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October 10, 2010

Dr. Weisman's office was painted in calming tones, and Janet focused on a colorful work of abstract art hanging on the wall behind the doctor's desk.

"What do you think it means?" Janet asked, pointing to the picture. She and Michelle had been together for twenty years through good times and bad. Michelle loved art and Janet hoped the distraction might calm her.

Michelle looked carefully, "I'm not sure. It looks like . . . well, kind of like, music."

A moment later Dr. Weisman appeared and walked around to his desk. "You have a heck of an eye," Dr. Weisman said, looking at Michelle. "It's a reprint of a Kandinsky piece and some experts think it's an attempt to represent music on canvas." Michelle smiled.

Dr. Weisman's tone became more serious. "I have good news and bad news. But the good news is pretty good. It's not stage III."

Michelle and Janet sighed in relief. "So what is it?" Janet asked.

Dr. Weisman took a deep breath, "Michelle has stage II ovarian cancer." Janet held Michelle's hand as Michelle began to cry. Michelle's heart raced and she started to hyperventilate. Janet put her arm around Michelle, trying to calm her even though Janet wanted to burst into tears herself.

Dr. Weisman gave them some time to recover. When he next spoke, his voice was soothing. "I know this is not what you wanted, but it can be treated and it has not spread outside of the ovaries and uterus."

Michelle wiped her eyes. "Will I be okay?"

Dr. Weisman nodded, “The prognosis is good in most of these cases. We will need to operate, but since it hasn’t spread very far we should be able to knock it out with surgery and several rounds of chemo. The chances of long-term survival are good, but we need to move as quickly as possible to make sure it doesn’t spread farther.”

Michelle seemed more at ease. Janet was ecstatic that the prognosis was good. Michelle would be okay. Nothing else mattered. It had only been a week or two, but it seemed like an eternity since the irregular test came back and then the follow-up showed signs of cancer. Janet and Michelle were powerless to do anything while they waited, but now they knew it was treatable. Yet Janet knew Michelle was terrified of chemo and still in shock from the newness of the situation. She wanted to make the fear go away, but she didn’t know how. She held Michelle closer and she could feel Michelle relax a bit.

Janet relaxed a bit too. Then it hit her. Janet held her anger back as fear and desperation gripped her. She was powerless. Thankfully, at that moment Michelle excused herself to go to the restroom. Janet looked at Dr. Weisman and began to speak. “What about insurance? Michelle isn’t covered. We have paid out of pocket for everything up to now.”

She and Michelle had been devoted partners for twenty years, but since their state did not allow them to marry and Janet’s employer, a mid-sized engineering firm, did not provide benefits for same-sex couples, Michelle could not be covered under Janet’s policy. Michelle’s job with a building supply company had been reduced to part time a year earlier and she lost her benefits, including health coverage. At first they thought Medicaid would provide coverage, but Michelle made too much to qualify for Medicaid, although just barely, so she remained uninsured. The desperate search for insurance coverage began long before Michelle learned she might have cancer, but after losing half her salary, any decent coverage was out of reach.

Dr. Weisman scratched his chin and thought for a few moments. “I can do the surgery for free. If you ever win the lottery you can pay me back,” he said as he smiled. Then his expression turned somber. “But the hospital and drug costs will be significant.”

“How much do we need?” Janet asked, her mind racing through every way in which they could raise the money.

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“Just the hospital and drug costs will probably be more than \$50,000 and could be as much as \$175,000 depending on the amount of chemo Michelle needs and the recovery time,” Dr. Weisman replied. Janet calculated that they could probably raise \$15,000 from their own funds and friends and family, but even if they sold their house they would not have more than \$25,000 total given their current mortgage and sagging housing prices.

The conversation stopped abruptly when they heard Michelle talking to a nurse in the hallway. Both Janet and Dr. Weisman knew that Michelle did not need extra stress. When Michelle returned to her seat, Janet turned to her and gave her a hug. “Thank God it’s treatable,” Janet said warmly; yet she knew that getting the treatment quickly would not be easy without insurance.

December 10, 2015

Mandy Rodriguez stared at the letter. Her mind raced in a thousand directions. She had overcome so much. What about her 4.0 GPA in the graduate counseling program? What about all of her volunteer work to help poor patients in need of clinical services in the program’s counseling assistance program? The words on the page were inconceivable.

