

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, in her
capacity as Executor of the estate of THEA
CLARA SPYER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

10-cv-8435 (BSJ) (JCF)

EXPERT AFFIDAVIT OF LETITIA ANNE PEPLAU, PH.D.

I, Letitia Anne Peplau, Ph.D., hereby depose and say as follows:

PRELIMINARY STATEMENT

1. My professional background, experience, and publications are detailed in my curriculum vitae, which is attached as Exhibit B to this affidavit. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation (“*Windsor*”) and by counsel for the Plaintiffs in *Pedersen, et al. v. Office of Personnel Management, et. al.*, 3:10-cv-01750 (VLB) (D. Conn., filed Nov. 9, 2010). I have actual knowledge of the matters stated in this affidavit and could and would so testify if called as a witness.

2. I have been a Professor of Psychology at the University of California, Los Angeles since 1973, with promotions to tenure in 1978, to full professor in 1982, and to Distinguished Professor in 2010. I am currently the Psychology Department Vice Chair for Graduate Studies. From 2005-2011, I served as Director of the UCLA Interdisciplinary Relationship Science Program. This program, funded by the National

prejudice and discrimination. Stigma is reflected both in acts of individuals and in the institutions of society, including its laws, that legitimate and perpetuate the second-class status of gay men, lesbians, and bisexuals. By denying federal recognition to legally married same-sex couples, DOMA both reflects and perpetuates stigma against lesbians, gay men, and same-sex couples. The stigma and discrimination perpetuated by DOMA harm not only individuals in legal same-sex marriages, but gay men, lesbians, and bisexuals as a group.

II. Understanding Sexual Orientation

A. What is Sexual Orientation?

14. The American Psychological Association provides a widely accepted definition of sexual orientation: “Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person’s sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions.”¹

15. Beginning with the research of Alfred Kinsey in the 1940s, researchers have recognized that sexual orientation can range along a continuum from exclusively heterosexual to exclusively homosexual. Nonetheless, it is most often discussed in terms of three categories: heterosexual (having emotional, romantic, or sexual attractions to members of the other sex), gay/lesbian (having attractions to members of one’s own sex), and bisexual (having attractions to both men and women). Most adults in the United

¹ American Psychological Association, 2008; Herek, 2000, 2001.

States can readily categorize themselves as heterosexual, gay/lesbian, or bisexual.² The specific category name that an individual prefers (e.g., homosexual, gay, queer) may vary,³ but in national surveys in the U.S., nearly all participants are able to indicate their sexual orientation category.

16. For clarity, it is important to distinguish sexual orientation from other aspects of sex and gender. These include biological sex (the anatomical, physiological, and genetic characteristics associated with being male or female), gender identity (an individual's psychological sense of being male or female), and gender-role orientation (the extent to which an individual conforms to cultural norms defining feminine and masculine behavior).

17. Social scientists view sexual orientation as a multi-faceted phenomenon involving attractions, related behaviors, and identity. In research studies, the particular component of sexual orientation that researchers assess will differ depending on the purpose of the research. For example, a study about the experiences of individuals in same-sex marriages would recruit participants based on their behavior of marrying a person of the same sex. A study of personal experiences of social stigma and discrimination among openly gay and lesbian individuals would most likely recruit individuals who self-identify as gay or lesbian.

18. Sexual orientation is inherently linked to social relationships. Sexual orientation is a characteristic of an individual, like their biological sex, age, or race, and it is also about relationships – whether an individual is attracted sexually or romantically to

² See, e.g., Chandra, Mosher, Copen & Sionean, 2011, pp 29-30; Laumann, Gagnon, Michael & Michaels, 1994, p. 293.

many of them had spent a substantial portion of their adult life with the same partner.

23. As discussed above, the significant majority of adults exhibit a consistent and enduring sexual orientation.⁹ Nonetheless, a small minority of individuals are exceptions to this majority pattern. For example, while in prison, some men who identify as heterosexual may nonetheless engage in sexual activities with men since female partners are unavailable. Some individuals have reported changes in their sexual orientation in midlife, perhaps as a result of meeting a particular person. Understanding these kinds of exceptions to the general pattern of stable sexual orientation described above is of theoretical interest to scholars. Researchers have used terms like “sexual fluidity” or “sexual plasticity” to refer to changes in sexual behavior, attractions, and identity over time or across situations. Importantly, observations about fluidity in a small minority of people should not obscure the big picture of stability for the majority of adults. In a discussion of women’s sexual fluidity, Peplau and Garnets¹⁰ noted: “Claims about the potential erotic plasticity of women do not mean that most women will actually exhibit change over time. At a young age, many women adopt patterns of heterosexuality that are stable across their lifetime. Some women adopt enduring patterns of same-sex attractions and relationships.” Nor does the fact that a small minority of people may experience some change in their sexual orientation over their lifetime suggest that such change is within their power to effect. This is why standard definitions of sexual orientation characterize it as stable.

⁹ Based on large-scale survey data, Chandra et al. (2011, p. 1) conclude that “Sexual attraction and identity correlate closely but not completely with reports of sexual behavior.” Thus, most heterosexual individuals do not engage in sexual activity with same-sex partners, and most gay and lesbian individuals similarly do not engage in heterosexual behavior.

