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A TALE OF TEN CASES

Rights of Conscience Cases Arising in the Context of Nondiscrimination Laws

Alliance Defending Freedom

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Almost everyone agrees that discriminating against people because of things they cannot change about themselves, such as their biological sex or skin color, is wrong. The vast majority of us would agree that people should not be denied basic services, like those provided by restaurants, hotels, and stores, because of these types of immutable characteristics. Similarly, most people would say that people should not be denied basic services because of their religious beliefs or their political viewpoints. We might disagree with one another about these things. But most people would say that restaurants should not refuse to sell someone food because the owner disagrees with the customer's religion. Nor, to take another example, should hair stylists refuse to cut someone's hair because the stylist is of a different political party than the customer. Generally speaking, we almost all agree that this type of discrimination is not only morally wrong, it is harmful to our society.

There are times, however, when these general rules against discrimination should give way to more important principles against forcing someone to violate her conscience. Take, for example, the case of a printing business that is owned by a committed vegan and animal rights activist who believes that using animals for food is morally wrong. Should that business be forced to produce tee shirts printed with Chick-fil-A's slogan, "Eat Mor Chikin?," when the very notion of eating chicken is morally offensive to its owner? Or, suppose a minority-race videographer is asked by members of the Ku Klux Klan to make a documentary promoting their racial hatred. Should she have to create a positive video about the KKK? Or, suppose a baker who identifies as homosexual is asked to make a cake that says that God hates homosexuals. Should he have to do so?

Most people would agree that, in each of these examples, the business owners should be free to "discriminate" in order to avoid violating their consciences and creating messages that are reprehensible to them. So, while we tend to agree that discrimination is wrong, we also tend to recognize that sometimes there are

exceptions to that general rule. And one such exception occurs when a business owner is asked to engage in conduct, or create a message, that is at odds with their deep-seated convictions of right and wrong. Or, at least, that should be an exception.

Sadly, we are increasingly seeing a tendency to refuse to grant these types of exceptions to people of faith when their religious convictions prevent them from offering services that would legitimize or promote what they believe is sinful behavior. For example, as will be discussed in more detail later in this paper, a wedding photographer was recently found to have unlawfully discriminated because she would not attend their commitment ceremony, provide photography services, and create a "wedding" photo memory book for a same-sex couple. The only reason she declined to provide her services, however, is because her church teaches that marriage should only be between a man and a woman and it would be wrong for her to use her artistic talents to promote other types of "marriages." There are numerous examples of similar outcomes for people of faith whose consciences prevent them from participating in, or promoting, what they regard as sinful activity. They are being compelled by the government to violate their consciences and go against their religious beliefs.

Consequently, one of the greatest threats today to religious freedom and people of faith is the rapid proliferation of laws prohibiting discrimination on the basis of sexual orientation and gender identity in places of public accommodation, housing, and employment. Alliance Defending Freedom has been involved with a number of these cases in which complaints have been brought pursuant to one of these nondiscrimination ordinances. This paper first summarizes the current status of those cases, and then describes the cases that have already concluded.

Current Cases

I. Elane Photography (Jonathan and Elaine Huguenin).

- Case Name: *Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013), *petition for cert. filed* (Nov. 8, 2013) (No. 13-585).

- New Mexico Supreme Court Decision is available at: http://www.adfmedia.org/files/ElanePhotoNMSCopinion.pdf.

- Petition for Certiorari is available at: http://www.adfmedia.org/files/ElanePhotoCertPetition.pdf.

- Alliance Defending Freedom Resource Page is available at: http://www.adfmedia.org/News/PRDetail/5537.

In New Mexico, Elaine and Jonathan Huguenin operated a company called Elane Photography, which specialized in wedding photography. Elaine, an artist with a degree in photography, is the lead photographer for the company, and she employs a photojournalistic style in her work, using her pictures to tell stories for her clients.

In going about their work, both Elaine and Jonathan were ever-mindful about the messages communicated through the photographs Elaine creates. Company policy ensured that they will never tell a story or convey a message contrary to their belief system. As believing Christians, Elaine and Jonathan believe the Bible's teaching that marriage is the union of one man and one woman.

