

Holy Matrimony: The Discrimination Case that Paved the Way for LGBTQ+ Rights

By: Reham Abdelghafar, Gian Wagner, Burhanuddin Danish, Surya Prasad, and William McCulley

I. Introduction by Reham Abdelghafar

The case of *Bernstein v. Ocean Grove Camp Meeting Association* (2007) investigates the balance between a business owner's right to refuse service and the right of people not to be discriminated against based on their sexual orientation. This case is one of the stepping stones for LGBTQ+ rights between *Lawrence v. Texas* 539 U.S. 558 (2003), the case that struck down sodomy laws across the United States, and *Obergefell v. Hodges* 576 U.S. 644 (2015), the case that made gay marriage legal and recognized in all 50 states. The case follows the complainant filing a complaint on the discrimination against them based on their sexual orientation, alleging that the respondent is in violation of New Jersey's Laws Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

Bernstein filed a complaint against Ocean Grove, alleging they violated the LAD by withholding services to a public accommodation, N.J.S.A. 10:5-1 to -49. A person's property right is one of this nation's founding principles. This applied to business owners who could often refuse service to anyone they wanted to, with the idea being that a business owner would only refuse service in extreme cases as they do not wish to lose business. This idea came under fire during the Civil Rights era, when White business owners would refuse service to African American customers, as in the famous case of Greenville's lunch counter. The 1964 Civil Rights Act (88-352 (78 Stat. 241)) would limit who a business owner could refuse service to, with the only time a business owner could refuse service would be in cases where the customer was being rude or disruptive of business ending the practice of a blanket refusal of service based on race or

sex. The New Jersey court has long held that it is unlawful for the owner of “any place of public accommodation” to refuse its use based on one’s identity. The LAD’s definition of public accommodation excludes places such as “any institution, bona fide club, or place of accommodation, which is in its nature distinctly private” and “any educational facility operated or maintained by a bona fide religious or sectarian institution.” The protections for refusing service did not apply to sexual orientation or any businesses that were to be found under public accommodations.

This case note begins by diving into the history of the case following the rights to use public accommodations. It also covers what is listed as a public accommodation and the exceptions under these outlines. The controversy lies within whether the respondent's Pavilion would fall under a definition of private property, allowing them to deny the complainant access to use it, or if it falls under the guidelines of a public accommodation, which holds them in violation of New Jersey’s LAD. The controversy behind the use of the Pavilion also lies within the religious background of the Ocean Grove Camp Meeting Association. Ocean Grove has funded several other secular and religious structures while maintaining the religious outlook in apparent terms. The Pavillion was never outwardly stated to be a religious structure or has ever received funding in a religious manner. This establishes the argument that the Pavillion is under public accommodation laws rather than private property laws. The Pavillion was also advertised to be used by the public and only required an application to be filled out; nowhere on the application stated the religious ties to Ocean Grove or if the applicant had to have a certain belief in order to be granted access in using the Pavillion. The effects of this case brought up the important discussion of LGBTQ+ rights and members of the LGBTQ+ community to have protection under state laws. This case brought up essential points on the topic of discrimination

based on one's sexual identity and one's religious beliefs in the mix on whether they have the right to deny access on the grounds of public accommodation.

II. Description/Background Information

A. Facts: by William McCulley

In 2007, the same-sex couple, Harriet Bernstein and Luisa Paster, were looking for a place to hold their civil union ceremony. The couple decided on the Ocean Grove Camp, where they would hold their ceremony. Ocean Grove Camp, located on the white sand beaches of Neptune, New Jersey, has a rich history stretching back to the late 1800s. Ocean Grove Camp was founded by Christians who ran it according to Christian values until 1989, when they applied for tax-exempt status on some parts of the camp, which included the pavilion where Harriet Bernstein and Luisa Paster were looking to get married. The religious nature of the Camp worried the New Jersey Department of Environmental Protection (DEP), the department issuing the tax exemption. The leaders of Ocean Grove assured the DEP that they would dial back some of the religious prohibitions and policies they had at the time. Under New Jersey's Law Against Discrimination (LAD) (N.J.S.A. 10:5-1 to -49) and the policies of the DEP, Ocean Grove was unable to ask about or refuse service based on a couple's religion. Ocean Grove rented out the pavilion the couple wanted to get married in for a fixed fee of \$250. Ocean Grove also used the pavilion for religious services or opened it up to the public when it was unoccupied. At the time the complaint was filed (June 19th, 2007), there was nothing on Ocean Grove's website about a prohibition on same-sex couples from getting married, with the only reason a request to rent the pavilion would get denied would be availability. In March of 2007, same-sex couple Harriet Bernstein and Luisa Paster's request to rent the pavilion out was denied, with Ocean Grove citing the reason as the existence of civil unions conflicting with their views on homosexuality and

