

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

RIMS BARBER, ET AL. PLAINTIFFS

VS. CIVIL NO. 3:16-cv-00417-CWR-LRA

PHIL BRYANT, ET AL. DEFENDANTS

AND

CAMPAIGN FOR SOUTHERN EQUALITY, ET AL. PLAINTIFFS

VS. CIVIL NO. 3:16-cv-00442-CWR-LRA

PHIL BRYANT, ET AL. DEFENDANTS

MOTION FOR PRELIMINARY INJUNCTION

VOLUME 1 OF 2

BEFORE THE HONORABLE CARLTON W. REEVES  
UNITED STATES DISTRICT JUDGE  
JUNE 23, 2016  
JACKSON, MISSISSIPPI

REPORTED BY: CHERIE GALLASPY BOND  
Registered Merit Reporter  
Mississippi CSR #1012

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MR. PAUL E. BARNES

FOR THE DEFENDANTS BRYANT AND DAVIS :

MR. TOMMY D. GOODWIN

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1 (Court Called to Order)

2 THE CLERK: Before the court this morning are cases  
3 styled and numbered *Rims Barber, et al. v. Governor Phil*  
4 *Bryant, et al.*, civil action number 3:16CV417CWR-LRA and  
5 *Campaign for Southern Equality, et al. v. Phil Bryant, et al.*,  
6 civil action number 3:16CV442-CWR-LRA.

7 THE COURT: Good morning.

8 (All responded good morning)

9 THE COURT: The court would ask since we do have  
10 people who are concerned observers all in the courtroom today,  
11 please refrain from talking while in the courtroom, even in a  
12 hushed tone because your voices are amplified and it might  
13 interfere with the court reporter's duty and obligation to make  
14 an accurate record. If you have to leave at any time, just be  
15 quiet as you're leaving. I do not require you to sit here and  
16 forego a bathroom break or anything like that.

17 These matters have been consolidated for the purposes  
18 of this hearing. The court has spoken with the counsel, and we  
19 have procedural guidelines as to how we will proceed in this  
20 case. There are many lawyers involved. I just need to make  
21 sure that all lawyers who are involved have entered an  
22 appearance in this matter. Is that right on behalf of the  
23 collective plaintiffs? Has everyone entered an appearance  
24 whether pro hac vice or otherwise?

25 MR. McDUFF: Yes, Your Honor.

1 THE COURT: Okay. Is that the same for the Paul,  
2 Weiss group?

3 MS. KAPLAN: Yes, Your Honor.

4 THE COURT: This matter is before the court on the  
5 matter of preliminary injunction regarding what is commonly  
6 known or colloquially known as HB 1523. So we're going to be  
7 taking evidence today; but before that, we will have brief  
8 opening statements. Who wishes to go first on behalf of the  
9 plaintiffs?

10 MR. BARNES: I'll go first, Your Honor.

11 THE COURT: Okay. Mr. Barnes.

12 MR. BARNES: Yes, Your Honor, we had a global  
13 objection that we wanted to present to the court --

14 THE COURT: Okay.

15 MR. BARNES: -- before we went forward.

16 THE COURT: Please do.

17 MR. BARNES: Your Honor, may it please the court, my  
18 name is Paul Barnes, and I represent two of the defendants, the  
19 Attorney General, Jim Hood, and Judy Moulder. With me is my  
20 cocounsel, Mr. Miracle, who represents the same parties in the  
21 CSE III case; Mr. Goodwin, who represents the governor and John  
22 Davis, the head of MDHS in both cases.

23 Your Honor, the defendants just want to on the record  
24 renew our objections to the consolidation on the hearing on the  
25 motion for preliminary injunction filed by the plaintiffs in

1 CSE III, which is case 3:16CV442 and the motion for preliminary  
2 injunction filed in the Barber case, which is number 417.

3 This denies defendant's adequate notice and reasonable  
4 opportunity to be heard and a meaningful opportunity to be  
5 heard. Consolidation of these matters for hearing on  
6 approximately one week's notice significantly increases the  
7 complexity, the number of witnesses, and the issues which have  
8 to be addressed.

9 For example, plaintiffs in CSE III anticipate calling  
10 at least two, apparently three expert witnesses as to whom we  
11 have no disclosures other than the CVs of two of those  
12 witnesses. So there's no way we can anticipate their testimony  
13 or whether the court can and whether we can even determine  
14 whether or not it should be admissible, et cetera. So it's  
15 impossible to adequately prepare under those circumstances.

16 Further consolidation has caused scheduling problems  
17 related to the testimony of at least one of the witnesses, I  
18 believe Dr. Jones, who the court is going to hear tomorrow, as  
19 told us. So we expressly renew and do not waive our objections  
20 to the presentation of any evidence, argument, witnesses, or  
21 exhibits related to the CSE III case and motion at this hearing  
22 today, as this matter in action number 417 was set for hearing  
23 at a prior time, and the State was provided the time permitted  
24 by the rules to respond and prepare for the case in Barber  
25 filed by Mr. McDuff.

1 THE COURT: Thank you. Any response from the other  
2 side?

3 MS. KAPLAN: Your Honor, I think we think all of these  
4 arguments were fully presented to Your Honor at the telephone  
5 conference that was transcribed, and there's no need to repeat  
6 them here only except to correct the record to the extent that  
7 we only have two expert witnesses, and they have the resumés of  
8 both of them.

9 THE COURT: Okay. Thank you. One correction. I  
10 don't think the telephone conference was transcribed. I know I  
11 didn't have it transcribed on my end.

12 MS. KAPLAN: Withdrawn, Your Honor.

13 THE COURT: Okay. But the motion -- the motion is  
14 denied. The court believes that there has been sufficient time  
15 for the parties on this matter of preliminary injunction, which  
16 obviously is far different from a trial on the merits. So the  
17 court is going to deny that objection. Are you ready to  
18 proceed, Mr. McDuff?

19 MR. McDUFF: Yes, Your Honor.

20 OPENING STATEMENT BY

21 MR. McDUFF: Good morning. I'm Robert McDuff, along  
22 with my law partner, Sibyl Byrd, and our cocounsel from the  
23 Mississippi Center of Justice, Reilly Morse and Charles Lee.  
24 We represent the plaintiffs in *Rims Barber, et al. v. Phil*  
25 *Bryant*, one of the two cases that has been consolidated this



1 morning for the hearing.

2 Our challenge is that House Bill -- and our allegation  
3 is that HB 1523 violates the establishment clause that requires  
4 a separation between church and state of the First Amendment to  
5 the United States Constitution and also violates the equal  
6 protection clause requiring equal treatment among citizens of  
7 the Fourteenth Amendment.

8 We are going to have plenty of time later on to  
9 discuss the legal positions in the case. I want to say for now  
10 that two of our plaintiffs will be testifying today; but as you  
11 know, there are 13 plaintiffs in total. We have submitted  
12 written sworn declarations on behalf of each of them to the  
13 court.

14 In the interest of time, they are not all being called  
15 as witnesses today, but they represent a broad collection of  
16 Mississippians that reflects the thousands of people throughout  
17 the state who have opposed this bill. The plaintiffs in the  
18 Barber case are gay, lesbian, transgender and straight citizens  
19 of the state of Mississippi. They include members of all of  
20 the three groups that we contend are disfavored and condemned  
21 by HB 1523, same-sex couples who marry or plan to marry,  
22 unmarried people engaged in sexual relations, and transgender  
23 people.

24 The plaintiffs are:

25 Reverend Rims Barber, the director of the Mississippi

1 Human Services coalition, a long-time community activist  
2 throughout the state ever since he came to Mississippi in 1964  
3 to participate in the civil rights movement and an ordained  
4 Presbyterian minister.

5 Carol Burnett, who will testify today, the director of  
6 the Mississippi Low Income Child Care Initiative and the Moore  
7 Community House on the Mississippi Gulf Coast, a long-time  
8 activist for social justice and an ordained Methodist minister.

9 Joan Bailey, a retired therapist whose practice was  
10 largely devoted to lesbian women who began working on issues  
11 involving discrimination against gay and lesbian people in the  
12 mid 1980s when she was asked to join a committee at St. Andrews  
13 Episcopal Cathedral and paradoxically describes herself as a  
14 resident of northeast Jackson.

15 Katherine Elizabeth Day, a transgender woman from  
16 Jackson, who is an artist and activist.

17 Anthony Laine Boyette, a transgender man from the  
18 Mississippi Gulf Coast.

19 Reverend Don Fortenberry, an ordained Methodist  
20 minister and long-time social justice activist and retired  
21 chaplain of Millsaps College.

22 Dr. Susan Glisson, the founding director of the Winter  
23 Institute for Reconciliation at the University of Mississippi,  
24 an unmarried woman in a long-term relationship with an  
25 unmarried man.

1           Derrick Johnson, the executive director of the  
2 Mississippi State conference of the NAACP and a civil rights  
3 activist in every sense of the word.

4           Dorothy C. Triplett, a well-known, highly regarded  
5 community and political activist who has been involved in  
6 social issues across the spectrum who lives here in Jackson.

7           Renick Taylor, a field engineer at CBIZ Network  
8 Solutions on the Gulf Coast, a political activist, a military  
9 veteran, the first openly gay person to represent his political  
10 party at a national political convention. He is a gay man  
11 engaged to be married to his male partner during the summer of  
12 2017.

13           Brandiilyne Mangum-Dear, who will testify today, the  
14 lay pastor at the Joshua Generation Metropolitan Community  
15 Church in Hattiesburg. Her partner, Susan Mangum is also a  
16 plaintiff. She is the minister of music at the Joshua  
17 Generation Metropolitan Community Church and is a paralegal at  
18 a law practice in Laurel.

19           And the Joshua Generation Metropolitan Community  
20 Church itself, a church in Hattiesburg that is an inclusive  
21 ministry that welcomes all people regardless of age, race,  
22 sexual orientation, gender identity or social status.

23           We are joined today by the plaintiffs in the case that  
24 was filed very soon after ours, *Campaign for Social Equality v.*  
25 *Bryant*.

1           The plaintiffs there are the Campaign, which has been  
2 a plaintiff in the cases challenging the ban on same-sex  
3 marriage and the ban on same-sex adoption, also Dr. Susan  
4 Hrostowski, who is a plaintiff in the challenge to the adoption  
5 statute, and they are represented by the lawyers who took the  
6 lead in those two cases, Roberta Kaplan and Joshua Kaye, as  
7 well as their colleagues from the Paul Weiss law firm in New  
8 York. Ms. Byrd and I were fortunate enough to assist them in  
9 those cases, and we are pleased to be here today coordinating  
10 the presentation of evidence.

11           Ms. Kaplan will speak in a moment about the witnesses  
12 they are going to present. They will begin with a few  
13 witnesses, and then Carol Burnett and Brandiilayne Dear-Mangum  
14 will testify at some point during the middle of that  
15 presentation. But we submit their testimony along with the  
16 declarations of all of these other plaintiffs who I have just  
17 mentioned.

18           We will be talking further about the legal issues and  
19 the factual issues. I just want to conclude now by saying that  
20 we are very honored to be here today with this collection of  
21 plaintiffs from our case and the plaintiffs from the coalition  
22 case -- the Campaign case who stand with thousands of  
23 Mississippians across this state, gay, lesbian, transgender,  
24 straight, who are pursuing a vision of a tolerant and inclusive  
25 society that abides by the principles of the United States

1 Constitution. That is why we are here today, and we thank the  
2 court for your consideration of our case.

3 MS. KAPLAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 OPENING STATEMENT BY

6 MS. KAPLAN: We are here today, as you heard my able  
7 colleague and friend Mr. McDuff explain, to present testimony  
8 in this case. The Campaign for Southern Equality case focuses  
9 solely on the establishment clause and challenges HB 1523 under  
10 that clause. As the court is aware, the First Amendment of the  
11 United States constitution provides that the government shall  
12 make no law respecting an establishment of religion.

13 Justice Marshall in the *Gillette v. United States* case  
14 from 1971 explained what that means is that as a general  
15 matter, it is surely true that, "The establishment clause  
16 prohibits government from abandoning secular purposes in order  
17 to put an imprimatur on one religion or one religion as such or  
18 to favor the adherence of any sect or religious organization."

19 In this case, we have three main theories for why  
20 HB 1523 violates the establishment clause. First, we believe  
21 that HB 1523 was enacted with the impermissible and sole  
22 purpose of advancing certain religious views and with no  
23 secular purpose whatsoever. And I will note on that, since I  
24 assume it will come up, that in establishment clause cases,  
25 unlike other cases -- constitutional provisions that sometimes

1 are brought before the court, legislative history and context  
2 is per se admissible.

3 The Supreme Court has said over and over and over  
4 again that when you're deciding whether a statute challenged  
5 under the establishment cause was enacted for a secular or a  
6 religious purpose, the history and context of the statute and  
7 how it was passed is relevant and admissible. You don't have  
8 any debates with Justice Scalia about legislative history in  
9 that context.

10 Our second argument is that HB 1523 improperly and  
11 unconstitutionally discriminates between religious beliefs and  
12 religious sects.

13 And our third argument is that HB 1523 impermissibly  
14 favors religion over nonreligion by imposing significant  
15 burdens on nonbelievers, most specifically on LGBT people.

16 Any one of those grounds standing alone would be  
17 enough to invalidate the statute, but here we believe all three  
18 are more than satisfied.

19 What I think would be most helpful right now is for me  
20 to describe our witnesses, provide kind of a road map of our  
21 witnesses and explain how their testimony supports these three  
22 establishment clause theories.

23 The first one you will hear from this morning is  
24 Professor NeJaime from UCLA law school. Professor NeJaime is  
25 an expert on the history of religious accommodation laws and

1 the efforts by right-wing religious groups to enact those laws  
2 in the wake of the *Obergefell* decision. He will set the table  
3 today by explaining how religious accommodation was originated,  
4 how they developed over time, including HB 1523.

5 His testimony is relevant to the constitutional  
6 analysis, as I said before, because it's clear that when  
7 deciding a challenge under the establishment clause, courts are  
8 not only permitted but are required to examine the origins and  
9 the context of the statute in order to determine whether  
10 there's any secular purpose or instead solely a religious  
11 motivation.

12 The next witness you will hear from, Your Honor, is  
13 Rabbi Jeremy Simons. Rabbi Simons, who lives here in Jackson,  
14 his testimony will be most relevant to our argument that  
15 HB 1523 elevates the beliefs of certain religious denominations  
16 over other denominations in a way that is constitutionally  
17 impermissible. Rabbi Simons will testify that reformed  
18 Judaism, and indeed most of American Judaism, does not hold the  
19 three religious beliefs advanced in HB 1523 and indeed holds  
20 religious beliefs that are exactly the opposite. This is  
21 relevant because it shows how HB 1523 impermissibly endorses or  
22 preferences certain religions and certain religious views over  
23 others.

24 Next you will hear from the plaintiff, who is in the  
25 courtroom today, Dr. Susan Hrostowski, who is a plaintiff in

1 this case. She was a plaintiff in the adoption case. She's a  
2 life-long resident of Mississippi. She's also an Episcopal  
3 vicar. Reverend Hrostowski, like Rabbi Simons, will testify  
4 that the Episcopal Church not only does not hold the religious  
5 beliefs endorsed by HB 1523 but believes that the teachings of  
6 Christ require that all people, indeed including gay and  
7 lesbian people, be treated with equal dignity.

8 Reverend Hrostowski will testify to the dignitary and  
9 other harms that will face her as a lesbian and her family, her  
10 wife and son, as a result of HB 1523. That testimony is  
11 relevant not only to standing but to the constitutional  
12 balancing test that is required under the establishment clause.

13 The next person you're going to hear from is  
14 Dr. Hrostowski's wife or Reverend Hrostowski's wife, Kathy  
15 Garner. Ms. Garner is the executive director of the Aides  
16 Services Coalition of Hattiesburg. Her testimony will relate  
17 to perhaps one of the most ominous and dangerous impacts of  
18 HB 1523, one that no one in the legislature, at least that  
19 we're aware of, seems to have considered.

20 Kathy Garner will explain that HB 1523 poses a severe  
21 risk to the treatment of people with HIV and AIDS in  
22 Mississippi, including the very real risk that either people  
23 won't get tested for HIV or if they do get tested and test  
24 positive, they won't continue on the regimen of drugs that they  
25 need in order to stay healthy and to prevent the risk of



1 transmission to others.

2 By expressly allowing medical service providers in  
3 Mississippi to refuse to provide counseling to someone who is  
4 gay or who has sex -- had had sex outside of marriage, HB 1523  
5 creates a very real serious risk of harm, even death, to the  
6 state's most vulnerable populations. This testimony is  
7 relevant to why HB 1523 fails the balancing test announced by  
8 the Supreme Court in *Thornton* and *Cutter*, since it does not  
9 take into account the burdens it imposes on others as required  
10 by Supreme Court precedent.

11 And last, but certainly not least for today, you will  
12 hear from Joce Pritchett, another life-long Mississippi  
13 resident, a named plaintiff in the CSE I case and a CSE member  
14 who will describe in moving detail how difficult it has been  
15 for gay people to live with dignity in the state of  
16 Mississippi, how the *Obergefell* decision and this court's  
17 decision in CSE I provided a sense of vindication and peace  
18 that turned out to be only temporary, and how HB 1523 has  
19 returned gay people in Mississippi to the days of fear,  
20 hostilities, and even self-loathing. This is relevant both to  
21 standing analysis and to the *Thornton* balancing analysis I  
22 discussed earlier.

23 Finally, tomorrow, Your Honor, we will be presenting  
24 the testimony of our last witness, Dr. Robert Jones, of the  
25 Public Research Research Institute. Dr. Jones, who actually

1 grew up here in Jackson and went to college here, will testify  
2 about the sharp disagreements between religious Americans and  
3 American religious sects about the issues of LGBT equality as  
4 well as the fact -- and this is crucial -- that the  
5 overwhelming majority of secular Americans do not hold any  
6 moral conviction -- I'm going to repeat that, quote, unquote  
7 moral conviction -- that gay people should not be permitted to  
8 marry. I say that because the words "moral conviction" are in  
9 the statute presumably in order to give it a secular purpose.  
10 There is no such secular purpose.

11 Dr. Jones' testimony will make crystal clear that the  
12 religious beliefs in HB 1523 are held by some religious sects  
13 but not by others and that the law creates clear denominational  
14 winners and losers in violation of the establishment clause of  
15 the United States constitution. Thank you, Your Honor.

16 THE COURT: Mr. Barnes.

17 OPENING STATEMENT BY

18 MR. BARNES: Thank you, Your Honor. Your Honor, we  
19 don't anticipate calling any witnesses today, but we will be  
20 cross-examining some of the plaintiffs' witnesses and bringing  
21 out some facts that we think are critical to the resolution of  
22 the issues before the court.

23 The focus today needs to be on the text of HB 1523,  
24 not the hype. We have all seen news stories, reports in the  
25 media, advocates saying, *This is what this law says. This is*

1 what this law does. This is what this law will permit. We  
2 need to concentrate on the text of 1523, what it actually says,  
3 what it actually does, as opposed to the way that various  
4 constituency groups have interpreted it.

5 HB 1523 is a reasonable accommodation of the free  
6 exercise of religion and the protection of freedom of  
7 conscience. Both the Supreme Court and the Fifth Circuit  
8 foreshadowed conflicts like this when you have the intersection  
9 of competing rights, competing fundamental rights.

10 Plaintiffs -- in *Obergefell*, the Supreme Court  
11 recognized the right of same-sex couples to marry under the  
12 Fourteenth Amendment. But at the same time, both the majority  
13 and all of the dissents recognized that the *Obergefell* decision  
14 would have a significant impact on those who hold sincerely  
15 held religion beliefs that causes them to oppose same-sex  
16 marriage. And the Fifth Circuit in its order and ruling after  
17 *Obergefell* specifically noted that these conflicts would likely  
18 arise, but the court was taking no position on how they should  
19 be resolved.

20 Just like a Religious Freedom Restoration Act or RFRA,  
21 the way I have commonly heard it shorthanded, this law is a  
22 reasonable accommodation because it is intended to alleviate  
23 burdens on free exercise and freedom of conscience. After  
24 *Obergefell*, it was readily apparent that those who oppose  
25 same-sex marriage for religious or moral reasons needed

1 protection. The Supreme Court had made orthodox the view of  
2 the plaintiffs, a view that is at odds with the sincerely held  
3 religious beliefs and moral convictions of many Americans and  
4 many Mississippians.

5 As to the sectarian nature of the beliefs that are  
6 specified defined in Section 2 of HB 1523, I believe the  
7 evidence will show that not only are these beliefs  
8 nonsectarian, they transcend and cross religious and cultural  
9 distinctions.

10 The evidence will show that adherence of practically  
11 every religion have members who support same-sex marriage and  
12 members who oppose same-sex marriage. That's true of the  
13 Catholic Church. It's true of the Southern Baptist Church.  
14 It's true of the Episcopal Church. So these beliefs can't be  
15 limited -- you can't say this is a Christian belief, this is an  
16 Episcopal belief, this a Catholic belief.

17 Catholicisms is an interesting point that I'm sure we  
18 will explore with Dr. Jones in that the official position, the  
19 doctrine of the Catholic Church, as I understand the Pope  
20 speaking ex cathedra says that same-sex marriage is a sin. The  
21 official doctrine of the Catholic Church opposes same-sex  
22 marriage, yet 60 or 70 percent of American Catholics say they  
23 favor same-sex marriage. So either they are -- I don't want to  
24 call them "bad Catholics," but certainly the basis of those  
25 views can't be essentially and inherently religious if the

1 people in that denomination are ignoring the doctrine of their  
2 church.

3 I think the evidence will show that for the vast  
4 majority of people who support same-sex marriage, they don't  
5 consider religious belief. They have other reasons, cultural,  
6 scientific, et cetera, for that belief. And even among the  
7 those who oppose same-sex marriage, some 43 percent say that  
8 the basis of their objection is not religious but is based on  
9 scientific, cultural, common sense, other reasons.

10 HB 1523 does not de facto or purport -- it does not  
11 immunize anyone from any violation of federal law nor does it  
12 purport to. As a matter of fact, HB 1523 specifically  
13 recognizes the right to be married and specifically puts the  
14 onus on a person, the clerk and if a clerk refuses themselves,  
15 puts the onus on that person to take all steps necessary to  
16 ensure the issuance of a marriage license is not impeded or  
17 delayed. They have to do that in order to claim the  
18 protections of the statute.

19 The administrative office of the courts is tasked with  
20 the same duties with regard to any judicial recusal. Nothing  
21 in 1523 says that someone whose rights are violated is barred  
22 from bringing a 1983 suit in federal court to vindicate those  
23 rights.

24 The other key -- the key difference between this case  
25 from CS -- I keep wanting to say CSI I -- CSE I, the same-sex

1 marriage case, and CSE II, the same-sex adoption case, is that  
2 in those cases, in CSE I, Mississippi law specifically banned  
3 same-sex couples from being married. In CSE II, Mississippi  
4 law specifically banned same-sex couples from adopting.

5 Now, on its face, HB 1523 does none of those things.  
6 On its face, HB 1523 says, *We are protecting people who holds*  
7 *beliefs. We are protecting religious freedom and moral*  
8 *convictions.*

9 Now as to the injuries, as the court noted in its  
10 order in the ACLU case and also in the court's ruling denying  
11 rehearing, there is a difference between standing and merits  
12 and standing -- and whether or not a person is entitled to a  
13 preliminary injunction and suffered irreparable harm, even if  
14 they have standing to bring a case. And we think that is an  
15 important point in this case also, because many of the asserted  
16 injuries that plaintiffs have alleged in their complaint are  
17 just the type of attenuated, hypothetical conjectural injuries  
18 that the court dismissed in the ACLU case rather than the type  
19 of concrete and particularized harms that are eminent and  
20 likely to occur.

21 The issue today, the primary issue today, is whether  
22 the plaintiffs have met their burden to prove that they are  
23 going to suffer irreparable and eminent harm that justifies the  
24 inclusion, justifies an injunction immediately barring 1523 --  
25 HB 1523 from going into effect on July 1.

1 Your Honor, that concludes my opening comments.

2 Defendants do invoke the rule concerning witnesses.

3 THE COURT: All right. All witnesses are parties or  
4 either experts. Is that correct?

5 MS. KAPLAN: That's correct. We have fact -- I  
6 thought the question was whether they are out of the courtroom.  
7 The only witnesses who are in the courtroom right now are  
8 either parties or experts.

9 THE COURT: Okay. So fact witnesses are --

10 MS. KAPLAN: Any other fact witnesses are sequestered.

11 THE COURT: All right. Thank you. Thank you,  
12 Mr. Barnes. Are the plaintiffs ready to call their first  
13 witness?

14 MS. KAPLAN: We are, Your Honor.

15 THE COURT: You may proceed.

16 MS. KAPLAN: We call professor Doug NeJaime.

17 THE COURT: I'm sorry. Mr. Barnes?

18 MR. BARNES: Your Honor, if it please the court, I  
19 thought we were going to try to address objections to exhibits  
20 beforehand so that we would streamline the process, if the  
21 court would like that.

22 THE COURT: Yes. Has the courtroom deputy been  
23 provided a copy -- I guess the exhibit list and the witness  
24 list the last one -- I'm trying to make sure because there were  
25 a couple that came through last night. So I need to make sure

1 that we have the most current exhibit list and witness list  
2 from each of the parties. Now, turning --

3 MR. BARNES: Go first, Your Honor?

4 THE COURT: Yes, please. Which ones of the plaintiffs  
5 do you have objections to?

6 MR. BARNES: Yes, Your Honor. As to the plaintiffs in  
7 the Barber case, as to the declarations of the plaintiffs that  
8 they have listed, except to the extent that the witnesses are  
9 here and plan to testify live, the State will stipulate for  
10 purposes of this hearing only, for the preliminary injunction  
11 hearing, that if those witnesses were here testifying live,  
12 they would testify consistent with their declarations. But we  
13 do object to the consideration of declarations of those who are  
14 actually going to be here and testify live. We think that's  
15 inappropriate when the court -- when they are here to testify.

16 As for exhibit -- that's exhibits 1 through 10, and 24  
17 of those declarations. And as I understand it, that would be  
18 declaration 1, declaration 10. Is that right? It's  
19 Ms. Mangum-Dear and Carol Burnett, is that correct, Mr. McDuff,  
20 that you're planning to offer live?

21 MR. McDUFF: Yes, with respect to --

22 THE COURT: Make sure you're talking into the mic,  
23 Mr. McDuff.

24 MR. McDUFF: I'm sorry, Your Honor. With respect to  
25 Exhibit 10, Reverend Mangum-Dear will testify. Susan Mangum



1 will not be testifying.

2 THE COURT: Okay.

3 MR. BARNES: And then, Your Honor, as for Exhibits 11  
4 through 23, which are basically statements and newspaper  
5 reports and comments apparently from various groups, we object  
6 to those exhibits as hearsay, some of them containing multiple  
7 levels of hearsay. We object to the relevance. We object to  
8 the lack of authentication. And we do not think those should  
9 be admitted or considered by the court.

10 We do recognize that at a preliminary injunction  
11 hearing the court has certain discretion to consider matters  
12 that might not be later admissible at trial. However, the lack  
13 of admissibility does go to the weight that evidence should be  
14 given, as I understand the test. And so we also object that  
15 even to the extent the court decides it may consider some of  
16 those materials today for preliminary injunction purposes, that  
17 we object to the inclusion of those materials in the record for  
18 trial, if the court was to combine it -- or if we have trial  
19 later.

20 Now, that's it for *Barber*. Would you like me to go on  
21 with our objections the other plaintiffs or wait until  
22 Mr. McDuff --

23 THE COURT: I'm hear response, if any, from Mr. McDuff  
24 as to those objections.

25 MR. McDUFF: Just briefly, Your Honor. Declaration

1 number 10 is -- was signed by a witness who will be testifying  
2 and also a witness who will not be testifying so we ask that it  
3 be admitted with that understanding.

4 With respect to the remaining exhibits, two of them --  
5 one of them is the Jackson city ordinance that is figuring into  
6 the legal arguments. Another is a University of Southern  
7 Mississippi policy which figures into the legal arguments.

8 And then the remainders are articles, statements,  
9 relating to the positions of many employers, businesses,  
10 manufacturing groups, the Mississippi Economic Counsel about  
11 the adverse economic impact this will have on the state. Those  
12 are admitted solely for the purposes of public interest issue  
13 with respect to the preliminary injunction standard. And the  
14 Fifth Circuit, of course, has held that at the preliminary  
15 injunction stage the procedures in the district court are less  
16 formal and the district court may rely on otherwise  
17 inadmissible evidence, including hearsay evidence.

18 These things are not in dispute, that is, the  
19 Mississippi Manufacturing Association made the statement it  
20 made. So I believe it is appropriate in these circumstances to  
21 admit them for purposes of this hearing with the understanding  
22 that the State is not waiving any objection that it might have  
23 at any future proceeding.

24 THE COURT: Thank you, Mr. McDuff. Mr. Barnes, any  
25 rebuttal?

1 MR. BARNES: No, Your Honor. And as for Exhibit 10,  
2 with that understanding, then we would agree with that one.  
3 The same stipulation as to the other declarations with respect  
4 to the plaintiff who's not here, that she would testify  
5 consistent with that if she was here for purposes of this  
6 hearing only.

