realized it,
19 and then corrected it.

20 But the Census Bureau procedures did not allow for
21 their data entry people to take into account that correction.
22 Because what it looked like to the data entry people was that
23 person had marked both boxes, male and female. And the rule,
24 the processing rule that the Census Bureau used to have, was to
25 just take the first box, which is "male."

1 But in this new, revised procedure, what they
2 realized was that sometimes you can tell exactly what people
3 are trying to do on those forms.

4 And so they allowed the data entry people to make a
5 judgment about whether or not it looked like they were
6 correcting it and changing it.

7 So they believe they have better data on the sex of
8 individuals, and that they've reduced this miscoding problem
9 that resulted in some different-sex couples, who are married,
10 being inadvertently put into the data as same-sex couples.

11 **Q.** Thank you. Thank you.

12 And let me ask you to page back in this document to
13 the appendix, and in particular to the Appendix Table 2, page
14 number -- there is no page number, so it would be Appendix
15 Table 2. It's just before you get to the references.

16 And it is a -- it is a 2-page table of statistics
17 relating to each state. Do you see that?

18 **A.** Yes, I do.

19 **Q.** Okay. And if you look at the statistics for California,
20 under the column marked "Same-Sex couples," in the "Total"
21 column you have "84,397."

22 And that's the number that -- that is used in your
23 expert report and we discussed earlier this morning, for the
24 total number of same-sex couples in California, right?

25 **A.** Yes, that's correct.

1 Q. And as you go across that -- the row pertaining to
2 California, the number of same-sex spouses, according to the
3 ACS 2008 survey, is 23,403. Continuing on to the right on that
4 row, the number in this survey for same-sex unmarried partners
5 is 60,994, which is just the difference between the total
6 number and the number of same-sex spouses.

7 And then to the far right-hand column is the number
8 18,000 legal marriages.

9 Now, that -- those 18,000 legal marriages represent
10 the estimate that you and your colleagues made with respect to
11 California; is that correct?

12 A. That's correct.

13 Q. Okay. And so it's -- there's a difference between the
14 estimate from the Census of 23,000-and-change, and your
15 estimate of 18,000. But I take it those are just differences
16 in the methodologies that were used?

17 A. It's -- yes, they are very, very different methodologies.
18 That's the simplest way to answer it, yes.

19 Q. Okay. Now, this morning we talked about, in your
20 paragraph 40, where you use the marriage rate over a 4-year
21 period, in Massachusetts, of 64 percent to -- to calculate the
22 number of marriages that you would estimate would take place in
23 California, if same-sex marriage were -- were lawful, of the
24 people who will not enter or register a domestic partnership.

25 Now, that assumes, though, does it not, that same-sex

1 marriage rates in Massachusetts are a reliable predictor of
2 what same-sex marriage rates would be in California, correct?

3 **A.** Yes.

4 **Q.** Are you aware of any reasons why that might not be so?

5 **A.** No. I think it would be the case, that it's a reliable
6 predictor.

7 **Q.** Now, in Massachusetts, same-sex couples do not have the
8 option of registering as a domestic partnership, do they?

9 **A.** No, that's correct.

10 **Q.** So it's either marriage or cohabitation in Massachusetts?

11 **A.** There may have been some same-sex couples in Massachusetts
12 who had gotten a civil union in Vermont or a domestic
13 partnership in California. That's possible.

14 **Q.** But in terms of actually recognizing, under Massachusetts
15 law, a same-sex relationship, it's just marriage, correct?

16 **A.** Yes, that's correct.

17 **Q.** And in California, if Proposition 8 is invalidated,
18 same-sex couples will be able to choose between marriage,
19 cohabitation, or a domestic partnership; will they not?

20 **A.** I don't know. It's possible that a legislature would get
21 rid of domestic partnership.

22 **Q.** Well, at least -- at least right now, unless the
23 legislature takes action right now, that would be the case if
24 Proposition 8 were invalidated; would it not?

25 **A.** Well, the legislatures of Vermont and Connecticut and New

1 Hampshire ended the civil union status when they allowed
2 same-sex couples to marry. So California might well do the
3 same thing. I don't know what they'll do.

4 **Q.** But there was a period of time when either status was
5 available to Californians, correct?

6 **A.** Yes, that's correct.

7 **Q.** Now, I want to refer you to your deposition. I think it's
8 behind tab 3 of your binder. And I want to refer you to page
9 179, line 7. Let me know when you're there.

10 Have you found the page?

11 **A.** Yes.

12 **Q.** At line 7 the question is asked:

13 "And so I just want to know whether, in your
14 opinion, the consequences, whatever they may
15 be, of same-sex marriage in Massachusetts
16 will be identical to the consequences of
17 same-sex marriage in California."

18 **"ANSWER:** Again, so the consequences to
19 individual -- to married individuals?

20 **"QUESTION:** We can start there. That would
21 be fine.

22 **"ANSWER:** Some of the benefits of marriage
23 might differ slightly across the different
24 states. In terms of the consequences to
25 individuals, I think that the other

1 difference is that in California people would
2 have a choice of domestic partnership, which
3 they don't have in Massachusetts. So those
4 are two differences between the states."

5 Do you recall that testimony?

6 **A.** I do. That was one place that we discussed this issue. I
7 believe there were some others.

8 **Q.** Okay. Now, so if Massachusetts had had the option of
9 domestic partnership available, presumably some people would
10 elect to register domestic partnerships, just as they had in --
11 they did in California, when both were available, and just as
12 they do in the Netherlands.

13 Do you agree with that?

14 **A.** I don't know.

15 **Q.** Well, if that premise is accurate, shouldn't your
16 64 percent marriage rate be adjusted, in order to account for
17 the same-sex couples in Massachusetts who would have opted for
18 a domestic partnership, if that had been available?

19 **A.** I don't think so, actually.

20 If you look at the numbers -- percentages of same-sex
21 couples who married just in those six months, as I believe I
22 mentioned, the -- you know, that initial kind of voting with
23 their feet for marriage, was roughly 17 to 20 percent of
24 California's same-sex couples.

25 And the -- the -- if you think about if you just

1 double that, so that you've got a whole year instead of just
2 six months, then you have almost the same first year take-up
3 rate of marriage for same-sex couples in Massachusetts. That's
4 a very clear suggestion that couples will be responding in the
5 same way.

6 Excuse me. Could I get some more water, please?

7 **THE COURT:** Yes. We will take care of that.

8 **THE WITNESS:** Thank you.

9 **BY MR. COOPER:**

10 **Q.** So I take it your answer is, no, you don't think that your
11 64 percent metric should be adjusted to account for that point?

12 **A.** No. It might be that many couples will get married, and
13 64 percent of the couples will get married, and even more will
14 also have domestic partnership.

15 **Q.** Now, there are also some disincentives for California
16 same-sex couples to get married, that Massachusetts same-sex
17 couples do not have. Is that not true?

18 **A.** I'm not aware of any.

19 **Q.** I want you to turn to tab 12 in your binder. And in
20 particular, to page 13.

21 I'm sorry. Before you do...

22 **MR. COOPER:** If you will let me back up, Your Honor.
23 Forgive me. I was advised by one of my colleagues that I
24 was -- I was wrong in my impression that PX1271, the document
25 we previously discussed, had been admitted into evidence. And

1 I would like to do so now.

2 **MR. BOIES:** No objection.

3 **THE COURT:** 1271 is admitted.

4 (Plaintiffs' Exhibits 1271 received in evidence.)

5 **BY MR. COOPER:**

6 **Q.** Okay. And the document behind tab 12 is entitled,
7 "Marriage, Registration, and Dissolution by Same-Sex Couples in
8 the United States." It is PX1263.

9 Do you recognize that document?

10 **A.** I do.

11 **Q.** And you participated in its preparation; didn't you?

12 **A.** I did.

13 **Q.** In July of 2008?

14 **A.** Yes.

15 **Q.** Okay. And if you'll turn to page 13, please.

16 Now, in figure 8, there are three bar -- bar -- bars
17 in a chart, indicating the average monthly registration of
18 domestic partnerships in California in three different periods:
19 The period 2000 to 2001; the period of 2002 to 2004; and the
20 period 2005 to the present. And, of course, the present was,
21 you know, at least through July 2008.

22 And it indicates that -- that after 2005, after AB205
23 had been passed, domestic partnerships actually became less
24 popular as an option among same-sex couples; is that right?

25 **A.** No, I don't think that indicates that at all.

1 Q. No? Well, it does certainly indicate that there was a
2 decline, does it not, in the average monthly registrations
3 after -- after 2005?

4 A. There was a decline, probably, because of fulfilling some
5 of the pent-up demand earlier on.

6 Q. The pent-up demand for domestic partnership?

7 A. For some form of legal recognition. In this case,
8 domestic partnership, yes.

9 Q. And you don't think that the passage of AB205 had anything
10 to do with it?

11 A. In terms of the numbers?

12 Q. Uh-huh.

13 A. Uhm, no, I don't think it had anything to do with it. But
14 I -- as I said, it's hard to -- I think we note this in the
15 report, it's actually very hard to -- to deal with California
16 because the law changed so many times.

17 Q. Well, now, but AB205 actually was the statute that
18 extended, quite comprehensively, all of the rights and benefits
19 of marriage to domestic partnerships; attempted, essentially,
20 to equalize the two statuses, correct?

21 A. That may -- that appears to have been one of the goals,
22 yes.

23 Q. Now, turn to the next page, if you will. And Table 3
24 there has statistics for a number of jurisdictions, including
25 California, with respect to dissolutions of legally recognized

1 same-sex couple relationships by year.

2 And you'll note that in 2004, the number of
3 dissolutions spiked enormously. It went from 733 in 2003,
4 which itself was up from 296 in 2002, to a much larger number
5 in 2004, of 2,513 dissolutions.

6 So not only was the new registrations -- were the new
7 registrations after 2005, did they decline significantly, but
8 in the -- in the anticipation of 2005, dissolutions spiked.
9 Isn't that right?

10 **A.** There was an increase. And most of that increase was
11 right before -- was in the last couple of months of 2004. So
12 there was a spike. The question about what that means is a
13 different matter.

14 **Q.** Well, doesn't your report suggest an explanation,
15 Professor Badgett, for what that means?