marriage. Due to the attention of the case, Ocean Grove lost the tax exemption status on the pavilion. Additionally, they stopped renting out the pavilion, only using it for private religious events. Ocean Grove responded to both the lawsuit and the elimination of their tax-exempt status, claiming they were well within their First Amendment rights, specifically freedom of religion, to reject Harriet Bernstein and Luisa Paster.

B. Procedural History: by Reham Abdelghafar

The matter comes before the New Jersey Division on Civil Rights. Harriet Bernstein and Luisa Paster filed a complaint alleging that the Ocean Grove Camp Meeting Association, the respondent, discriminated against them based on their civil union status. This discrimination violates the New Jersey Law Against Discrimination (LAD) N.J.S.A. 10:5-1 to -9. On January 12, 2012, Administrative Law Judge Solomon A. Metzger issued an initial decision concluding that the respondent violated the LAD.

1. Initial Complaint

On June 19, 2007, the complainants filed a verified complaint with the Division on Civil Rights alleging that the respondent had rejected their application to use their Boardwalk Pavilion for a civil union ceremony while still permitting the Pavillion to be used for weddings and other secular functions. The respondent went forward to file a motion to dismiss the complaint, which was then denied in a written decision on January 7, 2008. In March 2007, the respondent originally denied the complainants' request to use the Pavillion for a civil union ceremony because the concept of civil unions conflicted with the respondent's belief on homosexuality.

2. Findings of the Case

The Division on Civil Rights completed its investigation and issued a finding of probable cause on December 29, 2008. On June 11, 2009, the matter was transmitted to the Office of

Administrative Law for a hearing. In July of 2010, the two parties were cross-moved for a summary decision. In September of the following year, the matter was reassigned to Administrative Law Judge Metzger, who issued a decision on January 12, 2012. The respondent filed exceptions, and the complainants filed a reply. The timeline for issuing the final order was further extended to October 22, 2012. In July of 1989, the respondent originally applied to the NJ Department of Environmental Protection for a Green Acres tax exemption for some property, including the Pavillion and the adjacent boardwalk area. In the application, the respondent described the area as public in nature. Neptune Township opposed the application out of concern that the respondent might impose religious restrictions that would ultimately limit public access. The respondent went on to assure State officials and the public during a DEP hearing that they would make the Pavillion available for public use without reservations.

3. Judges Conclusions

The ALJ found that the Pavillion was a place of public accommodation for purposes of the LAD based on and listed as exceptions. The ALJ found that the respondent gave express assurances that would provide them annual financial benefits and that the Pavilion would be open to the public and not governed by any religious restrictions and continues to renew said assurances. The ALJ also found it significant that the respondent solicited the public to rent out the Pavillion and further presented itself to the public as a wedding venue without mentioning specific preconditions. The ALJ rejected the respondent's claim that allowing a civil union ceremony in the Pavillion would violate the respondent's First Amendment rights since the Pavillion was used as part of a claimed "wedding ministry." Based on the material facts found, the ALJ determined that the respondent violated New Jersey's Laws Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The Director affirmed the ALJ's determination that the

undisputed material facts support the conclusion that the respondent violated the public accommodation provisions under the LAD.

