

Alex ([00:02](#)):

Hi. And welcome to Making the Case with Lambda Legal. A podcast from Lambda legal, highlighting impactful cases and policy work. I'm Alex Berg, a journalist and host and I cover all things LGBTQ+ and the issues that impact us. On this episode of Making the Case. We're going to discuss a case involving healthcare, civil rights and religious exemptions. It's a case about a woman seeking treatment for infertility and being blatantly discriminated against and in fact, medically harmed because of her sexual orientation. In 1999, Lupita Benitez was living in San Diego when she sought treatment for infertility while she wasn't married as it wasn't legal. She and her long term partner were ready to take the next step and start a family.

Alex ([00:45](#)):

Unfortunately, for Lupita the path to motherhood would prove unnecessarily challenging. This is the kind of case that Lambda legal, that involves a lot of overlapping work. And senior attorney Jenny Pizer was able to call on her experience and deep knowledge of non-discrimination protections and religious or conscientious exemptions to those protections, let's dive in. Today, we have Jenny Pizer, senior council and director of strategic initiatives for Lambda Legal here to talk about Benitez, the North Coast Women's Care Medical Group. Welcome, Jenny.

Jenny ([01:15](#)):

Great to be with you.

Alex ([01:16](#)):

To start us off briefly tell me about this case.

Jenny ([01:19](#)):

Well, back in 1999, Lupita Benitez needed medical care for a common infertility condition and only had one in network clinic option but her doctors there refused to do the common procedure they do routinely for their other patients. And it was because of their religious beliefs about lesbians having children. Well, that refusal violated California's non-discrimination law. The way they treated her, well, they delayed the procedure for nearly a year. They did unnecessary tests and they kept her on fertility medication that causes mood swings and other things by the way, is linked to cancer when it's used for long periods. And then eventually, they told her she would just have to go elsewhere because none of the doctors at the clinic would treat her. So they dumped her and she was devastated, it was outrageous. And so a lawsuit was brought, Lambda Legal got involved. We litigated her for nearly a decade and in 2008, we got a wonderful unanimous ruling from the California Supreme Court that allowed us to establish a new precedent under California law that's been super important and that it allowed us to reach a very good result for our client.

Alex ([02:22](#)):

As I was reading this case, I felt my own temperature rise by how dismissed the plaintiff was by her doctors and how the doctors refused care on the basis of their beliefs as you mentioned. What was your strategy in this case and how did you come up with it?

Jenny ([02:37](#)):

Early in the case, the doctors put in writing that they refused to treat Lupita the way they treat their other infertility patients because she's a lesbian, they put that in writing. And in many discrimination cases, defendants will claim in the course of the case that they acted for reasons other than our client's identity or their personal characteristics, they change their story and then there's an argument about why they really did what they did. So having that discriminatory motive explicitly in writing was very helpful. And then when the doctors predictably, tried to change their story later and claim, they refused to treat Lupita because she was unmarried and remember at that time, same sex couples could not marry in California or anywhere in the United States and we would point back to their own written words so that was important. Another important fact is that there was only one clinic available to Lupita on an in-network basis.

Jenny ([03:31](#)):

And that was helpful because under nondiscrimination laws usually, it's no excuse that a person could get their services elsewhere. If you're operating a business and it's open to the public, you can't turn people away based on who they are when there's a law that requires everybody be treated equally. We all should be able to go shopping or look for an apartment or seek medical care without worrying that we're going to be suddenly rejected and humiliated for no fault of our own just because of who we are that's what the civil rights laws are for.

Jenny ([04:03](#)):

But some people say, "Well, why make a fight out of this? You could go somewhere else where they want your business or why make a fight out of this when in some other clinic they want to take care of patients like you?" So the fact that Lupita really was stuck here, that the only clinic available was refusing to treat her the way they treat the other patients was a response to that argument. That's a argument based on what people think the law says or how people should behave instead of the way the law really works. And in this instance, Lupita also endured nearly a year of double talk and unnecessary and invasive tests. So other key elements of the strategy were that religious beliefs have been invoked repeatedly in the past in America as justifications for different types of discrimination.

Alex ([04:54](#)):

You don't see it as an act of discrimination?

