

Exhibit D

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 KRISTIN M. PERRY, et al.,)

4 Plaintiffs,)

5 v.) No. 09-CV-2292 VRW

6 ARNOLD SCHWARZENEGGER, in)

7 his official capacity as)

8 Governor of California,)

9 et al.,)

10 Defendants.)

11

12 Washington, D.C.

13 Tuesday, November 3, 2009

14 Deposition of DAVID GEORGE BLANKENHORN III, called

15 for examination by counsel for Plaintiffs in the

16 above-entitled matter, the witness being duly sworn

17 by CHERYL A. LORD, a Notary Public in and for the

18 District of Columbia, taken at the offices of COOPER

19 & KIRK PLLC, 1523 New Hampshire Avenue N.W.,

20 Washington, D.C., at 9:41 a.m., and the proceedings

21 being taken down by Stenotype by CHERYL A. LORD, RPR,

22 CRR.

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1 Q. Okay. So is it fair to say, then, that
 2 you don't intend to be offering opinions about what
 3 the impact of allowing same-sex marriages
 4 specifically in California in a context that has
 5 certain laws that already apply about child rearing,
 6 et cetera -- what that impact would be particularly
 7 in the state of California?
 8 MR. THOMPSON: Objection, mischaracterizes
 9 the testimony.
 10 Go ahead.
 11 A. Yeah.
 12 I would prefer to say what -- what I am
 13 saying rather than to have it stated that way.
 14 What I'm trying to do is that in human
 15 groups, we can discern a -- we can discern the basic
 16 contours and dimensions and purposes and social
 17 functions of an institution called marriage, and that
 18 as we evaluate our future in California and also
 19 possibly in other states that this understanding of
 20 what it means to -- to -- to -- what marriage means
 21 in the human experience is valuable. And it is a
 22 valuable contribution to the discussion to be

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1 familiar with this.
 2 And further that the trend in the United
 3 States and elsewhere toward deinstitutionalization
 4 can be measured and -- and can -- can -- I don't want
 5 to say measure. I want to say assessed and can be
 6 evaluated by persons of goodwill with respect to the
 7 impact of that trend on children and societies.
 8 And further, I'm arguing that the advocacy
 9 of gay marriage is a part of that trend toward
 10 deinstitutionalization. And so that as people in
 11 California and as people in any state evaluate the
 12 topic of same-sex marriage or the possibility of
 13 changing their laws to grant the right of same-sex
 14 couples to marry, I believe that it is valuable and
 15 useful to have as a context and as a foundational
 16 basis of understanding what is the institution we're
 17 talking about and in what direction is it headed in
 18 our nation, in -- in the world, and what are the
 19 likely consequences of that direction, and what is
 20 the apparent role of the current push or the current
 21 desire or the current campaign for same-sex marriage,
 22 what role, if any, does that play in this trend of

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1 deinstitutionalization.
 2 I believe that those are -- are -- do not
 3 constitute the entire realm of useful knowledge when
 4 it comes to making an informed assessment, but --
 5 regarding the issue of same-sex marriage in
 6 California, but I do believe that that -- those
 7 assessments and that way of organizing a body of
 8 knowledge could potentially be useful to people
 9 who -- who are making this decision.
 10 BY MR. DUSSEAULT:
 11 Q. Okay. Would you agree that to evaluate
 12 the likely impact of allowing marriage -- same-sex
 13 marriage in a single state on the institution of
 14 marriage and whether it would lead to
 15 deinstitutionalization that it is relevant to
 16 consider what other practices and actions are
 17 currently allowed under the laws of that state?
 18 A. Would I consider as a general matter that
 19 it would be relevant?
 20 Q. Yes.
 21 A. I would consider it relevant, yes.
 22 Q. You've drawn a distinction a couple times

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1 in your testimony about things done specifically for
 2 this case versus things done over the course of your
 3 career. That's certainly a fair distinction.
 4 Have you engaged in any studies or
 5 analysis that you did specifically for the purpose of
 6 offering an expert opinion in this particular
 7 litigation?
 8 A. Have I undertaken a study --
 9 Q. You can break them down if you want.
 10 A. -- that is a study undertaken specifically
 11 and exclusively for the purpose of preparing this
 12 document?
 13 Q. Let's say specifically, because I don't
 14 care if you plan to use it later, that's fine, but
 15 specifically because you were hired to give an
 16 opinion here, so you conducted a study.
 17 A. Well, if by, study, do you mean that I
 18 devoted some days and weeks to reading and trying to
 19 organize my thoughts and trying to refresh my
 20 recollection about other previous work that I have
 21 done, the answer is yes.
 22 Q. Okay. Anything else?