7 Other than that, Your Honor, the court's prepared to  
8 rule. I'm prepared to move on to the plaintiffs' second list.

9 THE COURT: For purposes of this hearing, all  
10 exhibits -- that motion is going to be -- those objections are  
11 going to be overruled. For purposes of this hearing all  
12 exhibits to the -- except for the declarations of those who are  
13 testifying live today and/or tomorrow, except for those  
14 exhibits, which is Exhibit 1, I believe, and a portion of, if  
15 you will, Exhibit 10 that was a declaration that was signed off  
16 by multiple people, only one of whom will be testifying, but  
17 the declaration is admissible as to the other persons who will  
18 not be testifying and on behalf of the church too, which may or  
19 may not be testifying.

20 So all exhibits, except for Exhibit Number 1, are  
21 admitted into evidence and will be made a part of these  
22 proceedings with the understanding that later objections may be  
23 made if this matters is to proceed beyond trial.

24 MR. BARNES: Thank you, Your Honor. With respect to  
25 the plaintiffs' list in the Campaign for Southern Equality

1 case -- and I'm sure my colleagues will correct me if they are  
2 wrong, they sent me an e-mail last night saying that they were  
3 intending to offer certain of these exhibits. If I missed one,  
4 please let me know.

5 First of all, they are going to plan to offer  
6 Exhibit 2, 5, 6, 7, 8, 9, and 10. I'd like to address those  
7 first. Your Honor, we object to these, again, as hearsay.  
8 Some of them contain multiple levels of hearsay. We object to  
9 the relevance. We object to the lack of authentication of  
10 those exhibits, that is, numbers 2, 5, 6, 7, 8, 9 and 10. It  
11 is my understanding plaintiffs do not intend to offer Exhibits  
12 1, 3, and 4.

13 Your Honor, as for their -- also it is my  
14 understanding plaintiffs are not planning to offers Exhibits  
15 11, 12 or 13, on their list. They do plan to offer Exhibits  
16 14, 15, and 16. Again we object to those exhibits on the basis  
17 of authentication, hearsay, and multiple levels of hearsay and  
18 relevance.

19 As to exhibits -- then again I apologize, Your Honor.  
20 Let me cover everything. It's my understanding that plaintiffs  
21 do not intend to introduce Exhibits 17 through 25 on their  
22 list. As to Exhibits 26 and 27, the CVs of the two prospective  
23 experts, we don't object to those, Your Honor. They are just  
24 the CVs. We agree those would be proper.

25 Exhibit 28, the unofficial transcript of the

1 legislative debate regarding HB 1523, we object to that. It is  
2 unofficial. Mississippi has no official legislative history,  
3 and the floor debate reflects only a small portion of whatever  
4 consideration the legislature as a whole and legislators  
5 individually might have given to the passage of HB 1523 and so  
6 it would reflect an inaccurate portrayal of that.

7 We object to Exhibit 29 on the basis again of  
8 relevance, hearsay, lack of authentication.

9 On Exhibits 30 and 31 -- Exhibit 30. Let me take that  
10 first. It is my understanding that Dr. Hrostowski -- Reverend  
11 Hrostowski -- the Reverend Dr. Hrostowski, excuse me, I  
12 apologize -- is planning to testify live. So we would object  
13 to the admission of that declaration and any exhibit thereto  
14 she can address in her live testimony.

15 It is my understanding that plaintiff's last Exhibit  
16 CSE-31, the declaration of Jasmine Beach Ferrara, it is our  
17 understanding that she is not intending -- plaintiffs are not  
18 planning to call her. To the extent she's unavailable, we  
19 would stipulate as we did with Mr. McDuff's client that if here  
20 and available to testify live, she would testify consistently  
21 with her affidavit.

22 Now, we do have objections to the exhibits to these  
23 two affidavits, and again there are similar exhibits that we  
24 have to other -- made to others based on authentication,  
25 hearsay, lack of relevance -- I apologize, Your Honor. For

1 purposes of our objections, we object to all of those exhibits  
2 on those grounds of authentication, relevance, hearsay and  
3 multiple levels of hearsay. And those are our objections, Your  
4 Honor.

5 Can I have a moment?

6 THE COURT: You may.

7 (Short Pause)

8 MR. BARNES: I apologize. For purposes of not  
9 interrupting the flow of the hearing, may we have the  
10 stipulation that an objection for one of the defendants is an  
11 objection for all?

12 THE COURT: Yes.

13 MR. BARNES: Thank you.

14 THE COURT: Any response from the plaintiff?

15 MS. KAPLAN: Yes, Your Honor. Exhibits 5 through 10,  
16 14 through 16 and 29 will all be coming in through the  
17 testimony of expert witnesses, and for those reasons I don't  
18 think -- as well as the reason Mr. McDuff said about the Fifth  
19 Circuit in preliminary injunction hearings, I don't think the  
20 objections stand.

21 Exhibit 2, which is the one about the Episcopal  
22 Church -- and I apologize. I misspoke. 5 through 10, which  
23 are the positions of reformed Judaism on the issues presented  
24 by HB 1523 are all, we believe, Your Honor, in addition to the  
25 preliminary injunction standard constitutional facts. When a

1 court is deciding -- what I mean by that, there's a  
2 constitutional fact doctrine that provides that when a court is  
3 deciding issues like an issue under the establishment clause  
4 and needs to determine facts relevant to that constitutional  
5 determination as opposed to a more ordinary fact in a case that  
6 says who did this, who said what, et cetera, the court is  
7 permitted great latitude in consideration those facts, and the  
8 traditional rules of evidence don't apply.

9 So we think not only would they come in under the kind  
10 of stipulation that you talked about with Mr. McDuff in terms  
11 of a preliminary injunction hearing, but they are clear -- I  
12 can't think of a more clear example of facts that would come in  
13 with the constitutional fact doctrine.

14 Exhibit 28, which is the unofficial transcript of the  
15 legislative hearings we submitted -- and I can put it in an  
16 affidavit if you want on that, Your Honor. We submitted the  
17 tape that we received to an official transcription service in  
18 New York City and they transcribed it.

19 As I said earlier in my opening and is clear under the  
20 law, that the legislative history as well as the statements of  
21 legislators are properly considered as evidence as to whether a  
22 statute was enacted with an impermissible purpose of advancing  
23 religion under the establishment clause. I have a Fifth  
24 Circuit cite for that, Your Honor. That would be *School Board*,  
25 274 F.3d 289.

1           And same thing with the Jasmine Beach Ferrara  
2 affidavit. The exhibits attached to those are the official  
3 position of the United Church of Christ on these issues. Again  
4 the court is completely entitled to consider those in  
5 connection with the Constitutional Facts Doctrine as well as  
6 the preliminary injunction standard.

7           With respect to Ms. -- Reverend Beach Ferrara's  
8 testimony, as an officer of the court I have to tell you she is  
9 here. She is present. We submitted the affidavit and declined  
10 to have the testimony frankly in an effort to expedite things.  
11 If the State insists, we can put her on the stand, but that's  
12 why we did it that way.

13           MR. BARNES: Your Honor, with regards to that  
14 declaration, we'll make the same stipulation regarding the  
15 other declarations of plaintiffs, that if they were here live  
16 she would testify consistently with that testimony for purposes  
17 of this hearing. We'll stipulate to that.

18           Your Honor, might I be heard for brief rebuttal, if  
19 Ms. Kaplan is through?

20           THE COURT: Yes.

21           MR. BARNES: Your Honor, I think our confusion over  
22 Exhibits 5 through 10 kind of point out how difficult it is to  
23 prepare for a hearing such as this on short notice and without  
24 any expert disclosures. It was my understanding that  
25 plaintiffs have said they are calling two expert witnesses.



1 That's Professor NeJaime and Dr. Jones. It was our  
2 understanding that Rabbi Simons was not going to be called as  
3 an expert witness.

4 MS. KAPLAN: That is correct. I apologize. I  
5 corrected that. 2, 5 through 10 are coming through through  
6 fact witnesses.

7 MR. BARNES: I'm sorry. Then I missed -- I apologize  
8 if I missed that correction. But, Your Honor, we disagree with  
9 the plaintiffs that these can be considered. Without meeting  
10 other evidentiary standards, we believe they still have to meet  
11 the same standards as any other evidence.

12 One moment.

13 (Short Pause)

14 MR. BARNES: That's all the objections we have, Your  
15 Honor. And then after the court rules on these, we request  
16 that we also get a rulings on any objections plaintiffs have to  
17 our exhibits so that we can then just move ahead.

18 THE COURT: Okay. Thank you, Mr. Barnes. I'm only  
19 going to speak to the exhibits which the court understands that  
20 the plaintiffs will seek to admit and the objections related to  
21 those exhibits. With respect to Exhibit 2, 5, 6, 7, 8, 9 and  
22 10, what witness would those exhibits becoming through,  
23 Ms. Kaplan?

24 MS. KAPLAN: Yes, Your Honor. 2 will be coming  
25 through Reverend Dr. Susan Hrostowski, and 5 through 10 will be

1 coming through Rabbi Simons. Excuse me. 10 will be coming in  
2 through the expert. So 5 through 9 will be coming in through  
3 Rabbi Simons. 10 actually comes in through Professor NeJaime.

4 THE COURT: When does the plaintiff anticipate calling  
5 Mr. Simons?

6 MS. KAPLAN: Rabbi Simon is our second witness.

7 THE COURT: Court will reserve ruling on 5, 6, 7, 8,  
8 and 9 until it has had an opportunity just to see what those  
9 exhibits are. Exhibit 10 the objections are overruled. I  
10 think for purposes of preliminary injunction, the court can  
11 review those. In response to Exhibit 2, going back because I  
12 have not spoken to that, the court will take that one up before  
13 Ms. Hrostowski testifies along with Exhibit 30. So I'm  
14 reserving ruling on Exhibit 2 and Exhibit 30. Exhibits 14, 15,  
15 and 16, is this stuff that the experts will be speaking on?

16 MS. KAPLAN: It is, Your Honor.

17 THE COURT: Okay. 14, 15 and 16, the objections to  
18 those will be overruled. Again, for purposes of this  
19 preliminary injunction, the court finds a need to have to  
20 review -- will take that -- those things into consideration.

21 The next exhibit I see is Exhibit 26. Well --

22 MR. BARNES: No objection to that one.

23 THE COURT: 26, 27, there are no objections there.  
24 And then the next one is Exhibit 28. For purposes of this  
25 hearing -- and the court understands that Mississippi has no

1 official legislative history. But if I'm understanding, the  
2 transcript that was made of these hearings was taken from the  
3 videotapes of the legislative session that I guess in the last  
4 year or two is a function that the Mississippi College School  
5 of Law, I believe, has taken up and has done a great service to  
6 this state in that regard. And so the court will not accept it  
7 as the official transcript, but the court obviously could see  
8 the video itself and will know what was said during the  
9 legislative debate because there's an actual recording of it.  
10 But kudos again to Mississippi College School of Law for doing  
11 that. So the objection to 28 is overruled.

12 The court is going to overrule those objections and  
13 again for purposes of this preliminary injunction hearing, I  
14 think the court can consider the -- are the videotapes  
15 themselves a part of the evidence or simply the transcript or  
16 could -- or do the transcripts point the court directly to the  
17 portion of the video or whatever so that the court could look  
18 at it independently if it decides?

19 MS. KAPLAN: Yes, Your Honor. It is my  
20 understanding -- I need to correct that. We actually -- it's  
21 on the Internet. You go out to the Mississippi thing and you  
22 can watch it on the Internet. But we would be happy to  
23 undertake to convert that into a DVD and present it to the  
24 court. We have folks who can do that.

25 THE COURT: We can go to the Internet. We have

1 actually gone to the Internet. Again it's a great service that  
2 Mississippi College School of Law has undertaken.

3 MR. BARNES: Your Honor, and, of course, we certainly  
4 appreciate the contributions that the Mississippi College  
5 has --

6 THE COURT: And I'm not trying to give them a plug,  
7 but I know it sounds like it.

8 MR. BARNES: But, you know, credit where credit is  
9 due, Your Honor. A part of our objection is the fact that we  
10 haven't had time to listen to the several hours of debate again  
11 in order to compare it with the transcript. And so we --  
12 today as we stand here, we can't agree that it accurately  
13 represent it or not. We understand the court has ruled. I  
14 just want to make it clear that was part of our issue.

15 THE COURT: Okay. Thank you, Mr. Barnes. So that  
16 objection is overruled. Exhibit Number 29 is the next one. Is  
17 there still an objection to that particular exhibit,  
18 Mr. Barnes? I was not clear.

19 MS. KAPLAN: I want to clarify that too will be coming  
20 in through an expert.

21 THE COURT: Which expert is that?

22 MS. KAPLAN: Professor NeJaime.

23 MR. BARNES: We still object to it, Your Honor, on the  
24 basis I previously stated.

25 THE COURT: Thank you, Mr. Barnes. The court is going

1 overrule the objection. The court has already advised the  
2 parties with respect to the declaration and the exhibits  
3 attached to the Exhibit 30. The court is going to reserve  
4 ruling on those until it has an opportunity to at least review  
5 those documents. And Exhibit 31, there is no objection to 31  
6 now that the plaintiffs will not be calling Reverend Jasmine  
7 Beach Ferrara. Is that the party's understanding?

8 MR. BARNES: Yes, Your Honor. I believe I have stated  
9 our position in the stipulation for the record. I don't want  
10 to go through it again, but same stipulation that we previously  
11 made.

12 THE COURT: So Exhibit 31 will be admitted.

13 Now I turn to the parties for the Barber plaintiffs.  
14 Does Barber plaintiffs have any objections to the  
15 government's -- to the defendant's exhibits?

16 MR. McDUFF: I don't. Those basically pertain to  
17 issues that Ms. Kaplan's witnesses are dealing with so I will  
18 let her state whether she has any objections. I do not have  
19 any that she doesn't have.

20 THE COURT: Okay. All right. Ms. Kaplan, are there  
21 any exhibit -- excuse me, are there any objections to the  
22 defendant's exhibits?

23 MS. KAPLAN: Yes, Your Honor. We assume from looking  
24 at the exhibits that they intend to use them on  
25 cross-examination of Dr. Jones. And if that's the case, we

1 have no objection.

2 THE COURT: All right. Is that a fair representation  
3 of how those exhibits will be used, Mr. Barnes?

4 MR. BARNES: Your Honor, that's one way we intend to  
5 use them. It may not be the only way.

6 THE COURT: Okay. All right. Well, if they are good  
7 for one way, they are going to be good for all the ways. All  
8 right.

9 So now it's time for us to call our first witness, but  
10 before we do that we're going -- I think this a good time to  
11 take about a ten-minute break for everyone. Report back in  
12 about ten minutes, and we'll begin the testimony.

13 (Recess)

14 THE COURT: Mr. Barnes?

15 MR. BARNES: I apologize, Your Honor. One point of  
16 clarification. The court has ruled on our objections made on  
17 the record. Can we have a stipulation we have continuing  
18 objections so we don't have to keep popping up and down like a  
19 jack-in-the-box?

20 THE COURT: Yes.

21 MR. BARNES: Thank you.

22 THE COURT: So you won't keep hearing overruled all  
23 the time. We just have to make this thing here -- add some  
24 levity to it.

25 MS. KAPLAN: I told Mr. Barnes, Your Honor, that I

1 didn't want to see him popping.

2 MR. BARNES: I was just thinking my legs were going to  
3 get tired. But I understand, Your Honor.

4 THE COURT: Okay. All right. Is the plaintiff ready  
5 to call its first witness?

6 MR. KAYE: We are, Your Honor.

7 THE COURT: You may proceed.

8 MR. KAYE: Plaintiffs call our first witness,  
9 Professor Douglas NeJaime.

10 THE COURT: Okay.

11 (Witness Sworn)

12 MR. GOODWIN: Your Honor --

13 THE COURT: Mr. Goodwin?

14 MR. GOODWIN: Your Honor, before the professor begins  
15 his testimony, we'd like to make an objection as to him being  
16 called today on two grounds. Number one, we've not been  
17 provided with any kind of a disclosure, expert disclosures,  
18 prior to the hearing. We have his CV. So we know who he is  
19 and generally what he does, but we have no idea or we did not  
20 have an idea until just moments before the hearing what the  
21 subject matter of his testimony would be. As a result of that,  
22 we're unduly prejudice in our ability to cross-examine him  
23 effectively. That's number one.

24 Number two, there's no need, Your Honor, for what is  
25 going to amount to a legal expert in this case. The

1 plaintiffs' counsel are very capable, and our briefs outline  
2 the issues for the court, and he's simply -- if he's going to  
3 testify with regards to cases that are similar to this, cite  
4 law journals, things of that nature, those things are covered  
5 in the briefs and will be covered by the arguments of counsel,  
6 Your Honor. And for those reasons, we would object to his  
7 testimony.

8 THE COURT: All right. Any response?

9 MR. KAYE: Just two points, Your Honor. First,  
10 Professor NeJaime's name was disclosed last Friday, and we  
11 would have been happy to disclose the nature of his testimony  
12 had we been asked. And, second, we're not planning to offer  
13 Professor NeJaime as a legal expert. He's going to be  
14 testifying about facts that we believe will be helpful to the  
15 court in line with the Supreme Court precedent that makes clear  
16 that the court can and should consider the context in which  
17 policies that are challenged under the establishment clause  
18 arose.

19 THE COURT: Okay. Any response, Mr. Goodwin?

20 MR. GOODWIN: Yes, Your Honor. Despite the  
21 characterization of what he may testify, we still see that as a  
22 legal expert; and for the same reasons I've stated, we would  
23 object.

24 THE COURT: Okay. I'm going to give you some leeway  
25 to figure out what it is that this witness can offer. The -- I



1 realize you said you disclosed his name and the other side did  
2 not request anything. But under Rule 26, the obligation to  
3 disclose is on the party who's putting forth the witness. It  
4 really doesn't matter if the other side doesn't ask for it.  
5 But I don't know if the other side has been sufficiently  
6 prejudiced, however, at this point because I don't even know  
7 what the testimony might be. So we'll get through this witness  
8 some kind of way. So I'll allow you to raise any objections  
9 during the course of his testimony, and we'll take those up  
10 then.

11 MR. GOODWIN: Thank you, Your Honor. I guess to  
12 clarify our position, if he's speaking as to simply facts based  
13 on cases, that's one thing. If he begins to opine and issue  
14 opinions about what cases mean, what decisions mean, that sort  
15 of thing, that's the issue that we have.

16 THE COURT: All right. Otherwise he could come up  
17 here and do it. Right? We are just trying to keep this thing  
18 real. This is a two-day hearing.

19 MR. KAYE: Your Honor, I would just also note just for  
20 the record that the disclosure on last Friday had Professor  
21 NeJaime's address at the UCLA law school. So I think that to  
22 some extent at least served as a disclosure of who he is and  
23 what he would be doing here. Just wanted to make the record  
24 clear. May I begin?

25 THE COURT: You may.

1 DOUGLAS NEJAIME,

2 Having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KAYE:

5 Q Professor, will you please state your name for the record.

6 A Douglas NeJaime.

7 Q And Professor NeJaime --

8 THE COURT: I usually give this thing about that is  
9 the mic before you. Please, Professor, make sure that you  
10 speak in -- you don't have to speak directly into it, but speak  
11 loudly and clearly enough for the court reporter to hear you  
12 and speak at a pace at which she can keep up with you and try  
13 to avoid speaking at the same time as the attorney. Make sure  
14 all your responses are verbal.

15 THE WITNESS: Yes, sir.

16 BY MR. KAYE:

17 Q Professor NeJaime, what is your profession?

18 A I'm a law professor at UCLA School of Law, and I'm also the  
19 faculty director of the Williams Institute at UCLA.

20 Q What's the Williams Institute?

21 A It's a research institute that focuses on sexual  
22 orientation and gender identity law and policy and does both  
23 legal and social science research on those topics.

24 Q How long have you been a professor of law?

25 A I've been professor of law for eight years.

1 Q Where do you teach?

2 A At UCLA School of Law for two years, at UC Irvine School of  
3 Law, and before that at Loyola Law School.

4 Q And --

5 THE COURT: Which Loyola?

6 THE WITNESS: Los Angeles.

7 THE COURT: Okay. Thank you.

8 BY MR. KAYE:

9 Q In advance of testifying here today, did you provide us  
10 with a copy of your CV?

11 A Yes.

12 MR. KAYE: Honor, may I approach?

13 THE COURT: Yes, you may.

14 BY MR. KAYE:

15 Q Professor NeJaime, I've handed you the document that's been  
16 premarked as CSE Exhibit 27. Do you recognize this document?

17 A Yes.

18 Q What is it?

19 A My CV.

20 Q Thank you. Would you describe your educational background.

21 A I received my A.B. from Brown University where I  
22 concentrated in American civilization and my J.D. from Harvard  
23 Law School where I was senior editor of the *Harvard Civil*  
24 *Liberties Law Review*.

25 Q What are your responsibility as a faculty director at the

1 Williams Institute?

2 A In addition to a lot of administrative responsibilities, I  
3 oversee research in some of our major research areas, including  
4 research on religious exemptions, which we study from both a  
5 legal and social science perspective to understand the impact  
6 of religious exceptions on the LGBT population.

7 Q What are your research topics as law professor at UCLA?

8 A As law professor, my own research involves religious  
9 accommodations, family formation, and family recognition and  
10 the relationship between law and social movements with primary  
11 emphasis on the LGBT movement and the Christian right movement.

12 Q And within the field of religious accommodations, do you  
13 have any particular areas of study?

14 A So I do focus on the history and the evolution of religious  
15 accommodations in the U.S. as well as the role of social  
16 movement actors, including primarily Christian right  
17 organizations and their leaders in advocating for those types  
18 of religious accommodations.

19 Q About how many religious accommodation statutes, laws, have  
20 you read and studied in the course of your career?

21 A More than 100.

22 Q And aside from reading those laws, how else do you study  
23 religious exemption, religious accommodations bills?

24 A So my research involves, of course, examining legislation  
25 and judicial decisions as well as secondary literature and

1 research on the topic but also analysis of primary source  
2 materials from the organizations that are advocating or  
3 opposing these laws. So that involves reviewing an  
4 organization's materials that they put out themselves, other  
5 materials that are in the public record, including things they  
6 have submitted in legislative bodies or to courts, as well as  
7 media accounts and interviews that they have given to the media  
8 as well as in some of my earlier work interviews of actors at  
9 organizations themselves.

10 Q Okay. Have you published any articles that discussed the  
11 role of Christian advocacy groups in regards to religious  
12 accommodations or religious exemption laws?

13 A Yes, specifically with regard to religious exemptions, a  
14 recent article in the *Yale Law Journal* in 2015 called  
15 "Conscience Wars," which examined the role of Christian right  
16 organizations in advocating for religious accommodations, a  
17 2012 article in the *California Law Review* which examined  
18 specifically the relationship between proposed religious  
19 exemption statutes and marriage for same-sex couples and LGBT  
20 antidiscrimination law, and a 2009 article in the *Harvard*  
21 *Journal of Law and Gender* that examined religious  
22 accommodations efforts in public school context, including with  
23 regard to curriculum.

24 Q Have you published any books that address this topic?

25 A I have a case book titled *Cases and Materials*. The new

1 title will be *Cases and Materials on Sexuality, Gender*  
2 *Identity, and the Law*, and that includes sections of which I'm  
3 the primary author on the relationship between religious  
4 accommodations and same-sex marriage and LGBT  
5 nondiscrimination.

6 Q Are you a member of any professional associations?

7 A In addition to Williams Institute, I'm a member of the Law  
8 and Society Association as well as a member of the Religious  
9 Accommodations Working Group out of the University of Southern  
10 California.

11 Q Have you --

12 THE COURT: Excuse me. Let me interrupt you for just  
13 a second. The *National Law Journal* article that you mentioned  
14 in 2015, is it on your CV?

15 THE WITNESS: It should be, yes. It's *Yale Law*  
16 *Journal* from 2015.

17 THE COURT: *UCLA Law Journal*?

18 THE WITNESS: *Yale Law Journal*.

19 THE COURT: *Yale Law Journal*. I apologize. Okay.

20 "Conscience Wars." Is that it?

21 THE WITNESS: Yes.

22 THE COURT: Thank you. I'm sorry.

23 MR. KAYE: Oh, please.

24 BY MR. KAYE:

25 Q Professor NeJaime, have you served as an expert witness

1 before?

2 A No.

3 Q Are you being paid for your services today?

4 A No, but my travel is being reimbursed.

5 MR. KAYE: Your Honor, I offer Professor NeJaime as an  
6 expert on the field of history of religious accommodations  
7 statutes and the role of Christian right organizations in  
8 advocating for these laws.

9 THE COURT: Any objection?

10 MR. GOODWIN: Your Honor, simply renewing the  
11 objections we have had previously, we do not need any voir dire  
12 of the witness.

13 THE COURT: Okay. Thank you. Professor NeJaime will  
14 be tendered as an expert witness on the area of history of  
15 religious accommodations statutes and --

16 MR. KAYE: The role of Christian right organizations  
17 in advocating for those laws.

18 THE COURT: And for those reasons.

19 MR. KAYE: Thank you, Your Honor.

20 BY MR. KAYE:

21 Q Professor NeJaime, what were you asked to do in this case?

22 A I was asked to provide expert testimony on the history and  
23 evolution of religious accommodations in the U.S. and the role  
24 of organizations and leaders of the Christian right movement in  
25 advocating for religious accommodations.

1 Q What are religious accommodations?

2 A Generally when we use the term "religious accommodation,"  
3 we mean an exemption from a generally applicable law, so a law  
4 that the legislature passes that binds everyone in the society  
5 and someone based on their religious beliefs or practices seeks  
6 to not have the obligations imposed by that law imposed on  
7 them.

8 Q Thank you. When did religious accommodations first arise  
9 in the United States?

10 A So we have a long tradition of some forms of religious  
11 accommodations, but our constitutional free exercise law was  
12 not read to provide exemptions from generally applicable laws  
13 as a general matter until the 1960s.

14 Q Okay. And starting in the 1960s, what rights were those  
15 religious accommodations directed at protecting?

16 A So generally people were claiming that their ability to  
17 practice their religion or engage in ritual religious practice  
18 was being infringed by some generally applicable law.

19 Q Can you give as you examples of that?

20 A So classic examples would be unemployment benefits. So in  
21 order to collect unemployment benefits, the individual has to  
22 be fired from their position and not for cause. And for  
23 individuals who, for instance, observe a Saturday sabbath and  
24 weren't able because of their religious faith to work on  
25 Saturdays, they were denied unemployment benefits. And courts



1 said that they would get a religious exemption such that they  
2 could qualify for unemployment benefits because their religious  
3 obligations forced them not to work on Saturdays.

4 Other examples would be criminal drug laws so some minority  
5 religious faith groups engage in ritual use of what would be on  
6 banned substances lists, and they have asked for exemptions  
7 from the laws that otherwise ban those substances so that they  
8 can engage in their ritual use.

9 Q Now, you were referring to these as constitutional  
10 protections. Did there come a time when that changed?

11 A Yes. The Supreme Court in 1990 in *Employment Division v.*  
12 *Smith* interpreted the free exercise clause in a way that meant  
13 that there would not ordinarily be religious exemptions as a  
14 matter of constitutional --

15 MR. GOODWIN: Objection, Your Honor, as to expressing  
16 a legal opinion.

17 THE COURT: Objection overruled.

18 BY MR. KAYE:

19 Q You can continue.

20 A That there would not ordinarily be exceptions from  
21 generally applicable laws as a matter of constitutional free  
22 exercise law.

23 Q And what was the reaction to that turn of events?

24 A So there was bipartisan reaction against that decision  
25 which led Congress to pass the Religious Freedom Restoration

1 Act in 1993.

2 Q What was the -- you described the nature of the support for  
3 that 1993 bill?

4 A The Religious Freedom Restoration Act, RFRA, passed with  
5 near unanimous support in the senate and was supported by  
6 organizations across the political spectrum as well as  
7 organizations from a range of religious positions. So you have  
8 large evangelical Christian organizations, eventually Catholic  
9 organizations, small minority faith organizations and  
10 organization like the ACLU all working in coalition to pass  
11 that legislation.

12 Q Okay. Are there other similar laws that have been passed  
13 across the country?

14 A Yes. So there are 21 states that have their own Religious  
15 Freedom Restoration Acts, RFRAs, and many of those acts were  
16 passed in the wake of a U.S. Supreme Court decision in 1997  
17 ruling that Congress had exceeded its authority in applying  
18 RFRA to the states and so states then passed their own  
19 Religious Freedom Restoration Acts.

20 Q What was the nature of the support for those state-based  
21 RFRAs?

22 A So many of those state-based RFRAs also had strong  
23 bipartisan support and were supported by larger evangelical  
24 Christian and Catholic organizations as well as by small  
25 minority faith groups and by the ACLU.

1 Q Now, were there -- did there come a time when the nature of  
2 support for these types of bills changed?

3 A Yes. So in the past I would say five years or so, we have  
4 really seen a shift in the kinds of support that RFRA's and  
5 other religious exemption statutes have. So it's become much  
6 more an effort that's supported by the major religious  
7 organizations and Christian right organizations seeking to make  
8 claims on religious exemption, and some of the groups that had  
9 previously supported RFRA's like the ACLU, have withdrawn their  
10 support from those types of laws.

11 Q What caused that change?

12 A So there's obviously, you know --

13 MR. GOODWIN: Your Honor, objection as to speculation.

14 THE COURT: Objection overruled.

15 A Many things contributed to these shifts, but one major  
16 source of the shift has been the attention explicitly by  
17 Christian right organizations to attempt to pass religious  
18 exemption statutes as a response to same-sex marriage and LGBT  
19 antidiscrimination law.

