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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THE WOODLANDS PRIDE, INC., 4:23-CV-02847
ET AL.

VS. HOUSTON, TEXAS

ANGELA COLMENERO, ET AL. AUGUST 28, 2023

TRANSCRIPT OF CONSOLIDATED PRELIMINARY INJUNCTION HEARING AND
TRIAL ON THE MERITS - DAY 1
HEARD BEFORE THE HONORABLE DAVID HITTNER
UNITED STATES DISTRICT JUDGE

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1 MS. GIFFORD: Thank you.

2 MR. KLOSTERBOER: Good morning, Your Honor.

3 Brian Klosterboer --

4 THE COURT: Okay. Hang on.

10:38AM 5 MR. KLOSTERBOER: -- for the plaintiffs.

6 THE COURT: Yes, sir. We have a diagram here. I'll
7 get to know it pretty quick, okay? But yes, sir. And your
8 printout says Klosterboer?

9 MR. KLOSTERBOER: Correct, Your Honor.

10:39AM 10 THE COURT: Yes, sir. Who do you represent?

11 MR. KLOSTERBOER: I represent The Woodlands Pride as
12 well as the other plaintiffs in this case.

13 THE COURT: Other plaintiffs, all the other plaintiffs?

14 MR. KLOSTERBOER: Correct, Your Honor.

10:39AM 15 THE COURT: Okay. Just so we get it on the record, who
16 are the other counsel then with you and what's their
17 affiliation? What's your affiliation?

18 MR. KLOSTERBOER: I work with the ACLU of Texas.

19 THE COURT: Okay. Who is next?

10:39AM 20 MR. KLOSTERBOER: I'm joined by Thomas Buser-Clancy.
21 He is also with the ACLU of Texas --

22 THE COURT: Okay.

23 MR. KLOSTERBOER: -- Brandt Thomas Roessler with the
24 law firm Baker Botts as pro bono counsel for the plaintiffs.

10:39AM 25 THE COURT: Is that the local Baker Botts or

1 Washington?

2 MR. ROESSLER: New York.

3 THE COURT: Okay. I don't hold New York against you.

4 MR. KLOSTERBOER: We have Emily Rohles.

10:39AM 5 THE COURT: Let's see. Yes. Again, how do you
6 pronounce it?

7 MS. ROHLES: "Rohles."

8 THE COURT: R -

9 MS. ROHLES: R-O-H-L-E-S.

10:39AM 10 THE COURT: You are?

11 MR. ROESSLER: With Baker Botts Houston.

12 THE COURT: Okay. Baker Botts Houston.

13 MS. ANDREWS: Ali Andrews with Baker Botts Houston.

14 THE COURT: Okay. And next?

10:40AM 15 MS. KEMPF: Chloe Kempf with the ACLU of Texas.

16 THE COURT: Okay. Thank you. You may be seated.

17 MR. KLOSTERBOER: Your Honor, the plaintiffs are also
18 here and their party representatives, if you would like them to
19 introduce --

10:40AM 20 THE COURT: In a moment. In a moment.

21 MR. KLOSTERBOER: Yes, sir.

22 THE COURT: I tell you what. Yes. Please introduce
23 the parties plaintiff that we may be hearing from.

24 By the way, if you want to move seats, I can't do
10:40AM 25 anything with that pole. I had a pole in state court.

1 Have a seat for a second. I've got to tell my
2 pole story.

3 I had a pole in state court so this is the
4 smallest full-time courtroom. I could have moved to one of the
5 monster courtrooms over the years. But for 37 years I've
6 remained on this floor, but I have the best office space in the
7 building, so I traded one for the other.

8 So don't hesitate if you want to move around. We
9 do have some seats in the front also. If you're completely
10 blocked, we put some extra seats in.

11 Okay. So now where are we?

12 MR. KLOSTERBOER: Your Honor, the plaintiffs are here;
13 and we're going to ask them to stand up.

14 THE COURT: Yes.

15 MR. KLOSTERBOER: This is Jason Rocha with
16 The Woodlands Pride; Gavyn Hardegree with Abilene Pride
17 Alliance; Richard Montez, Jr., with 360 Queen Entertainment;
18 Kerry Lynn Sieff with Extragrams and Brigitte Bandit.

19 THE COURT: Okay. Thank you. All right. Thank you.

20 Now, are we ready for the defense? What's that?
21 Lunch you're coming in with?

22 UNIDENTIFIED MAN: No.

23 THE COURT: Okay. Yes, ma'am. Now please. Sorry.

24 MS. GIFFORD: Taylor Gifford with the
25 Attorney General's Office on behalf of provisional Attorney

1 General Angela Colmenero.

2 THE COURT: Okay. And now with you, we'll go down.
3 Your colleagues. Yes.

10:41AM

4 MS. GIFFORD: With me I have Johnathan Stone, also with
5 the Attorney General's Office; and Charles Eldred, also with
6 the Attorney General's Office.

10:42AM

7 THE COURT: Okay. Who else do we got? Okay. Anybody
8 else attorneys? We have from -- we have -- what is it -- a
9 table full of folks. And I tell you what. Let's start right
10 here. Yes, sir. Your name, sir?

11 MR. VIADA: My name is Ray Viada. I'm here on behalf
12 of the City of Abilene.

10:42AM

13 THE COURT: I've got a question for you. You wanted a
14 jury trial in this case. You filed for a jury trial. Where is
15 the jury issue here?

16 MR. VIADA: If there is one, I want a jury trial on it.

17 THE COURT: Well, what is it?

18 MR. VIADA: I have no idea.

19 THE COURT: No, sir.

10:42AM

20 MR. VIADA: At this point as I see it, it's a question
21 of law for the Court.

22 THE COURT: Okay. Thank you.

23 MR. VIADA: If there's a fact issue.

10:42AM

24 THE COURT: I came across that. I was looking for a
25 jury issue.

1 MR. VIADA: I agree with you.

2 THE COURT: Okay. You see there's no jury in the box
3 but we can pick a jury back here and start in if you need to.

4 Okay. Yes, ma'am.

10:42AM

5 MS. CUBRIEL: Lisa Cubriel. I am from the Bexar County
6 District Attorney's Office, and I'm here on behalf of the Bexar
7 County District Attorney Joe Gonzalez.

8 THE COURT: Thank you.

10:43AM

9 MS. YBARRA: Amy Ybarra and I'm here on behalf of
10 Travis County and County Attorney Delia Garza.

11 THE COURT: Okay.

12 MR. PLAKE: Daniel Plake here on behalf of Montgomery
13 County and District Attorney Brett Ligon.

14 THE COURT: Thank you.

10:43AM

15 MR. GRIFFIN: B. D. Griffin, County Attorney for
16 Montgomery County here for Montgomery County and DA Britt
17 Ligon.

18 THE COURT: Okay. Slow down, sir.

19 Again. Montgomery County, correct?

10:43AM

20 MR. GRIFFIN: Montgomery County and District Attorney
21 Brett Ligon.

22 THE COURT: Okay. Thank you, sir.

23 Mr. Wagstaff.

10:43AM

24 MR. WAGSTAFF: Robert Wagstaff here on behalf of Taylor
25 County and DA James Hicks, Your Honor.

1 THE COURT: Okay.

2 I'm trying to figure out where to start. There
3 was -- a lot of the motions -- there's a motion -- let's see.

4 Okay. There are a few motions to dismiss. In a
10:44AM 5 way you can argue that on the way, but this is a final trial
6 that we have. Thank you for working overtime to get this done.

7 There's no need, I don't believe, in a case like
8 this, for a hearing on a temporary restraining order, although
9 there may be one issue just to allow me to write the opinion so
10 we'll see.

11 I'll make that determination either today or
12 tomorrow because I know the statute goes into effect on
13 September 1st. So I'm aware of that.

14 But this allows you and me to do it once. We
10:44AM 15 have a trial on the merits. You get everything down and then
16 either you accept what comes down or it goes up to a different
17 court.

18 But I thought it was in everybody's interest so
19 we don't have to do it twice because basically we will be doing
10:45AM 20 it twice if we need a preliminary injunction and then a
21 permanent injunction.

22 So in effect I look at this as a combination, I
23 suppose, of a TRO but primarily a trial on the merits. So
24 thank you for putting the work in. The other thing is -- yes,
10:45AM 25 ma'am.

1 MS. GIFFORD: Your Honor, just for the record, the
2 attorney general does object to moving forward on trial on the
3 merits and while I appreciate --

4 THE COURT: Did you file anything to that extent?

10:45AM

5 MS. GIFFORD: No, we have not filed anything.

6 THE COURT: So why is it now when you're standing up on
7 the day of trial with everyone here and nobody having an
8 opportunity to respond in writing that you're now moving for in
9 effect to do away with this trial and do it again somewhere
10 down the line with the same folks and the same issues?

10:45AM

11 MS. GIFFORD: Your Honor, because we've been working
12 around the clock to prepare for this. I will say that I
13 absolutely appreciate the Court's -- the Court's intent of
14 doing this once. I do appreciate that.

10:46AM

15 THE COURT: Well, what about the permission that a
16 judge has to convert a preliminary injunction to a permanent
17 injunction hearing, trial in effect?

18 MS. GIFFORD: Yes, Your Honor. You do have discretion.

10:46AM

19 THE COURT: It's long-standing, federal. I think also
20 when I was in the state court 30 some-odd years ago it was
21 still that way.

22 But what are you doing it, just for the record?

23 MS. GIFFORD: Yes, Your Honor. For the record, there
24 are -- to the extent the plaintiffs have brought an as-applied
25 challenge, we believe that there could be fact issues that need

10:46AM

1 to be developed and we've not had an opportunity to develop
2 those.

3 THE COURT: What are the fact issues? Because somebody
4 wanted a jury trial and you said no, and he withdrew it. What
10:46AM 5 now? Did you ask for a jury trial or any kind of fact issues
6 to determine?

7 MS. GIFFORD: We have not yet, Your Honor.

8 THE COURT: All right. You want a ruling?

9 MS. GIFFORD: Well, my other point would be as to
10:47AM 10 standing to the extent we need --

11 THE COURT: Standing?

12 MS. GIFFORD: Yes, sir.

13 THE COURT: Okay. We're going to discuss all of that.
14 It will all be in there, but right now it's overruled.

15 MS. GIFFORD: Okay. Thank you.

16 THE COURT: You've got it on the record.

17 You're free to direct questions to me or to
18 answer me from the -- from your place if you pull the
19 microphones in. We have the podium. You do not have to use
10:47AM 20 the podium like most federal courts require.

21 You can stand at your place when you examine
22 witnesses. It's like they do it in state court. You can do it
23 sitting, okay? You don't have to stand or use the podium.
24 It's there if you want to use it.

10:47AM 25 I just want to make sure I keep in some sequence

1 that I had here. All right. There's the first thing I have
2 the plaintiffs' request for judicial notice.

3 Any objection to that by the defense?

4 MR. ELDRED: Yes, Your Honor.

10:47AM

5 THE COURT: All right. What's the objection? Pull the
6 mic in, sir. Pull it in by the -- yeah, pull it all the way in
7 if you can and it will pick up.

8 MR. ELDRED: Testing.

9 THE COURT: Okay. Go on. Which ones can you agree to?

10:48AM

10 MR. ELDRED: None.

11 THE COURT: None. Why is that?

12 MR. ELDRED: Exhibits 1 through 20 and 23 through 29,
13 those are either portions of legislative history or are tweets
14 by public officials.

10:48AM

15 In principle I think you could take judicial
16 notice of those things, but you should not in this case because
17 they do not show any sort of discrimination against drag shows
18 as alleged by the plaintiffs.

19 THE COURT: Why don't you break them down between
20 legislative history and the Twitter. First of all, let me
21 maybe shortcut it. What about the plaintiffs' position?

10:48AM

22 MR. KLOSTERBOER: Yes.

23 THE COURT: Plaintiffs' position. Can you withdraw any
24 of those? What about all the tweets and the Twitters and the
25 news articles?

10:49AM

1 MR. KLOSTERBOER: Your Honor, we do believe that they
2 are relevant to the legislative history. We're not bringing
3 any kind of discrimination claim. And they also just conveyed
4 to the Court that they have not identified any facts in
5 dispute. As we said in our motion, courts routinely do take
6 notice of tweets from government officials. Often it goes to
7 the weight. They might not. Whether the Court looks at them
8 or not, they are appropriate to be admitted into evidence and
9 subject to take judicial notice.

10 THE COURT: Okay. Now, let's see. Counsel, I just
11 want to get everybody...

12 MR. ELDRED: For the record, I'm Mr. Eldred.

13 THE COURT: Yeah, Mr. Eldred. Here it is. What is it
14 specifically that's in the tweets that you have a concern
15 about, the tweets and the newspaper articles and so forth?

16 MR. ELDRED: Plaintiffs allege that this law violates
17 their right to free speech and it's discriminatory against drag
18 shows. But they have not alleged that there is similarly
19 situated shows out with there sexually oriented performances
20 that are not being discriminated against.

21 So for that reason, these tweets do not show --
22 the tweets and the legislative history do not show that drag
23 shows are being singled out.

24 THE COURT: Well, what about isn't there some comments
25 by public officials that drag shows are included in it?

1 MR. ELDRED: I think that's fair to say some of them
2 say something like that.

3 THE COURT: Isn't it?

4 I'll ask now the plaintiff. Isn't there some
10:50AM 5 instances where public officials have related specifically to
6 the drag shows relative to this legislation?

7 MR. KLOSTERBOER: That is true, Your Honor. And
8 there's not an argument against admissibility. They're only
9 arguing about the content. It's clearly established case law
10:50AM 10 that we've cited in our motion that they are admissible.

11 And then, like I said, they're misstating. We're
12 bringing a facial challenge to the law under the First
13 Amendment. But regardless of how probative they are for the
14 Court, they're still admissible.

10:51AM 15 THE COURT: Okay. Yes, sir.

16 MR. ELDRED: Well, they're not relevant. The law is
17 content neutral. And I think they're trying to submit these
18 documents and tweets to show it's not content neutral, it's
19 actually discriminatory towards their clients.

10:51AM 20 But it's not discriminatory towards their
21 clients. They don't have any evidence that it's discriminatory
22 toward their clients because they have no evidence that there's
23 any other people that are making these sexually oriented
24 performances in public or in front of children.

10:51AM 25 So it's not singling anybody out. It's neutral

1 on its face and there's no allegation even that it's only being
2 applied to them and not being applied to other people.

3 THE COURT: What about the legislative history?

4 MR. ELDRED: Same objection. It's not relevant because
10:51AM 5 it does not show that the law is not content neutral. It does
6 show a history --

7 THE COURT: Well, haven't cases, somewhat similar cases
8 at least referred to it or admitted it for whatever weight it
9 should be given in other jurisdictions?

10:52AM 10 MR. ELDRED: I think that's happened. But there's no
11 weight here because they need to show that this law is
12 discriminatory toward plaintiffs.

13 THE COURT: I understand. That's the basic thing they
14 have to do. So if I rule against you it's not that I don't
10:52AM 15 grasp that. All right. All right. So those are your
16 objections.

17 MR. ELDRED: There are two more. I'm sorry.

18 THE COURT: Yes, sir. Please.

19 MR. ELDRED: 21 and 22 are newspaper articles and you
10:52AM 20 may not take judicial notice of newspaper articles.

21 THE COURT: Okay. Counsel for the plaintiff, what's
22 your best case on the newspaper articles?

23 MR. KLOSTERBOER: Your Honor, we have a case cited from
24 the Western District of Texas, *U.S. ex rel. Lamb*, where it says
10:52AM 25 courts have the power to take judicial notice of the coverage

1 and existence of newspaper and magazine articles.

2 THE COURT: How many newspaper articles do you have?

3 MR. KLOSTERBOER: We only have two. The first one,
4 Your Honor, is actually specifically quoted and cited in the
10:52AM 5 actual legislative record from the committee. In the bill
6 analysis it cites an article from the *New York Post* as one of
7 the bases for this law.

8 THE COURT: Go on.

9 MR. KLOSTERBOER: That article is explicitly
10:53AM 10 incorporated into the legislative record and the lawmakers
11 refer to that article.

12 The other article also has statements and quotes
13 from lawmakers just given the context of the law. But, you
14 know, if Your Honor would like, the second article we could
10:53AM 15 just introduce later on if needed.

16 THE COURT: All right.

17 MR. KLOSTERBOER: But the first article is clearly in
18 the legislative record.

19 THE COURT: What about the second one? What's that
10:53AM 20 number?

21 MR. KLOSTERBOER: Exhibit 22.

22 THE COURT: Okay. We'll go down slowly since you
23 withdrew it based upon the possible need.

24 22, objection is granted.

10:53AM 25 MR. KLOSTERBOER: Thank you, Your Honor.

1 THE COURT: All right. Now, what about the Twitters?

2 MR. KLOSTERBOER: Your Honor, we have two cases
3 directly citing that tweets are commonly referred to in court.
4 We could call Governor Abbott today to come testify. We assume
10:53AM 5 the State would not want that to happen.

6 So in *Hawaii versus Trump* the Ninth Circuit in
7 2017 took judicial notice of tweets from President Trump.

8 Also in *Christa McAuliffe versus de Blasio* in
9 2019 the Southern District of New York took judicial notice of
10:54AM 10 tweets from Bill de Blasio.

11 THE COURT: All right. What's the comment of the
12 governor?

13 MR. KLOSTERBOER: The comments from the governor, he
14 says that he's banned drag shows in public.

10:54AM 15 THE COURT: So he mentioned that?

16 MR. KLOSTERBOER: After he signed this law into effect,
17 he put out a statement proclaiming it. And the Court can take
18 judicial notice of that, which actually protects the government
19 officials from having to come testify about their comments.

10:54AM 20 THE COURT: Okay. All right, sir. Continue.

21 MR. ELDRED: Well, the same objection as before. It
22 doesn't show that this is not a content neutral statute. It
23 doesn't show that it's aimed at the drag show message.

24 Because there is no other show that is being --
10:54AM 25 there are no other people being allowed to put on sexually

1 oriented performances. They haven't alleged there's any other
2 people that are being allowed to do it and drag shows are not.
3 They need to show that before they can show it's not content
4 neutral.

10:55AM

5 THE COURT: All right. Especially since this is a
6 nonjury matter, it's a nonjury trial in effect, the objection
7 is overruled. I find it goes to the weight and not the basic
8 admissibility. So for that purposes the objection is
9 overruled.

10:55AM

10 I want to make sure each side if you need a
11 specific ruling any time, I'm trying to do it both sides, that
12 you have enough in the record from the Judge that it be in the
13 record for you for later use, okay?

14 MR. ELDRED: Thank you.

10:55AM

15 THE COURT: And I think you've done that admirably, so
16 thank you for that.

17 I tell you what. What I usually do in all
18 trials, jury or nonjury, it may seem overly simplistic but just
19 to focus in, all right, plaintiff, if you can do it in five
20 minutes, what are you here for? Pull your mic in or you can
21 use the podium. Either way.

10:55AM

22 MR. KLOSTERBOER: I'll come to the podium, Your Honor.

23 THE COURT: I just want an overview; then we're going
24 to get into the specifics.

10:56AM

25 MR. KLOSTERBOER: Yes, Your Honor. And plaintiffs

1 agree completely with the Court. We are here today
2 representing two small businesses, two local LGBTQ+ pride
3 groups and a drag performer and artist, Brigitte Bandit.

4 We agree with the Court that time is of the
10:56AM 5 essence. As the Court is aware, this law takes effect on
6 Friday. This is an egregiously unconstitutional law that
7 clearly violates longstanding doctrines including it's clear --

8 THE COURT: Doctrine in Texas or doctrine generally?

9 MR. KLOSTERBOER: From the U.S. Supreme Court,
10:56AM 10 Your Honor, and Fifth Circuit case law.

11 THE COURT: Go on.

12 MR. KLOSTERBOER: This is a clear content and
13 viewpoint-based law. The defendants have not pointed to
14 anything that would undermine that. The law on its face
10:56AM 15 prohibits free expression. It targets drag performances and
16 other types of performances. The fact that the law extends
17 beyond drag does not save it. It just farther dooms it.

18 THE COURT: Farther what? Dooms it?

19 MR. KLOSTERBOER: It dooms the law. It is vastly
10:57AM 20 overbroad, unconstitutionally vague, and a clear prior
21 restraint on speech.

22 The defendants are trying to obscure a
23 straightforward pre-enforcement challenge. It's a facial
24 challenge under the First Amendment that decades of Supreme
10:57AM 25 Court precedent shows is possible.

1 They're trying to point fingers at each other
2 saying the State is to blame. But of course, the Court is
3 aware plaintiffs are not allowed to simply sue the State or the
4 state legislature. Plaintiffs are tasked with suing the
10:57AM 5 enforcement officials; the people who have the authority to
6 enforce the statute.

7 The statute on its face clearly points to three
8 types of enforcement officials. First you have the attorney
9 general. They do not dispute in their brief they are tasked
10:58AM 10 with enforcing Section 1 of the law.

11 THE COURT: Well, it's criminal and civil, correct?

12 MR. KLOSTERBOER: Correct, Your Honor. Section 1 is
13 the civil penalties that are tasked with the attorney general.
14 And then there's the criminal penalties, which is Section 3.
10:58AM 15 And that is why the county and district attorneys are proper
16 defendants in this suit.

17 And they too do not dispute that they are tasked
18 with enforcing criminal laws and this is a pre-enforcement
19 challenge to a criminal law that they have a clear obligation
10:58AM 20 to enforce.

21 THE COURT: All right. Question. If a final
22 injunction is ordered by this Court, does it -- what does it
23 encompass? Does it encompass the municipalities, the cities,
24 and the counties or is it only against the State?

10:58AM 25 How do you feel that it would work if indeed you

1 got what you were looking for? Because I do with this with
2 each side. I'll say the same thing when I even request
3 findings of facts and conclusions of law. It would be if you
4 prevail on everything, would it be relative to you suing the
10:59AM 5 State in effect or the state official be a blanket then for
6 everyone as to being moot as far as they go except as an
7 appellate matter?

8 MR. KLOSTERBOER: Yes, Your Honor. We believe that all
9 the defendants in this suit are proper defendants, that
10:59AM 10 plaintiffs have standing and traceability against each one.
11 Because this statute has the three parts, it has three types of
12 defendants.

13 The attorney general, like we said, does not
14 dispute that they are tasked with enforcing those civil
10:59AM 15 penalties. Their only argument is that the statute only allows
16 them to take direct action against a commercial enterprise or
17 someone who controls the premises.

18 And they're trying to say that plaintiffs don't
19 fully have control because they don't own the premises. That's
10:59AM 20 an unreasonable interpretation of the statute. But even
21 accepting that as true, accepting --

22 THE COURT: What about the The Woodlands Pride? Who
23 are they? What are they? Do they run shows? Are they just a
24 civic association? What exactly are they?

11:00AM 25 MR. KLOSTERBOER: They are a civic association and

1 nonprofit organization. They host a pride festival on public
2 property in Montgomery County. And they also rent out and host
3 events at commercial enterprises including a car dealership.
4 They have corporate offices where they host drag shows and
5 events.

6 So they are clearly targeted both by the
7 enforcement authority of the attorney general against the
8 commercial enterprises where they host events and by Montgomery
9 County and the district attorney of Montgomery County.

10 THE COURT: Wrap it up. That's basically it?

11 MR. KLOSTERBOER: Yes, Your Honor. And so lastly, on
12 the merits, none of the defendants point to any arguments why
13 this is a straightforward facial challenge looking at the text
14 of the law itself as the Court already has seen many cases on
15 overbreadth, vagueness, viewpoint and content discrimination.
16 We believe this is a textbook violation of plaintiffs' First
17 and Fourteenth Amendment rights.

18 THE COURT: And that's why it ought to be declared
19 unconstitutional?

20 MR. KLOSTERBOER: Correct, Your Honor. That it be
21 declared unconstitutional and void and that all the defendants
22 in this case be enjoined from enforcement.

23 THE COURT: Okay. All right. Let's hear from the
24 State and then we'll hear individually if anyone wants to just
25 join in if we may. Okay. We'll do it that way.

1 This is the primary defendant, but I know you
2 have a role to play and I don't mean to ignore you and I'm not
3 going to, as long as you don't take too much time.

4 Okay. Counsel, go right ahead. What's it about
5 from your point of view?

6 MS. GIFFORD: Your Honor, first I would like to address
7 the standing and the sovereign immunity issue.

8 As plaintiffs' counsel pointed out, there are
9 three parts to this and not every defendant here has
10 enforceability to each part.

11 And our arguments have been that to the extent
12 that there is no enforcement authority, then there's sovereign
13 immunity as to those parts.

14 There is also a severability part of the section
15 of the statute, and so to the extent one might be considered
16 unconstitutional does not render the entire statute
17 unconstitutional.

18 Plaintiffs had pled that this was both an
19 as-applied challenge and as a facial challenge. So I would
20 like to point out it sounds to me that they're waiving their
21 as-applied challenge and proceeding purely on a facial
22 challenge.

23 THE COURT: Is that correct?

24 MR. KLOSTERBOER: Your Honor, I don't -- I would like
25 to see any case law that we have to waive our as-applied

1 challenge. We believe the Court has the power to facially --
2 we plead it in our complaint as an alternative.

3 THE COURT: All right. Have a seat. We're going to
4 jump back and forth. I don't mean to interrupt you like I just
5 did, but that's probably the easiest thing to do.

11:02AM

6 All right. Go right ahead.

7 MS. GIFFORD: You know, claims -- as the Court knows,
8 claims of facial invalidity often rest on speculation and
9 determining that a statute is unconstitutional facially should
10 be reserved in very -- should be handed down very modestly.

11:03AM

11 This is not something to be handed out in, you
12 know -- in a broad way, right.

13 We also take the position that drag in and of
14 itself is not inherently expressive conduct. We agree that
15 there could be instances where a particular performance may be
16 expressive conduct or moderately expressive conduct. But as a
17 whole, as they have pled this lawsuit, drag in and of itself is
18 not inherently expressive conduct.

11:03AM

19 I also would like to point out --

11:03AM

20 THE COURT: So what are you trying to prohibit?
21 Because you're saying to this extent it may not be, to that
22 extent it may not be. But then some may be.

23 MS. GIFFORD: Your Honor, plaintiffs are challenging a
24 law that does not exist. There is no ban on drag shows.

11:04AM

25 Senate Bill 12 does not ban drag shows; it bans sexually

1 oriented performances --

2 THE COURT: Don't you already have statutes on that?

3 MS. GIFFORD: No, Your Honor. They do not go so far as
4 to prevent the type of sexually oriented performances --

11:04AM 5 THE COURT: Where do you find them?

6 MS. GIFFORD: -- in front of children.

7 I'm sorry. Where do you find what?

8 THE COURT: Again, where do you find how it raises to
9 pornography or where it raises to something that might have a
10 negative effect on children?

11 MS. GIFFORD: In terms of secondary effects, the harm
12 on children for seeing it?

13 THE COURT: That's what I mean. What are you trying to
14 protect and how do you draw a line?

11:04AM 15 MS. GIFFORD: Your Honor, the line is that it -- well,
16 it appeals to the prurient interest and it's indecent and
17 harmful to children. And we have an expert who will testify
18 today as to the --

19 THE COURT: I know there's an objection to the -- that
11:05AM 20 something's been filed as to that individual and I'm not
21 overlooking it.

22 Go on.

23 MS. GIFFORD: Yes. So as to the harmful effects of
24 sexually explicit performances in front of minors, SB 12 does
11:05AM 25 not prohibit sexually explicit performances to adult audiences.

1 So the plaintiffs are absolutely --

2 THE COURT: Who is deemed an adult?

3 MS. GIFFORD: 18 and up.

4 THE COURT: 18 and up.

11:05AM 5 MS. GIFFORD: Yes, sir. Plaintiffs are more than
6 welcome to put on as graphic of a performance as they choose in
7 front of adults, but not in front of children.

8 THE COURT: Who is going to monitor it?

9 MS. GIFFORD: Well, there are -- the statute has a
11:05AM 10 couple of different ways to do that. One is that attorney
11 general has enforcement authority to ensure that premises --
12 people who control the premises of a commercial enterprise do
13 not authorize and allow sexually oriented performances that
14 appeal to the prurient interest in front of minors.

11:06AM 15 THE COURT: Who is going to make that determination?
16 Somebody in the audience? In other words, one of the agents?
17 I don't do this lightly. Because we get a lot of cases here
18 where people -- what is it -- some of the bars and grills will
19 play boxing matches that they don't pay for and they actually
11:06AM 20 have people sitting in there determining, yes, that bar A, B, C
21 didn't pay for it and that boxing match was shown.

22 So where is the enforcement possibility?

23 MS. GIFFORD: Well, there is no private right of
24 action. So unlike some of the other states that have brought
11:06AM 25 challenges to similar conduct, this isn't a statute where a

1 proverbial Karen could object to a performance that was going
2 on. It would be the attorney general who would bring the civil
3 penalties against a person who controlled the premises.

4 THE COURT: So does that mean a deputy attorney general
11:07AM 5 needs to be sitting out there, one of your investigators and
6 then report what goes on?

7 MS. GIFFORD: No, Your Honor. But I mean, similarly,
8 as with, say, other indecency statutes, there doesn't need to
9 be someone, an assistant DA or a prosecutor at every possible
11:07AM 10 place where there could be something that would violate the
11 Penal Code with regard to indecency.

12 So it would be -- again, right, this gets into
13 the speculation and the hypotheticals that are -- that are
14 discouraged in ruling on a facial challenge to a statute on the
11:07AM 15 grounds that it is overbroad and vague.

16 So when the Court does have to get into questions
17 of speculation, that raises the risk of premature
18 interpretation of a statute on the basis of factually bare bone
19 records.

11:08AM 20 And that's from the court's -- the Supreme
21 Court's opinion in *Sabri*, S-A-B-R-I, a 2004 case.

22 I mean, so again, this isn't where, you know, an
23 assistant attorney general has to be at every possible venue
24 and every possible place to ensure compliance.

11:08AM 25 THE COURT: A parent could bring that on their own you

1 say?

2 MS. GIFFORD: I'm sure a parent could raise it. But
3 it's not -- again, we're getting into speculation, which is --

4 THE COURT: Where did the role of parents come into
5 this whole thing? In other words, a parent could say, no,
6 you're not going to that show, young man or young lady. Or,
7 you're not going to that parade because we think it's improper.

8 What's the role of parents in this?

9 MS. GIFFORD: Well, the statute doesn't specify the
10 role of parents. What this statute specifies is that a
11 sexually oriented performance that appeals to the prurient
12 interest in sex --

13 THE COURT: Of children?

14 MS. GIFFORD: -- in front of children is prohibited.

15 THE COURT: Okay. So parents have no role in that?

16 MS. GIFFORD: I'm sorry. What do you mean by "have a
17 role"?

18 THE COURT: Well, is there a need for that statute
19 relative to parental supervision saying, you're not going to
20 that show or you're not going to that parade?

21 MS. GIFFORD: No, Your Honor. The --

22 THE COURT: Because this has been brought up in other
23 cases.

24 MS. GIFFORD: And the State, as the Supreme Court said
25 in *Reno*, has an interest in protecting children from indecent

1 material.

2 THE COURT: Okay.

3 MS. GIFFORD: So there is a compelling state interest
4 in this.

11:10AM 5 THE COURT: You can wrap it up because you will have
6 many more opportunities.

7 MS. GIFFORD: I imagine I will.

8 THE COURT: Yes, ma'am. Anything further that you need
9 to get in at this point?

11:10AM 10 MS. GIFFORD: Well, it's not expressive conduct. Even
11 if it is considered expressive conduct, it should be reviewed
12 under intermediate scrutiny.

13 THE COURT: Okay. Thank you.

14 All right. Now we have the municipalities and
11:10AM 15 the counties. Does anyone generally want to just add anything
16 to this as far as your interest or the concerns that you have
17 at this time?

18 Yes, sir.

19 MR. VIADA: Thank you, Your Honor.

11:10AM 20 THE COURT: That's Mr. Viada.

21 MR. VIADA: Viada.

22 THE COURT: Viada. Thank you. From Abilene. Yes,
23 sir.

24 MR. VIADA: And I'm here for the City of Abilene. The
11:10AM 25 City of Abilene's interest in this is not to take issue one way

1 or the other with the validity of the statute. I understand
2 this is a facial challenge of a state statute. It doesn't
3 involve a municipal act.

4 The municipality in this case has only been
5 alleged to have done one thing and that was to grant a permit
6 for the Abilene Pride organization to have a street parade.

7 So whatever prohibition that they feel chilled by
8 has not chilled the City of Abilene from granting a permit and
9 there's no allegations that the City has threatened to take
10 away their street permit.

11 THE COURT: So --

12 MR. VIADA: So we are dragged into this kicking and
13 screaming, taking the position that we're not here to cheerlead
14 for the statute or to oppose it. We're letting them have their
15 street parade.

16 THE COURT: So why did you get sued? Is that your
17 question?

18 MR. VIADA: Yeah. That is my question.

19 THE COURT: I'm going to ask them in a moment.

20 MR. VIADA: The only thing that we're here to dispute
21 is that we should even be sued in this case. You know, we've
22 taken the position that since we're sued under 1983, they have
23 to have alleged that the final policymaker of the City, which
24 is the city council, either has taken some action to deprive
25 them of their constitutional rights, and there's none alleged,

1 or threatened to do so, and there's none alleged.

2 THE COURT: Hold on. What do you need this man in here
3 for and the rest of them perhaps? Why?

11:12AM

4 MR. KLOSTERBOER: Your Honor, we share common ground
5 with the City of Abilene. They have been dragged into this
6 lawsuit on drag performances. But their quarrel is with the
7 state legislature --

8 THE COURT: Who dragged them in? No pun intended. How
9 did they get in here?

11:12AM

10 MR. KLOSTERBOER: They should complain to the state
11 legislature, who specifically delegated enforcement authority
12 to cities.

13 THE COURT: But you sued them. Why did you pick them
14 out? Apparently they are not creating any problem at all.

11:12AM

15 MR. KLOSTERBOER: Our plaintiff, the Abilene Pride
16 Alliance, has an upcoming event on September 30th on public
17 property in the City of Abilene.

18 THE COURT: Counsel, how do you respond?

11:12AM

19 MR. VIADA: We haven't stopped them. We told them they
20 could.

21 MR. KLOSTERBOER: And starting September 1st the city
22 municipality and county will be bound to follow Section 2 of
23 this law, which the legislature has specifically given them the
24 enforcement authority.

11:13AM

25 And the Supreme Court and the Fifth Circuit tell

1 us that you have to sue the enforcement authority. You can't
2 sue the legislature. Under their theory the legislature could
3 delegate an unconstitutional law to municipalities and you just
4 can't sue anyone. You can't sue the municipality. They can
11:13AM 5 let the municipality violate the First Amendment with no
6 review.

7 THE COURT: I know you're dealing with statutes and
8 constitutionality. But the bottom line there's this man
9 representing the City of Abilene said you're going to have a
11:13AM 10 parade and what are you suing them for?

11 MR. KLOSTERBOER: It's exactly the same as the attorney
12 general and the district attorney has not done anything yet.
13 But on September 1st they are statutorily obligated under this
14 law. It's a pre-enforcement challenge. We're not alleging
11:13AM 15 anyone has taken any action.

16 THE COURT: How do you pick these defendants out?

17 MR. KLOSTERBOER: Your Honor, where the plaintiffs
18 reside and have performances are in these counties.

19 THE COURT: Okay. Okay. I understand.

11:14AM 20 MR. KLOSTERBOER: So the plaintiffs will testify today
21 that they have a credible threat that this law will be enforced
22 against them and these are the enforcement entities here.

23 THE COURT: Okay. Got it.

24 Yes, sir. You may continue. I got it.

11:14AM 25 MR. VIADA: Thank you, Your Honor.

1 Counsel for the plaintiffs have pointed out that
2 there are three sections to the statute. One has to do with
3 the Health and Safety Code, which the City has nothing to do
4 with.

11:14AM 5 The second provision is an amendment to the local
6 government code which has two separate sections. One says that
7 the cities may not permit the sexually oriented activities on
8 public property.