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1 A. No.
 2 Q. Okay.
 3 A. Not that I recall.
 4 Q. Okay. And I know the word study could
 5 have various meanings. I'm trying to use it as it's
 6 often used in the field of sociology, and I see
 7 people refer to studies.
 8 Have you personally conducted any studies
 9 on which you're relying in forming your opinions in
 10 this case?
 11 MR. THOMPSON: Objection, vague.
 12 A. I have -- as I mentioned, I have -- I have
 13 read and re-read things. I have tried to organize my
 14 thoughts in a way that I thought I could present them
 15 usefully, and I've -- I've tried to refresh my memory
 16 of the body of work that I've done over the years as
 17 it may pertain to achieving excellence in this
 18 document.
 19 BY MR. DUSSEAULT:
 20 Q. Okay. In your professional life, you
 21 don't conduct studies in the sense of dealing with a
 22 certain number of subjects who are -- who fill out

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1 questionnaires, are observed, interviewed, and their
 2 answers and responses are gauged. We see a lot of
 3 that in some of the things that you rely on.
 4 I'm just trying to understand --
 5 A. Have I personally been involved in those
 6 kinds of activities?
 7 Q. Yes.
 8 A. Yes, I have.
 9 Q. In what role?
 10 A. Well, usually my role has been that of --
 11 of conceptualizing the topic of inquiry, of
 12 recruiting the scholars to carry out the work by
 13 participating in and supervising that work and by
 14 assisting either in a primary way or in a nonprimary
 15 way in writing up the results and in disseminating
 16 those results to the public.
 17 Q. But you will typically bring in someone
 18 else who conducts the study?
 19 A. Well, typically, our studies are done by
 20 groups of scholars. We tend to have a model that is
 21 interdisciplinary and collabora- -- collaborational
 22 -- if that's a word -- in nature.

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1 So for a number studies that have been
 2 carried out by -- by the Institute for American
 3 Values in -- over the past 20 years, I have a number
 4 of times been involved as, say, the principal author
 5 of the report or often as the person who had the lead
 6 role in conceptualizing, developing the methodology,
 7 and so on, in -- in -- in actually carrying out the
 8 research itself.
 9 But I -- we typically work in -- we work
 10 in a group -- we work as groups of scholars, and if
 11 you wanted to, you could look at each of our reports
 12 that have occurred over the past 20 years, and you
 13 can see in each report in what way my role was
 14 described, and we've tried to be fairly clear about
 15 that.
 16 Q. Okay. Let's turn to your -- your index of
 17 materials considered, which is at the end of exhibit
 18 1.
 19 MR. THOMPSON: Could we go off the record
 20 just a moment?
 21 MR. DUSSEAULT: Sure.
 22 (Discussion off the record.)

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1 THE VIDEOGRAPHER: Going off the record.
 2 The time on the video screen is 12 o'clock and 38
 3 seconds.
 4 (Discussion off the record.)
 5 THE VIDEOGRAPHER: Here marks the end of
 6 videotape number 2 taken in the deposition of
 7 Mr. David Blankenhorn III. Going off the record.
 8 The time on the video screen is 12:01 and 38 seconds.
 9 (Recess.)
 10 THE VIDEOGRAPHER: Here begins videotape
 11 number 3 taken in the deposition of Mr. David
 12 Blankenship III -- I'm sorry -- Blankenhorn III.
 13 Going back on the record. The time on the video
 14 screen is 12:11 and 54 seconds. Please continue.
 15 BY MR. DUSSEAULT:
 16 Q. Mr. Blankenhorn, if you would turn,
 17 please, to your index of materials considered in
 18 exhibit 1.
 19 You were testifying before our break about
 20 certain studies in which you've been involved.
 21 Are any of those studies that you're
 22 referring to included in this index of materials