In September 2006, Vanessa Willock asked Elaine to create pictures of her same-sex commitment ceremony. Elaine believed that the pictures she would create at the event would tell a story of marriage at odds with her religious convictions and what she believes to be God's plan for marriage. As a result, she politely declined.

Interestingly, Elaine would have gladly provided other types of photography services to a customer who identified as homosexual. For instance, she would have happily taken a portrait of such a customer, or filmed a graduation ceremony. But what Ms. Willock and her partner wanted Elaine to do was to participate in, and promote, their homosexual marriage. She was being asked to photograph the ceremony and create a memory book to tell the 'love story' of their wedding. To do that, Elaine would have to violate her conscience. She would have to act in ways her religious beliefs told her were wrong and promote a message at odds with what her faith told her was right. Elaine would have to attend a ceremony that her religious tradition teaches is immoral. She would have to pose the couple intimately. She would have to instruct them how to gaze romantically and lovingly into one another's eyes, how to caress a cheek or hand intimately and how to kiss—tenderly in this pose, passionately in that one—so as to get the perfect shots. Then, Elaine would have to take these photos, edit them, and create a memory book for their wedding, portraying it as a joyous event, when Elaine believed it was sinful and saddened God. She was not being asked to merely take a photograph of a person who identifies as homosexual, something she gladly would have done. She was being asked to participate in and use her talents to create speech that promoted something that she believed was sinful. This was far different than, say, serving someone at a lunch counter. And so Elaine declined to participate. Elaine said "no."

Ms. Willock readily found another photographer eager to help her celebrate her day, and that photographer charged less money than Elaine did to tell the story of the ceremony. But, sadly, this was not enough for Ms. Willock. Unwilling to let the Huguenins be free to conduct themselves consistently with their religious

beliefs, Ms. Willock sued the company under the New Mexico Human Rights Act, alleging unlawful discrimination on the basis of sexual orientation.

The New Mexico Human Rights Commission used the Act to punish Elaine and Jonathan for declining to photograph Ms. Willock's ceremony, and ordered them to pay nearly $7,000 in attorneys' fees to Ms. Willock's attorney. The New Mexico Supreme Court upheld the decision, ruling that the Huguenin's religious rights, guaranteed by the Constitution, must yield to the state's antidiscrimination law. One of the judges wrote that, while he understood that all the Huguenins wanted was to be let alone to live their lives according to their faith, they must surrender their right to freely exercise their religion as "the price of citizenship."

Alliance Defending Freedom attorneys have asked the U.S. Supreme Court to review the case.

Elaine and Jonathan spent almost a quarter of their young lives—all while trying to make a living and raise a family—trying to vindicate First Amendment rights that were given pride of place in our nation's founding and still-governing documents. And yet the courts ruled against them, ruling that their rights to act according to their faith and be faithful to their understanding of what God wants them to do are not as important as the state antidiscrimination law.

II. Masterpiece Cakeshop (Jack Phillips).

- Case Name: *Craig and Mullins v. Masterpiece Cakeshop, Inc. and Jack Phillips*.
- Jack Phillips' summary judgment motion and memorandum are available at: http://www.adfmedia.org/files/MasterpieceSJBrief.pdf.
- The ruling against Jack Phillips and Masterpiece Cakeshop is available at: http://www.adfmedia.org/files/MasterpieceDecision.pdf.
- Notice of appeal to the Colorado Civil Rights Commission is available at: http://www.adfmedia.org/files/MasterpieceAppeal.pdf.
- Alliance Defending Freedom media page available at: http://www.adfmedia.org/News/PRDetail/8700.

Jack Phillips has been using his artistic talents to design and create wedding cakes and baked goods for the last 40 years. Twenty years ago, he started Masterpiece Cakeshop, and since that time he has served thousands of customers in Colorado without regard to race, religion, sexual orientation, or any other status.

In addition to being a baker, Jack is a committed Christian who believes that he should live consistently with what he believes to be true. As a consequence, Jack seeks to operate his business in accordance with his faith, even when it costs him.

For instance, he will not bake any Halloween-themed goods, even though Halloween typically provides bakeries increased revenue-making opportunities, because he believes that Christians should not promote Halloween. And he closes his store on Sunday, because he wants his employees to be able to go to church if they so desire.