Speaker 4 ([04:56](#)):

I see it as an act of following my faith. It's not just a cake, it's an iconic symbol of a wedding. This is a religious ceremony that goes in direct conflict with my faith.

Speaker 5 ([05:08](#)):

Get your pastor to sign that exemption form and if your pastor doesn't have the courage to sign it, I'll sign it for you.

Speaker 6 ([05:14](#)):

I really think it's unfortunate, they're putting us in a position to have to either decide between prayer or doing what they say. And I think the answer to that is easy, I think we stick with prayer.

Jenny ([05:25](#)):

Our courts have been fairly consistent for decades really in rejecting those attempted uses of religion to excuse discrimination. Because the courts have recognized that if that kind of exception were recognized, it would effectively gut our civil rights laws that the laws have to protect everyone. It doesn't matter what people's motives for discriminating might be. I mean, whether it's religion or personal hostility or anything it might be, it doesn't matter. The point is that people are to be protected in these contexts so we argued in court that case law shows what the answer should be in this case. The fact that it was sexual orientation, discrimination doesn't mean the principal should apply any differently. And I would mention a couple of other key parts of our strategy. We had to do quite a bit of public education and point out, there are many types of medical care where some religions oppose that care and there's not endless religious rights to deny a person their medical standard of care if you're in that field of medicine.

Jenny ([06:27](#)):

And I think another key area that we had to really emphasize is the difference between a particular medical procedure say some type of end of life care and the person or the patient that saying, "I won't provide this care to anyone," is very different under our civil rights law than saying, "I won't give it to this type of person." So we had to do public education about that and we had to argue that in our legal papers. And I would say maybe the last key part of the strategy here was addressing the medical establishment in California, the California Medical Association fairly early in the case, filed a friend of the court brief against us supporting the doctors, discriminating. Arguing that they should have that kind of religious right to refuse care to lesbian patients. And we needed to push back on that both engaging with the California Medical Association and various important allies who were involved in that group and other medical associations.

Jenny ([07:27](#)):

And we did persuade California Medical Association to change their position in this case, filing a different legal brief and quite a few other medical associations to support this position. All the major medical associations have positions against discrimination. They say conscience rights are protected but never to excuse discrimination against patients. And many of those groups came into the case and said that on their own behalf and I think that was very powerful and important. It shouldn't change the way the law applies, the law applies the way it's written and understood but having medical voices confirm that's the right answer in terms of standard of practice, certainly was helpful reinforcing that the civil rights rule and the medical ethics rule are completely in harmony in this case and in similar cases.

Alex ([08:17](#)):

I'm struck by so many things that you just mentioned in particular, just how Lupita the plaintiff was in this really vulnerable position in this situation. There is so much time and energy that goes into getting fertility treatments, it is mental and physical and a big life decision. And then you have these doctors, people you're relying on to build your family, put you in this position. The doctors also try to victimize themselves. Do you see that in a lot of your cases?

Jenny ([08:47](#)):

Unfortunately, we see it not just in our cases but we see it in debates, in legislative arenas. And certainly, in a lot of the public media.

Speaker 7 ([08:57](#)):

I'm a high school football coach. I don't know anything about the law but I knew my rights as an American. I'm not going to hide who I am, I'm not going to hide my faith.

Jenny ([09:06](#)):

I mean, historically religious freedom has been and it continues to be very important. It's a core American value always has been and remains so today. But it's not a weapon against other people. This country was founded because of people being persecuted because of their religious beliefs. I mean, we are very religiously diverse. If we're going to have a civil society that functions, everybody has to be willing to follow the rules that are there to protect other people from harm. And that's particularly poignant in the medical context because the doctors have the expertise, as patients we have to depend on them to put our needs as patients first, not their own personal needs, let alone their religious needs.

Jenny ([09:47](#)):

If they're there practicing medicine with a state issued medical license, I mean, that license is supposed to tell us that we can rely on that person to provide medical care not religiously motivated behavior. And I think that was an important part of this case and the impact that it's had more broadly because most of us can relate to being in that position to feeling very vulnerable in the doctor's office. And if we can't count on the doctor to know what they're doing and then to do the standard of care and to treat us properly based on our medical needs as opposed to their own personal needs, religious or otherwise, then that's a pretty scary situation. I think for many people.

