

1 11:35 a.m.

2 THE COURT: Okay. Before we go back to this, let's
3 talk about scheduling, so that we all know what the schedule is
4 going to be.

5 It's my understanding that we will finish up
6 cross-examine and maybe some direct, and then the next witness
7 is the economist. So let's see where the timing is. We'll
8 finish, and maybe we'll take an early lunch so that Ms. Nessel
9 will have a chance to go over that which she wants to go over,
10 and maybe an even a bit longer lunch, if that's all right.

11 Now, tell me about after that witness, just so -- we
12 get calls every day. People want to know what's going on, when
13 they should come and when they shouldn't come. So tell me what
14 you anticipate being the State's schedule.

15 MS. HEYSE: Sure. Absolutely, your Honor. After Dr.
16 Price this afternoon and when he finishes, we intend to call
17 Dr. Loren Marks. That was just actually, to bring to your
18 attention, your Honor, a change in the ordering.

19 THE COURT: Okay.

20 MS. HEYSE: We had some travel difficulties. But Dr.
21 Loren Marks will be available to testify after Dr. Price. And
22 then after him, we will have Dr. Douglas Allen.

23 THE COURT: Okay.

24 MS. HEYSE: And I do note we will not be able to bring
25 Dr. Allen onto the stand until Thursday.

1 THE COURT: Okay.

2 MS. HEYSE: So we may have, depending on the timing,
3 we may have a slight break in the action, but it shouldn't be
4 much.

5 THE COURT: Okay. So you figure that you probably
6 will finish your case Thursday?

7 MS. HEYSE: Yes.

8 THE COURT: And does the plaintiff anticipate, it's
9 not made in stone, any rebuttal?

10 MR. MOGILL: At this point, we're not anticipating.

11 THE COURT: Okay. At this point not. So the
12 anticipation is, is that we'll go today, we'll go Thursday, for
13 as long as we can, and closings Friday. Is that fair?

14 MS. HEYSE: We'll go today, tomorrow and Thursday.

15 THE COURT: Today, tomorrow.

16 MS. HEYSE: Yes.

17 THE COURT: And then should finish some time tomorrow
18 in the afternoon. And whenever we should --

19 MS. HEYSE: Thursday, we'll finish.

20 THE COURT: Oh, I'm sorry.

21 MS. HEYSE: Yes.

22 THE COURT: Today, tomorrow, Thursday.

23 MS. HEYSE: Right. Correct.

24 THE COURT: I'm a day short. Today, tomorrow, and
25 Thursday.

1 MS. HEYSE: Correct.

2 THE COURT: And we'll do closings Friday. Is that
3 pretty much what everybody is anticipating.

4 MS. STANYAR: Sounds good. The only thing I would say
5 is they switched the order of Professor Marks --

6 THE COURT: Yeah.

7 MS. STANYAR: -- who is my witness. I'm not guessing
8 we'll get to cross of Loren Marks today, right?

9 MR. POTCHEN: We are not calling him today.

10 MS. HEYSE: We do not --

11 MS. STANYAR: You don't have him here.

12 MS. HEYSE: We do not anticipate calling him today.

13 MS. STANYAR: It's tomorrow, I'm fine.

14 MS. HEYSE: I should have clarified that. I'm sorry.

15 THE COURT: Good. Perfect. People call all the time
16 and we don't know what to tell them. But now we know --

17 MS. HEYSE: Sure.

18 THE COURT: -- what the schedule is. And again, it's
19 not made in stone. If somebody has to change it, we'll go from
20 there. Okay.

21 MS. HEYSE: Your Honor, while -- I'm sorry, one more
22 minute?

23 THE COURT: Sure.

24 MS. HEYSE: Just to get some clarification, are you
25 looking for closing briefs as well?

1 THE COURT: It's, do you remember I told you at the
2 beginning, it's up to you.

3 MS. HEYSE: Okay.

4 THE COURT: You've briefed -- I've got lots of briefs.

5 MS. HEYSE: Sure.

6 (Laughter in courtroom.)