16 I refer you to -- again, back to page 13, in the
17 first full paragraph beginning "Registration..." In the second
18 sentence there it reads:

19 "In California, domestic partnership was
20 established in 2000, and then significantly
21 expanded in 2002 and again in 2005, when
22 community property was established and the
23 legislature decreed that domestic partners
24 would have all the rights and
25 responsibilities associated with marriage."

1 And then in the next paragraph, towards the end --
2 actually, it's the last sentence of that paragraph, the report.

3 "While the 2002 expansion of domestic partner
4 rights in California led to higher monthly
5 registrations, the rate slowed somewhat after
6 the comprehensive reforms in 2005, that
7 included community property. Although, the
8 month figures were still much higher than in
9 the earlier phase."

10 Elsewhere in the report, the author suggests that
11 subjecting the couples to the community property regime that
12 came about as a result of the passage of AB205, was the
13 explanation for the decline in monthly registrations and the
14 spike in dissolutions, just before the statute was passed.

15 Do you see that?

16 **A.** Yes. I want to look at our footnotes. So the question is
17 whether or not community property might have had something to
18 do with that spike in dissolutions.

19 It's a difficult question to answer because we
20 don't -- no one studied this in a great deal of detail. And I
21 thought -- maybe I'm just remembering my book or some other
22 publication, where we talk about the honest confusion that was
23 apparent for some couples about what the tax and other
24 financial consequences of having community property might be.

25 I can refer you to many media accounts of this

1 phenomenon that was noted, that journalists talked to many
2 individuals who said their relationships were not ending, but
3 their tax advisors had -- their accountants had no idea what
4 the potential consequences might be, and that to be on the safe
5 side they were dissolving their relationship in that case.

6 And, you know, I'm not an attorney, but I do know
7 that subsequent to -- to the change in the law, there were lots
8 of questions that had to be answered. So there was much
9 confusion because domestic partnership is something that's --
10 you know, was kind of created here in California, this
11 particular version of it. So I think no one knew exactly what
12 that was going to mean.

13 **Q.** Where in this report does the -- do you and your coauthors
14 discuss those points?

15 **A.** Uhm, in this particular report, I'm not finding it, in
16 kind of looking through it very quickly. It's possible that
17 I'm thinking about a different context where we've talked about
18 it.

19 **Q.** Let me --

20 **A.** As I said, it might have been in my book.

21 **Q.** I'm sorry.

22 **A.** I don't know.

23 **Q.** Let me refer you to a footnote, footnote on page 33. It's
24 footnote number 18. And listed there are nine community
25 property states. And Massachusetts is not listed as among

1 them, is it?

2 **A.** No.

3 **Q.** Okay. Let me now invite your attention to paragraph 45 of
4 your expert report.

5 **A.** Okay.

6 **Q.** Now, this is the paragraph, is it not, or the place in
7 your report where you calculate, attempt to quantify, the
8 number of unemployed partners who would -- who would not be
9 eligible for healthcare benefits from the employer; is that
10 essentially correct?

11 **A.** They're not necessarily unemployed. They are either not
12 employed or their employers don't offer them benefits.

13 **Q.** And how many uncovered partners did you -- did you
14 calculate? I think the number is actually over on page 16,
15 towards the end of that paragraph.

16 **A.** Yes, almost 1600. 1,581 partners.

17 **Q.** And in the sentence where you identify that number, you
18 say:

19 "That leaves approximately 1,581 uncovered
20 partners, who I assume would be covered if
21 they were spouses."

22 So you assume that all of those uncovered partners
23 would qualify and would -- if they were part of a married
24 couple, would be able to get employer benefits as spouses,
25 correct?

1 **A.** Yes.

2 **Q.** I want you to refer, now, to tab 13 of your binder.

3 **MR. COOPER:** Your Honor, this is PX1261. I think it
4 was introduced by -- into evidence by Mr. Boies. It's the
5 California Employer Health Benefit Survey dated December 2008.

6 **BY MR. COOPER:**

7 **Q.** Now, this was the survey you relied on in connection with
8 your opinions on this subject matter; is that correct?

9 **A.** Yes.

10 **Q.** Okay. I want you to turn to page 4, please.

11 Now, according to this survey, California employers
12 offer coverage to their employees -- or, at least, I should
13 have said, 70 percent of all California employers offer
14 coverage to their employees -- employees.

15 30 percent don't offer any healthcare coverage,
16 correct?

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

18 **Q.** Okay. And this says nothing -- and I can't find anything
19 in the survey, frankly, that says or that would inform as to
20 whether or not the 70 percent of California employees --
21 employers who offer healthcare benefits to their employees,
22 also offer family benefits. That is, benefits that would
23 extend to a spouse, as opposed to individual benefits.

24 But it's -- it's clear, is it not, then, that -- that
25 one can't assume that every one of these uncovered partners

1 would be covered if they were a spouse?

2 **A.** Uhm, my understanding, from talking to the person who
3 works with the California Healthcare Foundation, that it was
4 her understanding that virtually all of these employers also
5 offer spousal coverage.

6 **Q.** Okay. So even if all 70 do, all 70 percent of California
7 employees [sic] offer family coverage, only 70 percent do?

8 **A.** Yes. And I took that into account in my calculation.

9 **Q.** You did take that into account?

10 **A.** I did. I think I said so in the paragraph that you
11 referred to earlier.

12 **Q.** And turn, as well, to page 18, please.

13 Now, in your paragraph 45, you further assume that
14 each one of the uncovered employees would have to pay \$5,909 in
15 a premium to -- to obtain their own coverage.

16 That would be a premium expense that the employer
17 would otherwise bear by himself. That's your assumption in
18 your paragraph, correct?

19 **A.** Yes.

20 **Q.** Now, on page 18, the -- the survey indicates that
21 employers rarely pay for all of family coverage; there is a
22 significant portion that the employee himself or herself has to
23 actually pay.

24 And according to this -- to this survey, the
25 employee's share is 3,000 -- essentially, \$3,200, as compared

1 to the \$10,000-and-change contribution by the employer. Did
2 you account for that, in your analysis?

3 **A.** I don't think I did, in calculating the absolute total --
4 additional total spending for couples, to the extent that
5 take-up rates are quite high for health insurance when it's
6 offered. But I did not take that into account in adding up the
7 total now.

8 **Q.** Well, speaking of take-up rates, turn to the page number 9
9 in your tab.

10 Now, not all employees are eligible for coverage by
11 their employer, correct?

12 **A.** That's correct. Some -- sometimes employers require them
13 to be full-time, for instance.

14 **Q.** Exactly. And, according to this, in California,
15 79 percent of employees are eligible for employer coverage.
16 This, again, doesn't tell us whether that's individual coverage
17 or family coverage, or both.

18 But -- but at least 79 percent are eligible for
19 individual coverage. But only 79 percent. 20 percent are not
20 eligible at all; isn't that correct?

21 **A.** Yes, that's correct.

22 **Q.** Okay. And not all the eligible employees actually take it
23 up. And in light of the cost of the premium, that certainly is
24 not surprising.

25 And according to this -- to this survey, 83 percent

1 of those who are eligible actually take it up. So the take-up
2 rate, while it is high, it is certainly not a hundred percent,
3 correct?

4 **A.** That's what this suggests, yes.

5 **Q.** So the net of that is that 65 percent, only 65 percent of
6 employees are actually covered by their employer in the state
7 of California; is that correct?

8 **A.** Yes, I believe that's what that says. Within firms
9 offering coverage, yes.

10 **Q.** Okay. Let's turn, now, all the way to paragraph 91 of
11 your expert report. And, actually, perhaps, it makes more
12 sense to turn to paragraph 90.

13 And this is a series of paragraphs that contains your
14 analysis and your calculations relating to the issue of
15 wedding-related business generation and tax revenue, correct?

16 **A.** Yes.

17 **Q.** Which you testified specifically about in your direct
18 testimony.

19 And I do want, now, to focus on paragraph 91. And in
20 this paragraph you're referring back to the study. I think you
21 had -- it was introduced in direct testimony, and you had a
22 conversation with Mr. Boies about the study you had done on
23 this subject, previous to your expert report, correct?

24 **A.** Yes.

25 **Q.** Okay. In this paragraph, you're referring to that study.

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"In that study, my colleagues and I used methods and data that are consistent with our prior studies. We estimated that the number of couples who would marry if allowed by predicting the number of couples that would wish to marry in California, and subtracting the number of couples that already did marry. Based on figures from Massachusetts, discussed previously, we predict that approximately half of California same-sex couples would marry in the first three years of having the option to do so. Half of the 120,639 same-sex couples in California, counted in the American Community Survey (an average of the 2004 to 2006 surveys) would be 51,320 couples."

Now, previously, in your expert report, in at least three different locations, you've used the number of same-sex couples as the 84,400 that we looked at a moment ago, from the ACS 2008 survey, correct?

A. Yes.

Q. Okay. And -- but now you're using the substantially higher number of same-sex couples in California that are derived from the previous surveys, which the Census has now

1 basically said were inflated; is that correct?

2 **A.** Yes. I'm not worried about that, though.

3 **Q.** And using that number, you've -- you have concluded that
4 51,320 couples, same-sex couples, would marry if -- over a
5 3-year period, correct?

6 **A.** That's right. We're just looking at a 3-year period here.

7 **Q.** All right. Let's continue with paragraph 92.

8 "We estimated the number of legal same-sex
9 marriages between June 16, 2008, and
10 November 4th, 2008, through a survey of
11 California county clerks that allowed us to
12 compare marriages in the summer of 2007 and
13 2008, resulting in an estimate of 18,000
14 same-sex couples who married."

15 And we've talked about the 18,000 same-sex marriage
16 estimate previously.

17 I want to skip, for purposes of time only, the next
18 two sentences and pick up with:

19 "We used data from the San Francisco County
20 Clerk's Office, to determine the percentage
21 of out-of-state same-sex marriages that
22 occurred before Proposition 8's passage" --
23 then you have in parentheses,
24 "19.3 percent" -- "and applied that
25 percentage to the entire state. Of the

1 18,000 married couples, we estimated the
2 number of resident and out-of-state same-sex
3 couples married in California to be 14,384,
4 and 3,746 respectively."