9 And as I explained, the only time that they've
11:14AM 10 asked us for anything to do, we've permitted it and we have
11 permitted it in the past. But keep in mind a home rule city is
12 not really an agent of the state government. It has its
13 existence by virtue of the Texas Constitution, which says that
14 the people of a community can create a home rule charter. The
11:15AM 15 power comes directly out of the Constitution.

16 THE COURT: That's probably what they're referring to.
17 I don't know.

18 MR. VIADA: Yes.

19 THE COURT: I've only heard from counsel for plaintiff.

11:15AM 20 MR. VIADA: But the third --

21 THE COURT: The third branch?

22 MR. VIADA: Yeah. The third is a Penal Code statute
23 which says that the plaintiffs are prohibited from doing things
24 and the City, as such, doesn't enforce it. It would be police
11:15AM 25 officers that enforce it and they get their authority and

1 direction from the State. So the whole case --

2 THE COURT: Explain that.

3 MR. VIADA: Okay.

4 THE COURT: In other words, if they're a member of the
5 Abilene Police Department --

11:15AM

6 MR. VIADA: That's right. And this gets to the
7 redressability of what they're looking for. Assume that the
8 Court would command the City of Abilene that it cannot enforce
9 the law. The City says, "You can't enforce the law."

11:15AM

10 The police officers hold their state and take
11 their oath of allegiance to enforce the laws of the state.
12 It's the Code of Criminal Procedure that commands them to --

13 THE COURT: What if there's an injunction on it? Then
14 they're not going to do it, right? It's not in effect.

11:16AM

15 MR. VIADA: The injunction against the City concerning
16 the enforcement of a state penal provision is not -- doesn't --
17 can't override the City's obligation under state law.

18 The City doesn't enforce the laws. It's the
19 police officers holding their license from the State who
20 enforce state law.

11:16AM

21 We're not the -- we're not the government that
22 issues the law and we're not the government that enforces the
23 law. It is the State of Texas that does that.

24 So this quarrel that they have is with the State
25 and with the State's law and with the provisions of the Penal

11:16AM

1 Code that require officials who hold their licenses from the
2 State to enforce the state statute.

3 It's not a city ordinance, it's a state law. And
4 we've given them permission to do what they want to do so
11:17AM 5 there's no controversy between these plaintiffs and our city.
6 That's my point.

7 THE COURT: I understand the position. We'll get to
8 you in a second. That's why -- by the way. You can take a
9 seat.

11:17AM 10 MR. VIADA: Thank you, Your Honor.

11 THE COURT: What I do in all jury trials, I say, "You
12 are free to amend your findings of fact and conclusions of law
13 or, you know, your final jury charge after the trial."

14 So I'm going to give -- the plaintiffs already
11:17AM 15 filed theirs; if you want to amend it based upon what goes on
16 in the next day or so, certainly you may do it.

17 We're going to also require, if they want to,
18 that the State file suggested findings of fact -- you've got a
19 large one, okay. I'll read it. But basically you're free to
11:17AM 20 amend that if things come up during trial that you had not
21 anticipated.

22 We heard from Abilene. Does anyone want to add
23 specifically to that at this time? You're going to have time
24 later on and certainly to sum up at the end of the hearing.

11:18AM 25 Yes, sir, if you want to come on up.

1 MR. PLAKE: Yes, sir. Daniel Plake for Montgomery
2 County.

3 THE COURT: That's Montgomery County. Yes, sir.

4 MR. PLAKE: Judge, I would like to start under *Mone11*,
11:18AM 5 which has three prongs. And we did attack the first prong,
6 which is the plaintiffs never identified a policymaker for the
7 county, which is Step 1, or a policy for the county, which is
8 Step 2. So they failed two out of three prongs.

9 In that regard, just to backtrack, on their
11:18AM 10 pleadings it was a little unclear reading the pleadings if they
11 were trying to allege the district attorney was a county
12 policymaker or if they had some other policymaker in mind. So
13 we kind of went under the assumption --

14 THE COURT: Who is your policymaker? The county judge?

11:18AM 15 MR. PLAKE: It would be the commissioners court. In
16 this case?

17 THE COURT: As an entity, the whole court?

18 MR. PLAKE: Commissioners court, yes, sir. And they
19 would operate through an ordinance. Going to the county policy
11:19AM 20 portion of that, Judge, they cite -- it is the amended local
21 Government Code 243.00 --

22 THE COURT: You need to slow down a bit --

23 MR. PLAKE: Sorry.

24 THE COURT: -- and pull the mic in a bit or speak up
11:19AM 25 just a bit.

1 MR. PLAKE: They're referencing the new local
2 government code 243.0031(b) and (c).

3 B is a permissive grant of authority to counties.
4 So there's no requirement for counties to act under B. And if
5 they were going to act under B, they have to pass some kind of
6 ordinance. But there is no ordinance. There's not even
7 ordinance on the agenda.

8 C isn't mandatory. The county may not authorize
9 these shows. But there's no allegation and I cannot think of
10 an enforcement mechanism for the county. We don't permit
11 anything. And they've not alleged that we've permitted
12 anything or would deny a permit.

13 THE COURT: Where do the permits come from? The
14 cities?

15 MR. PLAKE: In this case it came from the The Woodlands
16 Township, which has issued a permit and been dismissed.

17 THE COURT: Yeah. They've dismissed. Right.

18 MR. PLAKE: So we do not believe that C is mandatory
19 because C would require something under B, which is permissive.
20 There's no other way to get to our enforcement mechanism.

21 THE COURT: So what's your role here today?

22 MR. PLAKE: We're not sure other than we're the county
23 where some of the plaintiffs reside. We're not sure what the
24 county is doing in the suit. I think we have to distinguish
25 the district attorney, because we believe he is a state

1 official in this case.

2 THE COURT: Well, if an order comes down -- if it comes
3 down -- don't assume anything, it's the wrong thing to do. If
4 it comes down relative to the -- let's say as an example all of
5 the three prongs or three sections of the state law, that would
6 in effect, affect you by just the law not going into effect and
7 you don't have to bother with it, right?

8 MR. PLAKE: Judge, I agree with you on that. And when
9 you said "moot" earlier, we briefed that briefly as a privity
10 issue. So the case we cited was --

11 THE COURT: Privity to who?

12 MR. PLAKE: Privity between the defendants. So the
13 case we cited was --

14 THE COURT: Between the defendants?

15 MR. PLAKE: Yes, sir. So we believe if you -- say you
16 came in and enjoined Brett Ligon in his official capacity as a
17 state officer from enforcing the statute, that would not affect
18 other counties that are not part of this suit. But because the
19 attorney general is here and they're defending the suit on its
20 face, then that would create privity between the attorney
21 general and our local people.

22 THE COURT: Got it. Thank you.

23 MR. PLAKE: So you would not need to enjoin us,
24 especially since the law has not even gone into effect and will
25 likely --

1 THE COURT: That would be -- thank you. Agreed.

2 MR. PLAKE: Judge, I would also like to raise as to the
3 district attorney that in their amended pleading that they
4 filed, according to my record, about 12:45 this morning --

11:21AM

5 THE COURT: Which district attorney?

6 MR. PLAKE: Brett Ligon.

7 THE COURT: That's --

8 MR. PLAKE: Montgomery County.

9 THE COURT: Montgomery County.

10 MR. PLAKE: Yes, sir.

11 THE COURT: Okay. And who do you represent?

12 MR. PLAKE: Brett Ligon and Montgomery County.

13 THE COURT: Got it.

14 MR. PLAKE: The entire basis of the pleadings -- of the

11:21AM

15 complaint is a 1983 claim. Brett Ligon is not a person under
16 1983 assuming they are suing him in his role as a state actor.

17 Again, we weren't real clear on the pleadings, so
18 we did raise an *Ex parte Young* exception. They did raise an
19 objection to that or a response to that this morning, but we do
20 not believe that's timely, nor is it in their pleadings, their
21 complaint. All their complaint basis are 1983. They have not
22 alleged an *Ex parte Young* exception.

11:22AM

23 THE COURT: Okay. I think that's it. Thank you, sir.

24 MR. PLAKE: Thank you, Judge.

11:22AM

25 THE COURT: Anybody else at this time? Don't forget if

1 that's any time you want to chime in, please let me know, okay?
2 That's why I recognized everyone individually.

3 All right. The...

11:22AM

4 MR. KLOSTERBOER: Your Honor, the plaintiffs would like
5 to briefly just correct a couple of the statements from
6 opposing counsel or we could also wait until later.

7 THE COURT: Wait for later. Mark it down because when
8 it comes time for summation, all this is going to be round up
9 into one.

11:22AM

10 Okay. Now, what does the plaintiff desire to put
11 on in its case? The plaintiff.

12 MR. KLOSTERBOER: Your Honor, the five plaintiffs and
13 their party representatives are here today so we plan on
14 calling five witnesses.

11:23AM

15 THE COURT: All right. How long? Are they going to be
16 short I assume?

17 MR. KLOSTERBOER: They should be between 20 and 30
18 minutes. Each, we tried to streamline them as much as
19 possible.

11:23AM

20 THE COURT: Streamline it.

21 Okay. By the way, we take a break generally
22 about every hour and a half as the time goes on, okay? So
23 we'll have two sessions and then take a lunch break and pick up
24 after that, okay?

11:23AM

25 MR. KLOSTERBOER: Sounds good, Your Honor.

1 THE COURT: All right, counsel. Call your first
2 witness.

3 MR. KLOSTERBOER: Yes, Your Honor. The plaintiffs call
4 Kerry Lynn Sieff to the stand.

11:23AM 5 THE COURT: Raise your right hand and be sworn, please.

6 (The oath was administered.)

7 THE COURT: By the way, the chair does not pull
8 forward. Everybody tries. You have to pull the microphone in
9 and speak up.

11:23AM 10 THE WITNESS: All right. Can you hear me okay?

11 THE COURT: Yes.

12 MS. KEMPF: Your Honor, Chloe Kempf for the plaintiffs.

13 **KERRY LYNN SIEFF,**

14 having been first duly sworn, testified as follows, to wit:

15 **DIRECT EXAMINATION**

16 **BY MS. KEMPF:**

17 Q. Good morning, Ms. Sieff. Thank you for --

18 THE COURT: Okay. What is your last name?

19 THE WITNESS: Sieff.

11:24AM 20 THE COURT: How do you spell it?

21 THE WITNESS: S-I-E-F-F.

22 THE COURT: All right. Go right ahead.

23 **BY MS. KEMPF.**

24 Q. Can you please tell us your connection to this case?

11:24AM 25 A. Yeah. My connection to this case is I am the owner of a

1 drag entertainment company and I fear that SB 12 will affect my
2 business.

3 Q. And are you a plaintiff in this case?

4 A. I am.

11:24AM

5 Q. What is the name of your drag company?

6 A. The name of my company is Extragrams.

7 Q. And what is Extragrams?

8 A. Extragrams is a drag telegram service --

9 THE COURT: A "grand" what? "Hologram"?

11:24AM

10 THE WITNESS: "Drag telegram."

11 THE COURT: Oh, okay.

12 A. -- and a full-scale drag entertainment company.

13 **BY MS. KEMPF:**

14 Q. And what is your role at Extragrams?

11:24AM

15 A. My role is I am the founder, owner, and creative service
16 director of Extragrams.

17 Q. And are you testifying on behalf of Extragrams today?

18 A. I am.

19 THE COURT: How long have you been in business, ma'am?

11:25AM

20 THE WITNESS: I've been in business for three years.

21 THE COURT: Go on.

22 **BY MS. KEMPF:**

23 Q. Can you please tell us: What is drag?

11:25AM

24 A. So drag is overall a performance art. I would explain it
25 as the overdramatization of a character or a gender. It could

1 be the opposite one in which you were born or the same. Drag
2 is very theatrical. They tend to bring a lot of celebrity
3 illusions, so many drag artists do celebrity lookalikes.

4 THE COURT: You have to move the mic back a little bit.
11:25AM 5 You're carrying well. Just a bit. Yes, ma'am.

6 Go on.

7 THE WITNESS: All right. Is this better?

8 THE COURT: Yes.

9 A. Okay. Many drag artists do celebrity lookalikes,
11:25AM 10 impersonations like Dolly Parton, Lisa Minnelli, Beyoncé,
11 Frank Sinatra. It has a huge range and --

12 **BY MS. KEMPF:**

13 Q. And what is a drag telegram?

14 A. So a drag telegram is inspired by the old singing telegram
11:26AM 15 concept where people would send singing telegrams to people's
16 houses to do a song and dance dressed in a costume for a
17 birthday or for a celebration.

18 So during the pandemic when everyone was stuck in their
19 houses, we decided to bring this concept back, but make it more
11:26AM 20 elevated and high end.

21 Q. And you mentioned you do other forms of drag
22 entertainment. Can you briefly list --

23 THE COURT: When you're talking about telegrams, they
24 come to your house?

11:26AM 25 THE WITNESS: Yes. They go to houses, places of work,

1 companies --

2 THE COURT: Yes. Got it. Go on.

3 **BY MS. KEMPF:**

4 Q. Can you mention a few examples of the other types of drag
5 entertainment that you are engaged in?

11:26AM

6 A. Yeah. So we provide drag entertainment for events,
7 parties, weddings, corporate events. We do drag bingos,
8 full-scale drag shows for weddings, company parties, holiday
9 events.

11:26AM

10 Q. So in drag bingo what are your performers doing?

11 A. They're just doing a classic round of regular bingo, but
12 they're dressed in a really fancy way. Drag performers wear
13 big wigs, lots of makeup, accessories. And they play games and
14 they do it and call numbers in a really comedic way.

11:27AM

15 Q. So they're acting as the host of those events?

16 A. Yes, they are.

17 MS. KEMPF: Your Honor, may I approach the witness with
18 our trial exhibits?

19 THE COURT: Yes. You need not ask. In my court you
20 need not have permission to approach a witness.

11:27AM

21 Go right ahead.

22 **BY MS. KEMPF:**

23 Q. So, Ms. Sieff, I'd like to draw your attention to the
24 photograph marked as Exhibit 30 for identification.

11:27AM

25 THE COURT: All right. Now, do you have a copy? My

1 rules require two copies. Oh. There is one for me. You have
2 one on the desk there also? Yeah. I need two -- my procedures
3 manual requires two to be used here.

4 MS. KEMPF: Yes, sir.

11:28AM

5 THE COURT: How many do you have here? You've got a
6 whole book full, right?

7 MS. KEMPF: Yes, Your Honor.

8 THE COURT: How much time do you got?

11:28AM

9 MS. KEMPF: I promise we won't be talking about them
10 all with Ms. Sieff.

11 THE COURT: Okay. Go on.

12 And by the way, unless I hear an objection --
13 have you seen those before?

11:28AM

14 MR. STONE: Yes, we have, Your Honor. But to my
15 knowledge it has not been admitted into evidence.

16 THE COURT: No, it hasn't. What I'm going to say is
17 this: I've done this including some huge financial fraud
18 cases. All exhibits for everybody -- I know you're looking,
19 you don't know what's coming. Don't worry about it.

11:28AM

20 All exhibits from all sides are conditionally
21 admitted into evidence; however, first of all, you've got to
22 use them during the trial. And the second thing is if there's
23 an objection to it, raise it like you do in state court.

11:29AM

24 Otherwise it's going to be assumed to be in. If
25 it doesn't hurt you, so to speak, let it in. If you've got a

1 problem, I will look at each one. It will move a lot quicker
2 that way. I've found that in -- especially in cases with lots
3 of documentation. Yes, sir.

4 MR. STONE: Yes, Your Honor. Since this is
5 conditionally admitted, at this time we would like to object to
6 this exhibit on relevance grounds.

7 THE COURT: Which one is it?

8 MR. STONE: Number 33.

9 MS. KEMPF: 30, Your Honor.

10 MR. STONE: Oh. It's 30?

11 THE COURT: You know what? You don't even know which
12 one?

13 MR. STONE: I thought it was 33, Your Honor.

14 MS. KEMPF: I'm sorry, Your Honor. It's marked as
15 Exhibit 30 for identification.

16 THE COURT: 3-0?

17 MS. KEMPF: 3-0.

18 THE COURT: Okay. What's the matter with that? It's a
19 group of people.

20 MR. STONE: Yes, Your Honor. Exactly. It's a group of
21 people, Your Honor. We object on relevance grounds.

22 THE COURT: We haven't heard it yet. If you have to,
23 we object to it. Prove it up. I'm sorry. That's the only way
24 to do it.

25 MS. KEMPF: Yes, Your Honor. We'll lay the foundation

1 for an exhibit and on relevance. It's a demonstrative exhibit
2 that will allow Ms. Sieff to describe her typical drag
3 performances.

4 THE COURT: All right. So it's not admitted into
5 evidence. It's for -- what do you call it?

11:30AM

6 MS. KEMPF: Well, Your Honor, we plan to lay the
7 foundation to admit it into evidence.

8 THE COURT: All right. Okay. So it's been identified.
9 Plaintiffs' 30.

11:30AM

10 MS. KEMPF: Yes. Thank you, Your Honor.

11 THE COURT: What kind of predicate do you have there?

12 **BY MS. KEMPF:**

13 Q. Ms. Sieff, just briefly, do you recognize what's in this
14 image?

11:30AM

15 A. Yes, I do.

16 Q. And where was it taken?

17 A. This was taken in Austin, Texas, in a suburban-type
18 neighborhood in front of a house.

19 Q. And when was it taken?

11:30AM

20 A. It was taken in 2020.

21 Q. Were you present?

22 A. I was.

23 Q. Did you take the image?

24 A. I did.

11:30AM

25 Q. Does the photo marked as Exhibit 30 for identification

1 fairly and accurately depict the scene that day?

2 A. Yes, it does.

3 Q. And is this a true and accurate copy of the photograph
4 that you took that day?

11:31AM

5 A. Yes.

6 MR. ELDRED: Your Honor, we offer Exhibit 30 in
7 evidence.

8 MR. STONE: Your Honor, they've authenticated it, but
9 they haven't shown why it's relevant to any --

11:31AM

10 THE COURT: They said this is the kind of show she puts
11 on.

12 MS. KEMPF: That's right, Your Honor.

13 MR. STONE: The fact that this is the type of show that
14 she puts on isn't relevant to any of the claims or defenses in
15 this case.

11:31AM

16 THE COURT: Why? Because nothing has been specifically
17 identified --

18 MR. STONE: Yes, Your Honor.

19 THE COURT: -- under the law?

11:31AM

20 MR. STONE: Yes.

21 THE COURT: Okay. How do you respond to that?

22 MS. KEMPF: Your Honor, Ms. Sieff will use the image to
23 describe why the business that she engages in could arguably be
24 affected and proscribed by this statute, which is an element of
25 standing for a pre-enforcement challenge.

11:31AM

1 MR. STONE: Just so I understand, so they're contending
2 that this depiction of this picture would violate some portion
3 of SB 12?

4 MS. KEMPF: We're using it to show different elements
5 of Extragrams' performances that could arguably be proscribed
6 by the statute.

7 THE COURT: The objection is overruled.

8 30 is in, for that limited purpose. And that
9 purpose is what sort of a show and she is a show owner and
10 that's one of the plaintiffs in the case.

11 Go on.

12 MS. KEMPF: Yes.

13 **BY MS. KEMPF:**

14 Q. Ms. Sieff, could you please describe this image? What is
15 the performer wearing?

16 A. Yeah. So they're wearing a leotard like similar to a
17 gymnast's leotard, multiple pairs of tights, padding, boots,
18 big wig, makeup, accessories.

19 THE COURT: Now you're talking about the --

20 MS. KEMPF: Performer.

21 THE COURT: -- female character in the middle with the
22 yellow and the white outfit?

23 THE WITNESS: Correct.

24 THE COURT: All right.

25 **BY MS. KEMPF:**

1 Q. And can you please describe the performance that that
2 performer exhibited that day?

3 A. Yeah. So we did a surprise performance for the
4 neighborhood. They wanted to do like a neighborhood party to
5 celebrate someone's birthday.

11:32AM

6 So they all got together and we came in kind of like a
7 surprise coordinated by one of the clients here. And we came
8 in and we knew that there was going to be children there so we
9 wanted --

11:33AM

10 THE COURT: Do you have those electronically where we
11 can put them up on the screen? Did you think of that?

12 MR. KLOSTERBOER: Your Honor, we did. We tried to keep
13 it simple. We don't have it set up currently.

14 THE COURT: All right.

11:33AM

15 MR. KLOSTERBOER: We just have the pictures,
16 Your Honor.

17 THE COURT: All right.

18 A. So the performance and song that we did, we chose
19 Taylor Swift. We did the song *Shake it Off* and -- another one
20 of Taylor Swift's songs.

11:33AM

21 So we came in, did the performance. And then we played a
22 little audience interaction participation game where the
23 performer showed all the kids how to do a little *Shake It Off*
24 little move dance movement, little twist of the hips and then
25 they played the song and they all danced around together.

11:33AM

1 THE COURT: All right. Let me ask the attorney. Now,
2 this is one of the businesses suing in this case, correct?

3 MS. KEMPF: Correct, Your Honor.

4 THE COURT: And that's the business you feel that under
5 the state statute could effect her going out of business?

11:34AM

6 MS. KEMPF: Yes, Your Honor.

7 THE COURT: Why?

8 MS. KEMPF: Well, we will develop that in the testimony
9 with Ms. Sieff.

11:34AM

10 THE COURT: Keep going then.

11 MS. KEMPF: Okay. Thank you, Your Honor.

12 **BY MS. KEMPF:**

13 Q. Now I would like to turn your attention to exhibit marked
14 for identification Number 32.

11:34AM

15 MS. KEMPF: And this will be for the same purpose and
16 even more briefly, Your Honor.

17 THE COURT: Hold it. Let's see what the defense has to
18 say.

19 MR. STONE: Yes, Your Honor. Same objection as before
20 as to relevance. They haven't -- they haven't laid -- even
21 with the first picture they still haven't explained which part
22 of SB 12 it allegedly or could potentially violate.

11:34AM

23 THE COURT: All right. They're going to eventually
24 have to link it up.

11:34AM

25 MR. STONE: Yeah.

1 MS. KEMPF: We will.

2 THE COURT: You heard the questions I said. But for
3 the record, overruled with the same predicate Plaintiffs' 32 is
4 admitted.

5 **BY MS. KEMPF:**

6 Q. Can you, Ms. Sieff, describe the performer in this image?

7 A. Yeah, this is a performer dressed as Dolly Parton. And
8 this is someone was surprising them with -- their partner with
9 a drag telegram. They love country music and Dolly Parton so
10 we came in and performed right out in front of the street.

11:35AM

11 Q. And what is this performer wearing?

12 A. They're wearing a ruffle dress with a high slit up to the
13 hip, big wig, heels, makeup.

14 Q. And can you describe who viewed the performance that day?

11:35AM

15 A. The couple who -- the couple who is the recipients and
16 we're also on a public street here. So people who heard were
17 looking out from their windows or people walking by seeing what
18 we were doing as well.

19 Q. And tell us in general how Extragrams collaborates with
20 its drag performers.

11:35AM

21 A. Yeah. So we get a request for someone who wants a drag
22 telegram. They tell us about the celebration; whether they're
23 retiring, it's a birthday, anniversary. We learn a little bit
24 about what they like, what kind of music they like, if there's
25 a favorite celebrity singer that they like.

11:36AM

1 Then I work with a huge roster of performers. I pick out
2 which one specializes in that. I connect with the performer
3 and I say, "Hey, do you want to do this?"

4 We create the concept, we choose the song, and then we go
5 on location to perform it in a fun surprise element.

11:36AM

6 Q. And what do you do specifically in your role as creative
7 director of Extragrams?

8 A. So I'm facilitating the process between what the customer
9 is requesting and creating what they're wanting to celebrate.

11:36AM

10 I create and put it together with the drag performer.

11 Q. So as part of that process do you typically have final
12 approval over costumes?

13 A. I do have final approval over costumes. I have certain
14 standards and guidelines that I communicate to them of what
15 they should wear, the type of music that it should be.

11:37AM

16 I kind of lay out the overall scene of the event; where
17 it's going to be, what type of people we think are going to be
18 there.

19 And when -- sometimes I don't have full control.

11:37AM

20 Sometimes they'll show up and they might wear something a
21 little bit different than I anticipated. We try and adjust,
22 but sometimes I don't have full control. Yeah.

23 Q. Do you attend all of your performances?

24 A. I don't attend all of them. I attend most of them, but I
25 always have an on-site manager or an announcer with the drag

11:37AM

1 telegrams at every event.

2 Q. So when you attend are you in the capacity of an on-site
3 manager?

4 A. When I attend, I am an on-site manager. Correct.

11:37AM 5 Q. So all of your performances have an on-site manager?

6 A. Yes. They all have an on-site manager.

7 Q. What does the on-site manager do?

8 A. So on-site manager is --

9 THE COURT: Slow down a little bit.

11:38AM 10 THE WITNESS: Okay.

11 A. An on-site manager is the middle person between the client
12 customer and the performer. So we're making sure that we're
13 connecting the two. We are acting a little bit as security
14 making sure that the space is safe. We are helping the
11:38AM 15 performer get adjusted, any zipping if needed, coordinating
16 with the client, making sure everything is on track, on time.

17 Q. Does the on-site manager coordinate with the audience?

18 A. They do. And especially with the drag telegram an
19 announcer goes in with a megaphone with the drag performer and
11:38AM 20 they conduct the people where to stand, get ready for a
21 surprise. Get ready, we have a fun show. You can stand over
22 here. And overall direct the crowd.

23 Q. And when you are acting as the creative director choosing
24 songs and approving costumes, are you trying to craft a message
11:39AM 25 for your audience?

1 A. We are. We specialize in curating memorable moments. So
2 if it's someone's going away party, we might do Dolly Parton, *I*
3 *Will Always Love You* as a sendoff. So there very much is a
4 message that we're trying to create with song and dance and
5 entertainment.

11:39AM

6 Q. Who are Extragrams' clients?

7 A. So our clients vary from young people to older people. We
8 celebrate 80th birthdays. Then we have some of the largest
9 corporations and entities in the state, corporations like
10 Amazon, Google, Dell, University of Texas, San Antonio Zoo,
11 music festivals, public spaces like parks. We do a lot of
12 popup performances in parks for parties.

11:39AM

13 Q. So you mentioned parks. Do you recall what cities or
14 counties these parks are located in?

11:40AM

15 A. We're primarily Austin, Texas; Travis County, and some
16 surrounding areas, too.

17 Q. What surrounding areas have you performed in?

18 A. San Antonio, Dallas, Houston, Fredericksburg, Round Rock,
19 Pflugerville.

11:40AM

20 Q. And do you also perform in private commercial spaces?

21 A. We do.

22 Q. Can you give us a few examples, please?

23 A. Sure. Like we do a drag show at the Fairmont Hotel. We
24 do a drag brunch.

11:40AM

25 Q. Is the drag brunch at a restaurant?

1 A. It is in the hotel, yeah.

2 Q. Okay. Who comes to Extragrams shows?

3 A. Everybody.

4 Q. Do Extragrams shows typically have age restrictions?

11:40AM 5 A. They don't. It hasn't really been an issue.

6 Q. And do you tailor your shows to the audience you predict
7 might be there?

8 A. We do absolutely.

9 Q. In what ways?

11:41AM 10 A. We just make sure that the performers are dressed
11 appropriately, professionally. We often, even if we think the
12 majority of the crowd is going to be adults over 18, and there
13 may be a chance that under 18 people might be present or kids,
14 we make sure that the music that we pick and the costumes that
11:41AM 15 we pick would be okay for that as well.

16 Q. So can you ever know the exact ages of everyone in your
17 audience?

18 A. No. We don't know.

19 Q. Why is that?

11:41AM 20 A. Because we often are going into spaces, for example, if we
21 do a -- go to someone's house and we're doing a party there
22 they might say that's only adults, but we get there and some
23 have their kids or their teenagers. There's just no control
24 over that.

11:41AM 25 Also in our public spaces, example, drag brunch or at a

1 wedding or at a corporate event party that they're able to
2 bring their families too, we're just not carding. We're an
3 entertainment service or a vendor so our clients purchase
4 entertainment and we provide that.

11:42AM

5 Q. Do you ever have liability insurance for your
6 performances?

7 A. I do have liability insurance. Most venues and clients
8 request it when we perform on the premise.

9 Q. What do you understand that insurance to do?

11:42AM

10 A. My understanding of the insurance is if the performer
11 breaks something like a vase on the premise, that our insurance
12 will cover it.

13 Q. Do your drag performers do dance moves or any other
14 gestures as part of their performances?

11:42AM

15 A. Yes.

16 THE COURT: Yes. Let's go -- if it's a "yes" or "no"
17 it will go a lot quicker.

18 MS. KEMPF: Great.

19 **BY MS. KEMPF:**

11:42AM

20 Q. Do they?

21 A. Yes.

22 Q. Can you give us some examples?

23 A. Twisting, shaking, body waves, splits, shimmying.

24 Q. And do you fear that someone could accuse these

11:43AM

25 performances of containing sexual gesticulations?

1 A. I think they could, yeah.

2 Q. Why?

3 A. Because when you're shimmying, you're shaking, you're body
4 waving, that could come off as a sexual gesture.

11:43AM

5 Q. What is a body wave?

6 A. A body wave is something, you know, kind of just dancing
7 to the music, to the rhythm.

8 Q. Do you fear that someone could accuse those moves and
9 gestures as being simulated sexual acts?

11:43AM

10 A. I think it could -- I think it can mimic it and I think it
11 definitely could regardless if that's our intent or not, yeah.

12 THE COURT: Next question.

13 **BY MS. KEMPF:**

14 Q. Do your performances use accessories or prosthetics?

11:43AM

15 A. Yes.

16 Q. Can you give us some examples of accessories?

17 A. Wigs, pushup bras, corsets, breastplates.

18 Q. What's a breastplate?

11:44AM

19 A. A breastplate is something you put over and wear to give
20 you the illusion of having breasts. So if someone is doing a
21 celebrity impersonator or giving the illusion of being a woman,
22 then they are building up their chest.

23 Q. Do your performers use any type of prosthetics?

24 A. They do.

11:44AM

25 Q. Can you give an example, please.

1 A. The breastplate, hip padding. Drag kings sometimes put in
2 a packer or like stuff the area of their front crotch to kind
3 of give the illusion that they're male.

4 Q. Can you describe the packer in a little more detail?

11:44AM

5 A. Yeah. A packer is something you would place in your
6 crotch area to kind of give the illusion -- like it would look
7 like a Speedo, a man wearing a Speedo kind of thing to give the
8 illusion that they're a male character.

9 Q. Okay. The illusion of what exactly?

11:44AM

10 A. Of a man.

11 Q. Specifically --

12 THE COURT: I got it.

13 MS. KEMPF: Thank you, Your Honor.

14 **BY MS. KEMPF:**

11:44AM

15 Q. How would Extragrams be impacted if your performers could
16 no longer use the accessories and prosthetics you just listed?

17 A. I don't think they would be able to do what they're doing.
18 It's a performance art and the performance art is based on
19 giving an illusion of something of a gender or a character.

11:45AM

20 And without these we can't put on a show.

21 Q. What does the term "prurient interest in sex" mean to you?

22 THE COURT: You're talking about two terms or one?

23 MS. KEMPF: One term. The prurient interest in sex.

24 A. I'm not quite sure, to be honest. But my understanding is
25 with the -- doing something with the intent to be sexual. But

11:45AM

1 that would leave it open for interpretation for someone else to
2 perceive as sexual.

3 Something that we do would not be intentional or sexual
4 but someone could perceive that. It's vague. I don't know how
11:45AM 5 to explain it, really.

6 Q. Are you afraid that someone could accuse your performances
7 of appealing to the prurient interest in sex?

8 A. Yes. Because I can't help what other people are going to
9 think and feel.

11:46AM 10 Q. Quickly, do you take steps to ensure that Extragrams'
11 performers are fully clothed?

12 A. I do. They're wearing multiple pairs of tights typically,
13 costumes, gowns, leotards. Absolutely.

14 Q. Leotards. Even with these steps, can you be sure that a
11:46AM 15 wardrobe malfunction won't occur?

16 A. No, I can't. It happens often.

17 Q. Do you have examples?

18 A. Yeah. They often jump into a splits or a dance. Many of
19 the performers are high-energy acrobatic dancers; so they might
11:46AM 20 jump into a split. And if they're wearing a breastplate, the
21 top of the leotard could come down. The leotard in the back
22 can ride up the buttocks sometimes as well.

23 So that's -- yeah, that happens all the time in
24 performance art.

11:46AM 25 Q. Okay. Back to the infamous packers. Do you find them to

1 be lewd?

2 A. I do not, no.

3 Q. Do you fear others would see them as lewd?

4 A. I think that they could depending on --

11:47AM 5 Q. Why?

6 A. -- the silhouette and the way they look at it.

7 Q. Do Extragrams performers ever make physical contact with
8 other people doing performances?

9 A. They do. They're often interacting with performers -- I
11:47AM 10 mean with audience members; dancing with them, holding their
11 hand, sitting on their lap, kind of shimmying next to them on
12 them to dance, conga lines, grabbing each others' hips.

13 Q. So of those examples you just listed, do they involve
14 contact between one person and another person's breasts?

11:47AM 15 A. They do, especially if you're dancing with someone close.

16 Q. And one person and another person's butt?

17 A. Yes, sitting next to each other, dancing by them, on them,
18 at the side of them, yeah.

19 Q. Do you fear that SB 12 will have an impact on Extragrams
11:47AM 20 if it goes into effect?

21 A. I do.

22 Q. Why?

23 A. I fear that regardless of how we pretend -- present our
24 content that the vagueness of this law will leave so much
11:48AM 25 personal interpretation on to what my performers are doing and

1 put them at risk.

2 Q. But them at risk of what?

3 A. Of going to jail.

4 Q. And will it have any implications on your business?

11:48AM 5 A. It will, yes.

6 Q. Such as?

7 A. Such as I fear that due to the vagueness of this law and
8 with it being open to interpretation that I will not be able to
9 clearly direct my performers on what exactly to do or not to do
10 and even to the best of my ability there's still a risk
11 depending on how someone wants to see it.

11:48AM

12 Q. Do you believe it will have an impact on your clients?

13 A. I do. I think my clients will be afraid to bring us into
14 spaces and hire us.

11:48AM

15 Q. What will that fear lead to?

16 A. That fear will lead to not being able to be booked.

17 MR. STONE: Objection, Your Honor.

18 THE COURT: Hold it. Yes, sir.

19 MR. STONE: This question calls for speculation.

11:49AM

20 THE COURT: Rephrase it. Sustained to the form of the
21 question.

22 MS. KEMPF: Yes, Your Honor.

23 **BY MS. KEMPF:**

24 Q. Why are you concerned that your clients -- I think you
25 said would be hesitant if SB 12 goes into effect?

11:49AM

1 A. I think --

2 MR. STONE: Objection, Your Honor. Once again, this
3 calls for speculation about what the mind-set is of customers.

4 THE COURT: Sustained. I think I get the message.

11:49AM

5 There is going to be a concern there if they're familiar with
6 the statute. You may continue, but just it's the phraseology.

7 MS. KEMPF: Thank you, Your Honor.

8 **BY MS. KEMPF:**

11:49AM

9 Q. Does Extragrams have any performances scheduled in
10 September or October of this year?

11 A. We do.

12 Q. What kind?

13 A. Wedding, story times, drag telegrams, corporate events.

14 Q. So do these occur in public spaces, some of them?

11:50AM

15 A. Some of them do, yes.

16 Q. And some of them in private venues?

17 A. Correct.

18 Q. And for all ages?

19 A. Correct.

11:50AM

20 Q. And do you intend for these performances to be similar to
21 those that you've given in the past?

22 A. Sure, yes.

23 Q. Do you know if there are penalties for violating SB 12?

24 A. Yes. It's jail time for a year and \$10,000.

11:50AM

25 Q. What are you asking the Court to do today?

1 A. I'm asking them to block SB 12 and to -- block SB 12.
2 Yeah.

3 MS. KEMPF: Your Honor, I have no further questions
4 subject to --

11:50AM

5 THE COURT: Hold it. Do you want to confer for a
6 moment?

7 MS. KEMPF: Oh. Oh, yes.

8 **BY MS. KEMPF:**

11:50AM

9 Q. If we could just come back to Exhibits 30 and 32 that I
10 showed you. We'll start at 30.

11 A. Uh-huh.

12 Q. We're talking about your fear of this law. The
13 performance that occurred that's depicted in Exhibit 30, do you
14 fear that type of performance will be barred by SB 12?