7 THE COURT: We have summary judgment. So I'm not
8 asking for any briefs.

9 MS. HEYSE: Okay.

10 THE COURT: If anyone wants to submit, either, you
11 know, conclusions of law, findings of facts, that's fine. But
12 as I told you at the beginning, if you're going to do it, you
13 have to do it at the close of this, pretty much at the close of
14 the case. Because we are going to start working on it, if we
15 finish Friday, probably, Friday, you know, some time, and then
16 Monday, you know, the next week, pretty full force.

17 I think I told you at the end of the trial that I have
18 set some time aside for this trial and we're going to, I don't
19 know how long it's going to take us. So yes, anyone who wants
20 to submit.

21 MS. HEYSE: Could we perhaps have until Monday then,
22 if we close on Friday? Perhaps --

23 THE COURT: Monday at noon, something like that. The
24 sooner you can.

25 MS. HEYSE: Absolutely.

1 THE COURT: Because we are -- we have kind of cleared
2 our docket, and are going to start working on this as soon as
3 we're done.

4 MS. HEYSE: Thank you, so much.

5 THE COURT: Okay.

6 MS. STANYAR: One other question. So it would be the
7 normal closing argument, would be the, you know, we start, they
8 go and then our rebuttal?

9 THE COURT: You have rebuttal.

10 MS. HEYSE: Actually --

11 THE COURT: Reserve, and on the same time schedule
12 that we talked about. And we'll put Mr. Pitt in there, if he
13 cares to, right after the plaintiff and before the State
14 defendants.

15 MS. HEYSE: Perfect. Thank you, your Honor.

16 THE COURT: Okay. You may proceed.

17 BY MS. COOPER:

18 Q. I think where we left off before the break, we were talking
19 about the creation of the Austin Institute. You mentioned that
20 you worked with Luis Tellez in creating that institute?

21 A. Yes.

22 Q. Okay. Tellez was interested in creating an organization
23 that would help you continue your research and foster other
24 people's research in social science of the family and culture?

25 A. Correct.

1 Q. Is that right?

2 Okay. And Austin was formed last year; is that right?

3 A. Yes.

4 Q. Okay. You're a senior fellow --

5 A. Correct.

6 Q. -- at the institute? And the State's expert, Joseph Price,
7 is also a fellow there?

8 A. He is.

9 Q. Okay. Before we finish, I'm actually very close to
10 finishing, I just want to ask you about one more article.

11 MS. COOPER: Marked just for identification, Exhibit
12 62?

13 THE COURT: Three.

14 MS. COOPER: Three. Apologies. Okay. I only seem to
15 have two copies.

16 THE COURT: Okay.

17 MS. COOPER: Let me make sure I've got what I need
18 here, but I want to make sure you have a copy.

19 (Handing the witness Exhibit 63.)

20 THE WITNESS: Thank you.

21 BY MS. COOPER:

22 Q. Apologies. There's some highlighting on there.

23 Did you write this article called, "Porn Use in
24 Support For Same-Sex Marriage"?

25 MS. HEYSE: Objection. That's not the appropriate

1 title.

2 MS. COOPER: Did I, did I read it wrong?

3 THE COURT: I'm sorry.

4 MS. COOPER: Sorry. I don't have an extra copy. If I
5 may?

6 MS. HEYSE: Oh.

7 MS. COOPER: Thank you. Pardon.

8 BY MS. COOPER:

9 Q. "Porn Use and Supporting Same-Sex Marriage"?

10 A. Correct.

11 Q. It was published in "Public Discourse" in December, 2012?

12 A. Yes.

13 Q. "Public Discourse" is an online publication of the
14 Witherspoon Institute; is that right?

15 A. Correct.

16 Q. And turning to the conclusion at the end of your article,
17 just if you want to read along with me, is that correct, that
18 you concluded that "support for same-sex marriage by young
19 adult men may be in part a byproduct of regular exposure to
20 diverse and graphic sex acts in pornography"? Is that right?

