

No. 21-476

IN THE
Supreme Court of the United States

303 CREATIVE LLC, A LIMITED LIABILITY COMPANY;
LORIE SMITH,

Petitioners,

v.

AUBREY ELENIS; ET AL.,

Respondents.

*On Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit*

JOINT APPENDIX

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TABLE OF CONTENTS

Transcript of Law and Motion Hearing held
January 11, 2017.....1

Affidavit of Lorie Smith in Support of Plaintiffs’
Motion for Summary Judgment, filed February
1, 201715

Affidavit of Counsel for the Plaintiffs, Jeremy
D. Tedesco, in Support of Plaintiffs’ Motion for
Summary Judgment, filed February 1, 2017.....25

Excerpts from Appendix in Support of
Plaintiffs’ Motion for Summary Judgment28

Exhibit A to Joint Statement of Stipulated
Facts (Examples of prospective wedding
websites)51

Exhibit B to Joint Statement of Stipulated
Facts (proposed website addition)73

Exhibit C to Joint Statement of Stipulated
Facts (Colorado Civil Rights Division’s Probable
Cause Determination in *Craig v. Masterpiece
Cakeshop* dated March 5, 2013)75

Exhibit D to Joint Statement of Stipulated
Facts (Colorado Civil Rights Division’s Probable
Cause Determination in *Mullins v. Masterpiece
Cakeshop* dated March 5, 2013).....84

Exhibit E to Joint Statement of Stipulated Facts (Administrative Law Judge’s Initial Decision in <i>Craig and Mullins v. Masterpiece Cakeshop</i> dated December 6, 2013).....	93
Exhibit F to Joint Statement of Stipulated Facts (Colorado Civil Rights Commission’s Final Agency Order in <i>Craig and Mullins v. Masterpiece Cakeshop</i> dated May 30, 2014).....	119
Exhibit G to Joint Statement of Stipulated Facts (Colorado Civil Rights Commission’s Final Agency Order in <i>Jack v. Azucar Bakery</i> dated June 30, 2015).....	124
Exhibit H to Joint Statement of Stipulated Facts (Colorado Civil Rights Commission’s Final Agency Order in <i>Jack v. Gateaux</i> dated June 30, 2015).....	126
Exhibit I to Joint Statement of Stipulated Facts (Colorado Civil Rights Commission’s Final Agency Order in <i>Jack v. Le Bakery Sensual</i> dated June 30, 2015).....	128
Exhibit J to Joint Statement of Stipulated Facts (Colorado Civil Rights Division’s No Probable Cause Determination in <i>Jack v. Azucar Bakery</i> dated March 24, 2015).....	130
Exhibit K to Joint Statement of Stipulated Facts (Colorado Civil Rights Division’s No Probable Cause Determination in <i>Jack v. Gateaux</i> dated March 24, 2015).....	139

Exhibit L to Joint Statement of Stipulated Facts (Colorado Civil Rights Division’s No Probable Cause Determination in *Jack v. Le Bakery Sensual* dated March 24, 2015)..... 148

Defendants’ Response to Plaintiffs’ Motion for Summary Judgment and Memorandum in Support 156

Affidavit of Jacob P. Warner in Support of Plaintiffs 303 Creative LLC and Lorie Smith’s Response to Show Cause Order 199

Exhibit A to Plaintiffs 303 Creative LLC and Lorie Smith’s Response to Show Cause Order (Transcript of Proceedings of the Colorado Civil Rights Commission on June 22, 2018) 202

Verified Complaint for Declaratory and Injunctive Relief filed September 20, 2016 237

Final Judgment entered on September 26, 2019 307

Charge of Discrimination from *Scardina v. Masterpiece* in Case No. 1:18-cv-02074 309

Notice of Hearing and Formal Complaint from *Scardina v. Masterpiece* in Case No. 1:18-cv-02074 315

Closure Order from *Scardina v. Masterpiece*..... 322

3 C.C.R. § 708-1:10.1 324

3 C.C.R. § 708-1:10.2 325

3 C.C.R. § 708-1:10.12 331

Relevant Docket Entries for the United States
District Court for District of Colorado, Case No.
16-CV-02372.....335

Relevant Docket Entries for the United States
Court of Appeals for the Tenth Circuit, Case
No. 19-1413.....343

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-2372-MSK-CBS

303 CREATIVE LLC, a limited liability company;
LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division in her official capacity;

ANTHONY ARAGON, Member of the Colorado Civil
Rights Commission in his official capacity;

ULYSSES J. CHANEY, Member of the Colorado Civil
Rights Commission in his official capacity;

MIGUEL RENE ELIAS, "MICHAEL," Member of the
Colorado Civil Rights Commission in his official
capacity;

CAROL FABRIZIO, Member of the Colorado Civil
Rights Commission in her official capacity;

HEIDI HESS, Member of the Colorado Civil Rights
Commission in her official capacity;

RITA LEWIS, Member of the Colorado Civil Rights
Commission in her official capacity;

JESSICA POCOCK, Member of the Colorado Civil
Rights Commission in her official capacity;

CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity,

Defendants.

REPORTER'S TRANSCRIPT
(Law and Motion Hearing)

Proceedings before the HONORABLE MARCIA S. KRIEGER, Judge, United States District Court for the District of Colorado, commencing at 9:30 a.m., on the 11th day of January, 2017, in Courtroom A901, United States Courthouse, Denver, Colorado.

APPEARANCES

KATHERINE L. ANDERSON and JEREMY D. TEDESCO, Alliance Defending Freedom - Scottsdale, 15100 North 90th Street, Suite 165, Scottsdale, Arizona 85260, AND

MICHAEL L. FRANCISCO, MRDLaw, 3301 West Clyde Place, Denver, Colorado 80211, appearing for the plaintiffs.

VINCENT E. MORSCHER, Colorado Attorney General's Office, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado 80203, appearing for the defendants.

MARY J. GEORGE, FCRR, CRR, RMR
901 19th Street, Denver, Colorado 80294
Proceedings Reported by Mechanical Stenography
Transcription Produced via Computer

P R O C E E D I N G S

(Call to order of the court at 9:30 a.m.)

THE COURT: Court is convened today in case No. 16 cv 2372. This is encaptioned 303 Creative LLC and Lorie Smith versus a number of defendants: Aubrey Elenis, Anthony Aragon, Ulysses Chaney, Miguel Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock and Cynthia Coffman.

And the matter's set down for a law and motion hearing because there's been a motion for a prelim-

inary injunction filed here, and there also has a pending motion to dismiss.

Could I have entries of appearance, please.

MS. ANDERSON: Yes. Kate Anderson here on behalf of plaintiffs. I'm joined by cocounsel Jeremy Tedesco and Michael Francisco.

THE COURT: Thank you. And, counsel, you need to speak into the microphone. You have a soft voice and it kind of dissipates in the courtroom, so either pull that microphone toward you or go to the lectern, please.

MS. ANDERSON: All right.

THE COURT: Good morning and welcome to all of you.

MR. MORSCHER: Good morning, Your Honor. Vincent Morscher, Deputy Attorney General, representing all defendants in this matter.

THE COURT: Good morning and welcome to you as well.

MR. MORSCHER: Thank you.

THE COURT: Before setting this hearing down, I asked you to be prepared to -- or I said -- when I set it down, I asked you to be prepared to address a number of issues. And I've had an opportunity to review what you've filed. I think some of those issues may have clarified in the subsequent filings.

The purpose of our hearing here is to streamline what's going on and get a path forward. First of all, let me ask the plaintiffs why you named all of the defendants, Aragon through Pocock, as defendants

when essentially all you're suing is the Colorado Civil Rights Division.

MS. ANDERSON: Your Honor, this is a case of pre-enforcement challenge, challenging the constitutionality of state statute.

THE COURT: I know that.

MS. ANDERSON: And the reason we named each of those defendants is following the history of *ex parte Young* and *Muskogee* in the Tenth Circuit and *Wilson v. Stocker* saying that the way to avoid sovereign immunity when you're challenging the constitutionality of a state statute is to sue the people with enforcement power. And what's required is some enforcement power. So each of those defendants has some enforcement power and that is why we named them.

THE COURT: They have enforcement power if they act as a unit and they direct the director, correct?

MS. ANDERSON: Their enforcement power, as we understand it, is to file complaints, to investigate, to order hearings, and on down the line.

THE COURT: Individually?

MS. ANDERSON: The -- the A.G. and the commissioners and the commission can all file complaints, which is part of the enforcement power.

THE COURT: All right. So the members of the commission can file complaints; that's -- that's their enforcement power that you're concerned about?

MS. ANDERSON: Yes.

THE COURT: All right. Then let me ask the defendant -- or counsel for the defendants: What I understand is that simply the posting of this website, notwithstanding the content, would not cause any prosecution; is that correct?

MR. MORSCHER: That's correct, Your Honor. Just by having this service out there, it still takes a number of steps by independent actors to actually get it before, initially, the division and then eventually the commission, assuming, you know, various things happen.

So, you know, only if someone approaches a website, seeks out the service, is denied the service based on, you know, presumably their sexual orientation, and then they file a charge, then it would be an issue. However, as we mentioned, the independent party can still go to state court on their own and completely bypass the filing with the division and they could seek relief in state court automatically.

THE COURT: All right. But we're not concerned about that. We're concerned about enforcement. And what I just heard you say comports with what I read, which is that the plaintiffs -- or plaintiffs here will not suffer any injury unless service is denied; is that correct? Because there will be no enforcement unless service is denied.

MR. MORSCHER: Well, that's correct. I mean, they -- yes, they cannot take any action until facts happen, and service would have to be denied before they could take action and face --

THE COURT: All right. So what I understand you're saying is that the plaintiffs composed the website, there would be no enforcement taken simply because the website is posted.

MR. MORSCHER: I mean, that's correct. The -- that's correct.

THE COURT: Okay. And that the only enforcement that would occur, if any, would be after someone has requested service and the plaintiffs have denied service; is that correct?

MR. MORSCHER: Well, I guess when you are talking enforcement, you know, what does that mean? Because they still -- there still needs to be an investigation, there still needs to be all these other steps before it's actually noticed for a hearing --

THE COURT: Well, we're not talking about that. We're talking about what is the triggering event? Is the triggering event the posting of the website or is the triggering of the -- triggering event the denial of service?

MR. MORSCHER: The -- as far as defendants are concerned, Your Honor?

THE COURT: Uhm-hum.

MR. MORSCHER: As far as defendants are concerned, the triggering event is when a charge is filed and probable cause is found.

THE COURT: Well, let me -- let me run down some concepts, then, here. Let's hypothetically say that the plaintiffs post the website and somebody complains about the language on the website. Would that constitute a complaint?

MR. MORSCHER: If they filed a charge alleging that?

THE COURT: Uhm-hum.

MR. MORSCHER: I -- that would be a complaint, correct.

THE COURT: And would the defendants take any action to investigate that?

MR. MORSCHER: If it was determined that they had jurisdiction, for instance, it was filed timely, and it fell under the statute, then the Civil Rights Division would initiate an investigation.

THE COURT: Okay. Do you understand what I'm really asking you? Because if it is, as you have listed in your pleadings, a requirement that service be denied, then the plaintiffs have no standing with regard to any claim based on free speech. But if you are saying that enforcement could occur based on someone complaining about the language on the website, not the denial of service, then they may have standing.

MR. MORSCHER: Well, if they -- if you're going towards the issue of posting the information under that part of the statute that talks about a public accommodation and not putting that out there, then, yes, certainly I think someone would have an argument that they are not being denied service but someone is committing an illegal act by posting this discriminatory language on a website.

THE COURT: Well, there the injury that is alleged would be an injury based on a denial of free speech, a chilling effect. And if I understand the Government here, the State of Colorado, to say we're

not going to prosecute simply because people put statements on their websites about what services they do and do not intend to render, we're going to wait until some service is denied before we begin prosecution, then there's very little chilling effect as to the speech; it is, indeed, conduct that is being prosecuted. So what is the State's position?

MR. MORSCHER: Well, the State's position is that a matter needs to be initiated before any prosecution is made. And that really depends on the independent actor looking at what is posted and filing a charge with the division. Or it could be that they're denied service. It could be either one.

THE COURT: Okay. Sounds like the State exercises no discretion as to the complaints it pursues.

MR. MORSCHER: The only discretion it exercises is jurisdictional and -- yes, I mean, that's correct. It has no discretion whether it could accept a complaint as long as it is filed.

THE COURT: Okay. All right. Then let's turn to the motion for preliminary injunction. Have you discussed what facts are in dispute and whether or not you need an evidentiary hearing?

MR. MORSCHER: We did have a discussion, Your Honor. You know, we don't believe that any facts are in dispute in this matter. Certainly the facts that we think are material to this are defendants' business and their operations and their intent and their personal beliefs. Seeing as nothing has been filed or done here, we don't dispute that.

We certainly dispute their statement of what the law is and who has the authority and jurisdiction to take action. They -- they put all the defendants in one group, and all defendants have independent authority, so we don't -- you know, certainly we dispute that. But otherwise, there's no disputed facts here.

THE COURT: So you're prepared to resolve this on briefs?

MR. MORSCHER: That's correct, Your Honor.

THE COURT: All right. Let me hear from the plaintiffs.

MS. ANDERSON: Your Honor, we agree that there's no need for an evidentiary hearing, there's no facts in dispute, and this could be decided on the briefs.

THE COURT: All right. Sounds to me like the relief that you're requesting in the motion for preliminary injunction is exactly the same relief that you're requesting on the merits, correct?

MS. ANDERSON: No, Your Honor. We are -- on the merits we also have a facial challenge asking for facial relief. On the motion for preliminary injunction we're only asking for as-applied relief, that she be able to speak freely on her website and that she be able to enter the industry and begin creating custom wedding websites --

THE COURT: What's the difference with regard to the evidence that would be considered?

MS. ANDERSON: There could -- probably none, Your Honor. There could be --

THE COURT: That's right.

MS. ANDERSON: Yeah.

THE COURT: All right. Then why shouldn't I just combine the determination of the motion for preliminary injunction with the determination on the merits under Rule 42(b)?

MS. ANDERSON: I think you could, Your Honor, as long as you decided promptly the issues. There's irreparable harm going on right now with her chilling of her speech, so we would urge the Court to make a decision quickly.

THE COURT: Well, I'm not inclined to make two rulings.

MS. ANDERSON: So what would Your Honor -- what is Your Honor thinking?

THE COURT: When are you going to be prepared to address your issues?

MS. ANDERSON: I'm sorry?

THE COURT: When are you going to be prepared to address your issues?

MS. ANDERSON: Could I take just a brief moment?

THE COURT: Sure.

MS. ANDERSON: Thank you.

Your Honor, we would propose, then, that we file -- on an expedited briefing schedule, that within about three weeks we file summary judgment.

THE COURT: How long will it take the State to respond?

MR. MORSCHER: Your Honor, we're fine with whatever the Court decides. We can respond within 20 days of that.

THE COURT: All right. Then I'll set a deadline for filing of motion for summary judgment. There will need to be stipulated facts. Please understand if you do not stipulate to all the facts, I'll deny the motion outright --

MS. ANDERSON: Yes, Your Honor.

THE COURT: -- because that means we need to have a hearing. So you'll need to have stipulated facts. Please do not put those stipulated facts in your brief. Please list the stipulated facts that you agree to.

Motion for summary judgment will be filed three weeks from today. Ms. Glover, can you give us a deadline.

COURTROOM DEPUTY: Yes, I can. Three weeks from today is February 1st.

THE COURT: All right. The response will be filed three weeks from that date.

COURTROOM DEPUTY: Which would be February 22d.

THE COURT: All right. And the reply, if any, will be filed 14 days thereafter.

COURTROOM DEPUTY: March 8th.

THE COURT: Okay. Court withdraws the reference of the motion to dismiss docket No. 37 to Magistrate Judge Shaffer and will rule on the motion for preliminary injunction, motion for summary judgment, and motion to dismiss simultaneously.

Any need for clarification, further explanation, anything else we need to do?

MR. TEDESCO: I have one point of clarification.

THE COURT: Would you speak into a microphone, please.

MR. TEDESCO: Thank you, Your Honor. I just wondered if the State was going to be filing a cross-motion for summary judgment. Right now --

THE COURT: Why would the State file a motion for cross -- a cross-motion for summary judgment?

MR. TEDESCO: I don't know if they intend to or not. And since we were figuring out the schedule --

THE COURT: Let me be real honest about motions for summary judgment. Cross-motions for summary judgment are not helpful. The only issue on a motion for summary judgment is whether or not we need a trial. If we do not need a trial, meaning there's no genuine dispute as to a material fact, then the Court can enter judgment to the party entitled as a matter of law. It does not matter who files the motion.

MR. TEDESCO: Thank you, Your Honor.

THE COURT: All right. Anything else we need to do today?

MS. ANDERSON: No, Your Honor.

MR. MORSCHER: Nothing from defendants, Your Honor.

THE COURT: All right. I have one last question for the plaintiffs, and that is whose website would this be? You have two plaintiffs here.

MS. ANDERSON: It's her business website, 303 Creative.

THE COURT: Okay. So who owns -- would own the website and whose speech would be involved?

MS. ANDERSON: It would be both. She's the sole owner of the company --

THE COURT: Well, it doesn't work that way. Under *Hobby Lobby*, we know that entities can't have speech. So are you saying this is the speech of 303 Creative LLC, or are you saying that essentially this is Lorie Smith, not an LLC?

MS. ANDERSON: We are saying it is her speech through her company. So it's her company speech.

THE COURT: Okay. Then you may want to think about dismissing Lorie Smith from the caption of the action.

MS. ANDERSON: We will consider it, Your Honor.

THE COURT: Okay. Great. Thank you all very much. I look forward to receiving your briefs, and we will take it from there.

MS. ANDERSON: Thank you, Your Honor.

MR. MORSCHER: Thank you, Your Honor.

THE COURT: We will stand in recess.

(Proceedings concluded at 9:49 a.m.)

* * * * *

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated at Denver, Colorado, this 18th day of January, 2017.

A handwritten signature in black ink that reads "Mary J. George". The signature is written in a cursive style with a long horizontal flourish at the end.

MARY J. GEORGE, FCRR, CRR, RMR

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-02372-MSK-CBS

303 CREATIVE LLC, a limited liability company;
and LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division, in her official capacity;
ANTHONY ARAGON,
ULYSSES J. CHANEY,
MIGUEL “MICHAEL” RENE ELIAS,
CAROL FABRIZIO,
HEIDI HESS,
RITA LEWIS, and
JESSICA POCOCK, as members of the Colorado
Civil Rights Commission, in their official capacities,
and CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity,

Defendants.

**AFFIDAVIT OF LORIE SMITH IN SUPPORT
OF PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT**

I, Lorie Smith, hereby declare as follows:

1. I am competent to testify, and, in addition to my sworn testimony in the Verified Complaint, make this declaration based on my personal knowledge.
2. I own and manage the website: www.303creative.com (“my website”). This is the website for my business, 303 Creative, LLC.
3. On my website, people can submit electronic requests for my creative services through the “contact” webpage.
4. Information received from requests for creative services submitted via the “contact” webpage on my website are immediately reduced to email form and sent to my email inbox once the requestor clicks “submit.”
5. When I receive emails containing requests for creative services from my website via the “contact” webpage, it is my routine business practice to keep these requests and, if appropriate, respond.
6. On September 21, 2016, I received a request through the “contact” webpage on my website from a person named, “Stewart,” reference number 9741406, to create graphic designs for invitations and other materials for a same-sex wedding (“same-sex wedding request”).
7. The same-sex wedding request indicated the prospective client may also desire me to create a website for a same-sex wedding.
8. A true and accurate copy of this same-sex wedding request is included in the Appendix at pages 001-002.

9. Expressive businesses in Colorado regularly maintain websites that share stories of their art and their clients.
10. On these websites, creative professionals often communicate social, political, and religious messages in telling the stories of their clients and sharing the messages they express with their art.
11. Many expressive businesses in Colorado freely express their views in favor of same-sex marriage.
12. For example, I personally visited each of the websites referred to in paragraphs 13, 17-18, 20, 26, 29, 31, and 33 *infra* on January 30, 2017.
13. Brian Kraft Photography, before the legalization of same-sex marriage in Colorado, posted on its blog at <http://blog.briankraft.com/denver-art-museum-wedding/>:

It's a shame that I even feel the need to mention it—as it should be a non-issue, but as you enjoy these wedding photos of this wonderful same sex couple, please note how “right” everything is between these two and everyone that surrounds them, yet in the State of Colorado it is still not “right” (by law) to consider their union a “marriage,” with the benefits that come with that. Fortunately, Adam and Brian live in California, where they are finally offered the rights they so deserve. Hopefully all states will follow suit as soon as possible.
14. This Brian Kraft Photography blog post excerpt was found on a webpage directly under a header titled “Brian Kraft Photography” that also served

as a hyperlink back to the Brian Kraft Photography blog homepage.

15. This Brian Kraft Photography blog post excerpt was not found in a comment section or other place where members of the public could create content to be published on the website.
16. A true and accurate copy of this Brian Kraft Photography blog post excerpt is included in the Appendix at page 003.
17. Sarah Roshan Wedding Photographer similarly states on its homepage at <http://sarahroshan.com/> under the heading “We Believe”: “There doesn’t always have to be one bride and one groom. We fully support and love our LGBT couples. We are so happy that the US [sic] government is finally recognizing you for the beautiful people you are.”
18. Sarah Roshan Wedding Photographer also states on its homepage at <http://sarahroshan.com/>, under the heading “Meet Sarah”: “I believe one voice is enough to change the world.”
19. True and accurate copies of these excerpts from the Sarah Roshan Wedding Photographer homepage are included in the Appendix at pages 004-005.
20. In the introduction to a gallery of same-sex wedding pictures posted on its website at <http://www.sarahroshanphoto.com/phillip-gary-chautauqua-elopement-same-sexwedding-photographer/>, Sarah Roshan Wedding Photographer further states:

After Colorado ruled that a ban on gay marriage was unconstitutional I had a wave

of peace and just started to cry. This topic always is rooted so deep in what I believe not only about gay marriage but the world. I grew up doing theatre and so, as the stereotype would have it about half of my male friends were gay and a decent amount of my female friends as well. I truly believe that our differences and hate are taught. I was never taught that same-sex couples love any different than a heterosexual couple and therefor[e] my views on this subject have always been love is love. I stand for love period. I am so happy that our country is moving in a direction of less and less judgement [sic] and more and more equality and love for each other. We are all different. That is what makes us beautiful. How we love is all the same.

When I got a phone call for Phillip and Gary's elopement back in October, I was so excited! This was to be my first same-sex wedding since the law took effect I found myself tearing up behind my lens. This means so much to so many people. Something that I took for granted they were finally able to do. Reading the piece of paper that said marriage. All of it was magical

. . . .

Colorado is not yet 6 months into allowing gay marriage so I am looking forward to many more weddings, and someday I hope that people won't even give it a second thought. Love is love after all.

21. A true and accurate copy of this Sarah Roshan Wedding Photographer webpage excerpt is included in the Appendix at page 006.
22. These Sarah Roshan Wedding Photographer statements were found on a webpage directly under a header titled “Sarah Roshan Wedding Photographer,” a business logo, within a top menu containing links to other parts of the website.
23. These Sarah Roshan Wedding Photographer statements were not found in a comment section or other place where members of the public could create content to be published on the website.
24. Anginet Photography also expresses its views favoring same-sex marriage.
25. Anginet Photography, through its owner Anginet Page, expressed its views regarding same-sex marriage to Castle Rock News-Press following the U.S. Supreme Court’s *Obergefell* decision.
26. Castle Rock News-Press’s story explaining Anginet Photography’s support for same-sex marriage is located at <http://castlerocknewspress.net/stories/Wedding-photographercelebrates-court-ruling,192421>.
27. This Castle Rock News-Press story, entitled “Wedding photographer celebrates court ruling,” explains that Anginet Page left the Mormon church because of her support for same-sex marriage:

As long as she can remember, Anginet Page said, she supported same-sex marriage rights. Her passion for marriage equality even led her to leave the Mormon church.

“I was raised LDS, and one of the main reasons I left the church was because they didn’t support the right for people to love freely,” she said. “And so my whole life has been geared towards having same-sex marriage be legalized. The fact that it has is incredible.”

28. A true and accurate copy of this Castle Rock News-Press story is included in the Appendix at page 007.
29. In introducing pictures of a same-sex wedding on its website at <http://nicolenichols.com/blog/weddings/wedding-gay-new-orleans/>, Nicole Nichols Photography also notes its support for same-sex marriage and criticizes religions that express a different view:

... I loved their pastor’s English accent & how he focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people sharing their love & lives together. Throughout history gays have always been a part of reality, and always will be, its [sic] just unfortunate government & religion has not always recognized it. It was great to see that Jeremie & Jonathan’s wedding was certainly full of lots of family & friends celebrating their love & bond.

30. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 008.

31. On its blog at <http://nicolenichols.com/blog/special-events/denver-pridefest-co-gayweddings/>, Nicole Nichols Photography further publicized its support for same-sex marriage and participation in Denver Pridefest:

I am a strong believer that ALL should have the right to marry whomever he or she wants.

Other than for the art and the challenge, one of the reasons I became a wedding photographer is because I'm a lover...a sentimental romantic that has always "awed" when I see *any* two people in love. I have no enemies, I love everyone. Sure some have called me a naive idealistic hippie, but I *really* do believe love can change the world. And if someone wants to express their love to another person through a wedding, well they should have the right do [sic] get married, and get divorced, just like everyone else!

Not only am I a big supporter of gay rights...but also of brightly colored costumes, parades, and just having fun! So, on Sunday June 17th I was proud to be walking in support of CO gay weddings in the annual Denver Pridefest Parade. Wedding planner extraordinaire Mark . . . started CO Gay Weddings to help the gay and transgender community find LGBT friendly wedding professionals that don't discriminate on sexual orientation

32. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 009.

33. In introducing pictures of a same-sex wedding on its blog at <http://nicolenichols.com/blog/weddings/denver-gay-wedding-photographer-denver-botanical-gardens-tivoli-hall/>, Nicole Nichols Photography also expressed its support for the Supreme Court's decision in *Obergefell*:

It was an honor to witness and be able to document the strong endearing love Ashley & Paige share. And I'm so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows, from getting to file taxes together to being allowed to visit their spouse in severe hospital situations. Hopefully the rest of the world will soon follow. Love conquers all.

34. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 010.
35. These Nicole Nichols Photography blog post excerpts were found on a webpage directly under a header titled "Nicole Nichols Photography," a business logo and hyperlink back to the Nicole Nichols Photography website homepage.
36. These Nicole Nichols Photography blog post excerpts were not found in a comment section or other place where members of the public could create content to be published on the website.

**DECLARATION UNDER PENALTY OF
PERJURY**

I, LORIE SMITH, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 1st day of February, 2017, at Littleton, Colorado.



LORIE SMITH
303 CREATIVE LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-02372

303 CREATIVE LLC, a limited liability company;
and LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, as Director of the Colorado Civil
Rights Division, in her official capacity;
ANTHONY ARAGON;
ULYSSES J. CHANEY;
MIGUEL “MICHAEL” RENE ELIAS;
CAROL FABRIZIO;
HEIDI HESS;
RITA LEWIS; and
JESSICA POCOCK, as members of the Colorado
Civil Rights Commission, in their official capacities;
and
CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity,

Defendants.

