

Testimony concludes in same-sex marriage trial in San Francisco

SAN FRANCISCO - Closing arguments were expected around the beginning of March in the federal trial challenging the constitutionality of California's ban on same-sex marriage.

Chief U.S. District Judge Vaughn Walker, presiding at the nonjury trial, said Jan. 27 that he will set a date for closing arguments after at least a 30-day hiatus to review the evidence.

"Obviously a fascinating case," Walker said as he adjourned the proceedings. "Extremely well presented on both sides."

The final expert witness for the defense in the trial on the constitutionality of Proposition 8, the 2008 voter initiative that defined state-sanctioned marriage as limited to a man and a woman, testified that the "rule of opposites" has been a virtually unwavering principle of marriage throughout human history.

"There are no or almost no exceptions to this principle that marriage is between a man and a woman," said David Blankenhorn, founder and president of the Institute for American Values.

Blankenhorn defended the historical basis of that definition as he underwent close cross-examination by David Boies, a lawyer for same-sex couples who sued to have Proposition 8 overturned as discriminatory.

Asked if he knows of any exceptions to his view on the opposite-sex foundation of marriage, Blankenhorn said he is aware of only one described in the scholarly literature. In that case, men and boys in an African warrior society would form relationships that some scholars have described as marriage, Blankenhorn said.

But he said the relationships were ceremonial and that the boy tended to outgrow the role and often would leave to marry a woman.

The other bedrock principles of marriage are a bond between two people and a sexual relationship, Blankenhorn said.

Boies asked the witness to explain nuances in Blankenhorn's 2007 book, "The Future of Marriage."

"You write, 'If adopting same-sex marriage is likely to be part of large societal shift, or if it seems likely that adopting same-sex marriage would not significantly undermine efforts to renew wider marriage culture, I'm confident most advocates would favor adoption. But if same-sex marriage would impede that larger goal, I would be against it.' "

The lawyer then asked, "What you are saying is you believe rights of gays and lesbians should take second place to the needs of existing social institutions?"

Blankenhorn answered, "The answer to your question is yes. I would only point out I was saying I understand and accept the validity of the argument of those who disagree with me."

He added, "I'm one of those who doesn't believe this is a case of good vs. bad. I believe there are valid arguments on both sides of the issue."

Boies concluded his second day of questioning Blankenhorn by asking if he agrees that marriage is constantly evolving and always changing, and that there is no single definition of marriage. "I wrote those words," Blankenhorn answered.

Questioned by lawyer Charles Cooper, who supports Proposition 8, Blankenhorn underlined his view that "goods in conflict" can coexist harmoniously. Cooper submitted as evidence a New York Times essay in which Blankenhorn and a co-writer argued for strong foundations for marriage and for domestic partnership as a way to peaceably resolve the debate over the definition of marriage.

Blankenhorn, testifying the previous day as the principal expert witness for the Proposition 8 defense, said the social foundation of marriage is greater than the legal issues surrounding it. He described marriage and domestic partnership as separate institutions. He said marriage predates law and "is not a creature of law."

“The marital institution is differently purposed, is specifically purposed,” he said. “The purpose is to bring together the biological male and biological female to make it as likely as possible that they are the social and legal parents of the child. That’s the lodestar, that’s the distinctive and core contribution of the institution of marriage.”