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|--|---|
| <p>1 with the -- this is the first time I've provi- --</p> <p>2 done this for this kind of court situation, and I was</p> <p>3 simply relying upon my experience in writing</p> <p>4 academic-style articles.</p> <p>5 And I was simply trying to follow the</p> <p>6 conventions of citation that would be customary in</p> <p>7 those situations.</p> <p>8 Q. Okay. Are all of the documents included</p> <p>9 on your index of materials considered documents to</p> <p>10 which there's a specific citation in the report</p> <p>11 itself?</p> <p>12 A. I believe that's true. I -- I -- I -- I</p> <p>13 would have to go through and visit -- revisit every</p> <p>14 single instance and just double-check --</p> <p>15 Q. Okay.</p> <p>16 A. -- but to the best of my recollection, the</p> <p>17 answer to that is yes.</p> <p>18 Q. Okay. Now, have you -- for each of the</p> <p>19 materials listed here, have you read the entire</p> <p>20 document?</p> <p>21 A. If you mean every word of every page of</p> <p>22 every document, the answer would be no.</p> | <p>1 A. Oh, no.</p> <p>2 I'm not -- this isn't related. I'm not --</p> <p>3 I see. I understand.</p> <p>4 The anthropological quarterly 1998, I'm</p> <p>5 trying to remember the title of the article, so I</p> <p>6 can't say that I have read every word of every page</p> <p>7 of that particular article, because I'm not -- I'm</p> <p>8 not recalling in my mind right now which article that</p> <p>9 was.</p> <p>10 In the second instance, I'm pretty sure I</p> <p>11 read everything. I may have skipped a page or 2, but</p> <p>12 I think I'm pretty familiar or was familiar with that</p> <p>13 at the time.</p> <p>14 Number 3, yes.</p> <p>15 Number 4, yes.</p> <p>16 Number 5, yes.</p> <p>17 Number 6, yes.</p> <p>18 Number 7, yes.</p> <p>19 Number 8, yes.</p> <p>20 Number 9, yes.</p> <p>21 Number 10, I may have skipped a few pages,</p> <p>22 but I'm fairly familiar.</p> |
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| <p>1 Q. Okay. Are there -- strike that.</p> <p>2 Are there any documents that you include</p> <p>3 here as to which you can say with confidence that</p> <p>4 you've read the whole document?</p> <p>5 A. Yes.</p> <p>6 Q. Which ones?</p> <p>7 A. Do you want to go down the list --</p> <p>8 Q. Sure.</p> <p>9 A. -- of all of them?</p> <p>10 Q. Just the ones that you can say with</p> <p>11 confidence you've read the entire document.</p> <p>12 A. Well, let's begin with the first one.</p> <p>13 Trying to find footnote number 1 if</p> <p>14 somebody can help me.</p> <p>15 MR. THOMPSON: Oh, you can refer to the</p> <p>16 index of materials considered, is probably the</p> <p>17 easiest, at the end of the --</p> <p>18 THE WITNESS: But I need to see -- I need</p> <p>19 to see --</p> <p>20 MR. THOMPSON: That's fine.</p> <p>21 So Mr. Dusseault, the way I think he's</p> <p>22 going to do it --</p> | <p>1 Number 11, I'm not recalling the</p> <p>2 specifics. I would need to see the document to</p> <p>3 recall if I've read every word of every page.</p> <p>4 Same with number 12.</p> <p>5 13, yes.</p> <p>6 14, yes, although I may have skipped a</p> <p>7 page or 2.</p> <p>8 15 the same.</p> <p>9 16, yes.</p> <p>10 17, I would have to see the document</p> <p>11 again.</p> <p>12 18, yes.</p> <p>13 19, yes, although I skipped a couple of</p> <p>14 chapters of that book.</p> <p>15 20, yes.</p> <p>16 21, yes, although I may have skipped a few</p> <p>17 pages.</p> <p>18 22, yes.</p> <p>19 23, I skimmed it pretty carefully in those</p> <p>20 areas that I didn't read in its entirety. I was</p> <p>21 really focusing on a specific question, and so there</p> <p>22 were other chapters of that book that did not relate</p> |

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1 BY MR. DUSSEAULT:
 2 Q. Are you not able to answer --
 3 A. I have an opinion --
 4 Q. Are you not able to answer the question
 5 whether gay and lesbian persons in California had
 6 equal marriage rights as you use that phrase in
 7 paragraph 14 the day before Proposition 8 passed?
 8 MR. THOMPSON: Objection to the extent it
 9 calls for a legal conclusion.
 10 A. If by equal marriage rights we mean, did
 11 gay and lesbian persons in California have the right
 12 prior to the passage of Prop 8 to marry one another,
 13 then, I believe that they did have that right prior
 14 to Proposition 8 in the immediate preceding months of
 15 the passage of that initiative.
 16 BY MR. DUSSEAULT:
 17 Q. Okay. And just since this is a phrase
 18 that you've used in your report, is that how you mean
 19 the phrase equal marriage rights, the right of a gay
 20 and lesbian person to marry someone of the same-sex?
 21 A. I'm using the term out of respect for
 22 those advocates of same-sex marriage. I use the term

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1 to -- to show respect, because that is the term
 2 that's commonly abused by those advocates.
 3 And when they use the term, what they mean
 4 to say is that an individual has the right to marry
 5 the person of their choosing. And that's what they
 6 mean.
 7 And so I use the term understanding that
 8 that's the meaning, and I use the term out of respect
 9 for wanting to use the exact language of those whose
 10 argument I'm contesting.
 11 Q. I just want to understand the parameters
 12 of what you're talking about since you've presented a
 13 question whether or not to grant equal marriage
 14 rights.
 15 As you use that term here, you're using it
 16 to mean the right of someone to marry someone of the
 17 same sex as well as someone of the opposite sex.
 18 True?
 19 A. I'm using it to mean the right to marry
 20 the person of their choice, irrespective of the
 21 person's sexual embodiment or gender or orientation.
 22 That's what I'm meaning.