Dear Ms. Rodriguez:

I am sorry to inform you that you have been expelled from the counseling psychology program at Sycamore State University. The hearing committee voted unanimously to expel you due to your refusal to counsel clients in same-sex relationships about marriage issues in the mandatory counseling clinic. The committee found that you have no right to refuse such counseling based on your religion. Moreover, the committee found that your willingness to counsel gay or lesbian clients on any issues unrelated to marriage, and your willingness to refer clients in same-sex relationships who seek counseling regarding marriage issues, while positive steps, are inadequate to enable you to meet the clinical requirements for graduation. You must be willing to counsel any client on any issue regardless of sexual orientation.

Dean Francis Smith-Maquid

Mandy tried to hold back the tears. She had worked so hard, not just for herself but also for her five-year-old son, Andrew. She had escaped an abusive relationship and wanted to find a career where she could help people and support her son. Counseling psychology was perfect.

Mandy hadn't had any problems until Prof. Stinson's clinic. She was asked to counsel a same-sex couple regarding marital issues. Mandy referred the couple to another student in the clinic because she held a deep religious belief that marriage should be between a man and a woman. She had no problem counseling gay and lesbian clients about other issues, and in fact she had counseled a lesbian client whose ex-husband was abusive before and after the client came out.

Prof. Stinson was furious that Mandy referred the same-sex clients seeking marriage counseling to another student. Mandy recalled the conversation as a tear rolled down her cheek. Prof. Stinson said, "What is wrong with you! You have a duty to counsel everyone who comes through the door under our policies!"

Mandy was scared, but she was prepared for this. She responded to her professor, "I have counseled everyone who has come through the door until now, and I have no problem counseling gay and lesbian clients about any other issues, but my religious commitments do not allow me to counsel same-sex couples about marriage. I would be no good to them so I referred them to a student who could counsel them without objection. The other student gave me one of her client files involving spousal abuse so that my caseload was not reduced and her caseload was not increased."

"Do you honestly believe that same-sex marriage is such a sin that you can't counsel about it? This program is built for the twenty-first century, not the fifteenth!" Prof. Stinson huffed.

"Yes, I do, but it's nothing against gay people. It just has to do with my religious commitments and beliefs about marriage. If I help with that kind of relationship I would be facilitating the sin. I can't do that." Mandy was almost in tears.

"You can't refer a client just because it violates your views." Prof. Stinson said.

"I checked the policies and there is nothing preventing it, and there is a policy allowing referrals for patients who want to terminate their life

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because of the moral issues it raises for counselors. My issues come from religion, but they are still moral issues,” Mandy said.

“I will be filing disciplinary charges against you,” Prof. Stinson said.

Mandy remembered the sting she felt when Prof. Stinson said that. A week later, Professor Stinson filed charges against Mandy. Two weeks after the charges were filed, the department held a hearing. Mandy attended the hearing and testified. She had thought that the hearing went well. Even Prof. Stinson was respectful of her views. Maybe it was all a ruse to make her feel confident and not raise a complaint outside of the university. Mandy wasn’t sure what to do. She was frozen.

“Mommy, why are you crying?” Andrew asked.

“It’s okay, Andrew. Mommy was just reading a sad letter.”

“From who? Why is it sad?” Andrew asked.

“From some people who don’t know how to respect beliefs they disagree with.”

“They must not be very nice.”

“Well, that’s not for us to decide, Andrew.” Mandy hugged Andrew tightly, crying quietly so he wouldn’t worry.

October 15, 2014

Amy looked at her pack of birth-control pills. She had been on them since her surgery to remove an ovarian cyst, just after she turned 25. Her mom, Betty, had ovarian cysts as well. Both aunts on Betty’s side of the family had had ovarian cancer. Aunt Anna did not catch it before it was too late and died from it.

Amy remembered her initial visit with Dr. Brock after the surgery. Dr. Brock told her in no uncertain terms that she needed to take the pill to lower her risk of ovarian cysts and ovarian or uterine cancer. Amy was happy to have an edge in fighting her genetic predisposition, and it gave her even greater hope that she would be there to see her children and grandchildren grow up.

Amy looked at the pictures on her nightstand. There was one of her and Jim at the beach, and pictures of Abby and Max in their little jeans and t-shirts playing in the front yard. Amy allowed a smile as she thought about that day at the beach with Jim. It was the day they decided to adopt. They went to the beach to help relax after learning that Amy had fertility issues. When Jim found out, he joked that he was

like a kid, so they didn't need to have kids. Amy did not buy his calm front. She heard the pain underneath his laughter, and she suggested they take a weekend at the beach near her parents' house. Amy also began researching adoption.