**AFFIDAVIT OF COUNSEL FOR THE
PLAINTIFFS, JEREMY D. TEDESCO, IN
SUPPORT OF PLAINTIFFS’ MOTION FOR
SUMMARY JUDGMENT**

I, Jeremy D. Tedesco, hereby declare as follows:

1. I am competent to testify and make this declaration based on my personal knowledge.
2. I serve as co-counsel for the respondent in *Craig v. Masterpiece Cakeshop, Inc.*, No. P20130008X.
3. On July 25, 2014, a meeting of the Colorado Civil Rights Commission (“Commission”) was held at which the Commission decided whether a stay should be issued following its final decision in the *Masterpiece* case.
4. Following this meeting, respondents, through counsel, requested that the Commission provide an audio recording of the meeting.
5. The Commission responded by providing respondents’ counsel a copy of the audio recording of the meeting, which I then caused to be delivered, unchanged, to a certified transcriber, Katherine A. McNally, at Arizona Reporting Service, Inc.
6. Ms. McNally produced a certified transcription of excerpts of the audio recording, a true and accurate copy of which is found at pages 041-053 of the Appendix.

**DECLARATION UNDER PENALTY OF
PERJURY**

I, JEREMY TEDESCO, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 1st day of February, 2017, at
Scottsdale, Arizona.

A handwritten signature in black ink, appearing to read "Jeremy D. Tedesco". The signature is fluid and cursive, with a prominent horizontal stroke at the end.

Jeremy Tedesco
Attorney for Plaintiffs

**Excerpts from Appendix in Support of
Plaintiffs' Motion for Summary Judgment**

**TABLE OF CONTENTS
APPENDIX IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

September 21, 2016 Email from Stewart to 303 Creative Requesting Graphic Design and Website Design Services for Same-Sex Marriage	001
Brian Kraft Photography Webpage Excerpt	003
Sarah Roshan Wedding Photographer "We Believe" Webpage Excerpt	004
Sarah Roshan Wedding Photographer "Meet Sarah" Webpage Excerpt	005
Sarah Roshan Wedding Photographer "Same-Sex Wedding" Webpage Excerpt	006
Castle Rock News Press Story on Anginet Photography	007
Nicole Nichols Photography Blog Post Excerpt About a New Orleans Same-Sex Wedding	008
Nicole Nichols Photography Blog Post Excerpt About the Denver Pridefest	009
Nicole Nichols Photography Blog Post Excerpt About a Denver Same-Sex Wedding	010

Brief of the Colorado Civil Rights Commission in Opposition to Masterpiece Cakeshop's Petition for Writ of Certiorari Before the United States Supreme Court	011
Transcript from Colorado Civil Rights Commission Meeting In re Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc. and Jack Phillips, July 5, 2014	041

Kate Anderson

From: 303 Creative [info@303creative.com]
Sent: Wednesday, September 21, 2016 12:34 PM
To: Jeremy Tedesco
Subject: Fwd: 303RequestForm Result #9741406

Lorie Smith
 Sent from my iPhone

Begin forwarded message:

From: form_engine@fs21.formsite.com
Date: September 21, 2016 at 1:08:42 PM MDT
To: info@303creative.com
Subject: 303RequestForm Result #9741406
Reply-To: form_engine@fs21.formsite.com

Reference #	9741406
Status	Complete
Your Name *	Stewart
Email *	stewcurran@gmail.com
Phone	4155218593
Website:	onlymoreneverless.com
Briefly describe the nature of your business/organization *	Personal
If your inquiry relates to a specific	My wedding. My name is Stewart and my

event, please describe the nature of the event and its purpose:	31incent is Mike. We are getting married early next year and would love some design work done for our invites, placenames etc. We might also stretch to a website.
How can 303creative help you ? *	Website Design Services Graphic Design Services
Last Update	2016-09-21 14:08:43
Start Time	2016-09-21 14:06:36
Finish Time	2016-09-21 14:08:43
IP	12.27.99.35
Browser	Chrome
OS	Mac
Referrer	http://303creative.com/contact/

BRIAN KRAFT PHOTOGRAPHY

+++ The Blog +++

Denver Art Museum Wedding

Denver Art Museum Wedding. What a fun wedding this was. Brian and Adam live in Los Angeles, but planned their wedding for Denver at the C. Duncan Pavilion at the DAM (Denver Art Museum). Adam and Brian both work in the entertainment industry and wanted their wedding to feel a bit like one of the movie premier parties they attend in Hollywood. That, in combination with the couple having such a sense of humor and having family and friends that really know how to have fun, it was a sure recipe for a great day to celebrate their love. There were so many great moments all day and night, but one of my favorites was over at the Hotel Monaco, where the two grooms got ready in a suite together. They got to spend time together beforehand, but when it came time to get dressed, they did so in separate rooms within the suite and revealed their wedding day outfits once dressed. It was a really special moment. So, now I'm going to get out of the way with less words and get on with the photos, but I just want to mention one more thing. It's a shame that I even feel the need to mention it—as it should be a non-issue, but as you enjoy these wedding photos of this wonderful same sex couple, please note how "right" everything is between these two and everyone that surrounds them, yet in the State of Colorado it is still not "right" (by law) to consider their union a "marriage," with the benefits that come with that. Fortunately, Adam and Brian live in California, where they are finally offered the rights they so deserve. Hopefully all states will follow suit as soon as possible. Ok, now on to the photos! Congratulations, guys!





WE BELIEVE



The mountains are the best place to get married. Followed by a beach on the ocean.

A bride is not complete without her groom. (or her bride or a groom without his groom) It is a day not just about one person, it is about the whole that you are about to make. The day is about connection. To each other, to the people you choose to celebrate this union with.

There doesn't always have to be one bride and one groom. We fully support and love our LGBT couples. We are so happy that the US government is finally recognizing you for the beautiful people you are.

In always loving graciously.

There are no rules for your wedding. Traditional to non traditional, a wedding is what you make it because of what YOU believe in and how you envision it. There is no right or wrong way to do a wedding.

There are no accidents. The universe has a way of working it self out.

Dogs are often more loyal than a person. The uncomplicated love they have for you is the best thing ever. They are always welcome wherever you go, especially to your wedding or engagement session.

Romantic is more how you see the world than how you see your partner. They just happen to coincide.

Marriage is the most epic adventure. One that doesn't end until the day you die and one that is constantly challenging you and changing you into the person you were meant to be.

In carefree living and letting the life roll off your back.



MEET SARAH

I was born for the theatre, and the magic of getting lost in someone else's story.
I could live on Jelly Bellies... and perfectly salted margaritas.

I believe My cabin is the best place on earth. It is filled with family stories, memories of my Grandpa, fishing, hiking, and the best stargazing in the world.

I believe one voice is enough to change the world.

I believe hot chocolate and puppy snuggles could solve most the world's problems.

I thrive on afternoon naps (outside in a hammock, of course). And I love rain...period (Especially on a tin roof, thanks Nora.)

If I could Stitch Fix everything in my life, I would. I hate shopping but I love clothes and pretty things for my home.

I believe that all true beauty lives in imperfection. The feeling of the water over your waders and the cast of a fly rod is the epitome of relaxation to me. No distractions - just me, the water, and the fish.

I've been known to disappear into the mountain roads for entire afternoons. Just me, my Jeep and the most beautiful state on earth.

I could live in Chacos or hiking boots. Going barefoot always works too.

I believe all people deserve to be loved graciously.

I believe being wrapped in hand-crafted blankets and being hypnotized by a fire that is too-large is heaven on earth.

I believe love is best as an adventure, because surprises should always be shared.

I believe in falling in love, over and over. Every. Single. Day.

XO Sarah



PHILLIP + GARY | CHAUTAUQUA ELOPEMENT | SAME-SEX WEDDING PHOTOGRAPHER

FEBRUARY 10, 2015

ELOPEMENTS, SAME-SEX WEDDINGS

After Colorado ruled that a ban on gay marriage was unconstitutional I had a wave of peace and just started to cry. This topic always is rooted so deep in what I believe not only about gay marriage but the world. I grew up doing theatre and so, as the stereotype would have it about half of my male friends were gay and a decent amount of my female friends as well. I truly believe that our differences and hate are taught. I was never taught that same-sex couples love any different than a heterosexual couple and therefore my views on this subject have always been love is love. I stand for love period. I am so happy that our country is moving in a direction of less and less judgement and more and more equality and love for each other. We are all different. That is what makes us beautiful. How we love is all the same.

When I got a phone call for Phillip and Gary's elopement back in October, I was so excited! This was to be my first same-sex wedding since the law took effect. They are from Texas and were visiting friends and decided that since they were in Colorado they would make it official. I found myself tearing up behind my lens. This means so much to so many people. Something that I took for granted they were finally able to do. Reading the piece of paper that said marriage. All of it was magical and such sweet sweet people.

My favorite part may be the incorporation of Gary's birth son and all the super heroes. It was beautiful to see all their relationships and how their family was made and will continue to be made.

Colorado is not yet 6 months into allowing gay marriage so I am looking forward to many more weddings, and someday I hope that people won't even give it a second thought. Love is love after all.

Nicole Nichols
PHOTOGRAPHY
for the Rebellious & Romantic Free Spirit
Denver - New Orleans - Worldwide

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JEREMIE & JONATHAN'S WEDDING IN NEW ORLEANS – PICTURE PREVIEW

Posted in: Weddings

Nicole Nichols Photography

Jeremie & Jonathan recently celebrated their love with a beautiful ceremony at the [Metropolitan Community Church](#) followed by a reception at the [House of Blues](#) in the French Quarter.

We started with pictures of the wedding party in front of the church on Carrollton St., and we got even got lucky enough to have a streetcar stop for us to take some pictures in front of it. I loved their pastor's English accent & how he focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people sharing their love & lives together. Throughout history gays have always been a part of reality, and always will be, its just unfortunate government & religion has not always recognized it. It was great to see that Jeremie & Jonathan's wedding was certainly full of lots of family & friends celebrating their love & bond.

After the wedding everyone jumped on a bus to the House of Blues downtown. Everyone danced & partied into the night with the awesome band, [The Bucktown All Stars](#). Their cake & custom designed Mardi Gras beads were a perfect match to the antique New Orleans decor of the House of Blues. And the HOB's motto, "unity in diversity" couldn't have fit better. Thanks Jeremie & Jonathan for allowing me to be a part of your special event! Check out just a few of the shots from the wedding day below, much more to come!


wedding reception at House of Blues in New Orleans

Nicole Nichols
PHOTOGRAPHY
for the Rebellious & Romantic Free Spirit
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DENVER PRIDEFEST WITH CO GAY WEDDINGS

Posted in: Special Events / Documentary



2012 Denver Pridefest Pictures in Civic Center Park

PRIDEFEST – COLORS, CULTURE, FASHION, LOVE

I am a strong believer that ALL should have the right to marry whomever he or she wants.

Other than for the art and the challenge, one of the reasons I became a wedding photographer is because I'm a lover...a sentimental romantic that has always "awed" when I see any two people in love. I have no enemies. I love everyone. Sure some have called me a naive idealistic hippie, but I really do believe love can change the world. And if someone wants to express their love to another person through a wedding, well they should have the right to get married, and get divorced, just like everyone else!

Not only am I a big supporter of gay rights...but also of brightly colored costumes, parades, and just having fun! So, on Sunday June 17th I was proud to be walking in support of CO gay weddings in the annual [Denver Pridefest Parade](#). Wedding planner extraordinaire [Mark of Events Unwrapped](#) started [CO Gay Weddings](#) to help the gay and transgender community find LGBT friendly wedding professionals that don't discriminate on sexual orientation. The parade started early Sunday morning at [Cheeseman Park](#), headed downtown

through [Capitol Hill](#), and ended at [Civic Center Park](#) in the heart of the city. Pridefest went all weekend long, filling Civic Center Park with live music, community booths, and lots of colorful people and entertainment.

Play the slideshow below to see some of my pictures of the parade, the party, and lots of unique interesting people! And if you are looking for a photographer for your commitment ceremony or gay wedding, please contact me. Even though it may not be yet technically legal in Colorado, I would love to document your special celebration. Check out this [gay wedding in New Orleans](#) I photographed a couple years ago for some inspiration.

CO WEDDING PHOTOGRAPHER: DENVER BOTANICAL GARDENS & TIVOLI

Posted in: Weddings

ASHLEY & PAIGE'S FUN MODERN WEDDING AT DENVER BOTANICAL GARDENS



sunset pictures in front of the Tivoli in downtown Denver

I knew after photographing Ashley & Paige's engagement session that these two would be laid back and a lot of fun to work with. You can check out their [engagement pictures around downtown Denver here](#). And their wedding day was certainly just that. These two ladies got married at [Denver Botanical Gardens](#) last summer. We set up a first sight with the brides in the Tropical Conservatory, which was such a beautiful romantic moment it almost brought me to tears. The first sight allowed us to get a lot of their family and wedding party pictures out of the way, which is always a nice bonus on the wedding day. Then when it was time to walk down the aisle, they each walked up to the ceremony site with their fathers, coming from different sides of the garden. They pronounced their love in front of their family and closest friends in the "All American Selections Garden" and then afterwards we walked around the botanical gardens for more pictures.

We then all headed to the historic [Tivoli building](#) on the Auraria Campus in downtown Denver. We did more pictures with the wedding party around this historic landmark which was originally home to the Tivoli Brewing Company. And then it was time for the party to begin! Ashley & Paige rented out the [Turnhalle in the Tivoli](#), a unique urban venue with brick walls, a wrap-around balcony, and great views of the Denver city skyline. They decorated the venue with their wedding colors of navy blue, mint green, and grey, and added modern DIY touches such as painted vases and table cards named after different parts of Denver. After they did their first dances they each danced with their father and then they swapped and danced with each other's dad, which was a great personal touch. The brides and all their guests certainly enjoyed a fun-filled party. Their friends and family got down on the dance floor, enjoyed the fun photo booth, playing corn hole, and choosing treats from the all green candy bar. And for their bouquet toss Ashley & Paige each tossed their bouquet of flowers to male and female single guests. It was fun non-traditional twist to the bouquet toss and gave people two chances to catch the bouquet. When it was time for the party to end the guests gathered outside for a fun sparkler send-off and the brides were whisked away in a bike buggy.

It was an honor to witness and be able to document the strong endearing love Ashley & Paige share. And I'm so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows, from getting to file taxes together to being allowed to visit their spouse in severe hospital situations. Hopefully the rest of the world will soon follow. Love conquers all.

* * * * *

P20130008X, CR2013-0008 Hearing 07-25-2014
Transcribed from an Audio Recording

STATE OF COLORADO
CITY AND COUNTY OF DENVER

Colorado Civil Rights Commission Meeting
Held on July 25, 2014
Colorado State Capitol
200 East Colfax Avenue, Old Supreme Court
Chambers

In re: CHARLIE CRAIG and DAVID MULLINS v.
MASTERPIECE CAKESHOP, INC.
Case No: P20130008X, CR2013-0008

This transcript was taken from an audio
recording by Katherine A. McNally, Certified
Transcriber, CET**D-323.

ARIZONA REPORTING SERVICE, INC.
Audio Transcriptions
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481

P R O C E E D I N G S

* * * * *

(Commencement of audio at 00:00.0.)

THE CHAIRMAN: Calling the meeting to order. This is the Friday, July 25th, 2014, meeting of the Colorado Civil Rights Commission.

Would all of those that are present please feed your name into the record?

COMMISSIONER VELASQUEZ: Susie Velasquez, Greeley, Colorado.

COMMISSIONER RICE: Diane Rice, Loveland, Colorado.

MS. McPHERSON: Jennifer McPherson, with the Division.

MS. MALONE: Shayla Malone, with the Division.

MR. MORTURE: Vince Morture (phonetic), Deputy Attorney General, counsel for the Division.

MR. MAXFIELD: Eric Maxfield, First Assistant AG, from the Division.

COMMISSIONER ADAMS: Commissioner Adams, Fountain, Colorado Springs, Colorado.

COMMISSIONER HESS: Commissioner Hess, from Grand Junction, Colorado.

COMMISSIONER SAENZ: Rosa Saenz, from Denver.

COMMISSIONER JAIRAM: Raju Jairam, Fort Collins Colorado.

THE CHAIRMAN: And –

MS. MARTIN: Oh, I'm just observing.

THE CHAIRMAN: Yes, ma'am. But you need to tell us who you are, please.

MS. MARTIN: Oh, I'm Nicolle Martin.

THE CHAIRMAN: Okay. Nicolle Martin with –

MS. MARTIN: Counsel for complainants – I'm sorry. Counsel for respondents and appellants –

THE CHAIRMAN: Oh. Okay, (indiscernible).

MS. MARTIN: -- (indiscernible) Masterpiece.

THE CHAIRMAN: Okay. Thank you.

And I guess we do have a quorum.

(Conclusion of audio at 01:13.8; commencement of audio at 08:40.0.)

THE CHAIRMAN: Okay. Eric.

MR. MAXFIELD: So there is a Motion to Stay final agency order filed by respondents in the Craig v. Masterpiece Cakeshop case. There is a complainant's response in option to the Motion for Stay that was filed, I think, yesterday. And (indiscernible) has to take a look at that.

Procedurally, the – either party (indiscernible) a stay of the final agency order from the Commission. And then if that is granted, there'll be a stay in place. If it's denied, then they may also seek a stay from the Court of Appeals. The Court of Appeals could grant or deny the stay during the pendency of the appeal, which was also noticed by Masterpiece, Inc.

So if there are questions about the Commission's authority and the reasoning around the possible

granting of the stay or denial, I can try to answer those. It is – and then that’s something that I can do here and now to you, you know, in open session, or if you would want to waive attorney/client privilege, or you could ask to go into – make a motion to go into executive session, and we could have a closed session for attorney advice on the merits of the Motion to Stay.

THE CHAIRMAN: My question is, Do we need to respond to this or make a motion today or need a motion today?

MR. MAXFIELD: Yes. This – this ought to receive action today, either a grant or denial of the stay.

THE CHAIRMAN: Okay.

MALE SPEAKER: I would like to have an opportunity to read this. I don’t know about the others.

FEMALE SPEAKER: And maybe we can sometime take a short break, and when we finish the public – and at the beginning of our executive session and a few minutes to read this stuff, because we –

MALE SPEAKER: Yes.

FEMALE SPEAKER: -- I don’t think we’ve seen it until now.

MALE SPEAKER: (Indiscernible) last night.

MR. MAXFIELD: One thing that I could offer is that the – the legal standard identified by both parties in the general sense is the same. So I don’t think that there’s a contest about that. And so you’ll see the elements – four elements set out clearly by both parties, and for which I think there’s agreement.

FEMALE SPEAKER: Okay.

MALE SPEAKER: And then if we need any advice, then we could go into closed session?

MR. MAXFIELD: Yes.

THE CHAIRMAN: Okay.

MR. MAXFIELD: Yeah.

THE CHAIRMAN: So it – I guess we all finished through the public session, take maybe a 10-, 15-minute break, give everyone have a chance to read this –

MALE SPEAKER: Um-hmm.

THE CHAIRMAN: -- and then we'll discuss it.

MALE SPEAKER: Okay.

THE CHAIRMAN: Does that work?

FEMALE SPEAKER: Um-hmm. And then if we-- before we break up executive session –

THE CHAIRMAN: Before – yeah, if we need to go into executive session (indiscernible).

FEMALE SPEAKER: Okay. (Indiscernible) –

THE CHAIRMAN: (Indiscernible) merit.

FEMALE SPEAKER: -- if we have this on the agenda, we'll (indiscernible) –

THE CHAIRMAN: Yes.

FEMALE SPEAKER: -- have to go into executive session (indiscernible), okay?

THE CHAIRMAN: Is that acceptable?

FEMALE SPEAKER: Yes.

THE CHAIRMAN: All right. Any audience participation?

(Conclusion of audio at 11:48.4; commencement of audio at 17:35.1.)

THE CHAIRMAN: Okay. What we have here in front of us is – anyway, we’re here to discuss the Masterpiece Cakeshop, Case (indiscernible). Anyway, here’s the agenda.

FEMALE SPEAKER: Oh, yeah.

THE CHAIRMAN: Oh, here it is. Okay. We’re here to discuss Case P2013008X, CR2013-00H, Charlie Craig and David Mullins versus Masterpiece Cakeshop.

MALE SPEAKER: Um-hmm.

THE CHAIRMAN: There’s a motion for a stay of the final Commission – I mean, the Commission’s final order, and then there’s a response by the defendant in opposition. And then there’s – we’ve also been given a notice of appeal regarding a court, the appellate court, I guess.

So anyone want to lead off?

FEMALE SPEAKER: I’ll lead.

Mr. Chair, I move that the Commission deny the Motion to Stay in – for the Commission case.

FEMALE SPEAKER: Second.

THE CHAIRMAN: Okay. There’s a motion on the floor and a second to deny the respondent’s motion for a stay of the final order by this Commission.

MALE SPEAKER: Um-hmm.

THE CHAIRMAN: Okay. Are there any comments or discussions about this before I put it to a vote?

FEMALE SPEAKER: Yes, sir.

THE CHAIRMAN: Go ahead.

FEMALE SPEAKER: I'd like to make a couple comments.

First of all, I think for us to grant a stay would be to say that we disagree with our own order, final order. And of the arguments that are made, I think there is – by virtue of our order, we determined that there is a public – bless you –

FEMALE SPEAKER: Thank you.

FEMALE SPEAKER: -- there is a public interest in enforcing this, that clearly the public is hurt by actions such as those taken by Masterpiece Cake. Complying with the order is not harmful or irreparable to Masterpiece Cake. I don't see that any harm is done there.

I – I further believe that if you're going to do business in Colorado, you have to follow the Colorado Antidiscrimination Act, and for us to give a stay in this case would be to say, oh, unless you don't want to. So anyway, I – I believe that we have to live by our convictions and our orders (indiscernible) the respondent to do so.

THE CHAIRMAN: Sus--?

FEMALE SPEAKER: I would just like to point out, and I agree with the documents of the plaintiffs that – that the document that was in front of us from the – the plaintiffs' response.

THE CHAIRMAN: Oh, okay.

FEMALE SPEAKER: -- that they have not demonstrated a likelihood of success, because they were rejected three times before. And as Diane pointed out, we made a decision then. And I don't believe that -- that they have a likelihood of success.

THE CHAIRMAN:--kay. Commissioner Saenz?

FEMALE SPEAKER: I --

THE CHAIRMAN: No comments?

FEMALE SPEAKER: No.

THE CHAIRMAN: Commissioner Hess?

COMMISSIONER HESS: I agree with what's been said.

THE CHAIRMAN: Commissioner Adams?

COMMISSIONER ADAMS: I would agree with Commissioner Rice's and (indiscernible) assessment of what has transpired.

FEMALE SPEAKER: I have one more comment.

THE CHAIRMAN: Go ahead.

FEMALE SPEAKER: In regard to the respondent's argument -- endless argument, this is that they -- this argument's been made before, and it -- it holds no water, as far as I'm concerned, whatsoever. You -- and we said this in the hearing, and we need to repeat this over and over, you cannot separate the fact that these men -- their -- their sexual orientation from the action of wanting to celebrate the marriage, anymore than you could a case between races in many years gone past.

And the U.S. Supreme Court has found over and over that you cannot discriminate on the basis of race, and sexual orientation is a status absolutely like race or – so – and you can't separate the fact that these gentlemen want to marry from the fact that they are homosexual.

THE CHAIRMAN: Okay. (Indiscernible.)

I have some comments, and that is, you know, Mr. Phillips says that he wants to be respected or his views and religious views to be respected, and I believe that the general public also needs to – you know, their views need to be respected.

The –the issue here is whether or not the couple that went in to get service were treated with dignity and respect, and the fact of the matter are they were not, and it's also clear that they were turned away. And those have all been established.

And I don't believe that the individual's right to practice his religion violates other people's rights to free access, especially when the business is open to the public and serving the public.

Now, what Mr. Phillips does in private is his own business. And I agree that, you know, we cannot separate same sex marriage and say that I'm not discriminating against gay couples, because I mean, by the very definition, when two people of the same sex want to get married, it tells me that they are of a certain sexual orientation. So that argument, again, fails.

Go ahead.

FEMALE SPEAKER: Well, I just want to point out that this – this case is really not about same sex

marriage. It's – it's about a couple – it's just about a gay couple that wanted a cake to celebrate a life event in their life.

FEMALE SPEAKER: Um-hmm.

FEMALE SPEAKER: That doesn't really – it could have been a civil union. It could have been a – you know, let's wrap, you know, ribbon around a tree and – and – and say that we hope, you know, the world gets to be a better place with us in it as a couple. So it's not – I mean, I think there's some rhetoric that this is a case about same sex marriage. Well, it's really not. It's really about a case about denial of service.

FEMALE SPEAKER: You – yeah, you're exactly right –

MALE SPEAKER: Um-hmm.

FEMALE SPEAKER: -- Commissioner Hess.

I would also like to reiterate what we said in the hearing or the last meeting. Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, whether it be – I mean, we – we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to – to use their religion to hurt others. So that's just my personal point of view.

THE CHAIRMAN: Okay. Any other comments?

Okay. So there's a motion on the floor to deny the respondent's Motion for Stay of our final order. And all those in favor, please signify by saying aye.

(A chorus of ayes.)

THE CHAIRMAN: Those opposed?

Any abstentions?

Therefore the Commission denies the respondent's motion for a stay of our final order.

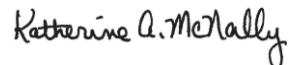
(Conclusion of audio at 27:54.1.)

* * * * *

C E R T I F I C A T E

I, Katherine McNally, Certified Transcriptionist, do hereby certify that the foregoing pages 1 through 12 constitute a full, true, and accurate transcript, from electronic recording, of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 8th day of August 2014.



KATHERINE A. McNALLY
Certified Electronic Transcriber
CET**D323

EXHIBIT A



You're Invited



LILY AND LUKE

SATURDAY NOVEMBER 17, 2017
LITTLETON, COLORADO

- WE INVITE YOU TO CELEBRATE OUR MARRIAGE -





LILY ROBINSON

THE BRIDE



449
DAYS

1
HOURS

...UNTIL WE GET MARRIED!

28
MINUTES

44
SECONDS



LUKE WILLIAMS

THE GROOM



OUR WEDDING EVENTS

CEREMONY

3:30 PM - 6:00 PM

SATURDAY
NOVEMBER 17,
2017

Ring ceremony, exchange of vows, and kiss the bride

LEARN MORE →

RECEPTION

6:00 PM - 11:00 PM

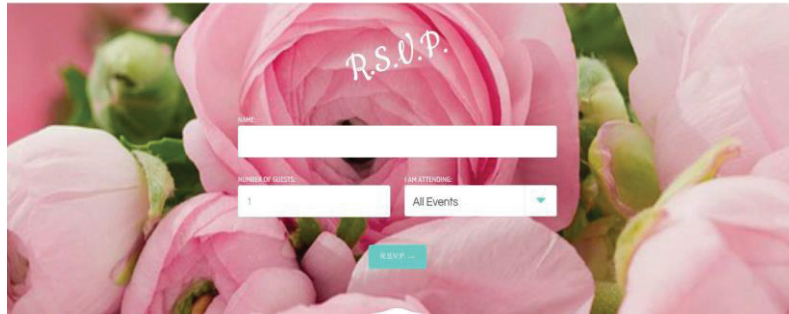
SATURDAY
NOVEMBER 17,
2017

Dinner, dancing, celebrate with us!