20 BY MR. KAYE:

21 Q That was starting about when?

22 A So we saw attention being given to religious liberty claims  
23 soon after the Massachusetts Supreme Judicial Court recognized  
24 same-sex marriage in 2003, but we didn't see elaborate  
25 exemption regimes being proposed until 2009 when states started

1 to legislatively move towards recognition of same-sex marriage.

2 Q And you mentioned elaborate exemption regimes. What do you  
3 mean by that?

4 A Exemption regimes that are actually providing the  
5 conditions under which an exemption might be granted, and not  
6 that these became law but these kinds of drafts that were  
7 circulating. So if the kinds of claims I was talking about  
8 previously were about one's ability to engage in their  
9 religious practices, these were exemption statutes and claims  
10 that were attempting to shield from liability individuals who  
11 had objections to interacting with by providing goods or  
12 services to others who might be protected by law, for instance,  
13 same-sex couples who now had the ability to marry or in some  
14 states were protected by antidiscrimination law.

15 Q Did the *Windsor* decision from the Supreme Court and the  
16 *Obergefell* decision have an impact on how many of this new type  
17 of religious accommodation laws were introduced?

18 A When *Windsor* recognized same-sex couple's marriages for  
19 purposes of federal law, obviously it was clear that the  
20 federal courts were playing a more significant role in the  
21 same-sex marriage effort, and many states were responding at  
22 that time by looking at religious exemption issues, and  
23 Christian right advocates were putting forward many religious  
24 exemption bills, including RFRA as well as other kinds of  
25 religious accommodation statutes.

1           After *Windsor* in the 2015 legislative session, we counted  
2 more than 50 bills across state legislatures that included  
3 religious exemptions in the LGBT context specifically. And  
4 after *Obergefell*, which recognizes same-sex couple's right to  
5 marry nationwide, that really accelerated. So in the 2016  
6 legislative session, we have over 100 religious exemption bills  
7 across more than 20 state legislatures.

8       Q    And how many of those bills have actually passed, been  
9 signed into law?

10       A    So in the 2015 legislative session, five of those bills  
11 were enacted. And in the 2016 legislative session, two of  
12 those bills were enacted.

13       Q    Including Mississippi?

14       A    Correct.

15       Q    Okay. I'd like to shift focus a little bit and talk about  
16 the nature of the organizations that support those laws. Could  
17 you describe those a bit?

18       A    So the religious exemption statutes that we've seen  
19 introduced in state legislatures are supported by both  
20 state-based organizations. So many states have some type of  
21 family policy institute that supports state legislative efforts  
22 and that receive support from national organizations. And so  
23 there are prominent Christian right national organizations that  
24 have been advocating for religious exemptions in state  
25 legislatures and most prominently including groups like the

1 Family Research Council, the Alliance Defending Freedom, the  
2 American Family Association.

3 Q I'd like to ask you about the Alliance Defending Freedom  
4 for a minute. What are the origins of that organization?

5 A So ADF was originally founded as the Alliance Defense  
6 Fund -- that changed its name to Alliance Defending Freedom --  
7 in 1994 by leaders of the Christian right with the express  
8 purpose of seeing Christian principles enacted into law. It  
9 was focused on litigation. So it was an attempt to respond to  
10 the litigation efforts of the left and organizations like the  
11 ACLU to have an organization representing the Christian right  
12 that was engaging in court-centered strategies rather than just  
13 political and electoral politics as a strategy and at first,  
14 was founded as a sort of clearinghouse that would coordinate  
15 and fund litigation efforts but grew into a very well-resourced  
16 litigation organization in its own right.

17 Q And at some point did the focus of ADF expand beyond its  
18 court-centered strategy?

19 A Yes. So ADF places a lot of emphasis on litigation  
20 strategies but has clearly become involved in legislative  
21 efforts around the country as well as in policy and other  
22 government institutions.

23 Q I'd like to talk about that more in a bit. But first does  
24 the ADF associate itself with any particular religion?

25 A It doesn't associate itself with a denomination but seeks

1 to advance what it deems to be Christian principles.

2 Q Okay. And what are the core issues for ADF's mission?

3 A So ADF would describe like many Christian right  
4 organizations its mission as involving life, marriage and the  
5 family, and religious liberty. And what that means is life  
6 includes abortion, and the marriage and the family is about  
7 marriage being a union between a man and a woman. And  
8 religious liberty means to some extent religious exemptions  
9 from kind of laws that depart from the views on the life and  
10 family plans.

11 Q What exactly is ADF's conception of the family?

12 A So a lot of leaders --

13 MR. GOODWIN: Objection to speculation, Your Honor.

14 MR. KAYE: Your Honor, this is a field study.

15 THE COURT: Objection overruled.

16 A A lot of leaders in the Christian right would describe the  
17 view of the family as what they term the natural family. And  
18 when they use the term "natural family," what they really mean  
19 is heterosexuality, sexual procreation, and men and women  
20 filling distinct roles in the family.

21 And so what they mean by that is that sex should be only  
22 within marriage, marriage is between a man and a woman, sex  
23 should have procreative purposes, and men and women should  
24 raise their biological children, and that men and women as a  
25 matter of biological destiny fill different roles with regard

1 to parenting and the family.

2 BY MR. KAYE:

3 Q Okay. What is your basis for believing that this is ADF's  
4 view?

5 A So I reviewed many of ADF's materials as well as the views  
6 they put forward in public documents that they submit. They've  
7 been actually quite straightforward about their views about  
8 these issues and specifically their views about the  
9 relationship between same-sex couples and marriage and family.

10 Q When you say they have been quite clear about it, what do  
11 you mean by that?

12 A They have long opposed same-sex marriage. They have filed  
13 briefs in cases opposing same-sex marriage. They also filed  
14 briefs in cases opposing the decriminalization of same-sex sex.  
15 So in *Lawrence v. Texas*, the 2003 case, they filed a brief  
16 opposing the overturning of *Bowers v. Hardwick*, which had  
17 upheld the constitutionality of sodomy bans.

18 In that case, they explicitly targeted homosexuality  
19 distinguishing heterosexual sodomy from homosexual sodomy. The  
20 leader of ADF, Allen Sears, published a book called *The*  
21 *Homosexual Agenda*, which is subtitled *About the Assault on*  
22 *Religious Liberty*, and in that book described homosexuality as  
23 a sin and as against Christian principles and specifically also  
24 as a threat to society and a threat to public health.

25 Q How does ADF work to advance its agenda?



1 A So ADF engages in litigation, and they will litigate their  
2 own cases. They will defend parties in litigation, and they  
3 will also, as a mentioned, file amicus briefs in litigation.  
4 And more recently they have been involved in legislative  
5 efforts either providing legislative testimony and speaking at  
6 hearings in state legislatures or in some instances submitting  
7 draft legislation to state legislatures.

8 Q Okay. Are there any organizations that share ADF's goals?

9 A Yes. So ADF works really in coalition with other  
10 organizations than the Christian right. So organizations like  
11 the family research counsel share the goals of ADF, and many of  
12 these organizations, their leaders signed what's called the  
13 Manhattan Declaration, which is subtitled "A call of Christian  
14 Conscience," which brings together these planks of life,  
15 marriage, and the family and religious liberty. And Allen  
16 Sears, for instance, is one of the signatories along with other  
17 leading Christian right organization founders.

18 Q Are there nonreligious groups that you're aware of that are  
19 also advocating for the same kind of religious accommodation  
20 laws that ADF and groups like it are advocating for?

21 A I'm not aware of secular groups that are engaging in those  
22 efforts and certainly none that have significance in terms of  
23 resources or power.

24 Q Thank you. I'd like to move focus now to the state of  
25 Mississippi and HB 1523. In advance of today's testimony, did

1 you review statements made by legislators during hearings for  
2 that bill?

3 A Yes.

4 Q Okay.

5 MR. KAYE: Your Honor, may I approach?

6 THE COURT: Yes, you may.

7 BY MR. KAYE:

8 Q Professor NeJaime, I'd like to direct your attention to  
9 page 33 of the first day of testimony here. Is there anything  
10 on this page that stood out to you in your review of this  
11 transcript?

12 A So this passage is clearly about the religious principles  
13 embodied here.

14 Q Would you read the portion that --

15 A The legislator says, "It's very clear what God says. Go  
16 back and look at your Bible. He calls sin sin. We are all  
17 fallen. This isn't about saying that I'm better than you or  
18 you're better than me. This is about aligning our right to  
19 worship, to speak and to do according to our faith, and our  
20 faith is pretty clear, and we're living in a day and an age  
21 where there is an agenda, and there is reverse prosecution.

22 "And personally I may be speaking out of turn here, but for  
23 my African-American brothers and sisters I personally feel that  
24 you had no choice in the color of your skin. There is nothing  
25 you can do to change that fact so we want to elevate a decision

1 to a protected civil class. And when we do that in this  
2 nation, we are on dangerous ground.

3 "There's a lot of emotion left up here, brothers and  
4 sisters. I would encourage you to look at this for what it is,  
5 and that is to protect my right, your right, to hold what is  
6 the most dear to you, to hold what I am willing to die for and  
7 as I hope you and claim to be Christians are willing to die for  
8 as well, and that is your beliefs. When you can no longer have  
9 your -- have beliefs, are you no longer free."

10 That's the end of the statement.

11 Q And is that type of language familiar to you?

12 A Yes. Certainly in legislative debates over religious  
13 exemption statutes we are seeing this kind of language that  
14 expressly invokes Christian principles as a basis on which to  
15 legislate in this matter.

16 Q Is it reminiscent of language used by any of the groups  
17 that you study?

18 A Yes. So Christian right organizations, both in public  
19 statements but as well in the communications with their  
20 constituents, are expressly invoking Christian principles and  
21 notions of sin as a basis on which to seek religious exemption,  
22 specifically in this context.

23 Q Okay. Now, you mentioned in your study of these groups you  
24 often review social media accounts. Is that correct?

25 A Yes.

1 Q Okay.

2 MR. KAYE: I should note for the record that the  
3 exhibit that Professor NeJaime was just testifying about was  
4 CSE-28, and I have just handed Professor NeJaime a document  
5 that been marked as CSE Exhibit 10.

6 THE COURT: Hold on for one second. So that the  
7 record will show that CSE-28 from which the professor was just  
8 reading is labeled "February 19, 2016, House Debate." I assume  
9 that's Mississippi legislature.

10 MR. KAYE: Yes, sir.

11 THE COURT: He was reading --

12 MR. KAYE: From page 33, the first page 33 of that  
13 document.

14 THE COURT: From the House debate, page 33. The  
15 exhibit -- the full exhibit contains statements from  
16 March 30th, 2016, includes the senate debate. But he was  
17 reading from the House debate just so that the record will be  
18 clear as to that.

19 MR. KAYE: Thank you for that clarification, Your  
20 Honor.

21 BY MR. KAYE:

22 Q Professor NeJaime, I've handed you a compilation of  
23 statements made by legislators in social media. Have you  
24 reviewed this document?

25 A Yes.

1 Q Okay. And are there any statements by legislators in this  
2 compilation that stand out to you?

3 A So I'm just looking at the first statement which includes  
4 some of the organizations that supported the Mississippi law.

5 Q Okay. Just for the record, this is -- it appears to be a  
6 Facebook post from Andy Gibson. And it's the first page of the  
7 exhibit. Do you recognize any of the organizations listed  
8 here?

9 A Yes. So there's national organizations that I study here,  
10 the Southern Baptist Convention Ethics and Religious Liberty  
11 Commission, the American Family Association, the Alliance  
12 Defending Freedom, the Family Research Council, and the  
13 Heritage Foundation.

14 Q Okay. Are there any -- I'd like to -- are there any other  
15 statements in this compilation that are relevant to you? I'll  
16 direct you to the fifth page of the compilation.

17 A So this is from the same legislator. "Check it out @ERLC.  
18 Mississippi has the best post *Obergefell* legislation to date.  
19 ERLC is --"

20 Q This appears to be a retweet? Is that --

21 A Yes.

22 Q Is that the right terminology?

23 A Yes.

24 Q And do you recognize @ERLC?

25 A Yes. It's the Ethics and Religious Liberty Commission,

1 which was on the first page as one of the supporters from the  
2 Southern Baptist Convention.

3 Q You can set that document aside. I'm now handing Professor  
4 NeJaime a document premarked CSE-29. Professor NeJaime, do you  
5 recognized this document?

6 A Yes.

7 Q What is it?

8 A It's a press release from Citizen Link about the passage of  
9 the Mississippi law HB 1523.

10 Q What is Citizen Link?

11 A Citizen Link is a part of Focus on the Family, and it  
12 coordinates the efforts of state advocacy groups to pass in  
13 state legislatures bills that advanced the agenda of the  
14 Christian right organizations, and it's recently changed its  
15 name to the Family Policy Alliance.

16 Q What is Focus on the Family?

17 A Another Christian right organization.

18 Q Is there anything in this press release that stands out to  
19 you?

20 A In the second paragraph the press release says that, "Our  
21 friends and the Alliance Defending Freedom wrote model  
22 legislation for the bill. Kelly Fiedorek, an attorney with ADF  
23 said people know the value of religious freedom."

24 Q Does it surprise you?

25 A No. We expect based on looking at these organizations that

1 they would be working with the state legislators to introduce  
2 and pass legislation that includes broad religious exemptions.  
3 And so it would be expected that a group like ADF would be  
4 producing model legislation, and we know, in fact, that they  
5 have produced model legislation in other areas.

6 Q I'd like now to turn your attention to HB 1523 itself. I'm  
7 going to hand you what's been marked as Defendant's Exhibit 1.

8 Professor NeJaime, what is the title of this bill?

9 A Protecting Freedom of Conscience from Government  
10 Discrimination Act.

11 Q Does that verbiage seem familiar to you?

12 A Yes. In my research, we -- what we have observed is a  
13 shift in language towards talking about conscience and  
14 discrimination. So this is using discrimination as a way to  
15 talk about religious exemptions such that you are protecting  
16 from discrimination those who are seeking religious exemptions  
17 from obligations that they might have to serve others without  
18 regard to discrimination.

19 Q Okay. So people are being discriminated against because  
20 they wanted to discriminate, if they are being told not to  
21 discriminate. Is that right?

22 A They are arguing that those who seek exemptions from  
23 antidiscrimination obligations are being discriminated against  
24 based on their religious beliefs.

25 Q I'd like to direct your attention now to Section 2 of the

1 bill. Would you read that, please.

2 A "The sincerely held religious beliefs or moral convictions  
3 protected by this act are the belief or conviction that (a)  
4 marriage is or should be recognized as the union of one man and  
5 one woman.

6 THE COURT: Slow down just a tad bit when you are  
7 reading.

8 A "(b) sexual relations are properly reserved to such a  
9 marriage. And (c) male (man) or female (woman) refer to an  
10 individual's immutable biological sex as objectively determined  
11 by anatomy and genetics at time of birth."

12 Q Do you have an understanding as to why those three  
13 religious beliefs were grouped together?

14 A So these beliefs are consistent with the natural family  
15 idea that I spoke about earlier so that marriage is the union  
16 of a man and a woman, that only sex within marriage is  
17 acceptable -- this is the sex for procreative purposes within a  
18 marital unit -- and that men and women as a matter of  
19 biological destiny, based on their biological sex, fill  
20 different and complementary roles in society as well as in the  
21 family.

22 Q Okay. So, Professor NeJaime, in your expert opinion, how  
23 does HB 1523 compare to other bills of its type?

24 A So of laws that have passed, HB 1523 is both narrower and  
25 broader. So of the other laws that we have studied, those laws



1 do not specifically name religious beliefs that are protected  
2 but rather protect sincerely held religious beliefs of  
3 claimants. And those laws that have passed have not protected  
4 secular businesses from any obligations to serve explicitly in  
5 the way that this law does.

6 Q This is really an outlier.

7 A Yes, it's unique.

8 MR. KAYE: No further questions at this time.

9 THE COURT: Mr. McDuff, I presume you have no  
10 questions for this witness?

11 MR. McDUFF: I have no questions, Your Honor.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. GOODWIN:

15 Q Professor, first thing you've got to do is help me.

16 Pronounce your last name for me.

17 A NeJaime.

18 Q NeJaime. I was waking up in the middle of the night  
19 thinking about mispronouncing your last name.

20 A No one gets it right.

21 Q You've covered a lot of ground in your testimony and so we  
22 may be bouncing around a little bit here. So forgive me. I've  
23 got a lot of notes here, and so I'll do the best I can. You  
24 talked a lot about the Christian right and their attempts to  
25 influence policy and laws. Correct?

1 A Yes.

2 Q Are they the only group in America that attempts to do  
3 that?

4 A No.

5 Q Including the LGBT community also attempts to influence  
6 policy and laws. Correct?

7 A Correct.

8 Q And that is the democratic process that we have. Is that  
9 right?

10 A Yes.

11 Q Is there a Christian left? You are referring to the  
12 Christian right. Is there a Christian left?

13 A The common academic term for those organizations that I was  
14 referring to are the Christian right, and there isn't any sort  
15 of accepted academic description of a Christian left.

16 Q Are there organizations of people that could be classified  
17 as Christian left that attempt to influence policy and laws?

18 A Not that I study.

19 Q Not that you study. But there could be; you are just not  
20 aware of them.

21 A There could be.

22 Q You say you don't study them. Do you study -- when it  
23 comes to Christian left or Christian right, do you exclusively  
24 focus on the Christian right and their efforts to influence  
25 policy and laws?

1 A I study primarily two movements: The LGBT movement and the  
2 Christian right movement. And those two moments have been  
3 involved in what we describe as movement/countermovement  
4 conflicts, and so it makes sense from a research perspective to  
5 study those two movements.

6 Q And you've been called by the plaintiffs in this case, and  
7 you have said that you have never been tendered as an expert.  
8 Is that right?

9 A I have never agreed to be an expert, yes.

10 Q And I've looked through your CV and looked at a list of  
11 your articles, and it appears to me -- and correct me if I'm  
12 wrong -- that your articles tend to skew in favor of the LGBT  
13 community. Is that fair to say?

14 A I actually -- most of my articles don't take normative  
15 positions. They are more analytical and interpretive. So in  
16 my academic writing, I tend not to have a normative or  
17 prescriptive position that's easily identifiable. But  
18 certainly I've taken positions that some in the LGBT movement  
19 might find aligned with some of their positions.

20 Q Have you ever found in any of your writings that a  
21 religious accommodation law in your opinion was acceptable and  
22 constitutional?

23 A Yes. So that's partly when I say it's not clear that I'm  
24 always taking -- that I take a particular normative position,  
25 in the context of religious accommodation, my own writing is

1 actually supportive of religious exemption, and we elaborate,  
2 my coauthor and I, the conditions in which we deem to be  
3 acceptable as a legal and principle matter, which is distinct  
4 from other positions that -- including the Supreme Court's  
5 decision in *Smith* that would oppose exemptions from generally  
6 applicable laws.

7 Q So there's nothing per se unconstitutional about a  
8 religious accommodation law.

9 A Religious accommodation laws can be constitutionally  
10 permissible.

11 Q Thank you. You've testified that there's a long history of  
12 religious accommodation laws dating back to, I believe, the  
13 1960s. Is that right?

14 A The constitutional free exercise protections for exemptions  
15 from generally applicable laws began with the court's  
16 jurisprudence in the 1906s.

17 Q Are you aware of the laws that were enacted post *Roe v.*  
18 *Wade* that provided for medical service exemptions or the right  
19 for a medical provider or a person not to perform abortions?

20 A Yes.

21 Q And those laws have been on the books now since the 1970s.  
22 Is that correct?

23 A So the federal church amendment passed in 1973, but there  
24 were some state laws on the books before the church amendment.

25 Q And the church amendment in a nutshell -- and if you

1 disagree please tell me, but in a nutshell allows a person even  
2 if they are receiving federal funds, public money, that they  
3 can based on a religious belief, conviction, refuse to perform  
4 abortions. Is that fair?

5 A Yes, it provides that a doctor or nurse can refuse to  
6 perform an abortion and that those who perform abortions are  
7 not to be discriminated against by institutions.

8 Q And I've read a couple of your things, including the  
9 article that you wrote, "Conscience" for the *Yale Journal*.

10 A "Conscience Wars."

11 Q And in that I believe you said that this modern iteration  
12 of religious accommodation laws are patterned after the church  
13 amendment type laws that would allow someone to exempt  
14 themselves from performing abortions based on religious  
15 beliefs.

16 A So what we observe in "Conscience Wars" is different kinds  
17 of exemptions being included in legislation after *Roe* and then  
18 more recently in after the past couple of decades and the ways  
19 in which some in the Christian right attempt to model some of  
20 the protections. But there's variation among those what we  
21 call healthcare refusal laws. So it would probably be  
22 important to distinguish between the kinds of laws that exist.

23 Q You testified that in the wake of *Windsor* there was a --  
24 there were lots of religious accommodation laws that were  
25 introduced in state legislatures across the country. Correct?

1 A Yes.

2 Q I believe you said approximately 50 or so across the  
3 country post *Windsor*. Correct?

4 A In the 2015 legislative session, yes.

5 Q That's what I'm referring to when I say "post *Windsor*."  
6 And then post *Obergefell*, you had approximately 100 bills  
7 introduced nationwide in state legislatures that addressed or  
8 sought religious accommodations. Is that right?

9 A Yes.

10 Q And looking through my notes, in post *Windsor*, of the 50,  
11 five were enacted. Do you know what states those were?

12 A This were Religious Freedom Restoration Acts enacted in  
13 Indiana and Arkansas. There were laws allowing us --  
14 magistrates or judges to refuse to perform marriages for  
15 same-sex couples in North Carolina and Utah, and there was a  
16 law in Michigan that allowed adoption and foster agencies to  
17 refuse to provide services based on sincerely held religious  
18 beliefs.

19 Q Many of the same things that are in HB 1523 that's at  
20 issue today.

21 A The Religious Freedom Restoration Acts are distinct, and  
22 Mississippi already has its own Religious Freedom Restoration  
23 Act. The other provision -- the adoption provision in Michigan  
24 provides not to specific religious beliefs but to any sincerely  
25 held religious belief so it doesn't limit the beliefs that are

1 protected, and the same is true of the other laws that passed.

2 Q What about the two laws that were passed post *Obergefell*?

3 We are talking about Mississippi and this bill being one.

4 Correct?

5 A Yes.

6 Q The other, am I assuming that's the North Carolina --

7 A No, north Carolina recently passed bill isn't a religious

8 exemptions bill. The other religious exemptions law that

9 passed is in Florida, which is called the Pastor Protection

10 Act.

11 Q Called what? I'm sorry.

12 A Pastor Protection Act.

13 Q What does that law provide?

14 A It provides that clergy and religious organizations do not

15 need to perform or solemnize marriages for same-sex couples,

16 which in some ways reiterates constitutional protections that

17 already exist.

18 Q That's a provision that's also in HB 1523. Correct?

19 A HB 1523 is about religious organizations when they act as

20 employers and providing goods and services as well as housing,

21 which goes beyond -- the Florida bill has inclusion of

22 religious organizations, but there's different definitions of

23 what constitutes a religious organization and when the

24 religious organization is protected in certain actions.

25 Q I guess I asked a poorly worded question. Does HB 1523

1 allow pastors to refuse to perform same-sex marriages just like  
2 the Florida bill?

3 A So HB 1523 includes exemptions for religious organizations  
4 including solemnization, but that would already be provided as  
5 a constitutional matter.

6 Q That's in there in 1523, just like the Florida bill.

7 A Should I review the bill in term of if the term "clergy" is  
8 in here?

9 Q I'll represent to you that it's in there, but if -- have  
10 you looked at the bill?

11 A Yes.

12 Q Okay.

13 A So it provides that the state government shall not take any  
14 discriminatory action against a religious organization --

15 THE COURT: Tell the court what section you're reading  
16 from.

17 A Section 3. "The state government shall not take any  
18 discriminatory action against a religious organization wholly  
19 or partially on the basis that such organization solemnizes or  
20 declines to solemnize any marriage or provides or declines to  
21 provide services, accommodations," and then it goes on, "based  
22 on belief described in Section 2 of this act." So that would  
23 provide this type of accommodation.

24 Q And let's see. In Section 9 of HB 1523 under -- you see  
25 Section 9, and then turn the page to number 4, subset (4). It



1 says, "Religious Organizations."

2 A Right.

3 Q And then you see in (c) there it says, "Religious leader,  
4 clergy or minister." Do you see that?

5 A Yes.

6 Q So we're in agreement that the two laws -- that HB 1523  
7 provides the same protection, religious accommodation that the  
8 Florida law does that you just spoke about, with regards to  
9 allowing pastors to refuse to perform same-sex marriages.

10 Correct?

11 A Yes.

12 Q We went a really long way to get there, didn't we? My  
13 apologies. You quoted from -- or you were handed CSE  
14 Exhibit 28. This is the transcript of the House debate. Do  
15 you still have this there with you?

16 A Yes.

17 Q And you read -- and for the record, this is well over 100  
18 pages of House debate, is it not?

19 A Yes.

20 Q Okay. And you read a particular portion two or three  
21 sentences, four sentences, from this earlier in your testimony,  
22 did you not?

23 A Yes.

24 Q And I would like to bring to your attention -- and you were  
25 reading from the House debate.

1 MR. GOODWIN: For the record, Your Honor, this will be  
2 the -- I'm about to refer to page 37 of the senate debate that  
3 is the -- it's all a part of this collective exhibit, but it's  
4 the March 30, 2016, senate debate page 37. Are you there?

5 A Yeah.

6 Q Okay. Do you see at the top it says, "Senator Jennifer  
7 Branning"?

8 A Yes.

9 Q Could you read that for me beginning there, and I'll stop  
10 you when we -- when you have read what I would like for you to  
11 read?

12 A "Senator Jennifer Branning: Yes, I do. That's what this  
13 bill specifically addresses.

14 "Senator Joey Fillingane: So would you agree with me that  
15 there's a difference between equal rights and equal protection  
16 of the law versus special or elevated rights, which some groups  
17 may be seeking?

18 "Senator Jennifer Branning: Absolutely.

19 "Senator Joey Fillingane: And would that lead to the  
20 reverse discrimination that you're talking about here and that  
21 you've been answering questions from all of us? I mean, do you  
22 agree with me that it's our duty under the law to provide equal  
23 rights but not special or elevated rights?

24 "Senator Jennifer Branning: That's correct. And that's  
25 what you're Supreme Court has held on numerous occasions.

1 "Senator Joey Fillingane: And is it our intent with this  
2 piece of legislation, which you've masterfully handled, by the  
3 way, to level the playing field and make sure that while we  
4 don't discriminate against anyone, we also don't reverse  
5 discriminate against people at the same time?

6 "Senator Jennifer Branning: Exactly."

7 Q Thank you. That's -- now, it's clear from that  
8 testimony -- and first of all, are you aware that Senator  
9 Jennifer Branning was one of the coauthors of this bill?

10 A Yes.

11 Q It's clear from this testimony, isn't it, that one of the  
12 cosponsors is saying that there's zero intent in this to  
13 discriminate against anyone.

14 A Well, what she's saying is that her purpose is to protect  
15 against discrimination.

16 Q You can agree with me or disagree, and I'll allow you to  
17 explain. But if could you, just give me a yes or no answer and  
18 then you can explain as much as you would like.

19 But based on this, this testimony by cosponsor Senator  
20 Jennifer Branning, she is stating unequivocally that the intent  
21 of this bill is not to discriminate but to level the playing  
22 field. Is that right?

23 A Right.

24 Q Okay. And, again, I'm sorry to interrupt you. If you'd  
25 like to explain anything further you can. Now, there was

1 discussion and testimony about the Alliance Defending Freedom,  
2 is that right, otherwise referred to as the ADF? Is that --

3 A Correct.

4 Q -- fair? And there was -- you testified at length about  
5 that organization and the roots of it and the purpose of that  
6 organization. Right? Correct?

7 A Yes.

8 Q Did -- the ADF, the Alliance Defending Freedom, they didn't  
9 pass this bill; the Mississippi legislature did. Correct?

10 A Correct.

11 Q Again bear with me. I apologize. Have you ever done any  
12 research about the impact, potential injury, to -- as a result  
13 of laws like *Windsor*, *Obergefell* and others, have you done any  
14 research regarding the potential impact or injury those laws  
15 might have on the religious rights of those who may object to,  
16 say, same-sex marriage?

17 A I studied the conflict that we might -- I studied the  
18 religious liberty claims that they assert, and they assert  
19 injuries as part of that, but I don't -- if you're asking do I  
20 study qualitatively or quantitatively the impact of same-sex  
21 marriage recognition on religious objectors, the answer is no.

22 Q Again the focus of your research and your study is the  
23 impact of those laws on the LGBT community. Is that fair to  
24 say?

25 A One area of the research that much the Williams Institute

1 does involves the LGBT population impacted by religious  
2 exemptions laws.

3 Q But the inverse is not your focus, the inverse being the  
4 impact on those seeking religious accommodation is not the  
5 focus of your research.

6 A That's correct.

7 MR. GOODWIN: Your Honor, the court's indulgence just  
8 one moment to confer with cocounsel.

9 (Short Pause)

10 MR. GOODWIN: Your Honor, I tender the witness.

11 THE COURT: All right. Any redirect of this witness?

12 MR. KAYE: Just a few things, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. KAYE:

15 Q Mr. NeJaime, you were talking about the Florida bill that  
16 was enacted recently. Is that broader or narrower than  
17 HB 1523?

18 A Narrower.

19 Q Why?

20 A It is solely about religious organizations and is also  
21 focused on celebration and solemnization of marriage, and it  
22 also includes sincere religious beliefs.