11:51AM

15 A. I do. They're --

16 THE COURT: No. The answer is "yes."

17 **BY MS. KEMPF:**

18 Q. And why is that?

19 A. Because there are children present.

11:51AM

20 Q. And was your performer dancing that day?

21 A. And my performer was dancing.

22 Q. What kind of dance moves?

23 A. Twisting, shaking their hips, shaking, moving.

24 Q. Is your performer utilizing accessories and prosthetics?

11:51AM

25 A. Correct.

1 Q. What kind?

2 A. A breastplate or stuffing their bra. They're using
3 padding, which they do to often build body and hips. A corset,
4 heels, wigs, lots of makeup.

11:51AM

5 Q. And briefly Exhibit 32 as well. Do you fear that the
6 performance depicted in that image could be barred by SB 12?

7 A. I do.

8 Q. Why is that?

11:52AM

9 A. Because perhaps this could look like pretty risqué. The
10 slit is a little high, it's actually moved out of place. I
11 can't control who is going to be walking by. There could be
12 someone underage walking by viewing this and a parent decides
13 that they think this is prurient interest in sex.

14 Q. And was that performer dancing and making gestures?

11:52AM

15 A. They were dancing and singing, correct.

16 MS. KEMPF: Thank you, Your Honor. No further
17 questions subject to redirect.

18 THE COURT: Okay. Sir, go right ahead.

19 MR. STONE: Just a few questions, Your Honor.

20 THE COURT: Sure. Go on.

21 MR. STONE: Your Honor, may I sit?

22 THE COURT: Absolutely.

23 **CROSS-EXAMINATION**

24 **BY MR. STONE:**

11:52AM

25 Q. You work with independent contractors, right?

1 A. I do.

2 Q. The performers are not employees of your company, are
3 they?

4 A. No, they are not.

11:52AM 5 Q. Do you contract directly with the customers?

6 A. I contract directly with the customers, yes.

7 Q. Turning to Plaintiffs' Exhibit 30, you don't contend that
8 anything in this picture that's depicted would violate SB 12,
9 do you?

11:53AM 10 A. Can you say that again?

11 Q. Sure. You're not contending that anything depicted in
12 this image, Plaintiffs' Exhibit 30, would violate SB 12?

13 A. I think that someone could think that it could regardless
14 of our intent or what I think.

11:53AM 15 Q. Okay. So what in the picture that is Plaintiffs'
16 Exhibit 30 could violate SB 12?

17 A. Well, they're wearing gender marking accessories, dancing,
18 moving.

19 Q. So where in this picture are they dancing?

11:53AM 20 A. They're not in this. This was the after-the-show group
21 photo.

22 Q. So I'm asking you about the picture that is Exhibit 30.

23 A. Uh-huh.

24 Q. Okay. What is it about Exhibit 30 that you contend would
11:53AM 25 violate SB 12?

1 A. They are in drag wearing gender markers.

2 Q. So just being in drag --

3 A. And posing as an artist, yeah.

4 Q. So in your opinion just wearing drag and posing as an
11:54AM 5 artist could potentially violate SB 12?

6 A. That's not what the law says.

7 MS. KEMPF: Objection. Misstates testimony.

8 THE COURT: Say it again.

9 MS. KEMPF: Misstates the witness's testimony,

11:54AM 10 Your Honor.

11 THE COURT: Sustained. You may continue on this line
12 of questioning, however.

13 **BY MR. STONE:**

14 Q. I want to ask you about Plaintiffs' Exhibit 32.

11:54AM 15 THE COURT: That's on the public street, correct?

16 THE WITNESS: Correct.

17 THE COURT: Okay. Or at least on a lawn of somebody's
18 house.

19 THE WITNESS: Yes, lawns, streets, sidewalks,
11:54AM 20 driveways.

21 **BY MR. STONE:**

22 Q. And was it your contention earlier -- correct me if I'm
23 wrong -- that the reason that what's depicted in this image
24 could potentially violate SB 12 is because of the slit in this
11:55AM 25 performer's dress?

1 A. That's one part --

2 MS. KEMPF: Objection, Your Honor. Misstates the
3 testimony again.

4 THE COURT: She can answer it. If it's not correct,
11:55AM 5 you know, you correct it. But he may ask the question. Go
6 right ahead.

7 A. That's one element.

8 **BY MR. STONE**

9 Q. What other element in the picture that we're looking at
11:55AM 10 that's Plaintiffs' Exhibit 32 do you contend could probably
11 violate SB 12?

12 A. Well, they're dancing, performing with gender marker
13 accessories, moving their hips, shimmying their shoulders.
14 That could lead to someone's interpretation as prurient
11:55AM 15 interest in sex.

16 Q. Okay. But we're not watching them -- we're not seeing
17 them dance in this image, are we?

18 A. It's a photo, correct. So you can't see movement.

19 Q. Right. So from the photo that we're looking at is there
11:55AM 20 anything other than the slit in the dress that you contend
21 could potentially violate SB 12?

22 A. Besides the gender markers, yeah. It's a photo. So
23 it's -- yeah.

24 Q. Did you record videos of these performances?

11:56AM 25 A. We often record videos of these performances.

1 Q. Did you provide those videos in discovery to the state
2 defendants?

3 MR. KLOSTERBOER: Objection, Your Honor. I'm not sure
4 it's --

11:56AM 5 THE COURT: Say again?

6 MR. KLOSTERBOER: We don't know. It's asking for a
7 legal --

8 MR. STONE: I am not asking for a legal conclusion.
9 I'm asking if it was provided to us in discovery, the videos of
10 these performances you're testifying about today.

11:56AM 11 THE COURT: To your knowledge "yes" or "no"?

12 A. I have videos that I've -- for this one, no.

13 **BY MR. STONE:**

14 Q. For 32?

11:56AM 15 A. For 32, no.

16 Q. What about for 30?

17 THE COURT: Video provided, "yes" or "no"?

18 A. There was a video provided. I have a video.

19 MS. KEMPF: Your Honor, there's no video in evidence of
11:57AM 20 the performance.

21 MR. STONE: I didn't ask about evidence.

22 THE COURT: Well, it's not in evidence. He didn't ask
23 in evidence. Was it provided?

24 MR. ELDRED: It was not submitted, Your Honor.

11:57AM 25 THE COURT: Okay. All right.

1 MR. STONE: It wasn't provided to defendants.

2 THE COURT: If it wasn't provided to the plaintiffs'
3 lawyer, it wasn't presented to the defendants, correct.

4 **BY MR. STONE:**

11:57AM

5 Q. Well, did you provide a video from Plaintiffs' Exhibit 30,
6 the video from that event, to the attorneys?

7 MS. KEMPF: Objection. Claim of privilege.

11:57AM

8 THE COURT: Sustained. But counsel has already stated
9 it wasn't provided, so somehow we got around that, okay. That
10 attorney-client privilege.

11 Next question. The videos, in other words, I
12 understand were not provided.

13 **BY MR. STONE:**

14 Q. Do you have access to the video today?

11:57AM

15 A. I might.

16 Q. It may be stored on maybe your phone or on a computer?

17 A. Sure. Yeah.

18 Q. Okay. And is that something that would be difficult for
19 you to access and provide to the state defendants?

11:58AM

20 A. No. I could probably access it if needed, yeah.

21 Q. Okay. Do you have policies and procedures governing the
22 types of outfits worn by your performers?

23 A. Can you repeat the first part?

11:58AM

24 Q. Yeah. Do you have any policies or procedures governing
25 the types of outfits worn by your performers?

1 A. I do.

2 Q. Okay. Are those written?

3 A. They're communicated and written in e-mail to my
4 performers, yes.

11:58AM 5 Q. Were those provided to the state defendants?

6 A. I don't know.

7 MS. KEMPF: Your Honor, objection. There's been no
8 discovery in this case.

9 THE COURT: Okay. Sustained. They were not.

10 **BY MR. STONE:**

11 Q. What do those policies and procedures say about the types
12 of outfits that can be worn by your performers?

13 A. Yeah. So it's to keep pretty covered. Wear either
14 leotard, gown, dress. Music choices, not having any profanity
11:59AM 15 in regards to music. Outfits, avoiding -- not wearing like
16 thongs or strappy outfits. And that is if we are going into an
17 environment that we're not fully sure if there are going to be
18 kids there. That's primarily what we do, yeah.

19 Q. I see. Do your policies and procedures prohibit nudity by
11:59AM 20 performers during their performances?

21 A. Like full nudity? Yes.

22 Q. Uh-huh. What about partial nudity?

23 A. Can you explain what you mean? Like partial nudity.

24 Q. When I say "partial nudity," what do you think that means?

12:00PM 25 THE COURT: Wait a second. Was your question --

1 because she asked you can you define it. So you define it.

2 **BY MR. STONE:**

3 Q. Sure. Partial nudity meaning exposed breasts.

4 A. Like cleavage or cleavage on Dolly Parton or like full
12:00PM 5 breasts showing everything?

6 Q. Exposed breasts.

7 A. Exposed breasts, yeah.

8 Q. They do prohibit that?

9 A. Yeah, we don't -- they have to be covered, yes. But there
12:00PM 10 will be cleavage that shows.

11 Q. Cleavage that shows. Do your policies and procedures
12 prohibit performers from performing, say, wearing nipple
13 tassels?

14 A. Yes, in a public setting. Yeah, we don't -- yes.

12:00PM 15 Q. Do you tailor the -- do your policies and procedures
16 require performers to tailor the types of outfits that they
17 wear to the audience depending on whether there's minors that
18 might be present?

19 A. Yeah, you know, we do our best to understand the event,
12:01PM 20 the space, the type of crowd that's going to be there. And
21 make sure that we are wearing something and performing
22 something that we think is appropriate for that environment and
23 for that crowd.

24 Q. Who determines whether an outfit is appropriate for a
12:01PM 25 particular crowd?

1 A. In my business?

2 Q. Uh-huh.

3 A. Between me and my performer. There's a communication
4 between me and my performer. But they ultimately come in and
12:01PM 5 wear and bring what they do.

6 I don't approve exactly what they wear. They don't send
7 me necessarily a photo unless it's something questioned they
8 might send it to me and say, "Is this okay? What do you
9 think?"

12:02PM 10 And I would say, "I think it's okay."

11 Hopefully someone else would think it's okay.

12 Q. Have you ever determined that a performer's outfit was
13 inappropriate for -- because of the age of the audience that
14 might be in attendance at the performance?

12:02PM 15 A. Yeah.

16 THE COURT: The answer is "yes." Next question.

17 **BY MR. STONE:**

18 Q. Tell me what was the outfit that the performer was
19 proposing that you thought was inappropriate in that particular
12:02PM 20 instance?

21 A. I would say that maybe they're wearing something that is
22 showing maybe a little bit too much. Because they often wear
23 dance kind of, gymnast kind of type leotards. So maybe one
24 would show a little bit too much of the butt cheek or one would
12:03PM 25 maybe be more thongy or just something that's a little bit more

1 revealing. And then I need to assess the situation there,
2 whether we need to alter it or I check in with what the scene
3 is of the event and crowd and kind of make that -- try my best
4 to make that call.

12:03PM

5 Q. Why do you think that wearing a thong might be
6 inappropriate if there's minors present?

7 A. Well, even though they're wearing padding and multiple
8 layers of tights, this is not their bare buttocks -- let me
9 just put that out there as well -- we just -- it's just not
10 necessary.

12:03PM

11 Q. Inappropriate?

12 A. It could be perceived as maybe inappropriate, yeah.

13 Q. Do you perceive it as inappropriate?

14 A. Well, thinking something is slightly inappropriate and
15 creating a law against it is very different.

12:04PM

16 MR. STONE: Objection, Your Honor. Nonresponsive.

17 THE COURT: Overruled. You pass the witness? Is that
18 what you're doing? You want a ruling? Yes, you can pass the
19 witness. How is that?

12:04PM

20 Ladies and gentlemen, it's now about 12:05. The
21 way I usually do -- we began at 10:30. We'll take a 15-minute
22 break and then we'll get back in and go to about 1:30 and take
23 a lunch break at that time.

24 By the way, if you're not familiar with this
25 floor, there are restrooms right behind the wall; in other

12:04PM

1 words, you go out and make your first left. Also, if you go
2 all the way down to the -- what is it -- to our floor where it
3 ends and make a left at the far end of the building, there are
4 some on the far end of the building.

12:04PM

5 See you-all back ready to resume in 15 minutes.

6 COURTROOM SECURITY OFFICER: All rise.

7 THE COURT: You are free to leave.

8 (Court is in recess.)

9 THE LAW CLERK: All rise.

12:23PM

10 THE COURT: Thank you. Be seated.

11 Mr. Stone, you did complete your questioning or
12 not?

13 MR. STONE: No. Not quite, Your Honor. Just a little
14 bit left.

12:24PM

15 THE COURT: Wrap it up. I thought I might have cut you
16 off. Go on.

17 MR. STONE: Thank you, Your Honor.

18 THE COURT: By the way, after that I'll ask our other
19 counsel if they have any short questions to fill in and then
20 we'll go to any redirect.

12:24PM

21 Yes, sir. Go right ahead.

22 **BY MR. STONE:**

23 Q. Over the break were you able to pull up a copy of the
24 video that is depicting the dance routine that was performed in
25 Plaintiffs' Exhibit 30?

12:24PM

1 MS. KEMPF: Objection, Your Honor. Still there's been
2 no discovery in this case.

3 THE COURT: Sustained. You can ask did you pull it up,
4 "yes" or "no"? "Yes" or "no."

12:24PM

5 A. No, I didn't know I was supposed to.

6 THE COURT: Okay. Next question, please.

7 MR. STONE: Thank you. Thank you, Your Honor.

8 **BY MR. STONE:**

12:24PM

9 Q. Could your performers perform the same dance routines
10 without an exaggerated penis prosthetic at an all-ages event?

11 A. Could they? Sure.

12 Q. You testified earlier that wardrobe malfunctions happen
13 all the time. Do you recall that?

14 A. Yeah.

12:25PM

15 Q. Do those wardrobe malfunctions result in nipples being
16 exposed to minors?

17 A. Yeah, when there's typically a costume malfunction it
18 means that something has come off and is exposing part of the
19 body.

12:25PM

20 Q. What about genitals?

21 A. No.

22 Q. What about buttocks?

23 A. Part of the buttocks like, you know, if you're wearing a
24 bathing suit thong, part of the buttocks would show.

12:25PM

25 MR. STONE: Your Honor, may I use the screen to plug in

1 and show the witness something?

2 THE COURT: Okay. Go right ahead. Can we have that?
3 Go to the -- is the projector turned on? You may have to warm
4 up.

12:26PM 5 MS. KEMPF: Objection, Your Honor. We have never seen
6 this image.

7 THE COURT: Sustained.

8 Take it up and show it to her. You've always got
9 to show it to her. Counsel, you want to step around. Either
10 way. One or the other. Take a look at it.

11 MS. KEMPF: Yes, Your Honor. We object on the basis
12 that it's unauthenticated; it doesn't have any connection with
13 the witness.

14 THE COURT: Is there any connection with this witness?

12:27PM 15 MR. STONE: Yes, Your Honor. I'm going to ask --

16 THE COURT: Is it from her show?

17 MR. STONE: No, Your Honor. It's an illustrative
18 example so we don't have to authenticate it. And I want to ask
19 her specifically about her policies and procedures and they
20 relate to certain types of costumes or performances that would
21 be performed at all-ages events.

22 Their primary contention is that they can't
23 understand what performances would be prohibited at all-ages
24 events. So we want to test the veracity of that by asking this
25 witness to review certain videos and see if they would comply

12:27PM

1 with her policies and procedures for all-ages events.

2 MS. KEMPF: Your Honor, I'd object again that we've
3 never seen this video. It requires the witness to speculate on
4 an event that she never attended, never saw, and has nothing to
5 do with her company.

12:27PM

6 THE COURT: I have a ruling. Sustained.

7 Anything further?

8 MR. STONE: No, Your Honor. We pass the witness.

9 THE COURT: Okay. Any of the other counsel desire to
10 ask any questions?

12:28PM

11 MR. VIADA: No questions from the City of Abilene.

12 THE COURT: No. I just want to know. If there aren't
13 any, we'll move on.

14 All right. Recross if any.

12:28PM

15 MS. KEMPF: Very briefly, Your Honor. Thank you.

16 **REDIRECT EXAMINATION**

17 **BY MS. KEMPF:**

18 Q. Ms. Sieff, if your performers were prohibited from wearing
19 the prosthetics and accessories we talked about today, would it
20 change their expressive message?

12:28PM

21 A. It would.

22 Q. In what situation?

23 A. Well, they're drag performers so they're wearing
24 prosthetics, for example, a breastplate to enhance their chest.

12:28PM

25 We do a lot of Dolly Parton, she's wearing that. Celebrity

1 impersonators that need to wear these prosthetics in order to
2 give the illusion.

3 MS. KEMPF: Thank you, Your Honor. No further
4 questions.

12:28PM

5 THE COURT: Mr. Stone, do you need to cover what she
6 just asked for. Any further?

7 MR. STONE: No, Your Honor.

8 THE COURT: All right. Thank you, ma'am. You may step
9 down you're excused. You're free to leave. Call your next
10 witness, please.

12:29PM

11 MR. KLOSTERBOER: Your Honor, the plaintiffs call
12 Richard Montez, Jr.

13 THE COURT: All right. Raise your hand and be sworn.
14 (The oath was administered.)

15 **RICHARD MONTEZ, JR.,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MS. ANDREWS:**

19 Q. Good afternoon.

12:29PM

20 A. Good afternoon.

21 Q. Please state your full name for the record.

22 A. My name is Richard Montez, Jr.

23 THE COURT: Pull that microphone in counsel, please.
24 Can you get it any closer? That's about it.

12:29PM

25 MS. ANDREWS: I can get myself closer.

1 THE COURT: Your first name, sir?

2 THE WITNESS: Richard.

3 THE COURT: Richard. Okay. Thank you.

4 Go right ahead.

5 **BY MS. ANDREWS:**

6 Q. Where do you live?

7 A. I live in San Antonio, Texas.

8 Q. Is that in Bexar County?

9 A. It is.

10 12:29PM Q. Okay. Tell me about your family.

11 THE COURT: What do you do for a living? Why are you
12 here?

13 THE WITNESS: I --

14 THE COURT: I'll leave that to the attorney. Get to
15 12:29PM that first.

16 **BY MS. ANDREWS:**

17 Q. Okay. We'll get there first. What do you do for work?

18 A. I do two things in an official capacity. One is I serve
19 as the executive director of the membership division at the
20 12:30PM Hispanic Association of Colleges and Universities. And my
21 partner and I also own 360 Queen Entertainment.

22 THE COURT: 360?

23 THE WITNESS: Queen Entertainment.

24 THE COURT: Thank you.

25 **BY MS. ANDREWS:**

1 Q. Do you have any children?

2 A. We do. We have five children, all boys, that range from
3 ages of 8 to 13.

4 Q. And what is your education?

12:30PM 5 A. I have a degree in political science from St. Mary's
6 University.

7 Q. Do your parents live in San Antonio as well?

8 A. They do. My mom -- stepmom and my father live in
9 San Antonio.

12:30PM 10 THE COURT: I didn't catch it. What was your first
11 association with the Hispanic --

12 THE WITNESS: I'm the executive director of the
13 membership division at the Hispanic Association of Colleges and
14 Universities.

12:30PM 15 THE COURT: Okay.

16 **BY MS. ANDREWS:**

17 Q. Okay. So what is 360 Queen Entertainment?

18 A. 360 Queen Entertainment is a drag production company who
19 books drag queens from *RuPaul's Drag Race*, a nationally
12:31PM 20 syndicated television show. And we also book local drag queens
21 or drag queens from across Texas to perform out on the patio of
22 Tomatillos Restaurant & Bar, which is owned by my father.

23 Q. When did you start 360 Queen Entertainment?

24 A. We just celebrated our one-year anniversary in July.

12:31PM 25 Q. And why did you start it?

1 A. My partner and I have always had an affinity for drag and
2 have always looked up to drag performers. And our first show,
3 not in the capacity of 360, but just on a personal level, was
4 in our backyard for our birthday.

12:31PM

5 And we got such a resounding response from our family and
6 friends and neighbors and we decided this could be something
7 that could work as a business.

12:31PM

8 And at the same time my parents had the same idea. And
9 over Sunday dinner one day we kind of just were talking about
10 it and my dad said, why don't you have a drag show out on the
11 patio? We started 360 Queen Entertainment and now it's become
12 an official collaboration.

13 **BY MS. ANDREWS:**

14 Q. Do you hold events anywhere else?

12:32PM

15 A. We do not.

16 Q. Where is Tomatillos Restaurant located?

17 A. It's located on 1604 and 281 in San Antonio just on the
18 outskirts of the suburbs.

12:32PM

19 Q. And you said the events occur on the patio. Where is the
20 patio located?

21 A. So the patio is attached to the restaurant by one really
22 long wall.

23 THE COURT: Excuse me. The restaurant is also yours?

24 THE WITNESS: The restaurant belongs to my father.

12:32PM

25 THE COURT: Okay. Thank you.

1 THE WITNESS: Yes.

2 A. The restaurant -- the dining room rather, is connected to
3 the patio by one long, consecutive wall that is made completely
4 of windows where folks who are dining inside but do not have a
5 ticket to the show are able to look out and observe the
6 performances.

12:32PM

7 **BY MS. ANDREWS:**

8 Q. Are there other businesses in the vicinity?

9 A. There are. So the patio itself is straddled on three ends
10 by a parking lot, that fits about 80 to a hundred cars at a
11 time. And just across the parking lot separating the patio
12 from that -- separating the patio from these businesses you
13 have Men's Warehouse, you have a Genghis Grill where folks are
14 dining in. They can see the show very clearly. And there's
15 also a Main Event center in that strip. We are in a strip mall
16 with several other businesses.

12:33PM

12:33PM

17 Q. When you're holding a show, do you have, like, a rental
18 agreement with the restaurant or how does that work?

19 A. We have an agreement with the restaurant that the day of
20 the show from the morning to until the show ends we control
21 that space. We sell tickets, we decide who goes in and out
22 from the primary entrance of the show. The only thing that the
23 restaurant does is provide service to the customers.

12:33PM

24 Q. How do you make sure that restaurant customers don't go
25 out onto the patio?

12:33PM

1 A. Well, we do the best we can. We have one door that leads
2 directly from the dining room onto the patio. And usually
3 there's a person there because we need them to help open the
4 door when there are servers carrying lots of food at once. And
12:34PM 5 we restrict the entrance to there.

6 But we have had instances where children have run into the
7 patio through our show; not because they have any interest in
8 watching the drag show itself, but because there's a field in
9 the back where a lot of kids tend to go and play while their
12:34PM 10 parents are dining.

11 We've also had a situation where a gentleman thought that
12 it was much faster to get into the dining room by walking
13 through our show with his baby. So his goal was to -- he
14 walked in halfway through the show and then was headed into the
12:34PM 15 direction where that door for the servers is.

16 Q. As a general matter do you allow children into the show?

17 A. We don't. Our shows have always been -- well, at some
18 point they started --

19 THE COURT: Hold it. It's going to be better if it's a
12:35PM 20 "yes" or "no" question, just a "yes" or "no" answer.

21 A. Can you ask me the question again, please?

22 **BY MS. ANDREWS:**

23 Q. Do you allow children into your show as a general matter?

24 A. No.

12:35PM 25 Q. Okay. Have you ever made exceptions to that rule?

1 A. We have. There have been situations where there are
2 families dining inside and they have children with them who
3 these families are very well aware of what drag is. And they
4 have pleaded with us to allow them to come out onto the patio.
5 And we have made exceptions in the past and allowed children to
6 observe our drag show.

12:35PM

7 THE COURT: What was that just by the parents agreeing
8 to it?

9 THE WITNESS: Yes, sir.

12:35PM

10 THE COURT: And with full knowledge of what the
11 children were coming in for?

12 THE WITNESS: I've had parents tell me, my kids love
13 *RuPaul's Drag Race* and yes.

14 THE COURT: Okay. Go on.

15 **BY MS. ANDREWS:**

16 Q. Do your children watch drag performances?

17 A. We watch *RuPaul's Drag Race* as a family.

18 Q. Do they go to your drag performances at Tomatillos?

19 A. They have never been to my show, but for a good reason.
20 That has nothing to do because we think it's sexual in nature.

12:36PM

21 Q. What is the reason?

22 A. When we were creating this business, we wanted to create
23 an environment where adults could enjoy dinner, enjoy drinks,
24 enjoy entertainment, but not necessarily have to do it around
25 other people's kids.

12:36PM

1 And so we are parents of five children and we understand
2 what it might feel like to go somewhere and go as a couple and
3 then still have to deal with other people's kids.

4 So that is why we made these shows 18 and up; because we
12:36PM 5 had the audience in mind and their enjoyment. Not because we
6 believe children -- because the performances would be
7 detrimental to children.

8 Q. Tell me about the typical audience of one of your
9 performances.

12:36PM 10 A. Our audience is extremely diverse -- nationality,
11 ethnicity, male, female, nongender, binary, LGBTQIA+, straight
12 people. You would be surprised how much straight people love
13 drag. That's the core of our audience really. We get a lot of
14 straight cisgender people at our show.

12:37PM 15 Q. Has it been popular in the area?

16 A. Absolutely. The "Bottoms Up Diva Dinner," which is the
17 name of our show, is one of the very few drag shows that you
18 can catch out in sort of -- if you're familiar with
19 San Antonio, outside of 410 or outside of 1604.

12:37PM 20 We knew that there was a market out there for drag shows.
21 We knew there was a demand and we weren't wrong. These shows
22 have sold out often. We usually have anywhere between a
23 hundred to 175 people.

24 Our first show we reached capacity in that patio which is
12:37PM 25 200 people. And we had to scale back a little bit because it

1 was just too many. But the demand is there and people are
2 knocking down our door for these tickets all the time.

3 Q. There's an exhibit binder in front of you. Can you please
4 turn to Tab 36?

12:37PM

5 A. Okay.

6 Q. Are you familiar with this photo?

7 A. I am. I took this photo.

8 Q. When did you take it?

9 A. The spring of 2023, this year.

12:38PM

10 Q. Where was it taken?

11 A. This is out on the patio at Tomatillos Restaurant & Bar,
12 the restaurant I've been mentioning. This is a performer named
13 Adecia Lush from Dallas.

14 Q. Are you familiar with the scene?

12:38PM

15 A. I am. She is performing up on -- the patio has sort of
16 two levels. She's on the second level. And from here this
17 performer would be visible from that parking lot in the back
18 where you see there's a vehicle.

19 And then there is another parking lot that sort of
20 straddles it on a 90-degree angle where you could park another
21 20, 30 cars or so. And then another side of the parking lot
22 where there's another 90-degree angle that has parking.

23 Q. Is this an accurate copy of the photo you took?

24 A. It is.

12:39PM

25 MS. ANDREWS: Your Honor, I would like to offer

1 Plaintiffs' Exhibit 36 into evidence.

2 MR. STONE: Your Honor, we object on relevance grounds.
3 There's been no testimony that a minor witnessed this. In
4 fact, he's testified so far that his events are adults only.
5 So this has nothing to do with SB 12 and a violation of SB 12.

12:39PM

6 THE COURT: What's your response?

7 MS. ANDREWS: First of all, SB 12 is not even in effect
8 yet so there is no violation of SB 12. But this --

9 THE COURT: Well, no, no. We're going to assume. In
10 other words, we understand you want an injunction on that.

12:39PM

11 MS. ANDREWS: Right.

12 THE COURT: But let's not -- I understand the
13 technicality of the response.

14 What's the relevance of this?

12:39PM

15 MS. ANDREWS: Okay. Your Honor, this goes to the
16 expression. The attorney general has claimed that drag is not
17 expressive. We're going to talk about the expressive message
18 that is delivered through drag performances.

19 THE COURT: This drag performance?

12:39PM

20 MS. ANDREWS: Yes.

21 THE COURT: Look at it. We don't know what it's
22 showing yet.

23 MR. STONE: Yeah, Your Honor. They say they're going
24 to show it. But to my knowledge there's no video associated
25 with this. It appears to just be a still image of a person

12:40PM

1 holding dollars.

2 THE COURT: What's holding dollar bills? I have that
3 question, too.

4 MS. ANDREWS: I don't know the answer to that.

12:40PM

5 THE COURT: Hold it a second. Hold it. I'm going to
6 overrule your objection at this time.

7 If I find it's not relevant, I'll look back at
8 you and you can get up and object. But you need to know you're
9 entitled to a ruling. The ruling is objection overruled at
10 this time.

12:40PM

11 MR. STONE: Thank you, Your Honor.

12 THE COURT: Go ahead.

13 **BY MS. ANDREWS:**

14 Q. Okay. Mr. Montez, who is this performer?

12:40PM

15 A. This is Adecia Lush, a drag performer from Dallas, Texas.

16 Q. Describe her performance.

17 A. I remember this performance very well. She is performing
18 to a mariachi song which is not out of the ordinary for her
19 because she is Latina performer. And her aesthetic is very
20 much that of a mariachi singer.

21 In this particular scene, which in San Antonio you can
22 imagine people love mariachi. And so it's one of the most
23 memorable performances I think we've ever had with respect to
24 displaying Latin culture and Latin music.

12:41PM

25 THE COURT: Well, let me ask you this: What about the

1 dollar bills that she's got in her hands? I mean, where's the
2 expression? What does it mean in the community? I'm not
3 following. Go on.

12:41PM 4 THE WITNESS: Sure. Well, it is known by the community
5 that at drag shows you present performers with dollar bills in
6 order to appreciate their aesthetic, appreciate their
7 performance.

12:41PM 8 When I hand a drag queen a dollar it's because I
9 want her to know that I'm appreciative of the art that she is
10 displaying and has taken -- being brave out there and
11 displaying this art.

12 THE COURT: Okay. Thanks. Go on.

13 MS. ANDREWS: Thank you.

14 **BY MS. ANDREWS:**

12:42PM 15 Q. You said that this is in the parking lot. Where is the
16 parking lot in this photo?

17 A. In this particular photo you'll notice over -- if you're
18 looking at the photo over her right shoulder, there is a
19 vehicle parked just behind her.

12:42PM 20 THE COURT: Is that the right shoulder or her left
21 shoulder?

22 THE WITNESS: If you're looking at the photo so the
23 gentleman with the floral shirt and the glasses, just above his
24 head there's a vehicle.

12:42PM 25 THE COURT: All right.

1 **BY MS. ANDREWS:**

2 Q. And who parks in that parking lot?

3 A. Tomatillos customers and customers from surrounding
4 businesses.

12:42PM

5 Q. Is there any age limitation to who can go to that parking
6 lot?

7 A. No, I don't think Main Event would have put their space
8 there if there was.

12:42PM

9 Q. Okay. Let's turn now to Exhibit 37. Are you familiar
10 with that photo?

11 A. Yes, I am. This is a performer, Kristi Waters, on that
12 patio. And she's actually in the same spot as Adecia Lush was
13 in the prior photo, except this was taken from another angle
14 and now shows Men's Warehouse and Genghis Grill.

12:43PM

15 MR. STONE: Your Honor?

16 THE COURT: Yes, sir.

17 MR. STONE: At this point since we're starting to move
18 on, I'd like to reurge my objection to Exhibit 36. They never
19 actually talked about whether or not it would violate SB 12.
20 They never even asked about it.

12:43PM

21 So while they talked about, you know, how many
22 dollars bills this particular performer was holding, they
23 didn't say anything about how this would violate SB 12 or if
24 there were children in attendance.

12:43PM

25 THE COURT: What's your response?

1 MS. ANDREWS: Again, Your Honor, the attorney general
2 has said there's no expressive content in that drag, that
3 there's no expression. And that's what we're showing through
4 this photo.

12:43PM

5 THE COURT: All right. Overruled for that limited
6 purpose. It goes to the weight, not to the basic
7 admissibility.

12:43PM

8 I may have some of the same questions, but you
9 brought it to my attention. But for the purposes of this kind
10 of an equity hearing, I'll overrule it for that limited
11 purpose. It goes to the weight, not to the basic
12 admissibility.

12:44PM

13 MS. ANDREWS: Your Honor, I'd also like to point out
14 that Mr. Montez testified that minors could be in that parking
15 lot and see into the patio to see the performance. So even if
16 this particular performance does not violate SB 12, we're
17 establishing that a violation could be possible.

18 THE COURT: With someone passing on the street, on the
19 outside street?

12:44PM

20 MS. ANDREWS: Yes, Your Honor.

21 THE COURT: And they also mentioned that from the
22 inside of the restaurant you could see some of it, but even
23 though you're not a paying customer.

24 MS. ANDREWS: That's right, Your Honor.

12:44PM

25 THE COURT: All right. Go on.

1 MS. ANDREWS: Thank you.

2 **BY MS. ANDREWS:**

3 Q. Okay. Moving to Plaintiffs' Exhibit 37, did you take this
4 photo?

12:44PM 5 A. I did.

6 Q. Is it an accurate copy of the photo?

7 A. Yes.

8 MS. ANDREWS: Your Honor, I'd like to offer
9 Plaintiffs' 37 into evidence.

12:44PM 10 THE COURT: Okay. Do you have the same objection,
11 counsel?

12 MR. STONE: Yes, Your Honor.

13 THE COURT: I don't want to grant you a running
14 objection, but at least I want you to get into the record on
12:45PM 15 each of the ones to protect the record, okay?

16 MR. STONE: Yes, Your Honor.

17 THE COURT: It's overruled.

18 MR. STONE: Thank you.

19 **BY MS. ANDREWS:**

12:45PM 20 Q. Okay. Who is this performer, Mr. Montez?

21 A. This is Kristi Waters, who is the number one drag
22 performer in San Antonio and she is the host of our show.

23 Q. I see she's wearing a -- well, describe her outfit to me.

24 A. She's wearing a very short leotard. This performer often
12:45PM 25 wears and is wearing butt pads that reveal her buttocks. And

1 this performer also wears breastplates.

2 Q. And could this performance be viewed by a minor?

3 A. Yes.

4 Q. And where from specifically?

12:45PM

5 A. Well, from inside our dining room. But in this particular
6 exhibit you'll see over where it says "valuables" that Genghis
7 Grill, you see their dining tables there.

8 THE COURT: By the way, if you need to use the overhead
9 projector for any of this, you're welcome to do so.

12:46PM

10 MS. ANDREWS: Thank you, Your Honor. I just have one
11 more photo and then we'll move on.

12 THE COURT: Okay. What's the number?

13 **BY MS. ANDREWS:**

14 Q. Okay. Plaintiffs' Exhibit 38. Let's turn now to
15 Exhibit 38. What is this photo?

12:46PM

16 A. This is a photo of Angeria Van Michaels who was in the top
17 four of *RuPaul's Drag Race*.

18 Q. Did you take this photo as well?

19 A. I did.

12:46PM

20 THE COURT: Is that outside or inside?

21 THE WITNESS: This is outside the patio, sir.

22 THE COURT: Is it air-conditioned?

23 THE WITNESS: It is not.

24 THE COURT: Even in this weather, huh?

12:46PM

25 THE WITNESS: They still come.

1 THE COURT: Okay. Go on.

2 MS. ANDREWS: I'd like to offer Plaintiffs' Exhibit 38.

3 THE COURT: Any objections? Same objection?

4 MR. STONE: Same objections, Your Honor. They haven't

12:46PM

5 explained how this would violate SB 12. It's just not
6 relevant. As well as the other objections we've previously
7 expressed.

8 THE COURT: They're saying as to expression; but I
9 understand it.

12:47PM

10 For that limited purpose, overrule the objection.

11 MS. ANDREWS: Your Honor, for the last exhibit
12 Plaintiffs' Exhibit 37 --

13 THE COURT: What do you want to talk about? You want
14 to talk about Number 38 or have you done so?

12:47PM

15 MS. ANDREWS: I'm about to talk about 38. But I would
16 like to point out that it's not just for the expression in
17 these photos. There are incidents depicted that could violate
18 SB 12.