Now she could not imagine life without Abby and Max. That's what made the letter from her employer even more troubling. Amy was angry, but what could she do?

Jim had lost his job a few months earlier. They were able to scrape by on Amy's salary while Jim looked for work. They had always been a two-salary family, with both Amy and Jim adjusting their schedules to make sure Abby and Max were taken care of. The letter she held would cost them at least \$700 a year, and given that they were already in debt and just scraping by, Amy didn't know what to do. The letter read:

Dear valued Slangontech employee:

Slangontech is proud of each of our 7,000 employees. We are writing to inform you of a change in our benefits program that may affect some of you. In light of the United States Supreme Court's recent ruling in *Burwell v. Hobby Lobby*, we will no longer cover contraceptive care. We are a self-insured and closely held company.

John and Ellen Slangton and their family respect all employees, but their religious commitments prevent them from covering contraceptive care. Slangontech has reluctantly covered contraceptive care since 2010 under the state's mandatory contraceptive coverage law, and since 2014 under the Federal Affordable Care Act. Doing so has caused the Slangtons great pain. We believe that the recent decision by the United States Supreme Court in *Hobby Lobby* allows us to stop covering these items under the Affordable Care Act, and we also believe our state constitution will be interpreted in the same manner so that we need not cover contraceptives despite the state's mandatory contraceptive coverage law.

No other benefits will be affected. We wish you and yours a grace-filled year.

Slangontech, Inc.

Amy knew without looking how much her pills would cost. The doctor told her she needed to be on Yasmin 28 for a variety of reasons, including that two other pills she had tried caused her to have

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migraines. She had been taking the generic version, but even the generic cost \$60 per month, and that was without any price increases; \$720 a year, she thought. She could cut back on food and not buy the kids much for Christmas, but even that might not cover it. Or, she thought, she could go off the pill until whenever Jim got a job. Dr. Brock was clear that she needed to stay on the pill, but would a few months without it hurt? She knew the answer. Dr. Brock was clear that going off the pill for any period of time put her at risk for ovarian cysts, and that the longer she stayed off the pill the greater her risk of ovarian or uterine cancer. But what else could she do?

September 23, 2014

Jonathan Stein sat in his room. He felt nauseous, and the feeling would not go away. Ever since he spoke with Mr. Winston and Coach Fenton, he couldn't sleep or eat. Now, his parents were at school pleading his case to the principal. It wasn't fair. He never had these problems at his old school district. He didn't mind moving to his new school until all this started. He liked having a nice big yard and a smaller school, but now he felt like an outcast with a scarlet J, for "Jew," on his chest. All of this because he needed to miss two days of school for Rosh Hashanah, the second most important Jewish holiday of the year.

Between Coach Fenton's threat to bench Jonathan, who was a starting linebacker for the school's football team, if he missed two practices for "some Jew holiday," and Mr. Winston's refusal to allow him to take a makeup for a test that would greatly affect his grade in chemistry because, "I don't give makeup tests unless there is a medical reason," Jonathan felt like his life was falling apart. He was only in the eleventh grade, but he had a serious chance at a college scholarship for football or academics. Being benched would keep college scouts from seeing him play, and a low mark in chemistry would decrease his GPA. He couldn't afford either. His parents didn't have a lot of money, and he knew a scholarship would be needed if he wanted to have a brighter future.

Jonathan heard the front door open and hope returned. He went downstairs and saw his mom crying in the kitchen. His dad looked dumbfounded. Jonathan's dad saw Jonathan and said, "Jon, come and sit down." Jonathan sat at the kitchen table. His dad continued, "Jon, I don't know how to reason with these people. The principal said that it

is up to the teacher whether to allow a makeup test. He has talked to Mr. Winston, but Mr. Winston won't budge. The principal disciplined Coach Fenton for the way he spoke to you, but he can't make him change his mind about benching you if you miss practice without being injured."

Jonathan's mind raced and he remembered eighth-grade civics. "What about the Constitution? Don't we have a right to be who we are?" Jonathan's mom looked dejected. "We brought that up and the principal said these are general policies that apply to all students the same so they don't have to give you an exception. He said if the state had something called a religious freedom law, he would be able to help, but there is no religious freedom law here so it is up to the teachers."

Jonathan wanted to cry. He noticed that his dad was close to tears too. "It's my fault," his dad said. "We should have never moved here. I should have never taken the new job."

"But it's a great job and until this everything has been good here." Jonathan's mom said. "Who could have known about this? There is no way you could have known."