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1 Q. Now, you present the question as whether
 2 or not to grant equal marriage rights to gay and
 3 lesbian persons.
 4 Would you agree that in Prop 8 the
 5 question that was actually presented to voters was
 6 whether to take away those equal marriage rights that
 7 had already been deemed to exist?
 8 MR. THOMPSON: Objection, calls for a
 9 legal conclusion.
 10 A. I -- I would not view it that way.
 11 I view -- I view the -- although I am
 12 fully aware that those proponents -- I'm sorry -- the
 13 opponents, those who opposed Proposition 8, phrased
 14 it exactly that way.
 15 But my own understanding, which is perhaps
 16 somewhat of a variation on that -- on that
 17 formulation is that I view the Prop 8 initiative as
 18 the reinstating of the customary man-woman nature of
 19 marriage that has existed in California and in all
 20 human groups in almost all of human history.
 21 And so that while it is true that the
 22 equal marriage rights as I have -- we are -- as I

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1 have defined them existed as you put it on the day
 2 prior to Prop 8's passage, I view the larger social
 3 and political process there as bringing to bear the
 4 will of the voters on the question of the restoring
 5 of the customary marriage form that had heretofore
 6 existed in California and throughout history and the
 7 world.
 8 BY MR. DUSSEAULT:
 9 Q. So in your view as an intellectual matter,
 10 as you're saying here, does it make any difference
 11 whether the issue is whether to grant equal marriage
 12 rights that have never been granted or restore a
 13 definition that existed at some prior point in time?
 14 Does -- does how you come to this
 15 situation affect how you approach this as an
 16 intellectual matter from your perspective?
 17 MR. THOMPSON: Objection, vague.
 18 A. I certainly understand the proposition and
 19 the validity of the -- I certainly can see how a
 20 person -- particularly a person who was a supporter
 21 of same-sex marriage could say that the purpose of
 22 Proposition 8 is to take away a right that I now

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| <p>1 A. Well, the way I think about it is that if</p> <p>2 you put up these 2 normative or descriptions of</p> <p>3 marriage, if your question is, how many people lean</p> <p>4 strongly toward one versus the other, I -- and if</p> <p>5 your question concerns U.S. adults, I don't -- I</p> <p>6 don't have an opinion as to the current breakdown.</p> <p>7 Q. I guess what I was going for but more as</p> <p>8 you present these as 2 alternative ideas, but</p> <p>9 wouldn't you agree that many people view marriage as</p> <p>10 both a private, loving commitment between adults and</p> <p>11 something that benefits and protects any children who</p> <p>12 come into that marriage?</p> <p>13 A. Well, the important words that I tried to</p> <p>14 use in the document are -- I'm not looking at it</p> <p>15 right now -- but I used words like primarily or</p> <p>16 fundamentally or in essence. And the reason I used</p> <p>17 words of that nature is because whatever else -- I</p> <p>18 mean, the -- the -- to take one example of why I used</p> <p>19 that phrasing, the proponents of the view that</p> <p>20 marriage is fundamentally a pro-child social</p> <p>21 institution would also readily recognize and</p> <p>22 understand that marriage has an individual private</p> | <p>1 toward this other more historically foundational and</p> <p>2 historically very widespread and commonly accepted</p> <p>3 understanding.</p> <p>4 Q. Okay. In paragraph 15 of your report, you</p> <p>5 offer by my count 8 quotes that you characterize as</p> <p>6 representative examples of prominent persons making</p> <p>7 precisely this argument, which I assume refers to</p> <p>8 idea 1.</p> <p>9 A. Can you tell me the page?</p> <p>10 Q. Oh, yes.</p> <p>11 Page 3.</p> <p>12 A. Yes.</p> <p>13 Q. So just -- just to set the table again:</p> <p>14 On page 3, you say, idea 1, marriage is fundamentally</p> <p>15 a private adult commitment.</p> <p>16 Then in paragraph 15 you say: Consider</p> <p>17 these recent representative examples of prominent</p> <p>18 persons making precisely this argument.</p> <p>19 And you follow that with 8 quotes?</p> <p>20 A. Yes.</p> <p>21 Q. Now, this is something that you do in at</p> <p>22 least 3 spots in your report, make a statement and</p> |
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| <p>1 affective dimension between the spouses.</p> <p>2 So it's not a case that those people who</p> <p>3 hold that view deny that that dimension of marriage</p> <p>4 exists. And I have written about that dimension in</p> <p>5 my book.</p> <p>6 So I'm happy to discuss it, but the --</p> <p>7 the -- the issue before us is not that one. The</p> <p>8 issue before us is, what if anything do we think can</p> <p>9 be stated about the public purposes of marriage.</p> <p>10 And if the answer to that question is a</p> <p>11 statement that the definition of marriage is that</p> <p>12 it's an interdependent relationship between 2 people,</p> <p>13 then in essence or fundamentally or primarily, then</p> <p>14 that is indicative of the fact that the person who is</p> <p>15 saying that is very much oriented toward this first</p> <p>16 view of marriage I've talked about.</p> <p>17 Whereas if the person were to say,</p> <p>18 while -- you know, while acknowledging the multiple</p> <p>19 purposes of marriage, the fundamental and primary and</p> <p>20 cross-cultural purpose of marriage in human groups is</p> <p>21 to be a pro-child social institution, that would --</p> <p>22 that would indicate that that person was veering</p> | <p>1 then have a series of quotes that you list.</p> <p>2 Right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. How do you go about identifying</p> <p>5 what quotes you're going to put into your report?</p> <p>6 A. I try to -- what I did during -- over a</p> <p>7 period of several years was to search the public</p> <p>8 record of debate and the corpus of modern</p> <p>9 scholarship, and I sought as carefully as I could to</p> <p>10 literally collect these definitions. And I tried</p> <p>11 to -- if the person was a -- was a -- I use the word</p> <p>12 prominent just to -- somewhat loosely to really mean</p> <p>13 a person whose views are deemed worthy of publication</p> <p>14 in some significant publication and has some standing</p> <p>15 in society where that person would be viewed as</p> <p>16 having an opinion that is, you know, worth listening</p> <p>17 to by others, and so forth, and I tried to as</p> <p>18 carefully and as comprehensively as I could collect</p> <p>19 those definitions.</p> <p>20 And then I sought for the purposes of this</p> <p>21 report to choose those that I thought were</p> <p>22 representative of the argument that I think is --</p> |