C. Main Legal Issues: by Gian Wagner

The main legal issue is whether the complainants faced discrimination on the basis of their sexual orientation, in violation of New Jersey's Laws Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49. The respondents maintain that the refusal to rent the pavilion does not constitute civil union status discrimination outlined in N.J.S.A. 10:5-12f due to the complainant's lack of legal status. The respondents maintain that this legislation aims to ensure homosexual couples exercise the same rights and benefits as other homosexual couples, irrespective of their civil union status. The complainants assert that N.J.S.A. 37:1-28(f) provides homosexual couples with the same rights and benefits provided under the law to heterosexual couples and urges the court to apply LAD in this case.

The second main legal issue is whether the application of LAD, in this case, infringes upon the First Amendment rights of free exercise of religion and expressive association of the respondents. The respondents base their contention on previous rulings in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) and *Hurley v. Irish American Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557 (1995), which held expressive association rights allow for discriminatory behavior. The complainants argued that the case was more analogous to *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47 (2006) and *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980). The aforementioned cases detail circumstances where the definition of expressive association was not met and there was a presence of unlawful discriminatory acts.

The third main legal issue the court addressed is whether the pavilion is a place of public accommodation and thus explicitly under the umbrella of LAD. The definition of a place of

public accommodation is in N.J.S.A. 10:5-5(I) by listing examples and exceptions to the rule. The court observes three qualities to determine if a certain area is a public place of accommodation by observing if a place: (1) solicited the general public, (2) maintains close relationships with the government or other public accommodations, or (3) is similar to other enumerated or other previously recognized public accommodations.

D. Judgments: by Surya Prasad

Judge Solomon A. Metzger was the sole practitioner in the initial hearing of the case of *Bernstein v. Ocean Camp Grove Meeting Association (2007)*. Metzger based the decision on his analysis of several factors. Metzger examined the historical use of the Boardwalk Pavilion, the Green Acres tax exemption, and representations made by the respondent regarding equal access. This approach aimed to establish whether the Pavilion was a location of public accommodation under the Law Against Discrimination (LAD) N.J.S.A. 10:5-1 to 49. Metzger addressed the association's claim that hosting such a ceremony would violate its right of expressive association, free speech, and free exercise of religion. Rejecting this claim, he emphasized the neutrality of the LAD designed to combat discrimination, implying its overarching purpose of combating discrimination without undue interference in religious practices. Metzger determined the Boardwalk Pavilion a place of public accommodation based on its previous use for weddings and other public events, concluding that the Association violated the LAD by refusing to conduct a civil union ceremony for Harriet Bernstein and Luisa Paster. This decision favored the petitioners, and Metzger proceeded to file this initial decision with the Director of the Division on Civil Rights, J. Frank Vespa-Papaleo, for consideration. Upon Judge Metzger's issuance of the initial decision, the Division initiated an investigation into the matter. At the heart of the investigation was the matter of probable cause, a pivotal step in discrimination cases. The

Division cited the legal precedents set by cases such as *Frank v. Ivy Club* 120 N.J. 73 (1990) and *Sprague v. Glassboro State College* 161 N.J. Super. 218 (1978) to define probable cause as a reasonable ground for suspicion supported by facts and circumstances sufficient to warrant belief that the law was violated. It is pivotal to highlight that identifying probable cause does not constitute a final decision but serves as an initial screening process, indicating whether further action is applicable by the Division on Civil Rights. In applying this precedent, the Division carefully evaluated the evidence presented to determine the presence of a viable claim of discrimination under the LAD. The investigation also focused on the scrutinizing nature of the Boardwalk Pavilion. The investigation aimed to determine whether or not the Pavilion met the criteria for classification as a public accommodation under the LAD. The Division's investigation involved a comprehensive review of the Pavilion's historical use, which ranged from weddings to other public events, to determine its public nature. In light of these developments, examining the details surrounding the investigation conducted by the Division is crucial. Particular emphasis was placed on understanding the multipurpose and secular aspects of the Pavilion. Following this investigation of the evidence, legal precedents, and constitutional implications, the Division on Civil Rights arrived at the determination that probable cause exists to support the allegations presented in the complaint. This decision is grounded in the understanding that the Boardwalk Pavilion, operated by Ocean Grove Camp Meeting Association, qualifies as a public accommodation under the New Jersey LAD. With probable cause now established, the matter could proceed to a hearing where both of the parties would have the opportunity to present their cases in a more detailed and adversarial setting. This decision reflected the Division's commitment to upholding anti-discrimination statutes, ensuring equal protection under the law, and providing a fair and thorough process for resolving disputes.

