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Senior Legal Counsel Austin R. Nimocks:

Friday marked the end of the second week of the latest assault on marriage in our country. With the attorneys for Gov. Schwarzenegger and Attorney General Brown literally sitting on the sidelines, the defense of marriage rests solely with Cooper & Kirk, the Alliance Defense Fund, and the entire ProtectMarriage.com legal team. We willingly embrace this task.

The testimony Friday all came in the form of a single witness: Dr. Gregory M. Herek, an expert in psychology from the University of California at Davis. He was called as the plaintiffs' final witness in a futile effort to demonstrate that the concept of "sexual orientation" is immutable and no different from race or sex. The plaintiffs made quick work of Dr. Herek, asking him questions for less than two hours, and in no way establishing what they sought to establish. In fact, through Dr. Herek, they established quite the opposite—that the idea of "sexual orientation" has no clear or universal understanding or definition, but rather involves varying and fluid concepts of identity, desire, and behavior. In other words, "sexual orientation" is, in no way, like a person's race or sex.

For the remainder of the morning, and the entire afternoon, Dr. Herek was pounded by tough and vigorous cross-examination by ProtectMarriage.com attorney Howard Nielsen. Mr. Nielsen took Dr. Herek, who claims to be an expert, through dozens of books, research papers, and studies with which Dr. Herek was not familiar. Many times, Dr. Herek was presented with the statements and findings of certain scientists and then asked whether he agreed with a particular statement or conclusion. And on dozens of occasions, Dr. Herek was unable or unwilling to provide concrete answers to certain questions, even though he presents himself as an expert.

The studies that Dr. Herek was forced to address covered decades of research and studies on the questions of human sexuality. From Freud to Kinsey to modern-day scientists, Mr. Nielsen forced Dr. Herek to face a multitude of scientific evidence that sexuality and "sexual orientation" is largely a component of behavioral preferences and varies across time and place. In other words, the idea that "sexual orientation" is indeed an immutable human trait was thoroughly debunked in court Friday. Dr. Herek even acknowledged that evidence exists that reparative therapy (designed to assist individuals with unwanted same-sex attraction) has been a helpful and productive thing for many people who have sought treatment.

One of the most poignant moments of Dr. Herek's testimony came late in the day when he was asked whether he was aware of any study that identified a specific biological origin for homosexuality. (Another way of asking may be whether or not homosexual

behavior is in our DNA.) Dr. Herek, the expert on “sexual orientation,” didn’t know. He answered, “I have a sense that there might be some. But I – this is not something that I prepared for in terms of coming today. But as I said, I would certainly agree with the statement that we don’t know what the origins are of sexual orientation.” Not the kind of answer one would expect from an expert on this subject.

At the end of the day, the plaintiffs rested their case. By resting, they announced that they no longer had any evidence to offer in support of their case to redefine marriage for the entire country. After two weeks, here’s what the plaintiffs established:

- (1) That they’re capable of calling witnesses who have absolutely nothing to do with the case.
- (2) That the so-called expert on “sexual orientation” is unable to establish that there is a well-understood, universal definition of this concept (unlike race or sex).
- (3) That they’re capable of disrespecting religious faiths of all kinds.
- (4) That their objective economist would still support the repeal of Proposition 8 even if the evidence proved same-sex “marriage” to be an economic calamity.
- (5) That their expert on marriage admitted that a major historic purpose of marriage was to meet the child’s need to be emotionally, morally, practically, and legally affiliated with the woman and the man whose sexual union brought the child into the world.
- (6) That their historian admitted that people voted for Proposition 8 for a range of reasons that had nothing to do with an invidious intent to “discriminate.”
- (7) That their developmental psychologist admitted that there are differences between men and women that affect child development, that there is evidence that the absence of a father has its greatest and most predictable effect earlier in a child’s life, and that it is important for infants to attach to both their father and mother.
- (8) That their expert on political science thinks that the movement to redefine marriage has “no reliable political allies,” even though the California governor and attorney general are refusing to defend this case.

In the end, after two weeks of trial, the plaintiffs have questioned witnesses for about 28 courtroom hours while the ProtectMarriage.com legal team has questioned witnesses for about 27 courtroom hours, and the ProtectMarriage.com legal team has not yet called a single witness.

Stay tuned next week. Experts defending marriage and the California marriage amendment will testify.

[Read Day 9 Trial Transcript >>](#)