While Jack serves all people, because of his faith he will not serve all events. Specifically, he won't serve any event that conflicts with his faith. That's why he won't serve Halloween-themed parties. It's also why he will not create wedding cakes for same-sex weddings. Jack believes that God designed marriage to be the union of a man and a woman, and that all other sexual unions are sinful. Jack further believes that for him to promote a different kind of union as a "marriage" would cause him to displease God.

In July 2012, Charlie Craig and David Mullins asked Jack Phillips, owner of Masterpiece Cakeshop, to make a wedding cake to celebrate their same-sex ceremony. In an exchange lasting about 30 seconds, Phillips politely declined, explaining that he would gladly make them any other type of baked item they wanted but that he could not make a cake promoting a same-sex ceremony because of his faith. Craig and Mullins, now represented by the American Civil Liberties Union, immediately left the shop and later filed a complaint with the Colorado Civil Rights Division.

After the Civil Rights Division found probable cause, the complaint was heard by an administrative law judge, who found in favor of Craig and Mullins and against Jack Phillips.

Jack Phillips legal defense team, which includes attorneys from Alliance Defending Freedom, have filed an appeal with the Colorado Civil Rights Commission.

III. Arlene's Flowers (Barronelle Stutzman).

- Case Name: *State of Washington v. Arlene's Flowers*.
- Washington State's complaint against Arlene's Flowers is available at: http://www.adfmedia.org/files/ArlenesFlowersAGcomplaint.pdf.
- Arlene's Flowers' countersuit is available at: http://www.adfmedia.org/files/ArlenesFlowersCountersuit.pdf.
- The ACLU's complaint against Arlene's Flowers is available at: http://www.adfmedia.org/files/ArlenesFlowersACLUcomplaint.pdf.
- Alliance Defending Freedom media page available at: http://www.alliancealert.org/tag/zz-state-of-washington-v-arlenes-flowers/.

Sixty-eight-year-old Barronelle Stutzman, the sole owner of Arlene's Flowers in Richland, WA, has for her entire career served and employed people who identify as homosexual. One of her longtime clients, whom she had served for nine years while knowing that he identified as homosexual, asked her to design the floral arrangements for his same-sex "wedding." Ms. Stutzman had always considered him a friend. She responded by telling him that, while he knew she loved him, her religious convictions would not allow her to design floral arrangements that would support same-sex "marriage." He responded by bringing suit against her, as did the State of Washington. Both suits allege violations of Washington's state nondiscrimination law.

Alliance Defending Freedom, which represents Ms. Stutzman, filed a countersuit on her behalf against the State of Washington. The countersuit argues that the nondiscrimination law, as applied to Ms. Stutzman, is unconstitutional because it forces her to act contrary to her religious convictions and also to promote a message that she does not want to speak.

This matter is currently before the Benton County, WA, Superior Court. There will likely be a decision sometime in 2014. No matter which side wins in the state superior court, the matter will likely be appealed and the litigation will likely drag on for years.

IV. Hands On Originals (Blaine Adamson).

- Case Name: *Baker, for Gay and Lesbian Services Organization v. Hands On Originals*.
- Complaint alleging discrimination is available at: http://www.adfmedia.org/files/HOOcomplaint.pdf.
- Hands On Originals' response is available at: http://www.adfmedia.org/files/HOOresponse.pdf.
- Determination of Probable Cause is available at: http://www.adfmedia.org/files/HOOdetermination.pdf.
- Alliance Defending Freedom resource page is available at: http://www.adfmedia.org/News/PRDetail/5454.

Blaine Adamson is the managing owner of Hands On Originals, a printing company in Lexington, Kentucky that specializes in producing promotional materials. Blaine is a believing, practicing Christians who strives to live consistently with Biblical commands. He believes that God commands obedience in all areas of his life, and he does not distinguish between conduct in his personal life and his actions as a business owner. As a result, he strives to avoid using his

company to design, print, or produce materials that convey messages or promote events or organizations that conflict with his sincerely held religious convictions.

Hands On Originals has served customers that Blaine knew identified as homosexual, and it has employed (and currently employees) persons who identify as homosexual. But Blaine does not want to produce printed materials that promote homosexual behavior. Doing so conflicts with his sincerely held religious beliefs about sex and sexuality.

