

2. I am one of the attorneys for the defendants in this action and have been admitted to practice in New Jersey pro hoc vice by this Court for this case. I have personal knowledge of the facts set forth below and could and would competently testify thereto if called upon to do so as a witness.

3. In response to the subpoena duces tecum (STD) that plaintiffs served on David Rosenthal and Shamash List Serve Manager, I sent an e-mail to plaintiffs' counsel on Friday, April 5, 2013, asking that it be withdrawn on multiple grounds. I indicated that we would follow-up with a request to meet and confer by phone. A true and correct copy of that e-mail is attached to this certification as Exhibit "1."

4. The follow-up call to meet and confer by phone was made by my co-counsel, Michael Laffey, on Monday, April 8, 2013. In response, plaintiffs' counsel indicated that they wished to meet and confer by phone on Friday, April 12, 2013 and the call has been scheduled for that time.

5. We have proceeded to file the motion to quash, along with a companion motion to quash plaintiffs' SDT served on Thaddeus Heffner in Tennessee, because of the concern that the New York SDT recipients may not otherwise wait until the SDT return date of May 1, 2013 to produce the confidential documents that are the subject of the SDTs they received.

6. Should plaintiffs agree to withdraw the SDTs served on Thaddeus Heffner and/or David Rosenthal and Shamash List Serve Manager, we will withdraw one or both of the corresponding motions to quash.

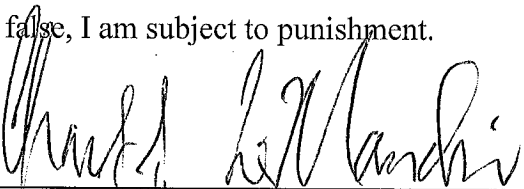
7. Attached hereto as Exhibit "2" is a true and correct copy of an article entitled "The New Gay-Rights Frontier: As gay marriage gets its day at the Supreme Court, activists in New Jersey

launch a new offensive in the fight for LGBT equality.” In this article, which is dated March 21, 2013, one of plaintiffs’ attorneys with the Southern Poverty Law Center discusses their reasons for bringing this case.

8. Thus far, plaintiffs have served over 300 interrogatories on the four defendants in this case. They have also served SDTs on third parties in four states including New Jersey, Tennessee, Virginia and New York. This is despite the fact that defendants have already produced to plaintiffs hundreds of pages of documents including all of the plaintiffs’ client files and their unredacted confidential list serve communications with third parties.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 9, 2013



Charles S. LiMandri, Esq.

Exhibit 1

Charles Limandri

From: Charles Limandri
Sent: Friday, April 05, 2013 3:29 PM
To: Lina Bensman; Teresa Mendoza; mlaffey@messinalawfirm.com
Cc: morrisdees@charter.net; jbruno@splcenter.org; christine.sun@splcenter.org; sam.wolfe@splcenter.org; James L BROMLEY; Scott McCoy; Allyn Z. Lite; Jeffrey A. Shooman
Subject: Ferguson v. JONAH
Attachments: David Rosenthal Subpoena.pdf; Heffner Subpoena.pdf

Dear Mr. Lite:

This e-mail is a good faith attempt to meet and confer with respect to the plaintiffs' recently served subpoenas duces tecum (SDT) on Thaddeus Heffner, David Rosenthal and the Shamash Listserv Mailing List Manager. (see above attachments). As to the SDT served on Mr. Heffner, on behalf of the defendants and Thaddeus Heffner (who we will also be representing on the motion), we request that plaintiffs withdraw Requests Nos. 1 through 4. Otherwise, we will file a motion to quash based on the grounds that the requests are irrelevant and immaterial, overbroad, burdensome and oppressive, harassing, seek to invade the marriage and family counselor privilege (N.J.S.A. 45:8B-29), and violate the contractual and constitutional privacy rights of third parties. These are not just pro forma objections as we understand that the requests improperly seek to reach potentially thousands of private e-mails involving nonparties and that have absolutely nothing to do with this case.

