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## RELIGIOUS FREEDOM OR GOVERNMENT-SANCTIONED DISCRIMINATION?

### *Julea Ward vs. Eastern Michigan University*

BY LEON F. SELTZER

**I**N 2006 JULEA WARD, a suburban Detroit high school teacher, enrolled in a master's program at Eastern Michigan University (EMU) with the goal of becoming a high school counselor. Although she performed well academically (maintaining a 3.91 GPA), from the start her unyielding religious views made her something of a problem student. An evangelical Christian, Ward would frequently butt heads with her professors about how her faith made it impossible for her to validate—or, in professional parlance, “affirm”—homosexual relationships, as well as heterosexual relations outside marriage. In this context, she was repeatedly reminded of the university's anti-discrimination policy and the need to respect the sexual orientation and lifestyle of everyone she worked with.

During her final year, 2009, in her required practicum Ward was assigned a student for counseling. Reviewing his file just two hours before their scheduled meeting and noting his same-sex orientation, she called her faculty supervisor and requested that this student either be immediately referred to another counselor or that she begin counseling him but make a referral if he brought up any relationship issues. The faculty supervisor canceled the

session and reassigned the student but also proceeded to set up an informal disciplinary hearing to deal with Ward's unorthodox request, unprecedented in her twenty years of teaching and which she saw as creating an “ethical dilemma.” Counselors in training were expected to work with clients from a wide range of backgrounds and holding a broad array of views. Ward's position, here and earlier, evidenced an inability—or unwillingness—to tolerate sexual orientations and preferences different from her own.

In the meeting that followed, which also included Ward's academic supervisor, Ward reiterated her position that she couldn't, in good religious conscience, “affirm” a same-sex relationship—a term that, it should be emphasized, does not mean to endorse or agree with, but rather to support or uphold the validity of. At one point her faculty supervisor gave her two options: voluntarily withdraw from the program, since she couldn't agree to abide by EMU's counseling guidelines—in line with those of the American Counseling Association (ACA); or request a formal review from a committee made up of three faculty members and one student representative to further evalu-

ate the charge of improper behavior. Ward opted for the latter.

Prior to this meeting, Ward was told that she'd violated two provisions of the ACA's code of ethics, namely, "imposing values that are inconsistent with counseling goals" and "engag[ing] in discrimination based on ... sexual orientation." Incorporated into the counseling program's student handbook, these non-negotiable stipulations were already known to Ward. When the formal hearing began and Ward was presented with these allegations, she protested that she didn't discriminate against anyone, and that she was willing to counsel gay and lesbian clients—as long as she didn't have to affirm their sexual orientation. In essence, she was arguing that she should be given the freedom to adhere to her religious beliefs and not be obliged to honor, or confirm, those whose practices she frankly found repugnant.

Not surprisingly, her defense failed to give the committee any reassurance that, going forward, she'd abide by the ACA's requirements. She couldn't claim that her Christian beliefs wouldn't interfere with carrying out her professional duties counseling gays and lesbians, while in the same breath claiming that she couldn't affirm their lifestyle because they were guilty of the "sin" of non-heterosexuality. By declaring herself unable to recognize the entire LGBT population as worthy of acceptance and respect, she was confessing that she couldn't leave her theological prejudices at the counseling room door.

Two days later Ward received a letter telling her of the committee's unanimous decision: that she had violated the code of ethics and, given her refusal to alter her discriminatory behavior, she was expelled from the program. Ward appealed the committee's verdict to the dean of the College of Education and was denied. She then filed an action against the members of the formal review committee, the two faculty members who conducted her earlier informal hearing, the dean, the president, and the members of the University's Board of Regents—claiming that her expulsion violated her free-speech and free-exercise rights under the First and Fourteenth Amendments.

The district court to which the case then went concluded in a summary judgment that the university had legitimately enforced a neutral, generally applicable curricular requirement necessary to performing its basic educational mission, and that Ward had not been targeted for her speech or religious beliefs. In short, case dismissed.

### *The Sixth Circuit Court of Appeals: A Legal, Ethical, and Ideological Debate*

Whereas everything up to this point had gone against Ward, here is where her case became knotty, entangled mostly by a legal technicality clearly in her favor. Although the appeals court did not disagree with many of the previous court's arguments, it focused on Ward's referral request, an issue that hadn't adequately been dealt with in the initial case. Consequently, even though it didn't overturn the lower court's ruling, it felt obliged to send it back to them.