23 Q When you say it includes religious beliefs, does it  
24 specifically enumerate which ones?

25 A No.

1 Q Other laws passed since 2015, are those broader or narrower  
2 than HB 1523?

3 A So in terms of --

4 Q Let me ask the question again. In terms of the specific  
5 religious beliefs, do any of those laws passed in 2015 identify  
6 specific religious beliefs?

7 A No.

8 Q And in terms of the breadth of the activities that are  
9 covered, are they broader or narrower?

10 A Narrower. And there are other -- part of what I mentioned  
11 are other RFRAs, which leave to a court to adjudicate whether  
12 the claimant wins rather than providing a blanket exemption.

13 Q Okay. Now, do you recall the testimony you were just  
14 reading with Mr. Goodwin on page -- it was on page 37 -- is  
15 that right -- of the senate debate for March 30?

16 A Yes.

17 Q Can I direct your attention to page 20 of that same debate?  
18 Just 16 pages earlier, 17 pages earlier.

19 A Yes.

20 THE COURT: This is the debate from which --

21 MR. KAYE: The same day as the senate debate that Mr.  
22 Goodwin raised. So it's the March 30, I believe.

23 THE COURT: You may proceed.

24 BY MR. KAYE:

25 Q I'd like to direct your attention to page 19, starting at

1 line 20. Would you read that for the record, please.

2 A "Senator Willie Simmons: But again I go back to the law,  
3 to the title. It says, Protecting Freedom of Conscience from  
4 Government Discrimination. So we want to move the government  
5 protection to prevent discrimination from the government to  
6 allow, we, the individuals to discriminate. And to give you an  
7 example, let's just say that I as a male owned a business. And  
8 if I had decided that I want to be a male chauvinist and not  
9 employ any person other than males, would that be a form of  
10 discrimination?

11 "Senator Jennifer Branning: Possibly.

12 "Senator Willie Simmons: And does this bill not allow that  
13 to occur?

14 "Senator Jennifer Branning: It would not in your private  
15 business. In the context of employment, Senator, it speaks to  
16 religious-based organizations. And I'll give you an example.  
17 Since you're talking about in the employment contest, let's say  
18 Mississippi College I understand is a Baptist college, I  
19 believe, a religious-based organization. If Mississippi  
20 College has married housing, okay -- no, let me back up. Let  
21 me use this in an employment context. If Mississippi College,  
22 being a religious-based college, teaches that marriage is  
23 between one man and one woman, they possibly would not want to  
24 employ homosexual people on their staff.

25 "Senator Willie Simmons: But isn't that a form of

1 discrimination?

2 "Senator Jennifer Branning: If this bill is passed, it  
3 wouldn't be. That's what we're trying to do is protect people  
4 that have sincerely held religious beliefs on this one issue."

5 Q And you can stop there. Is what Senator Branning is  
6 discussing here, does that fit with your understanding of the  
7 word "discrimination"?

8 A Yes.

9 Q Well, when she says it wouldn't be discrimination.

10 A Oh, no. She's recognizing that this would be  
11 discrimination, and this bill is attempting to immunize those  
12 who otherwise would discriminate from being held liable for  
13 discrimination.

14 Q Okay. And flipping back to page 36 -- 37 when you were  
15 speaking with Mr. Goodwin in the middle of the page, you read  
16 from Senator Joe Fillingane, "And it is our intent with this  
17 piece of legislation, which you've masterfully handled, by the  
18 way, to level the playing field and make sure that while we  
19 don't discriminate against anyone we also don't reverse  
20 discriminate against people at the same time."

21 In your opinion, do you agree that HB 1523 levels the  
22 playing field and doesn't discriminate against anyone?

23 A No.

24 Q Now, when you talked about the blanket exemption in  
25 HB 1523, what did you mean by that?



1 A It provides an exemption just as a matter of the law,  
2 meaning that one just needs to read the law and know that they  
3 are entitled to an exemption rather than a RFRA which  
4 Mississippi has that provides that one can seek an exemption by  
5 going to court, and that gives the ability to the judge to  
6 balance the burden on the religious claimant against the  
7 government's interest in enforcement of the law.

8 Q Okay.

9 MR. KAYE: If I may have one moment, Your Honor.

10 (Short Pause)

11 MR. KAYE: No further questions.

12 THE COURT: I have one question, and then the parties  
13 will be able to follow up based on the question that I've asked  
14 if they need to.

15 EXAMINATION

16 BY THE COURT:

17 Q Professor NeJaime --

18 A Yes.

19 Q -- you testified earlier about model legislation from ADF  
20 or other groups. Is there -- the model legislation, is that a  
21 public record anywhere? Have you seen any model legislation  
22 based on either these RFRA statutes or the new type of statutes  
23 that have been enacted since *Obergefell*?

24 A Yes. So model legislation by ADF is in publicly available  
25 records, specifically with regard to transgender individuals.

1 So ADF did submit model legislation to the Colorado state  
2 legislature on the rights of transgender people to use public  
3 facilities. The Religious Freedom Restoration Act language is  
4 based on the federal Religious Freedom Restoration Act. But  
5 when some states have sought to amend their statutes to provide  
6 protection explicitly to businesses, that's been done in  
7 conjunction with organizations. So, for instance, in Arizona,  
8 an Arizona state-based organization working with ADF, which is  
9 also Arizona based, was involved in that effort.

10 There's also been specific drafts of religious exemption  
11 statutes earlier in the same-sex marriage context dating back  
12 to 2009 that were drafted by a group of law professors and  
13 endorsed by organizations like the National Organization for  
14 Marriage. But that's sort of a first-generation kind of  
15 statute in this context.

16 Q Okay. Yeah. And I guess what maybe I want to ask that  
17 particular question is the Exhibit CSE-29 from Citizen Link, I  
18 guess, or that says, "Our friends at Alliance Defending Freedom  
19 wrote model legislation for the bill." Have you had an  
20 opportunity to review the particular model legislation that  
21 might be tied to that particular comment?

22 A So that model legislation is not available. When I read a  
23 statement like this, it's not surprising to me that there would  
24 be legislation that a group like ADF helped to craft. But ADF  
25 specifically also says that they are not a lobbying

1 organization and don't get involved in legislative effort. So  
2 there are documents in the public records, for instance, in the  
3 Colorado legislature that show that they are advocating  
4 legislation and putting forward draft legislation, but the  
5 draft legislation referred to here, to my knowledge, is not  
6 anything publicly available and that's nothing I've reviewed.

7 Q Okay. Thank you.

8 THE COURT: Any followup based on the questions that  
9 I've asked?

10 MR. KAYE: Nothing from me, Your Honor.

11 THE COURT: Anything from the State?

12 MR. GOODWIN: No, Your Honor.

13 THE COURT: All right. Is this witness finally  
14 excused?

15 MR. KAYE: We have no further questions, Your Honor.

16 THE COURT: Okay. All right. You can go back to LA  
17 or stay in Mississippi. If you stay here, please spend some  
18 money in Jackson. You're free to -- you're released, and you  
19 may stay or you may leave.

20 At this time, ladies and gentlemen, it's appropriate,  
21 based on the conversations that the court has had with the  
22 parties, we're going to take a lunch break now and we will  
23 resume court at 2:30. So court's in recess.

24 (Recess)

25 THE COURT: Is the plaintiff ready to call the next

1 witness?

2 MS. KAPLAN: We are, Your Honor, but I believe that  
3 the State wanted to do a little housekeeping first.

4 THE COURT: Oh, okay. Thank you.

5 MR. BARNES: May it please the court?

6 THE COURT: Mr. Barnes?

7 MR. BARNES: Yes, sir, Your Honor. I was going to  
8 suggest that we discussed earlier that to the extent that there  
9 are exhibits that are -- that were premarked we have already  
10 discussed and there are no objections to, we'd ask that -- so  
11 we'd ask that Exhibit D-1 through D-4 be admitted.

12 THE COURT: Okay. And any of the plaintiffs  
13 exhibits -- I don't have the numbers -- but anything we haven't  
14 objected to.

15 MS. KAPLAN: I believe -- I apologize, Your Honor. As  
16 I said before, I'm terrible with numbers. I believe the  
17 unobjected to exhibits from plaintiffs are 10, 14 through 16  
18 and 26 through 29. I hope I got that right. They are nodding  
19 like I did.

20 Two more very small things. One, Your Honor, we work  
21 fast. So during lunch we submitted to the court an evidentiary  
22 brief on the constitutional facts doctrine. It should have  
23 been filed, but I have an extra copy I can hand up if Your  
24 Honor would like. And, two, this relates to the CSE I matter,  
25 but I thought it was worth mentioning. Apparently just during

1 lunch today there was a news report from at least one source  
2 that the clerk of DeSoto County intends to recuse from issuing  
3 marriage licenses to gay couples.

4 With that, Your Honor, we are ready to call our first  
5 witness, who is Jeremy Simons.

6 THE COURT: Hold on. Hold on. Hold on. I apologize.

7 MR. McDUFF: Your Honor, just to make it clear, I  
8 believe our exhibits have already been moved into evidence and  
9 admitted by the court subject to the exceptions previously  
10 stated. But if they haven't, I now move them into evidence.  
11 They would be 1 through 24 except the court --

12 THE COURT: Hold on for one second. Ms. Smith, did  
13 you keep track of all of those that I said were admitted and  
14 the objections and when I overruled -- I intended for them to  
15 be admitted at that time.

16 THE CLERK: It was Exhibit 1 and a portion of  
17 Exhibit 10 you said would not be --

18 THE COURT: Right, right. But everything else  
19 basically was. Right? And they are already in evidence  
20 according to what you have done.

21 THE CLERK: I have P-2, P-3, P-4, P-5, P-6, P-7, P-8,  
22 P-9, P-10, P-11, P-12, P-13, P-14, P-5, P-16, P-17, P-18, P-19,  
23 P-20, P-21, P-22, P-23, P-24.

24 MR. McDUFF: That's correct, Your Honor.

25 (Exhibit P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10,

1 P-11, P-12, P-13, P-14, P-5, P-16, P-17, P-18, P-19, P-20,  
2 P-21, P-22, P-23, P-24 marked)

3 THE CLERK: The others were CSE-29, CSE-10, CSE-28,  
4 CSE-27, and D-1.

5 MS. KAPLAN: I also had CSE-26 is in which is the  
6 resumé and 14 through 16, which I don't think there were  
7 objections to, CSE-14, 15 and 16.

8 THE CLERK: I need copies of those. I don't have  
9 them.

10 MR. BARNES: I believe the court overruled our  
11 objections on 14, 15 and 16.

12 THE COURT: Which ones do you need copies of  
13 Ms. Smith?

14 THE CLERK: CSE-26, CSE-14 through 16. I have -- you  
15 did overrule 14 through 16.

16 MS. KAPLAN: I only have -- I apologize. All I have  
17 is the binder, but we'll undertake to get you copies really  
18 quickly.

19 (Exhibit CSE-10, CSE-14 CSE-15, CSE-16, CSE-26, CSE-27,  
20 CSE-28, and CSE-29)

21 THE COURT: We'll just make sure that the record is  
22 complete before we close out the record so it doesn't have to  
23 be right now.

24 MR. BARNES: And, Your Honor, just point of  
25 clarification, I believe Ms. Smith just said D-1 has been

1 admitted, and I believe they used it at one of their witnesses.  
2 I believe there are no objections to D-2, D-3 and D-4. We'd  
3 like to move those.

4 THE COURT: They are admitted.

5 (Exhibit D-1, D-2, D-3 and D-4 marked)

6 MS. KAPLAN: One more minor housekeeping matter, Your  
7 Honor. With respect to our next witness, Rabbi Simons, we  
8 would -- he had asked to affirm. I assume that's not an issue.

9 THE COURT: Absolutely.

10 MR. TABER: Good afternoon. Jacob Taber for  
11 plaintiffs CSE and Dr. Susan Hrostowski. At this time  
12 plaintiffs call their second witness, Rabbi Jeremy Simons, who  
13 is in the courtroom.

14 THE COURT: Okay.

15 (Witness Affirmed)

16 THE COURT: You heard the instructions, Rabbi -- tell  
17 me your last name again.

18 THE WITNESS: Simons.

19 THE COURT: The instructions that I gave to the other  
20 witness. I assume you were in the courtroom.

21 THE WITNESS: I was not in the courtroom.

22 THE COURT: I'm sorry. The microphone is there before  
23 you. You do not have to speak directly into it. Please speak  
24 loudly and clearly enough for the court reporter to hear you.  
25 Speak at a pace at which she can keep up with you, and please

1 allow the attorneys to finish their questions before you begin  
2 to answer so that the two of you won't be speaking at the same  
3 time, and make sure that all your responses are verbal.

4 A Yes, Your Honor.

5 THE COURT: Thank you.

6 RABBI JEREMY SIMONS,

7 Having first affirmed to tell the truth testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TABER:

10 Q Good afternoon.

11 A Good afternoon.

12 Q Can you please state your name for record.

13 A My name Jeremy Joseph Ryszard Simons.

14 Q Is it okay if I call you Rabbi Simons?

15 A Yes, it is.

16 Q Rabbi Simons, do you live here in Jackson?

17 A Yes, I do.

18 Q And what do you do for a living?

19 A I am a rabbi here in Jackson. My title director of  
20 rabbinistic service at the Goldring/Woldenberg Institute of  
21 Southern Jewish life.

22 Q How does one become a rabbi?

23 A In America, most people become a rabbi by going to a  
24 seminary to rabbinical school. In my case, I went to Hebrew  
25 Union College. It's one year in Israel in Jerusalem followed



1 by four years stateside. In my case I was on the Los Angeles  
2 campus.

3 Q Is your rabbinical school affiliated with a particular  
4 Jewish denomination?

5 A Yes, it is. It is the seminary of the reformed movement.

6 Q And at rabbinical school, what sorts of topics did you  
7 study?

8 A We studied quite a few topics in rabbinical school over the  
9 five years. Everything from basic Hebrew, which is how the  
10 curriculum begins during that year in Israel, to rabbinic texts  
11 and medieval texts, commentaries on our scriptures as well as  
12 basic skills for how to lead services, lifecycle events, how to  
13 spoke publicly in congregations or courtrooms perhaps and as  
14 well as pastoral care, how to counsel people in times of  
15 distress.

16 Q Did you have to opportunity to study anything about the  
17 history of American Judaism?

18 A Yes, I did. I took several courses.

19 Q What about Jewish laws relating to sexuality?

20 A Yes. Those laws come up in the curriculum, I wouldn't say  
21 necessarily frequently but are mentioned in various classes,  
22 yes.

23 Q Rabbi Simons, what does the Hebrew Bible and specifically  
24 the five books of Moses have to say about gay people?

25 A Honestly very little, that there are approximately three

1 references found in the first five books of the Bible, in  
2 Genesis through Deuteronomy. Two can be found in Leviticus,  
3 and they say essentially the same thing, that a man cannot lie  
4 with another man the way one lies with a woman. To put those  
5 verses in context, however, they appear during a whole of  
6 forbidden sexual acts, many of which have to do with incest.

7 It is also -- it is worth noting that these laws were only  
8 intended to apply to Israelites when they were in the land of  
9 Israel. They were never intended, if you read that chapter, to  
10 be applied universally.

11 Q You mentioned two references in Leviticus. Was there a  
12 third reference in the Bible?

13 A Yes. In Genesis, there's the story of Sodom and Gomorrah,  
14 and some people see that as being indicative of a condemnation  
15 of male homosexuality.

16 Q How do you read it?

17 A I choose to read it based on the rabbinic interpretations  
18 called the Midrash that are over a millennia old, and they  
19 describe the chief sin of the residents of Sodom as being an  
20 unjust and corrupt society, and they trace that injustice  
21 actually to economic injustice. Nowhere in the rabbinic  
22 commentary does it dwell on the sexuality of the people of the  
23 town.

24 Q Is this something you learned at your reformed Jewish  
25 rabbinical school?

1 A It came up within classes, but it's the sort of text that  
2 any learned Jew can find when they study our commentary and our  
3 tradition that it is common to study commentary alongside the  
4 text itself.

5 Q How did you decide to become a rabbi?

6 A It's kind of a funny story. I originally thought I was  
7 going to be a lawyer. I have never imagined I would be telling  
8 this to -- in this situation here. But I was actually on my  
9 way to law school after -- I had graduated from my  
10 undergraduate university, and I was cleaning up my religious  
11 school classroom where I had been teaching part-time with an  
12 old friend of mine who was my coteacher.

13 We were cleaning out the classroom at the end of the school  
14 year and she said, *You know, Jeremy, it's a shame you're going*  
15 *to law school because you would have been a really good teacher*  
16 *and really good youth group advisor.* I said, *You know Cory,*  
17 *you're right.*

18 Something clicked in that moment, and I started applying to  
19 jobs in the Jewish world the very next day. I thought I'd just  
20 spend a few years and then go on to law school, but that ended  
21 up being four years that I worked as a teacher in a synagogue  
22 and a youth group advisor and almost the equivalent of a youth  
23 pastor. During that time, I realized this was really my  
24 calling and what I wanted to devote my life to.

25 Q Were the synagogues that you worked at before rabbinical

1 school affiliated with any denomination of Judaism?

2 A Yes. They were both members of the Reform movement.

3 Q What is reformed Judaism?

4 A The Reform movement, it began in Germany and also pretty  
5 soon after found its way to America in Cincinnati, and it's  
6 predicated on the idea of allowing rationality to be a part of  
7 the religious. So, for example, accepting the basis of science  
8 and the scientific method.

9 And also the name "Reform" comes from very specific reforms  
10 made by those first reformers. So it had to do with reforming  
11 the liturgy, speaking in the vernacular, which would have been  
12 either German or English here in America, rather than Hebrew  
13 and a number of other essentially reforms. And one thing  
14 that's important to point out that it's called Reform Judaism  
15 as opposed to reformed, and that's because the movement is  
16 constantly changing, and it is constantly evolving. Its  
17 platform has been restated numerous times throughout the  
18 movement's history.

19 Q Do you know about how many reformed synagogues there are in  
20 this country?

21 A There are approximately 900 synagogues who are dues paying  
22 members of the movement.

23 Q How did that compare to other denominations in American  
24 Judaism?

25 A That is the largest. It is the largest denomination in

1 American Judaism.

2 Q And, now, there are other denominations, I assume from what  
3 you just said. Can you tell us what those are?

4 A Yes. The Jewish world can be kind of complicated, but  
5 there are three additional main movements and probably  
6 countless smaller movements or groups. But the other three  
7 main groups are the Reconstructionist movement, the  
8 Conservative movement and what often is called the Orthodox  
9 movement, however orthodoxy is really an umbrella term for a  
10 number of movements that fall within that category.

11 Q And are you familiar with the beliefs and practices of  
12 these other denominations?

13 A Yes, I am.

14 Q How so?

15 A First of all, just being a person active in the Jewish  
16 world, you come into contact with Jews of all backgrounds on a  
17 regular basis. But also while I was in seminary, I had the  
18 opportunity to study and what are called transdenominational  
19 settings or programs which means alongside seminary students  
20 from other denominations which included academic study, travel  
21 to Israel, and really around the world, and I have very close  
22 connections in all the moments.

23 Q Now, in your job that you have now as a rabbi, what do you  
24 do day to day?

25 A So it is somewhat a unique position. They tell me I'm the

1 only one in the country who does this sort of thing. I'm a  
2 circuit-riding rabbi of sorts, which means that within the  
3 southern region of 13 states, a survey that we conducted  
4 several years ago identified approximately 100 synagogues  
5 throughout these states that do not have a full-time rabbi of  
6 their own. And that in turn led to the recognition that  
7 there's a need for rabbinic support, hence the position was  
8 created and my job is to serve this communities who are  
9 otherwise not served.

10 So two to three weekends a month, I find myself on the  
11 road. And I also do a number of activities to support these  
12 communities from here in Jackson where I'm based, including  
13 writing a weekly sermon called "A Taste of Torah," which is  
14 e-mailed out to approximately 1200 subscribers, and it's read  
15 by these synagogues -- by lay leaders in synagogues who again  
16 don't have a rabbi. They may not feel comfortable teaching  
17 about the portion of the week, and this is a resource for them.  
18 I do tutoring and also work in the community in a variety of  
19 settings.

20 Q I'm sorry if you already said this, but what is Torah?

21 A Torah is the term we use for the first five books of the  
22 Hebrew Bible. That would be Genesis, Exodus, Leviticus,  
23 Numbers and Deuteronomy.

24 Q Now, these communities in the South that do not have rabbis  
25 that you serve, are any of those located here in Mississippi?

1 A Yes, quite a few are located in Mississippi.

2 Q And which ones have you had a chance to visit in your time  
3 at the job?

4 A I have visited the communities in Tupelo, in Oxford,  
5 Cleveland, Meridian, Vicksburg, Natchez, Hattiesburg, and  
6 Biloxi-Gulfport as well as Jackson.

7 Q And on a typical weekend visit, what sorts of things do you  
8 get to do?

9 A I try to do everything a full-time rabbi would do if they  
10 were in the community. So typically it involves leading  
11 services, worship services -- in the Jewish faith, that's on  
12 Friday nights and Saturday morning -- as well as teaching both  
13 adults and children. Oftentimes, I will pay house calls to  
14 homebound residents or hospital calls and really provide  
15 whatever services are requested by the community.

16 Q Has this given you an opportunity to get to know Jews in  
17 Mississippi?

18 A Yes, very well, yes. In fact, I get to be hosted often in  
19 people's home for home hospitality and spends hours sitting at  
20 kitchen tables learning about people's lives and their  
21 experiences here.

22 Q Wonderful. Can you give an example of a lifecycle event  
23 you have officiated in Mississippi which you said was the other  
24 half of the work that you do?

25 A Yes. I had the privilege officiating at what's called the

1 bar mitzvah, which is a coming-of-age ceremony in Vicksburg.  
2 And normally the ceremony happens when a young person is  
3 between the ages of 12 and 13. In this case, the gentleman was  
4 76 years old, and he had never had one when he was of the  
5 appropriate age and realized about a year before that this was  
6 something he wanted, which normally wouldn't be a big deal but  
7 it requires reading from the Torah scroll in Hebrew.

8 And the problem was that that gentleman had never learned a  
9 single letter of Hebrew. So over the course of the year, both  
10 my predecessor and me, we worked with him to teach him Hebrew  
11 and teach him how to use FaceTime so we could actually teach  
12 him how to learn Hebrew. And we were successful with one of  
13 those goals.

14 Q Now, from your experience engaging in this work, would you  
15 say that most Jews in Mississippi belong to the Reform  
16 denomination or Conservative or some other denomination?

17 A Most belong for the Reform denomination.

18 Q I am now going to give the witness a copy of HB 1523.  
19 These we just printed out and they are not marked D-1, but I  
20 represent that it's the same. Would the court like an  
21 additional copy?

22 THE COURT: No, no.

23 MR. TABER: Your Honor, may I approach?

24 THE COURT: You may.

25 MR. TABER: Thank you.



1 BY MR. TABER:

2 Q So Rabbi Simons, do you recognize this?

3 A Yes, I do.

4 Q And what is it?

5 A This is a copy of HB 1523.

6 Q Have you had a chance to read this before?

7 A Yes, I have.

8 Q And how did you first learn about HB 1523?

9 A I heard about this first when the bill was being discussed  
10 and then later when it was signed by the governor, both in  
11 local media and on social media from friends and colleagues  
12 across the country and, in fact, across the world.

13 Q Do you see on the first page in Section 2 the statute  
14 identified as a few religious beliefs and moral convictions?

15 A Yes, I see that.

16 Q Can you read for us Section 2(a)?

17 A "Marriage is or should be recognized as the union of one  
18 man and one woman."

19 Q Now, Rabbi Simons, do you personally hold this religious  
20 belief?

21 A No, I do not.

22 Q And does the Reform movement of Judaism teach this  
23 religious belief?

24 A No, it does not.

25 Q How do you know that?

1 A I know that because there have been a number of resolutions  
2 passed by the movement and its leadership and members  
3 stretching back to the 1970s.

4 MR. TABER: Your Honor, I'm now going to give the  
5 witness -- and I have discussed this with counsel -- four  
6 exhibits at one time, and we'll go through them one by one just  
7 to save the trip, if that's all right.

8 THE COURT: That's fine.

9 MR. TABER: I'm going to be giving the witness CSE-5,  
10 6, 7, and 8 in one stack.

11 BY MR. TABER:

12 Q So starting with Plaintiff's Exhibit CSE-5, which will be  
13 the first document in front of you, do you recognize this?

14 A Yes, I do.

15 Q What is it?

16 A This is a resolution titled "Human Rights of Homosexuals"  
17 that was passed by the Reform movement in 1977.

18 Q And briefly in your own words what does this say?

19 A This resolution acknowledges, first of all, the existence  
20 of homosexuality as a legitimate sexual identity and encourages  
21 that people that identify as homosexual be invited to and made  
22 welcome in Jewish spaces.

23 Q How does the Reform movement pass a resolution like this?

24 A There are a number of ways. The most common is either  
25 through the commission on social action or through biennial

1 conventions. It really has to do also based on the calendar.  
2 We have a convention every two years attended by leaders  
3 throughout the movement.

4 Q And about how many people would vote on a resolution like  
5 this?

6 A Depends on the year. I can't speak historically, but the  
7 last year there were 5,000 representatives.

8 Q Thank you. If you would please return to the next exhibit,  
9 Plaintiff's Exhibit CSE-6. Are you familiar with this  
10 document?

11 A Yes, I am.

12 Q And what is it?

13 A This is a document. It's another resolution passed by the  
14 Reform movement. It is titled, "Support for Inclusion of  
15 Lesbian and Gay Jews." It was passed in 1987.

16 Q Again in your own words briefly what it does say?

17 A This builds on the previous resolution from 1977 and again  
18 explicitly recommends that gays and lesbians be allowed to  
19 participate fully in synagogue life and explicitly states that  
20 they should be allowed to participate equally in worship and  
21 leadership and in general life.

22 Q Thank you. If you'd turn now to the next exhibit marked  
23 Plaintiff's Exhibit CSE-7, are you familiar with this exhibit?

24 A Yes, I am.

25 Q And what does the document -- what is it?

1 A This is again another resolution passed by the Reform  
2 movement. It is titled "Civil Marriage for Gay and Lesbian  
3 Jewish Couples," and it was passed in 1997.

4 Q Again briefly what does it say?

5 A This again references the previous two resolutions and  
6 calls for a civil marriage to be an option for gays and  
7 lesbians in this country and furthermore instructs the movement  
8 to consider how religiously we could accommodate a religious  
9 wedding for gays and lesbians.

10 Q Look at the top of the document. Was this enacted by the  
11 committee or by the whole biennial convention?

12 A It says it is adopted by the general assembly.

13 Q That would be --

14 A I believe so, yes.

15 Q Okay. Thank you. If you would finally turn to the last  
16 document there, Plaintiff's Exhibit CSE-8. Are you familiar  
17 with this document?

18 A Yes, I am.

19 Q And what is it?

20 A This document is, "Titled Resolution on Same Gender  
21 Officiation." It was adopted in March of 2000, and this is a  
22 slightly different type of resolution. This was adopted by a  
23 group called the CCAR, the central conference of American  
24 Rabbis. That is the rabbinic union that Reform rabbis are a  
25 part of, and I'm also a member of.

1 Q In your own words, what does this say? What does it do?

2 A This document is the culmination of several years of  
3 committee research on the matter which ultimately says that  
4 Reform Rabbis are permitted to officiate at same-sex marriage  
5 ceremonies and suggests liturgy to be used that would be  
6 appropriate in such a setting.

7 Q Thank you. Looking at these documents and from your own  
8 experience, how you would describe the religious beliefs of the  
9 Reform movement of Judaism regarding gay and lesbian marriage?

10 A I can see a clear evolution starting again in 1977 up until  
11 essentially the present where more and more rights and calls  
12 for equality were made until we reached the present, which is  
13 full unconditional equality.

14 Q To the best of your understanding, does HB 1523 reflect  
15 these religious beliefs about gay and lesbian marriage?

16 A No, it does not.

17 Q Now, let me ask you what are your personal religious  
18 beliefs about marriage?

19 A My beliefs I think I can best describe as having to do with  
20 the ceremony itself, that when a Jewish couple is married or a  
21 couple is married in a Jewish ceremony, it takes place under  
22 what's called the *chuppah*, which is a wedding canopy, and the  
23 *chuppah* or this canopy is meant to symbolize a number of  
24 things. First it's the couple's home, but it also has to be  
25 open on all four sides. Part of that is practical so people

1 can see that the couple is really there, but the deeper  
2 meaning, at least for me, is that it says that this marriage is  
3 public for the community and all the same, the entire community  
4 is invited to be a part of this marriage but also a part of the  
5 institution of marriage and that anyone ought to be able to see  
6 themselves underneath that canopy and have the right to be  
7 underneath there.

8 Q Do you believe that gay couples should be under that  
9 canopy?

10 A Absolutely.

11 Q And just to be clear, do you see your personal religious  
12 beliefs about marriage reflected anywhere in HB 1523?

13 A No, I do not.

14 Q Thank you. If you could turn back to the statute, which  
15 was the first document I put before you. Could you please read  
16 Section 2(b.)?

17 A Yes. "Sexual relations are properly reserved to such a  
18 marriage."

19 Q Do you personally hold this religious belief?

20 A No, I do not.

21 Q And does the Reform movement of Judaism teach this  
22 religious belief?

23 A No, it does not.

24 Q Rabbi Simons, in connection with your job, do you ever  
25 provide premarital counseling to Jewish couples?

1 A Yes, that's a requirement for any wedding where a  
2 officiate. I meet with the couple for four to five sessions at  
3 least beforehand to discuss their upcoming marriage.