19 THE COURT: Like what?

12:47PM

20 MS. ANDREWS: In the prior photo there's a portion of
21 the performer's buttocks is showing. SB 12 incorporates the
22 definition from the Business and Commerce Code of nudity, which
23 defines nudity as uncovered or covered in less than fully
24 opaque clothing any portion of a performer's buttocks.

12:47PM

25 There's portion of the performer's buttocks

1 visible in that last photo. And in Plaintiffs' 38 we'll also
2 talk about other parts of SB 12.

3 THE COURT: Go on then. We're 38 now. Is that
4 correct?

12:48PM

5 MS. ANDREWS: Yes, Your Honor.

6 **BY MS. ANDREWS:**

7 Q. Okay. Mr. Montez, what do you see in Plaintiffs' 38?

12:48PM

8 A. So to reiterate, this is outdoors. That blue square on
9 the floor you see behind her is just the first level of the
10 patio which has an overhead covering, just to answer your
11 question, Judge.

12:48PM

12 And where the gentleman in the pink is, who happens to be
13 my partner and business partner, is that door that I talked
14 about earlier where the servers come in and out with food and
15 where children have run out before.

12:48PM

16 You will see just over to the opening of that door there's
17 a person wearing a white hat. Children and families dine in
18 those tables. You can seat probably about 10 people in that
19 section. And as you can see, the person's head is sticking up
20 pretty prominently and can observe Angeria's performance.

21 Q. And can you describe her performance?

22 A. Angeria is what I would call a pageant queen who wears a
23 lot of big hair, she wears a lot of prosthetics to accentuate
24 female characteristics; in some cases breastplates.

12:49PM

25 She performs to hip-hop music, which includes twerking,

1 what some might consider gesticulations I guess. And just a
2 very high-energy performer.

3 Q. What is twerking?

4 A. Twerking is essentially a dance move. It could be
12:49PM 5 considered a cultural dance move as well. There are cultures
6 who use twerking as a form of expression where you put your
7 hands on your knees essentially and move your buttocks up and
8 down rapidly. And some folks may consider that to be sexual.

9 Q. And can you tell in this photo how this dancer is moving?

12:49PM 10 A. In this particular photo, she is -- I don't know how to
11 describe it -- but lots of fast movements, jumping. Angeria
12 does some death drops. I don't know if people are familiar
13 with death drops, but yes.

14 Q. I'm not. Could you please --

12:50PM 15 THE COURT: Hold it. If you use that term, what does
16 it mean?

17 THE WITNESS: A death drop is essentially where a
18 performer will tuck one of their feet or legs behind their butt
19 and then fall to the floor with the other leg extended. It's
12:50PM 20 probably something the average person can't do so audiences
21 response to it with a lot of amazement and wow.

22 **BY MS. ANDREWS:**

23 Q. Is there ever any portion of the dancer's body visible
24 that might violate -- that might constitute nudity? A portion
12:50PM 25 of the buttocks, genitals, breasts to the point underneath the

1 areola?

2 A. Yes. We've had wardrobe malfunction at the Bottoms Up
3 Diva Dinner. We've had a breastplate fall out. Some of our
4 performers wear sort of string bikinis that will cover the
12:50PM 5 nipples but be very, very revealing around the buttocks.

6 Q. Do they ever simulate contact with the buttocks of another
7 person?

8 A. Yes, during performances and then our host as well will
9 flirt with customers, sit on their laps when that's wearing a
12:51PM 10 thong. I've seen her invite what she considers to be a
11 handsome man to spank her on the butt.

12 Q. And when you say she sits on their laps, is her buttocks
13 making contact with another person?

14 A. On their knee, yeah.

12:51PM 15 Q. Okay. Do they ever perform gesticulations while wearing
16 prosthetics?

17 A. Yes. In our more recent show on Friday, which we believe
18 will be our last under SB 12, Kristi wore a breastplate that
19 was very revealing, pulsed her chest in front of people, put
12:51PM 20 her chest in front of people's faces.

21 Q. Would you say these shows are risque?

22 A. Some could say they're risque, but I think that's up for
23 people's own interpretation.

24 Q. Would you say they're obscene?

12:52PM 25 A. With respect to what my threshold for obscene is, no,

1 they're not obscene.

2 Q. Would you say that they appeal to the prurient interest in
3 sex?

12:52PM

4 A. I have difficulty with the word "prurient." But is it
5 sexualized performances? Again, with respect to my threshold,
6 no. But I know that there are people who believe they are.

7 Q. How do you know that?

12:52PM

8 A. People have called the police on us. We have had
9 customers who are not part of our ticketed customer base inside
10 the restaurant who have said to our employees they're not
11 coming back. And we have had one person take it upon
12 themselves to call the police because they believed what we
13 were doing was already illegal.

14 Q. Speaking of the employees, do you hire the waitstaff?

12:52PM

15 A. I do not.

16 Q. Do you hire the bussers?

17 A. I do not.

18 Q. Are any of those staff members under 18?

12:53PM

19 A. The waitstaff from what I understand that's outside in the
20 patio is not. But it's not beyond a reasonable doubt that a
21 busser could be 18. Lots of teenagers take busser jobs. And
22 considering the market in the restaurant industry, it's tough
23 to find help. So yes, young people do work for us within the
24 bounds of the law or for my father, rather.

12:53PM

25 Q. Would you say that these performances have artistic or

1 political value?

2 A. Absolutely.

3 Q. Can you describe that value?

4 A. I think every drag queen tries to articulate something
12:53PM 5 different through their performance art. We have one drag
6 queen named The Queen Fantasia who is what I consider very
7 social justice oriented.

8 And many of her performances as a black performer deal
9 with race and social justice and the music she performs to and
12:54PM 10 the way that she moves.

11 Kristi Waters is more of a comedic queen. And I think
12 that a lot of the comedy that she portrays is her expressing
13 herself.

14 Q. You brought this suit to challenge SB 12. Why did you do
12:54PM 15 that?

16 A. I did that because I'm in fear of losing my business. And
17 I believe that the show we had on Friday will be our last show
18 under SB 12. As you can see many of the things we do would be,
19 I believe, illegal under SB 12.

12:54PM 20 And I also did it because I believe that our show and our
21 business has a responsibility to our community to protect their
22 free speech and stand up for people who may be marginalized.

23 THE COURT: People who may be marginalized being who?

24 THE WITNESS: The LGBTQIA+ community, Your Honor.

12:54PM 25 THE COURT: Say it again.

1 THE WITNESS: The LGBTQI+ community, Your Honor.

2 THE COURT: Okay.

3 **BY MS. ANDREWS:**

4 Q. You mentioned that you have another job. When you say
12:54PM 5 that you're afraid you will lose your business, is that because
6 you're afraid you won't -- that you will lose money or another
7 reason?

8 A. Well, I like to believe that as a result of the way I was
9 raised by my father I have a sense of entrepreneurship. And
12:55PM 10 so, you know, small businesses get started to generate revenue.
11 And we want to make some money.

12 But we also wanted to, again, provide a platform for
13 people to express themselves and we take that very seriously.

14 THE COURT: Counsel, when you just mentioned your other
12:55PM 15 job, it's not the Hispanic Association. Is that what you're
16 referring to?

17 MS. ANDREWS: Yes, Your Honor.

18 THE COURT: Okay. Go on.

19 MS. ANDREWS: He's the executive director.

12:55PM 20 THE WITNESS: Yes. I'm a salaried employee in that
21 job, and I'm also the owner of 360. So I have two.

22 THE COURT: Right.

23 THE WITNESS: Yeah.

24 **BY MS. ANDREWS:**

12:55PM 25 Q. Sorry. Okay. So why do you think that SB 12 might be

1 enforced against you?

2 A. Our show takes place in a venue where children are on the
3 premises. We cannot guarantee that a child will not observe
4 our show. We -- our performers utilized breastplates. They
12:56PM 5 enhance their characteristics and features to appear to be
6 women.

7 Many of them are male-born individuals who are
8 impersonating a person of the opposite sex, all verbiage that
9 from what I have seen is included in this bill.

12:56PM 10 THE COURT: Specifically or what?

11 THE WITNESS: I believe I've seen a reference to a
12 person impersonating someone of the opposite sex, sir.

13 THE COURT: Go on.

14 **BY MS. ANDREWS:**

12:56PM 15 Q. Have you also seen parts of the bill that deal with sexual
16 gesticulations while wearing prosthetics?

17 A. Absolutely. And I'm increasingly concerned even as I hear
18 these discussions, that I'm not sure what all of that means.
19 And there appears to be a great deal of interpretation on the
12:57PM 20 table here. So it's worrisome to me that I could be breaking
21 the law.

22 THE COURT: Interpretation by who?

23 THE WITNESS: Others in the community, sir. People who
24 observe our show that maybe are not ticketed ticket holders.

25 THE COURT: Okay.

1 **BY MS. ANDREWS:**

2 Q. What do you fear will happen if you are found to violate
3 SB 12?

4 A. Well, I'm concerned about all parties involved in our
5 collaboration. I'm concerned that my father's restaurant could
6 be fined. I'm concerned --

7 THE COURT: Could be what? Fined?

8 THE WITNESS: Correct.

9 THE COURT: Okay. Go on.

10 A. I'm concerned that criminal charges and arrests could be
11 brought against our performers. And I'm concerned that we
12 could go out of business and not be able to provide a platform
13 for these performers for whom this is a livelihood.

14 **BY MS. ANDREWS:**

15 Q. Do you believe that 360 Queen Entertainment is expressing
16 its own message?

17 A. Absolutely. I think the community sees us as a vehicle
18 for free speech, a platform for LGBTQIA+ rights. And I know
19 for a fact that we empower people around us who wish to be
20 entrepreneurs to start their own businesses, potentially drag
21 shows.

22 Q. This bill is set to take effect on September 1st. Here we
23 are on August 28th. Do you have any shows scheduled or does
24 360 Queen Entertainment have any shows scheduled going forward?

25 A. We have ceased booking shows past September 1st because of

1 the high risks associated with booking a drag queen from
2 *RuPaul's Drag Race*.

3 There are contractual agreements that require deposits.
4 And most of these queens can charge -- some of them can charge
12:58PM 5 up to \$6,000. It would be too much risk for us to have these
6 bookings in place with the risk that SB 12 could go into effect
7 and then we'd have to cancel these bookings and lose money
8 upfront.

9 Q. Do you fear that if you don't cancel these shows and if
12:59PM 10 you go forward that 360 Queen Entertainment could be fined?

11 A. Absolutely.

12 Q. Do you recall seeing anything in SB 12 about nudity?

13 A. Yes, and sexual -- yes.

14 Q. Do you believe that your shows might be seen as violating
12:59PM 15 those portions of SB 12?

16 A. Absolutely.

17 Q. What have you done in the lead-up to SB 12 to prepare?

18 A. Well, as we've heard this public discourse and then even
19 conversations on the floor of the legislature about the
12:59PM 20 potential for SB 12 to pass and then eventually did, as any
21 good entrepreneur would do, you almost try to see how can we
22 keep doing this?

23 So we moved the time of our show. We moved the day of our
24 show. But at the end of the day we just don't see a way
12:59PM 25 forward because there will always be children around. That's

1 the nature of the restaurant where we host our shows.

2 Q. Would -- has taking those steps already chilled your
3 ability to express the message you want to express?

4 THE COURT: I don't understand the question.

5 **BY MS. ANDREWS:**

6 Q. Okay. You said you've taken steps to try to comply with
7 SB 12 that have not been successful. When you took those
8 steps, do you believe that that chilled your ability to express
9 the message you want to express?

01:00PM 10 A. When a production like ours, which is a pretty detailed
11 production, is presented with these adversities that I know
12 exist in SB 12, it creates a great deal of disruption.

13 I think it's a distraction. And it, I think, leads to the
14 dismantling of the quality of our show and the experience of
01:01PM 15 our attendees and that it prevents us from being able to
16 articulate the message that we want through these performances.

17 Q. Would you like to continue doing these performances going
18 forward?

19 A. Without a doubt.

01:01PM 20 Q. Did you have any plans to continue?

21 A. We don't currently have plans.

22 Q. Did you previously?

23 A. We did. We at some point had discussions with a performer
24 named Joey Jay and a performer named Bosco, both from *RuPaul's*
01:01PM 25 *Drag Race*, planning for an event in September. It's both my

1 partner and I's birthdays and we think that would be a great
2 draw because lots of people love us and they would come to the
3 drag show.

4 But since then considering the risks associated with
01:01PM 5 booking these drag queens, we stopped having those
6 conversations and put them to rest.

7 MS. ANDREWS: Nothing further. I'll pass the witness.

8 THE COURT: Thank you. Counsel.

9 MR. STONE: Your Honor, if I may. I just have a few
01:02PM 10 questions.

11 THE COURT: Yes, sir.

12 **CROSS-EXAMINATION**

13 **BY MR. STONE:**

14 Q. You don't own the premises where your shows are conducted,
01:02PM 15 do you?

16 A. I do not, but I control the patio during the show.

17 THE COURT: Unresponsive, correct?

18 MR. STONE: Yes, Your Honor.

19 THE COURT: Sustained.

01:02PM 20 **BY MR. STONE:**

21 Q. Let me ask it again. I'm very specific. I'm asking a
22 very specific question.

23 You don't own the premises where your shows are conducted,
24 do you?

01:02PM 25 MS. ANDREWS: Objection. Asked and answered.

1 THE COURT: Overruled.

2 A. I do not.

3 **BY MR. STONE:**

01:02PM

4 Q. Do you have a video of the performance that is depicted in
5 Plaintiffs' Exhibit 36?

6 A. I do.

7 Q. Do you have a video of the performance that is depicted in
8 Plaintiffs' Exhibit 37?

9 A. I do.

01:03PM

10 Q. Do you have a video of the performance that is depicted in
11 Plaintiffs' Exhibit 38?

12 A. I do.

13 Q. You contend that each of these performances involves
14 expressive conduct, correct?

01:03PM

15 A. Yes.

16 Q. But instead of giving us a video of the performances for
17 the Court to judge, you've just given us a still image; isn't
18 that right?

19 A. The images are still.

01:03PM

20 Q. Right. Your drag events are already adult only, aren't
21 they?

22 A. We promote to 18 and up, yes.

23 Q. Okay. You've made some exceptions for parents on a
24 case-by-case basis, right?

01:03PM

25 A. We have.

1 Q. What is your criteria for determining whether a minor can
2 be permitted at one of your adult-only shows on a case-by-case
3 basis?

4 A. We love to see parental discretion. So if none of these
01:03PM 5 minors have ever not been accompanied by an adult, their
6 requests have come from parents. And we think that that is
7 really the key to this; is to make sure that parents have
8 parental discretion -- that as a parent I understand the nature
9 of a show before I take my kids to it.

01:04PM 10 Q. So is it fair to say that the only criteria you have is
11 that a parent agrees?

12 THE COURT: Define "only." "Only criteria." You may
13 continue on the subject, though.

14 **BY MR. STONE:**

01:04PM 15 Q. Other than the parent consenting to the minor observing
16 the show, is there any other criteria that you employ when
17 deciding whether or not to permit a minor to attend your
18 adult-only event on a case-by-case basis?

19 A. I have not employed any other criteria.

01:04PM 20 Q. You testified, I believe, that children have run by your
21 performances before; is that correct?

22 A. Through the patio where the drag queens are performing,
23 yes.

24 Q. When they ran by, did you or the performers intend for
01:04PM 25 those minors to witness the show?

1 A. We did not.

2 Q. You testified that some cultures use twerking as a form of
3 cultural expression. Which cultures?

4 A. There are a number of black cultures, different
01:05PM 5 nationalities who use twerking as a form of expression.

6 Q. Which black cultures?

7 A. I couldn't name specific ones.

8 Q. What is the basis for your opinion that black cultures use
9 twerking as a form of cultural expression?

01:05PM 10 A. We have a number of performers who are part of our cast
11 frequently, who I have understood to believe that twerking is a
12 cultural representation of expression.

13 Q. Do any of your nonblack performers twerk?

14 A. They do.

01:05PM 15 Q. Okay. Is it fair to say that twerking is not unique to
16 black culture with respect to your performers?

17 A. Well, I'm trying to think if any of our other performers
18 have twerked. I imagine so, but there's not one that I could
19 recall has.

01:06PM 20 Q. Do you think that twerking is sexual?

21 A. By my bounds, no.

22 Q. What is twerking?

23 A. Twerking is the rapid movement of one's buttocks. Usually
24 you're really good at it if you have a strong waist and a large
01:06PM 25 behind and you put your hands on your knees, usually perform it

1 to music. Yeah.

2 Q. Could you show the Court what you mean when you say
3 twerking?

4 A. Sure.

01:06PM 5 Q. Yeah.

6 A. Yeah, I will.

7 Q. Please.

8 MR. STONE: Your Honor, we believe that this would be
9 helpful just to understand. It's always easier to see
01:06PM 10 something as opposed to just describe it.

11 THE COURT: You haven't heard me object yet.

12 MR. STONE: Thank you, Your Honor.

13 THE WITNESS: Actually I'm not sure I'm endowed enough
14 to get the point across. But essentially they'll do this
01:07PM 15 (indicating) and they throw their backs back and they do it in
16 people's faces. They do it everywhere.

17 **BY MR. STONE:**

18 Q. Thank you.

19 You said at some of your performances some of the
01:07PM 20 performers are wearing string bikinis, right?

21 A. Yes.

22 Q. And some of the performances involve performers being
23 spanked on the butt by attendees?

24 A. Yes, and being invited to touch their breastplates as
01:07PM 25 well.

1 Q. Touch their breastplates as well. Do they ever let minors
2 spank their butts during the performances?

3 A. No.

4 Q. Do they ever let minors touch their breastplates during
5 the performances?

01:07PM

6 A. No.

7 Q. Why not?

8 A. Because there typically are never minors at our show. But
9 we have had minors present and on the premises.

01:07PM

10 Q. If there was a minor at one of your shows, would you
11 permit that?

12 A. I haven't had enough time to evaluate whether or not I
13 would.

14 Q. Okay. But you might?

01:08PM

15 A. I might.

16 Q. Okay. Did you say that your performers also performed lap
17 dances on attendees?

18 A. No, they don't perform lap dances, but they do -- well, if
19 they dance on a lap and that's how you define a lap dance, then
20 I suppose so.

01:08PM

21 Q. Okay. And would you agree that your performers -- you
22 could still put on your shows, just at a different venue?

23 A. It would be very difficult for us to continue having the
24 format of our show at any family restaurant in town. We want

01:08PM

25 it to be at these types of restaurants. That's our entire

1 premise.

2 Q. I see. So your entire -- specifically for your
3 performances they need to occur at a family restaurant?

4 A. They need to occur at a full-service restaurant, and
5 99 percent of those are that in San Antonio.

01:08PM

6 THE COURT: Well, what's the business decision that you
7 made relative to that comment for business, as a businessman?

8 THE WITNESS: As a businessman we wanted to provide
9 a -- our company is called 360 Queen Entertainment because we
10 want people to get the drag, we want them to get the food, we
11 want them to be able to order drinks, and we want them to have
12 an in-dining experience.

01:09PM

13 THE COURT: Can they have a dining experience out on
14 the patio?

01:09PM

15 THE WITNESS: Yes.

16 THE COURT: What is the difference in admission or
17 cover charge or whatever if there is any?

18 THE WITNESS: So all of our tickets, they're \$65. And
19 that's based on --

01:09PM

20 THE COURT: Is that for the restaurant, or that's extra
21 for the show out on the patio?

22 THE WITNESS: We pay out the restaurant at the end for
23 food and things.

24 THE COURT: Okay. Go on.

01:09PM

25 **BY MR. STONE:**

1 Q. As it is right now, you put on an adults-only event, but
2 you put it on on a patio adjacent to a public street where
3 anybody walking by could see the performance, right?

4 A. Yes.

01:10PM

5 Q. So what's the significance of making it adults only if
6 it's entirely visible to the public and anyone can see it?

7 A. You don't get a seat at the show as it is, as the show
8 stands now, if you are under 18.

9 MR. STONE: Pass the witness, Your Honor.

01:10PM

10 THE COURT: Okay. Gentlemen, any questions
11 additionally?

12 MR. VIADA: No.

13 THE COURT: Hearing none. Yes. Any redirect?

14 MS. ANDREWS: Yes, Your Honor.

01:10PM

15 **REDIRECT EXAMINATION**

16 **BY MS. ANDREWS:**

17 Q. Mr. Montez, counsel just asked you about why do you keep
18 kids out if they can see it from the street or from the
19 restaurant. What is the reason that you make your show 18 and
20 up?

01:11PM

21 A. As I testified earlier, we make this show 18 and up
22 because we want adults to have an experience where they don't
23 have to deal with kids.

24 But I would love the opportunity as a business to host
25 something like a teen night where there is parental discretion

01:11PM

1 on whether or not kids come to the show and that we have a show
2 that where people -- young people in the LGBTQIA+ community can
3 see themselves in these performances, they can network with
4 other people who are part of their community.

01:11PM

5 THE COURT: You've also stated that some customers say
6 they're not coming back.

7 THE WITNESS: Yes.

8 THE COURT: Okay. So what's that? You mean that was
9 basically parents or just people in general?

01:11PM

10 THE WITNESS: People in general. I wouldn't be able to
11 tell you those individuals were parents. But we've had folks
12 at the restaurant say they weren't returning.

13 THE COURT: Okay.

14 **BY MS. ANDREWS:**

01:12PM

15 Q. Would you be able to charge the same amount for tickets if
16 you did not offer a full restaurant experience?

17 A. Very unlikely. There are other shows in town that just do
18 a show and they charge, you know, \$15 depending on where it is.
19 Yeah. It's different for everybody.

01:12PM

20 THE COURT: How much was it? 15 or 50?

21 THE WITNESS: 15, 20. It really ranges. And it
22 depends on the cost of the drag queens that they booked.

23 THE COURT: Okay.

24 **BY MS. ANDREWS:**

01:12PM

25 Q. Would it change the message that 360 Queen Entertainment

1 is expressing if it moved the location to, say, a bar or
2 nightclub or strip club?

3 A. Absolutely. And it would change the audience and the goal
4 of having this show out in the suburban area where more people
01:12PM 5 could be exposed to drag, be educated about drag, and
6 understand that it's not always what people say it is.

7 Q. Would you still -- would 360 Queen Entertainment still put
8 on shows in that type of environment; a bar, strip club,
9 nightclub?

01:13PM 10 A. It's not our scene. I wouldn't even know where to start
11 although --

12 THE COURT: What is it not your form of what? Of
13 expression or message or what?

14 THE WITNESS: I would say our message and expression.
01:13PM 15 We are just not in the business of having a drag show at a bar
16 or a club. And we don't get -- I don't think we get the same
17 point across if we have it in an environment like this where
18 people have the opportunity to talk to each other, get to know
19 each other, and dine and break bread with one another.

20 **BY MS. ANDREWS:**

21 Q. And what is that message?

22 A. Community.

23 MS. ANDREWS: I'll pass the witness.

24 THE COURT: Okay. Thank you, sir. You may step down.

01:13PM 25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: You're excused. You're free to leave. You
2 certainly may remain. Call your next witness. We get about 15
3 minutes.

4 MR. KLOSTERBOER: Yes, Your Honor. Plaintiffs calls
5 Gavyn Hardegree.

6 (The oath was administered.)

7 **GAVYN HARDEGREE,**
8 having been duly sworn, testified as follows, to wit:

9 **DIRECT EXAMINATION**

10 **BY MR. ROESSLER:**

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Can you please state your name for the record?

14 A. Gavyn Hardegree.

01:14PM 15 THE COURT: How do you spell your last name?

16 THE WITNESS: H-A-R and then degree like the
17 temperature.

18 **BY MR. ROESSLER:**

19 Q. What is your connection to this case?

01:14PM 20 A. I am the president of the board of directors for
21 Abilene Pride Alliance.

22 Q. What is the Abilene Pride Alliance?

23 A. It is a local Abilene LGBTQIA+ nonprofit.

24 Q. Where do you live?

01:14PM 25 A. I live in Abilene, Texas.

1 Q. And how long have you lived there?

2 A. Since 1998.

3 Q. Are you compensated in your role for the Abilene Pride
4 Alliance?

01:15PM 5 A. I am not.

6 Q. So what is it you do to make a living?

7 A. I am the community engagement specialist for Regional
8 Victim Crisis Center, another nonprofit in Abilene.

9 Q. Your work for the Abilene Pride Alliance is as a
01:15PM 10 volunteer?

11 A. Correct.

12 Q. What do you do for Abilene Pride Alliance in your role?

13 A. A little bit of everything. A typical president will
14 administer the board meetings, act as a representative face in
01:15PM 15 the community for the organization.

16 Q. And are you testifying on behalf of the Abilene Pride
17 Alliance today?

18 A. I am.

19 Q. What is the mission of the Abilene Pride Alliance?

01:15PM 20 A. Essentially to build, create, and maintain safe spaces for
21 the local LGBTQIA+ community.

22 Q. Okay. How does the Abilene Pride Alliance do that?

23 A. Right now we are primarily event-based; so we'll do three
24 different kinds of events; community-based events, fundraising
01:15PM 25 events, and occasionally we'll do a hybrid of those two.

1 And we also facilitate and provide meeting space for
2 social support groups and particular trans and nonbinary
3 individuals. We also have a support group that's facilitated
4 by a therapist.

01:16PM

5 Q. When was the Abilene Pride Alliance founded?

6 A. In 2019.

7 Q. How did it come about?

8 A. Local group of community leaders got together and
9 organized an event called Pride in the Park. And they saw a
10 desire and a need in the community for an organization like
11 ours to exist.

01:16PM

12 Q. You mentioned that the Abilene Pride Alliance host events.
13 When was Abilene's first major event?

14 A. Our first major event was in -- oh, gosh. There's been so
15 many. We started drag brunches a couple of years ago. Those
16 were our largest attended events.

01:16PM

17 Q. Does the Abilene Pride Alliance host any other types of
18 events?

19 A. We do. We've had drag bingo, we've had community
20 cookouts. Last year we had our first ever pride parade and
21 festival.

01:17PM

22 Q. At each of these events that you've mentioned is drag a
23 component of those events?

24 A. Yes.

01:17PM

25 Q. There are drag performers?

1 A. Absolutely.

2 Q. What message does the Abilene Pride Alliance convey by
3 having the drag performers at those events?

4 A. So for our community in particular, our drag performers
01:17PM 5 are kind of a nexus of belonging. It's a way for people in our
6 community to see themselves represented on a larger scale.

7 Q. What does a typical Abilene Pride Alliance drag
8 performance or performer look like?

9 A. Lots of sequins, big hair, wigs, breastplates, the hip
01:18PM 10 pads, packers, exaggerated jewelry.

11 Q. Would you say that they wear accessories?

12 A. Yes.

13 Q. Okay. Do they use prosthetics?

14 A. Yes.

01:18PM 15 Q. What does a typical drag performance look like?

16 A. Typically dancing, lip syncing, engaging with the audience
17 by hugging, kissing on the cheek, sometimes bumping hips.

18 Q. When they interact with audience, is there ever contact
19 between one person and the breast of another person?

01:18PM 20 A. Yes.

21 Q. What about the buttocks?

22 A. Yes, there can be.

23 Q. Let's talk about the drag brunches specifically if I may.
24 What is a drag brunch?

01:19PM 25 THE COURT: A drag what?

1 MR. ROESSLER: Drag brunch.

2 THE COURT: Brunch. Okay.

3 A. So that is an event that is comprised usually, for us,
4 four to five performers. They will do a set of one song. And
01:19PM 5 then usually the establishment that we're utilizing for the
6 event will serve food and drinks during the intermission and
7 then they come back and do a second set of songs.

8 **BY MR. ROESSLER:**

9 Q. What venue or what establishment do these drag brunches
01:19PM 10 take place in?

11 A. So the events that we had, we had a locally owned coffee
12 shop called Mezamiz that gave us exclusive use of their space
13 on Sundays when they were normally closed.

14 Q. Was this a ticketed event?

01:19PM 15 A. It was.

16 Q. Did the Abilene Pride Alliance charge admission?

17 A. We did.

18 Q. What does the Abilene Pride Alliance do with the funds
19 raised from that event?

01:19PM 20 A. We turn around and put it back into the organization.
21 Usually we'll put it into our general operating fund and use it
22 to pay bills or finance other events for the community.

23 Q. At the drag brunches does the Abilene Pride Alliance
24 impose any age restriction?

01:20PM 25 A. We do not.

1 Q. At the drag brunches can you describe for us how the drag
2 performers are dressed?

3 A. The drag queens will usually have on dresses, lots of
4 sequins, high heels, sometimes boots, wigs, makeup, big shiny
01:20PM 5 jewelry.

6 The drag kings will have on what would be considered
7 typically male clothing. They can also have breastplates or
8 binders and they'll also usually wear packers.

9 Q. Can you describe for the Court what a packer is?

01:20PM 10 A. So a packer is something that an individual would utilize
11 to give the appearance of a penis in their crotch area.

12 Q. What was the largest or most attended event that the
13 Abilene Pride Alliance has hosted?

14 A. Thus far that would be our pride parade and festival last
01:21PM 15 year.

16 Q. Around when last year was that?

17 A. That was in September. I believe it was September 23rd.

18 Q. There were two components to that event?

19 A. Correct.

01:21PM 20 Q. Which were?

21 A. The parade downtown and then the festival.

22 Q. Did the Abilene Pride Alliance have to obtain a permit to
23 have the parade?

24 A. We did.

01:21PM 25 Q. And you secured that permit?

1 A. We did.

2 Q. Did the Abilene Pride Alliance impose any age restriction
3 on the parade?

4 A. We did not.

01:21PM 5 Q. Okay. Was the parade visible to the general public?

6 A. It was.

7 Q. Can you describe for us what the festival portion looked
8 like?

9 A. So the festival was held at a public park next to the zoo
01:22PM 10 there in Abilene. We had a fairly large vendor fair. We also
11 had food trucks out front.

12 And then we also had a tented stage where we had some
13 community leaders speak; and then to close out the festival, we
14 had a big drag show at the end of the night.

01:22PM 15 Q. Were there drag performers also in the parade?

16 A. Yes, they had their own float. They also gathered in the
17 back of the truck and had a speaker and were dancing.

18 Q. Who owns the park where the pride festival took place?

19 A. The City of Abilene.

01:22PM 20 Q. Did you have to secure a permit to use the park for the
21 festival?

22 A. We did.

23 Q. And you did obtain that?

24 A. We did, yes.

01:22PM 25 Q. Did the Abilene Pride Alliance have exclusive use of the

1 park?

2 A. We did for that event, yes.

3 Q. Okay. Did the Abilene Pride Alliance control who could
4 enter the festival?

01:23PM

5 A. We did.

6 Q. Did the Abilene Pride Alliance impose any age restriction
7 on the festival?

8 A. We did not.

9 Q. Was the festival visible to the general public?

01:23PM

10 A. It could have been, yes.

11 Q. In what way?

12 A. So around the particular area that we were using there is
13 a fence that has metal bars about yea far apart. So anyone in
14 the parking lot or outside that fence could very easily look in
15 and see what was happening.

01:23PM

16 Q. How were the drag performers dressed at the festival?

17 A. The same as they would be at the brunches.

18 Q. Which includes?

19 A. Dresses, sequins, wigs, breastplates, hip pads, jewelry,
20 accessories, makeup, packers.

01:23PM

21 Q. Besides the drag performance, what other features were
22 there of the festival?

23 A. I would see the next most attractive feature was the
24 vendor fair.

01:24PM

25 Q. Okay. Can you describe that?

1 A. Yeah. We had a lot of local artisans, local crafters. We
2 had a lot of local nonprofits there sharing information about
3 their organizations. We also had the public health department
4 there sharing information and handing out free condoms and
01:24PM 5 lube.

6 Q. Does the Abilene Pride Alliance intend to host events like
7 the drag brunch and the parade and the festival in the future?

8 A. We would like to, yes.

9 Q. Would that include the drag performances?

01:24PM 10 A. Absolutely.

11 Q. Okay. Are there any plans for 2023 pride festival and
12 parade?

13 A. There are.

14 Q. Can you describe those for us?

01:24PM 15 A. So we will again have a parade downtown and then we will
16 have a festival inside the coliseum at the Taylor County Expo
17 Center.

18 THE COURT: Have you received any approval or licenses
19 from the City?

01:25PM 20 THE WITNESS: Yes, sir. For both.

21 THE COURT: At this time in advance?

22 THE WITNESS: Yes, sir.

23 THE COURT: Have you ever had any hassle from the
24 municipality?

01:25PM 25 THE WITNESS: No, sir.

1 THE COURT: Go on.

2 **BY MR. ROESSLER:**

3 Q. Prior to the enactment of SB 12, what were the plans for
4 the 2023 parade and festival?

01:25PM

5 A. The plan was to once again have a dedicated float in the
6 parade for our drag performers as well as having a big drag
7 show to close out the festival.

8 Q. Is that similar to how it was in 2022?

9 A. Correct.

01:25PM

10 Q. How has SB 12 impacted those plans for 2023?

11 A. So we have had to create backup plans to have in place in
12 the event that SB 12 is not enjoined. And we will not have a
13 float dedicated to our drag performers. And we have a backup
14 venue for our big drag show.

01:26PM

15 It's unfortunate because the backup venue will limit the
16 attendance number that we would have been able to have if we
17 could have it at the festival.

18 Q. What do these changes mean for the mission of the
19 Abilene Pride Alliance?

01:26PM

20 A. It greatly hampers our ability as an organization to
21 maintain the safe spaces that we have already created.

22 Q. The Expo Center where the 2023 festival is planned to be
23 held, who owns that Expo Center?

24 A. It's my understanding that it's owned by Taylor County.

01:26PM

25 Q. Does the Abilene Pride Alliance plan to hold a parade and

1 festival in 2024?

2 A. Yes, sir.

3 Q. Have there been any applications for permits for 2024?

4 A. Not as of currently, no.

01:27PM

5 Q. When did you first learn about Senate Bill 12?

6 A. Probably right about the time it was first being discussed
7 by state leaders.

8 Q. How did you come to learn about it?

9 A. Following the news.

01:27PM

10 Q. Does the Abilene Pride Alliance engage in visual
11 performances?

12 A. We do.

13 Q. What does the term "prurient interest in sex" mean to you?

14 A. I'm not really entirely sure what that means entirely.

01:27PM

15 But in my interpretation it's anything that can be deemed to
16 have any kind of sexual connotation or innuendo.

17 Q. How does SB 12 affect the Abilene Pride Alliance's ability
18 to have drag performances?

19 A. It would ultimately prevent our drag artists from being
20 able to convey their art in the way that is necessary to
21 represent the communities that they do.

01:28PM

22 Q. And how does this make you feel?

23 A. It gives me a great sense of grief.

24 Q. Are you able to give any guidance to your drag performers?

01:28PM

25 A. I cannot. I don't have any kind of legal knowledge or

1 specialization. In order to keep them as safe as I possibly
2 can if SB 12 is not enjoined, we will no longer have drag
3 components to our events.

4 Q. How would you describe drag?

01:29PM

5 A. For me drag is an art form that has existed for thousands
6 of years. It's a way to create space that didn't otherwise
7 exist. It is a way to spark necessary and important political
8 dialogue. And it is a way for, most importantly young people,
9 to see themselves reflected back to them. It's vital to that
10 sense of representation.

01:29PM

11 Q. You mentioned the vendor fair for 2023's pride festival.
12 Would that include the vendors selling condoms and lube as it
13 did in 2022?

01:30PM

14 A. No. The public health department would not be handing out
15 free condoms and lube if SB 12 is not enjoined.

16 Q. What does drag mean to the LGBTQIA community?

01:30PM

17 MR. STONE: Objection, Your Honor. This question calls
18 for speculation. He's asking this witness to testify on behalf
19 of the entire LGBTQI community and not within their personal
20 knowledge.