5 So, Professor Badgett, using the 19.3 percent metric
6 from San Francisco, you applied that to the 18,000 estimate of
7 same-sex marriages, and determined how many were effective --
8 of that number, were in state and how many could be estimated
9 as likely being out of state, correct?

10 **A.** That's correct.

11 **Q.** Okay. I can't get these two numbers to sum to 18,000, the
12 14,384 and the 3,746. They're not far off. By my calculation
13 it's 18,130, but --

14 **THE COURT:** Perhaps you could ask if there's an
15 explanation.

16 (Laughter)

17 **MR. COOPER:** That is my question, Your Honor. Thank
18 you.

19 **THE COURT:** All right. Good.

20 **THE WITNESS:** My guess is a typo.

21 **BY MR. COOPER:**

22 **Q.** Okay. Your paragraph continues:

23 "As a result, we estimate that 36,936
24 additional in-state couples would marry if
25 possible over the first three years that

1 marriage is open to same-sex couples."

2 Now, tell me how you derived the 36,936 number.

3 **A.** My hope is that it's the difference between the number at
4 the end of paragraph 91, 51,320 couples who live in California
5 that we estimate would marry, and the 14,384.

6 **Q.** Yes, it is. At least that's consistent with my math, as
7 well. I just wanted to confirm that that is -- that is, in
8 fact, the source of the -- of the number.

9 Now, again, the 51,320 is derived from the earlier
10 and overstated, according to the Census, estimate of the number
11 of same-sex couples in California.

12 If you use the 84,400 same-sex couples in California,
13 that you've used consistently elsewhere in your report, the
14 number of projected marriages would be half of 84,400, or
15 42,200. And you would deduct from that the 14,384, for a
16 figure of 27,000, correct, substantially lower than the number
17 you have?

18 **A.** That might well be. I don't think that's necessary to do.
19 I used the earlier study that we had already done, because we
20 have documented that in a lot of detail on our website, the
21 Williams Institute website.

22 And it seemed like a reasonable thing to update
23 something that we had already done, so that people could
24 understand better how we arrived at these particular figures.

25 But, really, in the end, I don't think it makes very

1 much of a difference. As I noted earlier, applying that
2 64 percent figure to California, to come up with what I think
3 is the best estimate of the number of couples who would marry,
4 is more than 51,000. Which just suggests it might take another
5 six months or a year, or so, to get up to this -- this 51,320
6 figure.

7 So it's simply a time period question, not --
8 wouldn't necessarily change the fact that there will be
9 hundreds of millions of dollars lost in business, for the
10 state's businesses.

11 **Q.** So just really doesn't much matter what number you use for
12 the number of same-sex couples in California, then, does it,
13 Dr. Badgett?

14 **A.** Well, these things are difficult to quantify, as I've said
15 before. And, in this case, this is an example of an exercise
16 where we -- we did our best to put some actual numbers that we
17 think come -- that are highly -- that are very easy to justify,
18 given what we know from the Census data, and from other states,
19 and to come up with our -- with our best estimate over a
20 particular period of time.

21 And so we think it's a good estimate for what it is.
22 It's hundreds of millions of dollars. That's our estimate.
23 It's difficult to quantify very precisely, but I think we have
24 a very, very good idea of what the order of magnitude would be.

25 **Q.** Let's turn, now, to paragraph 95, of your report. And

1 this is where you talk about quantifying the number of people
2 who would come to California to get married from high
3 California tourism states. And you -- the paragraph cites the
4 states of New Mexico, Arizona, Nevada, North Carolina, Oregon,
5 Texas, and Washington as high-tourism states.

6 And you conclude that the number of individuals
7 coming over a 3-year period would be 31,120; is that correct?

8 **A.** That's correct.

9 **Q.** Now, the numbers you're using to estimate the same-sex
10 couples in these high California tourism states also come from
11 the ACS 2004-2006 inflated estimates, correct?

12 **A.** That's correct, that they come from those estimates, yes.

13 **Q.** Now, have you -- with respect to your calculation of the
14 same-sex couples that will come from these states, have you
15 attempted to adjust or discount this number, or does this
16 number reflect an adjustment for the same-sex couples in these
17 states who have already gone to Massachusetts, Iowa,
18 Connecticut, Vermont, or New Hampshire to get married?

19 **A.** No. As I state very clearly, we did not alter these
20 estimates, beyond accounting for the fact that some of the
21 out-of-state couples who got married here in California might
22 have already come from those states. So we took an estimate of
23 that number out of that total.

24 **Q.** You took an estimate of what out of it?

25 **A.** We tried to estimate, of the roughly 3700 out-of-state

1 couples who had come already to California to marry, our
2 estimate of that, we figured some of those are likely to be
3 from those states. So we did subtract that out.

4 As I said, thus, we did not alter these estimates
5 beyond accounting for those couples married in California prior
6 to Proposition 8.

7 **Q.** Right. Okay. Well, don't you think that a lot of the
8 same-sex couples who -- and a lot of the pent-up demand, or at
9 least some of the pent-up demand that was willing to travel,
10 have already gotten married, same-sex couples in these states
11 have already gotten married, and that they will continue to get
12 married between now and the time that California does enable,
13 through whatever means, same-sex couples to marry?

14 **A.** I think those are two different questions, actually.

15 One is about: Did it satisfy the pent-up demand?
16 No, I don't think it has. If our estimate is anywhere close to
17 correct, of 3700 couples, that's a tiny blip. That's not even
18 1 percent of all same-sex couples in the U.S.

19 So I'm quite confident that that is not the pent-up
20 demand of couples who would be willing to travel.

21 As to whether or not, during whatever time period
22 Proposition 8 is still the law in California, whether or not
23 some of those couples might go somewhere else, that's entirely
24 possible.

25 **Q.** Okay. So one would not expect the same-sex couples in

1 those states, who want to marry, to wait for California to
2 offer it, if it is available elsewhere, would they? Or at
3 least not many of them?

4 **A.** No. Certainly, my estimate would be different if four or
5 five years from now California, once again, let same-sex
6 couples marry. This may be -- this is a loss to California.
7 Whether or not it's temporary or permanent might depend on
8 whether or not the law changes.

9 **Q.** Are you suggesting that the same-sex couples in these
10 other states are going to be willing to wait four or five years
11 to get married, for California to legalize same-sex marriage?

12 **A.** No. I'm not suggesting that at all. I'm simply
13 calculating what I think the cost of Proposition 8 is to the
14 state and to its municipalities.

15 **THE COURT:** All right. Ready to move on to another
16 subject?

17 (Laughter)

18 **MR. COOPER:** Very well, Your Honor.

19 **BY MR. COOPER:**

20 **Q.** Let's turn, now, to tab 15 in your binder.

21 And, Professor Badgett, this is identified as defense
22 Exhibit 1297. It is a Williams project study, policy study,
23 entitled, "Equal Rights Fiscal Responsibility: The Impact of
24 AB205 on California's Budget."

25 And it indicates you were involved in the preparation

1 of this document.

2 **A.** Yes, I was.

3 **MR. COOPER:** I'd like to introduce this into
4 evidence, if it isn't already.

5 **MR. BOIES:** No objection if it isn't already.

6 **THE COURT:** Very well. 1297 is in, if it isn't.

7 (Defendants' Exhibit 1297 received in evidence.)

8 **BY MR. COOPER:**

9 **Q.** I'd like to call your attention to page 7 of the document.
10 And it's the first paragraph under Roman III, "Tax Revenues
11 From Tourism." And the first sentence reads:

12 "Analysis of other states' consideration of
13 opening marriage to same-sex couples have
14 argued that the first state to do so would
15 experience a wave of increased tourism that
16 would bring millions of additional tax
17 revenues into state coffers."

18 Now, there has been, and one would expect, a big
19 first mover advantage to any state that was the first, as
20 Massachusetts was, to adopt same-sex marriage. Is that not
21 correct?

22 **A.** Yes, I think that is correct.

23 **Q.** Now, in this document, you consider three different
24 scenarios, do you not, in terms of projecting the nonresident
25 individuals who will come to California in order to -- in order

1 to register domestic partnerships, correct?

2 **A.** Yes.

3 **Q.** And your first scenario is what you call an optimistic
4 scenario, which would -- which would estimate that 64,000
5 couples in the western states will travel to California, and
6 spend the average three to five days' stay for overnight
7 visitors, and an average \$91 per person per day.

8 In the next paragraph you -- you articulate what you
9 call a somewhat less optimistic but more realistic scenario
10 assumes that the same proportion of those 64,000 western
11 couples will become domestic partners as the proportion of
12 same-sex couples in California who have registered.

13 And you conclude, using that metric, that 28,160
14 visitors, under your realistic scenario, will travel to
15 California to register domestic partnerships.

16 And then in the next paragraph you have, a
17 highly-pessimistic scenario is to assume that California will
18 get the same number of couples as Vermont received. And you
19 estimate that to be about 4700 out-of-state couples. But you
20 say that is likely to be way too pessimistic.

21 Now, have you ever gone back to assess how accurate
22 those predictions were?

23 **A.** Yes, in a way. I mean, as you could see, we really were
24 not very sure about what would happen. And things kept
25 changing, in terms of the legal landscape across the country.

1 And things kept changing in terms of the -- the status -- the
2 rights and responsibilities that went to domestic partnerships
3 in California.

4 So it's hard to know exactly why this happened, but
5 it turns out, I think, that our -- you know, our pessimistic
6 scenario turned out to be the one that was closest to what
7 actually happened.

8 There are relatively few out-of-state couples who
9 have registered their domestic partnerships in California.

10 There were things, other things that changed during
11 this time period that, I think, probably significantly dampened
12 demand for domestic partnerships in California. That would
13 include the fact that some other states had instituted some
14 similar types of statuses.

15 And shortly after we published this, I believe -- let
16 me just check the date -- May 2003, just a few months after
17 that, the Massachusetts Supreme Judicial Court said that
18 same-sex couples would be allowed to marry there.

19 And so that may have altered people's desire or
20 demand for a status that is clearly less than marriage.

21 **Q.** We can estimate how many have come, can we not, to
22 register domestic partnerships?

23 **A.** Not exactly. We know from the state's registry -- I
24 counted them up. I think it's roughly 5 percent of registered
25 same-sex partners -- registered domestic partners, excuse me,

1 have addresses from outside of California.

2 **Q.** Okay. About 5 percent.