4 Q Do the couples that you counsel ever talk about having been  
5 in a sexual relationship prior to marriage?

6 A They don't always want to volunteer that to a rabbi;  
7 however, as part of the process, I have them fill out several  
8 diagnostic relationship tools. And it includes a section on  
9 sexual relations and has the assumption that said relations  
10 have occurred.

11 Q Have you ever refused to marry a couple because you learned  
12 that they had had sex before marriage?

13 A No, certainly not.

14 Q And just looking at the statute again, do you see your  
15 religious beliefs about sex before marriage reflected in HB  
16 1523?

17 A No, I do not.

18 Q Thank you. Looking at the statute -- and you're going have  
19 to flip the page. This is single-sided, I think. Could you  
20 please read Section 2(c).

21 A "Male (men) or female (woman) refer to an individual's  
22 immutable biological sex as objectively determined by anatomy  
23 and genetics at the time of birth."

24 Q Rabbi Simons, do you personally hold this religious belief?

25 A No, I do not.

1 Q And does the Reform movement of Judaism teach this  
2 religious beliefs?

3 A No, it does not.

4 Q Rabbi Simons, what are your religious beliefs about gender  
5 and gender identity?

6 A I think that they can be summed up by the beginning of the  
7 Torah, Genesis chapter one, where in the creation story we read  
8 that humanity was created in *b'tzelem elohim*, in the image of  
9 God. And, in fact, in that first chapter of Genesis, the story  
10 is that man and woman were created simultaneously, and there  
11 are even some teachings that they were created as one, a person  
12 with both genders then separated.

13 And for me, the divine holiness of every human being is  
14 central, far more so than any determining factor about their  
15 body, whether it be their anatomy or so much as their hair  
16 color or eye color.

17 Q Just to be clear, does traditional Judaism believe that  
18 every single person is born definitely male or definitely  
19 female?

20 A No. And we can actually go back to document called the  
21 Mishna, which we know to be at least 1800 --

22 THE COURT: Could you spell that, please, for the  
23 record.

24 THE WITNESS: Men-shen -- no.

25 THE COURT: I'm a Baptist.



1 MS. KAPLAN: Your Honor, would you like that in Hebrew  
2 or in English?

3 BY MR. TABER:

4 Q All right, sir. Go, English.

5 A M-I-S-H-N-A.

6 THE COURT: Thank you.

7 A The H at the end is optional. This document called the  
8 Mishna is at least 1800 years old, and it is rabbinic document,  
9 and it discusses actually four distinct genders that are  
10 possible, male, female, then a category called tumtum, which is  
11 someone whose gender is essentially ambiguous, unable to be  
12 ascertained and then androgenous, someone who displays both sex  
13 characteristics.

14 And these documents -- the reason that rabbis care about  
15 this is this was a gendered world where there were certain  
16 things that you did for boys, certain things you do for girls.  
17 Specifically for boys, if you're Jewish, you circumcise them,  
18 and that's very important. And in order to do that, you have  
19 to decide if you have a boy or not; hence, why the rabbis are  
20 concerned with this issue. And you can see in the writings  
21 they truly struggle with it, in what to do in these cases where  
22 it is ambiguous. But what you don't see is them condemning the  
23 child or saying that this child cannot be a part of the  
24 community or is any less human or holy than anyone else.

25 Q Thank you.

1 MR. TABER: Your Honor, may I approach the witness?

2 THE COURT: Yes, you may.

3 MR. TABER: I'm now going to give the witness

4 Plaintiff's Exhibit CSE-9.

5 BY MR. TABER:

6 Q Rabbi Simons, you have seen this document before?

7 A Yes, I have.

8 Q What is it?

9 A This is another resolution passed by the Reform movement.

10 It is titled "Resolution on the Rights of Transgender and  
11 Gender Nonconforming People," and it was adopted at the most  
12 recent biennial convention which was this last fall in Orlando,  
13 and I happened to be in the room when this resolution was  
14 adopted.

15 Q What was that like?

16 A It was a rather incredible experience. This was -- we  
17 talked earlier a meeting of the leadership of the movement.  
18 There were 5,000 representatives in the hall at the time, which  
19 represented 900 congregations, 1.5 million Reform Jews. The  
20 resolution was presented, and then the chairman called for a  
21 voice vote. And there is an old joke that if you have two Jews  
22 in a room, you're destined to end up with three opinions  
23 someone once corrected me and said, *No, Rabbi, it is four*  
24 *opinions*, which only proves the joke.

25 But this was the first time I think I have ever seen and

1 probably ever will see that you had 5,000 Jews in a room and  
2 you had one opinion. It was a unanimous decision followed by a  
3 standing ovation.

4 Q In your own words, briefly, what does the resolution say?

5 A The resolutions recognizes the existence of transgender and  
6 gender nonconforming people and says that they should be  
7 treated equally, both civilly and in religious settings, and  
8 furthermore encourages our member congregations and  
9 institutions which includes summer camps, college programs,  
10 Israel programs, for all organizations that fall underneath the  
11 Reform movement to provide accommodations and sensitivity to  
12 people of all backgrounds.

13 Q To the best your understanding, is the resolution rooted in  
14 a political or religious beliefs?

15 A This is absolutely a religious belief and it cites several  
16 religious sources in the document.

17 Q And to the best of your understanding, does HB 1523  
18 reflect this -- the beliefs articulated here regarding  
19 transgender people?

20 A No, it is diametrically opposed to it.

21 Q So looking at Section 2 as a whole, then -- first let me  
22 ask you, can you tell me that every single Reform Jew or person  
23 who calls himself a Reform Jew believes what you believe about  
24 the topics we've discussed today?

25 A I cannot even begin to pretend I could speak for all Jews.

1 Q But would you say that the Reform -- can you tell me does  
2 the Reform movement of Judaism hold any of the religious  
3 beliefs in HB 1523?

4 A No. As an organization, no, and I would say most Jews do  
5 not, including the organization I work for, which is the  
6 largest Jewish organization in the state, the Institute of  
7 Southern Jewish Life. And when this resolution was adopted, we  
8 issued a press release condemning it, approved by our board as  
9 well as our staff. And we are not an organization that delves  
10 into politics or matters of politics rarely if ever. So for us  
11 to issue a condemnation is a pretty significant event.

12 Q Turning to the other Jewish denominations, to the best of  
13 your understanding with the familiarity we have discussed, does  
14 the Reconstructionist movement of Judaism hold the religious  
15 beliefs identified in HB 1523?

16 A No, it does the not.

17 Q And does the Conservative movement of Judaism hold any of  
18 the religious beliefs articulated in HB 1523?

19 A No, it does not.

20 Q Do orthodox Jews hold some or all of these beliefs?

21 A This it complicated with orthodoxy because that is a  
22 blanket term for a number of groups. Within the Orthodox  
23 movement, you can get different answers to these questions.  
24 However, I can say there are a number of Orthodox organizations  
25 dedicated to expanding gay rights and a place for gay and

1 lesbians and transgendered individuals within the Orthodox  
2 community.

3 Q To the best of your understanding, does HB 1523 reflect the  
4 religious beliefs of most Jews in Mississippi?

5 A No, it does not.

6 Q Rabbi Simons, do you hold any other sincerely held  
7 religious beliefs that might be relevant to your testimony  
8 today that we haven't yet had a chance to talk about?

9 A Yes. I hold a number of sincerely held religious beliefs  
10 as a rabbi. And I think -- the one that's stuck in my mind  
11 right now, we talked Leviticus and the prohibition against male  
12 homosexual acts that are found in Chapters 18 and Chapters 20.

13 If you look in between those two chapters, Chapter 19, you  
14 find the commandment *veahavta l'reyacha kamocho*, "You shall  
15 love your neighbor, your fellow as yourself." And this idea of  
16 loving and respecting those around us is central to my Judaism  
17 and to most people's Judaism.

18 There's a famous story about Rabbi Hillel, who lived 2,000  
19 years ago in the time of the Temple in Jerusalem. And when  
20 asked to summarize the entire Torah in one sentence, he said,  
21 "What is hateful to you, you do not do to another person."

22 Q Do you see this religious belief anywhere in HB 1523?

23 A I cannot find it anywhere on these 13 pages.

24 Q How does that make you feel?

25 A On the one hand, it makes me feel very upset that my

1 religion is seen as somehow less legitimate because I cannot  
2 identify with the so-called sincerely held religious beliefs.  
3 On the other hand, it makes me very angry because I consider  
4 myself a religious person with deeply held religious beliefs.

5 And by God, if someone were to hear me say this and assume  
6 that I believe anything that is in this statute, that is a  
7 tragedy that I have to explain that this is not me and this is  
8 not my religion.

9 Q Thank you so much.

10 MR. TABER: No further questions at this time, Your  
11 Honor.

12 THE COURT: I presume Mr. McDuff has no questions.

13 MR. McDUFF: I have no questions, Your Honor.

14 THE COURT: Thank you.

15 MR. GOODWIN: Thank you, Your Honor. May I proceed?

16 THE COURT: You may, Mr. Goodwin.

17 CROSS-EXAMINATION

18 BY MR. GOODWIN:

19 Q Rabbi Simons, you identified that or you testified that you  
20 are a member of the Reform movement. Correct?

21 A Yes, sir.

22 Q And that there are three other sects or denominations in  
23 the Jewish faith: Reconstructionists, Conservative and  
24 Orthodox. Correct?

25 A Yes, sir.

1 Q And that -- you said that while you can speak to the Reform  
2 movement's official stance on certain things, that you can't  
3 say that everyone in the Reform movement believes the same  
4 things. Correct?

5 A That is correct.

6 Q I don't know that you can get anyone in any group to agree  
7 on everything. Correct?

8 A Correct.

9 Q And you said as to the Reconstructionist, that as far as  
10 you know, they do not -- they do not agree with the beliefs  
11 identified in HB 1523. Is that right?

12 A That is correct.

13 Q But again you can't say that for every Reconstructionist,  
14 no more be you can say that for every Reform movement member.  
15 Correct?

16 A Correct.

17 Q And you said that for the Conservative movement the same  
18 thing. Correct?

19 A Correct.

20 Q And just like with the Reform movement, you say that -- you  
21 could not make a blanket statement about every member of the  
22 conservative movement, could you?

23 A I could not.

24 Q As to the Orthodox denomination, you said that that was  
25 much trickier because it -- there were a lot of divergent

1 opinions within that denomination. Right?

2 A Correct.

3 Q And certainly based on all of that, there are members of  
4 the Orthodox Jewish faith that disagree with same-sex marriage.

5 Would you agree?

6 A I would, yes.

7 Q And there are members of the conservative faiths or  
8 movement that disagree with the same-sex marriage. Correct?

9 A Correct.

10 Q And the same for the reconstructionist. Correct?

11 A Correct.

12 Q And the same even for the Reform movement. Correct?

13 A Correct.

14 Q And as to the belief or conviction that sex should be had  
15 between a man and woman who are married or within the confines  
16 of marriage, there are people in the Reform movement that hold  
17 that belief. Correct?

18 A Correct.

19 Q And the same goes for the Reconstructionist. There are  
20 members of that movement that hold that belief. Right?

21 A Uh-huh.

22 Q And the Conservative movement: Same thing. Right?

23 A Uh-huh.

24 Q And the Orthodox movement. Correct?

25 A Correct.



1 Q And then as to the last, which says that -- this is part  
2 (c) of Section 2, that male or female refer to an individual's  
3 immutable biological sex as objectively determined by anatomy  
4 and genetics at time of birth. There are Reform movement  
5 members who would agree with that. Correct?

6 A Possibly, yes.

7 Q And Reconstructionist members that would agree with that.  
8 Correct?

9 A Possibly, yes.

10 Q And Conservative members that would agree with that.  
11 Correct?

12 A Possible, yes.

13 Q And Orthodox members who would agree with that. Correct?

14 A It's possible, yes.

15 Q And these three beliefs that are identified -- beliefs or  
16 convictions that are identified in 1523, they also -- you can  
17 find those beliefs and other religions. Correct?

18 A I can't speak about other faith.

19 Q Is you can't speak as to whether or not they exist in any  
20 Christian denomination?

21 A I don't consider myself an expert on other religious  
22 faiths.

23 Q The same would apply to whether or not Islam -- if people  
24 of the Muslim faith had those beliefs, you couldn't speak to  
25 that?

1 A I'm a rabbi.

2 Q I know that sometimes rabbis and other people study other  
3 religions as well. I just had to ask the question.

4 A I have extensively, but I believe in letting other people  
5 speak for themselves.

6 Q Okay. Fair enough. The documents -- and I'm going to be  
7 referring to Plaintiff's Exhibit CSE-8. Do you have that  
8 document, Rabbi?

9 A I do.

10 Q And this was a resolution that was passed by an  
11 organization that you're a member of. Is that right?

12 A Yes, it is.

13 Q And that's the Central Conference of American Rabbis?

14 A Yes.

15 Q Is that a Reform movement group only or is it a mixture of  
16 Reform and other denominations?

17 A It is a Reform member group.

18 Q Okay. And I would like to point to on the second page  
19 the -- where it says the first -- the first paragraph on the  
20 second page that says, "Further resolved." Could you read that  
21 paragraph and the next paragraph for us, Rabbi.

22 A Yes. "Further resolved that we recognize the diversity of  
23 the opinion within our ranks on this issue. We support the  
24 decision of those who choose to officiate at rituals of union  
25 for same gender couples, and we support the decision of those

1 who do not. And further resolved that we call upon the CCAR,  
2 Central Conference of American Rabbis, to support all  
3 colleagues in their choices in this matter."

4 MR. GOODWIN: One moment, Your Honor, to consult with  
5 cocounsel.

6 THE COURT: Okay.

7 (Short Pause)

8 MR. GOODWIN: I tender the witness, Your Honor.

9 THE COURT: Thank you, Mr. Goodwin. Any redirect?

10 MR. TABER: We have nothing further, Your Honor.

11 Thank you.

12 THE COURT: All right. Rabbi Simons, you may step  
13 down. Thank you so much for your testimony. You may call your  
14 next witness.

15 MR. DIETER: Thank you, Your Honor. At this time the  
16 plaintiffs would like to call Reverend Susan Hrostowski to the  
17 stand, please.

18 (Witness Sworn)

19 THE COURT: Reverend, you've been in the courtroom the  
20 whole time. Right?

21 THE WITNESS: Yes, sir.

22 THE COURT: You've heard the instructions that I've  
23 given?

24 THE WITNESS: Yes, sir.

25 THE COURT: You'll abide by them?

1 THE WITNESS: Yes, sir.

2 REVEREND SUSAN HROSTOWSKI,

3 Having first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DIETER:

6 Q Could you please state your name for the record.

7 A Susan Hrostowski.

8 Q Ms. Hrostowski, have you ever testified in court before?

9 A I have.

10 Q When was that?

11 A Last November I was in this very building testifying in a  
12 suit in which we were trying to get the right to adopt. I was  
13 trying to get the right to adopt my son.

14 Q So why is it that you need to testify in that lawsuit?

15 A Well, I'll tell you the whole long story. My wife and I  
16 have been together for 27 years, and when we had been together  
17 for about four years we decided we'd like to have a child, and  
18 we decided that my wife would bear the child by artificial  
19 insemination and once he was born I would do a second-parent  
20 adoption.

21 When my wife Kathy was about eight months pregnant, a bill  
22 came up in the legislature that said no two people of the same  
23 gender could adopt a child and that precluded second-parent  
24 adoptions, and that was signed into law when my son was six  
25 weeks old.

1 Q What did that feel like to be unable to adopt your son?

2 A It was devastating. It was devastating. We had planned  
3 this -- it was such a joyful moment to welcome him into the  
4 world, and then this law barred us from being affirmed and  
5 validated as a family. It barred us from certain financial  
6 securities and legal securities. It made us a little paranoid,  
7 to tell you the truth. So I was worried that people were going  
8 to come and take them away from us because we were two people  
9 of the same gender with a baby in our house.

10 Q What was the outcome of that lawsuit?

11 A Well, we won, and then I was able to adopt my son just this  
12 past April. He's now 16.

13 Q Congratulations.

14 A Thank you.

15 Q What did that feel like?

16 A I was so overjoyed. It was -- it was like the second best  
17 day after his birth. It was just -- again, it was that  
18 affirmation that we are a family and that our state recognizes  
19 that and that we have all the privileges and responsibilities  
20 associated with that. So it was wonderful. And, again, it  
21 gave us that sense of security that's just indescribable.

22 Q Did you celebrate at all?

23 A We did. And my in-laws, my wife's family, sent me a  
24 bouquet of flowers with a note that said, "Congratulations,  
25 it's a boy." He's six foot one and weighs 185 pounds.

1 Q So tell me how long did that -- those feelings you  
2 experienced and how long did that last?

3 A Unfortunately not very long. It was -- we were riding high  
4 on that waive of, you know, we are making progress here. We  
5 have lived to see our marriage be legalized and validated,  
6 which we didn't think we would ever live to see. And then I  
7 got to adopt my son, which I was worried I wouldn't live to  
8 see. And then 1523.

9 So you know you kind of have this feeling like -- I'm a dog  
10 lover. You have this feeling like you're a dog on a long  
11 leash, and you're running and running and you think you're  
12 free, and then you get jerked back by the neck, you know. So  
13 it was very devastating.

14 Q Let's back up for a minute and make sure we get some of the  
15 key background facts on record. Could you just tell us,  
16 please, where do you live?

17 A I live in Hattiesburg.

18 Q Do you live with anybody?

19 A I live with my wife, Kathy, and my son Hudson.

20 Q Where were you born, Reverend?

21 A I was born in Savannah, Georgia. My father was in the Air  
22 Force and so we moved around a bit. But I was born towards the  
23 end of his career. So we moved to Mississippi when he was  
24 stationed at Keesler from where he retired, and so that -- I  
25 was almost seven when we moved to Gulfport.

1 Q Then how long did you live in Gulfport?

2 A All through school, all through undergraduate school, and  
3 then I worked for Mississippi Power Company for five years when  
4 I decided to go to seminary. So all through -- from seven  
5 until I was in the mid 20s.

6 Q Okay. And you mentioned you went to undergraduate. Where  
7 was that at?

8 A University of Southern Mississippi.

9 Q And then I know you also mentioned seminary. Did you get  
10 any degrees beyond college?

11 A I got a master's of divinity at Virginia Logical Seminary,  
12 and then I worked in the parishes for a while, and then I  
13 started doing mental health and alcohol and drug  
14 rehabilitation, which led me to go get a master's of social  
15 work at University of Southern Mississippi. And then I got  
16 interested in academia and so I went and got a Ph.D. in social  
17 work from Tulane University in New Orleans.

18 Q Woman of many interests and degrees, it sounds like. So  
19 that first degree you mentioned, the master's of divinity,  
20 could you just tell us what topics do you study to earn that  
21 did degree?

22 A Scripture classes, Old Testament and New Testament  
23 scripture classes, ethics, systematic theology, pastoral care,  
24 and homiletics.

25 Q Homiletics: What is that?

1 A The art of preaching.

2 Q And what is it that led you to enroll in that program?

3 A Well, right after my undergraduate program, I began working  
4 for Mississippi Power Company. And as a very young person, I  
5 had a position of some responsibility so I was in my very early  
6 20s running the payroll department for a major utility company  
7 and make something pretty nice money. So I had this really  
8 nice condo on the beach, I had a car and a sailboat, and yet my  
9 life felt really empty.

10 And I just -- I wanted to do something that had more  
11 meaning and depth and was in service to humanity. So I love  
12 church, and so I was at church every time the doors opened and  
13 started a conversation with my priest, who was my mentor, and  
14 then finally came to the realization that I had a call to the  
15 ordained ministry.

16 Q So what is it that you do now?

17 A Well, two things. I'm an social professor of social work  
18 at the University of Southern Mississippi, and I'm the vicar of  
19 a church in Collins, Mississippi, St. Elizabeth's.

20 Q When whether you say "a vicar," what does that mean?

21 A A vicar is the priest in charge of a small congregation.

22 Q Okay. So what would your duties be like as a vicar of this  
23 congregation?

24 A On Sundays I lead worship. I celebrate the Holy Eucharist,  
25 which is the principal service on a Sunday. And, of course



1 perform other sacraments as they are needed. I teach Christian  
2 education. I do pastoral care so I counsel with people when  
3 they are in crisis. I visit people when they are sick or  
4 having surgery or when a loved one has died, those kinds of  
5 things.

6 Q Do you ever perform wedding ceremonies?

7 A I do.

8 Q If you could just briefly walk us through, what is the  
9 process you go through if a couple were to come to you and ask  
10 you to do their wedding?

11 A When a couple comes to me and asks me if I'll officiate at  
12 their wedding, the first thing I think about is: Is there a  
13 relationship? Do I have a relationship with them? And why are  
14 they asking me to do this? And, you know, there's people who  
15 will -- who are unchurched and they just decide they want to  
16 get married, and they say, *Who do you know that can marry us?*  
17 *And so, A friend of a friend of a friend gave me your number*  
18 *and said you might marry us.*

19 No. No. You can go to the justice of the peace if that's  
20 not important to you that you have a relationship of some kind.  
21 You know, if there's not some kind of either relationship  
22 with -- not necessarily my church but some church. Why do you  
23 want a church wedding or why do you want to be married by a  
24 clergy person if that's -- so it is all about relationship.

25 Then the other thing is that I require everyone whose

1 marriage I perform to have premarital counseling. So I'll  
2 either do that myself or if I've known them for a long time and  
3 I don't think it can be objective, then I'll refer them out to  
4 a mental health therapist or another clergy person to do their  
5 premarital counseling. So when there's some kind of issue that  
6 you just know that this is going to cause a problem later down  
7 the line, abuse, for example, then we say, *No, I'm not going do*  
8 *that.*

9 Q Have you ever had a gay or a lesbian couple come to you and  
10 ask you to do their wedding ceremony?

11 A Sure, yes.

12 Q Tell us what process would you go through if that would  
13 happen?

14 A The exact same process. It is not any different.

15 Q And why is that? Why would you use the same process for a  
16 gay or lesbian couple as a straight one?

17 A There's no difference. You have two people who want to be  
18 joined in holy matrimony and so there's no reason for them to  
19 be treated any differently.

20 Q Is there any theological basis for your decision in that  
21 matter?

22 A I guess everything is based in the great commandment  
23 that -- "Love one another as I have loved you," is what Jesus  
24 said. Right? So pretty much it is based on that. And the  
25 dignity and worth of every human being. In the Episcopal

1 Church, our baptismal vows include, Will you uphold the dignity  
2 and worth of every human being? Will you seek and serve Christ  
3 in all persons? And so you know that's the basis that we treat  
4 everyone with dignity and respect.

5 Q So does the Episcopal Church have a position as to the  
6 marriages of gay or lesbian couples?

7 A It does. After years of committee work -- and that's the  
8 old joke about the Episcopal Church. On the seventh day, God  
9 created a committee. So after years of study -- in the  
10 Episcopal Church, we say that faith is a three-legging stool:  
11 Scripture, tradition, and reason. And all three of those are  
12 held in equal esteem, have equal weight. So after years of  
13 considering the question, when meeting in general convention,  
14 it is our tri-annual convention of representatives of the  
15 Episcopal Church, both lay and ordained, we voted to open holy  
16 matrimony to all people.

17 MR. DIETER: Your Honor, may I approach the witness?

18 THE COURT: Yes, you may.

19 BY MR. DIETER:

20 Q Reverend, I've handed you a document that's labeled  
21 Plaintiff's Exhibit CSE-2, if you would take a look. Do you  
22 know what this document is?

23 A I do. This is a letter from my bishop, Bryan Seage, to all  
24 the clergy in the diocese of Mississippi.

25 Q Did you receive this letter?

1 A Yes.

2 Q What is your understanding as to the purpose of this  
3 letter?

4 A Bishop Seage, who is a relatively new bishop -- he's just  
5 been our bishop for a couple of years -- is changing a policy.  
6 Under our previous bishop, Duncan Gray, when a same-sex couple  
7 wanted to be married in the church, the priest had to have his  
8 congregation or her congregation go through a long study  
9 process, and the vestry had to vote and then still the priest  
10 had to call the bishop and get permission to perform that  
11 service. And so with our new bishop, Bryan Seage, he is  
12 changing that to say to all the clergy, *If you want to perform*  
13 *gay marriages, perform them. If you don't, don't.*

14 Q When you say "bishop," just to clarify, could you explain  
15 what a bishop is?

16 A The bishop is what -- we call him the defender of the  
17 faith. Right? So the bishop is the leader of a diocese, and a  
18 diocese is a number of Episcopal congregations usually in a  
19 geographic area. In the state of Mississippi, all of  
20 Mississippi is one diocese.

21 Q To the extent that you have an understanding, how is that  
22 the Episcopal Church as a whole came to arrive at its position  
23 on gay and lesbian couples and their marriages?

24 A Well, again, you know, because we look at scripture,  
25 tradition and reason, and because we understand that cultures

1 change and life changes and because -- we know that we are  
2 imperfect people and we see things more clearly the more  
3 information we take in. So over those years when committees  
4 were studying the question of gay marriage, it just became more  
5 and more clear this was the right thing to do. So it was voted  
6 on the both the laity and clergy and was passed.

7 MR. DIETER: Your Honor, may I approach once more?

8 THE COURT: Yes, you may.

9 BY MR. DIETER:

10 Q The document I just handed the witness is Defendant's  
11 Exhibit 1. I believe both counsel and the court has a copy of  
12 it. Reverend, are you familiar with this document?

13 A I am.

14 Q And can you please tell us what that document is.

15 A This is HB 1523.

16 Q Could you read allowed for the court, please, just section  
17 2(a) near the bottom of the page.

18 A "Marriage is or should be recognized as the union of one  
19 man and one woman."

20 Q And we've touched on this some, but how is it that this  
21 belief that you just read compares to your own religious  
22 beliefs?

23 A It is incomplete, because it does not include gay and  
24 lesbian couples.

25 Q And how does it compare with the Episcopal Church's

1 beliefs?

2 A Again it would be incomplete because now holy matrimony is  
3 available to again both straight and gay couples.

4 Q Looking a little bit further down in that exhibit to line  
5 2(b), could you please read that allowed for the court?

6 A Sexual relations are properly reserved to such a marriage.

7 Q So what are your own religious views on this subject?

8 A First of all, sexual relations are only reserved to such a  
9 marriage which would be between one man and one woman,  
10 according to this document, which, as I said, is incomplete.

11 And, secondly, I would say that, you know, ideally, ideally  
12 we like to see people -- here's the thing. Sex is a gift from  
13 God, and it is precious and wonderful and should be treated as  
14 such. So when you have a gift that's precious and wonderful,  
15 you care for it. You take care of it.

16 And so ideally sexual relations should be within the bonds  
17 of a caring and committed relationship. That's the ideal. But  
18 we all know that we are human. And so, you know, you cannot  
19 really hold fast to that as, you know, this is just the way it  
20 is all the time.

21 Q So if, for example, you had a couple come into your  
22 congregation seeking to participate in communion and you knew  
23 that couple wasn't married but you also knew they were in a  
24 sexual relationship, how would you respond to that? Would you  
25 serve them communion?

1 A Absolutely. Absolutely.

2 Q Why is that?

3 A Well, they are children of God who are seeking  
4 participation in the table of the Lord. I mean, to me, this is  
5 what Jesus was all about. I can't imagine barring someone from  
6 the Holy Eucharist. Jesus came first to the marginalized, the  
7 sinful, the people who had been ostracized by the establishment  
8 and said, *Come on in*. You know, this is what Jesus was all  
9 about, showing God's love. While we were yet sinners, Jesus  
10 came to us and welcomed us back home. So who would I be to bar  
11 someone from communion when they are seeking grace and peace  
12 and the love of God.

13 Q And if that same couple came to you and asked you to  
14 perform their wedding and you knew that they had a sexual  
15 relationship before being married, how would you respond to  
16 that?

17 A I would be overjoyed. Hallelujah. Come on. Of course,  
18 you know, we want to make sure that through premarital  
19 counseling that this is a couple that really needs to be  
20 together and then through prayer and consideration, you know,  
21 we say, *Yes, let's honor this relationship and let's* -- the  
22 thing about marriage is, it's not just between the two people.  
23 It's not just between -- it is a covenant between the couple  
24 and the community, much like what the rabbi was describing.

25 So in the Episcopal Church, we do the vows between the

1 couple, and then we lift our heads up and say to the  
2 congregation, *Will all of you present do all in your power to*  
3 *uphold these two people in their life together?* So it is a  
4 covenant not -- again not just between the two but between the  
5 couple and the congregation. And so whether a couple whose  
6 already been intimate decides to honor that and to solidify  
7 that relationship and to enter into holy matrimony, that's  
8 cause for great celebration.

9 Q Going back for the exhibit just once more, would you read  
10 Section 2 line (c) aloud, please.

11 A Sure. "Male (man) or female (woman) refer to an  
12 individual's immutable biological sex as objectively determined  
13 by anatomy and genetics at the time of birth."

14 Q And how does that line from the statute, how does that  
15 compare with your own religious beliefs?

16 A It's not at all in keeping with my own beliefs.

17 Q And what are those beliefs that you have on this topic?

18 A From time to time people are born with a gender identity  
19 that is incongruous with their -- the manifestation of their  
20 physicality, and those people often undergo great  
21 psychological, emotional, and spiritual distress. And so they  
22 deserve our care and our love.