LEARN MORE →

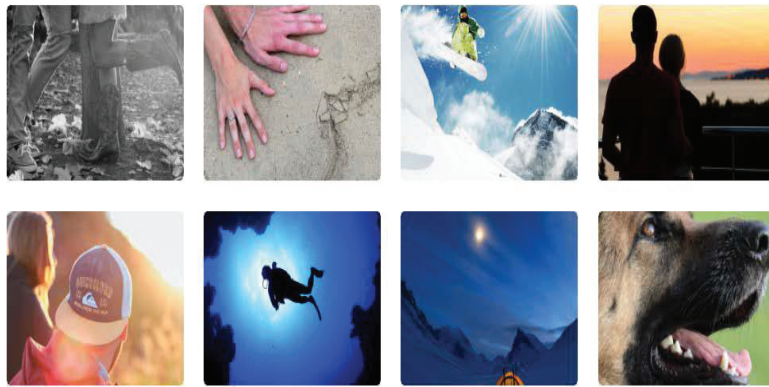
"FOR THIS REASON A MAN SHALL LEAVE HIS FATHER AND HIS MOTHER, AND BE JOINED TO HIS WIFE: AND THEY SHALL BECOME ONE FLESH."

-Genesis 2:24-



OUR PHOTO GALLERY

 Gallery



[VIEW OUR PHOTO GALLERY →](#)

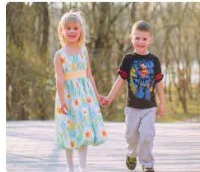
OUR BLOG



Lily's Favorite Scripture

March 16, 2016

I've spent a lot of time thinking about our upcoming wedding day and the significance...
Posted in: [Thoughts](#)



Meet our Flower Girl & Ring Bearer

March 16, 2016

Sara, our Flower Girl, and Sam, our Ring Bearer have very important roles in our...
Posted in: [Love](#)



Funny Dating Story

March 15, 2016

Luke is going to laugh when I tell this story, but as I think back...
Posted in: [Love](#)

[VIEW ALL POSTS →](#)

*Bring your
Dancing
Shoes!*

JOKES FROM

- GROOMSMEN, BRIDESMAIDS & FRIENDS -

#LILYLUKE

[View all →](#)

OUR TWEETS

- LILY & LUKE -

#LILY & LUKE

[View all →](#)





It All Began Seven Years Ago

LILY'S VERSION

Luke and I met about seven years ago in a place quite familiar to both of us -- the slopes. As Colorado natives, Luke and I enjoy all that Colorado's beautiful outdoors has to offer and it was only fitting that we would meet doing something that the both of us enjoy. Seven years later, we enjoy your trip to the slopes...together. I am beyond blessed by Luke's presence in my life. We cherish every moment together and look forward to committing to lifelong love and devotion as we tie the knot in November 2017. Together we want to express our heartfelt appreciation to our family and friends for being by our side for this special occasion!

LUKE'S VERSION

From the moment Lily crossed my path, I could tell there was something about this woman that I wanted to know more about. Lily and I met through mutual friends during a winter weekend trip to Copper Mountain. "It has been said and heard before, if something is too good to be true, it usually is." This was the first thing that crossed my mind when I met Lily. I couldn't imagine this beautiful, smart, humble, and loving person wasn't in a relationship with someone else.



we love each other, and...



COFFEE



CO



JESUS



DOGS



DIVING

This day I marry my friend, the one I laugh
live for, dream of, and love

It was a good, old-fashioned love, a love that had
all the good, old-fashioned qualities that
make a love affair a love affair.

That's why it was
the best.

*Bring your
Dancing
Shoes!*

11.17.17

LITTLETON, COLORADO

~ PLEASE JOIN US AS WE CELEBRATE OUR LOVE ~





HOME OUR STORY WEDDING EVENTS WEDDING PARTY RSVP GUEST BOOK REGISTRY PHOTOS BLOG CONNECT



SATURDAY NOVEMBER 17, 2017
HALF PAST FIVE O'CLOCK IN THE EVENING

An old superstition claims that being married on the half hour brings good fortune because the minute hand is ascending toward Heaven.

CEREMONY DETAILS		
 5:30 PM 6:00 PM		 Saturday November 17, 2017
LOCATION The Barn at Deer Creek Open Space 555 West Deer Creek Drive Littleton, Colorado 80120		
PARKING Complimentary visit parking is available for our guests		
WEATHER Our ceremony location is set in an outdoor mountain setting during the Fall months. We encourage you to dress accordingly.		
ATTIRE Formal		



TO FOLLOW CEREMONY
SIX O'CLOCK IN THE EVENING

RECEPTION DETAILS



6:00 PM
11:00 PM



Saturday November 17, 2017

LOCATION

The Barn at Deer Creek Open Space
555 West Deer Creek Drive
Littleton, Colorado 80128

SPIRITS

Fine selection of local Colorado wines, full bar, and virgin cocktails

DINNER MENU

First Course

Roasted Red Pepper Bisque
Served with Cilantro Creme Fraiche

Second Course

Petite Hearts of Romaine with Parmigiano, Seasoned Croutons, and Zesty Citrus Dressing

Entree

Filet Mignon with Zinfandel Reduction, Truffled Potatoes and California Vegetables or Grilled Pacific Salmon Served Over Risotto Cake, Accompanied by Spinach and Tomato Coulis

Dessert

Wedding Cake

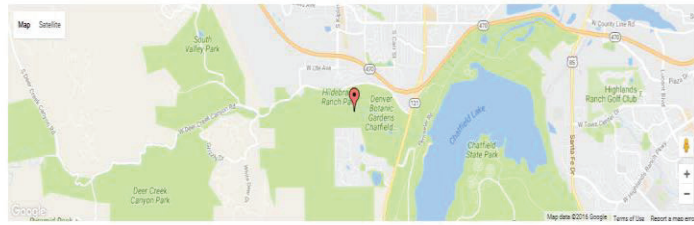
DANCING

Bring your dancing shoes; it's time to celebrate!



THE BARN AT DEER CREEK OPEN SPACE
555 WEST DEER CREEK DRIVE
LITTLETON, COLORADO 80128

Complimentary valet parking is available for our guests



- Designed by 303creative.com -

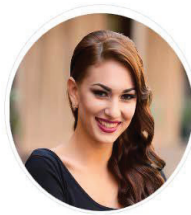
LUKE & LILY
Williams Robinson

HOME OUR STORY WEDDING EVENTS WEDDING PARTY RSVP GUEST BOOK REGISTRY PHOTOS BLOG CONNECT



Bridesmaids

"Each of these ladies has a special place in my heart and I am honored that they'll be standing by my side on my special day." - Lily



KYLIE SHANNON

WEDDING PARTY



Kylie and Lily have been friends since their early years in middle school where they met on the school bus and they have been best friends ever since.



KIRA JAMESON

WEDDING PARTY



Kira and Lily have been close friends since meeting through a mutual friend while attending the same college.



AVA SONOMA

WEDDING PARTY



Ava and Lily met during their Junior year at the University of Colorado.

Groomsmen

"You guys have been there for me (and Lily) since the very beginning. I'm honored to have you support us in our next chapter of life." -Luke



MARK SUTTON

BEST MAN



Mark and Luke have been great friends since about the age of five when they met at the local neighborhood pool.



JUDE TRAVOS

GROOMSMAN



Jude and Luke met through mutual friends during their high school years in Littleton, Colorado.



ZACHARY JONES

GROOMSMAN



Zachary and Luke met at work about four years ago. Both enjoy skiing and weekend outdoor adventures with "the guys".

Pastor Phil



PHIL JACOBS

Pastor Phil has known both Luke and Lily for three years

Flower Girl
Ring Bearer



SARA AND SAM

These two cuties, our niece and nephew, will be helping us on our special day

Bride's Family

GRACE ROBINSON

Mother of the Bride

BRADLY ROBINSON

Father of the Bride

HELENA ROBINSON

Grandmother of the Bride

ISABELLE SONG

Sister of the Bride

KERRY ROBINSON

Sister of the Bride

Groom's Family

JESSICA WILLIAMS

Mother of the Groom

MARK WILLIAMS

Father of the Groom

WILMA WILLIAMS

Grandmother of the Groom

LARRY WILLIAMS

Brother of the Groom

Ushers

ALAN GREEN

Bride's Uncle

SAMUEL FINE

Groom's Uncle

TOM SMITH

Groom's Uncle



JOKES FROM

- GROOMSMEN, BRIDESMAIDS & FRIENDS -

#ASHLEY&MICHAELWEDDING

[View all](#)



OUR TWEETS

- ASHLEY & MICHAEL -

@ASHLEY & @MICHAEL

[View all](#)





R.S.V.P.
RESPONDEZ, S'IL VOUS PLAÎT
LET US KNOW YOU'RE COMING!

NAME:

NUMBER OF GUESTS:

I AM ATTENDING:

From Our Blog



Lily's Favorite Scripture

March 14, 2016

I've spent a lot of time thinking about our upcoming wedding day and the significance...
Posted In: [Thoughts](#)



Meet our Flower Girl & Ring Bearer

March 16, 2016

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March 15, 2016

Luke is going to laugh when I tell this story, but as I think back...
Posted In: [Love](#)



Honeymoon Plans Secured

February 16, 2016

Many of you know that Lily and I share the love of the ocean. It's...
Posted In: [Love](#)

Guestbook

PLEASE FEEL FREE TO SHARE YOUR JOY WITH US.
WE CHERISH YOUR COMMENTS AND WILL HAVE THEM FOREVER AFTER...

Message:
Write us something nice or just a funny joke...

Name: John Doe

Email: Your email address will not be published.
email@example.com

Add message

3 PEOPLE WROTE TO US:

“
HELENA
I love this quote and it reminds me of you... "Love
doesn't make the world go round, love is what makes
the ride worthwhile." Elizabeth Browning
—
MARCH 4, 2018

“
MIKE ANDERSEN
"I am my beloved's, and my beloved is mine." Song of
Solomon 4:3
—
MARCH 4, 2018

“
YOUR SISTER, ISABELLE
You two are so meant for one another. I am honored to
witness your special day.
—
MARCH 04, 2018



Our Registry

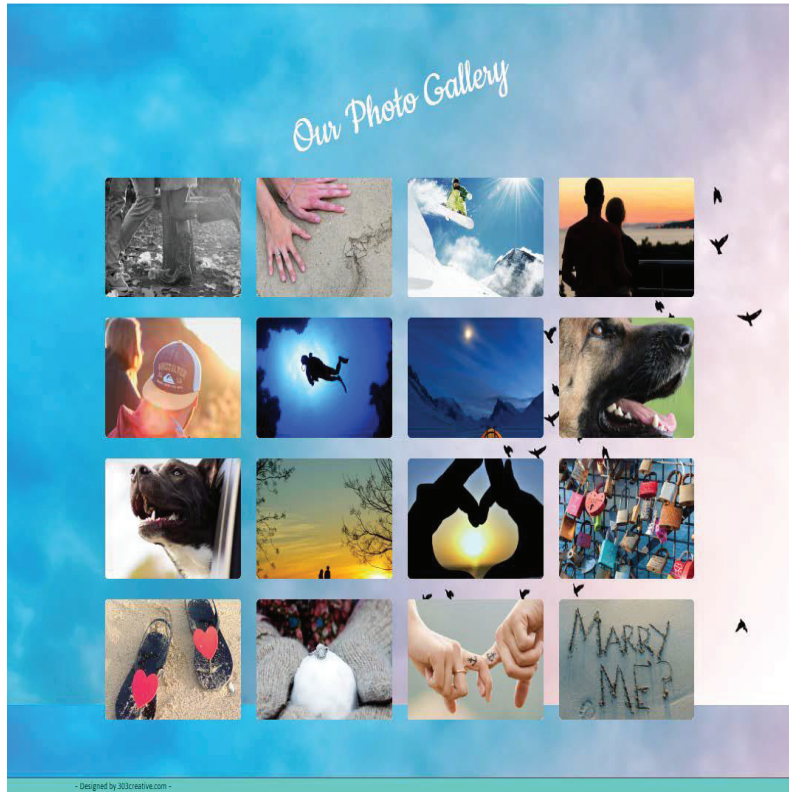
Luke & Lily are registered at the following:

Or make a monetary gift via PayPal:

If unable to attend our event, we graciously ask you mail gifts to:

Luke & Lily
555 W. 3rd Street
Littleton, Colorado 80122

- Designed by 303creative.com -





Our Blog

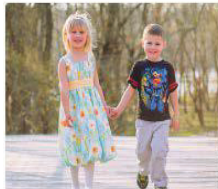


Lily's Favorite Scripture

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Posted In: [Love](#)



Honeymoon Plans Secured

February 16, 2016

Many of you know that Lily and I share the love of the ocean. It's...

Posted In: [Love](#)



He Proposed!

January 20, 2016

He Asked. I Said 'Yes!'

Posted In: [Love](#)



HOME OUR STORY WEDDING EVENTS WEDDING PARTY RSVP GUEST BOOK REGISTRY PHOTOS BLOG CONTACT

LILY'S FAVORITE SCRIPTURE



Lily Salzman March 24, 2016



I've spent a lot of time thinking about our upcoming wedding day and the significance it has for me spiritually. I'm reminded of a verse of scripture in the New Testament and it's one of my favorites...

"And He answered and said, "Have you not read that He who created them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. What therefore God has joined together, let no man separate."

Matthew 19:4-6 NIV

Thoughts

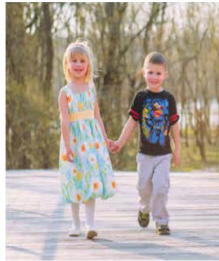




MEET OUR FLOWER GIRL & RING BEARER



Lily Robinson March 16, 2016



Sara, our Flower Girl, and Sam, our Ring Bearer have very important roles in our special day. These two darlings are Luke's sister's children. We couldn't be more happy to have them share this special day with us.

Love





FUNNY DATING STORY



Lily Robinson March 15, 2016



Luke is going to laugh when I tell this story, but as I think back to our seven years together, it's one of those memories that stands out in my mind.

After dating for three or four months, Luke planned a romantic evening and took me to an Italian restaurant for dinner. We enjoyed a romantic meal, wonderful conversation, and as we headed to the car, Luke realized he had locked the keys inside! Our romantic evening ended with a visit from the local locksmith.

Love





HONEYMOON PLANS SECURED



Luke Williams February 16, 2016



Many of you know that Lily and I share the love of the ocean. It's only fitting that our honeymoon would take us on a dive vacation to Belize in December 2017.

Love





HE PROPOSED!



Lily Robinson January 10, 2016



He Asked | She Yes!

Love



Write a comment:

Message

Write us something nice or just a funny joke...

Name

John Doe

Email

email@example.com

Your email address will not be published.

Post Comment



HOME OUR STORY WEDDING EVENTS WEDDING PARTY RSVP GUEST BOOK REGISTRY PHOTOS BLOG CONNECT

Connect With Us

LUKE WILLIAMS
555.443.1538
LUKEWILLIAMS@SAMPLE.COM

[f](#) [t](#) [g+](#) [i](#) [v](#)

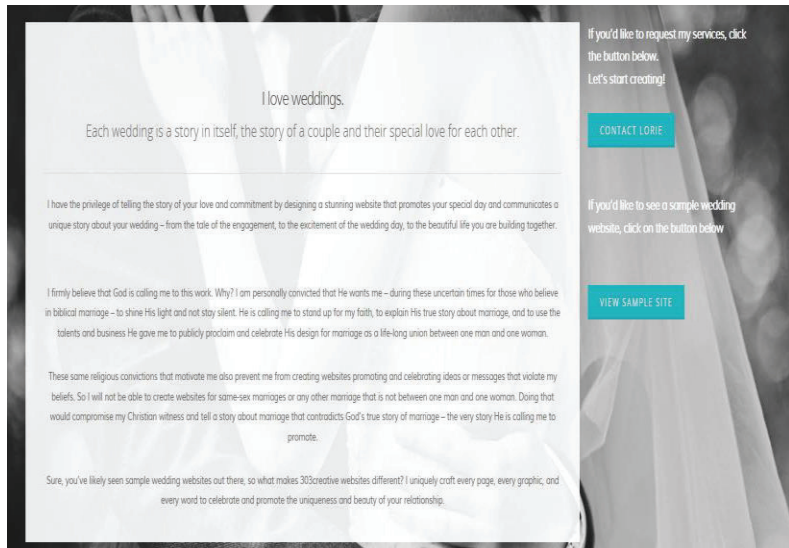
LILY ROBINSON
555.443.1536
LILYROBINSON@SAMPLE.COM

[f](#) [t](#) [g+](#) [i](#) [v](#)

555 WEST THIRD STREET
LITTLETON, COLORADO 80122

"I have found the one whom my soul loves."
Song of Solomon 3:4















EXHIBIT B



Why a Wedding Website?

A custom, easy, and unique way to take your invitation far beyond the envelope.

Website Features:

-  **Custom Website Domain** – A website address of your choice (ie: www.bride@groom.com).
-  **Personal Assistant** – Unlike many of the out-of-the-box wedding website options out there, you can rest assured that I will be your one and only contact throughout the design process. No 1-800 numbers, no generic email addresses, no support tickets. You'll have my direct line and personal email address for every step of the process.
-  **Custom Design** – I fully customize the look, feel, theme, message, color palettes, and design to celebrate you and your special day.
-  **Engagement Story Page** – A page inspired by you and written by Lorie, that captures and conveys the cherished storybook details of your love story.
-  **Ceremony Page** – A place where I communicate details about your wedding ceremony including the time, place, decor, and other personal details.
-  **Reception Page** – A place where I share details about your celebration.
-  **Wedding Party Page** – A place where I introduce your bridesmaids and groomsmen.
-  **Location Page** – A place where I communicate details about where your wedding and reception will be held, maps, directions, and anything else needed to get people from A to B.
-  **Online Guestbook** – A place for guests to share their excitement, leave notes, and communicate with you leading up to your big day.
-  **Guest RSVP Page** – A place for people to indicate whether or not they will attend.
-  **Photo Gallery** – A place where I display highlights of your life together, including your engagement, wedding, reception, and even your honeymoon.
-  **Couple Blog** – A place to share your thoughts and updates as you lead up to your special day.
-  **Gift Registry Page** – A place to share details of your wish list.
-  **Social Media Integration** – Share, post, tweet, snap on your favorite social media sites and automatically post them to your wedding website.



"I have the privilege of telling the story of your love and commitment by designing a stunning website that promotes your special day and communicates a unique story, that includes the tale of the engagement, the excitement of the wedding day, and the beautiful life you are building together."

LS

For this reason a man shall leave his father and his mother, and be joined to his wife, and they shall become one flesh.

Genesis 2:24 NASB

And He answered and said, "Have you not read that He who created them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. What therefore God has joined together, let no man separate."

Matthew 19:4-6 NASB

So, are you interested yet?

LET'S START CREATING!

EXHIBIT C



John W. Hickenlooper
Governor

Barbara J. Kelley
Executive
Director

Division of Civil Rights
Steven Chavez
Director of Division of Civil Rights

1560 Broadway, Suite 1050
Denver, CO 80202
(303) 894-2997
(303) 894-7830 (fax)
(303) 262-4845 (toll free)
200 West 38th Street, Suite 234
Pueblo, CO 81003
(719) 542-1298
(303) 859-0498 (fax)
222 S. 6th Street, Suite 301
Grand Junction, CO 81505
(970) 249-7303
(970) 249-7304
(970) 242-1252 (fax)
http://www.dora.state.co.us/24hr.html

Charge No. P20130008X

Charlie Craig
1401 E. Girard Pl, #9-135
Englewood, CO 80113
Party

Charging

Masterpiece Cakeshop
3355 S. Wadsworth Blvd.
Lakewood, CO 80227

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306(2), I conclude from our investigation that there is sufficient evidence to support the Charging Party's claim of denial of full and equal enjoyment of a place of public accommodation based on his sexual orientation. As such, a Probable Cause determination hereby is issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601(1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging party alleges that on or about July 19, 2012, the Respondent, a place of public accommo-

ation, denied him the full and equal enjoyment of a place of accommodation on the basis of his sexual orientation (gay). The Respondent avers that its standard business practice is to deny service to same-sex couples based on religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent’s actions is unlawful discrimination.

“Unlawful discrimination” means that which is primarily based on the Charging Party’s asserted protected group or status. The Respondent’s stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent’s reason is

pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P 2d 288 (Colo. 2000).

The respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

The Charging Party states that on or about July 19, 2012, he visited the Respondent's place of business for the purpose of ordering a wedding cake with his significant other, David Mullins ("Mullins"), and his mother Deborah Munn ("Munn"). The Charging Party and his partner planned to travel to Massachusetts to marry and intended to have a wedding reception in Denver upon their return. The Charging Party and his significant other were attended to by the Respondent's Owner, Jack Phillips ("Phillips"). The Charging Party asserts that while viewing photos of the available wedding cakes, he informed the owner that the cake was for him and his significant other. The Charging Party states that in response, Phillips replied that his standard business practice is to deny service to same-sex couples based on his religious beliefs. The Charging Party states that based on

Phillips response and refusal to provide service, the group left the Respondent's place of business.

The Charging Party states that on July 20, 2012, in an effort to obtain more information as to why her son was refused service, Munn telephoned Phillips. During this telephone conversation, Phillips stated that "because he is a Christian, he was opposed to making cakes for same-sex weddings for any same-sex couples."

The record reflects that Phillips subsequently commented to various news organizations, that he had turned approximately six same-sex couples away for this same reason. The Respondent has not argued that it is a business that is principally used for religious purposes.

Respondent Owner Jack Phillips ("Phillips") states that on July 19, 2012, the Charging Party, Mullins, and Munn visited his bakery and stated that they wished to purchase a wedding cake. Phillips asserts that he informed the Charging Party that he does not create wedding cakes for same-sex weddings. According to Phillips, this interaction lasted no more than 20 seconds. Phillips states that the Charging Party, Mullins, and Munn subsequently exited the Respondent's place of business. The Respondent avers that on July 20, 2012, during a conversation with Munn, he informed her that he refused to create a wedding cake for her son based on his religious beliefs and because Colorado does not recognize same-sex marriages.

The Respondent states that the aforementioned situation has occurred on approximately five or six past occasions. The Respondent contends that in

those situations, he advised potential customers that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. Respondent owner Phillips adds that he told the Charging Party and his partner that he could create birthday cakes, shower cakes, or any other cakes for them. The Respondent asserts that this decision rested in part based on the fact that the state of Colorado does not recognize same sex marriages.

In an affidavit provided by the Charging Party during the Division's investigation, Stephanie Schmalz ("S. Schmalz") states that on January 16, 2012, she and her partner Jeanine Schmalz ("J. Schmalz") visited the Respondent's place of business to purchase cupcakes for their family commitment ceremony. S. Schmalz states that when she confirmed that the cupcakes were to be part of a celebration for her and her partner, the Respondent's female representative stated that she would not be able to place the order because "the Respondent had a policy of not selling baked goods to same-sex couples for this type of event." Following her departure from the Respondent's place of business, S. Schmalz telephoned the Respondent to clarify its policies. During this telephone conversation, S. Schmalz learned that the female representative was an owner of the business and that it was the Respondent's stated policy not to provide cakes or other baked goods to same-sex couples for wedding-type celebrations.

S. Schmalz subsequently posted a review on the website Yelp describing her experiences with the Respondent. An individual identifying himself as "Jack P. of Masterpiece Cakeshop" posted a reply to Schmalz's review, in which he stated that "...a

wedding for [gays and lesbians] is something that, so far, not even the State of Colorado will allow” and did not dispute that he refuses to serve gay and lesbian couples planning weddings or commitment celebrations.

S. Schmalz states that after learning of the Respondent’s policy, she later contacted the Respondent’s place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a “dog wedding” between one of her dogs and a neighbor’s dog. Phillips did not object to preparing a cake for S. Schmalz’s “dog wedding.”

In an affidavit provided by the Charging Party during the Division’s investigation, Samantha Saggio (“Saggio”) states that on May 19, 2012, she visited the Respondent’s place of business with her partner, Shana Chavez (“Chavez”) to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent’s female representative stated that the Respondent would be unable to provide a cake because “according to the company, Saggio and Chavez were doing something ‘illegal.’”

In an affidavit provided by the Charging Party during the Division’s investigation, Katie Allen (“Allen”) and Alison Sandlin (“Sandlin”) state that on August 6, 2005, they visited the Respondent’s place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women’s intent to wed one another, the Respondent’s female representative stated, “We can’t do it then” and explained that the Respondent had established a

policy of not taking cake orders for same-sex weddings, “because the owners believed in the word of Jesus.”

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that “he is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake.”

Discriminatory Denial of Full and Equal Enjoyment of Services – Sexual Orientation (gay)

To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by a Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his sexual orientation. The Charging Party visited the Respondent’s place of business for the purpose of ordering a wedding cake for his wedding reception. The evidence indicates that the Charging Party and his partner were otherwise qualified to receive services or goods from the Respondent’s bakery. During this visit, the Respondent informed the Charging Party that his standard business practice is to deny baking wedding cakes to same-sex couples based on his religious beliefs. The evidence shows that on multiple occasions, the Respondent

turned away potential customers on the basis of their sexual orientation, stating that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. The Respondent's representatives stated that it would be unable to provide a cake because "according to the company, [the potential same-sex customers] were doing something 'illegal,'" and "because the owners believed in the word of Jesus." The Respondent indicates it will bake other goods for same sex couples such as birthday cakes, shower cakes or any other type of cake, but not a wedding cake. As such, the evidence shows that the respondent refused to allow the Charging Party and his partner to patronize its business in order to purchase a wedding cake under circumstances that give rise to an inference of unlawful discrimination based on the Charging Party's sexual orientation.

Based on the evidence contained above, I determine that the Respondent has violated C.R.S. 24-34-402, as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division


Steven Chavez, Director
or Authorized Designee

3/5/2013
Date

CERTIFICATE OF MAILING

This is to certify that on March 7, 2013 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the United States mail, postage prepaid, addressed to the parties listed below.

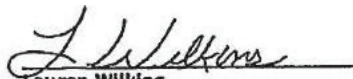
CCRD#
P20130008X

Charlie Craig
1401 E. Girard Pl, #9-135
ENGLEWOOD, CO 80113

Sara Rich
ACLU Foundation of Colorado
303 E. 17th Ave., Ste. 350
DENVER, CO 80203

Masterpiece Cakeshop
3355 S. Wadsworth Boulevard
LAKEWOOD, CO 80227

Nicolle Martin
7175 W. Jefferson Ave., Ste 4000
Lakewood, CO 80235



Lauren Wilkins
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EXHIBIT D



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Charge No. P20130007X

David Mullins
1401 E. Girard Pl., #9-135
Englewood, CO 80113
Party

Charging

Masterpiece Cakeshop
3355 S. Wadsworth Blvd.
Lakewood, CO 80227

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306(2), I conclude from our investigation that there is sufficient evidence to support the Charging Party's claim of denial of full and equal enjoyment of a place of public accommodation based on his sexual orientation. As such, a Probable Cause determination hereby is issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601(1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging party alleges that on or about July 19, 2012, the Respondent, a place of public accommodation, denied him the full and equal enjoyment of a

place of accommodation on the basis of his sexual orientation (gay). The Respondent avers that its standard business practice is to deny service to same-sex couples based on religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent’s actions is unlawful discrimination.

“Unlawful discrimination” means that which is primarily based on the Charging Party’s asserted protected group or status. The Respondent’s stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent’s reason is pretext; is not to be believed; and that the Charging

Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P 2d 288 (Colo. 2000).

The respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

The Charging Party states that on or about July 19, 2012, he visited the Respondent's place of business for the purpose of ordering a wedding cake with his significant other, Charlie Craig ("Craig"), and his mother Deborah Munn ("Munn"). The Charging Party and his partner planned to travel to Massachusetts to marry and intended to have a wedding reception in Denver upon their return. The Charging Party and his significant other were attended to by the Respondent's Owner, Jack Phillips ("Phillips"). The Charging Party asserts that while viewing photos of the available wedding cakes, he informed the owner that the cake was for him and his significant other. The Charging Party states that in response, Phillips replied that his standard business practice is to deny service to same-sex couples based on his religious beliefs. The Charging Party states that based on

Phillips response and refusal to provide service, the group left the Respondent's place of business.

The Charging Party states that on July 20, 2012, in an effort to obtain more information as to why her son was refused service, Munn telephoned Phillips. During this telephone conversation, Phillips stated that "because he is a Christian, he was opposed to making cakes for same-sex weddings for any same-sex couples."

The record reflects that Phillips subsequently commented to various news organizations, that he had turned approximately six same-sex couples away for this same reason. The Respondent has not argued that it is a business that is principally used for religious purposes.

Respondent Owner Jack Phillips ("Phillips") states that on July 19, 2012, the Charging Party, Craig, and Munn visited his bakery and stated that they wished to purchase a wedding cake. Phillips asserts that he informed the Charging Party that he does not create wedding cakes for same-sex weddings. According to Phillips, this interaction lasted no more than 20 seconds. Phillips states that the Charging Party, Craig, and Munn subsequently exited the Respondent's place of business. The Respondent avers that on July 20, 2012, during a conversation with Munn, he informed her that he refused to create a wedding cake for her son based on his religious beliefs and because Colorado does not recognize same-sex marriages.

The Respondent states that the aforementioned situation has occurred on approximately five or six past occasions. The Respondent contends that in

those situations, he advised potential customers that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. He adds that he told the Charging Party and his partner that he “could create birthday cakes, shower cakes, or any other cakes.” The Respondent asserts that this decision rested in part based on the fact that the state of Colorado does not recognize same sex marriages.

In an affidavit provided by the Charging Party during the Division’s investigation, Stephanie Schmalz (“S. Schmalz”) states that on January 16, 2012, she and her partner Jeanine Schmalz (“J. Schmalz”) visited the Respondent’s place of business to purchase cupcakes for their family commitment ceremony. S. Schmalz states that when she confirmed that the cupcakes were to be part of a celebration for her and her partner, the Respondent’s female representative stated that she would not be able to place the order because “the Respondent had a policy of not selling baked goods to same-sex couples for this type of event.” Following her departure from the Respondent’s place of business, S. Schmalz telephoned the Respondent to clarify its policies. During this telephone conversation, S. Schmalz learned that the female representative was an owner of the business and that it was the Respondent’s stated policy not to provide cakes or other baked goods to same-sex couples for wedding-type celebrations.

S. Schmalz subsequently posed a review on the website Yelp describing her experiences with the Respondent. An individual identifying himself as “Jack P. of Masterpiece Cakeshop” posted a reply to Schmalz’s review, in which he stated that “.. a

wedding for [gays and lesbians] is something that, so far, not even the State of Colorado will allow” and did not dispute that he refuses to serve gay and lesbian couples planning weddings or commitment celebrations.

S. Schmalz states that after learning of the Respondent’s policy, she later contacted the Respondent’s place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a “dog wedding” between one of her dogs and a neighbor’s dog. Phillips did not object to preparing a cake for S. Schmalz’s “dog wedding.”

In an affidavit provided by the Charging Party during the Division’s investigation, Samantha Saggio (“Saggio”) states that on May 19, 2012, she visited the Respondent’s place of business with her partner, Shana Chavez (“Chavez”) to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent’s female representative stated that the Respondent would be unable to provide a cake because “according to the company, Saggio and Chavez were doing something ‘illegal.’”

In an affidavit provided by the Charging Party during the Division’s investigation, Katie Allen (“Allen”) and Alison Sandlin (“Sandlin”) state that on August 6, 2005, they visited the Respondent’s place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women’s intent to wed one another, the Respondent’s female representative stated, “We can’t do it then” and explained that the Respondent had established a

policy of not taking cake orders for same-sex weddings, “because the owners believed in the word of Jesus.”

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that “his is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake.”

Discriminatory Denial of Full and Equal Enjoyment of Services – Sexual Orientation (gay)

To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by a Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

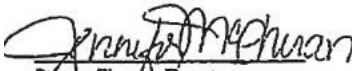
The Charging Party is a member of a protected class based on his sexual orientation. The Charging Party visited the Respondent’s place of business for the purpose of ordering a wedding cake for his wedding reception. The evidence indicates that the Charging Party and his partner were otherwise qualified to receive services or goods from the Respondent’s bakery. During this visit, the Respondent informed the Charging Party that his standard business practice is to deny baking wedding cakes to same-sex couples based on his religious beliefs. The evidence shows that on multiple occasions, the Respondent

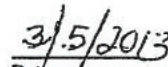
turned away potential customers on the basis of their sexual orientation, stating that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. The Respondent's representatives stated that it would be unable to provide a cake because "according to the company, [the potential same-sex customers] were doing something 'illegal,'" and "because the owners believed in the word of Jesus." The Respondent indicates it will bake other goods for same sex couples such as birthday cakes, shower cakes or any other type of cake, but not a wedding cake. As such, the evidence shows that the respondent refused to allow the Charging Party and his partner to patronize its business in order to purchase a wedding cake under circumstances that give rise to an inference of unlawful discrimination based on the Charging Party's sexual orientation.

Based on the evidence contained above, I determine that the Respondent has violated C.R.S. 24-34-402, as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division


Steven Chavez, Director
or Authorized Designee


Date

CERTIFICATE OF MAILING

This is to certify that on March 7, 2013 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the United States mail, postage prepaid, addressed to the parties listed below.

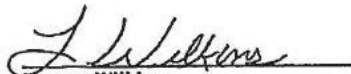
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EXHIBIT E

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	▲ COURT USE ONLY ▲
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs.	
MASTERPIECE CAKESHOP, INC., and any other successor entity, and JACK C. PHILLIPS, Respondents.	CASE NUMBER: CR 2013- 0008
<p style="text-align: center;">INITIAL DECISION GRANTING COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT</p>	

Complainants allege that Respondents discriminated against them due to their sexual orientation by refusing to sell them a wedding cake in violation of Colorado's anti-discrimination law. The material facts are not in dispute and both parties filed motions for summary judgment. Following extensive briefing by both sides, oral argument was held before Administrative Law Judge (ALJ) Robert Spencer at the Office of Administrative Courts on December 4, 2013. Complainants were represented by Paula

Greisen, Esq., and Dana Menzel, Esq., King & Greisen, LLC; Amanda Goad, Esq., American Civil Liberties Union Foundation LGBT & AIDS Project; and Sara Rich, Esq., and Mark Silverstein, Esq., American Civil Liberties Union Foundation of Colorado. Respondents were represented by Nicolle H. Martin, Esq.; Natalie L. Decker, Esq., The Law Office of Natalie L. Decker, LLC; and Michael J. Norton, Esq., Alliance Defending Freedom. Counsel in Support of the Complaint was Stacy L. Worthington, Senior Assistant Attorney General.

Case Summary

Complainants, a gay couple, allege that on July 19, 2012, Jack C. Phillips, owner of Masterpiece Cakeshop, Inc., refused to sell them a wedding cake because of their sexual orientation. Complainants filed charges of discrimination with the Colorado Civil Rights Commission, which in turn found probable cause to credit the allegations of discrimination. On May 31, 2013, Counsel in Support of the Complaint filed a Formal Complaint with the Office of Administrative Courts alleging that Respondents discriminated against Complainants in a place of public accommodation due to sexual orientation, in violation of § 24-34-601(2), C.R.S. Counsel in Support of the Complaint seeks an order directing Respondents to cease and desist from further discrimination, as well as other administrative remedies.¹

¹ The fines and imprisonment provided for by § 24-34-602, C.R.S. may only be imposed in a proceeding before a civil or criminal court, and are not available in this administrative proceeding.

Hearing began on September 26, 2013 and was continued until December 4, 2013 to give the parties time to complete discovery and fully brief cross-motions for summary judgment. Complainants and Counsel in Support of the Complaint contend that because there is no dispute that Masterpiece Cakeshop is a place of public accommodation, or that Respondents refused to sell Complainants a wedding cake for their same-sex wedding, that Respondents violated § 24-34-601(2) as a matter of law. Respondents do not dispute that they refused to sell Complainants a cake for their same-sex wedding, but contend that their refusal was based solely upon a deeply held religious conviction that marriage is only between a man and a woman, and was not due to bias against Complainants' sexual orientation. Therefore, Respondents' conduct did not violate the public accommodation statute which only prohibits discrimination "because of . . . sexual orientation." Furthermore, Respondents contend that application of the law to them under the circumstances of this case would violate their rights of free speech and free exercise of religion, as guaranteed by the First Amendment of the U.S. Constitution and Article II, sections 4 and 10 of the Colorado Constitution.

Because it appeared that the essential facts were not in dispute and that the case could be resolved as a matter of law, the ALJ vacated the merits hearing of December 4, 2013 in favor of a hearing upon the cross-motions for summary judgment. For the reasons explained below, the ALJ now grants Complainants' motion for summary judgment and denies Respondents' motion.

Findings of Fact

The following facts are undisputed:

1. Phillips owns and operates a bakery located in Lakewood, Colorado known as Masterpiece Cakeshop, Inc. Phillips and Masterpiece Cakeshop are collectively referred to herein as Respondents.

2. Masterpiece Cakeshop is a place of public accommodation within the meaning of § 24-34-601(1), C.R.S.

3. Among other baked products, Respondents create and sell wedding cakes.

4. On July 19, 2012, Complainants Charlie Craig and David Mullins entered Masterpiece Cakeshop in the company of Mr. Craig's mother, Deborah Munn.

5. Complainants sat down with Phillips at the cake consulting table. They introduced themselves as "David" and "Charlie" and said that they wanted a wedding cake for "our wedding."

6. Phillips informed Complainants that he does not create wedding cakes for same-sex weddings. Phillips told the men, "I'll make you birthday cakes, shower cakes, sell you cookies and brownies, I just don't make cakes for same-sex weddings."

7. Complainants immediately got up and left the store without further discussion with Phillips.

8. The whole conversation between Phillips and Complainants was very brief, with no discussion between the parties about what the cake would look like.

9. The next day, Ms. Munn called Masterpiece Cakeshop and spoke with Phillips. Phillips advised Ms. Munn that he does not create wedding cakes for same-sex weddings because of his religious beliefs, and because Colorado does not recognize same-sex marriages.

10. Colorado law does not recognize same-sex marriage. Colo. Const. art. II, § 31 (“Only a union of one man and one woman shall be valid or recognized as a marriage in this state”); § 14-2-104(1), C.R.S. (“[A] marriage is valid in this state if: . . . It is only between one man and one woman.”)

11. Phillips has been a Christian for approximately 35 years, and believes in Jesus Christ as his Lord and savior. As a Christian, Phillips’ main goal in life is to be obedient to Jesus and His teachings in all aspects of his life.

12. Phillips believes that the Bible is the inspired word of God, that its accounts are literally true, and that its commands are binding on him.

13. Phillips believes that God created Adam and Eve, and that God’s intention for marriage is the union of one man and one woman. Phillips relies upon Bible passages such as Mark 10:6-9 (NIV) (“[F]rom the beginning of creation, God made them male and female, for this reason, a man will leave his father and mother and be united with his wife and the two will become one flesh. So they are no longer two, but one. Therefore, what God has joined together, let not man separate.”)

14. Phillips also believes that the Bible commands him to avoid doing anything that would displease God, and not to encourage sin in any way.

15 Phillips believes that decorating cakes is a form of art and creative expression, and that he can honor God through his artistic talents.

16. Phillips believes that if he uses his artistic talents to participate in same-sex weddings by creating a wedding cake, he will be displeasing God and acting contrary to the teachings of the Bible.

Discussion

Standard for Summary Judgment

Summary judgment is proper when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. C.R.C.P. 56(C); *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 570 (Colo. 2008). A genuine issue of material fact is one which, if resolved, will affect the outcome of the case. *City of Aurora v. ACJ P'ship*, 209 P.3d 1076, 1082 (Colo. 2009).

The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail. *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546, 548 (Colo. 2006). However, summary judgment is a drastic remedy and should be granted only upon a clear showing that there is no genuine issue as to any

material fact. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139, 146 (Colo. 2007). Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate. *Dominguez Reservoir Corp. v. Feil*, 854 P.2d 791, 795 (Colo. 1993).

The fact that the parties have filed cross-motions does not decrease either party's burden of proof. When a trial court is presented with cross-motions for summary judgment, it must consider each motion separately, review the record, and determine whether a genuine dispute as to any fact material to that motion exists. If there are genuine disputes regarding facts material to both motions, the court must deny both motions. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988).

Having carefully reviewed the parties' cross-motions, together with the documentation supporting those motions, the ALJ concludes that the undisputed facts are sufficient to resolve both motions.

Colorado Public Accommodation Law

At first blush, it may seem reasonable that a private business should be able to refuse service to anyone it chooses. This view, however, fails to take into account the cost to society and the hurt caused to persons who are denied service simply because of who they are. Thus, for well over 100 years, Colorado has prohibited discrimination by businesses that offer goods and services to the public.² The most recent version of the public accommodation law, which was

² See § 1, ch. 61, Laws of 1895, providing that "all persons" shall be entitled to the "equal enjoyment" of "places of public accommodation and amusement."

amended in 2008 to add sexual orientation as a protected class, reads in pertinent part:

It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, *because of . . . sexual orientation . . .* the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

Section 24-34-601(2), C.R.S. (emphasis added).

A “place of public accommodation” means “any place of business engaged in any sales to the public, including but not limited to any business offering wholesale or retail sales to the public.” Section 24-34-601(1), C.R.S. “Sexual orientation” means “orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person’s perception thereof.” Section 24-34-301(7), C.R.S. “Person” includes individuals as well as business and governmental entities. Section 24-34-301(5), C.R.S.

There is no dispute that Respondents are “persons” and that Masterpiece Cakeshop is a “place of public accommodation” within the meaning of the law. There is also no dispute that Respondents refused to provide a cake to Complainants for their same-sex wedding. Respondents, however, argue that the refusal does not violate § 24-34-601(2) because it was due to their objection to same-sex weddings, not because of Complainants’ sexual orientation. Respondents deny that they hold any animus toward homosexuals or gay couples, and would willingly

provide other types of baked goods to Complainants or any other gay customer. On the other hand, Respondents would refuse to provide a wedding cake to a heterosexual customer if it was for a same-sex wedding. The ALJ rejects Respondents' argument as a distinction without a difference.

The salient feature distinguishing same-sex weddings from heterosexual ones is the sexual orientation of its participants. Only same-sex couples engage in same-sex weddings. Therefore, it makes little sense to argue that refusal to provide a cake to a same-sex couple for use at their wedding is not "because of" their sexual orientation.

Respondents' reliance on *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) is misplaced. In *Bray*, a group of abortion clinics alleged that anti-abortionist demonstrators violated federal law by conspiring to deprive women seeking abortions of the right to interstate travel. In rejecting this challenge, the Supreme Court held that opposition to abortion was not the equivalent of animus to women in general. *Id.* at 269. To represent unlawful class discrimination, the discrimination must focus upon women "by reason of their sex." *Id.* at 270 (emphasis in original). Because the demonstrators were motivated by legitimate factors other than the sex of the participants, the requisite discriminatory animus was absent. That, however, is not the case here. In this case, Respondents' objection to same-sex marriage is inextricably tied to the sexual orientation of the parties involved, and therefore disfavor of the parties' sexual orientation may be presumed. Justice Scalia, the author of the majority opinion in *Bray*, recognized that "some activities may be such an

irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed. A tax on wearing yarmulkes is a tax on Jews.” *Id.* at 270. Similarly, the ALJ concludes that discrimination against same-sex weddings is the equivalent of discrimination due to sexual orientation.³

If Respondents’ argument was correct, it would allow a business that served all races to nonetheless refuse to serve an interracial couple because of the business owner’s bias against interracial marriage. That argument, however, was rejected 30 years ago in *Bob Jones Univ. v. U.S.*, 461 U.S. 574 (1983). In *Bob Jones*, the Supreme Court held that the IRS properly revoked the university’s tax-exempt status because the university denied admission to interracial couples even though it otherwise admitted all races. According to the Court, its prior decisions “firmly establish that discrimination on the basis of racial affiliation and association is a form of racial discrimination.” *Id.* at 605. This holding was extended to discrimination on the basis of sexual orientation in *Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez*, ___ U.S. ___, 130 S.Ct. 2971, 2990 (2010). In rejecting the Chapter’s argument that denying membership to students who engaged in

³ In a case similar to this one but involving a photographer’s religiously motivated refusal to photograph a same-sex wedding, the New Mexico Supreme Court stated that, “To allow discrimination based on conduct so closely correlated with sexual orientation would severely undermine the purpose of the [state public accommodation law].” *Elane Photography, LLC v. Willock*, 2013 N.M. Lexis 284 at p. 4, 309 P.3d 53 (N.M. 2013).

“unrepentant homosexual conduct” did not violate the university’s policy against discrimination due to sexual orientation, the Court observed, “Our decisions have declined to distinguish between status and conduct in this context.” *Id.*

Nor is the ALJ persuaded by Respondents’ argument that they should not be compelled to recognize same-sex marriages because Colorado does not do so. Although Respondents are correct that Colorado does not recognize same-sex marriage, that fact does not excuse discrimination based upon sexual orientation. At oral argument, Respondents candidly acknowledged that they would also refuse to provide a cake to a same-sex couple for a commitment ceremony or a civil union, neither of which is forbidden by Colorado law.⁴ Because Respondents’ objection goes beyond just the act of “marriage,” and extends to any union of a same-sex couple, it is apparent that Respondents’ real objection is to the couple’s sexual orientation and not simply their marriage. Of course, nothing in § 24-34-601(2) compels Respondents to recognize the legality of a same-sex wedding or to endorse such weddings. The law simply requires that Respondents and other actors in the marketplace serve same-sex couples in exactly the same way they would serve heterosexual ones.

Having rejected Respondents’ arguments to the contrary, the ALJ concludes that the undisputed facts establish that Respondents violated the terms of § 24-

⁴ As the result of passage of SB 03-011, effective May 1, 2013, civil unions are now specifically recognized in Colorado.

34-601(2) by discriminating against Complainants because of their sexual orientation.

Constitutionality of Application

To say that Respondents' conduct violates the letter of § 24-34-601(2) does not resolve the case if, as Respondents assert, application of that law violates their constitutional right to free speech or free exercise of religion. Although the ALJ has no jurisdiction to declare a state law unconstitutional, the ALJ does have authority to evaluate whether a state law has been unconstitutionally applied in a particular case. *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1204 n. 4 (1993) (although the state personnel board has no authority to determine whether legislative acts are constitutional on their face, the board "may evaluate whether an otherwise constitutional statute has been unconstitutionally applied with respect to a particular personnel action"); *Pepper v. Indus. Claim Appeals Office*, 131 P.3d 1137, 1146 (Colo. 2005). The ALJ will, therefore, address Respondents' arguments that application of § 24-34-601(2) to them violates their rights of free speech and free exercise of religion.⁵

Free Speech

The state and federal constitutions guarantee broad protection of free speech. The First Amendment of the United States Constitution bars congress from

⁵ Corporations like Masterpiece Cakeshop have free speech rights. *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010). In addition, at least in the Tenth Circuit, closely held for-profit business entities like Masterpiece Cakeshop also enjoy a First Amendment right to free exercise of religion. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1137 (10th Cir. 2013).

making any law “abridging the freedom of speech, or of the press,” and the Fourteenth Amendment applies that protection to the states. Article II, § 10 of the Colorado Constitution states that, “No law shall be passed impairing the freedom of speech.” Free speech holds “high rank . . . in the constellation of freedoms guaranteed by both the United States Constitution and our state constitution.” *Bock v. Westminster Mall Co.*, 819 P.2d 55, 57 (Colo. 1991). The guarantee of free speech applies not only to words, but also to other mediums of expression, such as art, music, and expressive conduct. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569 (1995) (“the Constitution looks beyond written or spoken words as mediums of expression . . . symbolism is a primitive but effective way of communicating ideas.”)

Respondents argue that compelling them to prepare a cake for a same-sex wedding is equivalent to forcing them to “speak” in favor of same-sex weddings – something they are unwilling to do. Indeed, the right to free speech means that the government may not compel an individual to communicate by word or deed an unwanted message or expression. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (compelling a student to pledge allegiance to the flag “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control”); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (compelling a motorist to display the state’s motto, “Live Free or Die,” on his license plate forces him “to be an instrument for fostering public

adherence to an ideological point of view he finds unacceptable.”)

The ALJ, however, rejects Respondents’ argument that preparing a wedding cake is necessarily a medium of expression amounting to protected “speech,” or that compelling Respondents to treat same-sex and heterosexual couples equally is the equivalent of forcing Respondents to adhere to “an ideological point of view.” There is no doubt that decorating a wedding cake involves considerable skill and artistry. However, the finished product does not necessarily qualify as “speech,” as would saluting a flag, marching in a parade, or displaying a motto. *United States v. O’Brien*, 391 U.S. 367, 376 (1968) (“We cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”)⁶ The undisputed evidence is that Phillips categorically refused to prepare a cake for Complainants’ same-sex wedding before there was any discussion about what that cake would look like. Phillips was not asked to apply any message or symbol to the cake, or to construct the cake in any fashion that could be reasonably understood as advocating same-sex marriage. After being refused, Complainants immediately left the shop. For all Phillips knew at the time, Complainants might have wanted a nondescript cake that would have been suitable for consumption at any wedding.⁷

⁶ Upholding O’Brien’s conviction for burning his draft card.

⁷ Respondents point out that the cake Complainants ultimately obtained from another bakery had a filling with rainbow colors. However, even if that fact could reasonably be interpreted as the

Therefore, Respondents' claim that they refused to provide a cake because it would convey a message supporting same-sex marriage is specious. The act of preparing a cake is simply not "speech" warranting First Amendment protection.⁸

Furthermore, even if Respondents could make a legitimate claim that § 24-34-601(2) impacts their right to free speech, such impact is plainly incidental to the state's legitimate regulation of discriminatory conduct and thus is permissible. In *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (2006), the Supreme Court rejected the argument that withholding federal funding from schools that denied access to military recruiters violated the schools' right to protest the military's sexual orientation policies. In the Court's opinion, any impact upon the schools' right of free speech was "plainly incidental" to the government's right to regulate objectionable conduct. "The compelled speech to which the law schools point is plainly incidental to the Solomon Amendment's regulation of

baker's expression of support for gay marriage, which the ALJ doubts, the fact remains that Phillips categorically refused to bake a cake for Complainants without any idea of what Complainants wanted that cake to look like.

⁸ The ALJ also rejects Respondents' argument that § 24-34-601(2), C.R.S. bars them from "correcting the record" by publicly disavowing support for same-sex marriage. The relevant portion of § 24-34-601(2) only bars businesses from publishing notice that individuals will be denied service or are unwelcome because of their disability, race, creed, sex, sexual orientation, marital status, national origin, or ancestry. Nothing in § 24-34-601(2) prevents Respondents from posting a notice that the design of their products is not an intended to be an endorsement of anyone's political or social views.

conduct, and ‘it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.’” *Id.* at 62 (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949)). “Congress, for example, can prohibit employers from discriminating in hiring on the basis of race. The fact that this will require an employer to take down a sign reading ‘White Applicants Only’ hardly means that the law should be analyzed as one regulating the employer’s speech rather than conduct.” *Rumsfeld, supra.* “Compelling a law school that sends scheduling e-mails for other recruiters to send one for a military recruiter is simply not the same as forcing a student to pledge allegiance, or forcing a Jehovah’s Witness to display the motto ‘Live Free or Die,’ and it trivializes the freedom protected in *Barnette* and *Wooley* to suggest that it is.” *Id.*

Similarly, compelling a bakery that sells wedding cakes to heterosexual couples to also sell wedding cakes to same-sex couples is incidental to the state’s right to prohibit discrimination on the basis of sexual orientation, and is not the same as forcing a person to pledge allegiance to the government or to display a motto with which they disagree. To say otherwise trivializes the right to free speech.

This case is also distinguishable from cases like *Barnette* and *Wooley* because in those cases the individuals’ exercise of free speech (refusal to salute the flag and refusal to display the state’s motto) did not conflict with the rights of others. This is an important distinction. As noted in *Barnette*, “The

freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin.” *Barnette*, 319 U.S. at 630. Here, the refusal to provide a wedding cake to Complainants directly harms Complainants’ right to be free of discrimination in the marketplace. It is the state’s prerogative to minimize that harm by determining where Respondents’ rights end and Complainants’ rights begin.

Finally, Respondents argue that if they are compelled to make a cake for a same-sex wedding, then a black baker could not refuse to make a cake bearing a white-supremacist message for a member of the Aryan Nation; and an Islamic baker could not refuse to make a cake denigrating the Koran for the Westboro Baptist Church. However, neither of these fanciful hypothetical situations proves Respondents’ point. In both cases, it is the explicit, unmistakable, offensive message that the bakers are asked to put on the cake that gives rise to the bakers’ free speech right to refuse. That, however, is not the case here, where Respondents refused to bake any cake for Complainants regardless of what was written on it or what it looked like. Respondents have no free speech right to refuse because they were only asked to bake a cake, not make a speech.

Although Respondents cite *Bock v. Westminster Mall Co.*, *supra*, for the proposition that Colorado’s constitution provides greater protection than does the First Amendment, Respondents cite no Colorado case, and the ALJ is aware of none, that would extend protection to the conduct at issue in this case.

For all these reasons the ALJ concludes that application of § 24-34-601(2) to Respondents does not violate their federal or state constitutional rights to free speech.

Free Exercise of Religion

The state and federal constitutions also guarantee broad protection for the free exercise of religion. The First Amendment bars congress from making any law “respecting an establishment of religion or prohibiting the free exercise thereof,” and the Fourteenth Amendment applies that protection to the states. Article II, § 4 of the Colorado Constitution states that, “The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his opinions concerning religion.” The door of these rights “stands tightly closed against any governmental regulation of religious beliefs as such.” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963).

The question presented by this case, however, does not involve an effort by the government to regulate what Respondents *believe*. Rather, it involves the state’s regulation of *conduct*; specifically, Respondents’ refusal to make a wedding cake for a same-sex marriage due to a religious conviction that same-sex marriage is abhorrent to God. Whether regulation of conduct is permissible depends very much upon the facts of the case.

The types of conduct the United States Supreme Court has found to be beyond government control typically involve activities fundamental to the

individual's religious belief, that do not adversely affect the rights of others, and that are not outweighed by the state's legitimate interests in promoting health, safety and general welfare. Examples include the Amish community's religious objection to public school education beyond the eighth grade, where the evidence was compelling that Amish children received an effective education within their community, and that requiring public school education would threaten the very existence of the Amish community, *Wisconsin v. Yoder*, 406 U.S. 205 (1972); a Jewish employee's right to refuse Saturday employment without risking loss of unemployment benefits, *Sherbert v. Verner, supra*; and a religious sect's right to engage in religious soliciting without being required to have a license, *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

On the other hand, the Supreme Court has held that "activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare." *Wisconsin v. Yoder*, 406 U.S. at 220. To excuse all religiously-motivated conduct from state control would "permit every citizen to become a law unto himself." *Employment Division v. Smith*, 494 U.S. 872, 879 (1990). Thus, for example, the Court has upheld a law prohibiting religious-based polygamy, *Reynolds v. United States*, 98 U.S. 145 (1879); upheld a law restricting religious-based child labor, *Prince v. Massachusetts*, 321 U.S. 158 (1944); upheld a Sunday closing law that adversely affected Jewish businesses, *Braunfeld v. Brown*, 366 U.S. 599 (1961); upheld the government's right to collect Social Security taxes

from an Amish employer despite claims that it violated his religious principles, *United States v. Lee*, 455 U.S. 252 (1982); and upheld denial of unemployment compensation to persons who were fired for the religious use of peyote, *Employment Division v. Smith*, *supra*.