21 THE COURT: Your response?

22 MR. ROESSLER: I can withdraw the question.

23 THE COURT: Okay. Withdraw and rephrase it, please.

24 **BY MR. ROESSLER:**

01:30PM

25 Q. Are you a member of the LGBTQIA community?

1 A. I am.

2 Q. And how do you identify?

3 A. I identify as queer, trans, non-binary.

4 Q. As a member of the LGBTQIA community, what does drag mean?

01:30PM

5 A. Drag is both revolutionary and healing to me as a member
6 of that community. An example, one of our local queens,
7 Cecilia, uses drag as a way to minister to our community.

8 And that's something that she would not be able to do if
9 SB 12 is not enjoined. And that's a tenet of our mission;
10 creating and maintaining those safe spaces.

01:31PM

11 Q. In what way does she minister to the community?

12 A. She is beautifully eloquent and articulate. She will
13 typically speak to the audience and with the audience between
14 her performance numbers and sometimes while she is performing.

01:31PM

15 Q. Does drag have any particular meaning to trans or
16 non-binary people?

17 A. It does.

18 MR. STONE: Objection, Your Honor. Again, he's not
19 asking about this witness's personal knowledge. He's asking
20 this witness about what it means to other people in a
21 particular community.

01:31PM

22 THE COURT: Sustained.

23 MR. ROESSLER: I can rephrase.

24 THE COURT: Anything further?

01:32PM

25 MR. ROESSLER: Yes, Your Honor. Just two.

1 THE COURT: How much more?

2 MR. ROESSLER: Just two questions.

3 THE COURT: Okay. That's fine. Go on.

4 **BY MR. ROESSLER:**

01:32PM 5 Q. What are you asking the Court to do in this case?

6 THE COURT: The reason being is, is not to rush you
7 along, but we said we would take a lunch break. Finish up,
8 please. You've got two questions. Go right ahead.

9 THE WITNESS: Thank you, sir.

01:32PM 10 **BY MR. ROESSLER:**

11 Q. What are you asking the Court to do in this case?

12 A. I am asking the Court to please enjoin SB 12.

13 Q. And if the Court does so, how that would that affect the
14 Abilene Pride Alliance?

01:32PM 15 A. It would allow us to continue our fundraising efforts and
16 it would allow us to continue to build and maintain those safe
17 spaces for the LGBTQIA+ community in Abilene.

18 MR. ROESSLER: No further questions, Your Honor.

19 THE COURT: Thank you. We'll pick up after the lunch
20 break.

21 For folks that are not from this area, we have a
22 cafeteria downstairs. But right across Smith Street is that
23 used to be the Bank of America building. It's that red big
24 building with kind of the Gothic spires on it. If you go into
01:33PM 25 the main lobby and take the escalator down, it connects to the

1 entire downtown shopping food court, so forth, underneath this
2 whole area of town. So just to give you some idea where it is.

3 It's now about 1:35. We'll be back in at 2:35.
4 We'll see you then.

01:33PM

5 COURTROOM SECURITY OFFICER: All rise.

6 THE COURT: Okay. You are free to leave.

7 (Court is in recess.)

8 THE LAW CLERK: All rise.

9 THE COURT: All right. Thank you. Be seated.

02:38PM

10 Okay. Mr. Stone, are you up?

11 MR. STONE: Yes, Your Honor.

12 THE COURT: Okay. Go right ahead.

13 MR. STONE: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

02:38PM

15 **BY MR. STONE:**

16 Q. Abilene Pride is a not-for-profit entity, right?

17 A. Abilene Pride Alliance, yes.

18 Q. When I say, "Abilene Pride," do you understand that I mean
19 Abilene Pride Alliance?

02:38PM

20 A. Okay.

21 Q. Okay. The City of Abilene is not a commercial entity, is
22 it?

23 A. Not to my knowledge.

24 MR. ROESSLER: Objection. Calls for a legal

02:38PM

25 conclusion.

1 THE COURT: Hang on a second. Say the question again.
2 Repeat the question.

3 Don't answer it. Let me hear it.

4 **BY MR. STONE:**

02:38PM

5 Q. The City of Abilene is not a commercial entity, is it?

6 MR. ROESSLER: I'll repeat the objection.

7 THE COURT: Overruled.

8 A. Not to my knowledge.

9 **BY MR. STONE:**

02:38PM

10 Q. Is the convention center where you want to hold a drag
11 event within the City of Abilene a commercial entity, to the
12 best of your knowledge?

13 A. I'm not sure.

14 Q. Abilene Pride has a board position whose role is to
15 monitor the online activity of opposition groups, right?

02:39PM

16 A. Correct.

17 Q. How long has that position on the board existed?

18 A. That position was created shortly after the second drag
19 brunch that we had.

02:39PM

20 Q. And approximately how many hours a week does this board
21 member spend monitoring the speech of others online in these
22 opposition groups?

23 A. I'm not sure.

24 Q. What is the name of that board position?

02:39PM

25 A. DRI.

1 Q. What does DRI stand for?

2 A. Data research and intelligence.

3 Q. And does that DRI position involve anything beyond just
4 monitoring the online speech of others?

02:40PM 5 A. I'm not sure.

6 Q. You testified earlier that the drag performances that
7 Abilene Pride puts on involve expressive conduct, right?

8 A. Correct.

9 Q. I think you said some of the performances are
10 revolutionary, right?

11 A. Correct.

12 Q. And they're healing?

13 A. For me, yes.

14 Q. You said some of them involve ministering to the
15 community, right?

16 A. Yes.

17 Q. Do you have videos of any of these performances?

18 A. I do not.

19 Q. Does Abilene Pride have videos of any of these
20 performances?

21 A. I'm not sure.

22 Q. So we'll just have to take your word for it, huh?

23 THE COURT: That's right, Counsel. Go right ahead.

24 THE WITNESS: Sorry. That wasn't a question.

25 BY MR. STONE:

1 Q. Earlier you testified that at some of your events the
2 performers' buttocks come into contact with some attendees,
3 right?

4 A. Correct.

02:41PM

5 Q. Can you describe -- describe how the performers' buttocks
6 come into contact with attendees?

7 A. There have been a few occasions where the venue has been
8 crowded and as the entertainer was moving to engage with the
9 crowd, they bumped into some folks. Occasionally they will do
10 a hip bump with one of the audience members.

02:41PM

11 Q. Is that the only contact between the performers --
12 performers' buttocks and attendees that you've observed at
13 Abilene Pride events?

14 A. In my observation, yes.

02:41PM

15 Q. You also said that sometimes the performers' breasts come
16 into contact with attendees, right?

17 A. Uh-huh.

18 Q. Can you describe the circumstances that you've witnessed
19 where performers' breasts came into contact with attendees?

02:41PM

20 A. Front-facing hugs.

21 Q. Is that the only context in which you've seen performers'
22 breasts come into contact with an attendee?

23 A. Again, there can be accidental bumpings into where that
24 will occur, yes.

02:42PM

25 Q. But other than front-facing hugs and accidental bumping,

1 have you seen any other contact between a performers' breasts
2 and attendees at Abilene Pride events?

3 A. No.

4 Q. You've contended that some of the performers at your show
02:42PM 5 have performed dance routines that contained gestures or
6 gesticulations that might be interpreted as sexual by others,
7 right?

8 A. Yes.

9 Q. But you don't think that those performances involve
02:42PM 10 gestures or gesticulations that were sexual?

11 A. With the understanding that I'm not speaking for every
12 observer of the shows, no, I do not personally.

13 Q. Right. So let's set aside the observers of the shows. Do
14 you personally think that the dance routines involve gestures
02:43PM 15 or gesticulations that are sexual?

16 A. No.

17 Q. Does Abilene Pride think that the performances involve
18 gestures or gesticulations that are sexual?

19 A. No.

02:43PM 20 Q. So what makes you think that an objective observer could
21 view those performances as sexual?

22 A. Because it's happened.

23 Q. What do you mean it's happened?

24 THE COURT: People made comments or complaints or what?

02:43PM 25 THE WITNESS: Yes, sir. We've had protesters and we

1 had the Abilene Police Department called on one of our drag
2 brunches.

3 **BY MR. STONE:**

4 Q. I see. And what happened when the police arrived at that
5 drag brunch?

6 A. They came, observed, asked us some questions, and left.

7 THE COURT: And then what?

8 THE WITNESS: They came and observed and asked us some
9 questions and left.

10 THE COURT: And left?

11 THE WITNESS: Yes, sir.

12 **BY MR. STONE:**

13 Q. Nobody was arrested?

14 A. No, sir.

15 Q. Nobody was fined?

16 A. Not to my knowledge.

17 Q. There were no citations issued?

18 A. Not on our side. They did speak with the protestors, and
19 I can't testify as to what transpired there.

20 Q. Sure. What was happening at the time that the police were
21 called at the drag brunch event?

22 A. I'm not sure exactly when they were actually called, so
23 I'm not sure how to answer that.

24 Q. What was happening at the drag brunch event immediately
25 prior to the police arriving?

1 A. I think we were possibly in an intermission so there were
2 food and drinks being served.

3 Q. Prior to the intermission was there a performance?

4 A. There was.

02:45PM 5 Q. And just briefly, what did that performance involve?

6 A. Dancing, lip syncing, the use of wigs, makeup, chest
7 plate, hip pads, dresses, jewelry, and other accessories.

8 Q. You testified earlier that some of the performers sit in
9 the laps of attendees during performances?

02:45PM 10 A. I did not testify to that, no.

11 Q. Okay. It's in your declaration though, right?

12 A. That has never occurred at any of the events that I have
13 been at. I know that one of the other plaintiffs testified to
14 that previously.

02:46PM 15 Q. Yeah. So, Paragraph 11 of your declaration states --
16 correct me if I'm wrong -- "On some occasions our drag
17 performers give front-facing hugs or hip bumps to audience
18 members or even sit in their laps."

19 A. Correct.

02:46PM 20 Q. Do you recall?

21 A. Yeah. I do know that you read it, yes. Thank you.

22 Q. Do performers ever dance in the laps of any of the
23 attendees during the performances?

24 A. They usually will just sit and continue lip syncing.

02:47PM 25 Q. Usually but sometimes they do dance in the laps?

1 A. Not that I've never observed like lap dances, no.

2 Q. Okay. You testified that some drag kings have packers
3 which is an exaggerated penis bulge, right?

4 A. Correct.

02:47PM 5 Q. You don't consider an exaggerated penis bulge to be lewd,
6 do you?

7 A. No.

8 Q. Could the performers at your events perform the exact same
9 routine without an exaggerated penis prosthetic?

02:47PM 10 A. In my opinion, no.

11 Q. Why not?

12 A. Because it takes away their ability to present a fully
13 male illusion.

14 Q. Are the exaggerated penis bulges sometimes intended to
02:48PM 15 simulate an erection?

16 A. No.

17 Q. Are some of the penis prosthetics worn on the outside of
18 clothing at your events?

19 A. No.

02:48PM 20 Q. How big are the exaggerated penis prosthetic bulges at
21 your events?

22 A. I'm not sure.

23 Q. Okay. Would you say the size of a softball?

02:48PM 24 A. I'm honestly not sure how to gauge that for you. It just
25 looks like a normal bulge.

1 Q. So --

2 THE COURT: How about next question, Counsel. Move on.
3 I got the message.

4 **BY MR. STONE:**

02:49PM 5 Q. You testified that at some of your events the performers
6 give front-facing hugs to attendees, right?

7 A. I did.

8 Q. And some of them give front-facing hugs to attendees while
9 wearing a penis prosthetic, right?

02:49PM 10 A. Correct.

11 Q. Do they ever give front-facing hugs to children attendees
12 at your events?

13 A. The drag king that we have had at our events, I have never
14 seen him give kiddos hugs. I have seen our queens give side
02:49PM 15 hugs.

16 Q. You stated in your declaration that performers at Abilene
17 Pride events are not nude under your view of that term, right?

18 A. Correct.

19 Q. What is your view of the term "nude"?

02:49PM 20 A. I mean, that's a relatively broad term. But in my
21 estimation it's when there's an inappropriate amount of flesh
22 showing; buttocks, breasts, any kind of what's considered
23 normally a private area.

24 Q. Are there performers at Abilene Pride events who perform
02:50PM 25 entirely unclothed?

1 A. No.

2 Q. Are there performers at Abilene Pride events who perform
3 with their genitals, buttocks or breasts above the top of their
4 areola exposed or visible?

02:50PM

5 A. No.

6 Q. Does Abilene Pride have policies and procedures for the
7 content of its performances at events?

8 A. We have verbal agreements.

9 Q. What are those verbal agreements?

02:50PM

10 A. Please be age appropriate.

11 Q. So you tell the performers that their performances need to
12 be age appropriate?

13 A. I ask them, yes.

14 Q. Okay. Do you explain to them what you mean when you say
15 age appropriate?

02:50PM

16 A. If they have questions, yes.

17 Q. Do they frequently have questions or do they just
18 generally understand what is and is not age appropriate?

19 A. Given the rural and conservative area we're from, we
20 typically know what those guidelines are going to be, yeah.

02:51PM

21 Q. Are Abilene Pride events all-age events?

22 A. Yes, sir.

23 THE COURT: When you say they're all-age events, are
24 the shows in effect targeted toward any age group?

02:51PM

25 THE WITNESS: No, sir. They're just appropriate for

1 any age.

2 THE COURT: Okay.

3 **BY MR. STONE:**

02:52PM

4 Q. Does Abilene Pride permit performers to perform actual or
5 simulated vaginal sex at an all-age event?

6 A. No.

7 Q. Does Abilene Pride permit performers to perform actual or
8 simulated anal sex at all-age events?

9 A. No.

02:52PM

10 Q. Does Abilene Pride permit performers to perform actual or
11 simulated masturbation at all-age events?

12 A. No.

02:52PM

13 Q. Is it your contention in this lawsuit that performers at
14 Abilene Pride events should be permitted to perform actual or
15 simulated sex acts for a sexual purpose at all-age events?

16 A. No.

17 Q. Is it your contention in this lawsuit that performers at
18 Abilene Pride events should be permitted to perform nude at
19 all-age events?

02:52PM

20 A. No.

21 Q. Is it your contention in this lawsuit that performers at
22 Abilene Pride events should be permitted to exhibit their
23 genitals in a lewd state for a sexual purpose at all-age
24 events?

02:53PM

25 A. No.

1 Q. Is it your contention in this lawsuit that --

2 THE COURT: Slow down, please.

3 MR. STONE: I'm sorry, Your Honor.

4 **BY MR. STONE:**

02:53PM

5 Q. Is it your contention in this lawsuit that performers at
6 Abilene Pride events should be permitted to exhibit sexual toys
7 for a sexual purpose at all-age events?

8 A. No.

02:53PM

9 Q. Is it your contention in this lawsuit that performers at
10 Abilene Pride events should be permitted to contact or simulate
11 contact with another person's buttocks, breasts, or genitals
12 for a sexual purpose at all-age events?

13 A. I'm sorry. Could you repeat that?

02:53PM

14 Q. Is it your contention in this lawsuit that performers at
15 Abilene Pride events should be permitted to contact or simulate
16 contact with another person's buttocks, breasts, or genitals
17 for a sexual purpose at all-age events?

18 A. No.

02:53PM

19 Q. Is it your contention in this lawsuit that performers at
20 Abilene Pride events should be permitted to sexually
21 gesticulate with an exaggerated prosthetic penis for a sexual
22 purpose at all-age events?

23 A. No.

02:54PM

24 Q. Abilene Pride allows condoms to be handed out at its
25 all-age events, right?

1 A. That was at the vendor fair at the festival.

2 THE COURT: I can't hear you.

3 THE WITNESS: That was at the vendor fair during the
4 festival.

02:54PM

5 **BY MR. STONE:**

6 Q. So it was one event?

7 A. Yes. Thus far.

8 Q. Okay. And they also handed out sexual lubricant at the
9 all-ages event as well?

02:54PM

10 A. Yes, sir.

11 MR. STONE: Pass the witness, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, anything
13 further? Yes, sir.

02:54PM

14 MR. WAGSTAFF: I'm going to come up there so I can see
15 and be seen I guess.

16 THE WITNESS: I'm sorry. Who are you representing?

17 MR. WAGSTAFF: I was going to say that. I'm Robert
18 Wagstaff and I'm here on behalf of Taylor County and DA Hicks.

19 THE COURT: Okay. Go right ahead, sir.

02:55PM

20 MR. WAGSTAFF: Thank you.

21 **CROSS-EXAMINATION**

22 **BY MR. WAGSTAFF:**

23 Q. May I ask how you prefer to be addressed?

24 A. Gavyn, they/them pronouns. Thank you.

02:55PM

25 THE COURT: In this instance you may use the first

1 name.

2 MR. WAGSTAFF: Thank you, Your Honor.

3 **BY MR. WAGSTAFF:**

4 Q. Gavyn, again I'm Robert Wagstaff; and I don't believe you
02:55PM 5 and I have ever met.

6 A. I don't think so, no, sir.

7 Q. You know my brother, right? James. He's been involved
8 with the Abilene Pride Alliance since its inception, right?

9 A. Uh-huh.

02:55PM 10 Q. Is that a "yes"?

11 A. Yes.

12 Q. Okay. Thank you.

13 And so certainly you and I have never discussed anything
14 about this or had any conversations with regard to anything
02:55PM 15 related to what we're doing here today, true?

16 A. True.

17 Q. And I've never done any work for the Abilene Pride
18 Alliance, never had any contact with the board or done anything
19 like that to your knowledge, true?

02:55PM 20 A. True.

21 Q. And I'll represent to you I haven't, okay?

22 A. Okay.

23 Q. Now, after last year's parade did the county, anybody from
24 the county, the commissioners court, county judge, the

02:56PM 25 DA's office, anybody raise any concerns with, for example, the

1 float that the drag queens were on during the parade? Did
2 anybody raise any issue with that from the county or related to
3 the county?

4 A. No, sir.

02:56PM

5 Q. And what about the festival? Did anybody from the county
6 raise any concerns about the festival?

7 A. No.

8 Q. Okay. And in all the news media where the TV, the news
9 media and the paper, they were all there for the parade and the
10 festival, right?

02:56PM

11 A. I do know there were some media folks there.

12 Q. And you know that there was on the TV, on the news
13 broadcast on TV that there was some clips from both the parade
14 and the festival shown?

02:57PM

15 A. That is my understanding. I didn't have time to watch
16 them.

17 Q. And so were you aware that there were county officials
18 that attended the parade?

19 A. No, sir.

02:57PM

20 Q. Now, and this year you plan on -- your hope is to do
21 essentially the same type activity, the same thing this year
22 that you did last year, true?

23 A. Correct.

24 Q. Okay. And that would be again the parade?

02:57PM

25 A. Uh-huh.

1 Q. And, again, the festival. This time it's going to be at
2 the Expo Center and not at Nelson Park, right?

3 A. Yes, sir.

4 THE COURT: Is that a bigger venue or a smaller venue?

02:57PM

5 THE WITNESS: It's larger. And our reason for wanting
6 to have it there is because it's easier for us to secure.

7 THE COURT: To secure it?

8 THE WITNESS: Yes, sir.

9 **BY MR. STONE:**

02:57PM

10 Q. I guess at the Nelson Park last year y'all had a tent?

11 A. Over the stage, uh-huh.

12 Q. Right. And so the Expo Center would allow you to be
13 indoors and like you said a little more secure, be able to
14 control a little bit more who comes and who goes, right?

02:58PM

15 A. Yes, sir.

16 Q. Has anybody from the county said any issues to you about
17 this year's parade?

18 A. No, sir.

19 Q. About this year's festival?

02:58PM

20 A. No, sir.

21 Q. Has your DRI member on the board, have they raised any
22 alarms with the board or said, hey, this is what we're hearing
23 from some of the county commissioners or this is what we're
24 hearing from the DA's office? Anything like that?

02:58PM

25 A. No, sir.

1 MR. WAGSTAFF: That's all the questions, Your Honor.
2 Thank you.

3 THE COURT: Anything further at this time?

4 MR. VIADA: Nothing from the City of Abilene.

02:58PM 5 THE COURT: Okay. By the way, everybody, when it comes
6 time to summing up, everyone, all the attorneys for all parties
7 were given again the opportunity to sum up at the end. So if
8 you're holding any other comments know you will have an
9 opportunity to be heard, everybody.

02:58PM 10 All right. Anything further?

11 MR. ROESSLER: Just some brief redirect, Your Honor.

12 THE COURT: Okay. Go on.

13 **REDIRECT EXAMINATION**

14 **BY MR. ROESSLER:**

02:59PM 15 Q. Gavyn, do you recall questioning by the state's attorney
16 or the attorney general's attorney that began with, "Is it your
17 contention that"? Do you remember that line of questioning?

18 A. Yes, sir.

19 Q. And to most of those questions I believe your testimony
02:59PM 20 was no, it is not your contention; is that correct?

21 A. Correct.

22 Q. While it is not your contention that those things be true,
23 do you feel that others may interpret drag performers hosted by
24 the Abilene Pride Alliance in a sexual way?

02:59PM 25 MR. STONE: Objection, Your Honor. This calls for

1 speculation. He's asking him about what others would think and
2 not about what his own personal position is.

3 THE COURT: Yeah, rephrase the question. So objection
4 to that form is granted.

03:00PM 5 Now, go on. You're rephrasing.

6 MR. ROESSLER: I'm rephrasing.

7 THE COURT: Okay.

8 **BY MR. ROESSLER:**

9 Q. Do you have a fear that others may take action against the
03:00PM 10 Abilene Pride Alliance based on SB 12?

11 A. I do.

12 Q. When counsel for Taylor County was questioning you, he
13 asked if the Abilene Pride Alliance was doing essentially the
14 same thing as last year. Do you remember that question?

03:00PM 15 A. I do.

16 Q. Okay. Earlier you testified that there are differences
17 between the 2022 and 2023 pride parade and festival; is that
18 correct?

19 A. Correct.

03:00PM 20 Q. Can you remind the Court what those differences are?

21 A. We've had to make some logistical adjustments. We would
22 have to nix the drag performer float from the parade. And
23 we've also had to secure and plan for a secondary venue that
24 will limit the attendance of the drag show at the festival.

03:01PM 25 Q. Has the county or any county officials discussed with you

1 problems caused by SB 12?

2 A. No.

3 MR. ROESSLER: No further questions.

4 THE COURT: All right. Thank you. You may step down.

03:01PM 5 THE WITNESS: Thank you, sir.

6 THE COURT: Call your next witness, please.

7 MR. KLOSTERBOER: Yes, Your Honor. The plaintiffs call
8 Jason Rocha.

9 MR. STONE: Your Honor, if we could interject. I think
03:01PM 10 we talked with y'all about potentially taking a witness out of
11 order because he has to testify tomorrow morning. Is now -- do
12 you'll mind if we call him now just because there may be
13 cross-examination?

14 MR. KLOSTERBOER: Your Honor, this concerns the
03:01PM 15 attorney general's expert witness, which we object to
16 testifying altogether. But to the extent that they want to
17 call out of order, the plaintiffs are flexible on the order if
18 the Court wants.

19 THE COURT: You are. All right, sir. Do you want to
03:02PM 20 have a seat. Let me just get down to what's the objection?

21 MS. ANDREWS: Actually, Your Honor, I'll talk about
22 that.

23 THE COURT: Now this is a psychiatrist, right?

24 MS. ANDREWS: This is a psychiatrist.

03:02PM 25 THE COURT: And I've read his CV, his background and so

1 forth and the report that he's got or the comments that he has
2 if it's not just the report. It's just an overview, but I've
3 read it so start from there. Why do you object to this next
4 witness?

03:02PM

5 MS. ANDREWS: Your Honor, his report does not make
6 clear how he's defining sexually oriented performance. But to
7 the extent he's defining it as obscene material or anything
8 that's already covered by other criminal laws, there's no
9 dispute here. Nobody is saying that that type of material is
10 not harmful to children.

03:02PM

11 To the extent he's using the broad definition
12 that SB 12 uses and talking specifically about the things that
13 are not covered by the criminal laws currently but would be
14 covered by SB 12, there's no indication that he has any
15 expertise on the areas. He's not a child psychologist, he
16 doesn't cite SB 12. He doesn't cite any studies --

03:03PM

17 THE COURT: Well, he's not a psychologist. I believe
18 he's a psychiatrist. That's an M.D.

19 MS. ANDREWS: You're right, Your Honor.

03:03PM

20 THE COURT: And he discusses in detail the effects that
21 it may have on children, especially by age as they go over the
22 developmental of the brain.

23 MS. ANDREWS: Yes, sir.

24 THE COURT: But what's your objection to him

03:03PM

25 testifying?

1 MS. ANDREWS: He cites no methodology, no studies, no
2 data --

3 THE COURT: No *Daubert* hearings or anything else was
4 filed. I know it's a short fuse, but I've read it all. What
03:03PM 5 specifically -- is it a relevance -- what is it -- objection or
6 what?

7 MS. ANDREWS: Relevance and reliability. And we
8 actually did file a motion to strike and exclude under *Daubert*.

9 THE COURT: Well, that's not timely. I'm not going
03:04PM 10 to -- if anything with a *Daubert* hearing if you're not
11 familiar, it's where you can challenge the -- it was an effort
12 to do away with the so-called junk science in a lot of various
13 type of cases. All right.

14 But we're here and I could make that
03:04PM 15 determination at the time of trial instead of having the jury
16 taken out and questioning the expert at that time. Because
17 usually it's done ahead of time which is the importance of a
18 *Daubert* hearing.

19 All right. But once again, what is it that you
03:04PM 20 object to him doing or he doesn't have the background or what?
21 Because he's discussing the effect of such exhibitions or
22 exhibitions on young people, on adolescents so to speak?

23 MS. ANDREWS: Right. And Rule 702 says that for
24 testimony to be admissible, expert testimony has to be based on
03:05PM 25 sufficient facts and data, methodologies, principles, that

1 those have to be applied properly.

2 He's taken a very small sample size, which is his
3 own clients or the patients that he has evaluated for criminal
4 hearings, for commitment hearings. He is not dealing with
03:05PM 5 sample sizes of the entire population, they're not
6 representative of the population.

7 THE COURT: Well, does he have to be a pediatric
8 psychiatrist? Would he have to be? It may be more preferable,
9 but just technically isn't it true that physicians to some
03:05PM 10 extent can testify just as to their expertise?

11 MS. ANDREWS: Yes. And to the extent he's doing that I
12 don't think he's testifying to anything that anyone is
13 disputing. We're not saying that some sexually explicit
14 content can't hurt children.

03:05PM 15 THE COURT: Okay. What is it on the disputed aspect?

16 MR. STONE: Absolutely, Your Honor. May I answer your
17 question first? This goes to intermediate scrutiny and
18 secondary effects, which is something that if you get that far
19 in the case and believe that you have to apply intermediate
03:06PM 20 scrutiny, this is something that --

21 THE COURT: Give me your definition of intermediate
22 scrutiny. I've done my own research, but put it in the record.

23 Oh. You've got to look that up too, huh?

24 MR. STONE: I wanted to -- "To survive intermediate
03:06PM 25 scrutiny a content neutral law regulating expression must be

1 narrowly tailored to serve a significant governmental interest
2 and leave open ample alternative channels for communication of
3 the information."

4 THE COURT: Now, what does that mean relative to your
03:06PM 5 objection? What relevance, if any, does it have?

6 MR. STONE: Under *O'Brien* as well there's secondary
7 effects. But, Your Honor, we're going to show that there is a
8 compelling government interest at stake. We're going to show
9 that the law here is narrowly tailored. And we're going to
03:06PM 10 show that there's ample alternative channels available. The
11 witness is going to be --

12 THE COURT: Alternative channels for what in this case?

13 MR. STONE: For in this case as it relates to the
14 plaintiffs for them to be able to put on their performances in
03:07PM 15 adult-only venues.

16 But getting to the harm that children suffer --
17 could suffer from observing these performances. We think that
18 goes directly to whether this law is narrowly tailored. We
19 believe that the testimony from this expert will substantiate
03:07PM 20 that.

21 THE COURT: That it is what? It is narrowly tailored?

22 MR. STONE: That it is narrowly tailored, Your Honor.
23 And that there's secondary effects as well at stake here; that
24 is, the impact that these performances can have on minors if
03:07PM 25 they are exposed to them.

1 THE COURT: What's his background relative to drag
2 shows?

3 MR. STONE: Your Honor, we'd love to get into that. We
4 think this is improper to bring up this objection now. We
03:07PM 5 haven't even proved him up yet.

6 THE COURT: What objection?

7 MR. STONE: This objection to the expert. I haven't
8 even proffered him yet. I haven't built up -- gone through his
9 CV. I haven't established what his training is as it relates
03:08PM 10 to the subject matter. I haven't laid any predicate.

11 So this is way premature to have this discussion
12 until I've at least had an opportunity to prove him up and then
13 they can do voir dire.

14 THE COURT: Well, I will tell you this: That for the
03:08PM 15 purposes of a nonjury trial, okay, there's a lot more leeway
16 than if it was in front of the jury. And I'd call him in and
17 do an examination of him, you know, out of the hearing of the
18 jury. All right.

19 For whatever weight the finder of fact may give
03:08PM 20 to this and I'm that. I'm the finder of fact and the lawyer
21 and the law expert here, not only just the finding the fact,
22 all right?

23 To that extent it's overruled. So if he needs to
24 get it into the record, fine. It doesn't mean that I will
03:08PM 25 consider it or what weight I will give to it. But in this kind

1 of a matter where it's a nonjury case with only the judge
2 handling it in a nonjury matter, I'll allow you to give him a
3 call.

4 How much time do you have? Because I've gone
03:09PM 5 through and I need to make that determination. I've gone
6 through his background. Sure, you can get a little background.
7 But what's the time estimate on this next witness ballpark?

8 MR. STONE: I think about an hour, Your Honor, maybe
9 less.

03:09PM 10 THE COURT: Just to be talking about the effects on
11 young people?

12 MR. STONE: Well, we're going to go through some
13 various particular examples. It might be a little bit less,
14 Your Honor. I'm bad at gauging time.

03:09PM 15 THE COURT: Well, I tell you what I've done for
16 37 years. I have a nice clock up here, a chess clock. Okay.
17 You give me -- talk to your people, give me an estimate of
18 time. Do you want to...

19 You can be seated. I think you see where I'm
03:10PM 20 heading.

21 MS. ANDREWS: Yes. Thank you, Your Honor.

22 MR. STONE: Your Honor, we think we can do it in 45.

23 THE COURT: Well, let's put it this way. I'm going to
24 allow you to call him. But if it gets to the point where --
03:10PM 25 and, again, nothing personal, it's not to any of the

1 attorneys -- you're going down a rabbit trail, okay, I'm going
2 to jump in and say, "No, move on to your next subject."

3 All right. With that limitation, I'll allow you
4 to call him now out of order. And call your next witness.

03:10PM

5 MR. STONE: Thank you, Your Honor. At this time the
6 State calls Dr. Michael Arambula.

7 (The oath was administered.)

8 THE COURT: Have a seat, sir. Go right ahead, sir.

9 MICHAEL ARAMBULA, MD,

03:11PM

10 having been duly sworn, testified as follows, to wit:

11 **DIRECT EXAMINATION**

12 **BY MR. STONE:**

13 Q. Could you state your name for the record?

14 A. My name is Dr. Michael Arambula.

03:11PM

15 THE COURT: How do you spell your last name?

16 THE WITNESS: My last name is spelled A-r-a-m-b-u-l-a.

17 **BY MR. STONE:**

18 Q. What degrees do you hold, Dr. Arambula?

19 A. I have a bachelor of science in pharmacy, a doctor of

03:11PM

20 pharmacy, and a doctor of medicine.

21 Q. What year did you obtain your medical degree?

22 A. In 1987.

23 Q. What year did you obtain your pharmacy degree?

24 A. 1976.

03:11PM

25 Q. Did you do an internship?

1 A. Yes.

2 Q. Where?

3 A. At the University of Texas Health Science Center at
4 San Antonio.

03:12PM

5 THE COURT: Pull the microphone in just a little bit,
6 sir.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Okay. Go right ahead.

9 **BY MR. STONE:**

03:12PM

10 Q. Did you do a residency?

11 A. Yes.

12 Q. Where?

13 A. The same institution.

14 Q. In what?

03:12PM

15 A. In general psychiatry.

16 Q. Did you do a fellowship?

17 A. Yes.

18 Q. Where?

19 A. At Rush Medical College in Chicago, Illinois.

03:12PM

20 Q. In what?

21 A. Forensic psychiatry.

22 Q. What licenses do you currently hold?

23 A. I still have my pharmacist license and then I have a
24 license to practice medicine, both here in Texas.

03:12PM

25 Q. How long have you been licensed to practice medicine in

1 Texas?

2 A. I believe it was '88 when I was issued my license.

3 Q. How long have you been licensed to practice pharmacy in
4 Texas?

03:12PM

5 A. Since --

6 THE COURT: It says 1977.

7 THE WITNESS: Right. '77. Thank you, Your Honor.

8 **BY MR. STONE:**

03:13PM

9 Q. What honors and awards in psychiatry generally have you
10 received?

11 A. A couple come to mind. I'm a distinguished life fellow of
12 the American Psychiatric Association. And then a few years ago
13 I received the Psychiatric Excellence Award from our state
14 psychiatric society.

03:13PM

15 Q. What academic appointments have you held?

16 A. I have two appointments in San Antonio. I'm an adjunct
17 faculty member at the same institution in San Antonio, the
18 department of psychiatry, as well as the department of
19 psychiatry at the University of Incarnate Word medical school.

03:13PM

20 Q. What presentations have you given in the field of
21 psychiatry?

22 THE COURT: All right. I've read them all. Okay? It
23 goes on for many, many number of pages on all sorts of things,
24 which I have read. So let the record reflect that. And this
03:13PM 25 will be in the documentation for any other -- for all purposes.

1 MR. STONE: Your Honor, at this time we'd like to offer
2 Defendants' Exhibit 1, which is --

3 THE COURT: What is that?

4 MR. STONE: This is the CV.

03:14PM

5 THE COURT: CV?

6 MR. STONE: Yeah, the curriculum vitae.

7 THE COURT: Just the expert report or just the CV
8 itself? Any objections for the purposes of this hearing?

9 MS. ANDREWS: No objections.

03:14PM

10 THE COURT: All right. Thank you. It's admitted.

11 **BY MR. STONE:**

12 Q. What experience do you have evaluating or treating adults
13 that were exposed to sexually explicit material as a minor?

03:14PM

14 A. So part of my psychiatric training and experience occurred
15 during residency when I learned and was taught about the
16 adverse effects of minors being exposed to sexually explicit
17 materials and/or sexual exploitation.

18 Then later during my fellowship training in forensic
19 psychiatry I learned about that subject matter much more in
20 detail.

03:15PM

21 THE COURT: All right. You've had a lot of experience
22 with depositions on commitment hearings and also trials. Any
23 of those involve children or is it are you going to be
24 testifying as to either depositions or trial testimony as to
25 the effect of various matters while they were children?

03:15PM

1 THE WITNESS: So to answer your inquiry, the civil
2 commitment trials listed --

3 THE COURT: That's correct.

4 THE WITNESS: -- have to do with sexually violent
03:15PM 5 predators.

6 THE COURT: Say it again.

7 THE WITNESS: They have to do with sexually violent
8 predators.

9 THE COURT: Predominantly?

03:15PM 10 THE WITNESS: Yes, almost all of them are. There may
11 be one or two that are civil commitment for dangerousness.

12 THE COURT: All right.

13 THE WITNESS: As part of my training and experience and
14 then trial testimony, it involved looking at investigative
03:15PM 15 matters regarding the victims of the sex offenders.

16 THE COURT: Okay.

17 THE WITNESS: Okay. And then was there one other
18 inquiry you added?

19 THE COURT: No. That's about it. Okay. Go on,
03:16PM 20 Counsel.

21 **BY MR. STONE:**

22 Q. Did any of those cases that you've previously -- that you
23 mentioned that you've testified before in, did any of them
24 involve minors who were exposed to sexually explicit materials?

03:16PM 25 A. Yes.

1 Q. Approximately how many?

2 A. I've been a state's expert for probably 20 years. I think
3 about 300 cases, approaching that.

4 Q. And then of those approximately 300 cases that you've
03:16PM 5 testified before in, approximately how many of them involved a
6 minor who was exposed to sexually explicit material?