21 A. Well, let me put that in the context. I documented that as
22 men's pornographic use increased, the frequency of it
23 increased, the support for same-sex marriage increased, and
24 that several controls.

25 And so, yeah, I mean, I stated in the conclusion it

1 may not be entirely a product of reasoned interest in freedoms,
2 rights, liberties, etcetera, but it may in part be due to
3 exposure, yes.

4 Q. You're talking about straight men there?

5 A. That's what the article is about, yes.

6 Q. Okay.

7 MS. COOPER: I have nothing further. Thank you.

8 THE COURT: Okay. Any redirect, please?

9 MS. HEYSE: Yes. Just a few questions.

10 THE COURT: Take your time.

11 REDIRECT EXAMINATION

12 MS. HEYSE:

13 Q. Dr. Regnerus, you stated earlier that you don't favor
14 excluding other groups from marrying that have poor child
15 outcomes.

16 A. Mh-hm.

17 Q. Can you explain that?

18 A. Correct. When you look at the sort of states' compelling
19 interest in fostering marriage, I mean, most children come from
20 a heterosexual union, and some of them are -- come when it's
21 inconvenient or unplanned. And states have interests in sort
22 of the flourishing of children, and uniting children to their
23 mothers and fathers. And so I think our data, the NFSS, reveal
24 that it's wisest when states have a compelling interest in
25 uniting moms, dads and kids.

1 Q. You mentioned that, earlier in your testimony or in
2 cross-examination, that gay and lesbian families are more apt
3 to be planned.

4 A. Correct.

5 Q. Do you recall that?

6 A. Yes.

7 Q. Does that mean that's the only way that kids are coming
8 into same-sex families?

9 A. No. As the NFSS demonstrates, and it's somewhat unclear
10 today, but children come in via a failed heterosexual union, or
11 a single person getting pregnant, whether there was a union or
12 not, as well as adoption. So there's a lot of different ways.
13 I don't think there is any population-based data right now that
14 tells us who comes in and how. Yeah.

15 Q. So based on the data that is currently available, can
16 definitive conclusions be drawn about outcomes for what
17 Plaintiffs' counsel terms as "planned" same-sex families?

18 A. Right.

19 Q. So ART, DI?

20 A. Right. We can learn about it from these non-probability
21 samples where we can know about 50 to 70 people, but we can't
22 know, since they are not a random sample, we can't know if it's
23 a reflection of how other people, how the general public
24 accomplishes this.

25 So until you get more data from a larger probability

1 sample, I think it's largely, you know, we're doing guesswork
2 about how it works.

3 Q. Do you still have documents in front of you that were
4 presented? Okay. Great.

5 If you could turn to paragraph 49 of your report. And
6 that's on page 13.

7 A. Right.

8 Q. All set?

9 A. Mh-hmm.

10 Q. And earlier, Ms. Cooper had referred you to the first
11 sentence in that paragraph. And that states, if you read along
12 with me, "in that study," and this is referring to Rosenfeld's
13 "How Couples Meet and Stay Together" study, correct?

14 A. Right.

15 Q. Okay. So "In that study, the highest stability rates
16 appear among heterosexual married couples, while notably better
17 stability is located among married gay and lesbian couples than
18 among those in civil unions," and in parenthesis, "as would be
19 expected."

20 Is there additional information in that paragraph?

21 A. Yes.

22 Q. Can you tell me what, what else that paragraph says?

23 A. Do you want me to read it?

24 Q. Sure.

25 A. Okay. It says, "Yet, Rosenfeld's analysis also detects

1 greater instability among lesbian couples in general," I might
2 add that was statistically significant in his findings, "a
3 finding that persists even after a lengthy series of control
4 variables are included. While lesbian couples in the study are
5 more apt to be raising children, the presence of children does
6 not appear to be a factor in the diminished relationship
7 stability evident among them."