As to the two identical SDT's served on David Rosenthal and the Shamash Listserv Mailing List Manager, we request that you also withdraw the subpoenas, as to Requests Nos. 1 through 4, on the grounds that they are irrelevant and immaterial, harassing, and seek to violate the contractual and constitutional privacy rights of third parties. Although not all of the JONAH listserv participants were actual clients, all were either struggling with same-sex attraction, or were being supported by others to better their lives. Moreover, they were all prescreened and approved by JONAH as listserv participants and were assured that their participation would remain confidential. Furthermore, although we have previously provided you with the pertinent facts and legal authority with respect to the right to privacy of third parties, we are including it again here for your convenience:

It is appropriate for JONAH to assert the privacy rights of third parties, specifically that of former and current clients. It should go without saying that clients undergoing any kind of counseling or therapy do so with an expectation that the information they reveal will be kept private. Moreover, the service agreement that each JONAH client entered into contains a provision guaranteeing that his identity, client relationship, and the nature and content of his work with JONAH will remain private and confidential. Consequently, absent express waivers, defendants cannot reveal any information about clients other than plaintiffs without breaching their fiduciary and contractual obligations to those clients.

Furthermore, those other clients have constitutionally protected rights to privacy. Under the United States Constitution, the protected "zone of privacy" includes the individual interest in avoiding disclosure of personal matters. (*Whalen v. Roe*, 429 U.S. 589, 598-99 (1977).) Courts of appeals "have interpreted *Whalen* to recognize a constitutional right to the privacy of medical, **sexual**, financial, and perhaps other categories of highly personal information – **information that most people are reluctant to disclose to strangers** – and have held that the right is defeasible only upon proof of a strong public interest in access to or dissemination of the information." (*Wolfe v. Schaefer*, 619 F.3d 782, 785 (7th Cir. 2010) [emphasis added].) Similarly, New Jersey courts have consistently

recognized "a right to privacy implicit in article 1, paragraph 1 of the state's constitution." (See, e.g., *Lewis v. Harris*, 875 A.2d 259, 266 (N.J. Super. App. 2005).) While we have entered into a confidentiality agreement, defendants have no legal right to waive any third party's constitutional right to privacy.

At the very least, the other clients' private information should not be released until they have been notified that plaintiffs are seeking to discover it and have been given an opportunity to object to its production. (See, e.g., *Dendrite Int'l, Inc. v. Doe No. 3*, 342 N.J. Super. 134, 141 (App. Div. 2001); see also *Gross v. Kennedy*, 15 N.J. Super. 118, 121 (Ch. Div. 1951) [in determining whether production of third party materials should be compelled, courts should consider: (a) whether good cause has been shown for the examination; (b) whether one not a party to the suit may be unduly affected by revelation of its private affairs; and (c) whether the materials are within the possession, custody or control of the other party].).

Based on the foregoing, Mike Laffey will be following up with a phone call to you early next week, in compliance with Rule 1:6-2(c) of the New Jersey Rules of Court, prior to our filing the motions to quash the respective SDT's. In the meantime, Mr. Lite, thank you for your professional courtesy and cooperation in this matter.

Charles S. LiMandri
President and Chief Counsel
Freedom of Conscience Defense Fund

P.O. Box 9120
Rancho Santa Fe, CA 92067
Tel: (858) 759-9930
Fax: (858) 759-9938
www.consciencedefense.org
cslimandri@limandri.com

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you

From: Lina Bensman [mailto:lbensman@cgsh.com]

Sent: Wednesday, April 03, 2013 1:34 PM

To: Charles Limandri; Teresa Mendoza; mlaffey@messinlawfirm.com

Cc: morrisdees@charter.net; jbruno@splcenter.org; christine.sun@splcenter.org; sam.wolfe@splcenter.org; James L BROMLEY; Scott McCoy; Allyn Z. Lite; Jeffrey A. Shooman

Subject: Ferguson v. JONAH

Dear counsel,

Please find attached a copy of plaintiffs' third party subpoenas to David Rosenthal and to Thaddeus Heffner.

Regards,

Lina

Lina Bensman
Cleary Gottlieb Steen & Hamilton LLP
Assistant: namitrano@cgsh.com
One Liberty Plaza, New York NY 10006
t: +1 212 225 2069 | f: +1 212 225 3999
www.clearygottlieb.com | lbensman@cgsh.com

This message is being sent from a law firm and may contain confidential or privileged information. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.

Throughout this communication, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.

EXHIBIT 2



We're more than 78,000 people looking out for more than 70 million Americans. That's HEALTH IN NUMBERS™

UnitedHealthcare Visit uhc.com

Subscribe Give Gift Renew Current Issue



THE AMERICAN PROSPECT navigation bar with search, login, and social media links.