7 A. Probably close to 70 percent, in that area. I've been
8 involved in civil litigation where minors have been sexually
9 exploited. I would say maybe a hundred cases in my career.

03:16PM 10 Q. Do you have any experience working specifically with
11 minors, either evaluating them or treating them, who were
12 exposed to sexually explicit material?

13 A. I do.

14 Q. Just generally can you describe that for us, that
03:17PM 15 experience?

16 THE COURT: Any of them include drag queen shows, drag
17 shows?

18 THE WITNESS: There's been some in the history but not
19 predominant.

03:17PM 20 THE COURT: What do you mean "some"?

21 THE WITNESS: In other words --

22 THE COURT: Not predominant relative to your
23 examination of them.

24 THE WITNESS: Right. Predominantly it's been exposure
03:17PM 25 to heterosexual, homosexual activity, pornography.

1 THE COURT: In their person or just the pornography
2 aspect?

3 THE WITNESS: Both.

03:17PM

4 THE COURT: Okay. And we deal a lot, unfortunately,
5 with -- what is it -- child pornography. Is it based upon any
6 child pornography or participating in that by force?

7 THE WITNESS: Both, sir.

8 THE COURT: Both?

9 THE WITNESS: Yes.

03:18PM

10 THE COURT: All right. Go on.

11 MR. STONE: At this time, Your Honor, defendants offer
12 Dr. Arambula as an expert in the practice of psychiatry and on
13 the impact of sexually explicit material on minors.

14 THE COURT: Your response, please.

03:18PM

15 MS. ANDREWS: Your Honor, we maintain our objection to
16 Dr. Arambula's expertise in the area at issue here.

17 THE COURT: Why?

03:18PM

18 MS. ANDREWS: Because the types of activities that are
19 outlawed by SB 12 but not already outlawed by other criminal
20 laws are not the types of activities that he's talking about.

21 THE COURT: We're going to do something rare which we
22 can rarely do. I'm going to allow you to take him just to a
23 few questions on voir dire.

03:18PM

24 Of course, people say we never have had a
25 voir dire in the case. Well, at this point an opposing

1 attorney may be in the position to ask just a few questions and
2 then I'll make a rule.

3 So it's not a full cross-examination. It's
4 challenging just certain points and then it's back to me. Go
03:19PM 5 on.

6 MS. ANDREWS: Got it. I'm just coming up here so I can
7 reach the microphone.

8 **VOIR DIRE EXAMINATION**

9 **BY MS. ANDREWS:**

03:19PM 10 Q. Dr. Arambula?

11 A. Arambula. Either one. I answer to both.

12 Q. When you talk about sexually explicit materials, what are
13 you referring to?

14 A. Typically it's been pornography. It can be between adults
03:19PM 15 or adults and children. And then also being subject to sexual
16 abuse as well as observing sexual activity between adults
17 and/or adults and children that is inappropriate on the part of
18 the minor.

19 Q. And would you say that any -- let's say any -- the
03:19PM 20 representation of any simulated sex act, including
21 masturbation, is harmful to a 17-year-old?

22 A. I mean, it's possible. But by the time somebody is 17
23 generally speaking, they already know about masturbation so
24 they probably have done that themselves.

03:20PM 25 Q. But it's not per se harmful in every instance, right?

1 A. Not, no, nothing is --

2 THE COURT: Ask a few more questions and take a seat.

3 MS. ANDREWS: Okay.

4 **BY MS. ANDREWS:**

03:20PM 5 Q. Okay. Would you say that when you're talking about a
6 sexually oriented performance are you talking about a sexually
7 oriented performance where a dancer who is clothed might mimic
8 slapping the buttocks of another dancer?

9 THE COURT: Is that what you're referring to basically?

03:21PM 10 THE WITNESS: Not necessarily if they're --

11 THE COURT: Is it more serious that you consider?

12 THE WITNESS: Right. Involving nudity, but when
13 someone is clothed, no, I wouldn't go that far.

14 **BY MS. ANDREWS:**

03:21PM 15 Q. When you say "nudity," how do you define nudity?

16 A. Pants are gone, underwear are missing.

17 THE COURT: All right. That's it. Have a seat.

18 Let me ask you a question that I asked at the
19 very beginning.

03:21PM 20 THE WITNESS: Yes, sir.

21 THE COURT: In your experience have you come across
22 anyone who has had a really negative result, a lifelong result
23 or led to criminal activity from -- what is it -- drag shows?

03:21PM 24 THE WITNESS: So some of the individuals -- so the
25 answer is yes, but not predominant, like I said earlier. And

1 those cases have involved individuals who observed
2 cross-dressing, got involved themselves in cross-dressing.

3 But the unusual behavior was not that. It was
4 that at some point it involved sexual exploitation of minors or
03:22PM 5 something to that effect and that was one of the background
6 issues.

7 THE COURT: Okay. What's your objection?

8 MS. ANDREWS: To him as a witness or to that testimony?

9 THE COURT: No. We're not talking about him
03:22PM 10 professionally.

11 MS. ANDREWS: Okay.

12 THE COURT: Okay. But as a lawyer at this time are you
13 objecting to this witness?

14 MS. ANDREWS: Yes, I am.

03:22PM 15 THE COURT: On what grounds?

16 MS. ANDREWS: Relevance.

17 THE COURT: All right. Nothing personal, because I
18 have a close relationship to many physicians, okay? So it's
19 not personal at all.

03:22PM 20 At this time -- and I understand you may
21 disagree. I'm just making my ruling now. I gave both sides an
22 opportunity.

23 I'm granting the objection, Doctor. Thank you
24 for coming. You may step down.

03:22PM 25 MR. STONE: Your Honor, we would like to make an offer

1 of proof using this witness.

2 THE COURT: Well, how do you do an offer of proof in
3 federal court?

03:23PM

4 MR. STONE: Your Honor, we'd like to create a separate
5 record asking back and forth question -- back and forth with
6 this witness. We also -- I'm sorry.

7 THE COURT: Go on.

03:23PM

8 MR. STONE: We'd like to create a separate record with
9 this witness for the purposes of appeal because we disagree
10 with the Court's ruling. And we believe that also if we had a
11 few more minutes to respond to the voir dire we could have
12 proved him up with some additional questions, his specific
13 relationship to this case.

03:23PM

14 And specifically this witness watched some
15 videos. He didn't -- there's more to it than just his
16 professional training. He actually watched videos of drag
17 shows and he's prepared to talk about what he witnessed in some
18 of the videos and whether or not what he witnessed could
19 potentially be harmful and why.

03:23PM

20 THE COURT: Okay. Now, nobody wants to get any
21 reversal. I don't try my cases for appellate courts, okay? If
22 you feel that you want to allow him to go ahead for purposes of
23 the record, that's up to you.

03:24PM

24 I heard it. I respect what he says. An offer of
25 proof is done after the regular testimony, okay? So I'm not

1 denying you on the record that you're entitled to an offer of
2 proof.

3 But is it easier to get it in in a nonjury case
4 or do you want to do it all over again or what?

03:24PM

5 MS. ANDREWS: Your Honor, this would not result in
6 having to do it all over again. We maintain our objection.

7 The testimony that he would give, even if he's
8 watched videos of shows, that doesn't go to anything that's at
9 issue here. There are some obscene drag performances, sure.

03:24PM

10 That's not in dispute.

11 THE COURT: Okay. The ruling holds. Thank you, sir.

12 Now, if he wants to make a -- what is it -- an
13 offer of proof, I'm not going to do it during trial.

03:24PM

14 But Doctor, you're not ready to go yet. We're
15 not through with you yet, Doctor.

16 How do you propose to go about it? You're
17 entitled to an offer of proof, but not right in the middle of
18 trial.

03:25PM

19 MR. STONE: Right. And the problem is that this
20 witness has to leave.

21 THE COURT: I understand that. So how long is your
22 offer of proof going to take?

23 MR. STONE: About 30 minutes, I think.

03:25PM

24 THE COURT: I've never allowed -- by the way, you can
25 do it as an offer of proof or to put on the testimony. You can

1 state what he would have said if he was called. If you want to
2 put him on now just for a limited offer of proof and then also
3 offer later what he would have continued to say because we're
4 looking for a schedule. I don't want to inconvenience your
03:25PM 5 expert witness. How do you want to proceed?

6 MR. STONE: Your Honor --

7 THE COURT: Talk to --

8 MR. STONE: Can I confer?

9 THE COURT: Yes. Off the record talk to them as to
03:25PM 10 which way you want to proceed.

11 (Off-the record discussion.)

12 MR. STONE: Your Honor, I'm going to do it in 15
13 minutes.

14 THE COURT: Okay. That's fine.

03:26PM 15 Sir, you want to retake the stand.

16 Keeping in mind that those of you that are not
17 used to this. You don't see this very often. In -- what is
18 it -- in state court I think they call it -- what is it -- a
19 bill of review is it?

03:27PM 20 MR. GRIFFIN: A bill of exception?

21 THE COURT: A bill of exception. Federal court we have
22 a lot more flexibility. Keep in mind this is for just to
23 preserve it as an appellate point as to what the man would have
24 said. So it's going to be condensed.

03:27PM 25 I'm giving you 10 minutes, not 15. Let's just

1 get it done.

2 One question after another and then you make a
3 tender of it, okay? And then I have to rule on the tender.

4 MR. STONE: Thank you, Your Honor.

03:27PM 5 THE COURT: So now you can lead him, you can get right
6 to the bottom line.

7 (The following was tendered as an Offer of Proof:)

8 **EXAMINATION**

9 **BY MR. STONE:**

03:27PM 10 Q. Did you review in preparation for your testimony today
11 SB 12?

12 A. I did.

13 Q. And in your review of SB 12, did you see that the
14 requirements for violations of SB 12 involve performances that
03:28PM 15 appeal to prurient interest in sex?

16 A. Yes.

17 Q. Did you review any videos in preparation for your
18 testimony today?

19 A. I did.

03:28PM 20 Q. Do you believe that -- how many videos did you review?

21 A. I believe there were four or five. Could have been six.

22 Q. Did one of the videos display a performer flashing their
23 anus to an audience that contained minors?

24 A. That was one of them.

03:28PM 25 Q. Can you describe why that might be harmful for a minor to

1 witness?

2 A. So as I explained in my report, minors, their behavior is
3 shaped by experience and by copying behavior. And so watching
4 someone like that would leave an imprint in some minors, not
5 everyone.

03:29PM

6 And they would go on to act that. And because they lacked
7 judgment because they're cognitively and emotionally immature,
8 it could be anywhere. It could be at school, on a baseball
9 field, wherever. And that's where they would encounter
10 rejection.

03:29PM

11 Q. In preparation for your testimony today did you review a
12 video where a performer flashed her breasts at an event that
13 was for all ages?

14 A. Yes.

03:29PM

15 Q. How could that be harmful to the physical or psychological
16 health of a minor?

17 A. So based on what I just reported about the same
18 methodology and what minors are dealing with, the same kind of
19 behavior could occur with some individuals, some minors, and
20 create problems for them interpersonally, socially. They could
21 be sexually preoccupied for some that are sensation seeking.

03:30PM

22 Q. In preparation for your testimony today did you watch a
23 video where a performer at an all-ages event with minors
24 simulated jacking off using a prosthetic penis?

03:30PM

25 A. Yes.

1 Q. How could that be harmful to the physical or psychological
2 well-being of a minor?

3 A. Again, relying on the basis for their behavior; i.e.,
4 experience observing, copying individuals who -- minors who are
03:30PM 5 already familiar or may become familiar with masturbation, that
6 would serve as -- to facilitate that kind of behavior.

7 Q. In preparation for your testimony today did you review a
8 video where a young child stroked the genitals of a drag
9 performer dressed as a little mermaid?

03:31PM 10 A. Yes, sir.

11 Q. Describe what was in that video.

12 A. There was a child that was stroking the groin area of a
13 performer that if I remember right, they were on stage or right
14 in front of them.

03:31PM 15 Q. Did the performer stop the child from doing it?

16 A. No.

17 Q. Did they encourage the child to do it?

18 A. There was not a hesitation or movement of the hand away on
19 the part of the performer to the child's hand, so I didn't see
03:31PM 20 anything.

21 Q. Why might that be harmful to the physical or psychological
22 well-being of a child?

23 A. So that fondling occurs when -- in adults -- and I'm not
24 saying it occurred in this particular video, but that's how
03:31PM 25 perpetrators groom their victims to be subsequently exploited.

1 And so in this case there's -- because there wasn't any
2 shaping or you shouldn't do that or stop the behavior, then the
3 behavior is more likely to continue.

4 And, again, minors are not emotionally or cognitively
03:32PM 5 developed so they will, if they're going to repeat that
6 behavior, encounter difficulties in their psychosocial
7 environment.

8 Q. In preparation for your testimony today did you observe a
9 video with a drag performer with a prosthetic penis wearing a
03:32PM 10 skirt do a dance performance at a restaurant where minors were
11 present?

12 A. I did.

13 Q. In your opinion why might that be harmful -- what you
14 observed in that video be harmful -- strike that.

03:32PM 15 Describe what was in the video that you watched.

16 THE COURT: Why don't you just lead him.

17 **BY MR. STONE:**

18 Q. Okay. Did the performer lift their skirts and exhibit
19 their prosthetic penis during the dance?

03:32PM 20 A. Yes, that's what I recall.

21 Q. Did the dance appear to be sexual in nature?

22 A. It could be. I mean, I just saw underwear underneath so
23 it was not pushing the envelope like the other videos I saw.

24 Q. Okay. In your opinion -- or do you have an opinion on
03:33PM 25 whether minors should be allowed to attend events involving

1 sexually explicit performances?

2 A. I do.

3 Q. What is your opinion?

4 A. That minors should not be exposed to sexually explicit
03:33PM 5 performances, whether they're heterosexual, bisexual,
6 homosexual. It really does not matter. It's not appropriate
7 for them developmentally.

8 Q. What is the basis for that opinion?

9 A. Behavior, again, is -- sexual behavior is largely learned.
03:33PM 10 There is some shaping of behavior according to family values,
11 society expectations, and obviously not to cross into criminal
12 laws.

13 It's been my professional experience that individuals who
14 were exposed to stimulea like this early left an imprint on
03:34PM 15 them. Some struggled with chronic masturbation, and then
16 others crossed over into sexual deviance.

17 THE COURT: Were any of them the result of drag shows
18 in your personal opinion? I mean, in your professional
19 experience?

03:34PM 20 THE WITNESS: So the drag shows -- in my professional
21 experience, the drag shows did not involve sexually explicit
22 behavior and things like that that was reported to me, so I
23 would say no.

24 THE COURT: Okay.

03:34PM 25 THE WITNESS: But it depends on what was going on.

1 THE COURT: The videos that you were shown, were they
2 in Texas or do you have any idea where they were?

3 THE WITNESS: I thought one of them was in Austin if I
4 remember right. But I can't say I took note of that.

03:34PM 5 THE COURT: Okay. Go right ahead, sir.

6 **BY MR. STONE:**

7 Q. One of the videos that you saw was in Plano, right?

8 A. I remember that one, too. On the top, yes, sir.

9 Q. And one of them was in Austin, right?

03:35PM 10 A. Right. Right.

11 Q. So some of the videos that you observed were from drag
12 performances that were performed in front of minors here in
13 Texas, right?

14 A. Correct.

03:35PM 15 MR. STONE: Your Honor, I think my ten minutes are up.

16 THE COURT: Okay. That's your tender.

17 Now, I ask again to the defense: Do you still
18 stand on the objection, or do you want any cross-examination?
19 Because usually there's no cross-examination. That's his offer
03:35PM 20 of proof. So is there anything else you want now to get into
21 the record?

22 MS. ANDREWS: Plaintiffs stand on their objection.

23 THE COURT: All right. Now, what do you do next?

24 MR. STONE: We would like the Court to reconsider
03:35PM 25 having heard this testimony. We'd ask that the Court instead

1 of doing a separate offer of proof allow this to be joined with
2 the record.

3 We believe that we've established that this
4 witness has expertise in the subject matter, that his testimony
03:35PM 5 is relevant to the issues before the Court today. And we'd ask
6 that the Court reconsider its prior ruling and admit this
7 testimony.

8 THE COURT: Well, you're making now an offer of proof;
9 is that correct?

03:36PM 10 MR. STONE: Yes, Your Honor.

11 THE COURT: Okay. That's declined. That's denied.
12 There is your record.

13 MR. STONE: Thank you, Your Honor.

14 THE COURT: Thank you, sir. Thank you for coming.

03:36PM 15 All right. Call your next witness.

16 MR. KLOSTERBOER: Your Honor, the plaintiffs call
17 Jason Rocha.

18 THE COURT: Have you been sworn? I don't think you
19 have.

03:36PM 20 (The oath was administered.)

21 THE COURT: Identify yourself.

22 MS. ROHLES: Emily Rohles for the plaintiffs.

23 THE COURT: Who are you with?

24 MS. ROHLES: Baker Botts Houston.

03:37PM 25 THE COURT: I think I mentioned beforehand, didn't I,

1 that we had an amicus briefed filed. Did I mention that? I
2 don't think so. I do want to recognize that. Give me one
3 second because I wanted to do that.

4 An amicus brief, that means a friend of the Court
03:37PM 5 brief, was filed by Texas Values in opposition to plaintiffs'
6 motion for temporary restraining order.

7 I want to acknowledge that it was well written,
8 and I did consider it. So if anybody from that organization is
9 here, I did read it and it was ordered filed in the record for
03:37PM 10 this case.

11 Sorry about that. Go on.

12 **JASON ROCHA,**

13 having been duly sworn, testified as follows, to wit:

14 **DIRECT EXAMINATION**

03:37PM 15 **BY MS. ROHLES:**

16 Q. Would you please state your name for the record?

17 A. Jason Rocha.

18 Q. And can you introduce yourself to the Court and tell us
19 how you're connected to this case?

03:37PM 20 A. Yes. So I'm the founder and president of The Woodlands
21 Pride. I started it in 2018.

22 THE COURT: What's the name of it? The Woodlands
23 Pride?

24 THE WITNESS: The Woodlands Pride, yes, sir.

03:38PM 25 A. And after I returned from the Army in Iraq, I moved back

1 to The Woodlands -- I grew up in the Spring area -- and
2 identified that there weren't a lot of people that looked like
3 me celebrating the LGBTQ+ community; and so that's when we
4 started The Woodlands Pride, again, in 2018.

5 **BY MS. ROHLES:**

6 Q. And is The Woodlands Pride a plaintiff in this case?

7 A. Yes.

8 Q. Are you testifying on behalf of The Woodlands Pride today?

9 A. Yes, I am.

03:38PM 10 Q. And what is the message of The Woodlands Pride? What is
11 your goal as an organization?

12 A. Our main goal is to spread awareness in a suburban area
13 outside of the fourth largest city in the country. We want to
14 showcase that you don't have to leave your home, your home
03:38PM 15 city, your hometown, on your home county in order to feel
16 celebrated and accepted and equal.

17 And I think we've done that in The Woodlands in Montgomery
18 County. Our inaugural festival had over 5,000 people. Our
19 fourth annual festival last year had over 7,500 people and it's
03:39PM 20 just growing every year.

21 Q. And how does The Woodlands Pride further this goal, this
22 message?

23 A. Our biggest -- we have events. Our biggest event is the
24 festival, as I just mentioned. This is our -- we just had our
03:39PM 25 fourth one last year, and we are planning our fifth anniversary

1 festival on October 21st.

2 THE COURT: So you have a number of festivals?

3 THE WITNESS: This will be our fifth one.

4 THE COURT: Okay. It's an annual festival?

03:39PM 5 THE WITNESS: Yes, sir.

6 **BY MS. ROHLES:**

7 Q. Can you describe what typically happens at the
8 The Woodlands Pride Festival?

9 A. Yes. We have -- we've had over hundreds of exhibitors,
03:39PM 10 2-, 300 exhibitors over the last several years, hundreds of
11 amazing volunteers, which we appreciate so much.

12 We have, of course, sponsors that bring in revenue that
13 help us fight the cause and raise awareness, such as a lot of
14 local sponsors that are headquartered in The Woodlands area
03:40PM 15 like Huntsman, the Howard Hughes Corporation. Ones that just
16 have a large presence there like ExxonMobil, HP, and HPE and
17 dozens of others.

18 And so the event looks like a traditional festival. You
19 walk in. We have a stage where we have performances, mostly
03:40PM 20 drag. And then we have the hundreds of exhibitors in their
21 booths. And then we even have a kid zone that is sponsored by
22 a local childcare business in the community.

23 Q. And who attends The Woodlands Pride Festival?

24 A. It is one of the most diverse pride festivals I've ever
03:40PM 25 attended with people from ages -- from my little nephew who was

1 six months old when he first attended to younger than that, all
2 the way to the elderly.

3 Because the Montgomery County area, The Woodlands Conroe
4 has an older population and we do get a lot of allies and
03:41PM 5 supporters that way.

6 Q. And where is The Woodlands Pride Festival held?

7 A. At Town Green Park in Montgomery County.

8 THE COURT: Where?

9 THE WITNESS: Montgomery County.

03:41PM 10 THE COURT: Where in Montgomery do you have it?

11 THE WITNESS: In The Woodlands.

12 THE COURT: In The Woodlands?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is that a city or it's part --

03:41PM 15 MS. ANDREWS: It's a township.

16 THE COURT: It's a township. Okay.

17 **BY MS. ROHLES:**

18 Q. What park is it held in?

19 A. Town Green Park.

03:41PM 20 Q. Is this a public park?

21 A. It is.

22 Q. And are there any -- you testified that children attend
23 this event, correct?

24 A. Yes.

03:41PM 25 Q. Have there ever been any age restrictions on the pride

1 festival?

2 A. No, there have not been.

3 Q. And why is that?

4 A. It is an event for everybody that celebrates the LGBTQ+
03:41PM 5 community. We live in a county, a township, a state that
6 doesn't always highlight and celebrate the LGBTQ+ community.
7 So we want to be that beacon of hope whether you're a
8 school-age student, a college-age student, or in a senior
9 facility.

03:42PM 10 Q. Is this a free event?

11 A. It is.

12 Q. And even if you wanted to exclude children or people under
13 the age of 18, would you be able to do that?

14 A. While we would never do that as long as I'm at the helm of
03:42PM 15 the organization, it would be logistically challenging, very
16 costly. If it were to maintain at that park, we would have to
17 erect 20-foot fences like they do at other festivals --

18 THE COURT: Did you say you had a concern or no
19 concern? I want you to follow up on that point, please. I
03:42PM 20 didn't follow it completely.

21 MS. ROHLES: I asked even if he wanted to exclude
22 children from this event would he be able to.

23 THE COURT: All right. But he does not and he doesn't
24 want to.

03:43PM 25 MS. ROHLES: Correct.

1 THE COURT: Got it.

2 **BY MS. ROHLES:**

3 Q. And you mentioned that The Woodlands Pride hosts other
4 types of events. What other types of events?

03:43PM

5 A. This previous June we hosted our inaugural summit and that
6 was a summit that included some of our mental health sponsors.
7 It included some trans activists. It included some allies to
8 give an educational talk on how to be the best ally that they
9 could be. And this was hosted at the Sam Houston State
10 University system.

03:43PM

11 THE COURT: Are you fully employed by your organization
12 or do you have an outside profession?

13 THE WITNESS: I have an outside profession. It's a
14 hundred percent volunteer run and led, The Woodlands Pride.

03:43PM

15 THE COURT: Okay. What is your business background?

16 THE WITNESS: I'm a consultant for captive insurance
17 carriers. I build carriers for large corporations.

18 THE COURT: Okay.

19 **BY MS. ROHLES:**

03:43PM

20 Q. Do you ever -- does The Woodlands Pride ever host any
21 events at a private commercial space?

22 A. We haven't yet, but we are looking at that for a large
23 event; however, we have hosted smaller events at local coffee
24 shops and things like that.

03:44PM

25 Q. Thank you. And what future events do you have planned?

1 A. Our future event, obviously the festival -- maybe not
2 obviously. But our fifth anniversary festival on October 21st.
3 And then also we are planning a gala in the spring currently
4 for 2024.

03:44PM

5 Q. Where are you planning on holding the gala?

6 A. We are still shopping per se for a venue, but we are
7 looking at a car dealership that typically they donate their
8 space or one of our corporate headquarters to host it in their
9 lobby.

03:44PM

10 THE COURT: You need any licenses for any of your
11 activities?

12 THE WITNESS: We do require a TABC license, a temporary
13 permit that we usually obtain through a bar that sponsors.

03:45PM

14 THE COURT: How about from any governmental agency for
15 any of your activities?

16 THE WITNESS: We do have a park permit granted through
17 The Woodlands Township.

03:45PM

18 THE COURT: Now, what is in effect The Woodlands
19 Township? I know where The Woodlands is and so forth. Is it
20 an independent municipality? Do you have your own police and
21 fire department or what?

03:45PM

22 THE WITNESS: So it's a special interest municipality.
23 We do not have our own police department. We contract. "We"
24 meaning The Woodlands Township contract that through the
25 Montgomery County Sheriff's Department.

1 THE COURT: Any kind of city counsel or is it just the
2 commissioners court of Montgomery County?

3 THE WITNESS: The Woodlands Township has a board of
4 directors which acts like a city council.

03:45PM 5 THE COURT: Okay. If you need a permit for one of your
6 festivals or a parade somewhere, where do you go?

7 THE WITNESS: We start off with The Woodlands Township.
8 And because of that, because we have a TABC license, a
9 temporary permit, we have to get it approved through the
03:46PM 10 Sheriff Rand. I don't know his --

11 THE COURT: The sheriff's office?

12 THE WITNESS: Yes, with the county.

13 THE COURT: All right. Go on.

14 **BY MS. ROHLES:**

03:46PM 15 Q. At your events do you ever have police officers or anyone
16 else for security purposes?

17 A. Yes. Also with the permit we actually have to secure a
18 security plan which we also run through the off-duty police
19 officers which are all contracted through Montgomery County and
03:46PM 20 we usually have about 15 or 20 officers.

21 Q. Thank you. And at the festival you said -- do you
22 typically have performances there?

23 A. We do.

24 Q. And what type of performances do you have at the festival?

03:46PM 25 A. We of course have drag performances, but we also have

1 local bands. There's a band called the Houston Pride Band that
2 they bring up a symphony of instruments and play.

3 We have -- we just have a very varied type of
4 entertainment there.

03:47PM

5 Q. And these drag performances that you have, are these
6 visual performances?

7 A. They are.

8 Q. And what message do the drag performances have at your
9 festival?

03:47PM

10 THE COURT: Excuse me. What messages?

11 **BY MS. ROHLES:**

12 Q. What messages do the performances convey if any?

13 THE COURT: Okay. You can answer the question.

03:47PM

14 A. From me and from what I've heard from the community, it
15 conveys a message of strength; that while we are a small
16 organization, we are mighty.

03:47PM

17 And when the people attend, when I attend the festival, it
18 really amplifies that we are seen and that we are heard and
19 that we are able to live freely in our hometown and, you know,
20 not having to leave our hometown to experience joy and...

03:48PM

21 THE COURT: Are you trying to convey any kind of a
22 message or is it just comedic entertainment or serious
23 entertainment or a combination of both or an expression of a
24 community? Or is it all bound up? Is there any negative type
25 of connotation that you think could be there?

1 We'll hear from other inputs. But from your
2 connotation is it lighthearted or is it a serious message or is
3 it both or what?

4 THE WITNESS: For me it is like any other aspect of our
03:48PM 5 society. It can be all of those things at the same time
6 because that's what art is to me. So there are comedy bits.
7 One of our board of directors is a drag performer and she
8 emcees the event.

9 Then we have entertainers. We have social
03:48PM 10 justice movement drag queens. We have drag kings and that was
11 something we wanted to include so we could show support to the
12 lesbian community.

13 So it's everything plus more, but really a show
14 of solidarity with -- for the LGBTQ+ community.

03:39PM 15 THE COURT: Okay. Go on.

16 **BY MS. ROHLES:**

17 Q. And could The Woodlands Pride express this message --
18 would The Woodlands Pride -- as the Woodlands Pride -- is the
19 festival to The Woodlands Pride put on in furtherance of this
03:49PM 20 desired message?

21 A. Sorry. Can you repeat the question?

22 Q. I'm sorry about that. Let me rephrase.

23 Would The Woodlands Pride be able to express the same
24 message without drag performers?

03:49PM 25 A. Definitely not the same message. Because if we removed

1 something, it could never be the same message.

2 Q. And during these performances -- prior to these
3 performances does anyone with The Woodlands Pride meet with the
4 performers to discuss how the performance will go or what
03:50PM 5 message to convey, anything like that?

6 A. Yes. Our drag queen Persephone, she's on our board like I
7 said. She has a meeting with them. They talk about the dos
8 and don'ts. She approves the playlist, the music playlist.

9 We've never said that we are a family-friendly event, but
03:50PM 10 we do oftentimes say that we are a reflection of a
11 family-oriented community.

12 And we want to make sure that that is pushed out through
13 music that's played, through everything you see. From even
14 again, we have bounce houses and, you know, a kid zone to
03:50PM 15 what's happening on the stage which is the prime form of
16 entertainment.

17 THE COURT: What is this now? A kid zone? What do you
18 mean?

19 THE WITNESS: One of our sponsors is a day-care in
03:50PM 20 Montgomery County. And part of their sponsorship is they
21 provide -- what are they called -- moonwalks or bounce houses
22 and a face painter and balloon art and a snow cone stand.

23 And that's away from the stage. That's towards
24 the waterway if you're familiar with The Woodlands area.

03:51PM 25 THE COURT: For the whole productions of drag shows,

1 any aspect of children considered one way or another?

2 THE WITNESS: I'm sorry? Can you --

3 THE COURT: Yeah. In other words, in the whole concept
4 of the drag shows is there any consideration given to children
03:51PM 5 or appropriateness or admission ability or what?

6 THE WITNESS: Yes, sir. Like I stated, we have that
7 conversation with our drag queens -- Persephone does rather.
8 And I can tell you this much: We've never had an issue, we've
9 never had a complaint.

03:51PM 10 And we have by my rough estimation, every single
11 festival we've had has had no less than 50 percent seemingly
12 heterosexual couples with young families.

13 THE COURT: So the parents would bring their children
14 making a parental decision whether or not to go to a drag show?

03:52PM 15 THE WITNESS: Yes, sir.

16 THE COURT: Go on.

17 THE WITNESS: Which is very publicized, by the way. We
18 have a lot of social media followers. We publish everything
19 online. Part of it is with our submission to the Township as
03:52PM 20 well.

21 **BY MS. ROHLES:**

22 Q. Can we turn to Plaintiffs' Exhibit 51 or what's marked as
23 such?

24 THE COURT: 51?

03:52PM 25 MS. ROHLES: 51.

1 THE COURT: Got it.

2 **BY MS. ROHLES:**

3 Q. Do you recognize this photo?

4 A. Yes, I do.

03:52PM

5 Q. 51?

6 A. Yes, I do.

7 Q. Thank you. What is this photo of?

8 A. This is a photo taken from our 2019 festival. I can tell
9 that because of the little logo right there is Ambriza. And
10 they were one of our sponsors in 2019.

03:53PM

11 THE COURT: Where is the logo? I'm looking for the
12 logo.

13 THE WITNESS: The logo is on the bottom by the yellow
14 skirt.

03:53PM

15 MS. ROHLES: 51.

16 THE WITNESS: I was also on 50.

17 THE COURT: All right. That's with the performer and
18 what is it -- the two kids or is it a parent and a child? Is
19 this the same one? Is that the one you're referring to?

03:53PM

20 MS. ROHLES: Yes.

21 THE COURT: Okay. Start it again because I was on the
22 wrong page.

23 MS. ROHLES: No problem.

24 **BY MS. ROHLES:**

03:53PM

25 Q. Do you recognize the photograph marked as Exhibit 51?

1 A. Yes.

2 Q. And what is this photograph?

3 A. It's an image of a parent and their child celebrating and
4 essentially tipping the performer for doing a great job at the
03:54PM 5 2019 festival.

6 Q. And is this a true and accurate reflection of
7 The Woodlands Pride Festival in 2019?

8 A. I would say that this picture could go down in the
9 dictionary of what The Woodlands Pride looks like.

03:54PM 10 Q. And is this one of your drag performers that's at the top
11 of the photo?

12 A. Yes.

13 Q. And can you describe any sort of -- is this performer
14 wearing any sort of accessories that might exaggerate the
03:54PM 15 female form?

16 A. Yes, a wig, eyelashes. I guess if you want to go as far
17 as to say jewelry and a skirt that you can't really see in
18 this, but she was performing Taylor Swift. This was I think
19 *Shake it Off* era.

03:54PM 20 THE COURT: And a youngster depicted in the photo. Is
21 that correct?

22 THE WITNESS: Yes.

23 **BY MS. ROHLES:**

24 Q. Yes. So while you do have a kid zone off to the side, are
03:55PM 25 children often present to view these drag performances?

1 A. Yes.

2 THE COURT: Let me ask you this: Is this one
3 specifically tailored to a family aspect?

03:55PM

4 THE WITNESS: Our performances aren't specifically
5 tailored to a family aspect, but they are tailored to mostly
6 ensuring that there's no bad language in music and that it is a
7 festival for everybody. Because it is a free festival and
8 people come in and out.

03:55PM

9 THE COURT: Well, some drag shows go a little further,
10 don't they?

11 THE WITNESS: Uh-huh.

12 THE COURT: As far as the adult aspects of it; is that
13 correct?

14 THE WITNESS: To my knowledge yes, they do.

03:55PM

15 THE COURT: All right. But you're saying this one
16 carefully weeds out that sort of a potential problem and it's
17 still a parental decision to come to any drag show, isn't it?

18 THE WITNESS: Yes. For lack of better terms on my
19 part, this is a family friendly drag performance.

03:56PM

20 THE COURT: All right.

21 **BY MS. ROHLES:**

22 Q. And this is typical of what most of the -- this isn't a
23 special performance that you requested to be for children; this
24 is typical of all of the performances that you have at the
25 festival?

03:56PM

1 A. Yes.

2 Q. Thank you. Can we now turn to what's marked as --

3 THE COURT: Yes.

4 MR. STONE: Your Honor, she hasn't offered this exhibit
03:56PM 5 so I've been waiting to object until she -- if you want to go
6 ahead.

7 MS. ROHLES: I would offer this into evidence.

8 THE COURT: Objection, please?

9 MR. STONE: Yes, Your Honor. We object on relevance
03:56PM 10 grounds. While this does depict a child, you can't see what
11 the performer is wearing at all. All you can see is the face
12 of the performer and their hand and the performer is smiling.

13 So it doesn't actually depict anything that could
14 conceivably violate SB 12, so we don't think it's relevant at
03:56PM 15 all, Your Honor.

16 THE COURT: Well, with those reservations that I do
17 recognize it's overruled. 51 is admitted.

18 What's your next one?

19 MS. ROHLES: My next one is Exhibit 47.

03:57PM 20 THE COURT: 47?

21 MS. ROHLES: 4-7.

22 THE COURT: That's a bit different.

23 MS. ROHLES: It is.

24 **BY MS. ROHLES:**

03:57PM 25 Q. Do you recognize this photo?

1 A. Yes. This was taken last year in our October '22
2 festival.

3 Q. October '22 at the festival. Is this a true and accurate
4 reflection of the festival in 2022?

03:57PM

5 A. One of many.

6 MS. ROHLES: And I would move to admit Exhibit 47 into
7 evidence.

03:57PM

8 MR. STONE: Same objection, Your Honor. First of all,
9 there's no children depicted. They haven't identified yet how
10 this would violate SB 12.

11 And, again, if there's -- they haven't gone into
12 it, but if there's a video of this performance why are we
13 seeing a still shot and not the video? Why won't they just
14 show the video to the Court?

03:57PM

15 THE COURT: Well, that's something for the finder of
16 fact to consider, what's missing. Because I note -- I note
17 that some of those photos are family friendly. And it was
18 mentioned and I do understand that some of them may not be all
19 that toned down, shall we say. So I'm aware of it. What's the
20 purpose of this one?