As a general rule, when the Court has held religious-based conduct to be free from regulation, “the conduct at issue in those cases was not prohibited by law,” *Employment Division v. Smith*, 494 U.S. at 876; the freedom asserted did not bring the appellees “into collision with rights asserted by any other individual,” *Braunfeld v. Brown*, 366 U.S. at 604 (“It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin”); and the regulation did not involve an incidental burden upon a commercial activity. *United States v. Lee*, 455 U.S. at 261 (“When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.”)

Respondents’ refusal to provide a cake for Complainants’ same-sex wedding is distinctly the type of conduct that the Supreme Court has repeatedly found subject to legitimate regulation. Such discrimination is against the law (§ 24-34-601. C.R.S.); it adversely affects the rights of Complainants to be free from discrimination in the marketplace; and the impact upon Respondents is incidental to the state’s legitimate regulation of commercial activity. Respondents therefore have no

valid claim that barring them from discriminating against same-sex customers violates their right to free exercise of religion. Conceptually, Respondents' refusal to serve a same-sex couple due to religious objection to same-sex weddings is no different from refusing to serve a biracial couple because of religious objection to biracial marriage. However, that argument was struck down long ago in *Bob Jones Univ. v. United States*, *supra*.

Respondents nonetheless argue that, because § 24-34-601(2) limits their religious freedom, its application to them must meet the strict scrutiny of being narrowly drawn to meet a compelling governmental interest. The ALJ does not agree. In *Employment Division v. Smith*, *supra*, the Court announced the standard applicable to cases such as this one; namely, that “the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Employment Division v. Smith*, 494 U.S. at 879.⁹ This standard is followed in the Tenth Circuit, *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10th Cir. 2006) (a law that is both neutral and generally applicable need only be

⁹ Respondents have not cited the ALJ to any Colorado law that requires a higher standard. Although Congress made an attempt to legislatively overrule *Smith* when it passed the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1(a), the Supreme Court has held that RFRA cannot be constitutionally applied to the states. *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997). Colorado has not adopted a state version of RFRA, and no Colorado case imposes a higher standard than *Smith*.

rationally related to a legitimate governmental interest to survive a constitutional challenge).

Only if a law is not neutral and of general applicability must it meet strict scrutiny. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (because a city ordinance outlawing rituals of animal sacrifice was adopted to prevent church's performance of religious animal sacrifice, it was not neutral and of general applicability and therefore had to be narrowly drawn to meet a compelling governmental interest). *Town of Foxfield v. Archdiocese of Denver*, 148 P.3d 339 (Colo. App. 2006) is an example of how this test has been applied in Colorado. In *Town of Foxfield*, the court of appeals held that a parking ordinance was subject to strict scrutiny because it was not of general applicability in that it could only be enforced after receipt of three citizen complaints, and was not neutral because there was ample evidence that it had been passed specifically in response to protests by the church's neighbors. *Id.* at 346.

Section 24-34-601(2) is a valid law that is both neutral and of general applicability; therefore, it need only be rationally related to a legitimate government interest, and need not meet the strict scrutiny test. There is no dispute that it is a valid law. *Hurley*, 515 U.S. at 572 ("Provisions like these are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments.")¹⁰

¹⁰ Of course, the ALJ has no jurisdiction to declare CADA facially unconstitutional in any event.

Colorado's public accommodation law is also neutral and of general applicability because it is not aimed at restricting the activities of any particular group of individuals or businesses, nor is it aimed at restricting any religious practice. Any restriction of religious practice that results from application of the law is incidental to its focus upon preventing discrimination in the marketplace. Unlike *Church of Lukumi Babalu Aye* and *Town of Foxfield*, the law is not targeted to restrict religious activities in general or Respondents' activities in particular. Therefore, § 24-34-601(2) is not subject to strict scrutiny and Respondents are not free to ignore its restrictions even though it may incidentally conflict with their religiously-driven conduct.

Respondents contend that § 24-34-601 is not a law of general applicability because it provides for several exceptions. Where a state's facially neutral rule contains a "system" of individualized exceptions, the state may not refuse to extend that system of exceptions to cases of "religious hardship" without compelling reason. *Smith*, 494 U.S. at 881-82. But, the only exception in § 24-34-601 that has anything to do with religious practice is that for churches or other places "principally used for religious purposes." Section 24-34-601(1). It cannot reasonably be argued that this exception is targeted to restrict religious-based activities. To the contrary, the exemption for churches and other places used primarily for religious purposes underscores the legislature's respect for

religious freedom.¹¹ *Conestoga Wood Specialties Corp. v. Sebelius*, 917 F.Supp.2d 394, 410 (E.D. Pa. 2013) (the fact that exemptions were made for religious employers “shows that the government made efforts to accommodate religious beliefs, which counsels in favor of the regulations’ neutrality”), *aff’d* 724 F.3d 377 (3rd Cir. 2013).

The only other exception in § 24-34-601 is a secular one for places providing public accommodations to one sex, where the restriction has a bona fide relationship to the good or service being provided; such as a women’s health clinic. Section 24-34-601(3). The Tenth Circuit, however, has joined other circuits in refusing to interpret Smith as standing for the proposition that a narrow secular exception automatically exempts all religiously motivated activity. *Grace United*, 451 F.3d at 651 (“Consistent with the majority of our sister circuits, however, we have already refused to interpret Smith as standing for the proposition that a secular exemption automatically creates a claim for a religious exemption.”) The ALJ likewise declines to do so.

Respondents argue that § 24-34-601(2) must nevertheless meet the strict scrutiny test because the Supreme Court has historically applied strict scrutiny to “hybrid” situations involving not only the free exercise of religion but also other constitutional rights such as freedom of speech. *Smith*, 494 U.S. at 881-82. Respondents contend that this case is a hybrid situation because the public accommodation law not

¹¹ In fact, such an exception may be constitutionally required. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, ___ U.S. ___, 132 S.Ct. 694, 705-06 (2012).

only restricts their free exercise of religion, but also restricts their freedom of speech and amounts to an unconstitutional “taking” of their property without just compensation in violation of the Fifth and Fourteenth Amendments. Therefore, they say, application of the law to them must be justified by a compelling governmental interest, which cannot be shown.

The mere incantation of other constitutional rights is not sufficient to create a hybrid claim. *See Axson-Flynn v. Johnson*, 356 F.3d. 1277, 1295 (10th Cir. 2004) (requiring a showing of “‘fair probability, or a likelihood,’ of success on the companion claim.”) As discussed above, Respondents have not demonstrated that § 24-34-601(2) violates their rights of free speech; and, there is no evidence that the law takes or impairs any of Respondents’ property or harms Respondents’ business in any way. On the contrary, to the extent that the law prohibits Respondents from discriminating on the basis of sexual orientation, compliance with the law would likely increase their business by not alienating the gay community. If, on the other hand, Respondents choose to stop making wedding cakes altogether to avoid future violations of the law; that is a matter of personal choice and not a result compelled by the state. Because Respondents have not shown a likelihood of success in a hybrid claim, strict scrutiny does not apply.

Summary

The undisputed facts show that Respondents discriminated against Complainants because of their sexual orientation by refusing to sell them a wedding cake for their same-sex marriage, in violation of § 24-

34-601(2), C.R.S. Moreover, application of this law to Respondents does not violate their right to free speech or unduly abridge their right to free exercise of religion. Accordingly, Complainants' motion for summary judgment is GRANTED and Respondents' motion for summary judgment is DENIED.

Initial Decision

Respondents violated § 24-34-601(2), C.R.S. substantially as alleged in the Formal Complaint. In accordance with §§ 24-34-306(9) and 605, C.R.S., Respondents are ordered to:

(1) Cease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any other product Respondents would provide to heterosexual couples; and

(2) Take such other corrective action as is deemed appropriate by the Commission, and make such reports of compliance to the Commission as the Commission shall require.

Done and Signed
December 6, 2013

ROBERT N. SPENCER
Administrative Law Judge

Hearing digitally recorded in CR#1

EXHIBIT F

STATE OF COLORADO COLORADO CIVIL RIGHTS COMMISSION 1560 Broadway, Suite 1050, Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
CHARLIE CRAIG and DAVID MULLINS, Complainant/Appellant, vs. MASTERPIECE CAKESHOP, INC., and any other successor entity, and JACK C. PHILLIPS Respondent/Appellee.	
FINAL AGENCY ORDER	

This matter came before the Colorado Civil Rights Commission (“Commission”) at its regularly scheduled monthly meeting on May 30, 2014. During the public session portion of the monthly meeting the Commission considered the record on appeal, including but not limited to the following:

- Initial Decision of Administrative Law Judge Robert N. Spencer (“ALJ”) in this matter (“Initial Decision”);
- Respondents’ Brief in Support of Appeal;
- Complainants’ Opposition to Respondents’ Appeal;
- Counsel in Support of the Complainants’ Answer Brief; and

- Documents listed in the Certificate of Record.

Based upon the Commission's review and consideration, it is hereby ORDERED that the Initial Decision is ADOPTED IN FULL. In doing so, we further AFFIRM the following:

1. The Order Granting Complainants' Motion for Protective Order is AFFIRMED; and
2. The Order concerning Respondents' Motion to Dismiss the Formal Complaint and Motion to Dismiss Phillips is AFFIRMED;

REMEDY

It is further ORDERED by the Commission that the Respondents take the following actions:

1. Pursuant to § 24-34-306(9) and 605, C.R.S., the Respondents shall cease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any product Respondents would sell to heterosexual couples; and

2. Pursuant to 24-34-306(9) and 605, C.R.S., the following REMEDIAL MEASURES shall be taken:

- a. The Respondents shall take remedial measures to ensure compliance with the Public Accommodation section of the Colorado Anti-Discrimination Act, § 24-34-601(2), C.R.S., including but not limited to comprehensive staff training on the Public Accommodations section of the Colorado Anti-Discrimination Act and changes to any and all company policies to comply with § 24-34-601(2), C.R.S. and this Order.

- b. The Respondents shall provide quarterly compliance reports to the Colorado Civil Rights Division for two years from the date of this Order. The compliance reports shall contain a statement describing the remedial measures taken.
- c. The Respondents' compliance reports shall also document the number of patrons denied service by Mr. Phillips or Masterpiece Cakeshop, Inc., and the reasons the patrons were denied service.

Dated this 30th day of May, 2014, at Denver Colorado



Katina Banks, Chair
Colorado Civil Rights Commission
1560 Broadway, Suite 1050
Denver, CO 80202

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **FINAL AGENCY ORDER** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 2nd day of June 2014 addressed as follows:

Nicolee H. Martin
7175 W. Jefferson
Avenue, Suite 4000
Lakewood, CO 80235

Natalie L. Decker
26 W. Dry Creek Cr.,
Suite 600
Littleton, CO 80120

Michael J. Norton
Alliance Defending
Freedom
7351 E. Maplewood
Avenue, Suite 100
Greenwood Village, CO
80111

Jeremy D. Tedesco
Alliance Defending
Freedom
15100 N. 90th Street
Scottsdale, AZ 85260

Kristen K. Waggoner
Alliance Defending
Freedom
14241 N.E. Woodinville-
Duvall Rd., No. 488
Woodinville, WA 98072

David Mullins
Charlie Craig
c/o Sara J. Rich
ACLU Foundation of
Colorado
303 E. 17th Avenue,
Suite 350

Paula Greisen
King & Greisen
1670 York Street
Denver, CO 80206

Amanda Goad
American Civil
Liberties Union
125 Broad Street, 18th
Floor
New York, NY 10004

Stacy Worthington
Assistant Attorney
General
Office of the Attorney
General
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Denver, CO 80203

Charmaine C. Rose
Assistant Attorney
General
Office of the Attorney
General
1300 Broadway, 8th
Floor
Denver, CO 80203

Counsel in support of the
Complaint

Counsel for the
Commission

A handwritten signature in cursive script that reads "Shayla Malone". The signature is written in dark ink and is positioned above a solid horizontal line.

EXHIBIT G



June 30, 2015

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104

Charge Number: P20140069X; William Jack vs.
Azucar Sweet Shop and Bakery.

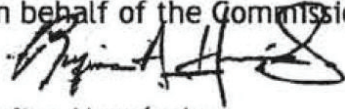
Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández', written over the text 'On behalf of the Commission'.

Rufina Hernández,
Director

cc: Azucar Sweet Shop and Bakery
David Goldberg

EXHIBIT H



June 30, 2015

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104

Charge Number: P20140071X; William Jack vs.
Gateaux, Ltd.

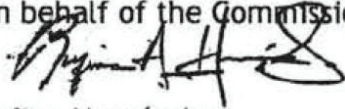
Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read "Rufina Hernández", written over the text "On behalf of the Commission".

Rufina Hernández,
Director

cc: Gateaux, Ltd.
Kathleen Davia

EXHIBIT I



June 30, 2015

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104

Charge Number: P20140070X; William Jack vs. Le Bakery Sensual, Inc.

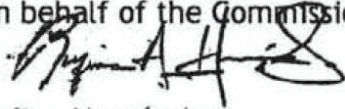
Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández', written over the text 'On behalf of the Commission'.

Rufina Hernández,
Director

cc: Le Bakery Sensual, Inc.
Jack Robinson

EXHIBIT J



Charge No. P20140069X

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104 Charging Party

Azucar Bakery
1886 S. Broadway
Denver, CO 80210 Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed. Instead, the evidence reflects that the Respondent declined to make the Charging Party's cakes, as he had envisioned them, because he requested the cakes include derogatory language and imagery. The evidence demonstrates that the Respondent would deny such requests to any customer, regardless of creed.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601(1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was treated unequally and denied goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the requested cake by the Charging Party was denied solely on the basis that the writing and imagery were “hateful and offensive”.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/ her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that

the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Pastry Chef Lindsay Jones ("Jones") (Christian). The Charging Party asked Jones for a price quote on two cakes made in the shape of open Bibles. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands in front of a cross, with a red "X" over the image. The Charging Party

also requested that each cake be decorated with Biblical verses. On one of the cakes, he requested that one side read “God hates sin. Psalm 45:7” and on the opposite side of the cake “Homosexuality is a detestable sin. Leviticus 18:2.” On the second cake, which he requested include the image of the two groomsmen with a red “X” over them, the Charging Party requested that it read: “God loves sinners,” and on the other side “While we were yet sinners Christ died for us. Romans 5:8.” The Charging Party did not state that the cakes were intended for a specific purpose or event.

After receiving the Charging Party’s order, Jones excused herself from the counter and discussed the order with Owner Marjorie Silva (“Silva”) (Catholic) and Manager Michael Bardo (“Bardo”) (Catholic). Silva came to the counter to speak with the Charging Party. Silva asked the Charging Party about his general cake request and the Charging Party explained that he wanted two cakes made to look like Bibles. The Charging Party then explained to Silva that he wanted the verses as referenced above to appear on the cakes.

Silva states that she does not recall the specific verses that the Charging Party requested, but recalls the words “detestable,” “homosexuality,” and “sinners.” The parties dispute what occurred next. The Charging Party alleges that Silva told him that she would have to consult with an attorney to determine the legality of decorating a cake with words that she felt were discriminatory. Silva denies that she told the Charging Party that she needed to consult with an attorney, and states that she informed the Charging Party that she would make him cakes in the

shape of Bibles, but would not decorate them with the message that he requested. Silva states that she declined to decorate the cakes with the verses or image of the groomsmen and offered instead provide him with icing and a pastry bag so he could write or draw whatever message he wished on the cakes himself. Silva also avers that she told the Charging Party that her bakery “does not discriminate” and “accept[s] all humans.”

Later that day, the Charging Party returned to the bakery to inquire if Silva was still declining to make the cakes as requested. Bardo states that he reiterated the bakery would bake the cakes, but would not decorate them with the requested Biblical verses or groomsmen. The Charging Party asked Bardo if “he consider[ed] not baking [his] cake discrimination against [him] as a Christian,” to which Bardo responded “no.” The Charging Party then left the bakery.

The Charging Party maintains that he did not ask the Respondent or its employees to agree with or endorse the message of his envisioned cakes.

The Respondent avers that the Charging Party’s request was not accommodated because it deemed the design and verses as discriminatory to the gay, lesbian, bisexual, and transgender community. The Respondent further states that “in the same manner [it] would not accept [an order from] anyone wanting to make a discriminatory cake against Christians, [it] will not make one that discriminates against gays.” The Respondent states that it welcomes all customers, including the Charging Party, regardless of their protected class.

The evidence demonstrates that the respondent specializes in cakes for various occasions, including weddings, birthdays, holidays, and other celebrations. On the Respondent's website, there are images of cakes created for customers in the past. There are numerous cakes decorated with Christian symbols and writing. Specifically, in the category of "Baby Shower and Christening Cakes" there are images of three cakes depicting the Christian cross, two of which include the words "God Bless" and one inscribed with "Mi Bautizo" (Spanish for "my baptism"). There is also an image of a wedding cake created by the Respondent depicting an opposite sex couple embracing in front of a Christian cross. The Respondent's website also provides that the bakery will make cakes "for every season of the year," including the Christian holidays of Easter and Christmas.

The Respondent states that it has previously denied cake requests due to business constraints, such as inability to meet customer deadlines due to high demand, but maintains that it would deny any requests deemed "offensive" or "hateful."

Comparative data reflects that the Respondent employs six persons, of whom three are Catholic and three are non-Catholic Christian. The record reflects that, in an average year, the Respondent produces between 60 and 80 cakes with Christian themes and/or symbolism.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2)

the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by “demeaning his beliefs.” There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than customers outside of his protected class.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Respondent was

a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Respondent denied the Charging Party’s request to make cakes that included the Biblical verses and an image of groomsmen with a red “X” over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Indeed, the evidence demonstrates that the Respondent would have made a cake for the Charging Party for any event, celebration, or occasion regardless of his creed. Instead, the Respondent’s denial was based on the explicit message that the Charging Party wished to include on the cakes, which the Respondent deemed as discriminatory. Additionally, the evidence demonstrates that the Respondent regularly creates cakes with Christian themes and/or symbolism, which are presumably ordered by Christian customers. Finally, the Respondent avers that it would similarly deny a request from a customer who requested a cake that it deemed discriminatory towards Christians.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

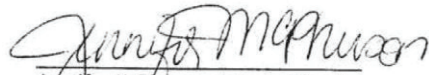
In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee

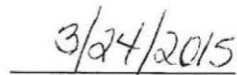

Date

EXHIBIT K



Charge No. P20140071X

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104

Charging Party

Gateaux, Ltd.
1160 N. Speer Blvd.
Denver, CO 80204

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601(1), as re-enacted, and the timeliness and all other jurisdic-

tional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake order requested by the Charging Party was denied because the cakes included what was deemed to contain “offensive” or “derogatory” messages and imagery. In addition, the Respondent was uncertain whether it could technically create the cakes as described by the Charging Party.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/ her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that

the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Manager Michelle Karmona ("Karmona"). The Charging Party asked Karmona for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble an open Bible. He also requested that each cake be decorated with Biblical verses. The Charging Party requested that one of the cakes

include an image of two groomsmen, holding hands, with a red “X” over the image. On one cake, he requested that one side read “God hates sin. Psalm 45:7” and on the opposite side of the cake “Homosexuality is a detestable sin. Leviticus 18:2.” On the second cake, with the image of the two groomsmen covered by a red “X,” the Charging Party requested that it read: “God loves sinners,” and on the other side “While we were yet sinners Christ died for us. Romans 5:8.” The Charging Party did not state to the Respondent or the Division whether the cake was intended for a specific purpose or event.

The parties dispute the events that occurred next. The Charging Party alleges that Karmona initially indicated that the Respondent would be able to make the Bible shaped cakes, but once she read the Biblical verses, she excused herself from the counter. The Charging Party further alleges that Karmona returned a short time later, informing him that she had spoken with the Respondent’s Owner, Kathleen Davia (“Davia”) (Catholic). The Charging Party claims that at this time Karmona informed him that the Respondent would bake the cakes, but would not include such a “strong message.” The Respondent denies that this occurred, claiming instead that the Charging Party had indicated that he wanted the groomsmen to be three-dimensional figurines with a “Ghostbusters X” over the figures. Karmona felt the Respondent would be unable to accommodate the request as described by the Charging Party, based on “technical capabilities.” The Respondent claims that the Charging Party was told that the Bible-shaped cakes, with the Biblical verses, *sans* the groomsmen figurines and “Ghostbusters X,” could be made.

The Respondent avers that, as with all customers, the Charging Party was asked to elaborate as to the purpose of the cakes, how he wished to present it, and how he would use it. The Charging Party would not provide an explanation to the Respondent. The Respondent alleges that it was the Charging Party's refusal to elaborate that left it with the impression that it would not be able to produce the cakes as requested by the Charging Party. The Respondent avers that it consistently requests that customers provide an image for them to replicate when it is something the Respondent does not "stock." For example, the Respondent avers that a customer requesting a cake with the image of a popular cartoon character can easily be created; however, when a customer requests a specific image without a photo reference or elaboration of the image, the Respondent will decline the request. Karmona then referred the Charging Party to another bakery with the belief that that bakery would be better suited to create the cakes as envisioned by the Charging Party.

The Respondent does not have a specific policy regarding the declination of a customer request, but states that the employee who receives the order also decorates the cake. It is the Respondent's position that, based on its individual employees' pastry knowledge, experience, and qualifications, they are best able to determine whether they have the ability to create the cake that a customer requests. Therefore, in the case of the Charging Party's request, Karmona determined that she would be unable to create the cakes as the Charging Party described.

The Respondent states that it has previously denied customer requests based on technical requirements,

including inability to create the requested image, and requests for buttercream iced cakes where the Respondent maintained a fondant decorated cake would be preferable. Additionally, the Respondent states that it has denied customer requests for cakes that included crude language such as “eat me” or “ya old bitch” or “naughty images,” on the basis that the imagery and messages were not what the Respondent wished to represent in its products. The Respondent’s other reasons for declining customers’ request include: availability of the product, insufficient time to create the cake requested, and scheduling conflicts.

The Charging Party avers that he did not ask the Respondent, or any of its employees, to agree with or endorse the message of his envisioned cakes.

Comparative data indicates that the Respondent employs six persons, of whom two are non-Catholic Christian, two are Agnostic, one is Catholic, and one is Atheist. The record reflects that the Respondent regularly creates Christian themed cakes and pastries, including items for several Catholic and non-Catholic Christian church events. Additionally, the evidence demonstrates that they have produced a number of cakes with Christian imagery and symbolism during the relevant time period.

The Respondent states that the Charging Party is welcome to return to the bakery.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of

the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons outside of his protected class by “demeaning his beliefs.” The evidence demonstrates that the Respondent attempted to engage the Charging Party in a dialogue regarding the cakes in more detail, which the Charging Party declined. There is insufficient evidence to demonstrate that the Respondent treated the Charging Party differently based on his creed. The evidence demonstrates that the Respondent would not create cakes with wording and images it deemed derogatory. The Respondent has denied other customers request for derogatory language without regard to the customer’s creed.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the

goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Respondent denied the Charging Party’s request to make cakes that included the Biblical verses and an image of groomsmen with a red “X” over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence suggests that based on the Respondent’s understanding of the Charging Party’s request, it would be unable to create the cake that he envisioned. The record reflects that the Respondent has denied customer requests for similar reasons. Additionally, the evidence demonstrates that the Respondent regularly produces cakes and other baked goods with Christian symbolism and messages, and continues to welcome the Charging Party in its bakery.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice

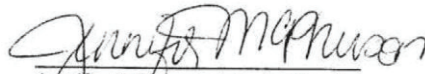
and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee

3/24/2015
Date

EXHIBIT L



Charge No. P20140070X

William Jack
4987 E. Barrington Ave.
Castle Rock, CO 80104
Party

Charging

Le Bakery Sensual, Inc.
300 E. 6th Ave.
Denver, CO 80203

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or service based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdic-

tional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake requested by the Charging Party was denied solely on the basis that the writing and imagery were “hateful.”

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent’s actions is unlawful discrimination.

“Unlawful discrimination” means that which is primarily based on the Charging Party’s asserted protected group or status. The Respondent’s stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent’s reason is pretext; is not to be believed; and that the Charging Party’s protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent’s position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent’s store on or about March 13, 2014, and was met by Owner John Spotz (“Spotz”) (no religious affiliation). The Charging Party asked Spotz for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble open Bibles. Spotz informed the Charging Party that he “had done open Bibles and books many times and that they look amazing.” The Charging Party then elaborated that on one cake, he wanted an image of two groomsmen, appearing before a cross, with a red “X” over the image. The Charging

Party described the image as “a Ghostbusters symbol over the illustration to indicate that same-sex unions are un-Biblical and inappropriate.” The Charging Party wanted Biblical verses on both cakes. The Charging Party showed Spotz the verses, which he had written down on a sheet of paper, and read them aloud. The verses were: “God hates sin. Psalm 45:7” “Homosexuality is a detestable sin. Leviticus 18:2” and on the cake with the image of groomsmen before a cross with a red “X”, the verses: “God loves sinners” and “While we were yet sinners Christ died for us. Romans 5:8.”

After the Charging Party made the request for the image of the groomsmen with the “X” over them, Spotz asked if the Charging Party was “kidding him.” The Charging Party responded that his request was serious. Spotz then informed the Charging Party that he would have to decline the order as envisioned by the Charging Party because he deemed the requested cake “hateful.” The Charging Party did not state to Spotz or the Division whether the cakes were intended for a specific purpose or event. The Charging Party then left the bakery, after Spotz declined to create the cakes as the Charging Party had requested.

The Charging Party maintains that he did not ask the Respondent, or its employees, to agree with or endorse the message of his envisioned cakes.

The Respondent avers that everyone, including the Charging Party, is welcome at its bakery, regardless of creed, race, sex, sexual orientation or disability. The Respondent states that its refusal to create the specific cake requested by the Charging Party was based on its policy “not [to] make a cake that is

purposefully hateful and is intended to discriminate against any person's creed, race, sex, sexual orientation, disability, etc." The Respondent avers that the Charging Party's request was intended to "denigrate individuals of a specific sexual orientation."

The record reflects that the Respondent specializes in making unique and intricate cakes for various occasions. The Respondent's website provides "[it] can design cakes that look like people, cars, motorcycles, houses, magazines, and just about anything you can imagine." The Respondent's website also includes images of cakes it has created for customers in the past, including cakes made to look like books and magazines. The Respondent also makes wedding cakes for both opposite sex and same sex couples, as well cakes for the Christian holidays of Christmas and Easter.

The Respondent denies that it has ever denied services or goods to customers based on their creed and/or religion.

It is the Respondent's position that production of the cake requested by the Charging Party would run afoul of C.R.S. § 24-34-701, which provides that a place of public accommodation may not "publish . . . or display in any way manner, or shape by any means or method . . . any communication . . . of any kind, nature or description that is intended or calculated to discriminate or actually discriminates against any . . . sexual orientation"

Spotz states that the only time he recalls denying a cake request was when he received a phone call in

which the caller asked if he could decorate a cake with “a sexy little school girl.”

