

1 that bears on the issue of whether a law allowing individuals  
2 of the same gender to marry would affect the divorce rate?

3 **A.** My only comment can come from observation of my home state  
4 of Massachusetts, which has had same-sex marriage for five  
5 years now. And this is, of course, only a correlation, but  
6 Massachusetts has the lowest divorce rate in the nation.

7 **Q.** And has it increased since marriage between individuals of  
8 the same sex has been recognized?

9 **A.** No. It has fluctuated but -- around a tenth of a  
10 percentage point. But, if anything, the direction has been  
11 down rather than up.

12 **Q.** Thank you.

13 To go back to something you mentioned a moment ago,  
14 what do you today, based on the collection of events that make  
15 up our history as a nation, view as the key defining  
16 characteristics of the institution of marriage in the  
17 United States?

18 **A.** First, of course, the consent of the two parties, which  
19 has been the basis for marriage since the era of the common  
20 law, the free consent of the two parties.

21 And I'll just add that in the United States, as  
22 compared to Europe, for centuries that consent has been  
23 presumed to rest on a love match, not on an arrangement.

24 So mutual consent between partners v  
25 each other, and their commitment to establish

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF  
CALIFORNIA

Case number: 3:09-cv-02292-VRW

PLTF EXHIBIT NO. PX3005

Date admitted: \_\_\_\_\_

By: \_\_\_\_\_

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20 law, the free consent of the two parties.

21 And I'll just add that in the United States, as  
22 compared to Europe, for centuries that consent has been  
23 presumed to rest on a love match, not on an arranged marriage.

24 So mutual consent between partners who freely choose  
25 each other, and their commitment to establish a continuing

1 stable relationship as the foundation for a household in which  
2 they will economically support one another and their  
3 dependents, and enable themselves to compose a family.

4 Q. Do you believe that a law recognizing the ability of  
5 individuals of the same sex to marry would be consistent and  
6 would include those characteristics you have just identified as  
7 being defining?

8 A. Yes.

9 Q. Why?

10 A. It seems to me that couples of the same sex have expressed  
11 many of the same motivations as couples of different sex to  
12 marry and to establish stable households.

13 And, in that regard, especially in an era when  
14 families can have children that are not the result of  
15 biological procreation, and so many families do, that it seems  
16 to me same-sex couples fulfill the aims of marriage from the  
17 point of view of the state.

18 And, certainly, it's up to any partner -- intimate  
19 pair to decide whether they wish to be married or not. But  
20 seems to me that by excluding same-sex couples from the ability  
21 to marry and engage in this highly-valued institution, that  
22 society is actually denying itself another -- another resource  
23 for stability and social order.

24 MR. BOUTROUS: Your Honor, if I may just check with  
25 my colleagues, I think I may have covered the waterfront.