In arguing for Ward's expulsion, EMU had focused on Ward's violation of the ACA ethical code prohibiting discrimination based on sexual orientation. It also maintained that Ward's required practical skills course (her practicum) did not permit her the freedom to refer clients whom she disapproved of. (It should also be noted that Ward's supervisor, in reassigning the gay student, wasn't so much honoring Ward's wishes as deciding on her own that it would be unethical to assign such a client to someone who'd already made it clear she wouldn't—or couldn't—affirm them.) Walter Kraft, EMU's vice president for communications, stressed that it wasn't Ward's evangelical beliefs that precipitated her dismissal, nor was it her stance toward homosexuality. Rather, it was her refusal to abide by the ethical code held not only by the ACA but also the American School Counselor Association (ASCA), which requires counselors "not to allow their personal values to intrude into their professional work."

At her informal hearing, Ward read a letter she'd sent to her academic supervisor affirming her belief that "God ordained relationships between men and women," and that people should "strive to cultivate sexual desires for persons of the opposite sex." Additionally, she claimed that in her professional work she was "morally obliged ... to express the biblical viewpoint regarding proper sexual relationships," vowing, "I would not sell out God." This supervisor, later testifying against Ward in her formal hearing, alleged: "It is my professional opinion that Ms. Ward is selectively using her religious beliefs in order to rationalize her discrimination against one group of people."

The ACA supported EMU's decision to expel Ward for refusing to treat clients who wished to discuss homosexual relationships or premarital sexual relationships. In its amicus brief it stated: "This conduct showed deficiencies in her ability to become a counselor, and her supervisors were obliged to respond accordingly."

Countering these arguments was Ward's lawyer, Jeremy Tedesco, of the Alliance Defense Fund—a Christian legal advocacy organization that describes itself as "defending religious liberty, sanctity of life, marriage, and the family." Tedesco noted that "if referrals are acceptable, including for many nonreligious-based reasons, they [EMU and the ACA] can't deny someone who has a religion-based need to refer ... Does [their ethical code] require a Jewish counselor to affirm the religious beliefs of a Muslim client?" he asked, also pointing out that the ACA does permit its members to choose not to work with terminally ill patients considering end-of-life options.

In Tedesco's estimation, a public university had no right to compel students to violate their religious beliefs to obtain a degree. And he contended that Ward's wanting to refer homosexuals wasn't indicative of same-sex prejudice, given that her alleged non-compliance with EMU's policies would also extend to heterosexuals "whose [sexual] practices went beyond the bounds of [her] biblical morality."

David Mach, an attorney for the American Civil Liberties Union, took a somewhat different approach in his amicus brief, contending that the canons of the profession justifiably put the needs of the client before the sensibilities of the counselor. He also argued that a high school counselor might be the only understanding adult an LGBT youth could turn to. And for them to feel discriminated against, negatively judged, or even turned away—especially in crisis—could be devastating. Moreover, any counselor who sought to avoid gay people (or, for that matter, adulterers or those engaged in premarital sex) was holding an untenable view of the profession.

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Weighing in for the American Psychological Association (APA) was Douglas C. Haldeman, a former chairman of its committee on lesbian, gay, and bisexual concerns. Describing the court's emphasis on referrals as "misplaced," he went on to state the APA's position categorically: "We don't train our students in discriminatory patterns of treatment, and we don't permit them."

Notwithstanding the strength of the various arguments against Ward, Circuit Judge Jeffrey Sutton (nominated to the court in 2001 by George W. Bush) held that Ward's case needed to be re-examined because of what a jury might construe as EMU's intolerance of her religious values, as well as the arbitrary nature, or illegitimacy, of challenging her request that a gay student be referred to another student counselor. He hypothesized that a jury might find that EMU deployed her request "as a pretext for punishing Ward's religious views and speech."

Echoing Tedesco, Sutton reflected that the religion-based ban on discrimination "surely ... does not require a Muslim counselor to tell a Jewish client that his religious beliefs are correct [or] an atheist counselor to tell a person of faith that there is a God. ... Tolerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination."