03:58PM

21 MS. ROHLES: I'll continue.

22 THE COURT: You want to lay some more predicate?

23 MS. ROHLES: Yes.

03:58PM

24 THE COURT: Let's get some more predicate why this is
25 useful to the plaintiffs' position as your case proceeds. Go

1 on.

2 MS. ROHLES: Thank you.

3 **BY MS. ROHLES:**

03:58PM

4 Q. This is a different year, a different performance. But is
5 this also a typical type of performance at the festival?

6 A. Yes.

7 Q. While we don't see any children in this photograph, from
8 your memory of the event are there children that were present
9 at the 2022 festival?

03:58PM

10 A. Yes, if you see under Entergy, the logo, the Young
11 Learner's Academy, the little red circle, that's the childcare
12 facility that sponsored the kid zone for that year as well.

13 Q. And so would you reasonably expect that there could be
14 children that saw this performance?

03:59PM

15 A. Yes.

16 Q. And can you describe what you see in the picture of what
17 the performance is like?

03:59PM

18 A. This is Queen Reign. She's likely dancing to Beyoncé
19 because I think that's all she dances to. And she's wearing
20 some kind of high heel fishnet stocking, a leotard, makeup, a
21 wig, you know, all of the things.

22 Q. And can you see any sort of portion of this performer's
23 buttocks in the photo?

24 THE COURT: Can you see what?

03:59PM

25 **BY MS. ROHLES:**

1 Q. Can you see any portion of the performer's buttocks in the
2 photo?

3 MR. STONE: Your Honor, I object. Is she asking about
4 the performance or the photo that we're looking at?

03:59PM

5 MS. ROHLES: I'm asking about the image of the
6 performer in the photograph.

7 MR. STONE: I'm sorry. I withdraw the objection,
8 Your Honor.

9 THE COURT: Go on.

04:00PM

10 A. Yes.

11 **BY MS. ROHLES:**

12 Q. Thank you. Do you see any -- are there any accessories or
13 prosthetics that this performer is wearing in the photograph?

04:00PM

14 A. Yes. The shoes, the makeup, the wig up top, and then I
15 guess if the leotard for a man is a prosthetic, then that too.

16 Q. And are these performers dancing in this photo?

17 A. Yes, they are dancing and then the picture was taken.

18 Q. Are they gesticulating?

04:00PM

19 A. I suppose one could get to that point. There was a point
20 where they -- and it's going to be hard to show this -- but
21 where they kind of do a Conga line type thing and put their
22 hands on each other's hips and did a sort of Beyoncé routine
23 again on the stage.

24 Q. So there are multiple performers in this photo, correct?

04:01PM

25 A. Uh-huh.

1 Q. And you testified they do sometimes touch each other while
2 they're doing these dances?

3 A. They do.

4 Q. And do they touch any portion of their buttocks or
04:01PM 5 anything like that?

6 A. Yes, they do.

7 Q. And is there anything about this photo that concerns you?

8 A. No.

9 MS. ROHLES: And I would move to offer this into
04:01PM 10 evidence.

11 MR. STONE: Your Honor, we object on relevance grounds
12 as well. Nothing about this photo would violate SB 12.
13 They've said -- so specifically the predicate she laid was that
14 part of this entertainer's buttocks are visible. You know, we
04:01PM 15 can all see the photo.

16 It looks like part of this entertainer's thigh is
17 visible, but this is a side-view angle. We can't see whether
18 or not this entertainer's buttocks are visible. So I don't
19 think they've even adequately laid a predicate that this
04:02PM 20 particular picture illustrates an example of somebody who might
21 conceivably violate SB 12.

22 And they haven't asked about the second part of
23 that test either, which is whether or not it was for a sexual
24 purpose. So it's not enough that they show part of their
04:02PM 25 buttocks and expose it. It would also have to be for prurient

1 sexual interest. There hasn't been any questions about that.

2 THE COURT: Isn't that -- prurient sexual interest is
3 up to various legal interpretations.

4 MR. STONE: It can be, Your Honor. But they haven't
04:02PM 5 asked this witness about it. And they're using this witness
6 to -- all we see is a still photo here. Again, if there was a
7 video, maybe we would have more to judge. But right now we're
8 looking at a still image of Queen Reign.

9 THE COURT: Go on. What's your response?

04:02PM 10 MS. ROHLES: I believe in this photograph you can see
11 that the performers are moving. Parts of their hands are even
12 a little blurry. I think it's obvious that they're dancing.

13 THE COURT: I'm looking at it. As far as I'm concerned
14 overrule the objection.

04:02PM 15 What's next?

16 **BY MS. ROHLES:**

17 Q. Could you -- are you able to define the term "prurient
18 interest in sex"?

19 A. Not necessarily before this law.

04:03PM 20 Q. And you said that you meet with your performers before
21 they -- before the event to discuss how the performance will
22 go; is that correct?

23 A. Yes, one of our board members does.

24 Q. Would you be able to confidently describe to them how to
04:03PM 25 avoid making a performance appear that it appeals to the

1 prurient interest in sex?

2 A. I would -- yes, because we've never had an issue.

3 Q. You said that -- do the attendees typically enjoy watching
4 these performances, the adults and children?

04:03PM 5 A. It's the biggest draw to the festival.

6 Q. Have you ever had any sort of protestors or anyone that
7 was opposed to these performances?

8 A. Yes. Over the years very few. They've grown year over
9 year.

04:04PM 10 THE COURT: Have they come back next year or you don't
11 know?

12 THE WITNESS: We don't know yet. But we do know that
13 there's a planned protest by an online group making its rounds
14 because we were in a 4th of July parade.

04:04PM 15 THE COURT: Because they were in a 4th of July parade
16 sponsored by who? By the county?

17 THE WITNESS: The Woodlands Pride bought a vehicle slot
18 for the 4th of July parade that is co-sponsored by many. But
19 also The Woodlands Township and a lot of other entities. And
04:04PM 20 since July 4th we've had a lot more hatred online.

21 A lot of precinct chairs going to the board
22 meetings demanding that different government entities pull
23 their sponsorships from the South County 4th of July parade.

24 THE COURT: Okay.

04:04PM 25 **BY MS. ROHLES:**

1 Q. And you mentioned that you have some upcoming events like
2 a gala planned, correct?

3 A. Yes.

4 Q. Can you remind the Court where you were planning on
04:05PM 5 holding this gala?

6 A. We are looking at a car dealership or one of our corporate
7 sponsors' lobbies.

8 Q. And can you describe what these venues are like? Are they
9 private spaces? Are there large windows, anything like that?

04:05PM 10 A. Yes, they're all private. They would be private. And we
11 like the appeal of the large windows to make you feel grand and
12 glitzy and all of that for a gala.

13 Q. And are you planning on having drag performances at the
14 gala?

04:05PM 15 A. We do.

16 Q. Are these performances planning to be similar to
17 performances you've had at the festival in years past?

18 A. Yes.

19 Q. And in what ways will you have control over either the car
04:05PM 20 dealership or the lobby where you plan to host the event?

21 A. These would be ticketed events -- that would be a ticketed
22 event so I guess that would be as much control as we could do.

23 Not knowing the staff, the age of the staff, not knowing
24 if somebody decided to sneak into their office real quick and

04:06PM 25 brought their child to get something for the weekend.

1 Q. Is this an age-restricted event?

2 A. There would be an age-restricted event.

3 Q. What age?

4 A. We're looking at 21 and up.

04:06PM

5 Q. 21 and up. And you said that the event also will have
6 large windows. Can you view the space from the outside?

7 A. Yes, for the spaces we're looking at.

8 Q. And the area that it's located in, would you be able to
9 prevent anyone under the age of 18 from walking by and looking
10 into the window?

04:06PM

11 A. Not without getting some kind of city or county permit.

12 Q. And -- thank you. One moment.

13 Also going back to the festival, you mentioned that you
14 have some exhibitors. What kind of exhibitors or vendors do
15 you have at the festival?

04:06PM

16 A. We've been very fortunate to also have a very diverse
17 plethora of different types of exhibitors from churches to
18 nonprofits to of course STI and STD testing exhibitors.

19 Q. These exhibitors, do they hand out any sort of products to
20 the attendees of your events?

04:07PM

21 A. Yes.

22 Q. And what types of products?

23 A. For those just listed they'll hand out information.

24 Everybody hands out information based upon what they're

04:07PM

25 exhibiting. Sometimes they'll do something special to draw

1 people into their booth.

2 But for specifically like the SDI/SDT testing of course
3 their promotion is safe sex. So they're handing out condoms
4 and lubes and other sorts of things.

04:07PM

5 Q. Could condoms be considered -- would you consider them
6 possibly a device designed and marketed as useful primarily for
7 the sexual stimulation of male or female genitals?

8 A. Yes.

9 Q. When did you first learn about Senate Bill 12?

04:08PM

10 A. I'm on the board for the Greater Houston LGBT Chamber and
11 we were down in Austin during the legislative session fighting
12 anti-trans and anti-drag bills.

13 Q. And what was your reaction when you first learned about
14 the bill?

04:08PM

15 A. My personal reaction was, of course they did.

16 Q. Do you have any thoughts or fears about how it may affect
17 The Woodlands Pride specifically?

18 A. Absolutely. It's -- drag specifically is, again, a big
19 revenue driver in terms of sponsorship and exhibitors showing
20 up because it brings in the attendees to the free festival.

04:08PM

21 Without entertainment, I don't know that we would have 5-
22 to 7,000 people show up at our festival every year, which means
23 we would have less sponsors and less awareness, training,
24 education and all of those things.

04:08PM

25 Q. And has learning about the bill impacted anything about

1 how you've planned this upcoming festival for 2023?

2 A. Yes, it has.

3 Q. And how has it changed how you have been planning the next
4 festival?

04:09PM

5 A. So we have our normal celebration planned with drag queens
6 and kings and we hope to do that. And we also have another
7 festival that either excludes it completely or the same
8 festival where we end up hiring an inflatable room which could
9 costs upwards of 5- to \$10,000 that would block off and we
10 would make it, you know, 21 up.

04:09PM

11 Q. And if you're forced to make changes to your event like
12 this, is that going to have any impact on The Woodlands Pride's
13 ability to express its message?

14 A. Yes. Because inherently I believe that drag is a part of
15 the LGBTQ+ community. And restricting that is restricting our
16 voice, is restricting our liberation, is restricting us as
17 people.

04:09PM

18 Q. And do you fear that SB 12 is going to be enforced against
19 you?

04:10PM

20 A. Yes.

21 Q. Why is that? What makes you fear that?

22 A. I believe that the enforcers of the law are going to
23 enforce the law.

24 Q. Do you typically have county police at these events?

04:10PM

25 A. Yes.

1 Q. And do you fear that they will enforce the law against
2 you?

3 A. I believe they would. I also believe that they wouldn't
4 even sign up to partner with us, which would also harm our
04:10PM 5 festival because we have to submit the security plan to the
6 township.

7 Q. And what are you asking the Court to do in this case?

8 A. I'm begging to help stop this from damaging the LGBTQ+
9 community to not just LGBTQ+ community, but all of arts.

04:10PM 10 Specifically just the freedom of speech. And not to be a
11 typical veteran, but this is exactly what you fight for. You
12 fight for democracy and liberation. And if we're fighting for
13 that across the world, how are we stopping that in our own
14 state? And so it's really damning to our state, to our
04:11PM 15 organization, to the LGBGT+ community.

16 MS. ROHLES: Thank you. No further questions subject
17 to redirect.

18 THE COURT: I've got one before we take a break. You
19 say you were going to organize perhaps something at a car
04:11PM 20 dealership and it will be what, adults only; is that correct?

21 THE WITNESS: Yes.

22 THE COURT: Are you talking 21 and up?

23 THE WITNESS: Yes. And specifically for alcohol.

24 THE COURT: Oh, for alcohol.

04:11PM 25 THE WITNESS: So we would sell alcohol at that event,

1 which we do at our festival as well. But this would be almost
2 like a bar. We don't want to have to check IDs every single
3 checkpoint. So if we check them once then we wouldn't have to
4 do that again.

04:11PM

5 THE COURT: What is it? Is it the drinking age just
6 for the record?

7 THE WITNESS: 21.

04:12PM

8 THE COURT: 21. Okay. What if a parent shows up with
9 let's say a couple of 10-year-olds or 12-year-olds and they
10 want to, with their permission, go in and buy a ticket for them
11 and so forth. What's the procedure at this point?

12 THE WITNESS: We would respectfully decline them from
13 entering our premises.

14 THE COURT: Completely?

04:12PM

15 THE WITNESS: Yes.

16 THE COURT: All right. It's now, let's say, almost
17 4:15. Let's take a break for 15 minutes and we'll get back in
18 and we'll keep on going.

04:12PM

19 Thank you. We'll see you back then. 15 minutes
20 from right now.

21 COURTRROOM SECURITY OFFICER: All rise.

22 THE COURT: You're free to leave or not.

23 MS. GIFFORD: How late do you expect us to go today?

04:12PM

24 THE COURT: I don't know. We're not going to go deep
25 into the evening. If we have to adjourn, we have a day

1 available tomorrow.

2 So let's see where we are. Either today or
3 tomorrow, because we've got to get it in and we have to do some
4 writing either on a TRO -- what is it -- permanent injunction,
04:13PM 5 because this is the final judgment.

6 So I'm realizing that. So -- but right now we'll
7 go on for some time. I'm not going to go on indefinitely; but
8 if it shows that we have to hold over because we want to get
9 closing arguments, too.

04:13PM 10 So we'll determine that at least at the end of
11 the next hour and a half. Okay. I'll see you then.

12 (Court is in recess.)

13 THE LAW CLERK: All rise.

14 THE COURT: Thank you. Be seated. All right. Who has
04:34PM 15 got the cross?

16 MR. STONE: I do, Your Honor.

17 THE COURT: Okay. All right. Mr. Stone, go right
18 ahead.

19 MR. STONE: Thank you, Your Honor.

04:34PM 20 **CROSS-EXAMINATION**

21 **BY MR. STONE:**

22 Q. You testified earlier about Plaintiffs' Exhibits 47 and
23 52, right?

24 A. What numbers?

04:34PM 25 Q. 47 and 52.

1 A. 47, yes. 52, I don't remember. It's here but...

2 Q. Oh. 51.

3 A. And I'm actually hard of hearing in my right ear, and I
4 can barely hear you.

04:35PM 5 Q. I'm sorry. I'll try to speak more clearly and into the
6 microphone.

7 I'm sorry. You testified earlier about Plaintiffs'
8 Exhibit --

9 THE COURT: You're coming across fine. Move it away a
04:35PM 10 little bit or move you away a little bit. Can you hear him all
11 right, sir? Can you hear him now?

12 MR. STONE: Can you hear me now?

13 THE WITNESS: Yeah, that's better.

14 THE COURT: All right. He needs to hear you. I need
04:35PM 15 to hear you. So meet me halfway and let's go.

16 MR. STONE: All right.

17 **BY MR. STONE:**

18 Q. Neither of the images that you testified earlier about
19 involved performers wearing packers, do they?

04:35PM 20 A. Not to my knowledge.

21 Q. You testified earlier that you couldn't define what a
22 prurient interest in sex was before SB 12, right?

23 A. Yes.

24 Q. But prior to SB 12 you still prohibited age-inappropriate
04:36PM 25 performances at your events, right?

1 A. No, what I said was that we --

2 THE COURT: Wait. Prohibited.

3 MR. STONE: Age-inappropriate performances at their
4 events.

04:36PM 5 THE COURT: Go on.

6 MS. ROHLES: Objection. Misstating the witness.

7 THE COURT: Overruled. He'll correct it if it's not
8 right.

9 Go on. Ask it again.

04:36PM 10 A. So what I said was that we hope that our drag queens and
11 kings emulate the family-oriented community that we live in.

12 **BY MR. STONE:**

13 Q. Does Woodlands Pride have any policies and procedures
14 governing the conduct of performers at your events?

04:36PM 15 A. To my knowledge, we do not.

16 Q. Do you have a practice that governs the content of the
17 performances at your events?

18 A. Other than having our -- Persephone, our board of
19 director, speak to the performers. Outside of that, no.

04:37PM 20 Q. And when -- Persephone?

21 A. Persephone is the drag queen.

22 Q. When Persephone speaks to the performers, does Persephone
23 tell them that the performances need to be age appropriate?

04:37PM 24 A. I'm not sure exactly what she tells them, but everything
25 is age appropriate.

1 THE COURT: What do you mean by that? I don't
2 understand. You can follow it up if you want.

3 **BY MR. STONE:**

4 Q. How do you know that they're -- strike that.

04:37PM

5 Who is conveying to the performers that the performances
6 need to be age appropriate at your events?

7 A. Persephone.

8 THE COURT: And her role is?

04:37PM

9 THE WITNESS: She's on our board and she happens to
10 also a drag performer.

11 THE COURT: Okay. Go on.

12 **BY MR. STONE:**

13 Q. So somebody is actually telling the performers your
14 performances need to be age appropriate?

04:37PM

15 A. Again, I'm not sure exactly what she tells them. But I do
16 know that we've never had any issues.

17 Q. You're here testifying on behalf of The Woodlands Pride?

18 A. Yes.

19 Q. The Woodlands Pride is a not for profit, right?

04:38PM

20 A. That's correct.

21 Q. You contend in this case that you will be in control of
22 the premises of a car dealership for an upcoming fundraising
23 gala that contains drag performances, right?

24 A. In regards to ticket sales, yes.

04:38PM

25 Q. So the ticket sales is what -- in your contention, that's

1 what makes you have control or possession of those premises?

2 A. I guess I don't understand the question because we don't
3 own the premises so we don't have control.

4 THE COURT: Yeah. Rephrase it.

04:38PM

5 **BY MR. STONE:**

6 Q. What is the basis for your contention that you're going to
7 control the premises of the car dealership at your upcoming
8 gala?

04:39PM

9 A. That we would only allow the people in who bought tickets
10 and it would be 21 and up.

11 Q. The gala is a formal event, right?

12 A. It will be a mixed, more of a casual event.

13 THE COURT: How much is the admission?

04:39PM

14 THE WITNESS: We're looking at probably hundred-dollar
15 tickets.

16 And when I say "casual," I mean, we want this
17 event to be for everybody in the community and not just people
18 who can afford hundreds of dollar tickets. So we want to also
19 include the marginalized groups as well. So we want to make
20 sure everybody is included in this event.

04:39PM

21 THE COURT: So it's basically a fundraiser?

22 THE WITNESS: Yes.

23 THE COURT: Okay. The performers, are they being paid?

04:39PM

24 THE WITNESS: Yes. They would be. We believe in art
25 so we support all of our artists monetarily.

1 THE COURT: Are they local folks or from around the
2 country?

3 THE WITNESS: We've flown in some from I think Vegas
4 one year. But most of them have been Texas performers, Houston
5 specifically.

04:40PM

6 THE COURT: Okay.

7 **BY MR. STONE:**

8 Q. Why will -- how will The Woodlands Pride ensure that only
9 adults attend the gala?

04:40PM

10 A. We will verify. We will post that it's 21 and up and then
11 we'll verify and ID as they enter the room.

12 THE COURT: You said that's so you do it once and don't
13 have to worry about it later?

14 THE WITNESS: Yes.

04:40PM

15 THE COURT: All right. For what? The alcoholic
16 beverage, TABC?

17 THE WITNESS: That way we don't have to have 20 TABC
18 license. We'll put a wristband on them; we'll know they're
19 verified and then, you know, they're good to go.

04:40PM

20 THE COURT: All right.

21 **BY MR. STONE:**

22 Q. You said there will be drag performances at the gala,
23 right?

24 A. That's the plan.

04:41PM

25 Q. Will those drag performances involve content that would be

1 inappropriate for an all-ages event?

2 A. We have not planned that far so I don't know yet.

3 THE COURT: But you did. I believe you said -- I don't
4 mean to jump in, but I am. You did mention that it was -- the
04:41PM 5 21 was primarily for the liquor license. Is that correct or
6 not?

7 THE WITNESS: That is correct. The liquor license is
8 the only reason it's 21 and up. It has nothing to do with the
9 performance of the drag.

04:41PM 10 THE COURT: All right. Go on. You may please proceed.

11 **BY MR. STONE:**

12 Q. Has Woodlands Pride ever put on an adults only -- other
13 than the upcoming gala, has Woodlands Pride ever put on an
14 adult-only drag performance?

04:41PM 15 A. No. To my knowledge, no.

16 Q. Have you ever been to an adults-only drag performance?

17 A. Yes. Yes, I have.

18 Q. What happens at an adults only -- in your personal
19 observation, what happens at an adults-only drag performance
04:42PM 20 that wouldn't happen at an all-ages drag performance?

21 A. In my limited scope of drag performances I've attended,
22 specifically one that comes in mind is one at Hamburger Mary's
23 here in Houston.

24 I think the drag performer said a few more cuss words.

04:42PM 25 Honestly, I think that was it. It was at bar and it was 21 and

1 up because it was at I think 8 or 9:00 at night.

2 THE COURT: It was mostly for language?

3 THE WITNESS: I'm sure they cussed a few times in jest.

4 But their outfits looked the exact same as our outfits at

04:42PM 5 The Woodlands Pride. Again, I have very limited experience

6 with attending drag performances myself.

7 **BY MR. STONE:**

8 Q. Okay. Does Woodlands Pride contract with the performers
9 at its events?

04:43PM 10 A. Yes.

11 Q. In those contracts do they contain any terms or conditions
12 about the contents of the performances or the outfits that the
13 performers can wear?

14 A. Not currently.

04:43PM 15 Q. When you say "not currently," will that be changing?

16 A. If a drag performer was gutsy enough to continue on doing
17 drag past SB 12 September 1, there would be some language
18 around what they could and could not do.

19 Q. And might that language reflect the contents of SB 12 so
04:43PM 20 no nudity, you know, the various elements of SB 12?

21 A. There's no nudity regardless of the law or not. Before
22 SB 12 there's never been nudity at any of our festivals.

23 Q. But there's not an actual policy that there can't be
24 nudity at any --

04:44PM 25 THE COURT: There's state laws regarding nudity, I

1 think. I don't know them but I'm fairly certain there's laws
2 already out there.

3 **BY MR. STONE:**

4 Q. So it's not because you guys have a policy or procedure
04:44PM 5 that prohibits nudity by your performers, it's because there's
6 a state law that prohibits it?

7 A. I would suspect that's why.

8 Q. You suspect or you know?

9 A. I know that there's a state law requiring no nudity.

04:44PM 10 Q. Uh-huh.

11 A. Yes. That's a fact I know.

12 Q. Okay.

13 THE COURT: Well, there's been some writing that there
14 may not be a need for this new legislation based upon what's
04:44PM 15 already on the books. So I'm sure somebody may be alluding to
16 that somewhere on either side.

17 Because now that it's come up, I think there was
18 some writing either here or in a case that I saw that there was
19 no need or there was a question as to the need for additional
04:45PM 20 legislation in this area.

21 So I'm not -- I'm just aiming it at both sides
22 because I came across it either in the pleadings or somewhere
23 in some of the cases I read. So if it's coming up, it just
24 came up.

04:45PM 25 So I'm just interjecting that if anybody needs to

1 follow up on that. But either side, let me know.

2 Okay. Go right ahead.

3 **BY MR. STONE:**

4 Q. Do you have -- does Woodlands Pride have a rental
04:45PM 5 agreement with the dealership where they're going to be holding
6 the gala?

7 A. No, we have not finalized that.

8 THE COURT: Is one coming, some sort of an agreement?

9 THE WITNESS: Yes. Our committee is meeting next week
04:45PM 10 or the next two weeks and they will be orchestrating all of
11 that.

12 **BY MR. STONE:**

13 Q. Do you -- does Woodlands Pride, is it going to carry
14 insurance for the gala event?

04:46PM 15 A. Yes, we have general liability.

16 Q. And that's because you could be liable for the conduct of
17 whatever happens during one of your events, right?

18 A. Yes.

19 Q. I think you already testified, but the performers also
04:46PM 20 carry insurance at your events, right?

21 A. The entertainers, the drag queens specifically, not to my
22 knowledge they do. But other exhibitors; food trucks, they
23 carry general liability insurance.

24 Q. Okay. In your complaint and declaration you contend that
04:46PM 25 performers at your show -- shows or events have performed

1 dances that contain gestures or gesticulations that could
2 arguably be interpreted as sexual by others, right?

3 A. Yes.

4 Q. But Woodlands Pride's perspective is that those
5 performances are not sexual, right?

6 A. That's correct.

7 Q. So what is the basis for your contention that some outside
8 objective observer would think that they were a sexual
9 performance?

04:46PM 10 A. I would point to the exhibit that you had earlier where
11 you had somebody twerk. Where he felt comfortable twerking,
12 you may not feel comfortable twerking. So it's just based on
13 someone's independent moral code.

14 Q. You stated in your declaration that no performers at
04:47PM 15 Woodland Pride events are nude, quote, under my view of that
16 term, unquote. Do you recall that?

17 A. I said that now or in my declaration?

18 Q. In your declaration.

19 A. Okay. There's no nudity due to state law and our own
04:47PM 20 family oriented friendly festival.

21 Q. But what I want to follow-up on, what do you mean by
22 "under my view of that term"? What does that mean?

23 A. Earlier somebody said nudity to them. I think it was the
24 doctor said underwear. So that could mean a bikini or a
04:48PM 25 Speedo.

1 To me if you're clothed, if you're covering your bits,
2 then that is not nude. But obviously to the doctor if you saw
3 somebody in a bikini because it looks like underwear and a bra
4 then he would deem that as nude.

04:48PM

5 Q. The doctor testified that somebody wearing a bikini would
6 be nude?

7 A. No. They said that underwear was nude to them.

8 THE COURT: Now, where was this? In the declaration?

04:48PM

9 MR. STONE: I don't know where he's getting that from,
10 Your Honor.

11 THE COURT: Somebody want to --

12 THE WITNESS: My recollection --

04:48PM

13 THE COURT: Hold it. Hold it. Somebody want to
14 clarify? Because you know what it is -- hold it. It's a
15 nonjury case; so if I've got a question, it's like a juror
16 asking a question.

04:48PM

17 MS. ROHLES: Your Honor, I believe because he's been
18 present for the whole trial, that he's referring to what was
19 offered during the offer of proof testimony and his
20 interpretation of what he heard the doctor say.

21 THE COURT: Okay. Okay.

22 MS. ROHLES: So --

23 THE COURT: Sure.

24 THE WITNESS: That's correct.

04:49PM

25 MS. ROHLES: So I object to this line.

1 THE COURT: Overruled.

2 MR. STONE: The record will reflect what it was.

3 **BY MR. STONE:**

4 Q. Currently are there any performers at Woodlands Pride
04:49PM 5 events who perform with their genitals, buttocks, or breasts
6 below the top of their areola exposed or uncovered?

7 A. As I said earlier, there's no nudity at our festival.

8 THE COURT: So the answer is no.

9 THE WITNESS: No.

04:49PM 10 **BY MR. STONE:**

11 Q. You contend that some performers at your events have
12 touched each others' buttocks during performances, right?

13 A. Yes.

14 Q. In your opinion, when they touch each others' buttocks
04:50PM 15 were they appealing to a prurient interest in sex?

16 A. No, I think they were just doing a dance routine.

17 Q. You've also contended that some of the performers have
18 done dance routines that contain gestures or gesticulations
19 that could be interpreted as sexual or simulated sexual acts,
04:50PM 20 right?

21 A. Interpreted by others, yes.

22 Q. Okay. What sorts of simulated sex acts did the performers
23 perform?

24 A. As stated earlier, I assume some twerk. They dance in
04:50PM 25 various ways and to some they may think that that's a sexual

1 manner.

2 Q. You said you assume some of them twerk?

3 A. Yes. I don't watch --

4 Q. Have you been to a Woodlands Pride events?

04:50PM 5 A. Yes, I've been to all four of them.

6 Q. Okay. Have you actually seen the performances at
7 The Woodlands Pride events?

8 A. Yes.

9 Q. Okay. So I'm asking from your personal observation at
04:51PM 10 those events what sort of simulated sex acts have you seen the
11 performers perform that you think might be subject to SB 12?

12 A. Well, I don't think that they're sexual in nature, but I
13 can see how some could interpret just different styles of
14 dancing. Yeah, different styles of dancing.

04:51PM 15 Q. What kind of styles of dancing?

16 A. I'm not a dancer so I'm not an expert on that and I will
17 not be demonstrating.

18 Q. Okay. I got you. I got you.

19 THE COURT: Well, someone was suggesting like a conga
04:51PM 20 line.

21 **BY MR. STONE:**

22 Q. Are there any sexual or simulated sexual acts that you
23 don't think would be appropriate for an all-ages event?

24 A. Can you repeat the question?

04:51PM 25 Q. Are there any sexual or simulated sexual acts that you

1 don't think would be appropriate for a performer to do during
2 an all-ages event?

3 A. I do not know why I'm not following that question. I'm
4 sorry. One more time.

04:52PM

5 Q. Sure. Are there any -- in your opinion, are there any
6 sexual or simulated sexual acts that you think a performer
7 might do that would not be appropriate at an all-ages event?

8 A. From what I've seen, everything that we do is for all
9 ages.

04:52PM

10 Q. Does Woodlands Pride permit performers to perform actual
11 or simulated vaginal sex acts at all-ages events?

12 A. We don't permit that, nor have they ever done that.

13 Q. What would you do if a performer did do that?

14 A. We would probably remove them from the stage and we would
15 not invite them back to be a participant in our festival.

04:52PM

16 Q. Because it wouldn't be appropriate for an all-ages event,
17 right?

18 A. We've never done that, though. But yes, you're correct.

19 Q. Okay. Is it your contention in this lawsuit that

04:53PM

20 performers at Woodlands Pride events should be permitted to
21 perform actual or simulated sex acts for a sexual purpose at
22 all-age events?

23 A. I'm sorry. I lost the train of the conversation or your
24 question.

04:53PM

25 Q. Sure. I'll do it a little bit slower. I'm just trying to

1 understand if we even disagree. So I'm going to go slow, okay?

2 A. Uh-huh.

3 Q. Is it one of your contentions in this lawsuit that
4 performers at Woodlands Pride events should be permitted to
04:53PM 5 perform actual or simulated sex acts for a sexual purpose at an
6 all-ages event?

7 A. No, I do not believe they should.

8 Q. Is it your contention in this lawsuit that performers at
9 Woodlands Pride events should be permitted to perform nude at
04:54PM 10 an all-ages event?

11 A. No, they should not be nude anywhere in public.

12 Q. That's not a part of the law that you're challenging,
13 right?

14 A. What's not a part of the law? I'm not --

04:54PM 15 Q. The prohibition in SB 12 on nudity at performances with
16 minors.

17 A. What's the question about? What I'm challenging?

18 Q. Is it a contention of yours in this lawsuit that
19 performers at Woodlands Pride events should be permitted to
04:54PM 20 perform nude at all-ages events?

21 A. No. I just don't understand the question because nudity
22 doesn't exist at our festivals.

23 Q. Is it a contention of yours in this lawsuit that
24 performers at Woodlands Pride events should be permitted to
04:55PM 25 exhibit their genitals in a lewd state for a sexual purpose at

1 all-age events?

2 A. No. They do not do that either.

3 Q. And it's not something you're contending in this lawsuit,
4 that they should be able to?

04:55PM 5 A. No.

6 Q. Is it your contention in this lawsuit that performers at
7 Woodlands Pride events should be permitted to exhibit sexual
8 toys for a sexual purpose at all-ages events?

9 A. No.

04:55PM 10 Q. Is it a contention of yours in this lawsuit that
11 performers at Woodlands Pride events should be permitted to
12 contact or simulate contact with another person's buttocks,
13 breasts, or genitals for a sexual purpose at all-ages events?

14 A. I guess it depends on who is watching that and what they
04:55PM 15 deem sexual. But no, that is not our goal in that.

16 Q. Is it one of your contentions in this lawsuit that
17 performers at Woodlands Pride events should be permitted to
18 sexually gesticulate with an exaggerated prosthetic penis for a
19 sexual purpose at all-age events?

04:56PM 20 A. No, they've never done that.

21 Q. Do you have kink performers at Woodlands Pride events?

22 A. What was that?

23 Q. Do you have kink performers at Woodlands Pride events?

24 A. Can you define what a kink performer is for me?

04:56PM 25 Q. I'm asking you. My follow-up question is what is kink?

1 So you either know or you don't. So are there kink performers?

2 A. No. Not to my limited knowledge of what kink is.

3 Q. You testified earlier that condoms are handed out at some
4 of the Woodlands Pride all-ages events, right?

04:56PM 5 A. Yes.

6 Q. And sexual lubricant is also handed out at some of your
7 all-ages events, right?

8 A. Yes.

9 Q. Why do you fear that police would not want to partner with
10 you?

11 A. If there's a law that restricts some of these drag queens
12 or drag kings in any capacity, I don't know that the enforcers
13 of the law would go and smuggle drugs across the border, so why
14 would they also break the law and support a festival that has
15 drag in it?

04:57PM

16 THE COURT: I don't understand that answer.

17 THE WITNESS: So the enforcers of the law aren't going
18 to break the law. And if they're celebrating -- if they're not
19 celebrating. If they're working at a festival that has drag
20 and they're supposed to enforce the law that prohibits drag,
21 how does that work? I don't want to ask a police officer to
22 break the law.

04:57PM

23 **BY MR. STONE:**

24 Q. So you think SB 12 prohibits drag?

04:57PM 25 A. It essentially does.

1 MR. STONE: I'll pass the witness, Your Honor.

2 THE COURT: Okay. Ladies and gentlemen, anything
3 further? Yes, sir. Just -- let's say --

4 MR. PLAKE: Plake, Judge. Daniel Plake.

04:58PM 5 THE COURT: Yes. Mr. Plake from Montgomery County.

6 MR. PLAKE: Yes, sir.

7 **CROSS-EXAMINATION**

8 **BY MR. PLAKE:**

9 Q. Mr. Rocha, has Woodlands Pride ever sought a permit from
04:58PM 10 Montgomery County?

11 A. No.

12 THE COURT: Let me ask you this: Is The Woodlands in
13 Montgomery County?

14 MR. PLAKE: Geographically, yes, Judge.

04:34PM 15 **BY MR. PLAKE:**

16 Q. Does The Woodlands Pride have a pending permit application
17 with Montgomery County?

18 A. No, just The Woodlands Township.

19 Q. Earlier I thought you said or testified something about
04:58PM 20 needing a permit from a city or county to cover windows at the
21 car dealership gala. Do you recall that?

22 A. Yes. The question -- yes, I do.

23 Q. What permit from the county would you need to cover
24 windows on private property?

04:59PM 25 A. Yes. I believe the question was how do you ensure that no

1 one -- no minor would be able to see inside the car dealership
2 or lobby.

3 And so my answer was the only way to restrict that would
4 be to get a permit from the county to shut down the road and
04:59PM 5 sidewalks to ensure that no one can walk past said building or
6 car dealership.

7 THE COURT: Didn't you say something about something
8 just to block the window that would cost 5- to \$10,000?

9 THE WITNESS: That was for the festival to erect a
04:59PM 10 fence around to restrict -- I guess to age restrict the
11 festival itself.

12 THE COURT: Okay. Sorry to interrupt. Go on.

13 **BY MR. PLAKE:**

14 Q. So the car dealership is located on public property or
04:59PM 15 private property?

16 A. It would be private property.

17 Q. So why would you need a county permit to block a private
18 sidewalk?

19 A. I was talking about a road or the sidewalk like outside of
04:59PM 20 Howard Hughes -- the Howard Hughes Tower on the waterway.

21 There's county roads, as you are well aware of, that the county
22 operates the roads in The Woodlands.

23 And so if we wanted to restrict access, visual access to
24 inside the Howard Hughes building per se, then the only way to
05:00PM 25 restrict the access would be to get a permit to close down the

1 road.

2 Q. How close is the closest county sidewalk to this car
3 dealership's windows?

4 A. I'm not sure.

05:00PM

5 Q. Are you sure they're county sidewalks and not township
6 sidewalks if they're Howard Hughes?

7 A. It could be either one. The roads are owned by county so
8 that would be county permit, right? And then the sidewalks
9 could be the township permit.