In March 2012, the Gay and Lesbian Services Organization ("GLSO"), an advocacy organization that promotes same-sex relationships and homosexual conduct, asked Blaine and his company to print promotional shirts for the Lexington Pride Festival, which, like GLSO, celebrates same-sex relationships and homosexual conduct. Blaine politely declined the request because he knew that the content of those shirts and the event that they would promote would communicate messages clearly at odds with his religious beliefs.

Blaine nevertheless did offer to connect GLSO with another company that would print the shirts for the same price that Hands On Originals would have charged. Yet this courtesy was not enough for the GLSO and its members. They believed that Blaine and his business should be punished for his objection to their messages. As a result, the GLSO filed a discrimination complaint with the Lexington-Fayette Urban County Human Rights Commission, alleging that Hands On Originals unlawfully discriminated on the basis of sexual orientation.

As with the previously discussed cases, this discrimination complaint has nothing to do with ensuring access to services. GLSO could get its shirts printed, but still decided to persecute Hands On Originals for disagreeing with its message. Indeed, soon after filing its nondiscrimination complaint, GLSO filled its shirt order with little trouble when another company offered to print the shirts for free. Nevertheless GLSO continues—to this day—to press its claim against Blaine and his company by not dismissing its complaint.

To add injury to insult, upon filing its discrimination complaint, GLSO and its allies began a public campaign against Hands On Originals in the community, which included, among other things, a page on the group's website and a "Boycott Hands On Originals" Facebook page. As a result of the public pressure created by GLSO, some of Hands On Originals' large customers—such as the University of Kentucky, the Fayette County Public School System, and the Kentucky Blood Center—have publicly stated that they are placing a hold on further business with Blaine and his company, resulting in a significant loss of business for Hands On Originals. This unfortunate and unwarranted development has jeopardized the livelihood of Blaine's many employees and the future of his company.

In November 2012, the Commission found probable cause to believe that Hands On Originals violated the local nondiscrimination ordinance. By simply striving to conduct himself consistently with his faith, Blaine now faces a legal struggle that threatens to approximate in time and pain the one already endured by the Huguenins in New Mexico. The travails of Hands On Originals illustrates that living in accordance with one's religious belief is an increasingly expensive right to exercise in these times.

V. Aloha Bed & Breakfast (Don and Phyllis Young).

- Case Name: *Cervelli v. Aloha Bed & Breakfast*, No. 11-1-3103-12 ECN (Haw. Ct. of App. filed May 9, 2013).
- Alliance Defending Freedom media page is available at: http://www.alliancealert.org/tag/zz-cervelli-v-aloha-bed-breakfast/.

Phyllis Young is a Christian with sincerely held religious beliefs, which are shaped by both the Bible and her Church's teaching. She resides with her husband in their family home in Honolulu, HI. It has 1,926 square feet and 10 ½ rooms—4 bedrooms, 2 ½ bathrooms, a family room, dining room, living room, and kitchen. The Youngs have owned this house for 35 years. It is their family home, where they raised their children and are visited by their grandchildren.

Phyllis sometimes rents a room, or two or three, of her family home, where she resides. Because of her sincerely held religious beliefs, she does not allow unmarried opposite-sex couples or same-sex couples to rent a room with a single bed together. Phyllis believes that sexual intercourse is only proper in opposite-sex marriage, and so it is immoral for opposite-sex, unmarried couples or same-sex couples to engage in sexual behavior. She would not even allow her adult daughter to share a room with her live-in boyfriend when they visited. This might seem old-fashioned to some. But Phyllis believes what the Bible and the Catholic Church teach about sexual morality.

Phyllis calls her rental business "Aloha Bed & Breakfast." But Aloha has no checking account. All payments for rooms in Aloha are made payable to Phyllis. Unlike hotels, Aloha has no employees. There is no clerk, or office into which members of the public enter. In fact, people may not enter Phyllis's home without her permission. She generally keeps her door locked, just like other homeowners. No one has ever even knocked on her door and asked to stay in Aloha. "Aloha" is not even listed in the phone book. The residence's listing is under the name of Don and Phyllis Young. When someone phones, Mrs. Young answers with some variation of, "Hello, this is Phyllis."