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| <p>1 to -- to illustrate my point, to be examples of the</p> <p>2 point I'm trying to make.</p> <p>3 And I tried to -- you know, I tried to be</p> <p>4 as fair-minded as possible, and I tried to not choose</p> <p>5 obscure people or obscure formulations. I chose 8</p> <p>6 here, but I could just have easily have given you 80.</p> <p>7 Q. Okay. And if I understand your answer,</p> <p>8 what you're trying to do is not endorse or dispute a</p> <p>9 view, not test its validity, just give examples of</p> <p>10 arguments that people have made?</p> <p>11 A. That is exactly right.</p> <p>12 Q. Okay. With respect to the 8 authors that</p> <p>13 you quote in paragraph 15, do you know whether any of</p> <p>14 them also talk about the role of child well-being and</p> <p>15 protection of children in marriage elsewhere in their</p> <p>16 work?</p> <p>17 A. Well, I know that some of them do. I</p> <p>18 suspect that all of them do.</p> <p>19 Yes, I think it's fair to say that all of</p> <p>20 them do.</p> <p>21 Q. Okay. In paragraph 16, you say: This</p> <p>22 understanding of marriage is reasonably widespread</p> | <p>1 A. Well, if you mean, does that idea also</p> <p>2 have valence in the citizenry as a whole, I would say</p> <p>3 the answer is yes.</p> <p>4 Q. Okay. And would you say that this view is</p> <p>5 also reflected in laws that in past several decades</p> <p>6 have been passed in states of the country?</p> <p>7 A. I'm not really -- don't feel able to</p> <p>8 answer that question precisely.</p> <p>9 In a -- in a general way, I would -- I</p> <p>10 would be able to say I think with some confidence</p> <p>11 that in a general way, my view is that a broad</p> <p>12 tendency in family law as a scholarly discipline is</p> <p>13 toward endorsement or a greater -- a growing</p> <p>14 acceptance of this view, and some trends in legal</p> <p>15 changes themselves have tended toward this view but</p> <p>16 while others have not.</p> <p>17 Q. Do you know -- accepting that you're not</p> <p>18 an expert in law, but someone who has read a lot on</p> <p>19 these subjects, do you know whether this view of</p> <p>20 marriage as fundamentally commitment between adults</p> <p>21 has been expressed by judicial decisions of the U.S.</p> <p>22 Supreme Court?</p> |
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| <p>1 today particularly among U.S. journalists and</p> <p>2 advocates of same-sex marriage.</p> <p>3 Do you see that paragraph?</p> <p>4 A. Yes.</p> <p>5 Q. What do you mean when you say, the</p> <p>6 understanding is reasonably widespread?</p> <p>7 A. Well, I mean that if one follows the</p> <p>8 public debate on this issue, and if one tries to be</p> <p>9 reasonably well informed about the scholarly and</p> <p>10 legal and journalistic and civic and religious</p> <p>11 discussions of the topic of marriage, that one will</p> <p>12 commonly hear this idea being given -- one will</p> <p>13 commonly hear this idea expressed.</p> <p>14 It's not unusual or rare to hear it</p> <p>15 expressed. I would say it's -- it's -- it's as a</p> <p>16 reasonably widespread idea in the sense that it is</p> <p>17 frequently voiced, particularly by these groups I've</p> <p>18 mentioned.</p> <p>19 Q. And it's -- but it's also an idea that is</p> <p>20 expressed well beyond just U.S. journalists and</p> <p>21 same-sex marriage advocates.</p> <p>22 True?</p> | <p>1 A. I'm not aware.</p> <p>2 Q. Okay. Do you believe it would affect any</p> <p>3 of the opinions you're offering in this case if in</p> <p>4 fact it had?</p> <p>5 MR. THOMPSON: Objection to the extent it</p> <p>6 calls for a legal conclusion.</p> <p>7 A. My -- my view of what marriage is and its</p> <p>8 public purposes and its dimensions are a result of my</p> <p>9 study of the actual -- the actual history, the</p> <p>10 textured history of the institution itself.</p> <p>11 And while -- while law is certainly an</p> <p>12 important influence on that institution, it's by no</p> <p>13 means the only one. And so while I would always be</p> <p>14 interested and influenced -- I would always be</p> <p>15 interested as a topic of knowledge to know what legal</p> <p>16 thinkers have stated about this, my overall</p> <p>17 understanding of what marriage is would be informed</p> <p>18 by a multiplicity of sources, and contemporary views</p> <p>19 of jurists would be one of them but not the only one.</p> <p>20 BY MR. DUSSEAULT:</p> <p>21 Q. When did this understanding of marriage as</p> <p>22 primarily an adult commitment first arise in the</p> |