3 And we also know from the document behind tab 12,
4 that is PX1263, that an average -- you'll recall we discussed
5 this -- an average of 462 domestic partnerships have been
6 registered every month since 2005, at least as of the date of
7 that document. And that would be, roughly, 17,000 or so.
8 Actually, that's perhaps a little -- a little on the high side.

9 And if you take 5 percent of that figure, you get 850
10 people, couples that have journeyed to California in order to
11 register their partnerships. Quite a bit lower than your
12 pessimistic estimation, and way, way lower than the others, as
13 well. Correct?

14 **A.** Well, it depends on which number you look at. If you look
15 at the total same sex -- or out-of-state couples who are
16 registered domestic partners, there would be -- 5 percent would
17 be a much larger number.

18 But, as I said, a lot of things change. So it's not
19 surprising that our pessimistic scenario was even too
20 pessimistic.

21 **Q.** But --

22 (Simultaneous colloquy.)

23 **A.** -- but I think it makes it clear that we knew that there
24 was considerable uncertainty in making that calculation at that
25 time.

1 Q. Could you now turn back in your expert report to paragraph
2 33. It's on page 10. And I want to refer you to footnote 3,
3 of that report.

4 A. I'm sorry. Actually, I'm looking at the wrong thing.
5 Sorry, yes.

6 Q. Footnote 3 reads:

7 "Massachusetts Department of Public Health
8 had recorded 13,270 marriages by same-sex
9 couples by the end of 2008. I adjusted for
10 the possible surge of out-of-state couples
11 marrying after they were allowed to wed in
12 Massachusetts as of August 1, 2008."

13 And so we're talking here about the individuals who
14 came to Massachusetts in 2008, when it was opened to
15 nonresident same-sex couples, correct?

16 A. Yes.

17 Q. Yes. In August of 2008. I --

18 "QUESTION: I adjusted for that possible
19 surge" -- continuing on -- "by calculating
20 the average weddings in August-December of
21 2005 to 2007. Legally, those were to be
22 in-state couples only. And subtracting that
23 from the number of marriages in
24 August-December of 2008. That difference is
25 a reasonable estimate of the number of

1 out-of-state couples coming to Massachusetts
2 to marry. I subtract that total from 13,270
3 to get 12,506."

4 Okay. So if you then subtract 12,506 from 13,270,
5 you get the number that you estimate of nonresident --
6 nonresidents of Massachusetts coming in to Massachusetts during
7 that 5-month period, correct?

8 **A.** That's correct.

9 **Q.** And what is that number?

10 **A.** It's roughly 700.

11 **Q.** About 764, according to my math, if it's -- if it's
12 correct.

13 And so that's how many came during a 5-month period.
14 And to adjust -- to try to annualize that over a year, what
15 would your rough estimate be, in terms of how many
16 non-residents would come to Massachusetts, using this as the
17 rate of -- the rate of subscription?

18 **A.** Well, I wouldn't use the data from this year to make that
19 kind of extrapolation.

20 The law didn't change until July of 2008. Actually,
21 most same-sex couples like to get married in the summer, like
22 different-sex couples do.

23 So there wasn't much time for people from other
24 states to know, to learn about the change in the law, to
25 realize they could come to Massachusetts, to make plans, to get

1 their relatives on board to go on a trip there, whatever they
2 felt like they wanted to do in order to celebrate those
3 weddings.

4 So I don't think we would be able to really draw many
5 conclusions from that, about the longer run number of same-sex
6 couples coming there to marry from other states.

7 **Q.** Okay. Well, if you did use it, though, if you do use
8 it --

9 **A.** Well, I wouldn't.

10 **Q.** If you did.

11 **A.** Uh-huh.

12 **Q.** So I'm asking a hypothetical.

13 If you did, about how many would you project, at that
14 rate, would come to Massachusetts over a 1-year period?

15 **A.** Uhm, I -- I would get a number that's too low. I don't
16 know. What would 700 be by the number of months? Five months?
17 Inflating it by 7 -- I don't know. 712, something like that.
18 It would be a higher number.

19 **Q.** It would be about --

20 (Simultaneous colloquy.)

21 **Q.** -- 1800 or so. Do you think that seems like it's in the
22 ballpark?

23 **A.** For that particular exercise.

24 But, again, as I said, as an estimate of the number
25 of same-sex couples who would come from out of state. I don't

1 think it would be a very good one.

2 **Q.** Okay. But, then, if you multiplied that by 3, assuming
3 again my hypothetical, that that is a useful metric to use,
4 your calculation for the number of -- that came to
5 Massachusetts during the first five months it was possible to
6 do so, then you get around 5500 people over a 3-year period
7 coming to Massachusetts.

8 Professor, I want you to turn your binder to tab
9 number 16. And that is marked as defense Exhibit 742. And it
10 appears to be a memorandum from you and your colleague,
11 Mr. Sears, to Daniel O'Connell, Secretary of Housing and
12 Economic Development.

13 And I trust that's for the State of Massachusetts,
14 correct?

15 **A.** That's correct.

16 **Q.** Okay. And this is dated June 30th, 2008, correct?

17 **A.** Yes.

18 **Q.** Okay. And if you'll turn to page 2 -- unfortunately, the
19 pages are not numbered, but it's the -- actually, I think
20 counts to the third page in.

21 Are you there? It basically has a heading, Number of
22 same-sex couples who will marry.

23 **A.** Yes.

24 **Q.** Yes. Okay. Now, I want to invite your attention to the
25 very last line on that page. It is the conclusion of a lot of

1 analysis and calculations that precede it. But the -- but the
2 sentence reads:

3 "Altogether, we estimate that 32,200 domestic
4 same-sex couples would travel to
5 Massachusetts to marry."

6 Do you see that?

7 **A.** Yes, I do.

8 **Q.** Okay. And that does not compare very closely, does it,
9 Professor Badgett, to the hypothetical I asked you to indulge,
10 based upon your calculations for the out-of-town same-sex
11 couples who would come to Massachusetts, of around 5500, over a
12 3-year period, does it?

13 **A.** You started with a number that I think is too low. If you
14 multiply it by three, it's even farther away from the figure
15 that I think would be more reasonable to -- to estimate for
16 Massachusetts.

17 **Q.** Do you continue to believe that 32,200 is reasonable, in
18 light of your calculation in paragraph 32 of this report?

19 **A.** We make these estimates with the best information we have
20 at the time, looking at the state of the law in any given
21 place.

22 As we talked about a little while ago, things keep
23 changing. And now Vermont, Connecticut, and New Hampshire, and
24 Iowa, allow same-sex couples to marry. So Massachusetts
25 will -- will and does have some competition for those couples.

1 Q. Did those states allow same-sex couples to marry when
2 Massachusetts opened its marriage window to out-of-town
3 same-sex couples?

4 A. No, they didn't.

5 Q. All right. Professor Badgett, again, you favor legalizing
6 same-sex marriage, correct?

7 A. I have said that I think it is -- based on my research, I
8 think it's something that's good for a lot of people, and
9 doesn't hurt anyone else; that's correct.

10 Q. Would you consider -- or reconsider, I should say, your
11 position on same-sex marriage if legalizing it would cost the
12 government money rather than save the government money, as you
13 believe it would?

14 A. My opinion is not really based on whether or not it saves
15 governments money or not. My role in doing these kinds of
16 calculations is just to make those estimates with the best data
17 I can find, to the best of my ability.

18 Q. Do you know of anyone who favors same-sex marriage, who
19 would change their position if it could be demonstrated that
20 legalizing same-sex marriage would cost the government money
21 rather than save it money?

22 A. I don't know. I would have no way of knowing that.

23 Q. You don't -- you don't -- as you sit here today, you don't
24 know of anybody who you think is in that category to know this?

25 A. No one who has ever said that to me, no.

1 Q. Do you know of anyone who opposes same-sex marriage, who
2 would change their positions based upon the fiscal implications
3 for state and local governments of legalizing or not legalizing
4 same-sex marriage?

5 A. Again, I don't know.

6 Q. Are you familiar with the official ballot materials for
7 the Proposition 8 election?

8 A. I've seen the -- the short summary that was on the ballot,
9 actually. And I might have, at one point, looked at some of
10 the language in the larger materials. I don't recall.

11 Q. Okay. Well, let me represent to you that -- and it's been
12 introduced. It's in evidence, I think, Plaintiff's
13 Exhibit No. 1. But in those official ballot materials, the
14 State advised the voters of the fiscal effects of
15 Proposition 8. And it advised the voters that:

16 "Over the long-run, this measure would likely
17 have little impact on state or local
18 governments."

19 Do you agree with that?

20 A. No, I don't.

21 Q. Okay. Do you believe that the voters of California were
22 entitled to rely upon it when they went to the polls?

23 A. I don't know. My understanding is, they are required to
24 have some kind of fiscal statement.

25 **MR. COOPER:** Your Honor, I don't know if this is a

1 good time for you, but if the Court would entertain a short
2 break, I might be able to tighten things up going forward.

3 **THE COURT:** That's an offer I can hardly refuse. Ten
4 minutes?

5 **MR. COOPER:** That would be good.

6 **THE COURT:** Is that going to be enough?

7 **MR. COOPER:** Yes. Thank you.

8 **THE COURT:** We will take ten minutes and resume,
9 then, with a shortened cross-examination of the witness.

10 (Recess taken from 2:39 to 2:55 p.m.)

11 **THE COURT:** Mr. Cooper.

12 **MR. COOPER:** Thank you, Your Honor. Your Honor, we
13 have another witness binder we want to hand up to the witness
14 and to the Court.

15 We're done with the big one, Professor Badgett.

16 May I approach the witness, Your Honor?

17 **THE COURT:** Yes, you may.

18 **MR. COOPER:** Thank you.

19 **BY MR. COOPER:**

20 **Q.** Professor Badgett, I want to turn now to page 36 of your
21 expert report, and paragraph 110.

22 **A.** Sorry. I put this away. Okay. I'm sorry, which page?

23 **Q.** Page 36, towards the end, paragraph 110.

