



## **A TALE OF TEN CASES**

### **Rights of Conscience Cases Arising in the Context of Nondiscrimination Laws**

**Alliance Defending Freedom**

**April 14, 2014**

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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

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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 immoral 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 a same-sex commitment ceremony, provide photography services, and create a “wedding” photo memory book for the same-sex couple. She only declined to provide her services, however, 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 incompatible with the tenets of their faith. 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>.

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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

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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 asked the U.S. Supreme Court to review the case. Sadly, the High Court declined to review it, which means Elaine's legal fight is at an end. Her right to freely practice her religious faith in her business has been taken away, causing her to close her photography business.

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. 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/>.
- Link to 60 second video "teaser" explaining what happened to Barronelle is available at: <http://www.youtube.com/watch?v=b1pM7LdyTc>
- Link to full 7 minute video explaining what happened to Barronelle is available at: <http://www.youtube.com/watch?v=MDETkcCw63c>

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Sixty-eight-year-old Barronelle Stutzman, the sole owner of Arlene's Flowers in Richland, WA, has for her entire 40-year 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." Barronelle 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. Interestingly, her friend sued her in her personal capacity, so it isn't just her business that is at stake. If Barronelle loses, she may lose not just her business but also her house and her other earthly possessions.

Barronelle cannot be considered a "bigot" in any sense of the word. She has both served and employed everyone equally her entire career. Barronelle's decision to decline to provide flowers for a same-sex "wedding" was not made because of the person requesting the service but because of the event itself. Barronelle believes the Bible says marriage is only between a man and a woman, and she believes it would be wrong for her to use her talents to promote alternate types of "weddings."

Alliance Defending Freedom, which represents Barronelle, 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.

Ultimately, this case is not about bigotry. Barronelle knew of the plaintiffs' relationship; for nine years she provided flowers that she knew they were sending to each other; but, when it came to marriage, that was the line. As Barronelle will tell you, the Bible says that marriage represents the relationship of Christ and His Church. It is a sacred covenant. And Barronelle believes that God, who established that covenant, gets to say what is, and what is not, a marriage. Barronelle believes that if she were to provide flowers for a same-sex "wedding," she would be saying that what God has said is a lie. She cannot do that.

No, what this case is about is whether the government can force someone like Barronelle to use her artistic abilities to create the government's preferred message, that a same-sex "marriage" is a marriage, when she does not want agree with that message nor want to speak that message. It is simply not necessary for the government to force Barronelle to violate her religious faith—not when there are three pages of florists in her city's Yellow Pages who could have served this couple. Indeed, the plaintiff-couple suing Barronelle have admitted that they received enough offers from florists for free service that they could do twenty weddings. But that wasn't good enough. No: what the government and the plaintiff want is for Barronelle to be forced to violate her conscience and act contrary to her faith. They

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believe that it is the government's job to coerce everyone to walk lock-step in line with political correctness, thereby forcing people of faith to embrace things, and celebrate things, that their faith teaches them are immoral and wrong.

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.

**III. 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.

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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.

**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 Christian 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

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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

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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.

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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

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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.*

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- 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

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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

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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.

# IDAHO HUMAN RIGHTS COMMISSION -- 2014

## ***Agency Overview***

The Idaho Human Rights Commission was created by the Idaho Legislature in 1969. The act has been amended several times over the years, but the purposes of the act as set forth in Idaho Code 67-5901(2) remain unchanged: "To secure for all individuals within the state freedom from discrimination . . . and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state."

Currently the commission has statutory authority to investigate complaints of discrimination in education, employment, real estate transactions, and public accommodations based on race, color, religion, national origin, and sex. In employment, housing, and public accommodations, it handles disability discrimination claims. Claims of age discrimination, for those who are 40 years of age or older, are processed only in employment cases. There are nine commissioners who are appointed by the Governor, representing labor, industry, and the ethnic and geographic diversity of Idaho. The commission has one office in Boise, and a staff of 10 FTEs.