24. Before the emergence of gay communities in the United States, it was fairly common for lesbians and gay men to marry a person of the other sex.¹¹ They entered these ostensibly “heterosexual” marriages for diverse reasons: to avoid social stigma, in response to pressure from family and friends, from a belief that marriage was the only way to have children, and/or to participate in a fundamental social institution. In some cases, these individuals only recognized or acknowledged their sexual orientation after marriage. It is psychologically harmful to ask lesbians and gay men to deny a core part of their identity by ignoring their attraction to same-sex partners and instead marrying a different-sex partner. Moreover, the disclosure that a spouse is gay or lesbian is often hurtful to the heterosexual spouse, highly upsetting to the married partners and their children or other family members, and may set the stage for separation or divorce. Therefore, encouraging gay men and lesbians to enter into a marriage with a heterosexual partner is not in the best interests of the individuals or the interests of society.

25. When gay men and lesbians are asked by researchers about their sexual orientation, the vast majority report that they experienced no choice or very little choice about their sexual orientation. In a national survey conducted with a representative sample of more than 650 self-identified lesbian, gay, and bisexual adults, 95% of the gay men and 83% of the lesbians reported that they experienced “no choice at all” or “very

¹⁰ Peplau & Garnets, 2000, p. 333.

¹¹ Bozett, 1982; Higgins, 2006. Researchers have estimated the percentage of lesbians and gay men who have been married. An analysis of responses to a 2003 survey of adults in California found that about 25% of lesbians and 9% of gay men ages 18-59 reported having ever been married, most of them presumably to a person of the other sex (Carpenter & Gates, 2008, Table 3).

little choice” about their sexual orientation.¹²

26. Sexual orientation is highly resistant to change through psychological or religious interventions. Recently, the American Psychological Association appointed a task force to conduct a systematic review of the peer-reviewed journal literature on sexual orientation change efforts.¹³ The Task Force concluded that “efforts to change sexual orientation are unlikely to be successful and involve some risk of harm” (p. 3). Based on currently available research, there is no credible evidence that these efforts are either effective or safe, and ample reason to believe that these interventions can harm those who participate.¹⁴ The Task Force also found evidence that many individuals who unsuccessfully attempt to change their sexual orientation experience considerable

¹² Herek, Norton, Allen & Sims, 2010. In that survey, 88% of gay men reported that they had “no choice,” and 7% reported “very little choice.” Similarly, 68% of lesbians responded that they had “no choice at all,” and 15% reported having “very little choice.” See also results from a California survey by Herek, Gillis & Cogan, 2009, Table 5.

¹³ APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Washington, DC: American Psychological Association. This report provides a detailed review and analysis of relevant research. It is available online at: <http://www.apa.org/pi/lgbt/publications/therapeutic-response.pdf>.

¹⁴ Although some psychotherapists and religious counselors have reported changing their clients’ sexual orientation from homosexual to heterosexual, empirical support for these claims is lacking. After reviewing published empirical research on this topic, the APA Task Force reported that it found “serious methodological problems in this area of research, such that only a few studies met the minimal standards for evaluating whether psychological treatments, such as efforts to change sexual orientation, are effective” (p. 2). Based on its review of the studies that met acceptable standards, the Task Force concluded that “enduring change to an individual’s sexual orientation is uncommon. The participants in this body of research continued to experience same-sex attractions following SOCE [sexual orientation change efforts] and did not report significant change to other-sex attractions that could be empirically validated, though some showed lessened physiological arousal to all sexual stimuli. Compelling evidence of decreased same-sex sexual behavior and of engagement in sexual behavior with the other sex was rare. Few studies provided strong evidence that any changes produced in laboratory conditions translated to daily life. Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE” (pp. 2-3).

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EDITH SCHLAIN WINDSOR, in her
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CLARA SPYER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

10 Civ. 8435 (BSJ) (JCF)
ECF Case

EXPERT AFFIDAVIT OF MICHAEL LAMB, PH.D.

I, Michael Lamb, Ph.D., hereby depose and say as follows:

PRELIMINARY STATEMENT

1. I am Professor of Psychology in the Social Sciences, Head, Department of Social and Developmental Psychology, Faculty of Politics, Psychology, Sociology, and International Studies, Cambridge University. I have been retained as a consultant by counsel for Plaintiff in connection with the above-referenced litigation ("*Windsor*") and by counsel for the Plaintiffs in *Pedersen, et al. v. Office of Personnel Management, et al.*, 3:10-cv-01750(VLB) (D. Com., filed Nov. 9, 2010). I have actual knowledge of the matters stated in this affidavit and could and would so testify if called as a witness.

2. My background, experience, and list of publications from the last 10 years are summarized in my curriculum vitae, which is attached as Exhibit A to this report.

3. I hold a Bachelor's degree in psychology and economics from the University of Natal in Durban, South Africa (1972), Master's degrees in psychology from

BIBLIOGRAPHY

Table of Contents

Factors predicting children’s adjustment	1
The sexual orientation of parents does not predict their children’s adjustment	2
Same sex couples can provide stable environments within which children can thrive.....	5
Children do not need dual-gendered parenting or two parents in order to be well adjusted	6
Children raised by same-sex parents are not more likely to have same-sex orientations themselves.....	6
Sexual orientation does not affect the likelihood that people will abuse children.....	6
Non-biologically related parents are capable of raising children as effectively as biological parents	8

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