24 And in that paragraph you -- you're speaking now to
25 the proposition that allowing same-sex couples to marry has had

1 and will have no adverse impacts on heterosexual marriage. And
2 in paragraph 110 you say:

3 "Based on my research and experience, I
4 believe it is unlikely that heterosexual
5 marriages would be discouraged or made
6 unstable if same-sex couples were allowed to
7 marry, or, in the case of California, be
8 permitted to continue marrying but for
9 Proposition 8. For example, data from the
10 Netherlands, the first country to allow
11 same-sex couples to marry, suggests that
12 heterosexual marriage trends do not
13 change" --

14 **A.** I'm sorry to interrupt. I was looking on the wrong page.
15 I thought you said page 36.

16 **Q.** I did say 36. It's your initial report.

17 **A.** Okay. Maybe I -- okay. Maybe I do have -- paragraph --

18 **Q.** Paragraph 110.

19 **A.** 110.

20 **Q.** Yes.

21 **A.** I'm sorry.

22 **Q.** Why don't you just go ahead and read that, and catch up
23 with me, if you will.

24 **A.** Yes. Okay.

25 **Q.** And to conclude, then, the paragraph:

1 "For example, data from Netherlands, the
2 first country to allow same-sex couples to
3 marry, suggests that heterosexual marriage
4 trends do not change when same-sex couples
5 are permitted to marry."

6 Professor Badgett, would you please open the binder
7 that I've given you, the small one, to tab number 1.

8 **MR. COOPER:** And what I have behind tab number 1 is a
9 demonstrative, Your Honor, as well as defense Exhibit 1887,
10 which is -- which is a collection of statistics on the marriage
11 rate in the Netherlands.

12 And if -- with the Court's permission, I would
13 publish the demonstrative to the -- to the television screen.

14 **BY MR. COOPER:**

15 **Q.** Now, Dr. Badgett, what this -- what this demonstrative
16 attempts to display is the marriage rate that is marriages per
17 1,000 inhabitants in the Netherlands, over the course of time
18 from 1994 to 2008.

19 And what it reflects is a marriage rate that is
20 relatively stable, from 5.4 marriages per 1,000 inhabitants, to
21 5.1 in 2001. That is from 1994 to 2001. And then from 2001,
22 that is 5.1 marriages per 1,000, to 4.6 marriages per 1,000 in
23 2008.

24 And if we turn to tab 2, what I've submit to you we
25 have calculated here is the average yearly rate of change in

1 the marriage rate for the Netherlands from 1994 to 2000, the
2 year before same-sex marriage was adopted in the Netherlands.

3 And, according to our calculations, the average
4 yearly increase during that period was zero 0.02 percent.
5 Every year, the rate increased an average, with variation,
6 obviously, between years within the period, but overall
7 increased .02 percent.

8 And if you'll turn, now, to tab 3, the next tab is
9 the marriage rate, and the average yearly rate of change in the
10 Netherlands for the period in which same-sex marriage was
11 adopted, and thereafter, 2001 to 2005.

12 And you'll see that the average annual rate of change
13 now declines. It declines to .07 percent, through the year
14 that is the most recent year in which we have data, 2008.

15 Now, that is a change between those two periods, the
16 period before same-sex marriage was adopted, and the period in
17 which and after -- the year in which and after same-sex
18 marriage was adopted in the Netherlands, a rate of -- of change
19 that is 450 percent, a decrease that -- that is 450 percent
20 from the previous period.

21 Dr. Badgett, now, notwithstanding the accepted and
22 understood difficulties of -- and the various considerations
23 and variables that go into social phenomenon of this kind, like
24 the marriage rate, it is clear that at least from the time that
25 the Netherlands adopted same-sex marriage until now, the

1 marriage rate has declined significantly, correct?

2 **MR. BOIES:** Objection.

3 **THE COURT:** What ground?

4 **MR. BOIES:** He has in the question all sorts of
5 assumptions.

6 **THE COURT:** I beg your pardon?

7 **MR. BOIES:** He has in the question all sorts of
8 assumptions and misstatements of the statistics.

9 **THE COURT:** Isn't that a matter you can take up on
10 cross -- or redirect?

11 **MR. BOIES:** It is. It's such a long question --

12 **THE COURT:** Well, it was a long question. I will be
13 more sympathetic to that objection, Mr. Boies.

14 (Laughter)

15 **MR. COOPER:** Let me try to shorten it up, Your Honor.

16 **BY MR. COOPER:**

17 **Q.** The marriage rate in the Netherlands has declined
18 significantly since same-sex marriage was --

19 **THE COURT:** How about just asking if it has, if the
20 rate of marriage has declined.

21 **MR. COOPER:** Thank you for that friendly suggestion,
22 Your Honor. I appreciate that.

23 **BY MR. COOPER:**

24 **Q.** Has it, Professor Badgett, declined significantly since
25 same-sex marriage was adopted in Netherlands?

1 **A.** In my opinion, it has not declined significantly from the
2 rates that we would expect, no.

3 **Q.** Okay. I want you to turn, now, to tab 4. And behind tab
4 4 is a demonstrative dealing with the subject of unmarried
5 couples with children in the Netherlands.

6 And this is just the -- essentially, the raw data for
7 every year from 1994 to 2008. And, at least according to my
8 and our research, the only data available for -- on this -- on
9 this statistic is from 1994 to 2008. In other words, there is
10 no data available prior to that.

11 And what this -- what this demonstrative shows is
12 that the numbers of unmarried couples with children have
13 escalated steeply and consistently over time, from 1994 to
14 2008, from 99,610 to 314,000 -- in 1994, to 314,566 in 2008.

15 And the -- the -- the numbers have, again, steeply
16 increased. Is that accurate?

17 **A.** This is just like the earlier slide that you showed.
18 Although, the '94 stopping -- starting point makes a little
19 more sense, I guess, if you can only find the data then.

20 But, yeah, we see that there was a trend of
21 increasing -- the increasing numbers of unmarried couples with
22 children. Although, again, this is not -- it's not clear this
23 is the right -- the right measure that you would want to use.
24 But there was a -- there was a trend before and a trend after.

25 I think, if you took that red line out there and

1 showed it to everyone in this courtroom, nobody would be able
2 to tell where same-sex couples got married.

3 **Q.** Well, let's -- let's turn to the next tab. And this
4 computes the rate of unmarried couples with children as a
5 percent of all families in the Netherlands. And it indicates
6 that in 1994, 1.54 percent of all families were unmarried
7 couples with children; but that percentage has escalated, to
8 2008, to 4.3 percent. And in 2001, the percentage was
9 2.84 percent.

10 So the -- the rate has, as you would expect, given
11 the increase in the numbers, but the rate that is the unmarried
12 couples with children as a percent of all families in the
13 Netherlands has increased significantly over this period of
14 time, correct?

15 **A.** Well, I would use "rate" in an entirely different sense
16 than you are using it here.

17 First of all, I don't -- I have not ever calculated
18 the statistic, and I don't know if this is, you know,
19 appropriate, accurate, or not.

20 But just looking at this graph, again, the rate of
21 change over the years is exactly the same. It's quite clear.
22 It's pretty much a straight line.

23 There was a trend of the increase before, that is
24 exactly equal to the trend of the -- of the increase
25 afterwards. So there is no -- there's no break, whatsoever, to

1 suggest that anything happened of importance in 2001.

2 **Q.** Well, let's look at the next tab. Because the yearly rate
3 of change is calculated for the years 1994 through 2000 here.

4 And that annual rate of change, with respect to
5 unmarried couples with children as a percentage of all
6 families, is calculated at .18 percent yearly increase
7 year-on-year increase.

8 If you turn to tab 7, the demonstrative behind tab 7,
9 the average yearly rate of change is calculated for the years
10 2001 to 2008.

11 And, as you can see, that rate of change is
12 .21 percent year-on-year. And so there has been an uptick.
13 Again, assuming the calculations, the math is correct, there
14 has, indeed, been an uptick since 2001, an uptick that amounts
15 to, yes, only .03 percent every year. But that -- that is,
16 essentially, a 17 percent increase in the -- in the average
17 yearly rate of change.

18 **A.** Well, you haven't explained to me what this point -- 0.21
19 yearly increase is.

20 Is that the average increase from 2001 to 2002, and
21 2002 to 2003, et cetera, et cetera?

22 **Q.** Yes. Yes, it is.

23 **A.** Well, I mean, these kinds of differences are very
24 sensitive to the years that you happen to pick to start and end
25 the calculation.

1 So, again, I can't comment on this, without having
2 looked more closely at the data. This doesn't -- these rates
3 seem odd to me, frankly. I don't know, as I said, what -- I'd
4 have to look at these. I'm seeing these particular angles on
5 the data for the first time.

6 **Q.** Fair enough. Fair enough.

7 Let's turn, now, to tab 8, the demonstrative behind
8 tab 8. And what this demonstrative displays are single-parent
9 families in the Netherlands, just the numbers, the total number
10 of single-parent families.

11 And, again, the number of single-parent families
12 since the time when the data began in the Netherlands being
13 kept, 1994 to 2008, the number of single-parent families has
14 very substantially increased; isn't that correct?

15 **A.** Again, I don't know. I'd have to look at this data and
16 see if it's correct, and think about it with regard to trends,
17 longer time period, probably, than you've got right here.

18 **Q.** Accepting the time period that I'm submitting to you --
19 and I don't ask you to agree with it, just to take it on its
20 face -- it is clear that the number of single-parent families
21 has very substantially increased over the period of time from
22 1994 to 2008, correct?

23 **A.** Again, as a measure of what? I don't really know exactly
24 what the -- what this is supposed to be showing. I mean, the
25 number -- the numbers that you've graphed here show an

1 increase.

2 **Q.** And in the demonstrative behind tab number nine, this
3 demonstrative exhibit shows single parents as a percent of all
4 families in the Netherlands, and that percentages displayed
5 here conform, do they not, to the rate -- or, excuse me, to the
6 numbers and very substantially increased over the course of
7 time from 1994 to 2008?

8 **A.** Again, it's -- you have to look at data in the larger
9 context of other kinds of things that are changing and earlier
10 trends. You know, I don't know. I haven't seen this data
11 before, so.

12 **Q.** And the demonstrative behind tab number ten, this chart
13 displays single parents as a percent of all families and the
14 average yearly rate of change in the Netherlands for the period
15 before same-sex marriage was adopted; that is, from 1994 to
16 2000. And it calculates a yearly increase in the rate of
17 change as .032 percent, a modest increase from 1994 to 2000.