related to alleged violations of civil rights. The focus of the investigation was then deliberately directed toward the Pavilion's public nature, emphasizing its use by the general public for various recreational and community activities. The Association asserted that applying the LAD compromises its constitutional rights, particularly the First Amendment's right to expressive association and the free exercise of religion. The Division on Civil Rights concluded that the multipurpose and secular nature of the Pavilion, as demonstrated by its diverse uses, exempts it from scenarios where expressive content is applicable. The Division recognized the importance of safeguarding religious freedoms but concluded that, in this instance, the LAD is a legitimate means to prevent discrimination based on civil union status. The State's interest in eradicating discrimination aligned with the law's neutral and generally applicable nature, implying that the compelling government interest outweighs any incidental impact on religious practices. Following the Ocean Grove Camp Association's decision not to appeal the decision, the Association no longer hosts wedding ceremonies in the Pavilion.

III. Main Section- Case Analysis

A. Examination: by Gian Wagner

The Boardwalk Pavilion is a public place of accommodation, according to the ruling. This ruling is in line with the definition provided in LAD, and the pavilion qualifies as a place of public accommodation as it satisfies each of the three qualifying characteristics sought out by the court. The material fact that Ocean Grove had previously ensured, on record, that they would not discriminate due to their doctrinal beliefs in order to obtain tax exemption status on the area. This highlights how the respondents failed to uphold their obligations and blatantly skirted the law in an effort to maintain religious purity.

The Ocean Grove Camp Association acted discriminatorily according to New Jersey's Laws Against Discrimination. The respondent's interpretation of the LAD that homosexual couples may not receive treatment differently than other homosexual couples with a civil union status is accurate but does not tell the whole story of this case and simultaneously neglects the intent and legislative history behind the LAD and similar laws. In N.J.S.A. 37:1-28(f), it is clear that homosexual and heterosexual couples deserve the same rights and benefits under the law. The intent behind this law is to provide equal protection for all persons under the law, regardless of sexual orientation. The line of reasoning argued by the respondents neglects the intent and legislative history of the LAD, and the court's ruling reflected this. Ocean Grove acted discriminatorily against the complainants as they denied the complainants access to their land solely on the basis of their sexual orientation.

Ocean Grove did not heavily dispute their discriminatory actions but attempted to justify them as a means to protect their First Amendment rights. The Court extensively addresses whether the application of the LAD violated the respondent's First Amendment rights. One of the defining features of the actions taken by this association that led to the court's ruling against them was that they had never inquired about the doctrinal beliefs and personal lifestyle choices of those who had used the pavilion for a wedding. This material fact leads us to believe that Ocean Grove is not truly concerned with expressive association with people and ideas that are not aligned with their own, but rather, they are concerned with associating with homosexual individuals. While it is not discriminatory to prevent expressive association with homosexuals, it is most certainly discriminatory to prevent association with homosexuals but not others that similarly fail to live up to the respondent's doctrinal beliefs. This line of reasoning shows that Ocean Grove had never previously ensured that the weddings hosted on their land were in line

with Christian beliefs. There are a myriad of other wedding ceremonies that may have been distinctly non-Christian, that were able access to the land and simply not screened for ideological differences. Renting out the pavilion for a wedding is not an inherently expressive action. This shows that this case is distinguishable from those used by the respondents to bolster their argument. Ocean Grove was not subject to accepting a homosexual member into their organization and was not subject to expressing association with homosexuality simply by renting out their pavilion. If Ocean Grove were hosting a parade for their ideology, they would have been able to reject a display of homosexuality in their parade, as a parade is an inherently expressive action. As stated previously, renting land for a wedding is not an inherently expressive action and is not subject to expressive association rights. For these reasons, Ocean Grove has no grounds to deny the homosexual couple access to their land for a wedding based on the right of expressive association and acted in a clearly discriminatory manner.