## **Core Functions/Idaho Code**

### **Administrative case processing. Idaho Code 67-5901, 67-5906, 67-5907, and 67-5908**

The primary work of the commission is to investigate claims of discrimination and to advise the parties on whether there is probable cause to believe that illegal discrimination has occurred. The administrative complaint must be filed within one year of the alleged unlawful discrimination. Idaho law makes the administrative filing a prerequisite to a case being filed in court. A court claim must be filed by a private party within 90 days of the commission's issuance of administrative closure. The commission contracts with the Equal Employment Opportunity Commission to handle federal discrimination claims within the state of Idaho. The commission also has authority to file claims in court on behalf of victims of discrimination.

### **Information and referral. Idaho Code 67-5906 (9)**

The commission frequently is contacted by people in difficult situations that fall outside the scope of the commission's statutory authority. In each case, the intake officer attempts to direct the person to a resource that will be able to provide more direct assistance. The commission intake staff also receive many contacts from people who could file a formal administrative complaint with the commission, but do not want to do so at that particular point in time. Intake staff will work with them to help them resolve their problems on their own, without the necessity of filing an administrative complaint.

### **Education about discrimination and the law. Idaho Code 67-5906 (9), (10) and (11)**

Commission staff offer seminars, workshops, technical assistance, and training programs to help Idahoans understand discrimination law and to be able to resolve discrimination disputes on their own. The commission also has the responsibility to inform the Governor and the Legislature of any recommendations it may have for legislative or other action to effectuate the purposes and policies of the anti-discrimination law. Most of the statutory changes that have been made over the years to the Idaho Human Rights Act have come, at least in part, from commission efforts to fulfill this responsibility. Also, the commission has taken public stands on issues before the Legislature and other bodies that would impact human rights within the state.

## **Revenue:**

Revenue comes from a federal contract with the EEOC, and the Department of Labor Penalty and Interest Fund and Employment Security Special Administration Fund.

Revenue	FY2011	FY2012	FY2013	FY2014	Fy2015
	\$832,900	799,200	1,021,800	1,035,700	1,052,400

**IDAHO HUMAN RIGHTS COMMISSION**  
**Profile of Cases Managed and/or Key Services Provided FY2014**

Cases Managed and Key Issues Raised	FY 2011	FY 2012	FY2013	FY2014
Total of administrative cases filed	524	491	463	442
Issues most frequently raised in administrative cases*				
Discharge (actual or constructive)	70%	68%	69%	64%
Sexual harassment	19%	16%	16%	15%
Harassment/Intimidation**	27%	24%	27%	31%
Failure to accommodate a disability	13%	18%	22%	17%
Terms & conditions of employment	21%	23%	19%	17%

\*Some cases raise more than one issue, so the percentages may total more than 100%

\*\* Charges allege harassment or intimidation based on race, sex, color, religion, national origin, age, or disability.

In 2014, the commission resolved 460 cases of discrimination (not including public accommodation cases), the vast majority of which will not go into either state or federal court.

Case Resolutions	2011	2012	2013	2014
Total of administrative cases resolved	509*	536*	468	460
No probable cause findings	71.7%	70%	67.5%	74%
Mediations, settlements, successful conciliations	18.3%	17.5%	19.4%	17%
Conciliation failures	2.3%	1.1%	1.6%	.4%
Non-jurisdictional; Notice of Right to Sue without findings; other**	7.7%	11.4%	11.5%	7.8%

\*Informal processing of public accommodation cases not included.

\*\*Other includes failure to cooperate, withdrawal without benefits, and failure to locate.

Individual benefits to complainants in 2014, including non-monetary, monetary, compensatory, and punitive totaled \$1,080,111.84. In FY2014, 95% of Respondents and Complainants who returned the survey expressed satisfaction with the Commission's work. Incalculable savings to the parties, the state of Idaho, and the state and federal judicial system are realized because of the administrative process developed by the IHRC, which avoids litigation in a vast number of cases.

Investigators and an intake officer field intake calls during all hours of operation.