These analogies (and others Sutton made) border on the absurd, or at least suggest that he (like Ward) lacks any genuine understanding of what affirming a client is all about. Affirmation has nothing to do with compromising, renouncing, or betraying one's own values. It's simply a matter of setting them aside, recognizing the subjective validity of the client's differing

belief system, and dealing with the client on their own terms. It's adopting a non-judgmental attitude (*de rigueur* for anyone entering the field) and respecting that all of us believe what we do because somehow it "works" for us. Therapists and counselors alike are taught, humanistically, to treat clients with respect, dignity, compassion, and understanding—the very essence of what Carl Rogers termed "unconditional positive regard" (and perhaps what, finally, contributes most to a client's improvement). If a counselor cannot offer this, even though the client's behavior, however maladaptive, is neither illegal nor immoral (according to any generally accepted secular/societal standard), they really aren't suited for the profession.

Moreover, should a client question a counselor about the latter's beliefs, it's perfectly okay for the counselor to candidly disclose that his or her ideology differs from the client's, as long as they can also demonstrate acceptance of the client's contrasting viewpoint. For the huge majority of counseling students, this acceptance wouldn't put their own beliefs, or integrity, at risk. But Ward's moral righteousness clearly prohibited her from empathizing with, honoring, or open-mindedly supporting, a position perceived as "against God." As she debated repeatedly with EMU's faculty, she could not validate another's sexual orientation without changing her belief system—and the university had no right to tell her to do so.

The truth is that EMU had tolerated Ward's fundamentalist Christian biases from the outset but objected to her unwillingness to validate any client whose sexual orientation or beliefs were theologically distasteful or abhorrent to her. And this is really the crux of the case: Ward's biblical convictions appear to have rendered her *incapable* of seeing sexual practices alien to her own as legitimate.

Judge Sutton's final position on EMU's and the ACA's referral policies is more difficult to refute. He argued that their shared ethical code "expressly permits values-based referrals." And while EMU's defendants contended that the school maintained a different policy for practicum students, they could not, Sutton noted, "point to any policy articulated in [the program's] course materials, the student handbook, or anything else forbidding practicum students from making referrals." Additionally, at no point had any professor explicitly *informed* Ward that such a policy existed.

**B**ecause the university failed to sufficiently substantiate its claim of a no-referral principle for practicum students, the Appeals Court decision was to "reverse and remand to the district court for further proceedings."

But the paramount issue here isn't whether Ward was, or should have been, within her rights to request a referral. Rather, it's about whether Ward, once licensed, could be expected to keep her religious biases independent of her professional obligations. And as a school counselor, she would not have the luxury of referral. Ethically *and* practically, counselors in such a setting can't pick and choose the students they'll work with. And this is why

EMU's faculty wanted practicum students to learn how to work comfortably with any student who might be assigned to them.

Humanist Manifesto III declares: "We are committed to treating each person as having inherent worth and dignity." This statement could virtually have been extracted from the ethical code of any of the helping professions. Although this ideal doesn't necessitate denouncing Ward's moral righteousness as such, it indirectly calls attention to the grave problems inherent in her moralistic exclusivity. Such an attitude is inevitably correlated with an ethic that by definition *must* be biased and discriminatory—and the very essence of what EMU found academically, professionally, and ethically unacceptable about her position.

Additionally, believing in facts over faith, the humanist—cognizant of the scientific research on homosexuality—would be obliged to conclude that Ward's prejudice against LGBTs wasn't reality-based. When asked by EMU faculty whether she believed that homosexuality was a choice, she responded unequivocally that it was. And, of course, she'd *have* to. If she believed otherwise, then the entire LGBT population would have to be viewed as part of God's divine plan.

#### *To Thine Own Religion Be True—But Just How "True" Is It?*

Many of the extensive comments following a January 27, 2012, *Huffington Post* story on this case critically explored Ward's position on homosexuality as it's specifically grounded in biblical teachings. What's so fascinating about this particular subject is how self-contradictory the Bible seems to be on the matter. Or maybe what's really contradictory is how differently individual Christians interpret scripture. Beyond the culture wars there is accumulating evidence that Christianity (not unlike some other religions) may be fighting an ideological war with itself.

One respondent argued that "Jesus was about love" and that "he never, ever took a stand against homosexuality." Biblical verses only inveigh against "the non-consensual sex between Roman soldiers or the Roman elite and their slaves or other boys," since such forced relations weren't loving but predatory. This stance would seem to undermine the position of Christians who express outright contempt or hatred toward consensual same-sex relationships.

Another writer alluded to Jesus's edict: "Judge not, lest ye be judged," perceiving Ward as totally oblivious to her savior's message and what he was attempting to instill in others. In the more extreme forms of Christianity, intolerance *does* predominate, and the live-and-let-live philosophy (which depicts a far more humanistic outlook) has generally been abandoned. Another respondent asked: "What would [Ward] say to the unwed pregnant teen? Would she counsel heterosexuals who were having premarital sex?"