18 (Document displayed)

19 **Q.** And compare that to the demonstrative exhibit behind tab
20 number 11, which displays the single parents as a percent of
21 all families and the average earlier rate of change in the
22 Netherlands from including 2001 to 2008.

23 And the yearly rate of change that is calculated here
24 is .08 percent yearly increase, which computes to an average
25 annual uptick in the percentage of single parents as a

1 percentage of all families of over 150 percent; do you see
2 that?

3 **A.** Yes. Although it doesn't make any sense to me to go to
4 something that looks like 5.6 percent in 1994 and 6.4 percent
5 in 2008 and call that 150 percent increase.

6 **Q.** That's the annual rate of change.

7 Dr. Badgett, I want you to, if you will, please, turn
8 to page six of your book. That is the book, *When Gay People*
9 *Get Married*. I think it's behind tab eight of the large
10 binder, or you can certainly turn to the actual book. It's
11 page six.

12 **THE COURT:** Are we done with the second binder,
13 Mr. Cooper?

14 **MR. COOPER:** Yes, we are, your Honor, although I
15 would like to move into evidence the underlying statistical
16 data from which these demonstratives were derived. It is --
17 and perhaps I should just go through them now. I apologize for
18 not --

19 **THE COURT:** DIX-1887?

20 **MR. COOPER:** I'm sorry, your Honor?

21 **THE COURT:** Under tab one of the binder, that's
22 DIX-1887?

23 **MR. COOPER:** Yes, your Honor.

24 **THE COURT:** Mr. Boies, any objection?

25 **MR. BOIES:** Your Honor, can I ask through the Court

1 just a question.

2 Is what is here the original copy of the original
3 document or is this something that's been prepared by counsel
4 summarizing the underlying materials?

5 **MR. COOPER:** No. It is the data that you get from
6 Statistics Netherlands.

7 **MR. BOIES:** So this is just a copy from Statistics
8 Netherlands.

9 **MR. COOPER:** Yes, it is.

10 **MR. BOIES:** I have no objection.

11 **THE COURT:** Very well. DIX-1887 is admitted.

12 (Defendants' Exhibit 1887 received in evidence)

13 **MR. COOPER:** And DIX-2639.

14 **THE COURT:** Where is that?

15 **MR. COOPER:** That is related, your Honor, to the
16 demonstrative behind chart number four, tab number four.

17 **THE COURT:** Very well. With that representation,
18 2639 is also admitted.

19 (Defendants' Exhibit 2639 received in evidence.)

20 **MR. COOPER:** And an additional defense exhibit,
21 DIX-2426 is related to the data associated with the
22 demonstrative behind tab number five.

23 **THE COURT:** Okay.

24 (Defendants' Exhibit 2426 received in evidence)

25 **THE COURT:** All right. Those are the underlying

1 data.

2 **MR. COOPER:** And, your Honor, I have got, I think,
3 just --

4 **MR. BOIES:** Your Honor --

5 **MR. COOPER:** One or two more.

6 No. Actually, I think that may be it.

7 **MR. BOIES:** Could I ask a question through the Court?

8 As I understand it, Defendant's Exhibit 2639 is
9 supposed to be the back-up for demonstrative four; is that what
10 I'm understanding?

11 **THE COURT:** Is that correct, Mr. Cooper?

12 **MR. COOPER:** Yes. Yes, it is your Honor, I think.

13 **MR. BOIES:** The numbers don't seem to match to me.
14 Demonstrative four has data for 1994, and I'm not seeing data
15 for 1994 on this back-up.

16 **MR. COOPER:** Oh, right. Your Honor, the -- as you
17 can see from the heading of the demonstrative -- of the exhibit
18 itself, "Size and Composition, Household Position in the
19 Household, January 1."

20 So it's data as of January 1 on -- 1995 is the data
21 that actually relates to year 1994. So they -- they label, at
22 least for this data, that it is as of January 1 of a year, not
23 December 31 of a previous year.

24 **THE COURT:** I see. And if we do a little more
25 arithmetic 56,057, 33,137, and 10,416 add up to 99,610, is that

1 it?

2 **MR. COOPER:** That's it.

3 **MR. BOIES:** And do I understand that the data for --
4 that's labeled on 2001 here is the data for January 1 of 2002?

5 **MR. COOPER:** No. It's -- I'm not sure I understand
6 the question. But the data for January 1, 2001 is the data
7 that applies to the year 2000.

8 **MR. BOIES:** That's what I was asking.

9 **MR. COOPER:** Yeah, okay.

10 **MR. BOIES:** Thank you.

11 **MR. COOPER:** Yes.

12 So I think the exhibits are in that pertain to this.

13 **THE COURT:** Very well.

14 **MR. COOPER:** Thank you, your Honor.

15 **BY MR. COOPER:**

16 **Q.** So, Professor Badgett, on page six of your book, the
17 second full paragraph it begins with the words: "What path."
18 Do you see that?

19 **A.** Yes. And it reads:

20 "What path should change take in the United
21 States, immediate or gradual? Do we need
22 alternatives to marriage? Some observers
23 want to see a more gradual expansion of
24 rights for same-sex couples to see what the
25 social impact will be."

1 And now do you agree with those observers?

2 **A.** With respect to what?

3 **Q.** With respect to that statement, that:

4 "...a more gradual expansion of rights for
5 same-sex couples should take place in order
6 to be able to see what the social impact will
7 be?"

8 **A.** I don't think it's necessary to wait any longer to see
9 what the social impact would be. I think we know.

10 **Q.** Do you believe that that view is a reasonable one to hold?

11 **A.** I have reached it through a reasoned process of looking at
12 many different sources of data in different places and those --
13 everything that I've looked at leads me to the conclusion that
14 there is no impact.

15 **Q.** So you don't believe that is a reasonable view, is that
16 your testimony?

17 **A.** I don't think it's necessary in order -- I don't think
18 it's necessary for us to wait and have a more gradual expansion
19 of rights. We have been going through that in the United
20 States already a gradual expansion of rights.

21 **Q.** (As read)

22 "Others farther right on the political
23 spectrum" -- the paragraph continues -- "see
24 the big changes in the United States,
25 especially in Vermont, Massachusetts and

1 California, as further examples of
2 undemocratic judicial activism foisted on an
3 unwilling public."

4 Now, I don't suppose you agree with that comment, do
5 you?

6 **A.** No. As I discuss in the book, I think that the pace of
7 change has been quite measured.

8 **Q.** And, finally:

9 "Some in the gay community argue that change
10 is happening too fast to avoid political
11 backlash and that creating alternatives to
12 marriage, both for same-sex couples and for
13 other family forums, might be a better way
14 go."

15 Now, you obviously don't agree with that, right?

16 **A.** No, I don't agree with that either.

17 **Q.** But you believe that that view is a reasonable one to
18 hold?

19 **A.** It's one that people offer and that we talk about. And my
20 goal in the book was to take each of these questions that I
21 posed in this introduction and to, you know, look at them from
22 the perspective of data and reason.

23 **Q.** But you think, don't you, Professor Badgett, that social
24 change with respect to same-sex marriage in this country is
25 taking place at a sensible pace at this time with more liberal

1 states taking the lead and providing examples that other states
2 might some day follow, isn't that correct?

3 **A.** That's the conclusion that I draw from my look at the data
4 on which states have made these changes, yes.

5 **MR. COOPER:** Your Honor, one moment, please.

6 **THE COURT:** Certainly.

7 (Discussion held off the record
8 amongst defense counsel.)

9 **MR. COOPER:** I have no further questions, your Honor.
10 Thank you, Dr. Badgett.

11 **THE COURT:** Very well. Mr. Boise, redirect?

12 **MR. BOIES:** Thank you, your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MR. BOIES:**

15 **Q.** Good afternoon, Professor Badgett.

16 You were asked earlier whether there were some
17 difficulties in the categorization of gays and lesbians; do you
18 recall that?

19 **A.** Yes.

20 **Q.** Are there difficulties in categorization of people based
21 on race and religion as well?

22 **A.** Umm, like with sexual orientation, I wouldn't think of
23 them as "difficulties." I think that there are challenges and
24 that's why we see some changes from time to time in terms of
25 how we measure those characteristics on surveys.

1 **MR. BOIES:** Could we put up the demonstrative that
2 went from 79,677 to 74,030? It was the demonstrative that you
3 used first.

4 (Document displayed)

5 **BY MR. BOIES:**

6 **Q.** This is the marriage rate for the Netherlands.

7 **A.** Yes.

8 **Q.** Now, this chart starts in 1994. Does this accurately
9 reflect the long-term trends as you believe they exist?

10 **A.** No. And there is quite readily available data that goes
11 back considerably farther.

12 **Q.** Let me ask you to look at your demonstrative exhibit 30.

13 (Document displayed)

14 **Q.** Can you explain what this exhibit shows?

15 **A.** This data starts in the 1960's, and what we see is a
16 well-known change in the marriage rate in the Netherlands which
17 peaked in about 1970, and since then has been on a pretty
18 steady decline with, you know, some variation from year to
19 year.

20 But overall I think you can see quite clearly that
21 there is a very clear long-term trend of downward -- of
22 decreases in marriage rates over time.

23 **Q.** And there are some yearly variations, is that correct?

24 **A.** Yes, there are.

25 **Q.** And, for example, the marriage rate actually goes up from

1 2001 to 2002, correct?

2 **A.** That's correct.

3 **Q.** And goes up again from 2007 to 2008, correct?

4 **A.** Yes, that's right.

5 **Q.** And if you look on this chart at 1994 --

6 **A.** Yes.

7 **Q.** (Continuing) -- that is the low point between two -- sort
8 of the valley between two mountains, correct?

9 **A.** It might be 1995. I can't quite tell from the data, but I
10 think if the year is sort of in the middle, it might be '95.

11 **Q.** So either 1994 or 1995 is sort of the low point between
12 two higher areas, correct?

13 **A.** Yes, yes.

14 **Q.** And if they had picked a date either before 1994 or after
15 1994, the percentages would be quite different, correct?

16 **A.** They could very well be quite different. Certainly, if
17 they looked before 1994, they would be quite different.

18 **Q.** Now, let me ask you to look again at your demonstrative
19 number 32, which we went over this morning.