Home Politics Culture Blogs Voices Magazine

HOME > VOX POP

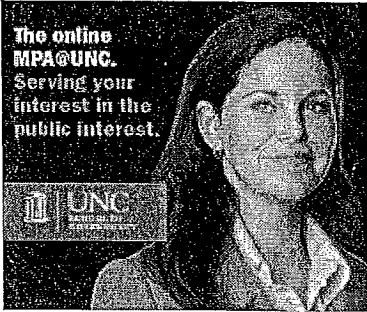
The New Gay-Rights Frontier

CHRISTOPHER MORAFF MARCH 23, 2012

As gay marriage gets its day at the Supreme Court, activists in New Jersey launch a new offensive in the fight for LGBT equality.

Like 19 Tweet 19 Pin it 28 Instagram Pocket

Email Print



As the Supreme Court prepares to take its first serious look at the issue of same-sex marriage—with oral arguments set to begin March 26 in back-to-back challenges to California's Proposition 8 and the Defense of Marriage Act—gay-rights activists and their supporters in the New Jersey Legislature are quietly advancing their fight for LGBT equality on a separate front, with a concerted push to undermine the practice of controversial gay conversion therapy in the state.

Polls show that public support for legalizing gay marriage has hit an all-time high, with 58 percent of Americans—including a growing number of Republicans—now in favor of granting same-sex couples the rights and benefits enjoyed by their heterosexual counterparts. But even the staunchest of activists recognize that victory for marriage rights in Washington will be but an incremental step on the road to equality for a community that has been consistently denied equal protection under the law.

Consider that only 18 states and the District of Columbia have laws explicitly allowing homosexual couples to jointly adopt children; and in 29 states it's still legal for an employer to fire a worker simply because he or she is gay. Meanwhile, efforts to strengthen state anti-bullying laws to include protections for gay and lesbian youth have met stiff resistance from conservative groups in places like Michigan and Arizona, and many private schools and institutions—most notably the Boy Scouts of America—continue to defend anti-gay policies.

Gay rights advocates, including the Southern Poverty Law Center (SPLC), are targeting the practice of conversion therapy on the grounds that by perpetuating the belief that homosexuality is a treatable mental disorder, it helps to legitimize discrimination against LGBT people. Earlier this month, a superior court judge in Jersey City heard preliminary motions in a first-of-its kind consumer-fraud lawsuit filed by the SPLC on behalf of four gay men who say they were conned out of thousands of dollars by two therapists who promised to make them straight. The litigation is part of a one-two punch against conversion therapy in New Jersey that also includes a bill in the state senate that would severely limit how practitioners can market their services.

Two of the defendants are an independent "life coach" named Alan Downing and his sometime employer, Arthur Goldberg—founder of the group Jews Offering New Alternatives for Healing, or JONAH. A disbarred attorney who served 18 months in

About the Author



Christopher Moraff covers national politics, social justice and consumer issues for a number of publications. He writes a weekly column for Philadelphia magazine's blog "The Philly Post" and is a contributing writer for In These Times, where he serves on the Board of Editors.

ARTICLES BY CHRISTOPHER MORAFF RSS FEED OF ARTICLES BY CHRISTOPHER MORAFF

green festival advertisement listing dates for New York City, Chicago, Washington, DC, Los Angeles, and San Francisco.


federal prison in the late 1980s for helping orchestrate a phony bond scheme, Goldberg describes homosexuality as a “false identity,” which he claims he can dislodge using techniques that range from the unconventional to the bizarre. (In one group exercise, clients were reportedly confronted by a human chain of their peers and peppered with anti-gay slurs as they attempted to reach a pair of oranges meant to represent testicles.) When the treatments failed to change their sexual orientation, clients were told it was due to their lack of commitment. “As long as you put in the effort, you’re going to change,” Goldberg allegedly told one plaintiff.

According to lead attorney Christine Sun of the SPLC, the consumer-fraud case against conversion therapy represents the opening salvo of a grassroots, multistate effort to chip away at LGBT discrimination by subverting the notion that homosexuality is nothing more than a lifestyle choice. “Discrediting the idea that you can change your sexual orientation completely demolishes the number-one justification for denying gay people equal rights,” she says. “If you look at the literature by some of the anti-gay groups, the first reason they have for not

allowing a gay couple to be married or not providing employment protections for gay employees, or not taking bullying against gay kids seriously is the idea that being gay is a mental disorder and it’s something that needs to be treated.”