At any given time, Mrs. Young will rent between one and three rooms in her home. She gives her guests a key that opens all doors to her home. Guests use Mrs. Young's personal washing machine and dryer. She, her husband, and her guests all share the living space of the house, including the family room, bathrooms and kitchen. The Youngs and their guests "rub shoulders" in the house. For instance, sometimes they find themselves relaxing in the family room at the same time. Mrs. Young stores some of her personal belongings in the closet of each room she rents to her guests. She also allows guests to use her personal computer, located in her own bedroom. Because of the intimate living arrangements Mrs. Young shares with her guests, she is selective in determining who she will welcome into her home. And she will not allow couples to stay in Aloha if allowing them to do so would violate her sincerely held religious convictions.

Diane Cervelli and Taeko Bufford, a couple who identify as "lesbian," asked to rent a room with a single bed in Mrs. Young's home. Mrs. Young declined because allowing a same-sex couple to share a room with only one bed in her home violates her sincerely held religious beliefs. Ms. Cervellie and Ms. Bufford complained to the Civil Rights Commission, which found probable cause that Mrs. Young had violated the state nondiscrimination law, which prohibits discrimination on the basis of sexual orientation.

Mrs. Young's attorneys, which includes attorneys from Alliance Defending Freedom, appealed that decision to the state trial court. On April 15, 2013, the trial court judge found that Mrs. Young had engaged in unlawful discrimination when she declined to rent a room—in her own home!—to a same-sex couple. The case has been appealed to the Hawaii intermediate Court of Appeals.

The trial court's ill-considered ruling, if permitted to stand, will prevent Phyllis and others from choosing the people they rent rooms to in their own homes. If Phyllis does not have this freedom, she will be forced to stop renting her property. This will likely prevent Phyllis and her husband from meeting their monthly mortgage obligations, thus forcing them to give up the home in which they raised their children.

VI. Sweet Cakes By Melissa (Aaron and Melissa Klein).

Melissa and Aaron Klein own Sweet Cakes by Melissa, a bakery located in Gresham, Oregon. They declined, because of their religious beliefs, to bake a wedding cake for a same-sex "wedding." The couple filed a complaint against them, which is currently pending before the Oregon Bureau of Labor and Industries ("BOLI"). If it finds probable cause, the case will be turned over to an administrative law judge, who could then assess civil penalties against the Kleins.

The commissioner of BOLI, Brad Avakian, has been quoted as saying that "The goal is never to shut down a business. The goal is to rehabilitate."

VII. Liberty Ridge Farm (Cynthia Gifford).

- Case Name: *Erwin v. Gifford and Liberty Ridge Farm*. "Allied Attorney" Jim Trainor is the Giffords' attorney. He is being assisted by Alliance Defending Freedom attorneys.

Liberty Ridge Farm, in Schaghticoke, NY, is the home of the Gifford family. It is a working farm that has been in the family for many years, and the main structure on the property is where the Giffords reside, raise their children, and engage in the private affairs of family life.

The Gifford family also chooses to allow people on their property for certain select events on given days at given times. Their home is not opened indiscriminately like a hotel, and although visitors pay for certain events held on the property, the Giffords determine the types of activities they will or will not allow.

The family holds deeply-held religious beliefs, and one of these beliefs is that God created the design for marriage, which is one man and one woman in a lifelong and exclusive relationship. The Giffords do not deny access to the Farm to any visitor on the basis of race, religion, sex, and other factors including sexual orientation. Everyone is welcome to attend any scheduled events on their property. They would even permit a same-sex couple to hold a reception on their property. But they will not allow same-sex a "marriage" ceremony, which violates their religious beliefs.

Melissa Erwin and Jennifer McCarthy are a same-sex couple who wanted to hold their "wedding" at Liberty Ridge Farm. The Giffords declined to allow them to do so because of their religious beliefs. Ms. Erwin and Ms. McCarthy then filed a complaint with the New York Division of Human Rights.

There was an evidentiary hearing in November 2013 before an administrative law judge. The ALJ asked both sides for briefs after that hearing. These briefs were submitted on January 7, 2014. Jim Trainor argues in his brief that Liberty Ridge Farm does not fit within the definition of public accommodation, and also that the Farm did not decline provide services because of the sexual orientation of the complainants but rather because of the Giffords' beliefs about marriage.