Intakes	FY2011	FY2012	FY2013	FY2014
Total number of calls to IHRC*	1987	2050	2121	2188
Average per month	166	170	176	182
Total number of charges drafted	481	438	450	471
Average per month charges drafted	40	36.5	37.5	39.2

\*Numbers do not reflect charges received from other sources i.e.: attorneys, complainants on their own behalf, and from EEOC.

# IDAHO HUMAN RIGHTS COMMISSION: FY2014 Breakdown by basis

Many charges allege more than one basis so the percentage adds to more than 100%

Basis State/ Federal	Fiscal Year	Total	Breakout	Breakout	Breakout	Breakout	
<b>Total Claims Filed</b>	<b>FY2014</b>	<b>442</b>	<b>Employment</b>	<b>Public Accom.</b>	<b>Housing</b>	<b>Education</b>	
	FY2013	463	<b>414 (94%)**</b>	<b>20 (4.5%)</b>	<b>7 (1.5%)</b>	<b>1 (.2%)</b>	
	FY2012	491					
	FY2011	524					
<b>Disability</b>	<b>FY2014</b>	<b>185 (42%)*</b>			<b>Discharge</b>	<b>Accommodation</b>	
	FY2013	204 (44%)			<b>130 (70%)**</b>	<b>73 (39%)**</b>	
	FY2012	188 (38%)			136 (66%)	101 (49%)	
	FY2011	190 (36%)			59 (31%)	90 (48%)	
					125 (65%)	69 (36%)	
<b>Sex</b>	<b>FY2014</b>	<b>156 (35%)*</b>	<b>Female</b>	<b>Pregnancy</b>	<b>Male</b>	<b>Sexual Orientation</b>	<b>Gender Identity</b>
	FY2013	168 (36%)	<b>100 (64%)**</b>	<b>14 (9%)**</b>	<b>35 (22%)**</b>	<b>5 (3%)**</b>	<b>2 (1%)</b>
	FY2012	176 (36%)	104 (62%)	24 (14%)	40 (24%)		
	FY2011	231 (44%)	109 (62%)	21 (12%)	46 (26%)		
			141 (61%)	33 (14%)	57 (24%)		
<b>Retaliation (all bases)</b>	<b>FY2014</b>	<b>126 (29%)*</b>					
	FY2013	131 (28%)					
	FY2012	124 (25%)					
	FY2011	157 (25%)					
<b>Age</b>	<b>FY2014</b>	<b>78 (18%)*</b>					
	FY2013	103 (22%)					
	FY2012	120 (24%)					
	FY2011	112 (21%)					
<b>National Origin</b>	<b>FY2014</b>	<b>47 (11%)*</b>		<b>Mexican</b>	<b>Hispanic</b>	<b>Other</b>	
	FY2013	55 (12%)		<b>16 (34%)**</b>	<b>10 (21%)**</b>	<b>21 (44%)**</b>	
	FY2012	55 (11%)		11 (20%)	29 (53%)	15 (27%)	
	FY2011	71 (14%)		18 (33%)	17 (31%)	20 (36%)	
				31 (44%)	19 (27%)	21 (29%)	
<b>Race/ Color</b>	<b>FY2014</b>	<b>22 (5%)*</b>		<b>Black</b>	<b>Asian/other</b>	<b>White</b>	
	FY2013	27 (6%)		<b>13 (59%)**</b>	<b>2 (9%)**</b>	<b>7 (32%)**</b>	
	FY2012	34 (7%)		13 (48%)	4 (15%)	10 (37%)	
	FY2011	38 (7%)		16 (47%)	7 (20%)	11 (32%)	
				25 (66%)	2 (5%)	11 (29%)	
<b>Religion</b>	<b>Fy2014</b>	<b>19 (4%)*</b>					
	FY2013	22 (5%)					
	FY2012	28 (6%)					
	FY2011	35 (6%)					

\*percentage of all claims filed

\*\* breakout: percentage of claims filed under individual bases

## ***Performance Highlights***

In 2014, 460 cases of discrimination were resolved, the vast majority of which will not go into either state or federal court.