05:00PM

10 Q. And how close is the closest county road to the car
11 dealership window?

12 A. I didn't design the city. I'm not sure. Or the township
13 rather.

14 Q. You can't estimate?

05:00PM

15 A. No, I can't.

16 Q. Are there any trees in the way?

17 A. As you may be familiar with The Woodlands, there's a lot
18 of trees everywhere. People still have a hard time finding
19 their pizza shop. So it's hard to tell where these trees may
20 be. Yes.

05:01PM

21 Q. There is a parking lot between the building, the windows,
22 and the county road?

23 A. As stated earlier, actually we have not selected our venue
24 for this. And so I said that we were in talks with either a
05:01PM 25 car dealership or one of our corporate sponsor's lobby.

1 Q. And what about a simple screen?

2 A. Everything costs money and that would be more fundraising
3 on our part.

4 Q. What about butcher paper taped to the windows?

05:01PM 5 A. We're not going back in the closet. We're not going back
6 into hiding. You can't hide who we are with butcher paper.

7 Q. I meant just as an alternative to closing a county road
8 that's an unknown distance away.

9 A. Yes. It was rhetorical of if we wanted to block people
05:02PM 10 from viewing the art that's happening inside, that the only way
11 that could feasibly happen would be to block access to the road
12 and to block access to any road in The Woodlands you have to
13 get a permit from Montgomery County.

14 Q. Has The Woodlands Pride entered any contracts with
05:02PM 15 Montgomery County to provide security?

16 A. They're all off-duty officers that we work with so I'm not
17 sure, but they are wearing that Montgomery County uniform.

18 Q. Right. But it's not just Montgomery County, right?
19 There's Shenandoah, there's Spring.

05:02PM 20 A. We only ever worked with Montgomery County or the police
21 officers from Montgomery County.

22 Q. You don't have any kind of contract with Montgomery County
23 to provide those officers, right?

24 A. Outside of the off-duty officers, no.

05:03PM 25 Q. You could also elect to employ private security, couldn't

1 you?

2 A. We could.

3 MR. PLAKE: I'll pass the witness, Judge.

4 THE COURT: Okay. Anybody further?

05:03PM 5 (No response.)

6 THE COURT: Not hearing anything, redirect?

7 MS. ROHLES: Thank you.

8 **REDIRECT EXAMINATION**

9 **BY MS. ROHLES:**

05:03PM 10 Q. When you were speaking about the gala and you were
11 testifying about your control over these potential venues,
12 would you have the -- would you be the only event in the car
13 dealership or in the lobby during that event?

14 A. Yes.

05:03PM 15 Q. And would you be responsible for regulating who comes in
16 and out or entering your event?

17 A. Yes. We would partner with an operations person.

18 Q. And this is a private space, correct?

19 A. Yes.

05:03PM 20 Q. And so would this -- would you be paying to use the space
21 or would the sponsor be providing it either way?

22 A. Either way, yes.

23 Q. And when you're age restricting it, is that to stop people
24 from viewing the performances inside?

05:04PM 25 A. No. It would be strictly for alcohol reasons.

1 Q. And regardless, it's age restricted for entry not just for
2 alcohol, correct?

3 A. Yes.

4 MR. STONE: Objection, Your Honor. This misstates
05:04PM 5 prior testimony. This witness said that he had not yet made a
6 determination on whether the performances would be adult only.
7 So at this stage while he said it's adult only because of the
8 alcohol, it still remains undecided whether the performances
9 themselves will also be adult oriented.

05:04PM 10 THE COURT: All right. For that limited purpose only
11 I'll allow you some recross. You can go into that. Go on.

12 MR. STONE: Thank you, Your Honor.

13 **BY MS. ROHLES:**

14 Q. Are you planning on -- are the performances you're
05:04PM 15 planning on having at the gala similar to the performances you
16 had at the festival?

17 A. Yes, they will be.

18 Q. Do you plan on instructing them to behave any differently
19 than they would perform at the festival?

05:05PM 20 A. No.

21 Q. And how would it impact your event if you had to put
22 butcher paper all over the windows?

23 A. If that were the only solution we likely would not do it
24 because it would make people feel like they didn't exist to the
05:05PM 25 outside world, which is something that generations before me

1 fought to exist -- to simply exist. And so butcher paper would
2 not be an option.

3 Q. And would that run contrary to the total mission and
4 message of The Woodlands Pride?

05:05PM

5 A. 100 percent.

6 Q. Earlier when you testified that no performers at the
7 festival were nude, what definition of nude are you using? Is
8 that your earlier definition of no clothing involved?

05:06PM

9 A. Nude to me means exposing genitals, breasts, or nipples, I
10 should say.

11 Q. Do any of your performers show a portion of their buttocks
12 or a portion of a breast at the event?

13 A. Cleavage, you know, depending on how thin their panties
14 are or whatever they're wearing, yeah.

05:06PM

15 Q. If nudity is defined as even a portion of the buttocks or
16 the breasts, could some say that the performers were exhibiting
17 nudity?

18 A. Yes.

05:06PM

19 THE COURT: That's not what the statute said, is that
20 correct?

21 MR. STONE: No, Your Honor. That's not what the
22 statute said. I read it to him.

23 THE COURT: Okay. What does the statute exactly say?

24 MS. ROHLES: One moment.

05:07PM

25 THE COURT: Yes. You might as well go to the statute

1 when in doubt.

2 MR. KLOSTERBOER: Sorry, Your Honor. It's in the
3 Commerce Code.

05:07PM

4 THE COURT: The Commerce Code. I don't know if that's
5 covering it. No pun intended. Somebody got the law itself?

05:07PM

6 MS. ROHLES: The definition of nude means, "A, entirely
7 unclothed or B, clothed in a manner that leaves uncovered or
8 visible through less than fully opaque clothing any portion of
9 the breast below the top of the areola of the breasts, if the
10 person is female, or any portion of the genitals or buttocks."

11 THE COURT: Just generally men and women?

12 MS. ROHLES: Yes, below breasts. Any portion of the
13 breasts below the top of the areola of the breasts, if the
14 person is female, or any portion of the genitals or buttocks.

05:08PM

15 THE COURT: Got it. Okay. Got it.

16 **BY MS. ROHLES:**

17 Q. So using that definition, could you say that some of the
18 performers were exhibiting nudity or nude at your events?

19 A. Yes.

05:08PM

20 Q. Has anyone from Montgomery County -- or do you fear that
21 Montgomery County may enforce this bill against you?

22 A. Yes.

23 Q. Why do you fear that?

24 A. A few years ago there was a billboard that said,

05:08PM

25 "Montgomery County, we enforce the law" or something like that.

1 And why wouldn't a law enforcement organization, whether it be
2 the constables, sheriff, a local municipality, enforce the law?
3 That's their job. And so we would fear that they would do
4 their job to enforce the law.

05:09PM

5 Q. And has anybody from the county ever told you or promised
6 you that they wouldn't enforce this bill?

7 A. No, they have not.

8 MS. ROHLES: No further questions.

9 THE COURT: Okay. Let's see.

05:09PM

10 All right. Mr. Stone, you had some limited
11 recross.

12 MR. STONE: Yes, Your Honor. But I think that they
13 covered that. I just have one question for this witness.

14 THE COURT: Sure. Go on.

05:09PM

15 **RE-CROSS-EXAMINATION**

16 **BY MR. STONE:**

17 Q. Earlier I asked you if there are any performers at
18 Woodlands Pride events who perform with their genitals,
19 buttocks, or breasts below the top of their areola either
20 uncovered or visible. Do you recall me asking you that?

05:10PM

21 A. There were a lot of questions. I'm sorry. I do not
22 recall that specific question. I'm happy to answer it.

23 Q. You answered that there were no performances like that at
24 Woodlands Pride events. Do you recall that?

05:10PM

25 A. I believe that's what I said.

1 Q. Okay.

2 MR. STONE: I pass the witness, Your Honor.

3 THE COURT: Any further questions on recross?

4 MR. PLAKE: No, Judge.

05:10PM 5 THE COURT: Okay. All right. Thank you, sir. You may
6 step down. You're excused. You're free to leave.

7 Call your next witness.

8 MR. KLOSTERBOER: Yes, Your Honor. Plaintiffs' final
9 witness is Brigitte Bandit.

05:11PM 10 (The oath was administered.)

11 MS. KEMPF: Your Honor, Chloe Kemp for the plaintiffs.

12 **BRIGITTE BANDIT,**

13 having been duly sworn, testified as follows, to wit:

14 **DIRECT EXAMINATION**

05:11PM 15 **BY MS. KEMPF:**

16 Q. Good afternoon, Ms. Bandit. Thanks for being here today.
17 Can you please introduce yourself to the Court?

18 A. My name is Brigitte Bandit and I am a drag artist and
19 performer in Austin, Texas.

05:11PM 20 Q. Is Brigitte Bandit your legal name?

21 A. It is not my legal name.

22 Q. Is it your drag performance name?

23 A. It's my drag name.

24 Q. And why are you using your drag performance name today?

05:11PM 25 A. I'm using my drag name out of safety concerns.

1 Q. And what city and county do you live in?

2 A. I live in Austin, Texas, and Travis County.

3 Q. How long have you lived in Texas?

4 A. I've lived in Texas pretty much my entire life.

05:11PM 5 Q. And what is your connection in this case?

6 A. I am a plaintiff.

7 THE COURT: You are a what?

8 THE WITNESS: Plaintiff.

9 THE COURT: Okay.

05:12PM 10 **BY MS. KEMPF:**

11 Q. So you mentioned you are a drag performer. Is that your
12 full-time job?

13 A. Yes, that is my full-time job.

14 Q. In what county do you do the majority of your
15 performances?

16 A. Most of my performances are in Travis County.

17 Q. Do you ever perform in other places?

18 A. Yes. I've performed in Houston, San Marcos, San Antonio,
19 Dallas. And I'm scheduled to perform in Denton and Abilene.

05:12PM 20 Q. Can you please tell us --

21 THE COURT: That's your full-time profession?

22 THE WITNESS: I'm a full-time drag performer, yes.

23 THE COURT: Thank you.

24 **BY MS. KEMPF:**

05:12PM 25 Q. Can you please tell us what is drag?

1 A. Drag is an art form in which somebody can express
2 themselves in or outside gender norms and expectations or like
3 a hyper-character that is highly exaggerated. Yeah.

4 Q. And what does performing drag mean to you personally?

05:12PM

5 A. Drag for me gives me a space where I can be my most
6 authentic self and explore myself and how I present and what I
7 want to say to other people about myself.

8 Q. What is it that you're trying to say to other people?

9 A. Well, it depends on the day.

05:13PM

10 Q. Can you give me some examples?

11 A. I perform a lot as Dolly Parton and I really love to share
12 her message of kindness and respect and accepting of other
13 people. Yeah.

14 Q. And when you perform drag, do you ever convey a political
15 message?

05:13PM

16 A. Yes.

17 Q. Can you give some examples?

18 A. The second time I testified against this bill, I wore a
19 gown with the Texas flag on top and underneath it I wore the
20 names of all of the victims from the Uvalde shooting.

05:13PM

21 Q. And what message were you trying to convey with your drag
22 performance?

23 A. I was trying to say that we're sitting here arguing about
24 drag performances and drag queens and under the concern of
25 safety for kids while kids are being shot in our schools here

05:13PM

1 in Texas.

2 Q. How long have you been a drag performer?

3 A. I've been a drag performer for five years.

4 Q. Do you intend to keep doing this work in the future?

05:14PM 5 A. Yes.

6 Q. The same type of performances you've done in the past?

7 A. Yes.

8 Q. And in your knowledge is drag associated with the LGBTQ
9 community?

05:14PM 10 A. Yes, it is.

11 Q. Can you tell us how?

12 A. Yeah. Although anybody can do drag whether or not they
13 are queer or not, it is an art form that has been predominantly
14 made by queer people and especially trans people over time.

05:14PM 15 It's allowed us to explore ourselves outside of like gender
16 expectations and norms within our society and that's very
17 important for queer people.

18 Q. Why is it important?

19 A. Because existing outside of what is expected for somebody
05:14PM 20 based on their sex or gender is very freeing. You're able to
21 be your most authentic self. You're able to know who you are
22 and express that to others.

23 Q. As part of your work do you do anything other than simply
24 perform drag?

05:14PM 25 A. Yes, I also host drag shows and produce drag shows.

1 Q. What does it mean to host and produce a drag show?

2 A. Whenever I produce a drag show I am working with a venue
3 to hire a certain amount of artists or drag performers. So I
4 book the other performers. I advocate for a certain kind of
05:15PM 5 budget, pay rate for the performers.

6 I make sure I get their music together, get a DJ to play
7 the tracts. Whenever I host a show, I am on the mic taking the
8 performers off the stage and on the stage, interacting with the
9 audience, and kind of just running the general show.

05:15PM 10 Q. What type of interacting with the audience?

11 A. With the audience I always give rules before we start a
12 drag show, kind of just rules of respect making sure that
13 they're not going to go on stage.

14 It's kind of safety concerns for everybody. We do have
05:15PM 15 drag artists who do like a lot of kicks and splits and we don't
16 want anybody to be in their way. And also just respecting the
17 boundaries of people, like don't touch a performer unless
18 you're invited to. Things of that nature.

19 Q. And do you intend to continue hosting and producing drag
05:16PM 20 shows in the future as well?

21 A. Yes.

22 Q. The same type of drag shows you host and produce now?

23 A. Yes.

24 Q. What type of venues do you perform in?

05:16PM 25 A. Typically I perform in 21 up clubs, but I also do a lot of

1 drag bunches, which are in --

2 THE COURT: What kind of clubs?

3 THE WITNESS: 21 up clubs.

4 THE COURT: Is that a chain?

05:16PM 5 THE WITNESS: Just any bar club that's 21 up.

6 THE COURT: 21. Age wise.

7 THE WITNESS: Yeah. Typically I perform at the night
8 clubs, you know. But I also do drag brunches that we talked
9 about earlier in like restaurants and stuff.

05:16PM 10 **BY MS. KEMPF:**

11 Q. What's a drag bunch?

12 A. A drag brunch is whenever like typically a restaurant
13 they're serving food --

14 THE COURT: Slow down a little bit. The court reporter
05:16PM 15 needs to get it all down.

16 THE WITNESS: Okay.

17 THE COURT: We've got plenty of time.

18 THE WITNESS: Okay. At a drag brunch it's normally at
19 a restaurant where they are serving food. And they also like
05:16PM 20 to hire entertainment. So whenever people are being served
21 they also get to watch an entertainer. It's a lot of fun.

22 **BY MS. KEMPF:**

23 Q. And do people of all ages attend drag brunches?

24 A. Yes.

05:16PM 25 Q. And do you ever perform in public spaces like parks?

1 A. Yes, I also do that, yes.

2 Q. Any examples?

3 A. Yeah, I've performed in parks before. I've performed at
4 festivals before. I've performed in front of people's houses
05:17PM 5 before, yeah.

6 Q. And do you host and produce shows at these same type of
7 venues that you just mentioned you performed in?

8 A. Yes, I will.

9 Q. So you mentioned drag brunches are all ages. Do you
05:17PM 10 perform at other shows that are sometimes for all ages?

11 A. Yeah, drag brunches, they can be 21 up as well. But
12 typically whenever it is in a restaurant it can be all ages.
13 So that does vary a little bit. But I also do all-ages shows
14 like drag story times.

05:17PM 15 Q. And why are doing all-ages show like that important to
16 you?

17 A. I enjoy working with all different kinds of audiences. I
18 worked with children my entire life. My very first job was
19 working with kids so it's not anything new to me. And I've
05:18PM 20 always enjoyed working with children and all different kinds of
21 people.

22 THE COURT: Is that in costume so to speak or is it out
23 of costume?

24 THE WITNESS: Whenever I do drag story times?

05:18PM 25 THE COURT: Yeah.

1 THE WITNESS: Yeah, I do it in costume normally.

2 THE COURT: For the kids?

3 THE WITNESS: Yes.

4 **BY MS. KEMPF:**

05:18PM

5 Q. And do you change your performance and appearance
6 depending on the audience that you're expecting to perform for
7 that day?

8 A. Yes, I do.

9 Q. How?

05:18PM

10 A. Just like any sort of artist doing anything. You want to
11 change whatever you're presenting depending on the audience and
12 the kind of place you're going. So whenever I'm doing kid
13 shows, I want to appeal to something that would be interesting
14 to kids. So typically I would do a character like Jessie, the
15 cowgirl from *Toy Story*. I've done that.

05:18PM

16 I've also done the little mermaid as well or I've dressed
17 like a big pink princess. Yeah. So it's typically pretty
18 covered and something that would be interesting to kids.

19 THE COURT: People in your profession need a
20 big -- what is it -- a big costume supply; is that correct?

05:19PM

21 THE WITNESS: Oh, yes. You should see my drag closet.

22 **BY MS. KEMPF:**

23 Q. And even when you're doing these performances that you
24 call 21 and up, can you ever be a hundred percent sure of who
25 is in the audience?

05:19PM

1 A. I cannot.

2 Q. Why is that?

3 A. Sometimes clubs will make an exception to allow a parent
4 to bring their kid in and --

05:19PM 5 THE COURT: What is it, up to the parent?

6 THE WITNESS: It's up to the parent, yeah, and also the
7 venue as well. But I've had parents want to bring their
8 17-year-old kid to a 21 up brunch. And we tell them what kind
9 of content there is and we leave that up to the parent.

05:19PM 10 THE COURT: What about younger kids?

11 THE WITNESS: I do ask the age and I would not -- for a
12 certain age range I would not -- for certain shows not accept
13 that.

14 THE COURT: It's up to you to accept it?

05:19PM 15 THE WITNESS: It's not up to me. It's up to the venue,
16 me, and the parent as well.

17 THE COURT: All three?

18 THE WITNESS: Yes.

19 THE COURT: Will have veto?

05:20PM 20 THE WITNESS: Huh?

21 THE COURT: Will have veto over it?

22 THE WITNESS: I mean, if any one of us was not
23 comfortable with it, then it just would not happen.

24 THE COURT: All right.

05:20PM 25 **BY MS. KEMPF:**

1 Q. Does it sometimes occur where somebody who is not
2 necessarily in the audience can still see parts of your shows?

3 A. Yes.

4 Q. How so?

05:20PM 5 A. I perform at a 21 up bar called Cheer Up Charlies which is
6 on Red River in Austin and the stage is outside. It's clearly
7 visible from the sidewalk. It's also surrounded by high-rises
8 and hotels. I've had somebody at the hotel come downstairs and
9 tell me that they enjoyed watching my show from their hotel
10 room. So I cannot --

11 THE COURT: With a pair of binoculars?

12 THE WITNESS: I know. I was, like, how did you see
13 that all the way up there?

14 **BY MS. KEMPF:**

05:20PM 15 Q. Do you ever wear accessories while performing?

16 A. Yes, I do.

17 Q. So I would like for you to open your exhibit binder there
18 to an exhibit marked for identification as Plaintiffs' Exhibit
19 Number 55. Do you recognize what's depicted in this exhibit?

05:21PM 20 A. Yes.

21 Q. Is it you?

22 A. That's me.

23 Q. Do you know when this photo was taken?

24 A. This was taken last year, probably I think October.

05:21PM 25 Q. And was this at a performance?

1 A. Yes. This was at Cheer Up Charlies that I mentioned
2 earlier.

3 Q. Does this photograph accurately represent how you looked
4 at the performance that day?

05:21PM 5 A. Yes.

6 Q. Would you wear this type of an outfit to an all-ages drag
7 performance such as a drag brunch?

8 A. Yes. And I have as well, yeah.

9 Q. So tell us a little bit about this image. What type of
05:21PM 10 accessories are you wearing?

11 A. In this image I am wearing a wig, a breastplate, a corset.

12 Q. I'm sorry. What's a breastplate?

13 A. A breastplate is like a vest with fake breasts on it to
14 enhance my chest. To give that Dolly Parton silhouette,
05:22PM 15 because I'm impersonating Dolly in this one. But I'm wearing
16 the breastplate, the corset, my costume, a big wig,
17 fingernails, fake lashes, and jewelry and heels.

18 Q. And just to be clear, so you're impersonating Dolly as in
19 Dolly Parton?

05:22PM 20 A. Yes, Dolly Parton.

21 THE COURT: Do you do your own singing, or is it
22 prerecorded usually?

23 THE WITNESS: I have to lip sync. You don't want to
24 hear me sing.

05:22PM 25 **BY MS. KEMPF:**

1 Q. Do any of the accessories or prosthetics that you just
2 pointed to exaggerate your female characteristics?

3 A. Yes, the breastplate and the corset.

4 MS. KEMPF: Your Honor, we offer Exhibit 55 into
5 evidence.

6 MR. STONE: Your Honor, we have similar objections to
7 what we've had before in that this doesn't depict anything that
8 would violate SB 12.

9 I would also note this is at Cheer Up Charlies,
10 which is a great bar in Austin, Texas, but it's a 21 and up
11 bar. So to the extent that this performance occurred at
12 nighttime at Cheer Up Charlies there wouldn't be any children
13 in attendance.

14 And if anyone saw it using binoculars from
15 another building, that would not presumably violate the
16 *mens rea* element contained within SB 12. So this doesn't
17 depict anything that is relevant to SB 12.

18 THE COURT: What's your response?

19 MS. KEMPF: Yes, Your Honor. If I may, the exhibit is
20 relevant because it goes to whether the accessories and
21 prosthetics Ms. Bandit wears are arguably proscribed by the
22 statute as accessories and prosthetics as she testified that
23 exaggerate her female sexual characteristics.

24 Ms. Bandit also testifies that she wears this
25 exact outfit to all ages drag brunches which are attended by

1 people of all ages, including children.

2 MR. STONE: Your Honor, we don't dispute that this
3 outfit does not violate SB 12. So again, I'm not sure how it's
4 relevant if the outfit itself does not violate SB 12 that she
05:24PM 5 wears the same outfit to an all-ages event.

6 THE COURT: Your response?

7 MS. KEMPF: Yeah. To demonstrate injury in fact in
8 this pre-enforcement context we have to show that Ms. Bandit's
9 course of action is arguably proscribed by the statute. And
05:24PM 10 she testified here as to one element of the statute.

11 THE COURT: Where is it? Read the statute, that area
12 that you have a concern on about or you think it may be
13 applicable when it takes effect.

14 MS. KEMPF: Yes. The exhibition of sexual
05:24PM 15 gesticulations using accessories or prosthetics that exaggerate
16 male or female sexual characteristics.

17 MR. STONE: That's half of it. There's a second
18 element of that --

19 THE COURT: What's the element?

05:24PM 20 MR. STONE: Right. The second element: That appeals
21 to the prurient interest in sex. That's the second half. So
22 it's not just that they're wearing the outfit. They also have
23 to be performing or engaging in conduct that appeals to the
24 prurient interest in sex.

05:25PM 25 And this witness just testified that she tailors

1 her productions to the age of the audience and that they're age
2 appropriate. So she's not appealing to the prurient interest
3 in sex by her own admission. So this is not relevant,
4 Your Honor.

05:25PM

5 THE COURT: Yes, ma'am.

6 MS. KEMPF: If I may. In order for an exhibit to be
7 relevant it doesn't have to prove every element of what the
8 exhibit is trying to go to. It just has to make something more
9 or less likely which it does in this case.

05:25PM

10 THE COURT: All right. Overruled. In other words, if
11 it's partially applicable, that's what you're offering for; is
12 that correct?

13 MS. KEMPF: Yes, Your Honor. We may refer back to this
14 exhibit at a later time. But I believe it's relevant just -- I
15 believe it is relevant for the reasons I just stated.

05:25PM

16 THE COURT: I've made my ruling. You may proceed.

17 MS. KEMPF: Thank you.

18 THE COURT: Okay.

19 **BY MS. KEMPF:**

05:25PM

20 Q. Ms. Bandit, while performing, for example at a drag
21 brunch, do you ever come into contact with other people's
22 bodies?

23 A. Yes.

24 Q. How so?

05:26PM

25 A. Well, typically at a drag show whenever we're performing

1 the audience likes to hold out money and tip us. So whenever
2 we go and we're performing, it's kind of fun to interact with
3 the audience and take the money.

4 And sometimes they even like to tuck it in my own costume.
05:26PM 5 They really love to tuck it in my cleavage sometimes in the 21
6 up spaces. And yeah, so I do tend to get in contact with
7 people when I'm performing.

8 Q. Does tipping occur at drag brunches?

9 A. Yes.

05:26PM 10 THE COURT: Say that again.

11 MS. KEMPF: Does this tipping with the money occur at
12 drag brunches?

13 THE COURT: Oh, okay.

14 **BY MS. KEMPF:**

05:26PM 15 Q. And those are all ages?

16 A. Yes.

17 Q. Do you ever dance with other performers as part of your
18 performances?

19 A. Yeah, I've danced with other performers.

05:26PM 20 Q. Does that dancing ever cause you to come into contact with
21 their bodies?

22 A. Yes, yeah. Totally.

23 Q. In what ways?

24 A. We can put our hands on each other or just bump into each
05:27PM 25 other. Just dancing with each other in general just the way

1 that you can touch each other and perform together, yeah.

2 Q. When you're dancing together, do you ever come into
3 contact -- does you and one other person ever contact each
4 other's buttocks for example?

05:27PM 5 A. Yes, we can do that.

6 Q. How so?

7 A. Yeah, we can -- I don't know. Just dancing together,
8 grazing against each other. And yeah, that can definitely
9 occur.

05:27PM 10 Q. And I want to draw your attention to the photograph marked
11 for identification as Exhibit 56 in your binder.

12 Do you recognize what is depicted here in this photograph?

13 A. Yes.

14 Q. What is it or who is it?

05:27PM 15 A. That is me.

16 Q. And when was this photograph taken?

17 A. This was taken in 2019.

18 Q. Where was it taken?

19 A. It was taken at Rain on 4th.

05:28PM 20 Q. And does this photo fairly and accurately depict your
21 appearance on the day of that performance?

22 A. Yes.

23 Q. So tell us a little bit about what's going on in this
24 picture.

05:28PM 25 A. In this photo I am dressed like the little mermaid Ariel

1 and I am performing with a dildo.

2 Q. And what type of performance is this?

3 A. This is a lip sync performance.

4 Q. And the venue is what type of venue?

05:28PM 5 A. It's Rain on 4th, which is a 21 up bar or sometimes they
6 have 18 up nights.

7 Q. What is a dildo?

8 A. A dildo is a fake penis.

9 Q. And do you understand a dildo to be designed for the
05:28PM 10 purpose of stimulating genitals?

11 A. Yes.

12 Q. Have you ever used a dildo like this as a prop at any of
13 your other performances?

14 A. Yes.

05:28PM 15 Q. Can you give us an example?

16 A. I sing into it during Mariah Carey's *All I Want for*
17 *Christmas is You*.

18 Q. In other words, you use it as a pretend microphone?

19 A. Yes.

05:29PM 20 Q. And you said that was at Cheer Up Charlies?

21 A. Yes, I've performed that number at Cheer Up Charlies
22 before.

23 Q. Is Cheer Up Charlies the same venue you described that was
24 visible?

05:29PM 25 A. Yes. I do want to clarify. These venues are very close

1 to Cheer Up Charlies. They can definitely see what's going on
2 without binoculars. Especially on the sidewalk. I have had
3 families sit outside the show and try to watch the show before.
4 So it's very relevant to how -- who can see the stage.

05:29PM

5 MR. STONE: Objection, Your Honor. Nonresponsive.

6 THE COURT: Overruled.

7 MS. KEMPF: Your Honor, we offer Exhibit Number 56 into
8 evidence.

9 THE COURT: Any objection?

05:29PM

10 MR. STONE: No objections, Your Honor.

11 THE COURT: Oh, no objections to that one. That's
12 admitted.

13 **BY MS. KEMPF:**

05:29PM

14 Q. In this image or in a typical show are your prosthetic
15 breasts ever showing?

16 A. Yes.

17 Q. Do you know if prosthetic breasts are considered genitals?

18 A. I don't.

19 Q. What does the word "lewd" mean to you?

05:30PM

20 A. Lewd to me means having to do with very inappropriate and
21 sexual conduct or displays.

22 Q. And do you consider your prosthetic breasts to be lewd?

23 A. No.

24 Q. Do you fear others might consider it to be lewd?

05:30PM

25 A. Yes.

1 Q. Why?

2 A. Because breasts are so heavily sexualized in our society,
3 although breasts are not inherently sexual.

4 Q. While performing, for example, at a drag brunch do you
5 ever perform dance moves or gestures?

6 A. Yes.

7 Q. What kind?

8 A. I will shimmy, I will walk in step. I'm not that much of
9 a good dancer, but I will shake my hips, shimmy, do things with
10 my hands, things of that nature.

11 Q. Do you -- for example, in Exhibit 56 do you make any
12 gestures with the dildo?

13 A. With the dildo, yeah, I mean, I'll sing into it. I'll
14 caress it like I'm doing in this video, kind of just, yeah,
15 play with it.

16 Q. Do you ever make what you fear others might consider a
17 sexual gesticulation?

18 A. Yes.

19 Q. Why do you fear that?

20 A. I do, because it's up to interpretation what is a sexual
21 gestic -- I can't even say the word. But, yeah, you know what
22 I mean.

23 Q. While performing do you ever simulate sexual acts?

24 A. I mean, I don't typically but I have, yeah.

25 Q. Like what?

1 A. Like making out with somebody, but not actually. Touching
2 each other in certain ways, even myself, maybe like touching my
3 breasts or my butt, something like that. Yeah.

4 Q. Do you ever thrust your hips?

05:32PM 5 A. Yes, thrust my hips or --

6 Q. Blow a kiss?

7 A. Oh, yes, and the blowing kiss for sure.

8 Q. What does the phrase "appeals to the prurient interest in
9 sex" mean to you?

05:32PM 10 A. Prurient interest in sex to me means something to do with
11 I guess having sex.

12 Q. Do you fear that someone could accuse your performances of
13 appealing to the prurient interest in sex?

14 A. Yes, I do.

05:32PM 15 Q. Why do you fear that?

16 A. Because it is so vague and open to interpretation,
17 especially whenever I'm wearing my breastplate people might
18 think that I am trying to do something sexual when I am not.

19 Q. Are drag performances inherently sexual?

05:33PM 20 A. Drag performances are not inherently sexual.

21 Q. Why?

22 A. Because drag is a form of art and it can be -- it can be
23 anything you want it to be. I would argue actually that most
24 drag is not sexual and like you can have humor. You can do

05:33PM 25 something very sad. You can do whatever you want with it

1 really.

2 Q. Do you fear that others view drag as inherently sexual?

3 A. Yes, they do.

4 Q. Why?

05:33PM

5 A. Because same thing with like what the tweet mentioned
6 earlier about Greg Abbott signing this into law. That this --
7 what are they -- sexually oriented performances but then
8 calling it a drag ban. So you think that drag is inherently
9 sexual.

05:33PM

10 Q. What parts of your body typically show during
11 performances?

12 A. Typically I have my legs out, my arms out, and my chest.

13 Q. Your chest meaning your breastplate?

14 A. Yeah.

05:33PM

15 Q. Cleavage?

16 A. Yeah.

17 Q. Are you ever fully nude?

18 A. I'm never fully nude.

19 Q. Are you ever somewhat nude?

05:33PM

20 A. Somewhat nude, yeah. I think the least I've ever been
21 wearing on a stage is a thong.

22 Q. Do you ever wear leotards as well?

23 A. Yes.

24 Q. Have you ever had a wardrobe malfunction during your

05:34PM

25 performance?

1 A. Yes, I have.

2 Q. Did can you give us an example?

3 A. An example is I also do Cher impersonation. And I was
4 doing *Turn Back Time* Cher. And she has kind of a panel look
05:34PM 5 on. And while I was performing, one of the panels over my
6 breasts slipped out of place and my nipple was exposed.

7 Q. Can you guarantee that you will not have a wardrobe
8 malfunction in the future?

9 A. I cannot guarantee that.

05:34PM 10 Q. What do you think the purpose of SB 12 is?

11 A. I believe the purpose of SB 12 is to push drag and queer
12 artistry out of public spaces.

13 Q. Do you have shows scheduled after September 1st?

14 A. Yes, I do.

05:34PM 15 Q. What kind?

16 A. I have all kinds of shows. My regular 21 up shows and
17 then I also have all-ages events planned as well.

18 Q. And are these events scheduled at both public and private
19 venues?

05:34PM 20 A. Yes.

21 Q. At these shows do you plan to do the same type of
22 performances that you've done in the past?

23 A. Yes.

24 Q. The same type of costumes --

05:35PM 25 A. Yeah. People love what I do.

1 Q. If SB 12 goes into effect, how do you fear it will affect
2 your business?

3 A. I am concerned that I will not get the same amount of
4 bookings that I do. And I'm afraid of, you know, some venues
05:35PM 5 that have hired me recently have also had to hire personal
6 security for their space during the event.

7 So that kind of cuts into the cost of putting on a drag
8 show. So I think that some businesses and places would be more
9 hesitant to have us.

05:35PM 10 Q. You said you fear you would get less bookings?

11 A. Yes.

12 Q. Why is that?

13 A. Because they probably are concerned about their own
14 liability hosting a drag show with this kind of law.

05:35PM 15 Q. Meaning they will choose not to host drag shows?

16 A. Yes.

17 Q. What do you understand the penalties of violating SB 12 to
18 be?

19 A. There is a fine and a potential for jail time.

05:36PM 20 THE COURT: Is that as to the performers, the
21 producers, the venue or what in your mind?

22 THE WITNESS: In my mind I think that I could possibly
23 be -- I think that it could affect me. That's how I've
24 interpreted it as somebody who produces shows, hosts shows, and
05:36PM 25 is a drag performer myself.

1 **BY MS. KEMPF:**

2 Q. And what is it that you're asking the Court?

3 THE COURT: Let me ask this: What's the plaintiffs'
4 position on that, the possible, you know, criminal penalties?
05:36PM 5 Is it applicable? In your position is it applicable to all
6 three like the witness just said?

7 MS. KEMPF: Yes, Your Honor. Due to the direct
8 liability of engaging in these performances but also through
9 aiding and abetting liability.

05:36PM 10 THE COURT: Okay. Go on.

11 **BY MS. KEMPF:**

12 Q. And what is it that you're asking the Court to do today?

13 A. I'm asking the Court to block this bill or law.

14 MS. KEMPF: Your Honor, no further questions subject to
05:37PM 15 redirect.

16 THE COURT: All right. It's almost a quarter to 6,
17 okay? We will be in session tomorrow so I think it will be a
18 good place to adjourn.

19 Do you have any further witnesses?

05:37PM 20 MR. KLOSTERBOER: No, Your Honor. This is our last
21 witness.

22 THE COURT: And the defense, any further witnesses?

23 MR. STONE: No, Your Honor.

24 THE COURT: Any from the other defendants?

05:37PM 25 (No response.)

1 THE COURT: All right. We're going to have to come
2 back tomorrow. And I don't want to put a rush on anybody,
3 okay? So we're going to adjourn at this point. We'll pick up
4 at 10:30. We will have the final witness and then I'll
05:37PM 5 hear -- what is it -- arguments of all of the counsel, in other
6 words, as to where it ought to go and possible findings of fact
7 and conclusions of law. I think we've got a lot in today.

8 I want to thank the attorneys for moving it
9 along. And I'm going to apologize to the witness for having to
05:38PM 10 cut it short, but we will pick up tomorrow.

11 So we'll see everybody tomorrow ready to resume
12 at 10:30 A.M. Thank you and we'll see you then.

13 MS. GIFFORD: Your Honor, may I ask how much time do
14 you anticipate giving each side for closing just so we can
05:38PM 15 prepare?

16 THE COURT: We're completely open. Let me ask this:
17 How much time does the plaintiff want?

18 MR. KLOSTERBOER: Currently not much, but it depends on
19 what they say. 15 or 25 minutes at most.

05:38PM 20 THE COURT: Okay. Your time, what do you need?

21 MS. GIFFORD: I anticipate we'll need at least an hour.

22 THE COURT: Let's go around 45 minutes. I mean, we're
23 in no rush. Everybody is here and I'm not putting any time
24 limits on the other defendants.

05:38PM 25 If you need to take 45, you're the primary

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