Comparative data reflects that the Respondent employs four persons, of whom one is Catholic, one is Jewish, and two have no religious affiliation. The record reflects that the Respondent creates at least one Christian themed cake per month, increasing to three or four Christian themed cakes in the month of December.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by “demeaning his beliefs.” There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than other customers because of his creed.

The Charging Party's request was denied because he requested the cakes include language and images the Respondent deemed hateful.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to make cakes that included the requested Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence demonstrates that the Respondent was prepared to create the cakes as described by the Charging Party, until he requested the specific imagery of the two groomsmen with a red "x" placed over image and the "hateful" Biblical verses.

Additionally, the record reflects that the Respondent has produced cakes featuring Christian symbolism in the past, which were presumably ordered by Christian customers.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601 (2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

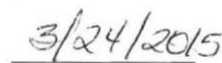
If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-02372-MSK-CBS

303 CREATIVE LLC, a limited liability company; and
LORIE SMITH,

Plaintiffs,

v.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division, in her official capacity;

ANTHONY ARAGON,

ULYSSES J. CHANEY,

MIGUEL "MICHAEL" RENE ELIAS,

CAROL FABRIZIO,

HEIDI HESS,

RITA LEWIS, and

JESSICA POCOCK, as members of the Colorado Civil
Rights Commission, in their official capacities, and

CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity;

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT

TABLE OF CONTENTS

	PAGE
FACTS	2
JURISDICTIONAL ARGUMENTS	2
Plaintiffs fail to allege Fed. R. Civ. P. 12(b)(1) jurisdiction over all claims.....	2
Burden of proof and elements	2
Elements that cannot be proven by Plaintiffs	3
SUBSTANTIVE ELEMENTS THAT PLAINTIFFS CANNOT ESTABLISH	10
Plaintiffs fail to show CADA violates Plaintiffs’ free speech rights	10
Burden of proof and elements	10
CADA does not compel or restrict Plaintiffs’ speech	10
The Supreme Court recognizes two types of compelled speech.....	10
CADA does not compel Plaintiffs to speak the government’s message	11
CADA does not compel Plaintiffs to host or accommodate another speaker’s message.	12
Any message conveyed would be attributed to the party being married, not Plaintiffs	15
CADA does not affect Plaintiffs’ free press rights.	17

CADA does not affect Plaintiffs’ rights of expressive association. 18

CADA does not violate the equal protection clause. 19

CADA survives strict scrutiny 20

Plaintiffs fail to show CADA violates Plaintiffs’ due process rights 21

PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF 25

 Plaintiffs will not suffer irreparable harm if the injunction is denied. 25

 Burden of proof and elements 25

 The balance of equities and the public interest are against issuing an injunction. 26

 Plaintiffs cannot meet the heavy burden required for a disfavored injunction. 28

ABSTENTION ARGUMENT 29

 Abstention mandates dismissal of this action ... 29

 Burden of proof and elements 29

 Elements that cannot be proven by Plaintiffs..... 30

 Comity 30

 Efficient federal judiciary 31

CONCLUSION 32

TABLE OF AUTHORITIES

	PAGE
CASES	
Ashcroft v. Iqbal, 556 U.S. 662 (2009).....	1
AT&T Techs. Inc. v. Royston, 772 P.2d 1182 (Colo. App. 1989)	9, 19
Awad v. Ziriax, 670 F.3d 1111 (10th Cir. 2012)	28
Bd. of Dirs. of Rotary Int’l v. Rotary Club, 481 U.S. 537 (1987)	6, 7
Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)	1
Bob Jones Univ. v. United States, 461 U.S. 574 (1983)	6
Brush & Nib Studio, CV 2016-052251, (Superior Court of Arizona, Maricopa County, Sept. 16, 2016)	12
Burford v. Sun Oil Co., 319 U.S. 315 (1943)	29, 30
Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).....	6
Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993)	7, 8
Clapper v. Amnesty Int’l USA, 133 S. Ct. 1138 (2013).....	4, 26
Collins v. City of Harker Heights, 503 U.S. 115 (1992)	24

Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)	29, 31
Connecticut v. Massachusetts, 282 U.S. 660 (1931)	25
Cope v. Kansas State Bd. of Educ., 821 F.3d 1215 (10th Cir. 2016)	4
Craig v. Masterpiece Cakeshop, Inc., 370 P.3d 272 (Colo. App. 2015) 1, 5, 6, 8, 11, 12, 13, 15, 16, 17, 19, 21, 31, 32	
Cressman v. Thompson, 719 F.3d 1139 (10th Cir. 2013)	9
Demetry v. Colorado Civil Rights Comm'n, 752 P.2d 1070 (Colo. App. 1988)	9
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)	29, 30, 31
Elane Photography, LLC v. Willock, 134 S. Ct. 1787 (2014)	15
Elane Photography, LLC v. Willock, 309 P.3d 53 (N.M. 2013)	12, 13, 14, 15, 16, 17
Faircloth v. Colo. Dep't of Corr., No. 16-cv-00908-GPG, 2016 U.S. Dist. LEXIS 58077 (D. Colo. May 2, 2016)	25
Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 528 U.S. 167 (2000)	2
Fundamentalist Church of Jesus Christ of Latter- Day Saints v. Horne, 698 F.3d 1295 (10th Cir. 2012)	28

Grace v. United Methodist Church v. City of Cheyenne, 451 F.3d 643 (10th Cir. 2006)	5
Grayned v. City of Rockford, 408 U.S. 104 (1972)	22
Greater Yellowstone Coal v. Flowers, 321 F.3d 1250 (10th Cir. 2003)	25
Heideman v. S. Salt Lake City, 348 F.3d 1182 (10th Cir. 2003)	25, 26
Hishon v. King & Spalding, 467 U.S. 69 (1984)	27
Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013)	4
Hurley v. Irish-American Gay, Lesbian & Bisexual Group, 515 U.S. 557 (1995)	6, 12, 13
Hyde Park Co. v. Santa Fe City Council, 226 F.3d 1207 (10th Cir. 2000)	21
Johnson v. United States, 135 S. Ct. 2552 (2015)	22
Kolender v. Lawson, 461 U.S. 352 (1983)	22
Lambert v. Hartman, 517 F.3d 433 (6th Cir. 2008)	23
Landis v. North America Co., 299 U.S. 248, 254 (1936)	31
Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)	13

Newman v. Piggie Park Enters., Inc., 256 F. Supp. 941 (D.S.C. 1966)	27
Nichols v. Board of County Comm’rs, 506 F.3d 962 (10th Cir. 2007)	21
O Centro Espirita v. Ashcroft, 389 F.3d 973 (10th Cir. 2004)	28
Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978)	17
Pacific Gas & Electric Co. v. Public Utilities Commission of California, 475 U.S. 1 (1986)	13, 14
Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987)	30, 32
Perry v. Taser Int’l Corp., 07-cv-00901-REB-MJW, 2008 WL 961559 (D. Colo. April 8, 2008)	24
Port-a-Pour, Inc. v. Peak Innovations, Inc., 49 F. Supp. 3d 841 (D. Colo. 2014)	26
Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 (10th Cir. 2001)	25
PruneYard Shopping Ctr. v. Robins, 447 U.S. 74 (1980)	17
R. A. V. v. St. Paul, 505 U.S. 377 (1992)	14
Reynolds v. United States, 98 U.S. 145 (1878)	6, 27
Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47 (2006)	10, 14

Roberts v. United States Jaycees, 468 U.S. 609 (1984)	6
Rooker v. Fidelity Trust Co., 263 U.S. 412 (1923)	29, 30, 31
Saxe v. State College Area School District, 240 F.3d 200 (3d Cir. 2001)	23
Schrier v. Univ. of Colo., 427 F.3d 1253 (10th Cir. 2005)	28
Seegmiller v. LaVerkin City, 528 F.3d 762 (10th Cir. 2008)	23
State of Washington v. Arlene’s Flowers, Inc., 2017 Wash. LEXIS 216 (Wash. Feb. 16, 2017)	8, 16, 18, 20
Susan B. Anthony List v. Driehaus, 134 S.Ct. 2334 (2014)	9
Uhlrig v. Harder, 64 F.3d 567 (10th Cir. 1995)	24
United State ex rel. Hafter v. Spectrum Emergency Care, Inc., 190 F.3d 1156 (10th Cir. 1999)	2, 29
United States v. Lee, 455 U.S. 252 (1982)	27
United States v. O’Brien, 391 U.S. 367 (1968)	16
Ward v. Utah, 321 F.3d 1263 (10th Cir. 2003)	9, 22
West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943)	10

Wooley v. Maynard,
430 U.S. 705 (1977) 11

Younger v. Colorado State Bd. of Law Exam'rs,
625 F.2d 372 (10th Cir. 1980) 23, 29, 30

COME NOW Defendants, by and through counsel, and pursuant to Fed. R. Civ. P. 56, who respond to Plaintiffs' motion for summary judgment (# 48) as follows.

The reason this litigation was initiated, and the target of Plaintiffs' ire, is a recent decision titled *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015). In *Masterpiece*, the Colorado Court of Appeals interpreted the public accommodations section of the Colorado Anti-discrimination Act (CADA) under similar facts and legal arguments that Plaintiffs raise here, and in lawsuits filed by the same Plaintiffs' counsel in numerous other jurisdictions. Plaintiffs' effort to blame Defendants¹ for the legal interpretation in *Masterpiece*, and their demand for federal court intervention to block the precedent established in *Masterpiece*, is the true purpose of this litigation. Like other jurisdictions that have considered and rejected challenges to similar anti-discrimination legislation, this Court should dismiss Plaintiffs' claims. In the alternative, this Court should defer to the Supreme Court and its consideration of the pending petition for certiorari in the *Masterpiece* case, which will decide the same issues raised in this litigation.

¹ Plaintiffs continue to lump all Defendants together even though they have separate and unique statutory authority. This is contrary to fundamental pleading requirements articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Nevertheless, in order to be consistent in this response, and without waiving any argument, Defendants will be referred to as such, unless otherwise noted.

FACTS

All material facts are contained in the Joint Statement of Stipulated Facts (# 49). Defendants object to Plaintiffs' "Statement of Facts" in "Plaintiffs' Motion for Summary Judgment and Memorandum in Support" (# 48) because it violates the Court's January 11, 2017 order. Defendants also object to Plaintiffs' inclusion of non-stipulated facts and the Appendix (# 48-3), as violating the same order.

JURISDICTIONAL ARGUMENTS

A. Plaintiffs fail to allege Fed. R. Civ. P. 12(b)(1) jurisdiction over all claims.

1. Burden of proof and elements

Since this is a court of limited jurisdiction, it is presumed no jurisdiction exists absent an adequate showing it should be invoked. *United State ex rel. Hafter v. Spectrum Emergency Care, Inc.*, 190 F.3d 1156, 1160 (10th Cir. 1999). Plaintiffs allege jurisdiction; therefore they must show it by a preponderance of the evidence. *Id.*

To establish Article III standing, Plaintiffs must show (i) an "injury in fact" that is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (ii) the alleged injury must be fairly traceable to the challenged action of the defendant; and (iii) it must be likely, not merely speculative, that a favorable decision will redress the injury. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000).

2. Elements that cannot be proven by Plaintiffs

Elements (i) and (ii) – injury in fact traceable to Defendants’ action:

Plaintiffs allege throughout their summary judgment motion that Defendants have “applied” CADA to Plaintiffs. (# 48). The stipulated facts do not support this. (# 49). Instead, Plaintiffs offer a speculative injury, based on a neutral law of general application, and a Colorado Court of Appeals decision interpreting that law. Before Plaintiffs could potentially suffer any injury, ten things must occur:

1. Plaintiffs offer their wedding website service to the public;
2. A person attempts to obtain the service;
3. Plaintiffs deny the service based on the person’s sexual orientation;
4. The person denied service files a charge of discrimination with the Colorado Civil Rights Division;
5. The Division investigates the charge and the Director or her designee finds probable cause to credit the charge;
6. Mandatory conciliation is attempted and fails;
7. The Colorado Civil Rights Commission decides to notice the case for hearing;
8. An ALJ holds a hearing and rules against Plaintiffs;
9. The Commission affirms the decision and orders Plaintiffs to cease and desist the discriminatory practice; and;

10. Plaintiffs exhaust their state appellate remedies.

(# 49, ¶¶ 6-17); C.R.S. §§ 24-34-306, 307 (2016). Not one of these things has happened. Consequently, there is no injury.

The Supreme Court recently restated its reluctance “to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment” because a “theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1148 and 1150 (2013). The Tenth Circuit has routinely applied the *Clapper* analysis to standing questions in First Amendment suits. *See, e.g., Cope v. Kansas State Bd. of Educ.*, 821 F.3d 1215, 1222-23 (10th Cir. 2016) (holding that standing did not exist where state education standards that had the potential to establish non-religious views about the cause and nature of life expressly preserved local school districts’ authority to determine their own curricula and what curricula would be adopted was speculative, as was any resulting injury); *c.f. Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1125-26 (10th Cir. 2013) (finding standing in religious challenge to the Affordable Care Act because failure to comply would result in “immediate tax penalties,” but not addressing other grounds for standing based on “potential regulatory action” and “possible private lawsuits”).

As to the first mandatory action that must occur, Plaintiffs argue they have not offered their services to

the public for fear that Defendants would enforce CADA. (# 49, ¶¶ 95-96), Plaintiffs cannot, however, manufacture standing by self-inflicted harm, based on an unrealized fear of a hypothetical future injury that is not pending. *Clapper*, 133 S. Ct. at 1151-52.

Plaintiffs allege injury by presuming Defendants are determined to enforce CADA against them, absent any case ever being filed. On the contrary, Defendants are statutorily prohibited from predetermining such an outcome. See C.R.S. § 24-34-305(3) (“In exercising the powers and performing the duties and functions under parts 3 to 7 of this article, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.”)

Plaintiffs also allege injury by arguing that Defendants have chilled their free speech rights. Because Defendants have taken no action here, Plaintiffs rely on the public accommodation provisions of CADA and the Colorado Court of Appeals *Masterpiece* decision (# 49, ¶25), which intercepted the law.

CADA’s public accommodation statutes do not, on their face, prohibit or punish Plaintiffs from publishing a wedding website or posting a message stating that they will not provide the website services to same-sex couples due to Plaintiffs’ religious beliefs. (# 49, ¶¶ 1-3). Because Plaintiffs readily admit they have no problem abiding by CADA’s public accommodation provisions by providing service to anyone, regardless of their sexual orientation, (# 49, ¶¶ 64-65), the statute has not chilled Plaintiffs’ speech.

Furthermore, CADA's public accommodations law is a neutral law of general applicability, so it is not subject to strict scrutiny. "A law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest to survive a constitutional challenge." *Grace v. United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10th Cir. 2006). Colorado has not only a legitimate interest, but a compelling interest in erasing discrimination against its citizens. *Masterpiece*, 370 P.3d at 293 (concluding that CADA is rationally related to Colorado's interest in eliminating discrimination in places of public accommodation). Indeed, the recent Supreme Court decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2783 (2014) concretely establishes this point:

[t]he principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction. . . . Our decision today provides no such shield. *The Government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.*

Id. (italics added); see also e.g., *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878) (religious motivation should not excuse compliance with laws); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 572 (1995) (public accommodation laws "are well within the State's usual power to enact when a legislature has reason to

believe that a given group is the target of discrimination....”); *Bd. of Dirs. of Rotary Int’l v. Rotary Club*, 481 U.S. 537, 549 (1987) (government had a compelling interest in eliminating discrimination against women in places of public accommodation); *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984) (“acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils that government has a compelling interest to prevent”); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (government had a compelling interest in eliminating racial discrimination in private education).

Plaintiffs’ reliance on *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) for the proposition that CADA’s public accommodations law is neither neutral nor generally applicable is misplaced. That case involved an ordinance whose “object” was “suppression of the central element of the ... worship service” of a disfavored religion. *Id.* at 534. The Supreme court’s reasoning there has never been extended to suggest that a generally applicable public accommodations law like Colorado’s – which “serves the State’s compelling interest in eliminating discrimination,” *Bd. of Dirs. Of Rotary Int’l*, 481 U.S. at 549 – cannot be applied to prevent discrimination against same-sex couples or any other identifiable group of customers.²

² Plaintiffs quote one Colorado Civil Rights Commissioner expressing the opinion that religion has been used to justify discrimination. (# 48, at p.57; # 48-3). The Court should disregard the statement for three reasons. First, relying on a statement contained in the Plaintiffs’ Appendix violates the

Further, CADA’s public accommodations law protects everyone in Colorado from discrimination because of “disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry . . .” (# 49, ¶1). CADA does not target religiously motivated conduct, so it is distinguishable from the ordinance in *Lukumi*.

Plaintiffs additionally seem to argue that Colorado’s public accommodations law is not neutral nor generally applicable because Plaintiff Smith should be exempted from CADA’s requirements like a church. They argue, she “objects to celebrating same-sex marriage on the same religious grounds as a church, yet the state denies her an exemption from CADA . . .” (# 48, at pp. 59-60). The Colorado Court of Appeals rejected this argument in *Masterpiece*. The bakery admitted that it did not contend that the bakery was used for primarily religious purposes. *Masterpiece*, 370 P.3d at 290-92. Here, there are no stipulated facts to support any assertion that Plaintiff 303 Creative should be exempted from CADA because the business is used for principally religious purposes.³

Court’s January 11, 2017 Order because the statement is not a stipulated fact. Second, the statement did not reflect the views of all Commissioners, nor does it show that CADA, generally or as applied, singles out religious conduct for unfavorable treatment in contravention of *Lukumi*. Third, the statement was made during deliberation of a whether to grant a stay, not in deciding the merits of the case. (# 49, ¶103, Exs. C, D, and F).

³ On February 16, 2017, the Washington Supreme Court unanimously rejected *en banc* the same types of challenges to the state’s anti-discrimination laws Plaintiffs’ counsel made concerning a florist who refused to provide flower arrangements

Plaintiffs argue injury based on three non-binding Director's decisions involving three other bakeries that refused to create offensive messages on cakes. (# 48, pp. 3, 5, 10, 11, 44, 59, 74; # 49) *see also Masterpiece*, 370 P.3d at 282, n. 8. The Director found no probable cause and the Commission denied their appeals. (# 49, ¶¶ 28, 103, Exhibits G-L) Those decisions cannot presume that a different result would occur here, especially because the actions of the Director and Commission in those matters have no binding precedent or effect. *See AT&T Techs. Inc. v. Royston*, 772 P.2d 1182, 1186 (Colo. App. 1989) (Directors' probable cause findings are only administrative determinations and are not binding); *Demetry v. Colorado Civil Rights Comm'n*, 752 P.2d 1070, 1072 (Colo. App. 1988) (these preliminary proceedings are without legal effect until a suit is brought and Commission's denial does not constitute a final agency action subject to appeal).

Finally, Plaintiffs argue standing under *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334 (2014), *Cressman v. Thompson*, 719 F.3d 1139 (10th Cir. 2013) and *Ward v. Utah*, 321 F.3d 1263 (10th Cir. 2003). All three cases are distinguishable because the laws at issue in *Susan B. Anthony List*, *Cressman* and *Ward* explicitly prohibited specific types of speech, and subjected the speaker to criminal liability for violating those laws. CADA prohibits only conduct, i.e. businesses may not refuse to serve persons based on a person's protected class, or inform the public they will refuse service to persons based on a protected

for a same-sex couple's wedding. *See State of Washington v. Arlene's Flowers, Inc.*, 2017 Wash. LEXIS 216 at **36-40 (Wash. Feb. 16, 2017).

class. (# 49, ¶¶1-3). CADA does not prohibit or criminalize speech.

Element (iii) – favorable decision will address injury.

Pursuant to § 24-34-602(1)(a), C.R.S., any person denied a public accommodation may initiate their own independent civil action in state court without ever filing a charge with the Division. (# 49, ¶¶4-5). If a person does so, he or she is prohibited from filing a charge of discrimination with the Commission. *See* § 24-34-602(3) (“relief provided by this section is an alternative to that authorized by § 24-34-306(9), and a person who seeks redress under this section is not permitted to seek relief from the commission.”). An injunction against Defendants will not prevent anyone from initiating an independent civil action against Plaintiffs to enforce CADA’s public accommodation provisions regarding sexual orientation. No facts support a contrary result.

SUBSTANTIVE ELEMENTS THAT PLAINTIFFS CANNOT ESTABLISH

A. Plaintiffs fail to show CADA violates Plaintiffs’ free speech rights

1. Burden of proof and elements

a. CADA does not compel or restrict Plaintiffs’ speech.

Plaintiffs allege CADA forces them to create wedding websites for same-sex couples in opposition to Plaintiffs’ personal religious beliefs or otherwise restricts them from being critical of same-sex marriage by punishing them for refusing to create

such websites. Plaintiffs cannot succeed on the merits.

i. The Supreme Court recognizes two types of compelled speech.

The compelled speech doctrine first articulated in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), applies in two scenarios. First, government is generally prohibited from requiring an individual “to speak the government’s message.” See *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). Second, the government may not generally require an individual to “host or accommodate another speaker’s message.” *Id.* Neither scenario exists here.⁴

ii. CADA does not compel Plaintiffs to speak the government’s message.

CADA does not compel Plaintiffs to speak in favor of or against same-sex weddings. CADA merely requires that Plaintiffs not discriminate against customers as it concerns the “full and equal enjoyment of the goods, services, facilities, privileges . . . of a place of public accommodation.” See § 24-34-601(2)(a), C.R.S., (2016); *Masterpiece*, 370 P.3d at 283 and 291 (“We conclude that the Commission’s order merely requires that Masterpiece not discriminate against potential customers in violation of CADA . . .” and “[w]e reiterate that CADA does not compel

⁴ Plaintiffs’ Motion, case citations, and arguments contained therein appear to focus on the second line of cases. However, Defendants will address the first scenario to the extent Plaintiffs are, indeed, raising a substantive issue with the first line of cases.

Masterpiece to support or endorse any particular religious views. The law merely prohibits Masterpiece from discriminating against potential customers on account of their sexual orientation.”).

Contrary to *Barnette*, 319 U.S. at 642, and *Wooley v. Maynard*, 430 U.S. 705, 715-17 (1977), and as recognized in *Masterpiece*, CADA does not compel a vendor to convey a particular message for or against same-sex weddings; only, that it treat same-sex couples the same as opposite sex couples with the “full and equal enjoyment of the goods, services, facilities, privileges . . . of a place of public accommodation.” See § 24-34-601(2)(a), C.R.S., (2016); *Masterpiece*, 370 P.3d. at 286; *see also e.g., Elane Photography, LLC v. Willock*, 309 P.3d 53m, 64 (N.M. 2013) (New Mexico’s anti-discrimination law “only mandates that if Elane Photography operates a business as a public accommodation, it cannot discriminate against potential clients based on their sexual orientation.”); *Brush & Nib Studio*, CV 2016-052251, (Superior Court of Arizona, Maricopa County, Sept. 16, 2016) (holding that the City of Phoenix’s anti-discrimination law did not require plaintiffs to speak any message, nor did it prohibit plaintiffs from stating their religious views concerning same-sex marriage).

iii. CADA does not compel Plaintiffs to host or accommodate another speaker’s message.

Plaintiffs rely on *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557 (1995), to support their position that Plaintiffs are entitled to choose the content of their own message and CADA cannot compel them to express an unwanted message.

In *Hurley*, a private, non-profit group that organizes the Boston Saint Patrick's Day parade denied the Gay, Lesbian and Bisexual Group of Boston's (GLIB) application to march in the parade. *Id.* at 561. The Massachusetts courts concluded that the parade sponsors violated the state's law prohibiting discrimination in places of public accommodation. *Id.* at 561, 563-64. On review, the Supreme Court first noted that public accommodation laws generally do not violate the First and Fourteenth Amendments, because the focal point of their prohibition is "on the act of discriminating against individuals," not to target speech. *Id.* at 572. It held, however, that because the parade sponsors were required to include GLIB, the state courts were effectively requiring them "to alter the expressive content of their parade," in violation of the First Amendment. *Id.* at 572-73. In other words, the Supreme Court found that the government improperly attempted to apply public accommodation law to "speech itself." *Id.* at 573.

Here, however, § 24-34-601(2)(a), applies only to Plaintiffs' business operation, and their decision to refuse to serve persons based on their sexual orientation. This type of statute does not fall under *Hurley's* purview. *See e.g., Elane Photography*, 309 P.3d at 68 (distinguishing *Hurley*, and stating, "Defendants cite no reported decision extending the holding of *Hurley* to commercial enterprise carrying on a commercial activity."); *Masterpiece*, 370 P.3d at 287 (distinguishing *Hurley*).

Similarly, *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), and *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986), do not support

Plaintiffs' position. In both cases, the government required a speaker to disseminate a third-party message along with its own protected speech. *Tornillo*, 418 U.S. at 257-58 (rejecting law that compelled newspapers to print responses from political candidates who had been criticized in editorials); *Pacific Gas & Electric*, 475 U.S. at 9-14 (rejecting law that compelled utility company to include copies of a specific environmentalist publication with bills sent to customers).

Both cases are inapplicable to the stipulated facts because CADA does not mandate a message in support of same-sex marriage or any message. In *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006), the Supreme Court rejected arguments by law schools that a statute requiring them to provide access to military recruiters equal to other recruiters violated their freedom of speech by forcing them to accommodate or host another speaker's message. *Id.* at 52-60. Instead, the Court found that the statute regulated "what law schools must *do* . . . not what they may or may not say." *Id.* at 60 (emphasis in original); *see also e.g., R. A. V. v. St. Paul*, 505 U.S. 377, 389 (1992) ("[W]ords can in some circumstances violate laws directed not against speech but against conduct.").

In *Elane Photography*, the New Mexico Supreme Court stated that the "United States Supreme Court has never found a compelled-speech violation arising from the application of anti-discrimination laws to a for-profit public accommodation. In fact, it has suggested that public accommodation laws are generally constitutional." 309 P.3d at 65-66. The court held that its public accommodations law did not

compel the photographer to convey any particularized message, but rather “only mandates that if Elane Photography operates a business as a public accommodation, it cannot discriminate against potential clients based on their sexual orientation.” See 309 P.3d at 64. The United States Supreme Court unanimously rejected the petition for writ of certiorari on April 7, 2014. See *Elane Photography, LLC v. Willock*, 134 S. Ct. 1787 (2014).

In, *Masterpiece*, the Colorado Court of Appeals held that § 24-34-601(2)(a), of CADA did not force the baker to host or accommodate any particular view on marriage. CADA required only that the baker offer the same services to its customers regardless of their sexual orientation. *Masterpiece*, 370 P.3d at 63 (“Masterpiece does not convey a message supporting same-sex marriages merely by abiding by the law and serving its customers equally.”); *Rumsfeld*, 547 U.S. at 64-65 (rejecting law school argument that forcing them to treat military and nonmilitary recruiters the same compels them to send “the message that they see nothing wrong with the military’s policies [against gays in the military], when they do,” because students “can appreciate the difference between speech a school sponsors and speech the school permits because it is legally required to do so.”).

iv. Any message conveyed would be attributed to the party being married, not Plaintiffs.