During FY2014, commission staff filled 23 requests for technical assistance presentations, primarily on the issues of harassment in the workplace, disability discrimination, and creating and maintaining a respectful workplace. The commission continues to improve its website as a source of information to the public about discrimination law, as well as information about upcoming events related to human rights issues. The commission presented Idaho's official ceremony to celebrate Martin Luther King/Idaho Human Rights Day once again in the Statehouse rotunda with Lt. Governor Little delivering the proclamation; and it co-sponsored the celebration of the 50<sup>th</sup> Anniversary of the 1964 Civil Rights Act. Governor Otter reappointed three commissioners.

As a result of economic circumstances, the Legislature approved legislation that merged the commission with the Idaho Department of Labor, which took effect on July 1, 2010. In June 2010, the commission moved to the Department of Labor's Main Office at 317 W. Main Street, Boise, Idaho. The Department of Labor provides administrative and logistical support, while the commission retains independence over discrimination disputes as established when the agency was created 45 years ago.

**Disability Discrimination in Places of Public Accommodation.** The Human Rights Act also prohibits discrimination against people with disabilities in places of public accommodation. Although federal law already required accessibility, the Legislature chose to establish a state law enforcement system that would be more effective than relying on the federal processes. In response, the commission has an informal resolution system designed to address accessibility issues quickly and easily whenever possible. Complainants are offered the alternative of filing an informal or formal complaint.

### **For More Information Contact**

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Mr. Chairman and members of the committee.

My name is Juli Stratton and I live in Post Falls. I am here today to support HB2.

I am a wife, a daughter, a neighbor, a sister, a college graduate, a volunteer, a mentor and a leader. I am so much more than my sexual orientation.

My wife, Amy, and I have the same conversations that every other couple has. We talk about what we are having for dinner, who is going to walk the dogs, who is going to shovel the driveway, and <sup>we</sup> have ~~us~~ parties and barbeques with our neighbors. We call Idaho our home. I want to be proud of living in this state. I want to live in a state that fully values who I am and who will protect Amy and me from discrimination.

I want to be evaluated on my job performance, my commitment to my community, on how I treat my family and friends, and how I support my local businesses. I want to be valued as a human being based on the person I am and what I contribute to my community and not on my sexual orientation or my gender identify. Passing HB2 would be a great step in showing me that you value me.

Please include my wife and me as full and equal citizens of this state.

Mr. Chairman and members of the Committee. Good morning.

My name is Emilie Jackson-Edney. I live and own property in Garden City, Idaho.

I am thrilled that you are giving me this opportunity to offer testimony in support of House Bill 2, and ask that you look into your hearts and your humanity to include Idaho's gay and transgender citizens in the Idaho Human Rights Act. Why? Because it's the right thing to do.

I am a second generation son....and daughter of this marvelous city and state. Much like many of you, I'm a parent. A son, Noah, and a daughter, Billy. 4 times a grand-parent, and my grand-daughter, Samantha will soon give birth to my first grand-son, Olin. I am a retired public employee following a 37-year supervisory career in civil engineering and construction management with a local highway agency. Most of the projects I've managed in my career have gone to improve the transportation infrastructure in this state. I am proud to have served a 6 year military obligation with the Idaho Army National Guard, honorably discharged with the rank of sergeant. I am a past Deacon in a fundamental Christian church. I'm a firm believer in the inherent worth of all God's children, and I attempt to live by the Golden Rule, as I'm sure many on this committee do, too. In my retirement, I am an educator, volunteer and community social justice activist. I'm a member of the Board of Directors of the Pride Foundation, a philanthropic community foundation with headquarters in Seattle. Oh...I almost forgot... I'm a transgender woman. As you can see from my introduction, I am so much more than this one aspect of myself.