23 And, you know, here's the thing. There have always been  
24 homosexuals. There are always been homosexuals. It is not a  
25 fad or nothing new. There have always been transgender people,



1 as the rabbi noted. There are always been transgender people.

2 When you read in the Bible about eunuchs, eunuchs are  
3 transgender people. And St. Philip was happy when he was able  
4 to preach the gospel to the eunuch and he accepted Jesus as his  
5 Lord and Savior, and that was a glorious day.

6 So if you've ever met anyone who felt that they were in the  
7 wrong body, you would understand their pain and their angst and  
8 you would understand how good it feels for them to finally be  
9 able to be in congruence with who they feel they are on the  
10 inside and who they are on the outside.

11 Q Does the Episcopal Church as a whole have any beliefs about  
12 gender identity?

13 A At general convention, which I was describing earlier, we  
14 have passed several transaffirming resolutions, and we have  
15 another committee right now working on developing liturgies for  
16 name changes for transgender people.

17 Q If we step back from those specific beliefs for just a  
18 moment and look at all three of the briefs listed in the  
19 statute together, do these combined beliefs, do they convey any  
20 message to you?

21 A Unfortunately, they convey a message to me that the State  
22 wants to hold certain people, that would be gay men, lesbians  
23 and transgender people, to be less worthy and have less dignity  
24 than other human beings.

25 Q And how does the combined message of those three beliefs

1 compare to the teachings of the Episcopal Church?

2 A They would be antithetical, I would think. You know,  
3 Jesus -- I get so frustrated. We have a brand new presiding  
4 bishop of the Episcopal Church, the national Episcopal Church  
5 named Bishop Curry, and he's talking about the Jesus Movement.  
6 We're all about the Jesus Movement. We need to remind people  
7 about what Jesus was really about.

8 So there are a couple of things. Like my favorite parable  
9 to point to here -- and there are several. But the parable of  
10 the good Samaritan. And here's what happens is what German  
11 Biblical scholars called the *Sitz im Leben*, the life situation,  
12 is lost on us now all of these thousands of years later.  
13 Right? We don't understand the sociology of what was going on  
14 at the time that Jesus was speaking.

15 So in the parable of the good Samaritan, of course, this  
16 young man says, *What must I do to inherit life?* Jesus  
17 says -- you know the scripture. Right? And so he says, *Thou*  
18 *shall love your neighbor as yourself.* And the question becomes  
19 who is my neighbor?

20 So Jesus tells the story of the good Samaritan. There's a  
21 man beaten up and laying for dead on the side the road. The  
22 Levite goes by, pays him no attention. Priest goes by, pays  
23 him no attention. The Samaritan comes by and the Samaritan  
24 cares for him and takes him to an inn and pays for his care.

25 So then Jesus asks, *Who was the neighbor?* See, what we

1 don't realize is that Samaritans and Jews hated each other and  
2 that Samaritans were dirty unclean dogs. And so that's -- the  
3 punchline of that parable was radical and offensive to Jesus'  
4 listener, and what he was saying to them is, *These people that*  
5 *you marginalize, these people that you call dirty and unclean*  
6 *and unworthy, that's your neighbor.*

7 So anytime -- again going back to dignity and worth.

8 Anytime we don't show dignity and value the worth of any human  
9 being, then I think we're doing a disservice to the gospel,  
10 which is, God loves you so much, right, that he gave his only  
11 begotten son and not just you or you and leave out them, but  
12 everybody. And so these kinds of things, they break my heart  
13 is what they do. They make me very sad.

14 Q And what was your reaction? Was that your reaction as a  
15 minister to finding out that HB 1523 had passed?

16 A Yeah, that was certainly part of it. I have to say I was  
17 very sad. And then I was very angry because one of the things  
18 that happens is that this is represented as the Christian view.  
19 This kind of devaluing of the human lives of gay and lesbian  
20 and transgender people, that condemnation, that judgmentalism  
21 is seen as that's what Christians are. And, no, that is the  
22 antithesis of the message of Jesus. That is the antithesis of  
23 the gospel.

24 And so I become angry. And then I was listening -- I  
25 listened to the debate in the senate, and I was taken with the

1 fact that many African-American senators rose in opposition and  
2 said, *This is exactly what they did to us. This is exactly*  
3 *what they did to us. They proof texted. You pull out little*  
4 *pieces of scripture, and you say, This is -- you know, this is*  
5 *why we should be able to oppress these individuals. And then I*  
6 *see that the governor says, The only people who are opposing*  
7 *this are the secular folks.*

8 No, we've raised our voices. We have let it be known there  
9 are Christians out there who have an opposite belief. And then  
10 when he says, *Christians will line up to be crucified for this,*  
11 *that is perverted. That is in my mind blasphemy. Jesus was*  
12 *crucified as an atonement for human sin, not so that we could*  
13 *oppress one another.*

14 Q You mentioned that you're also a social worker and a  
15 professor of social work.

16 A Yes.

17 Q What was your reaction to HB 1523's enactment as a social  
18 worker?

19 A Right away I think about a code of ethics. As a licensed  
20 social worker -- all licensed social workers must abide by the  
21 code of ethics of social workers. And in the code of ethics,  
22 there are several tenets that are in direct opposition of this.  
23 First is that we treat every person with dignity and worth --  
24 sounds like the Episcopal Church, huh -- also that we strive  
25 for social justice for all people, and that we honor human

1 relationships. Now, if I or any other social worker behaves  
2 contrary to that code of ethics, we lose our license. So  
3 it's -- my personal identity is bound up in this, both as a  
4 priest and as a social worker.

5 Q What about as a lesbian Mississippian, what was your  
6 reaction, your personal reaction, to of enactment of HB 1523?

7 A Again it's just so sad and that feeling of you're going to  
8 make progress, going to make progress, going to make progress,  
9 and then no. And I'll tell you that it's -- it's very -- it's  
10 a very viscerale feeling, like you're sick to your stomach.  
11 One day you are feeling great. You know, my family is great.  
12 We have been affirmed. We have been validated. We are almost  
13 free.

14 And then when 1523 passed the senate and was signed by the  
15 governor, then all that fear, all of that insecurity comes back  
16 to the old days when you -- you don't know what restaurant  
17 you're going to be able to go into without being denied. You  
18 don't know if you're going to be -- if you call -- like I said,  
19 keep calling and the air conditioner repairman is going to show  
20 up at my house and say, *I'm not going to fix your air*  
21 *conditioner because you're gay.* So you don't know except for  
22 the people that you've done business with before and those  
23 friends of ours who have been kind enough to put up signs on  
24 their places of business.

25 This was another thing that bothered me about in the senate

1 debate, there were a couple of other things that really  
2 bothered me. So one senator rose to offer a friendly amendment  
3 and said, *Okay, clearly y'all are going to pass this, but*  
4 *please why can't you get add to this an amend that says, If*  
5 *you're going to discriminate, please post a sign to save people*  
6 *from going in and being humiliated. No, wouldn't have it.*  
7 *Wouldn't have it. So that tells me -- what does that tell me?*  
8 *That tells me you want me to walk in and be humiliated.*

9 And then, you know, listening to the senator argue for this  
10 bill and somebody said -- you know, when you talk about  
11 strongly held religious or moral belief, so a senator rose in  
12 opposition and said, *What about people who have sincerely held*  
13 *moral convictions about alcohol or about gambling? And she*  
14 *said, the senator in favor said, No, this is just about LGBT.*  
15 *She repeated that. I guess y'all have that transcript*  
16 *somewhere.*

17 But that -- to sit there as a Mississippian and listen to  
18 people talk about you in that way, you know, when we just live  
19 our lives and try to be productive Mississippians and  
20 contribute to the state, like teach at a public university --  
21 my wife runs a nonprofit organization to help people with AIDS.  
22 We send our kid to school. We mow our lawn. We pay our taxes.  
23 And yet we are singled out as less than by our own government.  
24 It's just -- I can't describe it to you.

25 Q That indescribable feeling, have you ever felt anything

1 like it before?

2 A When they passed the law that said I couldn't adopt my own  
3 son, yeah.

4 Q Thank you very much for your time.

5 A Thank you.

6 MR. DIETER: No further questions at this time.

7 THE COURT: Okay. Thank you, Mr. McDuff?

8 MR. McDUFF: I have one thing that comes to mind that  
9 I'd like to ask her.

10 THE COURT: You may.

11 DIRECT EXAMINATION

12 BY MR. McDUFF:

13 Q I have two things I want to ask you, one of which is  
14 biographical. You didn't have time to lay out all of your  
15 impressive professional history, but one of the jobs you had  
16 was assistant priest at Trinity Episcopal Church in Hattiesburg  
17 for a while where my parents were members of your flock.

18 A Yes.

19 Q The church in which I grew up. I want to ask you about  
20 this. The statute speaks of sincerely held religious beliefs  
21 or moral convictions.

22 A Uh-huh.

23 Q Do you as a minister and as a person of faith, are your  
24 sincerely held religious beliefs on these issues something  
25 separate from your moral convictions, or are they part and

1 parcel of the same thing?

2 A Oh, they are the same thing.

3 Q Do your moral convictions stem from your religious beliefs?

4 A Absolutely.

5 Q You are the vicar of a church.

6 A Uh-huh.

7 Q You work at a university. I assume you have discussed  
8 these issues with a lot of people.

9 A Yes.

10 Q You -- have you discuss these issues with people who agree  
11 with you?

12 A Yes.

13 Q And have you discussed these issues with people, including  
14 some of your own parishioners, who agree were the positions  
15 endorsed by the State?

16 A Yes.

17 Q For these people on both sides of the issues, people of  
18 faith with whom you have discuss these issues, are their moral  
19 convictions separate from their sincerely held religious  
20 beliefs or are they part and parcel of the same package?

21 A They are part and parcel of the same package.

22 Q Do they -- from your conversations with them, do their  
23 moral convictions stem from their sincerely held religious  
24 belief?

25 A Absolutely.



1 MR. McDUFF: Thank you.

2 CROSS-EXAMINATION

3 BY MR. MIRACLE:

4 Q Good afternoon.

5 A How are you?

6 Q Doctor or Reverend?

7 A Whichever. Susan.

8 Q Reverend Hrostowski, you testified about your last  
9 appearance in this courthouse, and I was actually in the  
10 courtroom that day.

11 A Yes, sir.

12 Q And you testified about why you were here that day for the  
13 adoption. You'd agree with me, wouldn't you, that as it  
14 related to the adoption of your son, there was actually a  
15 statute that prohibited you -- I think you testified that  
16 actually prohibited you from adopting him prior to the change  
17 in that law. Is that correct?

18 A That's correct.

19 Q Would you agree with me that unlike the adoption statute  
20 that prevented you from legally adopting, you'd agree with me,  
21 wouldn't you, that HB 1523 does not have any similar provisions  
22 that prevent you from doing anything in your life.

23 A That's correct. I would agree.

24 Q And I should have asked this first, and I'll back up. I  
25 presume from your testimony already that you have before coming

1 in here today read HB 1523 from front to back.

2 A Yes.

3 Q So you --

4 A That's not to say I can remember all of it.

5 Q I understand. Some bills are a lot longer than 13 pages so  
6 we're glad this one is only 13 pages.

7 A That's right.

8 Q So you would agree with me that unlike the prohibition that  
9 you couldn't legally adopt, this bill is different in that  
10 respect. There's nothing that you are legally prohibited from  
11 doing under this statute. Correct?

12 A That's correct.

13 Q Now, your counsel referred you to I believe you still have  
14 it in front of you CSE-2 the letter from the bishop.

15 A Right.

16 Q And it's Bishop --

17 A Seage.

18 Q -- Seage.

19 A It looks like it is "siege" but it is pronounced "sage."

20 Q That's what I thought I understood you to say.

21 A S-E-A-G-E.

22 Q And, Reverend, if you would, turn to page 2 of that letter,  
23 if you would, for me. Would you mind reading slowly so the  
24 court reporter doesn't get mad at us, read for me the first  
25 paragraph on the top of that page 2.

1 A "It is my responsibility as bishop to provide access to the  
2 marriage liturgies approved for trial use by general convention  
3 2015. I realize that some of our clergy are willing to  
4 officiate and solemnize the marriage of same-sex couples while  
5 others are not. I respect the faith and ministry of anyone who  
6 is 'unable' to solemnize the marriages of same-sex couples  
7 because of their own conscience or because of their  
8 determination that to do so would cause irreparable harm to the  
9 unity of the congregation they serve. All clergy have my  
10 support and will not face any disciplinary measures simply  
11 because of their personal theological position."

12 And that's from Skirving 2015.

13 Q What is Skirving 2015?

14 A That is -- comes from a document that came out of general  
15 convention in 2015. "My only request is that you refer to me  
16 any same-sex couples seeking marriage so arrangements can be  
17 made to offer these services of the church."

18 Q Thank you. So can you tell me what is your understanding  
19 -- I know you didn't write this letter, but what is your  
20 understanding as you read that particular paragraph which  
21 reflected the sentiments of the bishop?

22 A If there are any clergy in the diocese who prefer not to  
23 perform same-sex marriages, that they are not under any orders  
24 from the bishop to do so.

25 Q So I take it implicit in that statement is that there are

1 clergy within the denomination that wish not to perform  
2 same-sex marriage.

3 A That's correct, uh-huh.

4 Q Now -- and again I know you didn't write this letter, but  
5 what is your understanding of the portion of that where he says  
6 that, "Because of their own conscience or because of their  
7 determination that to do so would cause irreparable harm to the  
8 unity of the congregation they serve." What is your  
9 understanding of what he meant by that?

10 A In some congregations, there's a split within the  
11 congregation where some people believe that gay and lesbians  
12 should be able to marry within the church and some don't. And  
13 so if the clergy person in some of those churches were to make  
14 a decision to go ahead and perform those marriages, it would  
15 cause a split. And so then, of course, that would leave the  
16 church in bad straights.

17 Q So the divisions are that deep still that the bishop  
18 recognizes that to do so could cause actual harm to a  
19 congregation causing to it split apart.

20 A Right. In a couple of congregations, yeah.

21 Q What is your understanding of him conveying in this letter  
22 that no disciplinary measures would be taken because of their  
23 decision not to perform? What disciplinary measures could have  
24 been taken?

25 A To be real frank with you, there are not very many. You

1 can be censored, I suppose. But in the Episcopal Church, what  
2 happens when people are -- receive discipline -- when a clergy  
3 person is disciplined by the bishop, perhaps they would be  
4 reassigned for awhile. Or, you know, in worst case scenario  
5 they would be asked to rescind their holy orders.

6 Q So as I appreciate what the bishop is conveying is that the  
7 clergy is free to make a decision without fear of their  
8 denomination taking any action against them. Is that correct?

9 A That's correct.

10 Q Do you have the HB 1523 in front of you?

11 A I do.

12 Q Would you turn to page -- it's going page 2, I believe.

13 Page 2 Section 3.

14 A Uh-huh.

15 Q We've talked a lot today, and you've been in the courtroom  
16 the entire day. Correct?

17 A Yes, I have.

18 Q We've talked a lot about Section 2(a), (b) and (c) and the  
19 definitions. I want to talk to you a little about some of what  
20 the bill actually does. Will you like at Section 3. And if  
21 you would, after the number 1, if you would read down to after  
22 the word "organization."

23 A "The state government shall not take any discriminatory  
24 action against a religious organization wholly or partially on  
25 the basis of that organization.

1 Q Thank you. And do you remember the testimony earlier this  
2 morning -- and we can refer back to -- if you will look at page  
3 11. I'm sorry. Page 12. If you look at the letter (b) at the  
4 top of the page. Do you see that?

5 A Uh-huh.

6 Q Could you read that for me?

7 A "A religious group, corporation, association, school, or  
8 educational institution, ministry order, society, or similar  
9 entity, regardless of whether it is integrated or affiliated  
10 with a church or other houses of worship and" -- you want me to  
11 keep going?

12 Q That's fine. Thank you. Would you agree with me looking  
13 back on the previous page under number 4, what you just read is  
14 defining what religious organization means for purposes of this  
15 bill?

16 A Yes.

17 Q Okay. Now, based on your testimony, I presume you would  
18 not want to see any clergy in your denomination subject to any  
19 kind of punishment for their personal beliefs one way or the  
20 other, whether it was to solemnize same-sex marriage or to not  
21 do so. Correct?

22 A Yes.

23 Q And you'd agree with me that Section 3(1) specifically says  
24 that the state government shall not take any discriminatory  
25 action against a religious organization wholly or in part for

1 the -- partially on the basis that such organization -- and  
2 then it goes on to discuss solemnizing marriages.

3 A Right.

4 Q So would you agree with me that you would not want to see  
5 any one of your fellow clergymen subject to any action by the  
6 State should they choose not to solemnize a same-sex marriage?

7 A That's correct.

8 Q Would you agree with me that Section 3 protects that from  
9 occurring?

10 MS. KAPLAN: Objection, Your Honor.

11 THE COURT: What the basis of your objection?

12 MS. KAPLAN: It's protected by the First Amendment of  
13 the United States Constitution.

14 THE COURT: Could you repeat that question, Mr.  
15 Miracle?

16 BY MR. MIRACLE:

17 Q You agree with me -- we read the Section 3(1) a moment ago.  
18 Correct?

19 A Right.

20 Q It says, "The state government shall not take any  
21 discriminatory action against a religious organization wholly  
22 or partially on the basis that such organization (a) solemnizes  
23 or declines to solemnize any marriage."

24 A Uh-huh.

25 Q All I'm asking you is: You would agree with me that you

1 would not want to see any one of your fellow clergy members  
2 disciplined by your own denomination or by the State, for that  
3 matter, for not solemnizing the same-sex marriage, would you?

4 A Yes.

5 Q You would not --

6 THE COURT: Hold on. Before you answer, what's the  
7 basis of your objection?

8 MS. KAPLAN: "Denomination" is fine. The use of the  
9 word "or by the State" is -- he knows that's an improper  
10 question because the State has no authority for 250 years in  
11 this nation to discipline a clergy for not following religious  
12 doctrine.

13 MR. MIRACLE: Your Honor, that's a speaking objection.

14 THE COURT: Repeat the question.

15 BY MR. MIRACLE:

16 Q I was simply reading from the statute which says that,  
17 "State government" --

18 THE COURT: But point the court directly to what --  
19 where you are reading from from the statute?

20 MR. MIRACLE: Page 2, Section 3(1).

21 THE COURT: Now, repeat your question.

22 BY MR. MIRACLE:

23 Q You understand what we have just had you read. Correct?

24 A Right.

25 Q My question is: You would agree with me that you -- based



1 on your prior testimony, as I appreciate it, you would not want  
2 to see any of your fellow clergy members subject to any  
3 disciplinary action by the state government as set forth in  
4 Section 3(1) or by your own denomination.

5 THE COURT: Any objection?

6 MS. KAPLAN: Not to that question, Your Honor.

7 THE COURT: Okay. You may answer.

8 A I'm a little bit confused in that --

9 BY MR. MIRACLE:

10 Q Let me simplify it. You would not want to see any clergy  
11 member of any denomination, your denomination or any other  
12 denomination, subject to any disciplinary matters by anyone for  
13 not performing a same-sex marriage. Correct?

14 A As -- yes. I'm just going to say yes.

15 Q Thank you. You had indicated that when someone comes to  
16 you to marry, you have a process, it sounds like, that you go  
17 through. And you indicated, if I appreciated your testimony,  
18 that you may choose not to marry a couple, whomever it may be,  
19 for a variety of reasons.

20 A That's correct.

21 Q And there could be an infinite number of reasons you make  
22 that decision?

23 A That's right.

24 Q Have you ever declined to solemnize a same-sex marriage for  
25 any other reasons that you had talked about?

1 A I have.

2 Q Okay. Now, you testified -- and correct me if I paraphrase  
3 incorrectly, but you testified that you feel like HB 1523  
4 conveys a message that the State wants to hold certain people  
5 less worthy. Is that a fair characterization of your  
6 testimony?

7 A Uh-huh, yes.

8 Q And as I understand your testimony, you feel yourself to be  
9 included in that group of feeling less worthy.

10 A Yes.

11 Q Okay. Your testimony is not that -- strike that. You  
12 don't believe that people that hold beliefs that are not the  
13 same as yours are less worthy either, do you?

14 A No.

15 Q So the fact that people that may disagree with same-sex  
16 marriage, they should not be deemed any less worthy than people  
17 who hold the opposite belief, should they?

18 A That's correct. I agree.

19 Q You also testified along these lines that 1523 conveys a  
20 Christian view, and I wrote that down. And if I wrote that  
21 down incorrectly, please tell me. But that the bill does not  
22 convey a message that you want conveyed, but it conveys a  
23 Christian view. Would you agree with me that the HB 1523  
24 doesn't use the word "Christian" anywhere in it?

25 A Right. I see what you're saying. And you're right. It

1 does not use the word "Christian." And perhaps I misspoke  
2 because what I was saying is that it does not reflect a  
3 Christian view, but it is labeled as and it is seen as a  
4 Christian view because it is endorsed by the Christian right.

5 Q But you'd agree with me nowhere on the face of the bill  
6 does it talk about Christian views.

7 A Yes.

8 Q And I believe the question was asked of the rabbi, and he  
9 deferred. But I'll ask the same question of you. Are you  
10 aware of whether any nonChristian denominations or sects  
11 believe doctrinally that same-sex marriage should not be  
12 permitted?

13 A I do not know of one.

14 Q You do not know of one where the faith -- explain your  
15 answer.

16 A Well, you said "nonChristian." Is that what you said?

17 Q Yes.

18 A Right. I don't know of -- myself personally, I don't know  
19 of a nonChristian faith. As the rabbi pointed out, in any  
20 denomination there's plurality of thought. So I don't know of  
21 any denomination or -- of any nonChristian faith that whole --  
22 blanketly says no to gay marriage.

23 Q Are you guessing or are you basing that on anything in  
24 particular?

25 A I don't have that knowledge. I don't know. I don't know

1 of one.

2 Q Thank you. Going back to the bishop's letter, I want to  
3 make sure I close the loop on this. You had testified earlier  
4 that you have spoken to a number of people within your  
5 denomination --

6 A Uh-huh.

7 Q -- who hold views on both sides. Correct?

8 A Yes.

9 Q And I believe Mr. McDuff asked you if those people that you  
10 spoke to separated moral conviction from their religious  
11 beliefs, and I believe you testified that they did not.

12 A Well, let me say this: I can't answer that question for  
13 them. My understanding of how moral convictions develop in a  
14 person is that they come out of their world view and that their  
15 world view is based on their religion, whether that be -- that  
16 might be the religion or lack of religion so that a world view  
17 of an atheist is going to inform his or her moral convictions.  
18 Do you see what I'm saying?

19 Q I just want to make sure when you were responding to  
20 Mr. McDuff's question -- let me put it this way: You cannot  
21 testify that somebody who does not believe in same-sex marriage  
22 doesn't hold that belief for a reason other than religion.

23 A I couldn't testify to that. I couldn't speak for another  
24 person.

25 Q It is very possible that people could have a viewpoint that

1 is not religious based and separate from a moral conviction.

2 A Personally I can't really see how that could be, but I  
3 can't speak for other people.

4 Q Correct. Thank you. Thank you very much for your time.

5 MR. MIRACLE: Your Honor, I tender the witness.

6 THE COURT: Okay. Redirect?

7 REDIRECT EXAMINATION

8 BY MR. DIETER:

9 Q I just have a few questions. You were asked about whether  
10 the word "Christian" appears on the face of this statute.

11 A Uh-huh.

12 Q I take it from your testimony earlier that you listened to  
13 the debate, the legislative debate on this. Is that right?

14 A I did.

15 Q When was that?

16 A I guess it was -- was that March 30th?

17 Q When did you listen to the debate?

18 A We listened to it as it was happening over the Internet.

19 Q And during that legislative debate, was the word  
20 "Christian" used during the debate?

21 A Yes. Yes, it was. I'm trying to remember which context  
22 most -- I remember it most particularly when the  
23 African-American senators rose in objection and talked about  
24 how they used scripture to justify segregation.

25 Q Before HB 1523 was enacted, did you already have the

1 ability to decide for yourself when you would or wouldn't  
2 perform a couple's marriage?

3 A That's correct.

4 Q And regardless of HB 1523 or not, do you believe that the  
5 State of Mississippi has any business in disciplining a  
6 minister for following or not following particular theological  
7 beliefs?

8 A Absolutely not.

9 Q You were also asked just a moment ago about whether HB 1523  
10 prohibits you from doing anything. Do you happen to know  
11 whether HB 1523 would allow you to enforce a Jackson  
12 antidiscrimination ordinance if you and your wife were denied  
13 service at a restaurant?

14 THE COURT: Before you answer, what's your objection?

15 MR. MIRACLE: Lack of foundation, calls for a legal  
16 conclusion, calls for speculation.

17 THE COURT: I'll overrule it. You may ask your  
18 question.

19 BY MR. DIETER:

20 Q The question is simply whether you know if HB 1523 would  
21 allow you to enforce a Jackson antidiscrimination provision if  
22 you and your wife were denied service at a restaurant.

23 A As I understand it, a person who denied us service could  
24 claim an exemption from being sued for discrimination through  
25 this bill.

1 Q And I take it you're not an attorney. Is that correct?

2 A I am not an attorney.

3 Q Okay. Thank you very much.

4 THE COURT: Is this witness finally excused?

5 MS. KAPLAN: She is, Your Honor.

6 THE COURT: All right. You may step down. Thank you  
7 so much. We'll take a 15-minute break. Court's in recess.

8 (Recess)

9 THE COURT: One thing for purposes of the record. I  
10 hope the parties -- the court reporter and I chatted just very,  
11 very briefly on our way out. I see that the rabbi is gone.  
12 The rabbi said a lot of words that -- again, I'm a good  
13 Baptist, and I don't -- but we may have to -- the court  
14 reporter might have to call him at some point in time to ask  
15 him to spell some of those.

16 MS. KAPLAN: Your Honor, we should be able -- both  
17 Mr. Taber and I have some knowledge of this stuff so we may be  
18 able to spell a lot for him.

19 MR. TABER: I've got a sheet that I think identifies  
20 what you're looking for.

21 MS. KAPLAN: Written in the rabbi's hand.

22 THE COURT: Okay.

23 MR. BARNES: No objection to the cheat sheet.

24 THE COURT: Again we just want to make sure that the  
25 record is as accurate as possible. In the English language,

1 sometimes two words spelled the same way can have totally  
2 different meanings. Or phonetically, they could definitely  
3 have different meanings.

4 Are we ready to call our next witness?

5 MR. McDUFF: Yes, sir. We call Carol Burnett.

6 (Witness Sworn)

7 CAROL BURNETT,

8 Having first been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. McDUFF:

11 Q Good afternoon, Ms. Burnett. You are a plaintiff in this  
12 case? Is that right?

13 A That's correct.

14 Q One of the plaintiffs in Barber v. Bryant. Where did you  
15 grow up?

16 THE COURT: Just make sure all your responses are  
17 verbal.

18 A Okay.

19 BY MR. McDUFF:

20 Q Where did you grow up?

21 A In Mississippi. My dad is a retired Methodist minister and  
22 we lived all over the place: Rolling Fork, Purvis,  
23 Hattiesburg, Jackson, all over the place.

24 Q Okay. Tell us briefly about your education.

25 A My college degree is from USM, and my master of divinity is



1 from Union Theological Seminary in New York.

2 Q And are you an ordained minister?

3 A Yes, I'm an ordained United Methodist minister.

4 Q Where do you work?

5 A I'm the executive director of two nonprofits. One is a  
6 local United Methodist women affiliated service organization  
7 called Moore Community House in Biloxi, and one is a state-wide  
8 advocacy organization for childcare for low income women, and  
9 it's called The Mississippi Low Income Child Care Initiative.

10 Q What does the Moore Community House do?

11 A We provide economic support services for low-income women,  
12 early Headstart for families with children birth to age 3 and  
13 women in construction job training programs so that women can  
14 enter the construction trade so they can earn more money than  
15 is typically the case for women in jobs in Mississippi where  
16 they are earning --

17 Q Were you the founder of the Moore Community House?

18 A No. Moore Community House has been there for 91 years.

19 Q When did you start -- when did you start working there?

20 A In 1989.

21 Q Okay. And was there a time between 1989 and the present  
22 day when you left Moore Community House for a while?

23 A Yes. I went to work in state government for a couple of  
24 years to run the -- at that time it was called the Office of  
25 Children and Youth at the Department of Human Services.

1 Q Okay. Who was the governor at that time?

2 A Ronnie Musgrove.

3 Q Is he the person who appointed you?

4 A Yes. I was an employee at DHS, and the director of the  
5 agency at that time was Betty Ward Fletcher.

6 Q Okay. What is your affiliation as director of the Moore  
7 Community House with the United Methodist Church?

8 A I'm their underappointment by the bishop of the Mississippi  
9 Conference of the United Methodist Church. I am also an  
10 employee -- it is a United Methodist women's organization, but  
11 it is an independent nonprofit and has a board of directors.  
12 So I'm actually an employee of that local nonprofit  
13 corporation, but I serve in that capacity also under the  
14 appointment of the bishop.

15 Q Now, when you went to work in state government at the  
16 Department of Human Services, did you do that under the  
17 appointment of the bishop?

18 A No. I -- in fact, I feel very strongly about separation of  
19 church and state, and I took a leave of absence from my  
20 ordination for the years that I was working for state  
21 government.