Further, to the extent any message is conveyed at all, reasonable observers would attribute that message to the individuals being married, not Plaintiffs. *Masterpiece*, 370 P.3d at 286 (“[T]o the

extent that the public infers from a Masterpiece wedding cake a message celebrating same-sex marriage, that message is more likely to be attributed to the customer than to Masterpiece.”); *Rumsfeld*, 547 U.S. at 64-65; *Elane Photography*, 309 P.3d at 69-70 (“It is well known to the public that wedding photographers are hired by paying customers and that a photographer may not share the happy couple’s views on issues ranging from the minor (the color scheme, the hors d’oeuvres) to the decidedly major (the religious service, the choice of bride or groom.”); *Arlene’s Flowers, Inc.*, 2017 Wash. LEXIS 216 at **28-32 (holding that decision to provide or refuse to provide flowers for a wedding does not inherently express a message about a particular wedding).

Masterpiece recognized that because vendors like Plaintiffs charge for their services, it reduces “the likelihood that a reasonable observer will believe that [Plaintiffs] support the message expressed in [their] finished product.” *Masterpiece*, 370 P.3d at 287. To this end, Plaintiffs’ website design service is also not constitutionally protected speech. See *United States v. O’Brien*, 391 U.S. 367, 376 (1968) (“We cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends to thereby express an idea.”).

Under Plaintiffs’ logic, any number of persons providing services to the public, such as architects, chefs, hair stylists, baristas, etc., could refuse service to same-sex couples on the basis of their religious belief under the auspices that their services are artistic and creative. This is a slippery slope that has been rejected by a number of courts on the basis that

antidiscrimination laws target conduct, not speech. See e.g., *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978) (“[T]he State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity.”).

b. CADA does not affect Plaintiffs’ free press rights.

Plaintiffs’ speech is not chilled, as they allege, and they are not required to espouse a particular viewpoint on same-sex marriage merely because the law requires service to same-sex and opposite sex couples equally. *Masterpiece* held that § 24-34-601(2)(a), of CADA does not prohibit a for-profit vendor from expressing its views on same-sex marriage; it does not prohibit a vendor from expressing its religious opposition to it; and a vendor remains free to disassociate itself from its customers’ viewpoints. *Masterpiece*, 370 P.3d at 288.

Plaintiffs remain free to post disclaimers “in the store or on the Internet indicating that the provision of its services does not constitute an endorsement or approval of conduct protected by CADA.” *Id.*; *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 87 (1980) (“[S]igns, for example, could disclaim any sponsorship of the message and could explain that the persons are communicating their own messages by virtue of state law.”); *Elane Photography*, 309 P.3d at 47 (“Elane Photography is free to disavow, implicitly or explicitly, any message that it believes the photographs convey” and it is unlikely that reasonable observers will interpret Elane Photography as sending a message that it supports same-sex

marriage by merely treating same-sex and opposite-sex customers alike). As such, there is no violation of the free press clause.

c. CADA does not affect Plaintiffs' rights of expressive association.

Plaintiffs also allege CADA forces them to violate their freedom of expressive association because it requires Plaintiff Smith to agree with a viewpoint contrary to her religious belief or to stop collaborating with individuals who share her view that marriage can be only between a man and a woman.

CADA does not prohibit, limit, or otherwise impinge Plaintiff Smith's right to associate with anyone who does or does not share her religious views. Indeed, Plaintiff Smith can attend any church, practice any form of religion, or belong to any group that wishes to espouse views against same-sex marriage, as she desires. Furthermore, even if there was the slightest infringement on Plaintiffs' expressive association, which there is not, Plaintiffs' rights would be justifiably curtailed because CADA serves the compelling interest of prohibiting discrimination, entirely unrelated to the suppression of ideas. *See e.g., Arlene's Flowers, Inc.*, 2017 Wash. LEXIS 216 at **54-55 (rejecting plaintiff's expressive association claim noting that "the Supreme Court has never held that a commercial enterprise, open to the general public, is an 'expressive association' for purposes of First Amendment protections.").

d. CADA does not violate the equal protection clause.

Plaintiffs' refer to three non-binding determinations resulting from charges of discrimination filed by a person alleging discrimination based on creed against bakeries that declined to produce cakes with specific messages. (# 49, ¶ 28). They claim an equal protection violation based on some of the Defendants actions in these cases, and their actions in the *Masterpiece*. The argument is unavailing for three reasons.

First, Plaintiffs have no idea how many determinations the Director or Commission have issued or reviewed, or what the facts and allegations of those charges were, since those matters are confidential and not subject to public disclosure. See C.R.S. § 24-34-306(3) (Commission and staff may not disclose filing of charge or actions on charges unless notice for public hearing). (# 49, ¶ 103, J-L).

Second, as discussed previously, Director's findings of probable cause or no probable cause are not quasi-judicial rulings and only non-binding administrative determinations reached without the benefit of a hearing. *AT&T Techs. Inc.*, 772 P.2d at 1186 (Colo. App. 1989). Since these decisions have no binding precedent or effect, Plaintiffs cannot show unequal treatment.

Third, the Colorado Court of Appeals distinguished the three bakeries in *Masterpiece*, 370 P.3d at 282, n. 8. Notably, *Masterpiece* refused to make a wedding cake for a same-sex couple *because of their sexual orientation* based on the owner's religious belief; while the three bakeries refused to make a cake

for a patron containing derogatory, offensive messages. *Id.*

e. CADA survives strict scrutiny.

Plaintiffs claim that CADA does not survive strict scrutiny. However, as discussed above, CADA is a neutral law of general applicability, which is not subject to strict scrutiny. Even assuming, *arguendo*, that strict scrutiny applies to CADA, CADA would survive strict scrutiny because it furthers a compelling interest and is narrowly tailored to that interest. As discussed above, CADA serves a compelling state interest in eradicating discrimination in places of public accommodation. Moreover, CADA is narrowly tailored to achieve this purpose for the reasons discussed herein.

Plaintiffs argue that because there are other website designers who are willing to serve same-sex couples with wedding designs, Defendants do not have a compelling interest in CADA's public accommodations law because same-sex couples can go somewhere else to obtain those types of services. (**#48, pp. 72-73**). This same argument was made by Plaintiffs' counsel in the *Arlene's Flowers* case, and "emphatically" rejected by the Washington Supreme Court. *Arlene's Flowers, Inc.*, 2017 Wash. LEXIS 216 at *53.

Here, Plaintiffs' argument not only strains credulity, it devalues the purpose of Colorado's anti-discrimination laws, which the State has a compelling interest in eradicating discriminatory behaviors. *Id.* ("emphatically" rejecting the same argument noting that every court to address the question has concluded that public accommodations laws "do not

simply guarantee access to goods or services,” but instead “they serve a broader societal purpose: eradicating barriers to the equal treatment of all citizens in the commercial marketplace.”).

B. Plaintiffs fail to show CADA violates Plaintiffs’ due process rights.

Plaintiffs argue that CADA violates their procedural due process rights because the terms “unwelcome, objectionable, unacceptable, or undesirable” in C.R.S. § 24-34-601(2)(a) are impermissible vague. Plaintiffs also argue that CADA violates Plaintiff’s Smith’s substantive due process rights because the statute deprives her to own and operate a business. Neither argument is correct for four reasons.

First, to “prevail on either a procedural or substantive due process claim under 42 U.S.C. § 1983, ‘a plaintiff must first establish that a defendant’s actions deprived plaintiff of a protectable ... interest.’” *Nichols v. Board of County Comm’rs*, 506 F.3d 962, 969 (10th Cir. 2007) (quoting *Hyde Park Co. v. Santa Fe City Council*, 226 F.3d 1207, 1210 (10th Cir. 2000)). As demonstrated throughout this response, Plaintiffs have not identified any action by the Defendants against Plaintiffs. Instead, any harm suffered by Plaintiffs is self-inflicted based on a misinterpretation of the *Masterpiece* decision. Thus, Plaintiffs do not satisfy this basic requirement of a due process claim.

Second, the “void for vagueness” doctrine applies where the government deprives a person of life or liberty under a law “so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary

enforcement.” *Johnson v. United States*, 135 S. Ct. 2552, 2556 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983)). However, “[c]ondemned to the use of words, we can never expect mathematical certainty from our language.” *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972). Hence, “perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.” *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989) (rejecting facial challenge to statute even though standards were “undoubtedly flexible, and the officials implementing them w[ould] exercise considerable discretion”).

The language used here – “unwelcome, objectionable, unacceptable, or undesirable” – is not so vague as to be constitutionally infirm and is subject to ready definition by reference to any dictionary, such as Merriam-Webster:

- “Unwelcome” means “not wanted or welcome.”
- “Objectionable means “undesirable” or “offensive.”
- “Unacceptable” means “not acceptable,” “not pleasing,” or “unwelcome.”
- “Undesirable” means “not desirable” or “unwanted.”⁵

Indeed, the United States District Court for the Southern District of Iowa recently rejected an identical argument by Plaintiffs’ counsel regarding the terms “unwelcome, objectionable, not acceptable, or not solicited” as contained in Iowa’s anti-

⁵ <https://www.merriam-webster.com/dictionary>.

discrimination laws. *Fort Des Moines Church of Christ v. Jackson*, 16-cv-00403-SMR-CFB, 2016 U.S. Dist. LEXIS 143677, *50 (S.D. Iowa Oct. 14, 2016) (“Though not perfect, the terms sufficiently describe messages of limited access to a public accommodation’s good or services based on membership in a protected class.”).⁶

Third, substantive due process only applies to fundamental interests. *Seegmiller v. LaVerkin City*, 528 F.3d 762, 768 (10th Cir. 2008). There is no fundamental right to carry on a business. Fundamental rights include “the right to marry, to have children, to direct the education and raising of one’s own children, to marital privacy, to use contraception and obtain abortions, and to bodily integrity. *Id.* at 770-71. While economic well-being may be protected by procedural due process, it is not a fundamental right. *Lambert v. Hartman*, 517 F.3d 433, 444 (6th Cir. 2008), cert. denied, 129 S. Ct. 905 (2009). Similarly, there is no fundamental right to practice a chosen profession. *Younger v. Colorado State Bd. of Law Exam’rs*, 625 F.2d 372, 377 n.3 (10th Cir. 1980). If there is no fundamental right to economic well-being or to practice a chosen profession, then there is no fundamental right to carry on a particular business, such as designing wedding websites. And, while practicing one’s religion may be a fundamental right, the Defendants have not impinged on that right in the least.

⁶ In contrast, Plaintiff’s rely on and quote from the decision of *Saxe v. State College Area School District*, 240 F.3d 200 (3d Cir. 2001). However, in that case the Third Circuit did “not reach the merits of Saxe’s vagueness claim.” *Id.* at 40.

Fourth, assuming that Plaintiffs' could identify a fundamental right, they cannot meet the standard for establishing a substantive due process violation. "[T]he standard for judging a substantive due process claim is whether the challenged government action would 'shock the conscience of federal judges.'" *Uhlig v. Harder*, 64 F.3d 567, 573 (10th Cir. 1995) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 126, (1992)), cert. denied, 516 U.S. 1118 (1996). To satisfy this standard, "a plaintiff must do more than show that the government actor intentionally or recklessly caused injury to the plaintiff by abusing or misusing government power." *Id.* at 574. Instead, Plaintiffs "must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking." *Id.* As example, under these principals courts have found a violation when school officials paddle a nine-year-old until the paddle breaks and blood soaks through her clothes, but not when school officials force a mentally disabled ten-year-old to clean out a clogged toilet with his bare hands. See *Perry v. Taser Int'l Corp.*, 07-cv-00901-REB-MJW, 2008 WL 961559, *2 (D. Colo. April 8, 2008) (comparing various cases to address what rises to the level of a substantive due process violation). Here, there is no stipulated fact establishing that any of the Defendants have engaged in conscience-shocking conduct.

PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF

A. Plaintiffs will not suffer irreparable harm if the injunction is denied.

1. Burden of proof and elements

“To constitute irreparable harm, an injury must be certain, great, actual and not theoretical.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Irreparable harm is not harm that is “merely serious or substantial.” See *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001). “Establishing irreparable harm is “not an easy burden to fulfill.” *Greater Yellowstone Coal v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003).

“[A] party seeking preliminary injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” See *Faircloth v. Colo. Dep’t of Corr.*, No. 16-cv-00908-GPG, 2016 U.S. Dist. LEXIS 58077, at *4 (D. Colo. May 2, 2016) (citation omitted). A preliminary injunction should not be granted “against something merely feared as liable to occur at some indefinite time in the future.” See *e.g.*, *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931).

Plaintiffs’ injury is speculative, vague, and does not satisfy the heightened legal standard. The Supreme Court recently restated its reluctance “to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment” because a “theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending.” *Clapper*, 133 S. Ct. at 1148 and 1150.

Here, Plaintiffs fail to allege an injury that is certain, great, or actual by Defendants, and only speculates as to what may happen if numerous,

theoretical facts occur. These ten mandatory facts, as listed previously, have not yet occurred. The failure of one of these steps to occur results in no injury to Plaintiffs.

B. The balance of equities and the public interest are against issuing an injunction.

Courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Port-a-Pour, Inc. v. Peak Innovations, Inc.*, 49 F. Supp. 3d 841, 873 (D. Colo. 2014) (citations omitted). Under the heightened standard of review, Plaintiffs must make a strong showing that their threatened injury outweighs the injury to the public under the preliminary injunction. *See Heideman*, 348 F.3d at 1190.

Here, Plaintiffs argue, in essence, that Defendants should be enjoined because Plaintiffs' religious belief, speech concerning same-sex marriage, and desire to refuse services to same-sex couples outweigh any interest the State of Colorado has in eliminating discrimination in places of public accommodation.

Plaintiffs' argument is unavailing, and counter to this country's lengthy civil rights history. As previously mentioned, the United States Supreme Court has recognized, time and time again, that states have a compelling interest in eliminating discrimination, and statutes, like CADA, further that interest.

Furthermore, the Supreme Court has also held that using religion to perpetuate discrimination

against individuals, and violate a state's laws, is inappropriate. *Reynolds*, 98 U.S. at 166-67 (noting that religious motivation should not excuse compliance with laws); *United States v. Lee*, 455 U.S. 252, 261 (1982) (rejecting religious exercise challenge to law requiring employers to pay social security tax for employees stating, "When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity."); *Newman v. Piggie Park Enters., Inc.*, 256 F. Supp. 941, 945 (D.S.C. 1966), *aff'd in relevant part and rev'd in part on other grounds*, 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U.S. 400 (1968) (finding that while defendant had a constitutional right to espouse the religious views of his choosing, he did not have "a constitutional right to refuse to serve members of the Negro race in his business establishments upon the ground that to do so would violate his sacred religious beliefs."); *see also e.g., Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984) ("Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional relief.") (citation omitted).

C. Plaintiffs cannot meet the heavy burden required for a disfavored injunction.

Plaintiffs' requested injunction would alter the status quo and is, as such, disfavored and subject to a heightened standard. "[T]he limited purpose of a preliminary injunction 'is merely to preserve the

relative positions of the parties until a trial on the merits can be held.” See *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (quoting *O Centro Espirita v. Ashcroft*, 389 F.3d 973, 977 (10th Cir. 2004)). Plaintiffs ask this Court to bar Defendants from enforcing Colorado’s public accommodation law so that they can discriminate against same-sex couples on the basis of their religious beliefs.

When a movant asks for a disfavored injunction, it “must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.” *Id.* (quoting *O Centro Espirita*, 389 F.3d at 975). In such cases, Plaintiffs “[h]ave a heightened burden of showing that the traditional four factors weigh heavily and compellingly in its favor before obtaining a preliminary injunction.” See *Fundamental Church of Jesus Christ of Latter-Day Saints v. Horne*, 698 F.3d 1295, 1301 (10th Cir. 2012) (internal quotations and citations omitted); see also *Awad v. Ziriak*, 670 F.3d 1111, 1126 (10th Cir. 2012) (noting that a movant must make a “strong showing” with regard to likelihood of success on the merits and with regard to the balance of harms).

ABSTENTION ARGUMENT

A. Abstention mandates dismissal of this action.

1. Burden of proof and elements

Since this is a court of limited jurisdiction, it is presumed no jurisdiction exists. *United State ex rel. Hafter v. Spectrum Emergency Care, Inc.*, 190 F.3d 1156, 1160 (10th Cir. 1999). Plaintiffs carry the

burden to establish jurisdiction by a preponderance of the evidence. *Id.*

Abstention is known by several names – *Pullman*, *Burford*, *Younger*, *Rooker-Feldman*, *Colorado River* – based on the Supreme Court case where it was first applied to a particular set of facts. This “division is a mere organizational convenience.” 17A Charles Alan Wright, et al., *Federal Practice & Procedure* § 4241 (3d ed. 2016). However titled, “[c]onsiderations of federalism are at the heart of abstention,” including: (i) comity – respect for the independence of the state governments, avoiding needless conflict with a state’s administration of its own affairs, and avoiding federal resolution of unsettled questions of state law; and (ii) promotion of an efficient federal judiciary by avoiding duplicative litigation and the decision of federal constitutional questions. *Id.* Dismissing, staying, or certifying a case based on abstention falls within the sound discretion of the district court. *Id.*

2. Elements that cannot be proven by Plaintiffs

In an effort to streamline these proceedings, Defendants address abstention generally, considering each principal of our federalism set forth above. See *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 n.9 (1987) (addressing *Pullman*, *Younger*, and *Rooker-Feldman* abstention simultaneously because “the various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases.”)

a. Comity.

As identified previously, the United States Supreme Court has held that states have a compelling

interest in eliminating discrimination through use of public accommodation laws. Further, a federal court should not interfere with state officers in exercising their duties under such laws. See *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).⁷

Pursuant to Colorado law, Plaintiffs' claims may be properly adjudicated in administrative forums and state courts. A federal court must presume that these state remedies are both adequate and a proper arena to settle federal constitutional questions. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987) ("Accordingly, when a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary."). There is simply no reason to subject Colorado and its officers to federal jurisdiction where the issues raised herein, involving both state law and a compelling state interest, could be resolved through state proceedings.

b. Efficient federal judiciary.

Masterpiece involves identical claims to those here, it has not yet been fully adjudicated, and is pending before the United States Supreme Court on Plaintiff's counsels' request for certiorari review.

⁷ Colorado's compelling interest in enforcing CADA and not subjecting persons participating in the process to liability is reflected in state law which provides that Commissioners and persons "participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding" authorized by CADA, "shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as a commission member or participant." §24-34-306(13), C.R.S.

Plaintiffs are essentially asking this Court to overrule *Masterpiece*, which is not appropriate relief from a district court and the court should abstain. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 412 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Further, addressing the same issues in multiple jurisdictions is not favored. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). Where separate actions seek similar declaratory relief, identity of parties is not necessary for abstention to apply. *Landis v. North America Co.*, 299 U.S. 248, 254 (1936) (“we find ourselves unable to assent to the suggestion that before proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes must be shown to be the same and the issues identical”). Instead, any “formula” that would limit stays to matters where identical parties are involved “is too mechanical and narrow.” *Id.* at 255. The harm that may befall one plaintiff in one court while a second court decides the same issue raised by a second plaintiff “are counsels of moderation rather than limitations upon power” to enter a stay. *Id.*

Importantly, should the Supreme Court grant certiorari in *Masterpiece*, any decision by this Court would become advisory. This alone counsels a stay. See *Pennzoil*, 481 U.S. at 11 n.9. (“In some cases, the probability that any federal adjudication would be effectively advisory is so great that this concern alone is sufficient to justify abstention, even if there are no pending state proceedings in which the question could be raised.”).

CONCLUSION

Plaintiffs request to enjoin Defendants “and anyone acting in concert with them” from enforcing a neutral law of general application must be rejected. Defendants have never taken any action against Plaintiffs. The entirety of their dispute is with the interpretation of Colorado’s public accommodation law by a Colorado appellate court. This forum is not the place to resolve that quarrel.

Defendants respectfully request that the Court deny all relief sought and dismiss this matter.

Respectfully submitted this 22nd day of February, 2017.

CYNTHIA H. COFFMAN
Attorney General

s/ Vincent Edward Morscher
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CERTIFICATE OF SERVICE

I certify that I served the foregoing DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT upon all parties herein by e-filing with the CM/ECF system maintained by the court or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 22nd day of February, 2017, addressed as follows:

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**IN THE UNITED STATES DISTRICT
COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-02372-MSK-CBS

303 CREATIVE LLC, a limited liability company; and
LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division, in her official capacity;

ANTHONY ARAGON;

ULYSSES J. CHANEY;

MIGUEL "MICHAEL" RENE ELIAS;

CAROL FABRIZIO;

HEIDI HESS;

RITA LEWIS; and

JESSICA POCOCK, as members of the Colorado Civil
Rights Commission, in their official capacities; and

CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity;

Defendants.

**AFFIDAVIT OF JACOB P. WARNER IN
SUPPORT OF PLAINTIFFS 303 CREATIVE
LLC AND LORIE SMITH'S RESPONSE TO
SHOW CAUSE ORDER**

I, Jacob P. Warner, declare as follows:

1. I am a citizen of the United States and a
resident of the State of Arizona. I am competent to

make this declaration and the facts stated herein are within my personal knowledge.

2. I am an attorney for Alliance Defending Freedom and I was an attorney of record for Plaintiffs in the matter of *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-02074-WYD-STV, previously pending in the United States District Court for the District of Colorado. The case was dismissed on March 5, 2019.

3. Attached as Exhibit A is a transcription of the proceedings of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission which took place on June 22, 2018.

4. Filed conventionally herewith as Exhibit B is the audio recording of the proceedings of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission which took place on June 22, 2018.

5. Colorado produced Exhibit B to Alliance Defending Freedom during the course of discovery in *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-02074-WYD-STV (D. Colo. dismissed Mar. 5, 2019).

6. Attached as Exhibit C are Public Session Minutes from the Eleventh (2017-2018) Monthly Meeting of the Colorado Civil Rights Commission which took place on June 22, 2018. These minutes state that this was a public session and that during the meeting Commissioners “voiced their opinion” about *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

7. Colorado produced Exhibit C to Alliance Defending Freedom during the course of discovery in *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-02074-WYD-STV (D. Colo. dismissed Mar. 5, 2019).

**DECLARATION UNDER PENALTY OF
PERJURY**

I, JACOB P. WARNER, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 7th day of June, 2019, at Scottsdale, Arizona.

s/ Jacob P. Warner
Jacob P. Warner

**Exhibit A to Plaintiffs 303 Creative LLC and
Lorie Smith's Response to Show Cause Order**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-02372-MSK-CBS

303 CREATIVE LLC, a limited liability company; and
LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division, in her official capacity;

ANTHONY ARAGON;

ULYSSES J. CHANEY;

MIGUEL "MICHAEL" RENE ELIAS;

CAROL FABRIZIO;

HEIDI HESS;

RITA LEWIS; and

JESSICA POCOCK, as members of the Colorado Civil
Rights Commission, in their official capacities; and

CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity;

Defendants.

**TRANSCRIPTION OF THE PROCEEDINGS OF
THE ELEVENTH (2017-2018) MONTHLY
MEETING BEFORE THE COLORADO CIVIL
RIGHTS COMMISSION WHICH TOOK PLACE
ON JUNE 22, 2018**

**EXHIBIT A TO PLAINTIFFS 303 CREATIVE
LLC AND LORIE SMITH'S RESPONSE TO
SHOW CAUSE ORDER**

**BEFORE THE COLORADO CIVIL RIGHTS
COMMISSION**

Eleventh (2017-2018) Monthly)
Meeting.)
)

At: Denver, Colorado

Date: June 22, 2018

TRANSCRIPT OF PROCEEDINGS

**FULL TRANSCRIPT, EXCEPT EXECUTIVE
SESSION**

TRANSCRIBED FROM AUDIO RECORDINGS

(Files: 6.22.18 1st Public Session.mp3 and 6.22.18
2nd Public Session.mp3.)

ARIZONA REPORTING SERVICE, INC.

Audio Transcription Specialists
2928 North Evergreen Street
Phoenix, Arizona 85014-5508

Transcribed by:
Katherine A. McNally
CERTIFIED TRANSCRIBER
CET**D-323

BE IT REMEMBERED that a Monthly Meeting was held at the Civic Center Plaza, Conference Room 110-D, 1560 Broadway, Denver, Colorado, commencing on the 22nd day of June, 2018.

BEFORE: ANTHONY ARAGON, Chairman
RITA LEWIS, Commissioner
CHARLES GARCIA, Commissioner
CAROL FABRIZIO, Commissioner
JESSICA POCOCK, Commissioner
DR. MIGUEL ELIAS, Commissioner

APPEARANCES:

For the Colorado Civil Rights Commission:

Adriana Carmona, Coordinator

Aubrey Elenis, Director

Billy Seiber, Attorney General's Office

Katherine Aidala, Attorney General's Office

(Commencement of audio recording file labeled 6.22.18 1st Public Session at 00:00:00.)

CHAIR ARAGON: -- to order the 11th monthly meeting of the Colorado Civil Rights Commission. If we could all go around the room and introduce ourselves, please, starting with Commissioner Lewis from Denver.

MS. LEWIS: Rita Lewis from Denver.

MR. GARCIA: Charlie Garcia, Denver.

MS. FABRIZIO: Commissioner Carol Fabrizio, Denver.

MS. POCOCK: Jessie Pocock, Colorado Springs.

CHAIR ARAGON: Good morning, Commissioner Aragon, Chair of the Commission, from Denver.

And Commissioner --

DR. ELIAS: Dr. Miguel Elias (indiscernible) Commissioner from Pueblo.

MS. CARMONA: Adriana Carmona, with the Division.

MS. ELENIS: Aubrey Elenis, with the Division.

MR. SEIBER: Billy Seiber, counsel to the Commission.

MS. AIDALA: I'm Katherine Aidala from the Attorney General's Office, counsel to the -- for the Division and sitting in for Vince Morscher today.

CHAIR ARAGON: Good morning. Welcome.

Okay. The first item on the agenda -- or second, I should say -- is the approval of the public session minutes of May 24, 2018. Do I have a motion?

FEMALE SPEAKER: I move to approve.

DR. ELIAS: I'll make a motion.

CHAIR ARAGON: Motion. Okay. Thank you, Commissioner Elias. Second?

FEMALE SPEAKER: Second.

CHAIR ARAGON: Second. Any discussion?

All those in favor, signify by saying aye.

(A chorus of ayes.)

CHAIR ARAGON: Opposed? Abstentions?

That motion carries. Thank you.

COM. FABRIZIO: I'll abstain.

CHAIR ARAGON: Oh, Commissioner Fabrizio, abstention? Abstain?

COM. FABRIZIO: Yeah.

CHAIR ARAGON: Okay. That's still okay. We still have four. Okay. Great.

Director's report.

MS. ELENIS: So I thought that this would be a really good time to talk a little bit about the Masterpiece Cakeshop finding that came out a couple of weeks ago. And rather than just read the statement that we posted on our web site, on the CCRD web site, there was a presentation that I had prepared for one of the Staff meetings upstairs. So I'm going to talk about a few points from that.

COM. LEWIS: Commissioner Elias, can you put your phone on mute?

DR. ELIAS: I beg your pardon?

COM. LEWIS: Could you put your phone on mute so we can hear the Director?

DR. ELIAS: (Indiscernible.) Yeah. I'm going to move my dog. I'll be back. Okay.

CHAIR ARAGON: Okay.

MS. ELENIS: Thank you.

So on June 4th, 2018, the Supreme Court ruled that the Colorado Civil Rights Commission was neither tolerant nor respectful of Mr. Phillips' sincerely-held religious beliefs in this particular case.