20 (Document displayed)

21 **Q.** This, of course, is from the person -- the professor that
22 had been selected as a defendants' expert and then later
23 withdrawn after this report was written, in which Professor
24 Allen says:

25 "In the Netherlands the total number of

1 heterosexual marriages has slowly fallen
2 since the introduction of same-sex marriage.

3 Like most western countries, this is, no
4 doubt, part of a larger secular trend."

5 Do you see that?

6 **A.** Yes, I do.

7 **Q.** And do you agree with that?

8 **A.** I do agree with that.

9 **Q.** Let me ask you to look at Exhibit 49.

10 (Document displayed)

11 **Q.** And this shows you, going all the way back to 1965, the
12 average annual different-sex marriage rates in the Netherlands
13 on a five-year basis, correct?

14 **A.** Yes.

15 **Q.** What does that show?

16 **A.** Well, it gets rid of a lot of the year-to-year variation,
17 which makes it quite easy to see that the long-term trend is
18 very clear. The long-term trend is towards lower marriage
19 rates in the Netherlands.

20 **Q.** And is the trend after 2001 any different than the trend
21 immediately preceding 2001?

22 **A.** No, not after you take out the year-to-year variation in
23 this way.

24 **Q.** Now, in your book that was -- or, actually, in your report
25 that was quoted to you, you talked about various trends related

1 to marriage, and those include rates other than marriage rates?

2 **A.** Yes, that's correct.

3 **Q.** For example, do they include divorce rates?

4 **A.** Yes.

5 **Q.** Let me show you demonstrative Exhibit 33.

6 (Document displayed)

7 **Q.** And this represents divorce rates in the Netherlands, 1996
8 to 2008, correct?

9 **A.** Yes, that's correct.

10 **Q.** And what does it show happened to divorce rates after
11 2001?

12 **A.** They decreased.

13 **Q.** Now, you mentioned that there was a conversion process
14 that was introduced in the Netherlands that you thought needed
15 to be taken into account in looking at divorce rates, correct?

16 **A.** That's right. Yes, that's an example of one of those
17 confounding factors that we talked about before.

18 **Q.** And let me show you demonstrative Exhibit 55.

19 (Document displayed)

20 **Q.** And this is the combined divorce and conversion rates in
21 the Netherlands, 1990 to 2008, correct?

22 **A.** Yes, to the best of our abilities. The Statistics
23 Netherlands does not actually provide the precise conversion
24 figure -- I'm sorry. This is the conversion figures, but these
25 aren't necessarily all dissolutions. I'm sorry.

1 But that's right. These are dissolutions from
2 marriages to registered partnerships in addition to divorces.

3 **Q.** That is, it includes all the conversions, but you don't
4 know how many of those conversions actually related to
5 dissolutions?

6 **A.** That's right. That's right. Some of them might not have
7 in resulted in dissolutions.

8 **Q.** So this would have increased the number of divorces and
9 conversions artificially to some extent, and how much you don't
10 know.

11 **A.** That's right that's right, yes?

12 **THE COURT:** Let me ask you, Professor, is this a
13 conversion from marriage to domestic partnership or --

14 **THE WITNESS:** Yes.

15 **THE COURT:** -- exactly what it is.

16 **THE WITNESS:** Yes.

17 **THE COURT:** That's what it is.

18 **THE WITNESS:** It's a conversion from marriage to
19 registered partnerships, because they were creating a
20 conversion -- my understanding is that they had to create a
21 conversion process for people who were registered partners who
22 could become married, and so they decided to allowed it to go
23 in both directions.

24 **BY MR. BOIES:**

25 **Q.** And as you understood it was conversion to domestic

1 partnership a way of getting an easy, simple divorce?

2 **A.** Yes. That's a way it's been used, although they no longer
3 allow different -- they no longer allow anyone to convert a
4 marriage into a registered partnership.

5 **Q.** Now, let me go back to the defendants' demonstrative that
6 we had up before.

7 (Brief pause.)

8 **MR. BOIES:** We are testing our technical capabilities
9 shifting back and forth.

10 Now, the demonstrative I want is the one that showed
11 both the marriage rate and the domestic partnership rate that
12 you showed. Is it possible to do that? You had a
13 demonstrative that did that before your binder.

14 (Brief pause.)

15 (Document displayed)

16 **BY MR. BOIES:**

17 **Q.** Now, this shows Netherlands opposite-sex relationships,
18 which include both marriage and domestic partnerships, correct?

19 **A.** That's what it appears to show, yes.

20 **Q.** Now, it shows an increase in domestic partnerships in 2001
21 to 2008. I believe you indicated there was a confounding
22 factor that related to that, is that correct?

23 **A.** Yes, yes.

24 **Q.** And would you explain what that is now?

25 **A.** Well, there were two potential ones, I think, although I'm

1 not positive because I had to look at this very quickly. I
2 think they have taken out the conversion, so this would just be
3 new registered partnerships.

4 Another thing that happened in 2001, after the law
5 that allowed same-sex couples to marry was implemented, was a
6 second law that actually made registered partnerships much
7 closer to marriage. They were already quite close in terms of
8 their legal rights and responsibilities. They were virtually
9 identical with a couple of exceptions.

10 One of those exceptions was the relative ease of
11 getting out of it; and the other was that there were no
12 parental responsibilities attached to registered -- to the
13 registered partner of a woman who gave birth to a child.

14 But in 2001 they changed that so that now the
15 partners of women who have -- the registered partners of women
16 who have children are considered to have parental authority.
17 They have responsibilities towards the children who are born
18 into those registered partnerships.

19 **Q.** Now, if you look at this chart -- and I ask you to look at
20 2001 -- from 2001 to 2002, the first year after same-sex
21 marriages were allowed, in the Netherlands both opposite-sex
22 marriages and opposite-sex domestic partnerships went up,
23 correct?

24 **A.** Yes. Clearly, yes.

25 **Q.** Now, you indicated that -- on your direct examination that

1 while it was useful to look at the Netherlands and other
2 foreign countries that permitted same-sex marriages, the best
3 evidence was to look at states in the United States where that
4 had happened, correct?

5 **A.** Yes, I think so.

6 **Q.** And let me ask you to look at demonstrative 41.

7 (Document displayed)

8 **Q.** Now, this shows the marriage rates in Massachusetts for
9 different-sex couples and the marriage rates in the United
10 States from 2000 to 2007, correct?

11 **A.** Yes, that's right.

12 **Q.** And what does it show for the United States in terms of
13 the marriage rate after 2004?

14 **A.** It's a pretty steady decline. There's a slight increase
15 from 2003 to 2004, but otherwise it's going down each year.

16 **Q.** And 2004 was when Massachusetts in May 17th permitted
17 same-sex marriages for the first time, correct?

18 **A.** Yes, that's correct.

19 **Q.** Now, what does the chart show happened to the marriage
20 rate in Massachusetts after 2004?

21 **A.** This shows that the marriage rate actually increased.

22 **Q.** Prior to 2004, what had the marriage rate in Massachusetts
23 been doing?

24 **A.** Well, since 2000, you can see -- well, from 2001 it's been
25 a pretty steady decline.

1 Q. And the Massachusetts rates we are talking about are
2 marriage rates just for different-sex couples, correct?

3 A. Yes. That's what this slide shows.

4 Q. Now, let me ask you to look at demonstrative 44.

5 (Document displayed)

6 Q. And what does this demonstrative compare?

7 A. This is looking at the change in the average annual
8 divorce rate before and after same-sex couples could marry in
9 Massachusetts.

10 Q. And what does it show?

11 A. It shows that the divorce rate has been declining in
12 Massachusetts and in the United States, but by a larger
13 percentage change than average before and after same-sex
14 marriage became possible.

15 Q. Let me make sure I understand what you are saying.

16 First, you are saying that after same-sex marriages
17 were permitted in Massachusetts, the annual divorce rates
18 declined, correct?

19 A. Yes, yes. That's right.

20 Q. And you are saying that during that same period of time,
21 annual divorce rates declined in the United States as a whole,
22 but not by as much; is that correct?

23 A. That's right.

24 Q. I would like to direct your attention to Defendant's
25 Exhibit 2647, which I think you have in one of the binders they

1 gave you.

2 **A.** Okay.

3 (Brief pause.)

4 **Q.** Do you have that in front of you?

5 **A.** Yes, I do.

6 **THE COURT:** Tab nine of the big binder, is that it?

7 **MR. BOIES:** I think so, your Honor. Yes, tab nine.

8 **MR. COOPER:** I'm sorry. I don't think I heard the
9 number correctly.

10 **MR. BOIES:** 2647, tab nine.

11 **MR. COOPER:** Oh, yes.

12 **BY MR. BOIES:**

13 **Q.** Now, Mr. Cooper asked you to compare the 11 months --

14 **A.** Actually, you know, I'm sorry. I think I have the wrong
15 one, too. Twenty-nine --

16 **MR. BOIES:** Can I approach, your Honor?

17 **THE COURT:** Try tab nine, I believe.

18 **THE WITNESS:** Tab nine, okay.

19 **BY MR. BOIES:**

20 **Q.** It is "Domestic Partnership Statistics 2000 to 2009."

21 **A.** Yes, okay.

22 **Q.** Now, Mr. Cooper asked you to compare the first 11 months
23 of 2009 to the first 11 months of 2008; do you remember that?

24 **A.** Yes, I do.

25 **Q.** And he suggested that those two periods were completely

1 comparable, despite the fact that same-sex marriage was allowed
2 in 2008, but not in 2009, correct?

3 **A.** He did.

4 **Q.** Now, in fact, same-sex marriage was only allowed for five
5 or six months in 2008, correct?

6 **A.** Yes.

7 **Q.** And if you -- if you take just the months that same-sex
8 marriage was allowed in 2009 and compare those with the same
9 five months -- or five or six months in 2009, the difference is
10 considerably greater, correct?

11 **A.** It looks like it would be, yes.

12 (Brief pause.)

13 **A.** Yes. Although, as I think I mentioned before, I think
14 that it's -- it's hard to draw any conclusions from a status
15 that's been around for nine years at that point; but that's
16 right, when same-sex couples had no choice, we do see a
17 higher -- higher numbers.

18 **Q.** All right. Now, he also asked you to look at your report
19 at Paragraph 91. Can you put that in front you?

20 (Witness complied.)

21 **A.** Yes.