22 Q Okay. Are you familiar with HB 1523?

23 A Yes, I am.

24 Q Have you read that bill?

25 A Yes, I have.

1 Q Have you followed the public debate about that bill?

2 A Yes, I have.

3 Q Okay. As you know, Section 2 of HB 1523 specifies three  
4 sincerely held religious beliefs or moral convictions that are  
5 "protected by this act," and they are the belief and conviction  
6 that, "(a) Marriage is or should be recognized as a union of  
7 one man and one woman, (b) sexual relations are properly  
8 reserved to such a marriage, and (c) male (men) or female  
9 (woman) refer to an individual's immutable biological sex as  
10 objectively determined by anatomy and genetics at the time of  
11 birth."

12 Do you subscribe to those three religious beliefs or moral  
13 convictions?

14 A No, I don't.

15 Q What is your belief regarding those subjects? What is your  
16 religious belief regarding those subjects?

17 A I believe we are all created in the image of God, that  
18 loving relationships exist in marriage and outside of marriage.  
19 Certainly that was true for same-sex couples before the country  
20 finally made same-sex marriage legal, and that those  
21 relationships as they are loving and equitable and respectful  
22 can be marriage relationships but are not necessarily marriage  
23 relationships. That we were called to be whole, loving and  
24 treat one another with compassion and justice.

25 Q What are your religious beliefs regarding the -- whether

1 sexual relations are properly reserved to a marriage between  
2 one man and one woman?

3 A I don't subscribe to that belief.

4 Q What are your religious beliefs with respect to whether  
5 male or female refer to an individual's biological sex as  
6 determined at the time of birth?

7 A I don't subscribe to that belief.

8 Q The bill -- the bill describes these beliefs and moral  
9 convictions regarding the three groups of people who are not --  
10 who are not protected by this bill or the views about them are  
11 not endorsed by this bill and that is same-sex couples who are  
12 married or plan to marry, unmarried people who engage in sexual  
13 relations, and transgender people. Do you -- as a minister and  
14 as a student of religion, what is the message the State is  
15 conveying by passage of their bill to those groups of people?

16 A That they are being condemned, that they are sinful and  
17 immoral.

18 Q What is the message being conveyed to you in your eyes and  
19 others who have different beliefs from those specified in this  
20 bill?

21 A That my religious perspectives are less worthy.

22 Q Do you believe the State is endorsing the religious beliefs  
23 set forth in this bill?

24 A Yes, I do.

25 Q The bill purports to provide certain protections to

1 religious organizations includes churches and ministers who  
2 hold those particular beliefs but not to ministers like you who  
3 hold different beliefs. What message does that convey to you?

4 A That this state is choosing sides in a religious debate and  
5 giving weight to one religious view and disfavoring another  
6 perspective.

7 Q You are a -- let me ask you this first. The statute speaks  
8 of sincerely held religious beliefs or moral convictions. For  
9 you as an ordained minister, do your moral convictions stem  
10 from your religious beliefs?

11 A Yes.

12 Q Are they separate or are they part of the same thing?

13 A No, they are not separate. They are part of the same  
14 thing.

15 Q What is the position of the United Methodist Church  
16 regarding same-sex marriage?

17 A I have an official position from the Book of Discipline  
18 from 2012 that I could share, although this position is  
19 currently under consideration for change.

20 Q Okay. Can you read that position, please. The position  
21 you're reading now from 2012, is that currently the position of  
22 the United Methodist Church?

23 A Yes. The Methodist Church has general conferences every  
24 four years, and the 2016 general conference just concluded.  
25 And these positions were debated at that conference, and the

1 conclusion of that conference was that these positions would  
2 remain in effect for the moment but that the council of bishops  
3 has been asked to essentially review these positions to come  
4 back with a revised position for the church at the next general  
5 conference which will be a special called conference because  
6 the church wanted to act on this sooner than four years from  
7 now.

8 Q Okay. And when will that next conference be? Do you know?

9 A The date hasn't been set on that yet.

10 Q Would you read the positions that currently remain as the  
11 positions of the United Methodist Church on this issue?

12 A "The practice of homosexuality is incompatible with  
13 Christian teaching; therefore, self-avowed practicing  
14 homosexuals are not to be certified as candidates, ordained as  
15 ministers, or appointed to serve in the United Methodist  
16 Church."

17 Q Let me interrupt you there. Is there a particular  
18 paragraph of the book of discipline that you just read?

19 A Yeah. 304.3.

20 Q Okay. And then is there another paragraph that's relevant  
21 to this?

22 A 341.6 reads, "Ceremonies that celebrate homosexual unions  
23 shall not be conducted by our ministers and shall not be  
24 conducted in our churches."

25 Q Do you believe that the passage of HB 1523 endorses the

1 current position of the United Methodist Church on these  
2 issues?

3 A As I just read, yes.

4 Q You talked about the fact that there is a debate in the  
5 church and that this is going to be discussed further in the  
6 future. How do you feel about the State of Mississippi passing  
7 this law in the midst of that debate?

8 A It weighs in on a debate that is happening within the  
9 church on one side of a religious issue that is being  
10 debated -- I mean, the United Methodist Church, the membership  
11 of the United Methodist Church as reported by *Christianity*  
12 *Today* in an article covering this debate at the general  
13 conference reported that the majority of the United Methodists  
14 in the country support changing these positions to support  
15 same-sex union and to support a more accepting and supportive  
16 and equal position on the topic of same-sex marriage and  
17 homosexuality and the ordination of homosexual pastors.

18 So that is a topic that is being hotly debated in the  
19 church right now, and for a state government to weigh in on  
20 that church debate is not a role for government to play in my  
21 opinion.

22 MR. McDUFF: That's all. Thank you.

23 THE COURT: I presume the other plaintiffs have no  
24 questions of this witness?

25 MS. KAPLAN: We do not, Your Honor.

1 THE COURT: All right. Thank you. Mr. Goodwin.

2 MR. GOODWIN: Yes, Your Honor. May I proceed?

3 THE COURT: Yes, you may.

4 MR. GOODWIN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. GOODWIN:

7 Q Reverend Burnett, thank goodness we finally got around to  
8 some Methodists. I'm a fellow Methodist. I just have a few  
9 questions for you.

10 A Sure.

11 Q You're a plaintiff in this case. Right?

12 A Yes, I am.

13 Q And I've looked at your declaration that you submitted, and  
14 this is something I just need to clarify for the record. I'm  
15 not trying to embarrass you or offend you in any way. But I  
16 need to clarify what your position is in this case as a  
17 plaintiff. Okay?

18 A Yes, I understand.

19 Q Are you a member of the LGBT community, yourself  
20 personally?

21 A I am not.

22 Q Are you a member of the transgender community specifically?

23 A I am not.

24 Q Okay. And do you feel like the provision in HB 1523 with  
25 regards to sex outside of marriage, that that discriminates



1 against you personally in some way?

2 A It does not.

3 Q Okay. All right. Now, you've just testified about the  
4 fiery debate that is currently going on in the United Methodist  
5 Church. Correct?

6 A Yes.

7 Q And that fiery debate is with regards to homosexuality and  
8 same-sex marriage. Correct?

9 A Yes, it is.

10 Q And there are people within the United Methodist faith that  
11 are on either side or both sides of this argument. Correct?

12 A Yes, that's correct.

13 Q And there are churches that have staked out positions on  
14 one side or the other. Correct?

15 A Yes, that's correct.

16 Q And, in fact, do you know of some churches that have  
17 actually split as a result of this issue?

18 A I don't have personal knowledge of that.

19 Q These beliefs -- strike that. This debate is also raging  
20 in other denominations as well. Correct?

21 A Yes.

22 Q Such as the Episcopal denomination. Correct?

23 A Yes.

24 Q And every other denomination of Christianity, to your  
25 knowledge -- correct -- is debating this issue?

1 A Well, some have made denominational decisions different  
2 than the position of the United Methodist Church, and so the  
3 division among the membership varies from congregations that  
4 are far more aligned with opposition to same-sex marriage, and  
5 some are far more aligned with support.

6 Q So some denominations have taken positions that are closer  
7 in kind to the United Methodist Church and some others have  
8 taken positions that are slightly different.

9 A Right.

10 Q Correct?

11 A But these are religious matters, and from my perspective,  
12 there isn't a role for state government to play to weigh in on  
13 these religious -- differences that are being argued among  
14 religious denominations -- you're talking about churches, and  
15 I -- I see no place for the State to weigh in in support of one  
16 particular religious view over another religious view.

17 Q Do you believe that the three beliefs identified in HB 1523  
18 favor one particular denomination over others?

19 A I believe that they favor a particular religious view over  
20 others.

21 Q But not a denomination?

22 A I believe that they favor denominations that don't -- that  
23 have taken positions that don't align with 1523.

24 Q To your knowledge, are the beliefs and convictions  
25 identified in 1523 held by members of other faiths other than

1 Christianity?

2 A I'm sorry. Could you repeat that?

3 Q Certainly. Certainly. My wife asks me to all the time.

4 I'll do it. Are the -- we're talking about the three beliefs

5 or convictions that are identified in HB 1523. Are those

6 beliefs, for example, that marriage should on be between a man

7 and a woman --

8 A I know the beliefs that are identified there.

9 Q Is that belief in particular, the first one on that list,

10 is that particular to Christianity? Are there other faiths

11 that hold that belief as well?

12 A I don't know. I'm not able to answer that question.

13 Q Okay. Fair enough. As to -- Mr. McDuff was asking you

14 about earlier whether or not your moral convictions and your

15 religious beliefs were one in the same or if they were

16 separate. Correct?

17 A Yes.

18 Q You stated that for you it's one in the same. Correct?

19 A That's correct, yes.

20 Q But you can't speak for other people on that issue, can

21 you?

22 A I cannot.

23 Q So there could be people out there that are against

24 same-sex marriage based on a moral conviction that has nothing

25 do with a religious belief. Isn't that possible?

1 A It's possible, but I couldn't speak to that.

2 Q Okay. And again you can't speak for them?

3 A Right.

4 Q Okay. You can only speak for yourself as to that. Right?

5 A Yes.

6 MR. GOODWIN: Court's indulgence one moment, Your  
7 Honor.

8 THE COURT: Yes, Mr. Goodwin.

9 (Short Pause)

10 MR. GOODWIN: I tender the witness, Your Honor.

11 THE COURT: All right. Redirect.

12 REDIRECT EXAMINATION

13 BY MR. McDUFF:

14 Q Ms. Burnett, as an ordained minister and as a person who  
15 has studied religion, can you imagine a person of faith who has  
16 a religious belief about these issues having a moral conviction  
17 that is not part of that religious belief?

18 A No.

19 Q I want to clarify one thing you said a minute ago. You  
20 were talking about denominations. Does HB 1523 favor the  
21 denominations that subscribe to the views set forth in HB 1523?

22 A Yes.

23 Q And does it by contrast disfavor the denominations who do  
24 not subscribe to those views?

25 A Yes. Did I say that backwards earlier?

1 Q I'm not sure. I just wanted to clarify it.

2 A I may have.

3 Q You were asked if you were part of any of the three groups  
4 that you earlier described as being condemned by HB 1523 and  
5 being called sinners and immoral, and you aren't. How does it  
6 make you feel that your state government has passed a bill that  
7 condemns these three groups of people?

8 A I very much oppose the condemnation of the people who are  
9 identified by 1523 so it makes me -- it makes my angry. I'm  
10 opposed to it, and it makes me feel like the religious  
11 perspective and the religious beliefs, the sincerely religious  
12 beliefs, that I hold are disfavored by the State whereas  
13 religious beliefs that I do not subscribe to are given  
14 preference by the State.

15 Q Thank you.

16 THE COURT: Is this witness finally excused?

17 MR. McDUFF: Yes, Your Honor.

18 THE COURT: Ms. Burnett, you may step down. Plaintiff  
19 ready to call its next witness?

20 MR. McDUFF: We call Brandiilynne Mangum-Dear.

21 BRANDIILYNE MANGUM-DEAR,

22 Having first been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. McDUFF:

25 Q Good afternoon.

1 A Good afternoon.

2 Q Reverend Mangum-Dear, are you a plaintiff in the case of  
3 Bryant -- Barber v. Bryant?

4 A I am.

5 MR. McDUFF: Do you need her to spell --

6 A My mother spelled it wrong.

7 BY MR. McDUFF:

8 Q Where do you live?

9 A I live in Hattiesburg.

10 Q All right. Where did you go up?

11 A A grew up in Waynesboro actually. I try not to tell  
12 everybody that, but that's where I'm from.

13 Q What is your occupation now?

14 A I am the founding pastor of Joshua Generation MCC.

15 Q What does MCC stand for?

16 A Metropolitan Community Church.

17 Q Okay. Is your church, Joshua Generation Metropolitan  
18 Community Church, also a plaintiff in this case?

19 A Yes.

20 Q Are you married?

21 A I am.

22 Q To whom?

23 A Susan Mangum.

24 Q Okay. And Susan Mangum: Is she also a plaintiff in this  
25 case?

1 A She is.

2 Q What is Susan Mangum's position in the church?

3 A She is our worship leader, the director of music.

4 Q Okay. All right. And was there a time you moved out of  
5 Waynesboro into the larger community of Laurel?

6 A Yes.

7 Q The metropolis?

8 A Yes.

9 Q And was there a time when you were a pastor at a church in  
10 Laurel?

11 A Yes.

12 Q Okay. Were you -- were you the head pastor, associate  
13 pastor or what?

14 A I was an associate pastor.

15 Q What is the name of that church?

16 A Christ Church.

17 Q Okay. And was it affiliated with any particular  
18 denomination?

19 A It's a nondenomination denomination.

20 Q Okay. Now, obviously you left at some point. When would  
21 that have been?

22 A In 2012.

23 Q Okay. Why did you leave that church?

24 A Well, I met Susan, and -- I had started to explore my  
25 sexuality, and then I met her, and I decided that I could no

1 longer lie to myself and I decided to leave the church because  
2 I knew that I couldn't be in that church and be openly gay.  
3 And so I was going to leave, and my pastor wouldn't let me. He  
4 told me I was having a midlife crisis, and he moved me into his  
5 house with his wife, and a week later I left.

6 Q Was -- were you subsequently the subject of sermons  
7 delivered by that pastor?

8 A Yes. My pastor outed me to the congregation and to my  
9 community, and the church out me to my family. And I didn't  
10 get the opportunity to tell my mother or my son or my dad or  
11 anyone.

12 Q They heard about it from the pulpit?

13 A Well, I had -- one of my -- one of the members of my  
14 ministry team was very close to me and I confided in her what  
15 was -- about my feelings for Susan, and she told my pastor and  
16 it went downhill from there.

17 Q When did you and Susan marry?

18 A We married in April of 2015.

19 Q Okay. And when did you start the Joshua Generation  
20 Metropolitan Community Church?

21 A September 2014.

22 Q Okay. Tell us about the church. What is its membership?

23 A We have about 80 people that regularly attend. We are  
24 radically inclusive, probably 90 percent LGBT.

25 Q All right. And what is the Metropolitan Community Church?



1 A The Metropolitan Community Church was founded in 1968 by  
2 Reverend Troy Perry. He's a gay man. And he started the  
3 church -- started having a meeting in his living room, and  
4 there was 12 people at this first meeting, and now we have over  
5 400 churches worldwide.

6 Q And what is the -- what are the principles of the  
7 Metropolitan Community Church?

8 A Like I said, we are very radically inclusive. We celebrate  
9 sexuality. We celebrate the LGBT community and the straight  
10 community. And we're Christian -- we're a Christian  
11 organization as well.

12 Q Just one moment, please.

13 A Okay.

14 Q We have talked already during this hearing about the three  
15 positions set forth in HB 1523 described as the sincerely held  
16 religious belief or moral convictions protected by this act.  
17 The first one is, "Marriage is or should be recognized as the  
18 union of one man and one woman." Does the Metropolitan  
19 Community Church share that belief?

20 A No.

21 Q Does the Joshua Generation Community Church share that  
22 belief?

23 A No.

24 Q Do you share that belief?

25 A No.

1 Q The second one, "Sexual relations are properly reserve to  
2 such a marriage." Does the Metropolitan Community Church share  
3 that belief?

4 A No.

5 Q Does the Joshua Generation church share that belief?

6 A No.

7 Q Do you?

8 A I was pastoring the church before I got married, and I  
9 assure you I did not take a vow of celibacy, no.

10 Q Okay. All right. And the third one is, "Male (man) or  
11 female (woman) refer to an individual's immutable biological  
12 sex as objectively determined by anatomy and genetics at the  
13 time of birth." Does you the Metropolitan Community Church  
14 share that belief?

15 A No.

16 Q Does Joshua Generation Church share that belief?

17 A No. A transgender woman leads -- sings lead in our praise  
18 band. So no.

19 Q And do you share that belief?

20 A Absolutely not.

21 Q What do you and the Metropolitan Community Church and the  
22 Joshua Generation Metropolitan Community Church believe about  
23 these issues?

24 A Well, Reverend Hrostowski said earlier they are incomplete.  
25 I do believe marriage is between a man and woman, but I also

1 believe it can be between a woman and a woman and a man and a  
2 man and transgender couple as well.

3 So I believe it's incomplete. I believe that we  
4 celebrate -- we completely celebrate diversity in our church.  
5 I believe that our creator is much bigger and than we give him  
6 credit for. I believe that we try to squeeze God however we  
7 believe or think of God into books and theologies, and God's  
8 much bigger than that.

9 Q The church where you were in Laurel --

10 A Uh-huh.

11 Q -- previously as an associate pastor, were its views on the  
12 issue the same views that are set forth in HB 1523?

13 A No. I started a recovery ministry at Christ Church in 2005  
14 for drug addicts and alcoholics, and oftentimes there would be  
15 LGBT people that would come through that ministry, and we were  
16 taught that homosexuality was a moral failure, it was a sin  
17 problem. So we tried to help drug addicts and alcoholics  
18 recover from their addiction, but we also tried to help  
19 homosexuals recover are their condition as well. We viewed it  
20 as a problem. So we tried to pray the gay away, in a sense. I  
21 came from a Pentecostal type church. It was a spiritual  
22 problem.

23 So it was really hard for a lot of the people that came  
24 through the ministry. They didn't make it. They didn't --  
25 they didn't get sober, they didn't get clean because we're

1 telling them that you can't be in a loving relationship  
2 because, you know, your sexuality is a sin.

3 Q You're talking about the gay and lesbian people that came  
4 through?

5 A Yes, yes.

6 Q In terms of that church's leadership and its positions,  
7 does it agree with the positions set forth in HB 1523 -- I'm  
8 talking about your old church in Laurel -- that marriage is or  
9 should be recognized as a union of one man and one woman?

10 A Absolutely.

11 Q And does it agree with the position set forth in the bill  
12 that sexual relations are properly reserved for such a  
13 marriage?

14 A Absolutely.

15 Q I'm talking about officially, not in everyone's practice.  
16 And does it agree with the position that male or female refer  
17 to an individual's immutable biological sex as objectively  
18 determined about anatomy and genetics at time of birth?

19 A Yes.

20 Q And for that church -- for the leadership of that church on  
21 these issues, was it just a disagreement with gay and lesbians,  
22 transgender people, or was it a belief that they are sinners  
23 and are immoral?

24 A Yes, it was a belief that they are sinners. It was part of  
25 the doctrine that was taught. There were many sermons, antigay

1 sermons, that were preached from the pulpit there.

2 Q Did -- were gay and lesbian people welcome in that church?

3 A In the words of my former pastor, they are welcome as long  
4 as they are willing to change.

5 Q In your church, are straight people welcome?

6 A Absolutely, as long as they are willing to be themselves.

7 Q Tell me about the ministries at your church.

8 A We have an incredible church. We have -- of course, we  
9 have a recovery ministry as well. I developed a 12-step  
10 curriculum when I was at my former church and I brought it over  
11 to our new church.

12 Q You're talk about recovery from --

13 A Recovery for drug addicts and alcoholics, yes. We let  
14 people be gay. We don't make them take the 12 steps anymore.  
15 That was a joke.

16 We have a young adult ministry, which is actually led by a  
17 transgender woman. It's for 18 and up. We have a youth  
18 ministry for grades 8 through 12. We have a children's  
19 ministry. We have -- we're actually getting ready to start a  
20 recovery ministry for those who have been victims of spiritual  
21 abuse.

22 Q Okay. And what do you mean when you talk about victims of  
23 spiritual abuse?

24 A Well, I feel as if coming from the church that I was in I  
25 was spiritually abused with scripture and doctrine that told me

1 and taught me that I was a moral failure, that I was an  
2 abomination, that I was evil because of the way that I love and  
3 because of my sexual orientation. That caused me damage, and I  
4 believe that scriptures are used in such a way that it brings  
5 harm to people, and it's the same as verbal abuse or physical  
6 abuse. It causes harm, but it's spiritually.

7 Q Your church obviously includes married, gay, and lesbian  
8 people, includes transgender people. As far as you know, does  
9 it include unmarried people who engage in sexual relations?

10 A Probably.

11 Q Okay.

12 A Yes.

13 Q What do you think about the fact that the State of  
14 Mississippi has passed a law that provides special protection  
15 to -- exclusive protection to people who hold different  
16 religious beliefs about these groups of people that are in your  
17 church than you hold?

18 A Well, it means that my beliefs are invalid. It speaks very  
19 clearly that the church that I was formerly a part of is  
20 protected because their beliefs are correct and mine are  
21 incorrect for some reason. It's degrading and hurtful.

22 MR. McDUFF: That's all the questions I have. Thank  
23 you.

24 THE COURT: All right.

25 MR. GOODWIN: One moment, Your Honor.

1 THE COURT: Okay.

2 MR. GOODWIN: No questions, Your Honor.

3 THE COURT: All right. I have one question. I just  
4 have one question.

5 EXAMINATION

6 BY THE COURT:

7 Q You indicated that you married in April of 2015.

8 A Yes.

9 Q Was that in Mississippi?

10 A No, sir. We went to Palm Springs in California to get  
11 married.

12 Q Okay. All right.

13 THE COURT: Any followup based on that question that  
14 I've asked?

15 MR. McDUFF: No, Your Honor.

16 MR. GOODWIN: No, Your Honor.

17 THE COURT: You may step down.

18 MR. KAYE: Your Honor, our next witness is Kathy  
19 Garner.

20 (Witness Sworn)

21 THE COURT: Ms. Garner, you have been outside so  
22 that's the microphone before you. You do not have to speak  
23 directly into it. Please speak loudly and clearly enough for  
24 the court reporter to hear you. Speak at a pace at which she  
25 can keep up with you. Make sure you allow the attorneys to

1 finish their question before you begin to speak and make sure  
2 all your responses are verbal. And could you spell your first  
3 name. Is it with a C or K?

4 THE WITNESS: With a K. Thank you for asking.

5 KATHY GARNER,

6 Having first been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KAYE:

9 Q Good afternoon, Ms. Garner.

10 A Good afternoon.

11 Q Would you say your full name for the record, please.

12 A My name is Kathryn McLaughlin Garner.

13 Q Thank you. What is your job?

14 A I'm the executive director of the AIDS Services Coalition  
15 in Hattiesburg.

16 Q And what's the AIDS Services Coalition of Hattiesburg do?

17 A We are community-based organization that serves people who  
18 are infected and affected by HIV.

19 Q How was the AIDS Services Coalition founded?

20 A In 2002, a man by the name of Bruce Vannostrand, who was a  
21 member of Trinity Episcopal Church in Hattiesburg was working  
22 on becoming a deacon in the church. As part of that process,  
23 the Episcopal Church has a very large outreach component to it.  
24 He was looking for an opportunity to provide service to the  
25 community, and he talked to I believe probably -- I think it



1 was the Catholic -- person from Catholic Charities. They said  
2 people who are HIV positive are being kicked out of their  
3 housing and that moved him to action. He was sort of a bull in  
4 a china shop on a good day. And he went to several of his  
5 friend at church and said *You, You, You: You are my board of*  
6 *directors. We are the AIDS Services Coalition. And by the*  
7 *way, I just bought a house.* And so that's 121 Haven House  
8 started.

9 Q Okay. And when did you start working at the AIDS Services  
10 Coalition of Hattiesburg?

11 A 2005.

12 Q Why did you choose to go work there?

13 A Well, I was -- I was working outside of this field. I was  
14 a volunteer with the AIDS Services Coalition for the years  
15 before, but my wife Susan came home from school one day and  
16 said, *AIDS Services Coalition, 121 Haven House, is going*  
17 *reopen.* It had closed. Bruce died six months after it opened  
18 of a massive coronary, and it had struggled.

19 *They are going to reopen it. They have a small grant.*

20 *They are going to hire a social worker to run it.* And out of  
21 my mouth came, *They don't need a social worker. They need me.*

22 And I think it was sort of a continuation of my life. I'm  
23 passionate about homelessness and about HIV, and who could be  
24 blessed enough to have two passions? And it fit with my belief  
25 system as an Episcopalian and as a person that I felt as a

1 ministry to me.

2 Q Okay. Now, you mentioned 121 Haven House as one of the  
3 services provided by the AIDS Services Coalition of  
4 Hattiesburg. Are there other services that you provide as  
5 well?

6 A Yes. 121 started as just that shelter with supportive  
7 services. But what we tried do over the years -- and our board  
8 as an organization is nimble. We have fabulous medical care,  
9 but there are a lot of things about serving people who are  
10 positive and people who are at high risk that are not medical.  
11 So housing is a huge component. We have added women's housing  
12 for women who are HIV positive or at high risk. We've also  
13 become the provider of HOPWA, which is Housing Opportunities  
14 for People with AIDS, which is a housing assistance program.  
15 We cover 73 of the 82 counties in Mississippi.

16 Another important part of what we do is for people who are  
17 at high risk, those people who are affected by HIV. So we do  
18 HIV testing. We have an education component where we do  
19 prevention education. We provide condoms through free mail  
20 order. We do -- we provide 75,000 condoms to the  
21 communities -- to people in communities all over Mississippi  
22 every year.

23 Q And do you provide counseling services as well?

24 A As a part of our testing, yes.

25 Q And why do you provide counseling services?

1 A They would have to go together. When you are providing an  
2 HIV test to someone, you are potentially changing their life  
3 forever. And as a part of that testing, we provide counseling  
4 to help them understand the impact of their decisions. We work  
5 with them on ways that they may can configure plans to keep  
6 themselves and their loved ones safe, if they are not negative.

7 If the test does come back positive, then we work with them  
8 to make sure that they are linked to care, which is critically  
9 important, and to discuss all of those things in a way that  
10 allows them to understand that we are -- we care for them.

11 Q I'd like to come back to the linkage to care in a moment.  
12 But first I want to ask: Why does the AIDS Services Coalition  
13 provide all of these services together? Why housing and  
14 outreach and testing and all of that?

15 A Very good question. If -- when people are -- have risky  
16 behavior or HIV positive, there are so many components to those  
17 decisions and those factors in their lives. And if we are not  
18 able to provide a continuum of care for those folks, long term  
19 you're not going have really good outcomes. If people who are  
20 positive are not in adequate housing or do not receive  
21 supportive services, they are less likely to be in care.

22 Q If they are not in care?

23 A They will become sicker and they will die.

24 Q What is the goal of providing this continuum of care?

25 A Well, the goal is to have a healthier population of folks

1 who are HIV positive and eventually to stop HIV and its impact  
2 on our community. When people are healthy, they are less  
3 likely to transmit their illness. So public health at stake  
4 really. It is a public health issue.

5 Q As well as individual health.

6 A Absolutely.

7 Q Does viral suppression mean anything to you?

8 A Uh-huh. Yes, it does. It means a lot to me.

9 Q What is that?

10 MR. MIRACLE: Your Honor, I object to relevance at  
11 this point. He may be going in a direction I think -- at this  
12 point, these questions are not relevant to the issues we are  
13 here about today.

14 MR. KAYE: Your Honor, I think you'll see where we are  
15 going very shortly.

16 THE COURT: Okay. I'll overrule the objection. The  
17 question was viral suppression?

18 MR. KAYE: Yes.

19 THE COURT: What does viral suppression mean to you?  
20 Right?

21 MR. KAYE: Yes.

22 THE COURT: Okay. Overruled.

23 A Viral suppression with someone who is HIV positive means  
24 that there is a very minimal presence of the virus in someone's  
25 blood.

1 BY MR. KAYE:

2 Q And if someone reaches viral suppression, as you were  
3 saying --

4 A They were highly unlikely to transmit their illness, and  
5 they are much healthier.

6 Q What are the biggest obstacles to reaching viral  
7 suppression in an individual?

8 A Continuity of care. There are so many barriers along the  
9 way to help for people who are marginalized. And being able to  
10 access care -- stigma in Mississippi is a huge, huge issue and  
11 actually going to -- going to a doctor linking yourself to care  
12 in the first place and staying in care is critically important,  
13 but it's also very, very scary for a lot of people.

14 Q Why is it scary?

15 A Stigma creates fear in folks to the extent that they are  
16 scared that they will lose their housing or lose their job,  
17 many other opportunities. We have actually had a client  
18 several years ago who -- he lived in a mobile home park, and  
19 somehow his status got out in his neighborhood, and we had to  
20 physically help him get out of there because they were shooting  
21 the windows out, people in the trailer park. So stigma is  
22 real, but they may really be out to get you too. Stigma is  
23 terrible. The fear, it is the about not knowing.

24 Q And how do you approach that with the way you serve the  
25 community you serve?

1 A The best way to combat stigma is through education and  
2 through treating people who are HIV positive or who are at high  
3 risk in a nonjudgmental fashion.