Alex ([10:28](#)):

Yes, it's incredibly relatable. What was the outcome of the case? What impact did this case have on lesbians seeking fertility care and more broadly, how did this affect LGBTQ+ people seeking healthcare?

Jenny ([10:40](#)):

Well, this case was a first of its kind. It yielded a unanimous California Supreme Court decision and many Supreme courts, their justices have lots of different views. So it was, I think, very important and powerful statement of the principle here that it was a unanimous ruling. It has been important for healthcare access for LGBTQ people. It also, I think, has been important more broadly beyond the medical context because there are not that many cases that address a situation that many people can relate to this way, where people can really feel vulnerable. Healthcare is so important so in the narrow sense, we got that decision. We had a lot of negotiations. We've resolved the case in a way that made our client very happy and then we've been able to talk about the principle and the legal issues and the fact that lesbian couples, LGBT people more broadly often want to be parents for the same reason as anyone else, are wonderful parents.

Jenny ([11:40](#)):

And the people who disagree with that for religious reasons should focus on raising their own kids and practicing their profession and not block other people from that profound happiness. So I think it's been important in terms of healthcare access also family formation and also a better public understanding about what religious rights are and aren't. That conversation continues and it's been difficult and I have to say there are organizations that are very well funded that are bringing legal cases and action in legislatures and political action to expand religious rights to discriminate. And there are members of this Supreme court who disagree with marriage for same sex couples and do seem to believe that religious rights should be reinterpreted to allow discrimination. So this case has focused attention in a good way,

but it was decided in 2008 in California and the fight continues nationally. It's a very important fight, we're doing everything we can to not just reinforce rights against discrimination but to limit rights to ignore the civil rights laws. This case can illustrate some of what's at stake in that fight.

Alex ([12:49](#)):

Yeah. This still very much persists. What did you learn from this case that you've used on another case?

Jenny ([12:55](#)):

Well, there are many things I have to say but among the key points I think is, what I've come to understand as a bit of a cognitive disconnect for some people of deep faith, that they've been raised to understand that if they follow religious tenants and beliefs, they're being a good person. And we're taught that discriminating is not a good thing to do, people who discriminate are bad people. So I think for some people, there's an honest belief that if they're following their religion, they're not discriminating because they're a good person, not a bad person. And so we need to unpack that for people and help people understand that they think they're doing the right thing when they refuse to serve somebody or treat somebody or rent an apartment or hire somebody for a job and engage in that conversation. Nobody likes to be told that a terrible person but they need to understand the harm they're causing.

Jenny ([13:46](#)):

And that's been an important part of the Benitez case and really many of our cases because lots of people don't see the impact of anti LGBTQ discrimination. If we don't make that real for them, if we don't bring that forward, they can't understand why we're saying this needs to stop. That what you're doing is hurtful and unkind in a way that you may not recognize but you're really causing harm. Many of our cases are about that, certainly this case was about that. So I think the impact of living day to day with the fear that you may suddenly be refused, publicly humiliated or in Lupita's case, she was kept on inappropriate treatment for almost a year. That really takes a toll on people and I think it's up to all of us to bring that forward so that more people can understand who we are and the impact of what they may be doing without realizing what they're doing and that creates the motive and the connection among us. If we don't tell our stories, we can't expect people to hear them. And that's an important part of what Lambda Legal's doing.

Alex ([14:46](#)):

Absolutely. Of course, our listeners can't see me but I have been nodding along to everything you're saying. Jenny, it has truly been an honor talking to you about this case. Thank you for listening to this week's episode of Making the Case with Lambda Legal. Making the Case is hosted by me, Alex Berg and written and produced by Erica Kramer for Lambda Legal. Our show is recorded and mixed by Erik Monical from Mouth Media Network. Original music was made for Making the Case by Megan Rose. If you are seeking information to assist with a legal matter involving sexual orientation, gender identity or HIV, please reach out to our legal helpdesk at lambdalegal.org/helpdesk. This podcast is intended to serve as general information. It is not legal advice nor intended as legal advice for individual legal advice, please contact an attorney.