22 **Q.** And he asked you a lot of questions about the calculation
23 of exactly how many thousands of California same-sex couples
24 would marry if they were allowed to; do you recall that?

25 **A.** That's right.

1 Q. Now, for the point that you are making, does it make any
2 difference whether the number of same-sex couples that are
3 being deprived of the right to marry is 30,000 or 40,000 or
4 50,000?

5 A. No, no. There is still enormous economic harm to those
6 couples, as well as to the state.

7 Q. Now, let me go to your demonstrative, Exhibit 12.

8 (Document displayed)

9 Q. And if what does this demonstrative show?

10 A. Again, this is the -- our estimate of the number of
11 couples who got married in those six months and compares it to
12 the number of couples registering domestic partnerships in
13 roughly that same time period.

14 Q. And it shows approximately 18,000 same-sex couples chose
15 marriage and about 2,000 same-sex couples during the same
16 period of time chose domestic partnerships, correct?

17 A. That's right.

18 Q. And what does that tell you about the preference of
19 same-sex couples for marriage over domestic partnerships?

20 A. Well, like some of the other comparisons we made, I think
21 shows that same-sex couples prefer marriage by a wide margin
22 over domestic partnerships.

23 Q. Let me ask you to look at demonstrative 13.

24 (Document displayed)

25 Q. What does this demonstrative show?

1 **A.** This shows, very clearly, the same point. It shows that
2 marriage is preferred for same-sex couples over either civil
3 unions or domestic partnerships then.

4 As I said, in the comparison with California, the
5 early version of domestic partnership was even less popular
6 amongst same-sex couples.

7 **Q.** Now, let me ask you to look at your report, paragraph 40.

8 (Witness complied.)

9 **Q.** Mr. Cooper read -- or, rather, asked you to read various
10 portions of this paragraph 40; do you recall that?

11 **A.** Yes.

12 **Q.** Would you read paragraph 41 for context?

13 **A.** Okay.

14 "In other, words allowing same-sex couples to
15 marry would result in a near term increase of
16 roughly 7,700 non-registered domestic
17 partners residing in California who would
18 benefit from the economic protections
19 afforded by marriage, or nine percent of the
20 same-sex couples living in California."

21 **Q.** Now, would you turn to paragraph 37 of your report?

22 (Witness complied.)

23 **Q.** And Mr. Cooper read and asked you to read various portions
24 of paragraph 37. For context, would you read paragraph 38?

25 **A.** (As read)

1 "Whereas, getting married sends a message
2 that is recognized by almost all individuals
3 in a culture, the same-sex couple suggested
4 in interviews that an alternative status is
5 often understood to have a different and
6 inferior meaning than marriage. Some of the
7 couples saw registered partnership as lacking
8 the deep emotional meaning of marriage and
9 they tended to see registered partnership as
10 dry and business-like.

11 "In contrast to registered partnership, a new
12 status that was created in 1998, part of the
13 value of marriage is the clearly-recognized
14 signal that it sends. According to one
15 former Californian who was living in the
16 Netherlands with her partner, a Dutch
17 citizen, quote, one of the amazing things
18 about marriage is people understand it, you
19 know. Two-year-olds understand it. It's a
20 social context and everyone knows what it
21 means, end quote.

22 "Her partner noted that marriage, quote, has
23 substance that registered partnerships
24 lacked. The ability to show, as she put it,
25 quote, this is the woman that I have chosen

1 to be with for the rest of my life, end
2 quote."

3 **Q.** And what's the significance of that in your analysis?

4 **A.** In my opinion, it shows that individuals clearly not only
5 see marriage as something that's more valuable that comes with
6 added characteristics over some alternative status, but the
7 alternative status in and of itself is devalued because it's
8 seen as sending a message of inferiority.

9 **Q.** Let me ask you now to look at the small binder that was
10 given you with the demonstratives. And I'm going to the
11 demonstrative that is at tab four.

12 **MR. BOIES:** And maybe we can put that up on the
13 screen?

14 (Document displayed)

15 **BY MR. BOIES:**

16 **Q.** Mr. Cooper asked you some questions about this, and
17 there's a portion of this chart that says there is a
18 215.8 percent increase; do you see that?

19 **A.** Yes, I do.

20 **Q.** And this purports to show the unmarried couples with
21 children in the Netherlands.

22 Now, when was same-sex marriage authorized in the
23 Netherlands?

24 **A.** As of April, 2001.

25 **Q.** April, 2001. Now, since it takes about nine months, at

1 least, to produce a baby, even if you start immediately, can we
2 agree that it is unlikely that there were any children born to
3 unmarried couples as a result of the passage of gay marriage
4 prior to 2002?

5 **A.** That sounds quite plausible to me.

6 **Q.** Now, I apologize for doing this, but we didn't have these
7 charts before and I'm going to ask you to do a little bit of
8 arithmetic with me so I understand.

9 **A.** Okay.

10 **Q.** If you look at the change, the increase in unmarried
11 couples with children from 1999 to 2001, do you see that?

12 **A.** Yes, I do.

13 **Q.** And that's an increase of, roughly, 34-and-a-half -- 34,
14 35,000, correct?

15 **A.** Yes, that's about right, roughly.

16 **Q.** Now, in the period after 2002, is there any comparable
17 period that had a comparable increase?

18 **A.** I don't see any that come close to that, no.

19 **Q.** For example, from 2002 to 2004, the increase was about
20 32,000, is that correct?

21 **A.** 2002 to 2004, over a two-year period. Oh, I'm sorry. I
22 was only looking at one-year periods.

23 Yes. That's a smaller increase, I believe.

24 **Q.** Right.

25 **A.** Yeah.

1 Q. And each of the subsequent years, actually, are smaller
2 than that, correct?

3 A. It looks like it. They come very close. This is about as
4 close to a straight line as you will ever see in a demographic
5 measure.

6 Q. Does this tell you anything at all about the effect of
7 allowing gay marriage -- encouraging people to have --
8 unmarried couples to have children?

9 A. It certainly provides no evidence whatsoever for it, in my
10 opinion.

11 Q. Now, if you look at the next demonstrative, the one behind
12 tab five, this shows the unmarried couples with children as a
13 percent of all families --

14 A. Yes.

15 Q. -- do you see that?

16 And from 2000 to 2001 the percentage increased by
17 .24 percent, correct?

18 A. Yes.

19 Q. And from 2001 to 2002 it was .22 percent, correct?

20 A. That looks right.

21 Q. Now, after 2002, is there any year where it increases by
22 that magnitude; that is, by .22 or .24?

23 A. .22 or .24? Somewhere in between from '03 to '04 it looks
24 like. And I believe in the other years it's less than that.

25 Q. Now, do you draw from this the conclusion that allowing

1 same-sex marriage reduced the number of unmarried couples with
2 children as a percent of all families?

3 **A.** That reduced it? No, I wouldn't conclude that at all
4 either.

5 **Q.** What can you, if anything, conclude from this?

6 **A.** I think you can conclude that the trend that existed
7 before 2001 continued after 2001 with virtually no departure
8 from that trend, no departure that I can detect of any
9 meaningful size.

10 **Q.** Do any of the questions that Mr. Cooper asked you go at
11 all to the issue of whether gay and lesbian couples are
12 substantially hurt by not being able to marry?

13 **A.** In terms of these figures here or in terms of the entire
14 discussion --

15 **Q.** The entire examination.

16 Is there anything -- is there anything that he
17 covered or showed you during the entire examination, not just
18 looking at these charts, that in any way is inconsistent with
19 your conclusion that gay and lesbian couples are substantially
20 hurt by not being able to marry?

21 **A.** No, no. I have not changed my opinion based on our
22 discussion.

23 **Q.** Was there anything that he showed you or discussed with
24 you during any part of the examination that in any way was
25 inconsistent with your conclusion that gay and lesbian couples'

1 children -- that is, children being raised by gay and lesbian
2 couples -- are hurt by their parents not being allowed to
3 marry?

4 **A.** No. I don't think we even discussed that at all. So, no,
5 my opinion has not changed. I still think they would be hurt
6 by their parents not being allowed to marry.

7 **Q.** Is there anything that you saw or heard at all during Mr.
8 Cooper's examination that in any way is inconsistent with your
9 conclusion that gay and lesbian couples' right to marry would
10 not cause any harm to heterosexual couples or to the
11 institution of marriage?

12 **A.** No. I still have seen no evidence that suggest that there
13 would be any harm or any change to the institution of marriage.

14 **MR. BOIES:** Your Honor, I have no more questions.

15 **THE COURT:** Very well. Thank you, Professor, for
16 your testimony. You may step down.

17 (Witness excused.)

18 **THE COURT:** And regrettably, counsel, we are going to
19 have to adjourn at this time for the day. I have a judges'
20 meeting that I need to preside at and I don't want to
21 disappoint my colleagues.

22 So we will resume tomorrow morning at 8:30. And,
23 let's see, our next witness is going to be?

24 **MR. BOIES:** Our next witness will be Mr. Ryan
25 Kendall, but we will also be playing excerpts from the

I N D E XPLAINTIFFS' WITNESSESPAGEVOL.**SANDERS, JERRY**

(SWORN)	1264	6
Direct Examination by Mr. Herrera	1265	6
Cross Examination by Mr. Raum	1285	6
Redirect Examination by Mr. Herrera	1314	6

BADGETT, LEE

(SWORN)	1320	6
Direct Examination by Mr. Boise	1320	6
Cross Examination by Mr. Cooper	1369	6
Cross Examination Resumed by Mr. Cooper	1403	6
Redirect Examination by Mr. Boies	1457	6

	<u>I N D E X</u>				
	<u>PLAINTIFFS' EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
1					
2	186			1272	6
3	1259 - 1272			1323	6
	1271			1412	6
4	1274 - 1276			1323	6
	1279 - 1287			1323	6
5	1289 - 1294			1323	6
	1300 - 1305			1323	6
6	2321			1323	6
	2342			1323	6
7					
8	<u>DEFENDANTS' EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
9	1108			1372	6
	1297			1430	6
10	1887			1452	6
	2339			1452	6
11	2426			1452	6
	2648			1393	6
12	2679			1391	6
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We, KATHERINE POWELL SULLIVAN and DEBRA L. PAS,
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Tuesday, January 19, 2010