



7 Stunning Trial Moments They Don't Want the Public to See

What Are the Proposition 8 Proponents Trying to Hide?

Evidence presented at trial showed that marriage equality is a fundamental American right.

- The Proponents' own witness, David Blankenhorn, agreed under oath that “the principle of **equal human dignity must apply to gay and lesbian persons**. ... [w]e would be **more American on the day we permitted same-sex marriage** than we were the day before.”¹
- Historian Nancy Cott pointed out that “the U.S. Supreme Court, in 1923, first named the right to marry as a **fundamental right**.”²
- Cott also quoted a former slave who, after the Civil War, said, “The marriage covenant is the **foundation** of all our rights.”³
- “[Marriage] is not simply a word. Just the fact we're here today suggests this is **more than a word**,” testified Psychology Professor Gregory Herek.⁴

Witnesses on both sides agreed that marriage equality would benefit families.

- Blankenhorn stated under oath: “I believe that adopting same-sex marriage would be likely to **improve the well-being of gay and lesbian households and their children**.”⁵ He also stated that the children of adoptive parents do as well if not better than the children of biological parents.⁶
- Blankenhorn went on, “Extending the right to marry to same-sex couples would probably mean that a higher proportion of gays and lesbians would choose to enter into committed relationships,”⁷ and “Same-sex marriage would likely contribute to **more stability and to longer-lasting relationships** for committed same-sex couples.”⁸
- Economics Professor Lee Badgett testified, “**Prop. 8 has inflicted substantial economic harm** on same-sex couples and their children who live here in California.”⁹
- Cott testified as to the stability that marriage lends families: “[T]he fact that the state is involved in granting these kinds of benefits and legitimacy to the marital family tends to lend a prestige, a status to that institution that no informal marriage has ever approximated.”¹⁰

Witnesses conclude that Proposition 8 was motivated by animus against gay and lesbian citizens.

- Political Science Professor Kenneth Miller, a witness for the Proponents, conceded: “My view is that at least **some people voted for Proposition 8 on the basis of anti-gay stereotypes and prejudice**.”¹¹
- Political Science Professor Gary Segura testified: “[T]he role of prejudice is profound. ... It's very difficult to engage in the give-and-take of the legislative process when I think you are an inherently bad person.”¹²
- History Professor George Chauncy explained on the stand, “You have a pretty strong echo [in the Proposition 8 campaign] of this idea that simple exposure to gay people and their relationships is somehow going to lead a whole generation of young kids to become gay.”¹³
- “There is no group in American society who has been targeted by ballot initiatives more than gays and lesbians,” said Segura. “They have essentially lost a hundred percent of the contests over same-sex marriage.”¹⁴
- Chauncy pointed out that one Proposition 8 commercial “implies that the very exposure to the idea of homosexuality threatens children and threatens their sexual identity, **as if homosexuality were a choice**. In addition, it suggests that the fact that gay people are being asked to be recognized and have their relationships recognized is an imposition on other people, as opposed to an extension of fundamental civil rights to gay and lesbian people.”¹⁵
- As the Court concluded: “**Proposition 8 fails to advance any rational basis** in singling out gay men and lesbians for denials of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite-sex couples are superior to same-sex couples.”¹⁶

1. Trial Transcript 2805:6 - 2806:1

2. Tr. 237:25-238:2

3. Tr. 203:8-9

4. Tr. 2045:11-12, 18-19

5. Tr. 2803:13-15

6. Tr. 2794:12 - 2795:5

7. Tr. 2849:14-17

8. Tr. 2849:20-23

9. Tr. 1330:14-16

10. Tr. 225:4-7

11. Tr. 2608:16-18

12. Tr. 1560:22-1561:9

13. Tr. 430:5-8

14. Tr. 1552:6-7, 10-12

15. Tr. 530:24-531:11



Witnesses and attorneys are unable to provide any rational basis for marriage discrimination.