Concluded Cases

In addition to the above, ongoing cases, Alliance Defending Freedom has also been involved with a number of cases that have concluded.

VIII. Wildflower Inn (Jim and Mary O'Reilly).

- Case Name: *Katherine Baker and Ming-Lien Linsley, and Vermont Human Rights Commission v. Wildflower Inn*, Docket No. 183-7-11

- Alliance Defending Freedom media page is available at: http://www.adfmedia.org/News/PRDetail/7601.

In the bucolic Vermont countryside, Jim and Mary O'Reilly operate the Wildflower Inn, a family owned bed-and-breakfast. For many years operating in a State that legally recognizes same-sex unions, the O'Reillys, a committed Catholic family, had an established business practice when approached by anyone asking the inn to host an event celebrating a same-sex marriage or civil union. When presented with such a request, Jim would honestly disclose his deeply held religious conviction that marriage is the union of one man and one woman, while nevertheless maintaining that the inn will host ceremonies or receptions for same-sex unions because that is what the State's nondiscrimination law requires. Jim would disclose this information about his religious convictions because he felt compelled to be honest with potential customers. This practice was approved by the Vermont Human Rights Commission in 2005, which concluded that there were "no reasonable grounds to believe that Wildflower illegally discriminated" merely by Jim's communicating his beliefs to a potential customer who inquired about celebrating a civil union on the property.

In 2011 the ACLU teamed up with the Human Rights Commission, the same entity that had blessed the O'Reillys' conduct just six years before, in a lawsuit against Wildflower. The lawsuit began when a former Wildflower employee falsely claimed that the inn would not allow a same-sex wedding reception. But the ACLU and the government did not merely challenge Wildflower's alleged unwillingness to host a same-sex reception; they directly attacked the O'Reillys' approved practice of honestly disclosing their religious beliefs about marriage to potential customers.

The O'Reillys' expression of their religious beliefs came at great cost. The real-world implications of a protracted legal battle with the government and the ACLU (and the prospect of paying the government's and the ACLU's attorneys' fees) threatened to bankrupt the O'Reillys and shutter the business they had worked so hard to build. Although the Commission agreed that the O'Reillys acted in good-faith reliance on its 2005 ruling, the government and the ACLU demanded that the O'Reillys pay $10,000 to the Commission as a civil penalty and $20,000 to a charitable trust set up by the ACLU's clients. Forced with the prospect of potentially losing their business, the O'Reillys relented and agreed to these terms in August 2012.

This case was not about access to services—the ACLU's clients were easily able to find a venue for their reception, and the Wildflower's business practice did not deny services to anyone, but merely disclosed the O'Reillys' relevant religious convictions. What the government and the ACLU really objected to was the

O'Reillys' mere mention of their views about marriage—views that conflict with the prevailing political orthodoxy in Vermont. For this, the government and ACLU insisted that the O'Reillys be punished. This case demonstrates the threat that nondiscrimination laws present to religious freedom—that those who disagree with the government's views about issues implicating a statutorily protected classification must pay dearly for the exercise of their constitutional rights.

IX. The Ocean Grove Camp Meeting Association.

- Case Name: *Bernstein v. Ocean Grove Camp Meeting Association*.
- Alliance Defending Freedom media page is available at: http://www.adfmedia.org/News/PRDetail/7717.

The Ocean Grove Camp Meeting Association was founded in 1869 by a small band of Methodist clergymen on the New Jersey shore. It is a religious association that provides a venue for religious services, including Sunday services, Bible studies, camp meetings, revival gatherings, gospel music programs, religious educational seminars, and other religious events. Upon its incorporation, the Association pledged that it would use its facilities for God's glory and would abstain from using them in any way "inconsistent with the doctrines, discipline, or usages of the Methodist Episcopal Church."

As part of its outreach programs to the community, the Association makes regular use of its privately owned, open-air Boardwalk Pavilion overlooking the Atlantic Ocean. Each day throughout the summer, the Association hosts overtly and exclusively religious events in the Boardwalk Pavilion, events ranging from Bible studies to worship services and revival meetings. All events held in the Boardwalk Pavilion are consistent with the religious beliefs and doctrines of the Association.