Again, the question arises as to whether the Bible can reliably determine who deserves to be counseled—or better, whose values warrant affirmation by the counselor. Clearly, scripture

has no inherent or consistent answers to help resolve this issue. And efforts to authoritatively decipher its deeper meanings leave room for anyone to exploit its verses to their advantage. As Shakespeare famously put it in *The Merchant of Venice*: "The devil can cite scripture for his purpose."

Another subject that came up in comments to the article was whether specifically Christian-trained counseling students could comfortably ignore the ACA's code of ethics. According to one respondent:

Before I began my practicum work on my way to a master's in Christian counseling, I had to agree to and sign that same national code of ethics. ... Counselors help their clients decide what path is best for them. We really had it drummed into us that telling a client what to do or steering the counseling in the direction of our personal preferences was a gross violation... that would result in the immediate loss of our license.

Another *Huffington Post* reader, who identified as a professional counselor, wrote:

I could ... listen to this fundamentalist bigot if I were her counselor. Let's say she even came to me with the problem of "People are disrespecting my beliefs." I could help her deal with that without asking her to change her beliefs, even if I loathe them. You don't think counselors get clients all the time they probably could not stand if they met on the street? But you do your job. Suppose you had a neo-nazi walk in? To what other therapist would you refer that person to get "affirmed"?

#### *Unyielding Fundamentalism and Its Scary Ramifications*

If, after being awarded a degree and becoming a licensed counselor, Julea Ward were to go into private practice, she could freely refer gay clients to other therapists for help with issues related to their sexual orientation. But working in an institutional context (her stated intention), where referrals are rarely possible, she'd have to work with LGBT individuals or almost certainly be fired.

Since her religious commitments would require her to let "sinful" clients know that their actions were immoral (or "unaffirmable") to her, she'd have to face the fact that, according to her profession's ethical code, she was flagrantly crossing the line—in fact, behaving in a way that could get her license suspended or revoked.

What if Ward found herself in a situation where—whether out of fear, embarrassment, or shame—her client initially withheld their sexual orientation? If this information were revealed later on (which isn't unusual), referring the client elsewhere or prematurely terminating treatment could cause that client substantial psychological harm.

For these reasons and others, Ward clearly sought to avoid working with LGBT individuals altogether. At some level she must have realized that her career aspirations and fundamentalist Christian dictates were irreconcilable. She unrealistically hoped that the counseling profession's ethical code would be changed, exclusively for her, to allow her to discriminate in a way compelled by her religious views. In this context it's especially curious that Ward claimed she'd been the victim of intolerance from EMU's faculty, although such "intolerance" was clearly in response to her own. Nor, practically, did EMU have any other option. For altering their policies would mean violating the ACA's ethical code and risk losing their accreditation. "Isn't it amazing when the religious right claims they're being discriminated against when they're punished for discriminating against [others]?" asked yet another *HuffPo* reader.

Perhaps it wasn't so much Ward's client that needed a referral as Ward herself—to some sort of theological school or seminary, or maybe an institution like Bob Jones or Liberty University, where a counseling program would embrace her extreme Christian views. Rather than fight EMU, a public institution, to allow right-wing biases, she could transfer her credits to a school where her negative religious sentiments against gays might be confirmed. Completing her counseling program at a private, non-accredited religious college would doubtless limit her professional mobility. But at least it would allow her to seek employ-

ment in like-minded private schools where she could practice counseling free of any threat to her sense of integrity. Given Ward's religious allegiances, this alternative constitutes the only solution capable of honoring and respecting both sides.

Given Ward's demonstrated recalcitrance, such a resolution doesn't seem likely. And in the improbable (but not inconceivable) event that her demand for religious freedom goes all the way to the Supreme Court—and is actually granted—it could open the gates for legal discrimination and further erode the separation of church and state.

In fact, in March the Michigan House Education Committee approved House Bill 5040, also known as the "Julea Ward freedom of conscience act," that would prohibit religious discrimination against students who are studying counseling, social work, or psychology.

Ward's case goes vastly beyond whether she should be allowed to return to EMU to complete her degree. It's about whether our courts and legislatures, if they accommodate such Christian extremes, would thereby be authorizing—or "institutionalizing"—prejudice and discrimination for all. **H**

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