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| <p>1 gotcha argument on the issue of why we should allow 2 gay marriage, they really I believe are in my view 3 really engaging -- they really are misunderstanding 4 this institution at a very deep level.</p> <p>5 I also want to make a final point in this 6 regard, which is that there is a very -- actually -- 7 I'm sorry -- I want to make 2 very quick final 8 points, and then I'll stop.</p> <p>9 One point is that there is a great deal of 10 variability in the status of infertility in 11 childishness -- childlessness. The couple may decide 12 at some point in their marriage that they do not want 13 to have children, but that opinion may change over 14 time.</p> <p>15 And even the physical elements of 16 infertility are almost never known prior to the 17 marriage. Very few couples get married knowing for 18 certain that there's infertility. And even when 19 infertility problems emerge, there are -- sometimes 20 it doesn't prevent them from having a child, so this 21 very practical nature of the -- of the variability of 22 the status such that it's subjective to human --</p> | <p>1 All we have to do is literally let nature 2 take its course. It would be like, why do we have to 3 have an order -- do we want to order birds to sing 4 and fish to swim. People have sex, and that sexual 5 activity produces children.</p> <p>6 And the point is not to stand around 7 permitting it or mandating it. The point is to 8 regulate it in the interests of the social life of 9 the child.</p> <p>10 And in order to achieve that goal, humans 11 have created an institution called marriage. All of 12 the scholars of the modern era, all of them with very 13 few exceptions have commonly acknowledged that, no, 14 this is not a controversial assertion, that this is 15 the fundamental purpose of marriage in human groups.</p> <p>16 So I've taken a moment to answer this 17 question at some length because it's a very important 18 one. It is widely and deeply misunderstood in the 19 public discussion.</p> <p>20 And those who use the argument in the way 21 that you're doing I believe really -- I -- I think 22 have not sufficiently thought through the role and</p> |
| <p>Page 183</p> <p>1 changed through human opinion and agency and change 2 in the -- how are bodies are working related to 3 sexual reproduction make it a complete impracta -- 4 impracticability, even if one wanted to to somehow 5 inquire prior to marriage about the fertility 6 intentions of the couple.</p> <p>7 There's another reason why we don't this 8 and why no one in the history of the world as ever 9 managed to do this, and that is because we don't need 10 to. People like to have sex. They frequently have 11 sex. And they don't -- we don't need to order them 12 to do it. We don't need to stand at the gate of 13 marriage and make sure they're going to do it. We 14 don't need to tell them that they have to have 15 children.</p> <p>16 People commonly want children. The 17 overwhelming majority of married people in the United 18 States and throughout all of history have had 19 children. And we don't need to order them to do it. 20 We don't need to issue a production quota. We don't 21 need to stand around and inquire as to their status 22 about the intention to procreate.</p> | <p>Page 185</p> <p>1 meaning of marriage.</p> <p>2 Q. Okay. I think you may have read a good 3 bit into my question that I didn't intend, because I 4 don't think I said anything about requiring 5 procreation or anything.</p> <p>6 I know --</p> <p>7 A. Well, I'd --</p> <p>8 Q. -- the things you've talked about quite a 9 bit.</p> <p>10 A. I'd like to go back and find out what the 11 question is. 12 (Talking at the same time.)</p> <p>13 A. I would like to know what the question 14 was, because I do believe that was exactly the 15 implication.</p> <p>16 MR. THOMPSON: It's all right. It's all 17 right.</p> <p>18 MR. DUSSEAULT: No. 19 Let's read it back. I'd like to see if 20 what he said is connected to what he was asked. 21 (The reporter read the record as 22 follows:</p> |