Secular “reparative” therapy came to prominence in the 1990s, when APA dissenter Dr. Charles Socarides and two colleagues—Benjamin Kaufman and Joseph Nicolosi—formed the National Association for the Research and Therapy of Homosexuality (NARTH) in an attempt to provide a scientific foundation for their belief that it’s possible to turn a gay person straight. Despite years of effort, they haven’t had much success. The single-most influential study supporting conversion therapy’s claims was repudiated by its author last year, and the scant evidence that exists of its effectiveness is based primarily on the word of “ex-gays” themselves, almost all of whom admit they still struggle with same-sex attraction.


ADVERTISEMENT



Cameroon, Stop Harassing the LGBT Community!

author: Brittany E.G.
signatures: 18,125


[Sign petition](#)

start a petition | grab this widget 

ways, these smaller battles are more important because they are less understood.” He points to the history of the women’s rights movement as evidence that full equality for homosexuals will not come with the stroke of a pen or a single Supreme Court decision. “After *Roe v. Wade*, a lot of people declared victory and dropped out of the [women’s rights] movement, and now 40 years later they’re fighting the same battles again,” he says. “This is not something that we want to happen in the LGBT community.”

“If you look at the literature by some of the anti-gay groups, the first reason they have for not allowing a gay couple to be married or not providing employment protections for gay employees, or not taking bullying against gay kids seriously is the idea that being gay is a mental disorder and it’s something that needs to be treated.”

amazon.com



Reebok Men's Realflex Transition Training Shoe
\$52.95-\$55.95

[Shop now](#)

amazon.com

Reebok Men's Realflex Transition Training Shoe
\$52.95-\$55.95

[Shop now](#)

Garden State Equality has been coordinating with New Jersey lawmakers to advance legislation that would ban conversion therapy for minors under the age of 18. The bill was introduced last fall by Democratic state Senator Ray Lesniak and is modeled on a similar law in California currently being challenged by proponents of conversion therapy. The California measure, which was drafted by state Senator Ted Lieu and signed into law in September by Governor Jerry Brown, was the result of an intense lobbying campaign by gay-rights groups led by the Human Rights Campaign. A federal judge blocked the law in December, before it was set to take effect, and the U.S. Ninth Circuit Court of Appeals will begin hearing oral arguments in two cases challenging its constitutionality on April 17. Plaintiffs include conversion therapists and their patients, who say the law violates their right to free speech.

Lesniak—an evangelical Christian who equates pressuring adolescents to change their sexual orientation with child abuse—says that the free-speech argument doesn't hold water.

"There is no scientific basis for this treatment—it's akin to a chiropractor saying they can cure cancer by manipulating your spine," he says. "Free speech does not mean anyone licensed to practice therapy can engage in fraudulent speech without being subject to a penalty."

Lesniak's bill passed the Senate Health, Human Services and Senior Citizens Committee on March 18 by a vote of six to one, with two abstentions. It now goes before the full Senate where it will be combined with a companion bill in the House sponsored by Assemblyman Timothy Eustace, an openly gay Democrat. Eustace's bill still faces consideration by the state assembly, but Lesniak says he is confident the legislation will be on Governor Chris Christie's desk by May.

Success in court, however, may prove trickier for the SPLC. JONAH's defense is being mounted by prominent anti-gay attorney Charles LiMandri, a practiced ideologue who has called homosexuality "destructive and pathological" and has warned of a "potential civil war" if same-sex marriage is legalized. In a motion filed last month, LiMandri—who is president of the Freedom of Conscience Defense Fund and served as a general counsel for the National Organization for Marriage—said the suit against JONAH violates his clients' constitutional rights to freedom of speech, freedom of religion, and freedom of association.

New Jersey also has a "learned professional exemption" that limits fraud litigation against doctors, attorneys, and other licensed occupations, as long as they are acting within the recognized boundaries of their profession. However, given the widespread rejection of conversion therapy by nearly every medical and psychological professional body, it's hard to see how conversion therapists will be able to hide behind the exemption.

For her part, Sun says she is confident a jury will agree that her clients were swindled but adds that by publicly exposing the "absurdity" of conversion-therapy practices, even a loss in open court is not without its merits. The JONAH case, she says, is part of a "broader campaign against an industry that preys on vulnerable gay people" that includes plans for legal action in other states. Since 2011, the SPLC has been working with organizations like Truth Wins Out, Lambda Legal, and the National Center for Lesbian Rights to undermine conversion therapy outside the courtroom, mostly through attempts to have practitioners tossed from professional associations and remove anti-gay literature from school-district health curriculum. But a victory in New Jersey would do something that none of those efforts can: establish by legal precedent that conversion therapy is indeed a fraud.

"If we're successful," Sun says, "this case will be the death knell of conversion therapy."