8 Q. Thank you. If you could also refer to an e-mail exchange.
9 And I apologize, I didn't mark the number of the exhibit.
10 There was an e-mail exchange between yourself and Brad Wilcox,
11 dated 9/22 of 2010.

12 A. Which number on it?

13 MS. HEYSE: May I approach, your Honor? May I
14 approach?

15 THE COURT: Oh, of course.

16 MS. HEYSE: I can show him where --

17 THE COURT: Absolutely. Save him some time. Thank
18 you.

19 BY MS. HEYSE:

20 Q. It was 11. Thank you.

21 I just want to be clear here, because Ms. Cooper had
22 pulled a sentence out of the middle of this e-mail. And I'm
23 looking at the middle section of this e-mail.

24 And it states that, talking about, you know, don't
25 dilly dolly. It would be great to have this, "this" in talking

1 about the NFSS, before major decisions of the Supreme Court.

2 Is there additional information beyond that, that
3 phrase there?

4 A. In front of it, you mean?

5 Q. Well, let's talk about what's in front of it.

6 A. Sure.

7 Q. Sure. Go ahead. What's in front of that partial sentence?

8 A. Move along as expeditious as possible, but don't get hung
9 up with deadlines. Do what is right and best and move on it.

10 And then after that, he says, I would like you to take
11 ownership and think of how you would want it to be done rather
12 than someone like me dictating parameters.

13 Q. Right. And just beyond the, we'd like to have this before
14 major decisions of the Supreme Court, it says, but that's
15 secondary --

16 A. Right.

17 Q. -- to the need to do it and do it well?

18 A. Right.

19 Q. Right?

20 A. It's always been my charge was to do a good job, I mean,
21 and --

22 Q. So --

23 A. -- come what may.

24 Q. So you did not interpret this as any particular deadline
25 for producing --

1 A. No.

2 Q. -- results?

3 A. Any deadline I had around the report was in my own head.

4 Q. And then if you'll look at your alumni profile from Trinity
5 Christian College. I just want to be clear, Dr. Regnerus,
6 what's the time frame for this profile?

7 A. I think that's ten, at least ten years old if not a little
8 bit older. And it's sort of humorous to see my old self in
9 some ways.

10 Q. If you'll look at the first -- the last sentence of the
11 first paragraph that Ms. Cooper had, had pointed out. So the
12 paragraph starts, "as Christians," do you see that?

13 A. Mh-hm.

14 Q. Okay. So if you look at the last sentence it states there,
15 "I believe that if your faith matters, it should inform what
16 you teach and what you research."

17 What do you mean by "inform" there?

18 A. Right. I mean shape what you're interested in and, and
19 kind of courses you find interesting and the research topics
20 you find interesting.

21 Q. So your religion shapes the topics that you're interested
22 in?

23 A. Right.

24 Q. In researching?

25 A. Right.

1 Q. Does it affect the data in your research?

2 A. No.

3 Q. Does it affect the results in your research?

4 A. It has nothing to do with results.

5 Q. Okay. Finally, Dr. Regnerus, to your knowledge, is there a
6 large-scale, longitudinal nationally representative study of
7 outcomes for children of same sex-married couples?

8 A. Not to my knowledge.

9 MS. HEYSE: Thank you, your Honor. I have no further
10 questions.

11 THE COURT: Thank you. You may step down.

12 Ms. Nessel, how about if we take -- if we go until
13 1:15, give you enough time?

14 Good. 1:15. We'll adjourn until 1:15 and reconvene.

15 You may be excused, Doctor. Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused, 11:51 a.m.)

18 THE CLERK: All rise.

19 (Recess taken, 11:51 a.m.)

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CERTIFICATE OF REPORTER

As an official court reporter for the United States District Court, appointed pursuant to provisions of Title 28, United States Code, Section 753, I do hereby certify that the foregoing is a correct excerpt transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, CSR, RPR, FCRR, CRR

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