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| <p>1 raised from birth by 2 biological parents versus 2 raised from birth by 2 other people? 3 A. Well, I can only refer you to what the 4 researchers themselves say -- 5 Q. Okay. 6 A. -- in their conclusion and in their 7 summation of the findings. 8 I'll just read it to you: 9 First, this is under the -- this is in 10 their conclusion section, what they call implications 11 of the research -- 12 Q. Okay. 13 A. -- for the broader public discussion. 14 First, research clearly demonstrates that 15 family structures matters for children, and the 16 family structure that helps children the most is a 17 family headed by 2 biological parents in a 18 low-conflict marriage. Children in single-parent 19 families, children born to unmarried mothers, and 20 children in stepfamilies or cohabiting relationships 21 face higher risks of poor outcomes than do children 22 in intact families headed by 2 biological parents.</p> | <p>1 compared the outcomes where children are raised 2 continuously with 2 parents who are biological 3 parents versus a child raised continually by 2 people 4 where one or both is not the biological parent? 5 A. Yes. 6 Q. What is -- what's an example of such a 7 study? 8 When I say, continuously, again, I don't 9 mean stepfamilies. I mean from birth. 10 A. Oh, I thought you were including -- I 11 thought you might be including issues of stepfamilies 12 on issues of adoption. 13 Q. What I'm looking at is, are there any 14 studies that you're aware of where in both samples, 15 the child is raised by the same 2 people 16 continuously, but in one, the 2 people are biological 17 mother and father, and in the other, one or both of 18 the people is not the biological mother and father. 19 A. Well, I think the answer is yes. 20 But the problem means -- the problem is 21 what exactly is your definition of continuously. 22 Do you mean that the child who's not the</p> |
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| <p>1 Thus is -- I'm skipping a sentence. I can 2 read it if you want, but the concluding sentence 3 says: There is thus value for children in promoting 4 strong, stable marriages between biological parents. 5 Q. Okay. But so even just taking just that 6 language, the authors are comparing 2 biological 7 parents in a low-conflict marriage to single-parent 8 families, children born to unmarried mothers, and 9 children in stepfamilies. 10 A. And cohabiting. 11 Q. And cohabiting. 12 But not for example to a situation where a 13 man and woman through adoption or otherwise together 14 raise a child from birth. 15 A. I'm not sure how they treated the issue of 16 adoption in this sample. 17 It's a fairly small number of children. 18 And I don't think it would have affected it much one 19 way or the other, but it's an interesting question. 20 I don't know if in the methodology they 21 say how they handled adoption. 22 Q. Are you aware of any study that has</p> | <p>1 biological offspring cannot have spent one day 2 outside the care of these parents? 3 Or what would be your definition of 4 continuous? 5 Q. Well, I'm trying to distinguish it from, 6 say, a step situation where a child may have 2 7 biological parents until they're 10 years old and 8 then the mother gets div- -- the parents get divorced 9 and the mother marries another -- 10 A. There are -- 11 Q. -- person. 12 A. -- many studies that compare those 2 13 -- (indiscernible). 14 Q. Okay. I'm talking about where the family 15 unit is -- and I've seen this in the literature -- 16 intact throughout the child's dependent years, so 17 same father, same mother, or same 2 parents, but 18 there is no biological connection between one or both 19 of the parents and the child. 20 Has there been any comparison -- 21 A. The closest thing -- 22 Q. -- in that situation?</p> |

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| <p>1 A. -- we have would be those studies that 2 compare the 2 married biological parents -- for the 3 sake of shorthand, perhaps we can at all it intact. 4 Would that be okay? 5 Q. Sure. 6 A. And then compare children who have been 7 adopted at very early ages -- let's say in infancy -- 8 by 2 married parents. There have been such studies. 9 Q. And have they shown there to be difference 10 in outcomes for the children who are biologically 11 connected to both parents versus those who are not? 12 A. My view of the weight of evidence on this 13 is that there -- yes. 14 The studies are not completely uniform. 15 There's some diversity in -- in the field, and it's a 16 little bit of an embryonic field of research, but my 17 reading of the evidence is that the weight of 18 evidence suggests that there are differences between 19 those 2 groups in terms of child outcomes. 20 And I am for example directing a study now 21 that looks at exactly this question. And the 22 research will be published in the next year or so,</p> | <p>1 I've tried to familiarize myself with these studies. 2 And I'm aware of the general weight of evidence in 3 them. 4 If you want me right now without any 5 ability to refer to anything to give you specific 6 titles of articles and authors and years of 7 publication, my answer is that I would be happy to do 8 that, but I can't do it right now on this moment 9 without any ability to confirm anything. 10 Q. And you don't include any of those studies 11 on your list of materials considered, do you? 12 A. Well, I don't think I discuss this 13 particular issue in my paper. 14 Q. Well, you've -- you've discussed what you 15 describe as the need of a child to be raised by the 2 16 parents who created the child. 17 Right? 18 A. I do discuss that, yes. 19 Q. Okay. And you have cited to several 20 studies that address this child welfare issue and 21 that use the word biological when talking about the 22 parents.</p> |
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| <p>1 and the preliminary data do suggest the differences 2 that I've described. 3 The differences -- well, that's the 4 answer. 5 Q. What -- give for me the names or authors 6 of published studies that have compared 2 intact 7 families, one where there's a biological connection 8 between both parents and the child and one where one 9 or both of parents is not biologically connected to 10 the child. 11 A. Well, there is -- there is a body of 12 literature on -- on this issue, and I would have to 13 go back and refresh my -- I would have to go back and 14 pull together the -- what I consider to be the best 15 or most representative studies for you. I'd be happy 16 to do that. 17 Q. But you can't as you sit here even name 18 one study that has compared those 2 family 19 situations? 20 A. I'm telling you with confidence that such 21 studies exist, that I've over the 20-year period that 22 I've been looking at this broad cluster of questions,</p> | <p>1 Correct? 2 A. That's correct. 3 Q. Okay. But you don't to support your 4 positions cite to any of the studies that you say 5 have actually compared an intact family where both 6 parents are biologically the creators of the child -- 7 A. -- (indiscernible) -- I -- 8 Q. -- and an intact family where one or both 9 of them is not/adopt (phonetic). 10 Correct? 11 A. Well, I am reasonably confident that a 12 number of these sources that I'm citing here discuss 13 this issue. 14 For example -- 15 Q. Like? 16 A. -- I'm reasonably confident that David 17 Popenoe in his article discusses it. I'm fairly 18 certain that McLanahan and Sandefur discuss it. I'm 19 reasonably confident that Amato discusses it. 20 As I said, in the Child Trends study, I 21 just don't know how they're looked -- I don't know if 22 they broke out the adoptive category in the way that</p> |