4 Q Who is the community that the AIDS Services Coalition  
5 serves?

6 A We serve everyone.

7 Q Gay and straight?

8 A Yes, sir.

9 Q Married/unmarried?

10 A Yes, sir.

11 Q Why?

12 A Because HIV knows no color or gender or race or sexual  
13 orientation.

14 Q Do you care about any of those distinctions in who you  
15 serve?

16 A Absolutely not.

17 Q Ma'am, are you familiar with HB 1523?

18 A Yes, sir.

19 Q And are you aware that counseling or psychological services  
20 could be denied based on one of three preferred religious  
21 beliefs identified in that bill?

22 A Yes, sir.

23 MR. MIRACLE: Object to characterization.

24 THE COURT: Rephrase your question.

25 BY MR. KAYE:

1 Q Are you aware that under HB 1523 there is an exemption for  
2 providing counseling or psychological services based on  
3 personal religious beliefs?

4 A I am aware.

5 Q And if HB 1523 went into effect on July 1st, what could be  
6 the consequences of that for the people that you serve?

7 MR. MIRACLE: Objection, Your Honor, calls for  
8 speculation.

9 BY MR. KAYE:

10 Q In your capacity as the executive director of the AIDS  
11 Services Coalition of Hattiesburg, do you have concerns about  
12 the population that you serve if HB 1523 went into effect?

13 A I do.

14 Q What are they?

15 A My biggest concern is that people will not get tested in  
16 the first place.

17 Q Why?

18 A Because of the fear of being turned away, not that we would  
19 do that but the fear of being turned away, the fear of not  
20 being able to be tested, and the fear of being judged.

21 Q And if someone were tested and tested positive for HIV and  
22 then were denied counseling services or psychological services,  
23 in your capacity as the executive director of the AIDS Services  
24 Coalition, do you have concerns about what might happen then?

25 A People who do not participate in linkage to care are not

1 going to be active in their health care, and they will not --  
2 they will not reach the golden ticket, the viral suppression  
3 that we hope that everyone reaches. And if they do not  
4 participate in that care, once again, HIV if not treated leads  
5 to death.

6 MR. KAYE: No further questions at this time.

7 THE COURT: I presume no questions from the other  
8 plaintiffs?

9 MR. McDUFF: That's correct, Your Honor.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. MIRACLE:

13 Q Good afternoon, Ms. Garner. My name is Doug Miracle.

14 A Yes, sir.

15 Q I represent Attorney General Jim Hood and Judy Moulder in  
16 this case. You are not a plaintiff in this case. Is that  
17 correct?

18 A No, sir.

19 Q And your wife is a plaintiff in this case. Is that  
20 correct?

21 A She is.

22 Q And can you just tell me why you chose not to be a  
23 plaintiff in the case?

24 A I don't know that I was not really a participant. Part of  
25 what I think that -- I don't really know on that -- I can't



1 tell you why I wasn't. I'm trying to think. They asked Susan  
2 because of her expertise.

3 Q Fair enough. Now, you testified that you're familiar with  
4 HB 1523 --

5 A Yes, sir.

6 Q And have you read 15 -- HB 1523?

7 A Yes, sir.

8 Q When did you last review the bill?

9 A I don't recall, to be honest. I know that it was probably  
10 within the last month or so.

11 Q And did you watch any of the legislative debate during the  
12 legislative session?

13 A I did.

14 Q Are you familiar -- let me ask you this. You've testified  
15 about your work with AIDS counseling and you testified about  
16 stigma being a problem in the community of people that may or  
17 may not be affected or already are infected. Is that correct?

18 A Yes.

19 Q And is it fair to say that that stigma existed prior to the  
20 passage of HB 1523?

21 A I think to a certain extent, yes.

22 Q Is it fair to say from your experience in your counseling  
23 with HIV or people potentially affected with HIV, you've  
24 experienced problems with people -- you testified about people  
25 being afraid to come get tested and things of that nature. You

1 testified that --

2 A Yes.

3 Q You testified --

4 A I didn't quite get the question. Yes, sir.

5 Q So that already was an issue that you faced in your  
6 counseling in trying to encourage people to come forward.

7 A No, I think you that was a -- I think was when Josh had  
8 asked about what my fear was that people wouldn't get tested  
9 after 1523.

10 Q Did you have any experience -- or have you had experience  
11 in the past with people being afraid to come forward and get  
12 tested in the past?

13 A People have been reticent but not fearful.

14 Q Not readily willing all the time to come forward. Would  
15 that be a fair characterization?

16 A Right.

17 Q Are you aware if HB 1523 contains any provisions with  
18 reference to counseling for AIDS patients?

19 A I know that there is a component to counseling which was  
20 discussed as a part of my testimony.

21 Q Do you have any familiarity or do you know whether or not  
22 anything in HB 1523 discusses potential treatment of AIDS  
23 patients?

24 A I do not.

25 MR. MIRACLE: One moment, Your Honor.

1 THE COURT: Yes, sir.

2 (Short Pause)

3 MR. MIRACLE: Thank you, Ms. Garner. I tender the  
4 witness.

5 THE COURT: Redirect?

6 MR. KAYE: Just a few questions. I'm sorry. Just one  
7 moment.

8 REDIRECT EXAMINATION

9 BY MR. KAYE:

10 Q Ma'am, do you know what the preferred religious beliefs  
11 identified in HB 1523 are?

12 MR. MIRACLE: Objection, Your Honor.  
13 Mischaracterization as to preferred religious beliefs.

14 MR. KAYE: Your Honor, may I approach?

15 THE COURT: Yes. Yes, you may approach.

16 BY MR. KAYE:

17 Q I'm going to hand you what's been marked as Defendant's  
18 Exhibit 1.

19 THE COURT: Objection overruled. I never ruled on  
20 that objection. I never ruled on the objection.

21 MR. KAYE: All right.

22 A I was impressed.

23 BY MR. KAYE:

24 Q I'd like to direct you to Section 2(b), right on the bottom  
25 of that first page there.

1 A Uh-huh, yes, sir.

2 Q And what does that say?

3 A "The sincerely held religious beliefs or moral convictions  
4 protected by this act or the belief or conviction that (a)  
5 marriage is or should be recognized as the union of one man and  
6 one woman, (b), sexual relations are properly reserved to such  
7 a marriage."

8 Q You can stop there.

9 MR. MIRACLE: Your Honor, I'm going to object. This  
10 is improper redirect. I didn't cover any of this on cross with  
11 her on Section 2(b).

12 THE COURT: Objection is sustained.

13 BY MR. KAYE:

14 Q Okay. You can set that document aside. Ms. Garner, do you  
15 know if many of the people served by the AIDS Services  
16 Coalition have sex outside of marriage?

17 A Yes.

18 Q And does that matter for whether or not you serve them?

19 A No.

20 Q And do they need your services?

21 A Yes.

22 MR. KAYE: No further questions.

23 THE COURT: Is this witness finally excused?

24 MR. MIRACLE: I apologize. I was talking to  
25 cocounsel. Nothing further, Your Honor.

1 THE COURT: You may step down. Thank you for your  
2 testimony.

3 MS. KAPLAN: Your Honor, for our final witness for  
4 today plaintiffs call Joce Pritchett.

5 (Witness Sworn)

6 THE COURT: Ms. Pritchett, you have not been in the  
7 courtroom so that's the microphone before you. You don't have  
8 to speak directly into it. Speak loudly and clearly enough for  
9 the court reporter to understand you.

10 THE WITNESS: Okay.

11 THE COURT: Speak at a pace at which she can keep up  
12 with you. Allow your attorneys -- the attorneys to finish  
13 their question before you begin to speak and make sure all your  
14 responses are verbal.

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 JOCE PRITCHETT,

18 Having first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. KAPLAN:

21 Q Can you please state your full name for the record.

22 A I'm Jocelyn Pepper Pritchett.

23 Q And, Ms. Pritchett, I apologize. What time did you start  
24 sitting outside the courtroom this morning?

25 A 9 a.m.

1 Q You've been sitting on some hard benches for an awful long  
2 time. I apologize.

3 A Very small room out there.

4 Q What is your age?

5 A I'm 48.

6 Q And what is your current address?

7 A [REDACTED], Jackson.

8 Q And where were you born?

9 A In Charleston, South Carolina.

10 Q Where did you grow up?

11 A A little town in --

12 Q All right, sir.

13 THE COURT: For purposes of the record, the court will  
14 redact the physical -- the address of this particular -- since  
15 you gave her --

16 MS. KAPLAN: Thank you.

17 THE COURT: -- listed her entire address. We'll make  
18 sure that's redacted from the record, if you will, madam court  
19 reporter.

20 MS. KAPLAN: Much appreciated, Your Honor. I  
21 apologize for the oversight.

22 BY MS. KAPLAN:

23 Q Where did you grow up?

24 A Bellefontaine, Mississippi.

25 Q How old were you when you moved from South Carolina to

1 Mississippi?

2 A Mother and daddy moved back when I was six months old.

3 Q For how long did you live in Bellefontaine, Mississippi?

4 A Until I went to college at 17.

5 Q Where did you go to college?

6 A Mississippi State.

7 Q And I apologize because you know I'm a Yankee. Where is  
8 Mississippi State located?

9 A Starkville, Mississippi.

10 Q Are you currently married, Ms. Pritchett?

11 A Yes.

12 Q What is the name of your suppose?

13 A Carla, Carla Webb.

14 Q And prior to your marriage to Carla Webb, were you ever  
15 married before?

16 A I was.

17 Q Who were you married to before?

18 A Larry Phillips.

19 Q And when did you get -- Larry Phillips is a man?

20 A Yes.

21 Q When did you get married to Mr. Phillips?

22 A In 1989.

23 Q And when was that in connection with your schooling?

24 A I was a senior in college.

25 Q And how long were you married to Mr. Phillips?

1 A About six years.

2 Q And what was the reason for you and Mr. Phillips  
3 separating?

4 A I had started to have debilitating panic attacks, anxiety  
5 attacks. I wasn't really sure what was going on. I just knew  
6 I was getting sick, and I start seeing a counselor, and she  
7 kind of helped me through that.

8 Q And did there come a time when you began to be concerned  
9 that you might be a lesbian?

10 A Yeah, in counseling. I kind of came out to myself during  
11 counseling. I had stopped eating. I had stopped eating by the  
12 time I went to see her, and she was concerned for my physical  
13 safety, and so she helped me through the divorce, and then she  
14 kind of helped me come out to myself. She asked me did I feel  
15 like I had to die instead of becoming who I was, and I realized  
16 that I did. I did believe that I had to die first.

17 Q Ms. Pritchett, I see that you're having -- this is a  
18 difficult topic. And so to the extent you need a break or need  
19 some water or need a Kleenex, please don't hesitate to let us  
20 know.

21 A Okay.

22 Q During this period when you were suffering these anxiety  
23 attacks, why were you so afraid at the idea that you might be a  
24 lesbian?

25 A I had never known anybody who was gay. I grew up in north



1 Mississippi in the '70s, kind of in the shadow of the civil  
2 rights movement. And the only -- we had three television  
3 channels growing up.

4 The only person I had ever known that was gay was my high  
5 school algebra teacher, and she had been humiliated and run out  
6 of town for having an affair with a woman, and that was really  
7 my only experience of anyone who was gay. And so on one hand I  
8 was relieved and kind of overjoyed that I understood now what  
9 was going on with me, but I was terrified of who I was becoming  
10 and what that meant for my future.

11 Q During this period -- what year was this approximately when  
12 you left your husband?

13 A '97 or so.

14 Q So during this period in 1997 or thereabouts and when you  
15 were meeting this counselor, did you start to tell people that  
16 were you were a lesbian?

17 A I did. I came out to my best friend first, my old college  
18 roommate. She did not take it well.

19 Q And did you -- after that telling your roommate and she  
20 didn't take it well, did you tell other people?

21 A Not so much after that. That experience with her, I think,  
22 kind of threw me off for a while. So I start coming out to  
23 other gay people as I met them and kind of developed a little  
24 bit of a gay community here in Jackson. But I didn't really  
25 tell anybody else.

1 Q Did you talk about the fact that you might be gay with --  
2 you've already mentioned your counselor.

3 A Right, yes.

4 Q And how did she -- without getting into personal details,  
5 how did she make you feel when you talked about that with her?

6 A Oh my God, she really saved my life. She just helped me  
7 understand that this is a normal reaction for some people, and  
8 she just, I guess, helped me see that I had a future as a  
9 lesbian and that I didn't have to be this or that. And she  
10 just kind of kept me sane long enough for me to find my way.

11 Q If at the time that you first expressed these concerns to  
12 your counselor she had told you that she didn't want to treat  
13 you anymore because of a sincerely held religious belief that  
14 marriage is only between a man and a woman, how would you have  
15 reacted to that?

16 A I don't know that I would be here today if she had acted  
17 like that. I think I probably would have been devastated. I  
18 certainly probably would not be a healthy normal adult now if  
19 that had happened.

20 Q Did there come a time when you moved from Mississippi to  
21 another state?

22 A Yes. I left to go to graduate school in Atlanta not too  
23 long after I came out.

24 Q And in Atlanta, did you start to talk to people about the  
25 fact that you might be -- that were you gay?

1 A I almost never went in the closet in Atlanta. When I got  
2 there, I went to Georgia Tech and the community was so diverse  
3 and not -- welcoming me. It was almost like they didn't even  
4 need to be welcoming. They just -- everyone was who they were,  
5 and so I was able to kind of grow and just become myself there.

6 Q And when you -- just so the record is clear, what were you  
7 doing in Atlanta during this period?

8 A I went to graduate school at Georgia Tech.

9 Q What were you studying?

10 A Civil engineering and city planning.

11 Q And when you were studying in Atlanta at Georgia Tech, did  
12 you from time to time visit your parents and come home to  
13 Mississippi.

14 A Yes.

15 Q And when you came home during those periods, did you tell  
16 people here that you were a lesbian?

17 A No.

18 Q Why not?

19 A I guess I was still afraid of their reactions. I didn't --  
20 I just wasn't willing to be treated differently yet. People  
21 look at you differently. When you go from being straight in  
22 their eyes to gay in their eyes, something changes. And I just  
23 wasn't ready to see them change.

24 Q And while -- did there come a point in time when you moved  
25 back home to Mississippi from Atlanta?

1 A Yes. My father died in 2001, and I had a job there after  
2 graduate school working at a large engineering firm in  
3 Buckhead. And when my father died, my firm let me move back  
4 home and work for them still here in Jackson.

5 Q By the way, before your father had died, had you told your  
6 parents that you were a lesbian?

7 A I did. My then partner and I went to have a ceremony at  
8 the MCC church in Decatur, and I called them kind of to invite  
9 them to the ceremony and come out at the same time, which may  
10 not have been the best choice, but that's the way I did it.  
11 And they just kind of said, *Well, honey, we're not stupid.*  
12 *We -- you've been seeing this person and living with her for a*  
13 *while so we assumed something was going on.* But they also  
14 didn't come to the wedding.

15 THE COURT: Hold on one second. MCC church for the  
16 record --

17 THE WITNESS: Metropolitan --

18 THE COURT: Metropolitan?

19 THE WITNESS: -- yes, sir. Metropolitan Community  
20 church.

21 THE COURT: Okay.

22 THE WITNESS: The gay church.

23 THE COURT: Okay.

24 BY MS. KAPLAN:

25 Q So you come back to Mississippi. Now you have a new job.

1 A Yes.

2 Q And now that you are back in Mississippi, are you out to  
3 people in Mississippi at this point in time?

4 A I started kind of coming out a lot more after I moved home  
5 from Atlanta because I guess I kind of -- I had lived in that  
6 community for two or three years where there was no closet, and  
7 so it was really hard to go back into the closet after having  
8 been out. So I kind of just started coming out a little more  
9 and more to clients and people one at a time as I felt they  
10 were safe.

11 Q And why did you do it people one at a time when you were  
12 sure they were safe?

13 A I didn't want to lose my job. I didn't want to not be able  
14 to live in the apartment I was living in. I had a lot of, you  
15 know, concerns that my life would be in jeopardy, if not  
16 physically then at least financially, if I came out all at  
17 ones.

18 Q When did you meet your current suppose or wife, Carla Webb?

19 A 2003. I had to ask her the date.

20 Q And where did you meet?

21 A We met in a local bar. They had a lesbian night on  
22 Thursdays where we played pool.

23 Q And at what point did your relationship with Carla get  
24 serious?

25 A We moved in together about a year later. We kind of dated

1 for about a year.

2 Q And at some point in time did you and Carla discuss the  
3 idea of having children?

4 A Yes. We both wanted children, and I was older when we met  
5 and so we discussed children early on.

6 Q And did you have any disagreements about that issue?

7 A Well, Carla is a lot more fearless than me, and she was  
8 ready to jump in and have kid quickly. I had a lot of fear,  
9 and maybe she did too, but she didn't voice it as much. I had  
10 a lot of concerns that -- I had a lot of concerns that my  
11 children wouldn't be legally safe no matter how we conceived  
12 them, and I had a lot of fear that the State could take them  
13 away from me if they found out we were gay. And I didn't know  
14 how you could raise kids and not be open, and so I had to work  
15 through a lot of that with my counselor before we -- before we  
16 ultimately tried to get pregnant.

17 Q By the way, was it the same counselor from when you went  
18 before?

19 A It was.

20 Q The same person.

21 A I saw her two weeks ago actually.

22 Q Did you ultimately decide to have children?

23 A We did.

24 Q And without naming their names, do you have children now?

25 A Yes. We have a daughter that's eight and a little boy

1 who's almost four.

2 Q And when your daughter was first born eight years ago, were  
3 you worried -- were you and Carla worried about how she would  
4 be treated?

5 A We worried about that a lot, so much that we kind of  
6 developed a good safe little bubble for her. We had a nanny  
7 who came to the house. We didn't try to put her in daycare or  
8 go through all of that. We were kind of cautious where we went  
9 to eat. We just made sure that anywhere we went we would be  
10 safe and she would be safe.

11 Q And what about with respect to her schools?

12 A We shopped for schools a lot. We -- we felt like at the  
13 time and even now that there really is only one private school  
14 in Jackson that she would be accepted at and our family would  
15 be accepted at and unfortunately it is one of the most  
16 expensive schools in the state. So we've done without a lot to  
17 make sure that she could go there, and she's done well there.  
18 It's an Episcopal school.

19 Q Now, you talked about this concept of living in a bubble,  
20 Ms. Pritchett. In connection with that, were there places that  
21 you and your family avoided?

22 A Yes. Well, even now, if a restaurant has a 50-foot cross  
23 in the front yard, we don't go there. There are a lot of  
24 places outside of Jackson that we just -- we just don't go  
25 because we -- it's -- I almost didn't -- it's almost like our

1 bubble has gotten smaller and smaller in that we know where we  
2 feel safe and we know where we don't, and it's almost not been  
3 a conscience decision to eat here but not eat there or go to  
4 this church but not that church. It's just our community. We  
5 know where we're safe, and that's where we stayed.

6 Q Would the same be true with respect to your daughter,  
7 particularly now that she's older? Do you have concerns about  
8 where she goes and what she does?

9 A We are very cautious where she goes. We've had trouble  
10 with summer camps. A lot of the summer camps for kids her age  
11 are religious based, and we've had friends who have invited her  
12 to religious-based camps, and we ask enough questions that  
13 we've never been able to send her to one.

14 So we again pay for a nanny to come sit with her during the  
15 summer and do activities with her because we just don't feel  
16 safe sending her somewhere where we are not really sure of how  
17 everyone will react to her.

18 Q At some point in time, Ms. Pritchett, did you start to  
19 think about getting married to Carla?

20 A When [REDACTED] was in kindergarten, she came home. I said her  
21 name. When our little girl was in kindergarten, she came home,  
22 and she had been studying families. They were studying family  
23 units and drawing pictures of families. And she asked if we  
24 would married, and we said, No. And she wanted to know why.

25 And we really didn't have a good answer for that



1 immediately, and then we kind of started thinking, well -- at  
2 that time six -- I think six or seven states had just come  
3 online for us where we could get married in those states  
4 legally, and so we decided that [REDACTED] needed to see us get  
5 married.

6 And so we went to Maine in 2013 and got married, and we  
7 came home and had a big ceremony at home with friends and  
8 family and pretty dresses and she was a flower girl so that she  
9 could physically see us have a wedding, even though it wasn't  
10 really recognized here but she saw us have a wedding.

11 MS. KAPLAN: Your Honor, in keeping with your prior  
12 instructions, I'd ask that the name of Ms. Pritchett's daughter  
13 be redacted from the record.

14 THE COURT: It will be.

15 BY MS. KAPLAN:

16 Q What do you? How did you -- where did you go to get  
17 married?

18 A We went Cape Elizabeth, Maine, to the lighthouse.

19 Q When was that?

20 A 2013.

21 Q And when you came back to Mississippi, did the State of  
22 Mississippi treat you as a married couple?

23 A No, no.

24 Q And did that create any problems?

25 A Well, the biggest problem we had was with our taxes. We

1 have businesses. We each had a business, and then we had a  
2 joint business for some of the property that we held, and we  
3 had to go through a lot of machinations with our accountants to  
4 file -- we had to file jointly federally and singly state, and  
5 I think that year we paid a fortune to have our taxes done.

6 Q Did there come a time when you became involved in a lawsuit  
7 that's now known as CSE I?

8 A Yes.

9 Q And why did you get involved in that lawsuit?

10 A You know, I think there were a multitude of reasons. We  
11 wanted to be recognized in our home state for our kids. Their  
12 friends families were married, and they didn't -- it was  
13 impossible to try to explain to them how you could be married  
14 in one state but not married in another state. So we wanted to  
15 do it for them.

16 But I think for me personally, I wanted to be -- I wanted  
17 to show other young people in Mississippi that you can be a  
18 family, you can be gay and be a family and have a successful  
19 business and have a career and just live a healthy happy life  
20 because I didn't have that growing up, and I wanted to be that  
21 for other kids too.

22 Q When you got involved in the CSE I lawsuit as a plaintiff,  
23 Ms. Pritchett, were you scared?

24 A We were terrified. We thought -- I thought we would have  
25 crosses burning in the front yard when we first got involved.

1 CSE, you know, sat down with us and they said, *We've talked to*  
2 *the FBI. We've talked to homeland security. We've been*  
3 *through all of these security measures. You're going to be*  
4 *safe.*

5 We had to give notice to the kids' schools, both of them,  
6 the days of the trial so that we -- so that they could be on  
7 high alert because we just really didn't know -- we didn't know  
8 how it was going to be received.

9 Q And why were you so scared?

10 MR. BARNES: Your Honor, I apologize.

11 THE COURT: Make sure you are talking into the mic,  
12 Mr. Barnes.

13 MR. BARNES: I have to object to the relevance of this  
14 entire line of questioning. CSE I was resolved in the  
15 plaintiff's favor. They have been married. And we don't see  
16 the connection between this testimony and HB 1523.

17 MS. KAPLAN: I think I'll get to the connection very  
18 shortly, Your Honor.

19 THE COURT: Okay. Overruled.

20 BY MS. KAPLAN:

21 Q Why were you so scared of becoming a plaintiff in CSE I?

22 A We both grew up in Mississippi in the '70s, and I think we  
23 had seen what civil rights activism got for you, and I didn't  
24 want to be gunned down in my driveway in front of my kids.

25 Q Did things improve for gay people in Mississippi after you

1 won the case in CSE I?

2 A I think they did. There was kind of a -- there was a huge  
3 celebration the night that -- the night that we found out that  
4 we had won. And even though -- even though we had to go to the  
5 Fifth Circuit and argue again and then even though six or nine  
6 months later *Obergefell* came down and there was another huge  
7 celebration, but I think people felt vindicated and happy that  
8 our community was safe. We felt safer.

9 Q Has that atmosphere of relative safety post *Obergefell*  
10 continued?

11 A Well, when HB 1523 was first being discussed in the  
12 legislature, I think there was a large change in the  
13 community's feeling. We felt like we were being attacked. We  
14 felt like we were being pursued, bullied by our own government.  
15 The federal government had come in and said we were legal  
16 families, and now our own state was saying that it's okay to  
17 discriminate against us again.

18 Q And how, if at all, has that affected the way gay people --  
19 at least the way gay people you know in Mississippi go by their  
20 daily life since HB 1523?

21 A We have friends who don't go out to eat anymore, guy  
22 friends from the Delta especially who just don't go out  
23 publicly. I think they're -- I think the guys have it a little  
24 bit harder than the woman. We have friends with businesses in  
25 Fondren who have been harassed by their neighbors. We've seen

1 KKK fliers for the first time in my lifetime. I've never seen  
2 one since -- until this bill came out. I think there's just an  
3 overall sense that the hatred towards us is escalating, and  
4 it's frightening.

5 Q You mentioned KKK fliers. Do you know what those KKK  
6 fliers said? Did you see copies?

7 A I've seen some this Belhaven and the Coast, and some were  
8 in Laurel not too long ago. They mentioned homosexuality, but  
9 they don't mention people specifically and white power and  
10 stuff like that.

11 Q And in connection with any children of gay couples in  
12 Mississippi, do you know anything that's happened in  
13 connection -- happened to them after HB 1523 was passed?

14 A We've had a couple of friends who have had their children  
15 bullied at school. One of Carla's -- one of -- I'm not --

16 Q I want you to be careful about --

17 A Not to say names. Right.

18 Q Be careful not to identify any names.

19 A One of my daughter's friends goes to a different school,  
20 and her parents call me crying one night saying she had been  
21 bullied at school, and she and [REDACTED] discussed that. They --  
22 the children were bullying here because she had gay parents.

23 MS. KAPLAN: Again, Your Honor, I'd ask that we redact  
24 copies of the name. Your Honor, may I approach the witness to  
25 hand her a copy of the complaint?

1 THE COURT: You may.

2 BY MS. KAPLAN:

3 Q Ms. Pritchett, I've handed you a copy of the complaint in  
4 this matter, and I've directed your attention to paragraph 75.  
5 You'll see that there's some language there highlighted in  
6 yellow. Could you please read that into the record.

7 A "Just weeks after the law was enacted, a Mississippi public  
8 schoolteacher accepted her government's invitation to promote a  
9 preferred religious beliefs at the expense of LGBT  
10 Mississippians and their family members by verbally assaulting  
11 her six year old" -- "by verbally assaulting her six year old  
12 for being the daughter of lesbian parents." I'm sorry. Give  
13 me just a second.

14 "According to the girl's mother, the teacher told their  
15 daughter that her parents weren't really married because a  
16 marriage can only be between a man and a woman. The teacher  
17 then proceeded to humiliate the little girl by polling the  
18 other children in the class to show that they all had a mother  
19 and a father and demonstrate that her parents were different."

20 Q Do you know the people who are referenced in that passage  
21 you just read?

22 A I do.

23 Q Without identifying any names, how do you know them?

24 A We met them soon after *Obergefell* came down.

25 Q And do you know why their names are not mentioned in that

1 complaint?

2 A Because they are terrified. I talked to them last night.  
3 They are terrified of being public. And they feel guilty for  
4 not being here to testify, but they finally just decided they  
5 couldn't put a target on their little girl's back.

6 Q Ms. Pritchett, do you have any reason to believe that the  
7 events described in that paragraph did not happen?

8 A I know that they happened.

9 Q How did -- hearing that story from your friends, how did  
10 that make you feel?

11 A Afraid for my kids, afraid for my friends' kids. They  
12 posted it on Facebook the morning after it happened when she --  
13 when she came home from school and told them, and the outcry  
14 was just so immense that they had to take the post down.

15 THE COURT: I'm sorry. "They" being the parents of  
16 the child?

17 THE WITNESS: The mothers, yes. The mothers of the  
18 little girl.

19 BY MS. KAPLAN:

20 Q Ms. Pritchett, God willing, where will you and your family  
21 be living this same time next year?

22 A Tampa, Florida.

23 Q And why is that?

24 A Because I don't want that to happen to my little girl. We  
25 just finally decided that we have to get them out of here and

1 get them somewhere that's safer to be.

2 Q And did HB 1523 have anything to do with that decision,  
3 Ms. Pritchett?

4 A I think it was the final straw. We felt like we were safe  
5 and okay. But then when this came out, it just felt like the  
6 State will never stop pursuing us. We just need to be  
7 somewhere where we can be safe.

8 Q Thank you, Mr. Pritchett, and thank you for your bravery in  
9 giving that testimony.

10 MR. BARNES: No questions, Your Honor.

11 THE COURT: All right. Thank you, Ms. Pritchett.  
12 That concludes, I believe, the testimony for today. I  
13 understand that there will be one witness tomorrow. I would  
14 like to begin at 8:30 or 9:00. What's the preference of the  
15 parties? Originally we had said 9:30 and that's not the case.

16 MS. KAPLAN: I'm an early riser, Your Honor, so  
17 whatever --

18 THE COURT: You are on the New York time?

19 MS. KAPLAN: Exactly.

20 THE COURT: All right.

21 MR. BARNES: Whatever time is most convenient for the  
22 court. 8:30 is fine, Your Honor.

23 MR. McDUFF: That's my preference.

24 MS. KAPLAN: We'd appreciated that, Your Honor,  
25 because there's a 6:30 plane that we have to catch.



1 THE COURT: Oh, you will.

2 MS. KAPLAN: Or we're going to spend some more money  
3 here.

4 THE COURT: You will catch a 6:30 plane.

5 MR. BARNES: We appreciate that from this side also,  
6 Your Honor.

7 THE COURT: Okay. We'll start up tomorrow morning at  
8 8:30. Thank you all for your attention, and court's adjourned.

9 (Recess)

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CERTIFICATE OF REPORTER

I, CHERIE GALLASPY BOND, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 27th day of June, 2016.

s/ *Cherie G. Bond*  
Cherie G. Bond  
Court Reporter