Mr. Chairman. The sad reality of my lived gender is that I have been discriminated against in this state. Therefore, I speak compellingly from inside the experience, and not as a passionate observer. There are no anti-discrimination protections for someone like me in the Idaho Human Rights Act. I have no avenue of recourse against discriminatory acts against me, and neither do my brothers and sisters. One of the most egregious acts was by medical practitioners, which is unconscionable.

In my volunteer service, I facilitate a transgender support group. I hear the heart wrenching stories from people like Tyler, Salem, Elliott, Drew, DW and others who tell of the discrimination they have experienced in this state. I hear the stories of fear, despair, and a sense of hopelessness, from our transgender teenagers, from frightened parents, from transgender adult men and women, their spouses, and from our transgender elders. Events that have a major impact on a person's quality of life in this state, and their ability to sustain themselves financially or emotionally.

Mr. Chairman and members of the Committee. I beseech you to pass House Bill 2. For a better Idaho, please Add the 4 words. Nothing more. Nothing less.

Thank you.

Emilie Jackson-Edney  
6007 Hazelbrook Lane, Garden City, Idaho 83714

My name is Diane Terhune and I'm testifying before you today because I am the mother of a transgender child. That's not something I ever imagined I'd be saying, but that is my reality. Before I was married, I taught Sunday school and worked my way through college obtaining both a bachelor's and master's degree in education. Two years after I was married, my first child was born, a son. Having children has been the absolute greatest gift in my life because it taught me to love unconditionally. I was a stay-at-home mom for ten years so I could be there for my two children. When my littlest one started kindergarten, I went back to teaching. Life was good. I had everything I'd always wanted. I told everyone that my son was the best boy in the world.

Then things changed. My son came out to me shortly before his thirteenth birthday. He innocently told me that he thought his life would be easier if he had been born a girl. At that time, I wasn't really listening. Then after he turned thirteen, he told me that he was afraid of getting broad shoulders and a deep voice. Those were startling comments to hear coming from my child and they certainly got my attention. We immediately got him into counseling and I found out my child was transgender. At first I didn't even tell my husband because I didn't know how he'd react. Then when I finally told him, he became very depressed. He told me it wasn't so much about the loss of his dream of who our

child was to become; it was his fear about how our child was going to be able to get along in life. I expressed to him that those were my fears as well. My son now presents as my daughter and I can't bear the thought of my precious child being treated unfairly by anyone simply for being herself.

For those of you who think LGBT individuals don't need to be considered as a protected group because they choose their lifestyles, let me tell you that no one chooses this life because it's one of hardship. You lose friends and even family members who are afraid of things they don't understand. We don't exactly understand it either but I'm here to tell you that I love my child with all my heart. People like my daughter are human beings the same as you and I and just want the chance to live happy, productive lives. I don't regret the fact that my child is transgender. She is exactly the person she was always meant to be and I adore her. What I'm asking you here today is to give her, and all gay and transgender individuals, a fair chance of becoming productive citizens without fear of discrimination. I'd like to close with a quote from Galatians 3 verse 28 "there is neither male nor female: for you are all one in Christ Jesus."

Mr. Chairman, members of the committee...

My name is Cammie Pavesic and my family is 5<sup>th</sup> generation Idahoan. We settled with the first pioneers in Jefferson, Idaho. I spent my first years in eastern Idaho, in Pingry, Blackfoot, and Pocatello where my family owns a potato farm. We moved to Boise where I graduated from Capital High School. I attended both University of Idaho and Boise State. I currently live in Coeur d'Alene so I am from all of Idaho. I have Idaho values in my blood, bones, and genes. I work hard and pull myself up by my bootstraps from feeding the cows to owning 2 businesses including a family theater called Prairie Dog Productions. I am a community leader and volunteer. I have volunteered for organizations like Cancer Kids World Wide and the Treasure Valley United Way. I am not a second class citizen and should be treated as a valuable part of Idaho's community and heritage. I live work and love in this state. Please Mr. Chairman and Committee members, make my home state safe for me and my family by passing HB2.

Cammie Pavesic

1507 E Lakeside Ave

Coeur d'Alene, Idaho 83814

District 4