

SELECTED CONFLICTS BETWEEN RELIGIOUS LIBERTY AND SAME –SEX UNION RECOGNITION IN THE UNITED STATES

California: Assisted Reproduction Doctor

Shortly after the California Supreme Court redefined marriage, the court heard a case involving a doctor who had referred a woman in a same-sex couple to another doctor for artificial insemination because of his religious concerns about participating in the procedure.¹ The court held that the doctor could claim no religious exemption to the civil rights law under which he was sued because of the State's overwhelming interest in ending sexual orientation discrimination,² a policy one judge identified as emanating from the court's marriage decision.³

Massachusetts: Catholic Charities and Adoption

In the wake of the *Goodridge v. Department of Public Health* decision, Massachusetts Catholic Charities sought an exemption from State law requiring adoption agencies to make no distinctions on the basis of sexual orientation.⁴ Catholic Charities could not do so consistent with its religious mandate. The legislature refused the exemption and Catholic Charities had to withdraw from the adoption business.⁵ Any possible relief from the judiciary was clearly not feasible because of the *Goodridge* court's equation of parenting by same-sex couples and married couples.⁶

Massachusetts: Parental Objection to Curriculum

In a recent case, parents of young elementary school students objected to curriculum and classroom discussion meant to inculcate in the children the idea that there are no differences between the marriages of husbands and wives and those involving same-sex couples.⁷ A panel of the U.S. Court of Appeals for the First Circuit held that public schools "have an interest in promoting tolerance, including for the children (and parents) of gay marriages."⁸

Missouri: Social Work Student

A social work student was accused of violating her school's code of conduct when, for reasons of her faith, she refused to sign a letter to the State Legislature advocating adoptions by same-sex couples. After she filed suit, the university quickly settled and took corrective action to clear the student's name and make other restitution.⁹

New Jersey: Methodist Camp Association

In New Jersey, a Methodist Camp Association was denied part of its tax exemption when it declined to allow a portion of its property to be used for a civil union ceremony. The same-sex couples who wanted to use the property are also pursuing a discrimination complaint against the Association, and the Division on Civil Rights in the Attorney General's Office has found "probable cause" for continuing the action against the Association.¹⁰

New Jersey: eHarmony Online Dating

A homosexual man sued an online dating service because it did not offer an option for men seeking to date other men. The Division on Civil Rights of the New Jersey Attorney General's Office intervened in the lawsuit on the side of the plaintiff and the company opted to settle, agreeing to change the options on its site and to pay \$5,000 to the plaintiff and \$50,000 to the Division.¹¹

New Mexico: Wedding Photographer

In New Mexico, a wedding photographer was successfully sued for declining to photograph a same-sex commitment ceremony. The New Mexico Human Rights Commission found in favor of the complainant and levied a nearly \$7,000 fine against the photographer.¹²

¹ North Coast Women's Care Medical Group v. San Diego Superior Court, 189 P.3d 959 (Cal. 2008).

² Id. at 968.

³ Id. at 971 (Baxter, J., concurring).

⁴ Daniel Avila, *Same-Sex Adoption in Massachusetts, the Catholic Church, and the Good of the Children: The Story Behind the Controversy and the Case for Conscientious Refusals* 27 CHILDREN'S LEGAL RIGHTS J. 1 (2007).

⁵ John Garvey, *State Putting Church Out of Adoption Business* BOSTON GLOBE A15 (March 14, 2006); Maggie Gallagher, *Banned in Boston* WEEKLY STANDARD 20 (May 15, 2006).

⁶ Avila at 11.

⁷ Parker v. Hurley, 514 F.3d 87 (1st Cir. 2008).

⁸ Id. at 95.

⁹ Brooker v. Missouri State University, Complaint, Case No. 06-CV-3432 (U.S. Dist., W. Dist. Mo.) at <http://www.telladf.org/UserDocs/BrookerComplaint.pdf>; Press Release, Missouri State Settles Lawsuit with Emily Brooker, Nov. 8, 2006 at <http://www.news.missouristate.edu/releases/27833.htm>.

¹⁰ OGCMA v. Vespa-Papaleo, D.N.J. Case No. 3:07-cv-03802 (U.S. Dist. Ct., N.J. pending). The tax exemption was provided to groups which permit open access to beachfront property. See also New Jersey Office of the Attorney General, Press Release, *Division on Civil Rights Finds Probable Cause in Ocean Grove Camp Meeting Association Case on Civil Union Ceremonies—Finding Says Lesbian Couple Discriminated Against When Request to Hold Civil Union Ceremony at the Boardwalk Pavilion Was Denied*, December 29, 2008 at <http://www.nj.gov/oag/newsreleases08/pr20081229a.html>.

¹¹ Press Release, Division on Civil Rights Announces Settlement with eHarmony, Inc.—Online Relationship Website Agrees to Provide Same-Sex Matching (Nov. 19, 2008) at <http://www.nj.gov/oag/newsreleases08/pr20081119a.html>.

¹² Willcock v. Elane Photography, HRD No. 06-12-20-0685, New Mexico Human Rights Commission, April 9, 2008.