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| <p>1 you're suggesting that would have been useful, and I</p> <p>2 agree with you.</p> <p>3 Q. Well, let me ask you this.</p> <p>4 In --</p> <p>5 A. But it's not an unusual question. It's</p> <p>6 common among scholars, and there have been -- there</p> <p>7 have been efforts to answer it. I think in -- I'm</p> <p>8 reasonably sure, including by the specific people</p> <p>9 that I'm citing there.</p> <p>10 Q. Do you know whether any of the sources</p> <p>11 that you quote from in paragraph 37 broke out</p> <p>12 adoptive families from the biological group?</p> <p>13 A. It's common in the scholarship to do that.</p> <p>14 Q. Okay. But do you have any actual support</p> <p>15 for the premise that any of them did that?</p> <p>16 A. As I just stated, I would have to go back</p> <p>17 and read the -- I would have to go back and re-read</p> <p>18 the document specifically for this question of how</p> <p>19 they treated the question of adoptive children, but</p> <p>20 as a general rule, I can say to you with quite a</p> <p>21 level of confidence that it is frequently done, and I</p> <p>22 can also report to you that the general finding is</p> | <p>1 A. No.</p> <p>2 Q. Only because of the gender -- excuse me --</p> <p>3 the sex of the participants?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. And for what that difference -- for what</p> <p>7 that difference means to marriage's central purpose,</p> <p>8 which is to unite the male and female in a pair bond</p> <p>9 that is child rearing in nature.</p> <p>10 So, yes, the fact that -- the fact of the</p> <p>11 man marrying the woman -- I mean, the man marrying</p> <p>12 the man or a woman marrying a woman would constitute</p> <p>13 a very seismic and radical negation of this</p> <p>14 fundamental principle of marriage historically as a</p> <p>15 human institution. That's not a nontrivial</p> <p>16 difference.</p> <p>17 Q. Okay. Are you aware of studies showing</p> <p>18 that children raised from birth by a gay or lesbian</p> <p>19 couple, have worse outcomes than children raised from</p> <p>20 birth by 2 biological difference-sex parents?</p> <p>21 A. No.</p> <p>22 Q. Okay. Let's take a look at the Amato</p> |
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| <p>1 that the outcomes are not identical and that those</p> <p>2 children raised in adoptive homes suffer from</p> <p>3 somewhat poor outcomes on some important variables</p> <p>4 than do those children raised in biological intact</p> <p>5 married couple homes.</p> <p>6 This is a -- this is a finding in the</p> <p>7 field. And it's not -- it's not -- because of the --</p> <p>8 because of the -- because of the closeness of the</p> <p>9 differential, it's not true that every study finds</p> <p>10 this, because remember -- recall, then, the</p> <p>11 discussion of adoption.</p> <p>12 Adoption is the family form that most</p> <p>13 rigorously seeks to mimic the married couple form.</p> <p>14 And so it would be natural to assume that the best</p> <p>15 outcomes for children in the -- if I may use a</p> <p>16 shorthand, nontraditional, would be in adoption.</p> <p>17 Q. But wouldn't --</p> <p>18 A. And that is in fact true.</p> <p>19 Q. Wouldn't a same-sex couple that married if</p> <p>20 it were permitted to do so, quote, unquote, mimic</p> <p>21 this -- as you use that word -- the traditional</p> <p>22 marriage form?</p> | <p>1 article that you mentioned.</p> <p>2 (Blankenhorn Exhibit No. 6</p> <p>3 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUSSEAUT:</p> <p>6 Q. Now, the portion of the Amato article that</p> <p>7 you quote refers to in the first couple of lines to</p> <p>8 continuously married parents, and then at the end</p> <p>9 says: The distinction is even stronger if we focus</p> <p>10 on children growing up with 2 happily married</p> <p>11 biological parents.</p> <p>12 Do you see that?</p> <p>13 A. M-hm, yes.</p> <p>14 Q. Do you know whether Amato in his work</p> <p>15 wrote adoptive families out from the biological</p> <p>16 group?</p> <p>17 A. Right now, I do not.</p> <p>18 Q. Turn if you would to page 96. It has a 96</p> <p>19 on the bottom.</p> <p>20 A. Yes.</p> <p>21 Q. Do you see footnote 63?</p> <p>22 A. Yes.</p> |