"Jon, I don't know what to tell you. We will support you whatever you choose to do about Rosh Hashanah. We can't force a decision on you," Jonathan's dad said in a soft voice.

"I don't really have a choice," Jonathan accepted his fate. "We have observed Rosh Hashanah for more than two thousand years. Even during the worst times people found a way. I'm not going to stop just because Mr. Winston and Coach Fenton are so ignorant."

Jon's mom and dad smiled with pride, but inside their hearts ached because they knew this would hurt Jon's chances of getting a college scholarship, whether academic or for football.

I INTRODUCTION

We are in the midst of a supposed war between sexual freedom* and religious freedom. If you watch the news, spend time in the

* The term "sexual freedom" is under inclusive. Clearly, LGBT and reproductive rights are about far more than sex. They are about fundamental questions of one's ability to be free and control one's destiny. LGBT rights are about being who you are without discrimination

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blogosphere, or listen to activists and politicians, you will hear examples of discrimination against one side or the other. It seems, at least in most media accounts, that the conflict between religious freedom and LGBT rights is insurmountable. Yet, there is a fundamental problem with this supposed conflict, namely, that in many cases it is not real. Religious freedom, LGBT rights, and reproductive freedom can coexist – at least in many contexts – even if some on one side or the other of the culture wars are uncomfortable with this fact.

Yet, the visceral attacks on the Supreme Court's recent decision to protect same-sex marriage and the equally visceral attacks on proposed state religious freedom laws in Michigan, New Mexico, Kentucky, Georgia, Indiana, and other states demonstrate that factions on both sides are adept at attacking laws and policies with which they disagree. Unfortunately, when one observes these attacks it becomes clear that many of those attacking have a complete inability, or perhaps lack of desire, to find common ground or put themselves in the shoes of those with whom they disagree. This sometimes brings public discourse on the relationship between religious and sexual freedoms down to the lowest common denominator, which is an affront to those who seek to move America forward without leaving millions of Americans behind.

Immoderate factions on both sides have had a disproportionately large role in framing the issues in the court of public opinion. The media, it should be no surprise, has often latched onto more radical voices and given the impression that those voices speak for one side or the other. Make no mistake; much of the problem here is based on perception and the framing of issues rather than on an inherent tension between religious freedom and sexual freedom. By the time you finish reading this book, you will understand how these important freedoms can coexist in many contexts, and how in those situations where common ground cannot be found, informed choices can be made that will allow the remaining walls between religious freedom and sexual freedom to stand without increasing

in the most fundamental aspects of life, and reproductive rights are about the freedom to control your body and determine your own future. I use the term "sexual freedom" in this book as shorthand for all of this. In this sense, the term "sexual" addresses far more than sex and the term "freedom" addresses far more than freedom in the bedroom.

hostility toward the broader freedoms that are important to each side. Hopefully, together, we can work to reframe these issues in a more productive way.

Of course, reframing these issues in a productive way cannot be done by burying our heads in the sand. Religious freedom and sexual freedom do conflict in several situations. For example, what should be done when a closely held for-profit entity denies benefits or services to employees based on religious objections? How can religious universities or adoption agencies representing faiths that oppose same-sex marriage continue to serve their missions in light of the issues raised by legal recognition of same-sex marriage? What should be done about government officials who refuse to grant marriage licenses to same-sex couples based on religious objections? And, of course, should Mandy Rodriguez in the hypothetical example have any legal recourse to avoid expulsion from her university?

These questions are important and serious. They will be addressed in detail in later chapters, but for now it is important to understand that many religious freedom claims are more like Jonathan Stein's situation. They have no impact on sexual freedom. Moreover, in many cases religious freedom claims have much in common with claims for LGBT and reproductive rights. After all, in all these situations people are seeking to keep government from interfering with or denying them their most fundamental, and often personal, aspects of being. Opposing or blocking all religious freedom laws to prevent discrimination could actually end up fostering discrimination against religious minorities, as well as mainstream Christians, in contexts where there is no discrimination against anyone else.

Mandy's situation is somewhat different from Jonathan's. Mandy's situation raises what is often called a "conscience claim." These claims sometimes, but not always, impact third parties. Conscience claims run the gamut from less controversial issues (at least less controversial in the twenty-first century), such as conscientious objection to military service to more controversial issues, such as the refusal of county clerks to issue marriage licenses to same-sex couples and the refusal of hospitals to allow abortions to be performed in their facilities. As will be seen, common ground may be found in some of these cases, but whether this can be done is a fact-sensitive question. The answer