- Bizarrely, Proponents suggested that they should not have to provide evidence to support their case.
 - The Court: “I’m asking you to tell me how [marriage equality] would harm opposite-sex marriages. ...” Proponents’ Lead Counsel Charles Cooper: “Your Honor, my answer is: **I don’t know. I don’t know.**”¹⁷
 - The Court: “What testimony in this case supports the proposition?” Cooper: “...your Honor, you don’t have to have evidence for this ...” The Court: “**I don’t have to have evidence?**”¹⁸
- Psychology Professor Letitia Peplau summed it up best: “[I]t’s very hard for me to imagine you would have a happily-married couple who would say, **‘Gertrude, we’ve been married for 30 years, but I think we have to throw in the towel because Adam and Stuart down the block got married.’**”¹⁹
- Professor Badgett was also unequivocal: “[L]etting same-sex couples marry would not have any adverse effect on the institution of marriage or on different sex couples.”²⁰
- Professor Cott used a poignant example to debunk the myth that marriage requires the ability to procreate: “There has never been a requirement that a couple produce children in order to have a valid marriage. ... George Washington, who is often called the father of our country, was sterile.”²¹

The Proponents’ witnesses were clearly unqualified to testify.

- Proponents’ supposed “expert,” Kenneth Miller, was forced to admit, “I haven’t looked closely at these other states to be able to form an opinion” on the very topic he was called to address.²²
- Miller was unable to think of laws that discriminate on the basis of sexual orientation and couldn’t identify key facts and figures, leading the Court to rule that he was “**not sufficiently familiar** with gay and lesbian politics specifically to offer opinions on gay and lesbian political power.”²³
- Proponents’ only other witness, activist David Blankenhorn, hasn’t published any peer-reviewed articles and hadn’t studied the effects of marriage equality.^{24, 25}
- The best qualifications that Blankenhorn could offer were that “in the course of this work as an expert in this case I have learned more about it for sure, and I think that I can probably write an article on this topic at this point,”²⁶ and that “**I have tried to pay some attention ... I have just read articles and had conversations with people, and tried to be an informed person about it. But that is really the extent of it.**”²⁷
- The Court finally ruled, “**Blankenhorn’s testimony ... should be given essentially no weight.**”²⁸
- Blankenhorn was so resistant to answering directly that the Judge rebuked him. “I’m sure you would not want your demeanor on the stand to be a negative factor in your testimony,” Judge Walker said. “I would urge you to pay close attention to Mr. Boies’s questions and to answer them directly.”²⁹

Marriage has changed over time to better suit families’ needs.

- Professor Cott explained that, historically, “marriage had an important political governance purpose. It set up men as heads of households ... children, stepchildren, slaves, apprentices, et cetera. ... that political governance purpose of marriage today has **shifted rather dramatically ... particularly since 1920, when women got the right to vote.**”³⁰
- She added, “[A]s many as 41 states and territories had for significant periods of their history on marriage between a white person and a person of color.”³¹
- Theodore Olson concluded: “We’ve improved the institution of marriage when we allowed interracial couples to get married. We have improved the institution of marriage when we allowed women to be equal partners in the marital relationship. We have improved the institution of marriage when we didn’t put artificial barriers based upon race. **And we will improve the institution of marriage and we will be more American, according to Mr. Blankenhorn, when we eliminate this terrible stigma.**”³²

Heartfelt testimony about the fight for equality.

- Plaintiffs Jeff Zarrillo and Paul Katami testified, “I want to be able to share the joy and the happiness that my parents felt, my brother felt, my friends, my co-workers, my neighbors, of having the opportunity to be married. It’s the logical next step for us,”³³ and “I just want to get married...**it’s as simple as that. I love someone. I want to get married.**”³⁴
- “I’m just trying to get the rights that the Constitution already says I have,” said Plaintiff Sandy Stier. “**At 47 years old I have fallen in love one time and it’s with Kris.**”³⁵

16. 704 F.Supp.2d 921, 1003; Slip Op. at 135

17. 704 F.Supp.2d at 931; Slip Op. at 9

18. Tr. 3039:17-18, 24-25, 3040:2

19. Tr. 601:22-602:1

20. Tr. 1330:17-19

21. Tr. 223:6-7, 12-13

22. Tr. 2506:3 - 2507:1

23. 704 F.Supp.2d at 951; Slip Op. at 50

24. Tr. 2728:19-2729:8

25. Tr. 2736:13-19

26. Tr. 2432:7-19

27. Tr. 2739:14-2740:14

28. 704 F.Supp.2d at 946; Slip Op. at 39

29. Tr. 2846:6-12

30. Tr. 221:23, 222:7-12

31. Tr. 228:10-13

32. Tr. 3007:17-21

33. Tr. 80:9-13

34. Tr. 108:11-13

35. Tr. 167:3-5, 178:13-14