B. Explanation: by Burhanuddin Danish

The social and political implications of *Bernstein v. Ocean Grove* are revealed in the context of the outstanding interests the parties represent. Harriet Bernstein sought not to procure damages but to establish same-sex couples' inherent protections under existing New Jersey anti-discrimination statutes. Ocean Grove maintained that the pervasive argument was religious organizations' right to fulfill or deny services in furtherance of their expressive association. The resulting summary judgment in favor of the plaintiff does not confer the complete authority of same-sex couples' right to anti-discrimination over religious organizations' right to expressive association. Instead, it balances the two by considering the degree to which expressive association is hindered and the application of a neutral law with general application, not intending to restrict religious expression.

The arguments presented in this case represent a continued discourse on balancing non-discrimination and religious expression protections. The historical objection to the legalization of same-sex recognition by religious organizations, removed from theological beliefs, was the imminent activation of non-discrimination protections that conflict with existing religious practices (Messner). The New Jersey Law Against Discrimination protects against discrimination and harassment based on race, religion, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, familial status, and genetic traits in employment, housing, and places of public accommodation. The Law Against Discrimination was amended between 1951 to 2018 to enlarge the scope of its protections to various groups that have been previously marginalized and to prevent the misconstruing of the Law Against Discrimination to exclude unenumerated groups. In conjunction with the Law Against Discrimination, the New Jersey Civil Union Act maintained that although the statutes amended following *Lewis v. Harris* (2006) did not include the specific right of “marriage” to same-sex couples but rather the right to “civil unions,” both confer the same rights, protections, and responsibilities, removing the notion that protections of the Law Against Discrimination only applied to “marriages.” The Law Against Discrimination, as one of the most comprehensive state anti-discrimination statutes in the United States, became the concern of religious organizations fearing conflicts with the enlargement of same-sex protections.

Dale v. Boy Scouts of America revealed the apprehensive nature of national politics in expanding rights protections beyond their accepted understanding. As understood by the New Jersey Supreme Court, the Boy Scouts of America were not exempt from the New Jersey Law Against Discrimination’s inclusion of places of public accommodation because of the non-selective nature of their membership. The United States Supreme Court reversed the

decision, holding that the forced membership of the plaintiff would hinder the organization's right to expressive association. The disparity between the national and New Jersey standards for anti-discrimination protections becomes evident when examining the expansion of rights following *Dale*. *Lewis v. Harris (2006)* highlighted the increasing momentum behind civil rights protections for same-sex individuals in New Jersey. The New Jersey Supreme Court held that the denial of the same-sex right to marriage violated equal protection language contained in the New Jersey Constitution. The newly amended legislation would only partly correct previous contentions with the restrictions, as a distinction was made between a same-sex "civil union" and an opposite-sex "marriage." On October 13, 2013, religious organizations' concerns regarding the full recognition of same-sex marriage came to fruition when a New Jersey trial court invalidated the restriction of marriage to individuals of different sexes, thereby permitting same-sex marriage in New Jersey. The same conclusion would not be reached on the national level until *Obergefell v. Hodges (2015)*.

After the decision in *Bernstein*, organizations aligned with both represented factions expressed their support or dissent regarding the opinion. In support of the Ocean Grove Camp Meeting Association, the Alliance Defending Freedom released several press statements throughout and following the decision by the Office of Administrative Law. The Alliance Defending Freedom maintained that the First Amendment intended to remove decisions related to religious expression from government purview. Following the decision, the Alliance Defending Freedom advised the Ocean Grove Camp Meeting Association and other religiously affiliated clients to close divisions related to public services, fearing subjection to government intervention (Alliance Defending Freedom). In support of *Bernstein*, the American Civil

Liberties Union released statements commending the decision, referring to it as evidence of New Jersey's unwavering support against discrimination in the public sphere (LoCicero).