In 1997, the Association began operating a wedding ministry in many of its private places of worship, including the Boardwalk Pavilion. Because this ministry was a means of Christian outreach to the community, the Association permitted members of the public to have their weddings in the Boardwalk Pavilion.

In March 2007, Harriet Bernstein asked the Association if she could use the Pavilion for a civil-union ceremony with her same-sex partner, Luisa Paster. The Association sincerely believes, based on its interpretation of the Holy Bible and its reading of the Methodist Book of Discipline, that marriage is the uniting of one man and one woman. The Association also believes that homosexual behavior is incompatible with Christian teaching, and thus it does not condone that practice. Naturally, then, the Association denied the couple's request because the proposed use of the facility violated the Association's sincerely held religious beliefs.

In June 2007, the couple filed a discrimination complaint with the New Jersey Division on Civil Rights, alleging that the Association's denial of their

request amounted to unlawful discrimination under the New Jersey Law Against Discrimination. As is all too common, the Division agreed, concluding in October 2012 that the Association had violated the State's nondiscrimination law, despite the fact that the Pavilion was a place of religious worship used by a religious organization.

The complaining couple neither suffered nor sought any monetary damages. Nor were they left without a suitable venue for their event, as evidenced by the fact that they held their civil-union ceremony on September 30, 2007, on a fishing pier in Ocean Grove. This case, then, like the others discussed, was not about a lack of access to services or facilities.

Instead, the couple filed their complaint to compel a religious organization to act in a manner that would violate core tenets of its religious faith. Regrettably, the government permitted the couple to use the nondiscrimination laws to prevent the Association from operating its programs and activities consonant with its religious faith.

X. Julea Ward.

- Case Name: *Ward v. Wilbanks*.
- Sixth Circuit opinion available at: http://www.adfmedia.org/files/WardAppellateDecision.pdf.
- Alliance Defending Freedom media page is available at: http://www.adfmedia.org/News/PRDetail/141.

Julea Ward was enrolled as a student in a graduate counseling program at Eastern Michigan University ("EMU"). As part of a practicum course, Julea was assigned a potential client seeking assistance for a same-sex relationship. Julea knew that she could not affirm the client's relationship without violating her religious beliefs about extramarital sexual relationships, so she asked her supervisor how to handle the matter. Consistent with ethical and professional standards regarding counselor referrals, Julea's supervisor advised her to refer the potential client to a different counselor. Julea followed that advice. The client was not in the least negatively impacted, and indeed never knew of the referral.

Shortly thereafter EMU informed Julea that her referral of the potential client violated the American Psychological Association's nondiscrimination policy, which mirrors many nondiscrimination laws enacted across the country. EMU also told Julea that the only way she could stay in the counseling program would be if she agreed to undergo a "remediation" program, the purpose of which was to help her "see the error of her ways" and change her "belief system" as it related to providing counseling for same-sex relationships. Julea was unwilling to violate or

change her religious beliefs as a condition of getting her degree, and therefore she refused "remediation."

At a subsequent disciplinary hearing, EMU faculty denigrated Julea's Christian views and asked several uncomfortably intrusive questions about her religious beliefs. Among other things, one EMU faculty member asked Julea whether she viewed her "brand" of Christianity as superior to that of other Christians, and another engaged Julea in a "theological bout" designed to show her the error of her religious thinking. Following this hearing, in March 2009, EMU formally expelled Julea from the program, basing its decision on the APA's nondiscrimination policy. At that time, Julea had been enrolled in the counseling program for three years and was only 13 quarter hours away from graduation.

Julea filed suit against EMU officials. After the trial court dismissed her claims, Julea won a unanimous victory from the Sixth Circuit Court of Appeals. When ruling in Julea's favor, that court noted that "[t]olerance is a two-way street," for if it were otherwise, nondiscrimination measures would "mandate[] orthodoxy, not anti-discrimination."

The abuse of religious liberty in the name of "tolerance" that the Sixth Circuit diagnosed is the same abuse our clients regularly suffer, all over this country, and it is visited upon them by the very nondiscrimination laws that, ironically enough, purport to protect the religious from discrimination.