The conflict between religious expression and anti-discrimination exists beyond the state level, illustrated by various cases involving parties representing the two factions. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018) established that although same-sex individuals are entitled to civil rights protections through neutrally applied statutes and the Constitution, theological objections to same-sex relations are protected views and are considered protected forms of expression. *303 Creative LLC v. Elenis* (2023) alters the understanding of the balance again, establishing that the First Amendment prevents the government from compelling an individual to express messages contrary to their religious beliefs, even if their services are considered public accommodation. Justice Sotomayor dissented, agreeing with the notions expressed in *Bernstein* that no public business should be entitled to the constitutional right to refuse service to individuals based on their identity. *303 Creative* illustrates a national trend in the constriction of anti-discrimination statutes, changing the balance to restrict instances in which individuals of protected classes are entitled to anti-discrimination protections.

In Tennessee, legislation has introduced criminal statutes against drag queen performances in the presence of minors. Alaska's civil rights agency has been instructed to eliminate language on the state website that guarantees protections for transgender residents. In Texas, legislation has been introduced that imposes restrictions on sexuality and gender identity education in schools, limits healthcare options for transgender youth, and restricts the participation of transgender students in specific college sports teams (Nieto-Munoz). In light of these nationwide movements against anti-discrimination protections for members of the LGBTQIA community, New Jersey detaches, enforcing the Law Against Discrimination and the

protections it imposes. The resistance against LGBTQIA+ equality in New Jersey presently manifests itself in many forms, including the systematic exclusion of these individuals in government forms. The New Jersey Attorney General recently cited twenty-eight towns for publishing marriage license forms that do not include options for non-binary individuals. In order to fill out these forms ``correctly,’’ these individuals would have to misgender themselves, raising clear concerns about Law Against Discrimination violations. After the violation notices were issued, only five of the original twenty-eight municipalities agreed to update their practices to be more inclusive, instigating public concerns over the intentional nature of the original exclusions. The Attorney General required municipalities that sought forgiveness from fines relating to Law Against Discrimination violations to remove exclusionary language, include explicit language permitting same-sex couples to obtain marriage licenses, and introduce employee training on the Law Against Discrimination (Gibbons).

C. Conclusion: by William McCulley

In the case of *Bernstein v. Ocean Grove Camp Meeting Association*, the Supreme Court of New Jersey found that the Ocean Grove Camp Meeting Association had violated the couple's rights under the New Jersey Law Against Discrimination (LAD). Observations favored the plaintiff for a few reasons, the most important being the pavilion's tax-exempt status. The court may have found differently if Ocean Grove was a private club, but Ocean Grove was trying to have their cake and eat it, too. By enjoying the tax exemptions, Ocean Grove had to give up a certain degree of their religious affiliations. Ocean Grove's failure to remove themselves from their religious beliefs opened them up to getting their tax exception taken away.

The case of *Bernstein v. Ocean Grove Camp Meeting Association (2007)* was important for gay rights in New Jersey because it reaffirmed the rights of the gay population of New Jersey,

specifically the rights to access the same rights and benefits that their straight counterparts have. The case came at an important time in American history, with the case situated just a few years before the Supreme Court struck down gay marriage bans. This case would also be an important step in the expansion of many anti-discrimination laws to include sexual orientation in addition to race and gender.

In 2023, the United States Supreme Court heard the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case, which is very similar to the case of *Bernstein v. Ocean Grove Camp Meeting Association*. In that case, the court found in favor of the defendant, allowing him to refuse service to transgender customer's request for a cake to celebrate her transition. This case, in combination with *Espinoza v. Montana Department of Revenue*, effectively overturns Bernstein's ruling. The case of *Espinoza v. Montana Department of Revenue* is important in this context because it is a case about whether a state government could deny funding to a private school on the basis that the school was religious. In *Espinoza v. Montana Department of Revenue*, the court held that a state government could not withhold funding. Both of these cases reflect a general trend over the past five years that rights the LGBTQ+ community fought hard for in cases like *Bernstein v. Ocean Grove Camp Meeting Association* are being restricted to accommodate discriminatory practices in business.

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