Based on a Commissioner's statements, the Court found that the proceedings did not honor the State's solemn responsibility of fair and neutral enforcement of Colorado's antidiscrimination laws. In the Court's decision, the Justices found that while handling the claims against the cakeshop, the Commission had shown --

CHAIR ARAGON: Hold on. Aubrey, hold on.

So Commissioner Elias --

DR. ELIAS: I'm going to another room.

CHAIR ARAGON: Yeah. Or just mute your phone.

COM. LEWIS: Could you just mute your phone?

CHAIR ARAGON: If you could mute your phone that would be ideal. Sorry, Aubrey.

MS. ELENIS: I don't mind.

CHAIR ARAGON: Thank you.

COM. ELIAS: You bet.

MS. ELENIS: You think we're good?

CHAIR ARAGON: Yeah.

MS. ELENIS: Okay. So in the Court's decision -- I'll try to talk a little bit louder too. I know I have a small voice.

In the Court's decision, the Justices found that while handling the claims against the cakeshop, the Commission had shown hostility towards the baker's religious beliefs, and in doing so violated his religious rights under the First Amendment.

So while this was disappointing for us at the Division, one of the important things to remember was that the opinion was very narrow. So the Court made its decision based on a specific set of facts and left open many legal questions. So what's going to happen is unfortunately those questions are going to have to be decided in future litigation.

And the Court didn't answer the larger question on whether businesses can use religious views to exempt themselves from antidiscrimination laws. And so that's a question that's likely to come up again in front of the Supreme Court pretty soon; right?

So what we know at this point is that the Colorado antidiscrimination laws -- they've remained unaffected. So the Court made clear in its finding that states like Colorado will continue to protect the LGBTQ community.

The general rule was, before the finding, and still is, that the First Amendment does not allow business owners to deny members of the community equal access to business services. So that means that the law still protects members of the LGBTQ community who visit places of public accommodation.

So what now in looking at the analysis of these cases going forward? So in these cases going forward, Commissioners and ALJs and others, including the Staff at the Division, have to be careful how these issues are framed so that it's clear that full consideration was given to sincerely -- what is termed as sincerely-held religious objections.

So the Court is basically sending a signal to administrative bodies that that decision-making

must be consistent and objective with the guarantee that all laws are applied in a manner that is neutral towards religion.

So for us, that's a bit interesting, because there aren't any real tools for analysis of what a sincerely-held religious objection means and how to measure that, so we are going to just rely on really adding analysis to those cases when they come in. And we're also going to be running stuff through our wonderful AG's as well.

So basically, keep fighting the good fight because the laws haven't changed. It's still the same.

COM. GARCIA: Where did that statement come from what you read?

MS. ELENIS: Me.

COM. GARCIA: Okay. Well done.

MS. ELENIS: Thank you.

FEMALE SPEAKER: Yep.

CHAIR ARAGON: Is the Division noticing a number of additional claims now? Or has there been an uptick, in terms --

MS. ELENIS: Not -- not thus far.

CHAIR ARAGON: Okay.

MS. ELENIS: But it's pretty -- still pretty new, so I anticipate that there would be because people are going to still continue to experience the same thing. And because the question wasn't answered, I think they're going to want answers.

COM. FABRIZIO: I think -- thank you for --

MS. ELENIS: You're welcome.

COM. FABRIZIO: -- reading that. I would say I -- you know, I've had a couple of reactions to the holding. Just that -- even though it's narrow, I've also, of course, think that people will use that, and you know, continue to see things like religious freedom restoration acts, you know, come into conflict with a number of civil rights pieces of legislation.

So I'm a little worried about what that kind of lets -- kind of allows in the future, as far as, like, giving people some momentum in taking that forward.

And then I would say the other thing -- I wasn't on the Commission when -- so I have no idea what happened then. But I would also say, you know, I felt a little bit like even though I think they -- it was correctly decided from the outside, but I also hope that anything that is taken out of here or listened to or -- that we're open to being respectful of everybody's views.

And so I kind of thought just about that in a -- as one, like, key takeaway to make sure, even sometimes when we have a case that seems really obvious and easy, to make sure we're being respectful of things that show up here, so --

FEMALE SPEAKER: Absolutely.

CHAIR ARAGON: Commissioner Lewis.

COM. LEWIS: I support Commissioner Diann Rice and her comments. I don't think she said anything wrong. And if this was 1950s, it would have a whole different look. So I was very disappointed by the Supreme Court's decision.

COM. GARCIA: Even for one thought the -- I agree with the opinion, but I also agree a lot with the dissent. And the dissent was very clear; they agreed with the opinion. They were disappointed that the Court didn't go ahead and resolve the real issues. So I thought the dissent was right on.

CHAIR ARAGON: A process question, though. So if the case were being discussed, I guess where were Commissioner Rice's comments publicly released? If those -- if the case was being discussed in executive session, was there -- did it go -- and I don't recall the steps it took -- was there another process where that information or her opinion was shared that then became a key piece of the case? Do you --

MR. SEIBER: I can answer, if you don't know.

MS. ELENIS: You can answer.

MR. SEIBER: I've read the transcript. And what had come before the Commission was a request to stay enforcement until, you know, the next phase. The -- that was the legal question before the Commission. There was a motion to stay. Stay what exactly, I can't tell you, but there was a motion to stay.

In the process of the motion to deny the request to stay and the second, there was some discussion. And that was when Commissioner Rita -- Commissioner Rice made that -- I'm sorry -- Commissioner Rice -- made --

COM. LEWIS: Commissioner Rita? No.

MR. SEIBER: -- made that -- made that statement. So it wasn't in the review of the facts; it wasn't in executive session; it wasn't anywhere else. It wasn't even in the review of the initial decision from

the Administrative Law Judge. It was simply discussion surrounding motion to stay.

I don't know the answer, whether the recording came from the Division or if it came from someone in the room. It was --

MS. ELENIS: Someone from the Alliance Defending Freedom was present during that meeting and recorded and then released that recording.

CHAIR ARAGON: Okay.

MR. SEIBER: And, of course, there's no restriction on recording of meetings, surreptitiously or otherwise, as far as I'm aware. Attorneys can't make recordings without warning the other people that they're doing the -- making the recording under Colorado law. I don't know who that person was; I don't know what source of background is there. But at any point in time anyone in a room could be recording the entire meeting.

CHAIR ARAGON: If it's in public session; right?

MR. SEIBER: Including -- in public session.

CHAIR ARAGON: Yeah.

MR. SEIBER: Including by video, you know, they could bring a video camera in, so --

CHAIR ARAGON: Okay. And then I just have one other sort of process question.

So I had e-mailed you the day that it came out to find out what -- what should we, as Commissioners, be doing. And you said that -- I think in your e-mail, you said that you were going to be sending a press

release or information to us on what we should and shouldn't be doing. I never saw that. So --

MS. ELENIS: So I didn't send anything to the Commission themselves. What we ended up doing is just doing a general press release and releasing it to the public. And then in terms of, like, any media requests or anything like that, the directive would have still been the same, to contact me so that I could forward the stuff to Rebecca Laurie.

CHAIR ARAGON: Right.

MS. ELENIS: She's our Director of Communications in our PIO.

But in terms of, you know, making public statements to the media or anything like that, there wasn't really anything that we could tell you to do because we didn't really have any further guidance, and we were still reading through the 56-page opinion at that point.

CHAIR ARAGON: Okay. But I -- I mean, so I got a couple of questions. And at least because I reached out to you, I knew the answer.

MS. ELENIS: Um-hmm.

CHAIR ARAGON: But I think in fairness to the Commission as a whole, I think it's really important that even if it is a press release or we're going to just put this up on the --

MS. ELENIS: That you know where it's coming from?

CHAIR ARAGON: -- web site, it would have been good to know that something --

MS. ELENIS: Yes.

CHAIR ARAGON: -- happened or -- because again, when it was -- really, it was all the Colorado Civil Rights Commission was the -- you know, involved in the case, then, of course, you know, well, you're on the Commission, what's going on?

MS. ELENIS: Um-hmm.

CHAIR ARAGON: I'm, like, I'm not able to answer that. But at least because I reached out that morning, I knew that what you said to me was that, you know, if it's anything related to the Division, it goes Division. If it's you as a Commissioner, that it's -- you're going to -- if it goes to the Governor's Office.

But I mean, to your point, you were contacted several times. And I just think it would have been beneficial to even know that there was a statement on the web site. I mean, it's just I feel like there was a lack of communication for the Commission.

MS. ELENIS: So going -- going forward, I'll make sure that --

CHAIR ARAGON: Yeah.

MS. ELENIS: -- if there's any information, that it'll be shared with you guys right away.

CHAIR ARAGON: Yeah.

MS. ELENIS: Even if it's going to be posted, I'll send you an e-mail --

CHAIR ARAGON: Yeah. That would be -- yeah.

MS. ELENIS: -- saying please check the web site. And I apologize for that.

CHAIR ARAGON: Because then we could use that too to be a resource. Yeah.

MS. ELENIS: Um-hmm. Exactly.

COM. POCOCK: Interestingly, I was contacted by a member of the public who found my cell phone number too, just asking for help with their case, in which it was, like, I -- you know, I directed them to come to the Division, and, you know, ask for clarification and never ended up (indiscernible), but --

MS. ELENIS: Okay.

COM. POCOCK: -- which is generally how I -- unless someone's calling to tell me, you know, maybe they need help with the process, and I can direct them to the right people. But --

MS. ELENIS: Right.

COM. POCOCK: -- that's the first time that happened. I have received e-mails before.

MS. ELENIS: Okay. And you've been really awesome about forwarding those along too. All of you have, when you receive something, so that's great. But yeah, noted.

CHAIR ARAGON: Okay.

MS. ELENIS: Going forward, we'll definitely -- I'll make sure to reach out and share that stuff right away.

CHAIR ARAGON: Yeah. And the community is interested. I was at a public forum yesterday with National Gay and Lesbian Real Estate Professionals, and we were with One Colorado and the Gill

Foundation. And some -- somebody asked me a question about the Masterpiece. I said, you know, I said, I'm here as Anthony. I'm not here representing the Commission. I don't feel comfortable answering your question.

MS. ELENIS: Right.

CHAIR ARAGON: But then Daniel was there, and he could at least help -- he was able to speak about it.

MS. ELENIS: Perfect.

CHAIR ARAGON: You know, the appointment process moving forward with the legislation. But, yeah, I'm just very mindful to (indiscernible).

COM. GARCIA: Well, I would assume that, as with any other Commission similar to this one, when they ask those kind of questions, you simply do what you do (indiscernible). The first thing you say is, I'm not speaking on behalf of the Commission; and I'm speaking on behalf of Anthony Aragon, and here I go.

CHAIR ARAGON: Yeah. Well, even then, I'm like -- I don't do that.

Commissioner Lewis, did you have (indiscernible)?

COM. LEWIS: Yes. I think it would be a good idea if you did release your statement to the media outlets because they're still talking about it.

MS. ELENIS: Oh, we have.

COM. LEWIS: (Indiscernible) you have?

MS. ELENIS: Yes.

COM. LEWIS: Okay.

MS. ELENIS: We released it on the date, the day of, that one on the 4th.

COM. LEWIS: Okay. I haven't heard much about it.

MS. ELENIS: There's been quite a few news articles, not necessarily about the statement that we released. But we've been getting kind of pings every morning about the number of media articles that are released. There's been a fair amount of commentary on both sides about it.

COM. LEWIS: Um-hmm. And would you be comfortable giving us a copy of your statement --

MS. ELENIS: Of course, yes, yes.

COM. LEWIS: -- so that we can send it to our outlets?

MS. ELENIS: Yes. I'll send that out right after this as well. Yes.

CHAIR ARAGON: Great.

COM. LEWIS: Great.

CHAIR ARAGON: Okay. Any other --

MR. SEIBER: I just (indiscernible) and, of course, always you carry the Division's phone number cards in your wallet. And if you are asked specific questions, direct them to the Division. I think your point of "I don't speak for the Commission" is really salient.

MS. ELENIS: Right.

MR. SEIBER: But here is a Division person, public information officer, so on and so forth.

CHAIR ARAGON: I did tell them after, I said, I felt like -- that felt like such a political response. I said, and I apologize. But it just -- it's the nature of the work that we do, and what we can and can't say, sorry.

Okay. Great. Anything else (indiscernible)?

MS. ELENIS: That's it.

CHAIR ARAGON: Okay. Wonderful.

MS. ELENIS: Thank you.

CHAIR ARAGON: Thank you.

Attorney General's report?

MS. AIDALA: Good morning. I have two cases here. The first is Denise Fulkerson v. Wonderland at Centerra. It was a housing discrimination case that was filed at OAC. And pursuant to statute, the respondents have elected to have the charge removed to state district court.

So I would ask -- and they're, you know, authorized by statute to do that -- ask for a motion to dismiss the case from OAC and remove it to state court.

MALE SPEAKER: So moved.

COM. LEWIS: Second.

CHAIR ARAGON: Okay. Any discussion?

All those in favor signify by saying aye.

(A chorus of ayes.)

CHAIR ARAGON: Opposed? Abstention? That motion carries.

MS. AIDALA: Great. Thank you.

And then the second case is Jayme Seybold and Candy Harman v. Regulator Industries, LLC. This case was presented at the Commission's meeting in March, and the settlement was approved.

So at this point, I would just ask for a motion to close the case.

COM. LEWIS: So moved.

CHAIR ARAGON: A motion by Commissioner Lewis.

Second?

FEMALE SPEAKER: Second.

CHAIR ARAGON: Second. Any discussion?

All those in favor, signify by saying aye.

(A chorus of ayes.)

CHAIR ARAGON: Opposed? Abstention? All right.

That motion carries.

MS. AIDALA: Great. Thank you.

CHAIR ARAGON: Great. And you'll have me sign those? Okay.

Audience, audience participation. I think we have one person that wanted to share this morning.

Good morning, if you'd introduce yourself for the Commission that would be great. Thank you.

MALE SPEAKER: Members of the Commission, my name is Jim Katin [phonetic]. I'm a resident of the city and county of Denver. Ten years ago I suffered a

severe traumatic brain injury. Today I'm sharing information about traumatic brain injury in Colorado.

The Colorado Department of Human Services says that every year there are approximately 950 deaths, 5,200 hospitalizations, and 27,000 emergency room visits related to traumatic brain injury.

According to research performed by Denver-based Craig Rehabilitation Hospital, approximately 500,000 Coloradans have sustained some sort of brain injury in their lifetime.

My message today is twofold. One, the population of Coloradans living with a traumatic brain injury is growing; and my second point is that as a growing population, we are often subject to unfair and unequal treatment, including discriminatory practices. Thank you.

CHAIR ARAGON: I know you've come to the Commission to speak before.

Did we ever connect you with -- is it Billy? I'm always drawing a blank on his name. I apologize. Our outreach person.

FEMALE SPEAKER: Sam, yes.

CHAIR ARAGON: Sam. Did you get to sort of connect with him at the Division, who does outreach, to determine sort of if there's an opportunity for partnership or for education purposes? I was just wondering.

I know that Senator Hernandez had come in as well as the woman with her young son. So I was just curious if there's been any movement on that front.

MALE SPEAKER: This is Jim Katin again. No, I haven't received any communication since that gathering.

CHAIR ARAGON: Okay.

MALE SPEAKER: You know, and I think it – from my perspective, my purpose is really to share information about this growing population. I think it's part of the disabled community that's often forgotten.

CHAIR ARAGON: Um-hmm. Okay.

MALE SPEAKER: So whatever connection we could make, that would be great. If not, I understand. And you know, in light of the time of year, it's an election cycle, all that kind of stuff. You know, whenever they have time, feel free to reach out to me.

CHAIR ARAGON: Okay.

MS. ELENIS: Can we have Tracy speak to that?

CHAIR ARAGON: Sure.

MS. ELENIS: Tracy, can you kind of give an update on what's going on --

TRACY: Sure.

MS. ELENIS: -- since that last visit.

TRACY: So --

MS. ELENIS: Thank you.

TRACY: Sam Anderson has reached out to folks over at Robert Hernandez, and has been in contact with him and with Maureen --

(Indiscernible - simultaneous speech.)

TRACY: Maureen Welch on several occasions, as well as they've come into our office. So --

CHAIR ARAGON: Okay.

TRACY: -- we have been in contact with them on multiple occasions, so --

CHAIR ARAGON: Great. Okay. All right. Well, I appreciate you coming in and speaking with the Commission this morning.

MALE SPEAKER: Thanks for the time.

CHAIR ARAGON: All right. Thank you, sir.

Other business, Division's outreach and education update?

Oh, Commissioner Lewis.

COM. LEWIS: I have a comment. I'm very disappointed that Juneteenth is not listed. Juneteenth is a 30-year-old tradition here in Colorado. And for people that don't know what Juneteenth is, it's a celebration of descendents of slaves that found out -- the slaves found out two years later in Texas that they were freed.

So I hope going forward that you will list Juneteenth. And Juneteenth is actually -- it was the 16th. So please put that on the calendar going forward.

MS. ELENIS: We actually had an internal discussion a couple of days ago, based on some of our disappointment that we didn't --

COM. LEWIS: Okay.

MS. ELENIS: -- participate this year. So next year, we most definitely will be there, as well.

CHAIR ARAGON: Again, I believe the Division did last year, though, didn't they not?

MS. ELENIS: Yes. Last year we did.

CHAIR ARAGON: Yes, they did. Okay. Yeah.

MS. ELENIS: Not this year.

COM. LEWIS: (Indiscernible.)

CHAIR ARAGON: Okay.

FEMALE SPEAKER: And also they will be at the Blackhawks Festival coming up.

MS. ELENIS: Yes.

COM. LEWIS: Okay. Good. Thank you.

CHAIR ARAGON: Okay. Any question -- I do believe everybody saw in the report that Sam included in the outreach, everybody saw that (indiscernible).

MS. ELENIS: And Sam isn't here today. He took a day of leave. So --

CHAIR ARAGON: Yeah. This is very helpful.

Thank you for that.

FEMALE SPEAKER: Awesome.

CHAIR ARAGON: I know that was something we requested, so thank you for that.

COM. LEWIS: And real quick, are you going to do this every month, the outreach events?

MS. ELENIS: Yes.

COM. GARCIA: The calendar is very helpful (indiscernible).

MS. ELENIS: Good.

CHAIR ARAGON: Yeah. Great. Thank you.

COM. GARCIA: (Indiscernible.)

CHAIR ARAGON: So the next item on the agenda is the process and decision-making regarding Rule 10.6(b)(2).

And what I'd like to do is entertain a motion to go into executive session to obtain legal counsel and discuss the policy. And then once we discuss the policy and asked our questions, we will go out of executive session. And then any further discussion that we do have in terms of drafting or moving the policy forward will be done in public session.

But I think that for all of us to ask questions and to get legal counsel that I would like to approach it that way -- if people are comfortable with that approach -- keeping in mind that any decisions that we do reach after our questions are answered, we will do in public session.

Is everybody comfortable with that?

FEMALE SPEAKER: Sure.

CHAIR ARAGON: Okay. So do you want to move it?

FEMALE SPEAKER: Sure. I move that we go into executive session to receive legal advice regarding the process and decision-making regarding Rule 10.6(b)(2).

FEMALE SPEAKER: Second.

CHAIR ARAGON: Second?

Any discussion?

MR. SEIBER: Could I modify that a little bit?

CHAIR ARAGON: Oh.

FEMALE SPEAKER: Um-hmm.

MR. SEIBER: Pursuant to Section 24-6-4023(a)(II) CRS?

CHAIR ARAGON: Yeah.

FEMALE SPEAKER: The last one?

MR. SEIBER: Yeah.

FEMALE SPEAKER: Okay. For the purpose of receiving legal advice pursuant to Sections 24-6-4023(a)(II) CRS.

CHAIR ARAGON: Commission Lewis, second?

COM. LEWIS: Thank you. Second.

CHAIR ARAGON: Second. Okay. Any discussion?

All those in favor, signify by saying aye.

(A chorus of ayes.)

CHAIR ARAGON: Opposed? Okay.

So any audience members that are not part of the Division or the Commission will need to exit the room.

FEMALE SPEAKER: Does that include the teenager over there?

CHAIR ARAGON: I think so, yes.

FEMALE SPEAKER: Yes.

CHAIR ARAGON: Yes, it does.

FEMALE SPEAKER: We're not --

CHAIR ARAGON: Unfortunately. But it's her fault, not mine. And then when we're done, we'll bring you back up.

FEMALE SPEAKER: (Indiscernible) Welcome Center.

FEMALE SPEAKER: Okay.

FEMALE SPEAKER: (Indiscernible.)

FEMALE SPEAKER: And then she'll come back.

CHAIR ARAGON: Okay. Great. Thank you. Okay.

And then we are now in executive session.

MR. SEIBER: Great. Do we have a separate recording for this?

(Conclusion of audio recording file labeled 6.22.18 1st Public Session at 00:23:05.)

(Executive session held, but not transcribed.)

(Commencement of audio recording file labeled 6.22.18 2nd Public Session at 00:00:00.)

CHAIR ARAGON: So we're back in public session to discuss the process of decision-making regarding Rule 10.6(b)(2).

And at this time, I think that -- why don't we open it up for discussion.

So the Commission has been discussing this rule. And we think that it is a good idea to establish a working group of a couple of Commissioners, or however many would like to be involved, in sort of

creating new language that helps clarify this rule further.

And again, we want to determine, you know, do both parties need to be present? And confidentiality?

So if someone would like -- do we need a -- we probably need a motion to create a working group for this purpose?

MR. SEIBER: I think it shores it up. Sure. Yeah.

CHAIR ARAGON: So I'll entertain a motion.

COM. FABRIZIO: Yeah. I'll move to create a working group to further clarify the Rule 10.6(b)(2).

CHAIR ARAGON: Great. And a second?

COM. GARCIA: Second.

CHAIR ARAGON: Second. Okay. Discussion.

So who from the Commission would like to be a part of this process? Commissioner Lewis, Commissioner Garcia, Commissioner Elias, any interest?

COM. ELIAS: Yeah.

CHAIR ARAGON: Commissioner Elias. And I will as well. Okay. So -- and Commissioner Aragon. So that will be the four of us.

So then do we -- does the Division then reach out to, This is an Adriana "herd the cat" sort of scenario, where you kind of send an e-mail, you find a time that's convenient for all of us to meet? Great. Okay.

COM. FABRIZIO: Can I just say one more thing on the surface?

CHAIR ARAGON: Go ahead. Yeah.

COM. FABRIZIO: I do think we -- we talked about a couple of things I think are worth resaying in the discussion.

CHAIR ARAGON: Yeah.

COM. FABRIZIO: One is the concern -- there's substantive concerns with the rule and how it affects the Commission, and then there's some logistical concerns about how it's implemented and how it might conflict with other rules.

I am personally fully supportive of figuring out the logistical concerns and making sure that works.

I also just want to touch on something about how when -- you know, the more kind of open argument we have -- not that I -- totally valid concerns that we talked about from counsel. But I also, you know, I do -- thinking about the Masterpiece case, I would say, as much as -- as much as I kind of took to heart the opinion and what it said, I also very much stand behind Commissioner Rice's statements. And as much -- I wouldn't want to be in that position. But I also -- there is a transparency there that I was actually proud of what she said, and I agree with her.

And from the kind of transparency perspective, I would hate to personally be used in a case, but also would rather have it be that than have it be kind of in secret that it couldn't come out. There's -- there's a part of me that's, like, whether or not the case is right or I'm personally under scrutiny or candidly any of you are under scrutiny for your thing, the thing I like that there is a little bit of transparency there, you know, as long as we're -- if we are being respectful -- and I think she was.

And so I do -- you know, I think -- I almost think of it in kind of the other conclusion, which is that this was like a situation that was tough and her comments got used publicly. And I think that's okay. I'm almost glad that something the Commissioner said ended up public and used, because I think it was the right thing.

So there's part of me on this rule that's thinking the kind of same substantive concerns, but I come out on the other side. So I just -- I wanted to say that.

CHAIR ARAGON: Great. And I think if this is the rule in its entirety that there needs to -- we need to make sure that there's language in here that this is -- this is discussed in public session, so that if it's not included in there, I think that as much information as we can provide to the Complainant that if you -- if you're requesting oral argument, that these are the steps that have -- you have to take. And so that there's sort of even a -- almost a checklist.

COM. FABRIZIO: Right.

CHAIR ARAGON: You know, you have to sign the confidentiality waiver; both parties have to agree to be present; you know, that just as much information -- you know, inform -- the discussion will occur in public session; and even to the point of what they may and may not present, I think is also of importance.

COM. FABRIZIO: Um-hmm.

CHAIR ARAGON: If we're going to -- if we're going to sort of travel down this road of really clarifying what this rule is, so that it's clear moving forward, that we just -- I think the more information we include in the rule --

COM. FABRIZIO: Right.

CHAIR ARAGON: -- that I think transparent -- again, to your point of transparency --

COM. FABRIZIO: Right.

CHAIR ARAGON: -- that there's not, well, no, that's not what -- that's what we thought this was going to (indiscernible) you clearly -- you reviewed the checklist.

Okay. Is it realistic to think that we can have a new policy in place by the next Commission meeting in July, with it being summer? Or do we want to --

MR. SEIBER: Well, you're going to have to -- you'll have to bring that back for the Commission to vote on.

CHAIR ARAGON: Well, right. We have to -- we have to create it first, yeah.

MR. SEIBER: Oh.

CHAIR ARAGON: Yeah.

MR. SEIBER: For the Committee to create it, yeah.

CHAIR ARAGON: Yeah. For the Committee to create or pre -- so what the process would be is the Committee will meet to create a new rule; right; or an amended rule?

MR. SEIBER: Or a -- well, a rule -- I think the Committee is going to sort of flesh out what the options are.

CHAIR ARAGON: Okay, uh-uh.

MR. SEIBER: Do we need to amend the rule? Can we create a policy from within the rule? Or you know,

what -- what is the Committee thing that needs to happen here?

CHAIR ARAGON: Got it. Okay. So to the Committee that are involved, do we think within 30 -- within the next 30 days that we -- we can have at least one -- I mean, we may need more than one meeting.

FEMALE SPEAKER: One draft (indiscernible).

COM. GARCIA: I would defer to the AG.

CHAIR ARAGON: Yeah. You're out to be a part of this too; right?

(Indiscernible - simultaneous speech.)

MR. SEIBER: Yeah. Well, I think -- I'm trying to think. This is -- do I -- do you want me to be part of your meetings? And -- or do you want to put together -- does the Committee want to put together something, ship it off to the AG's office --

COM. LEWIS: Yes.

MR. SEIBER: -- for review? And maybe you could have it to me by July. And then --

CHAIR ARAGON: Okay. Let's do that. I think --

COM. LEWIS: Yes. That makes more sense.

CHAIR ARAGON: I think -- what is it, somebody said slow is -- slow is better or something?

COM. LEWIS: Yes.

CHAIR ARAGON: What is it? There's a phrase somewhere that -- do it right, not fast.

COM. LEWIS: Right.

CHAIR ARAGON: That's what it was, yes. So --

COM. LEWIS: We might end up having some drafts, you know.

CHAIR ARAGON: Yeah. Exactly. Okay. So I think that -- I will -- the plan would be to have one Committee meeting before the next Commission meeting, which is July the 27th, I believe.

And then possibly have a draft to the Attorney General's Office for review. And then the Commission could vote -- the full Commission would vote on the new rule, or the amended rule, at the August Commission meeting.

MR. SEIBER: The policy.

CHAIR ARAGON: The policy.

MR. SEIBER: Yeah.

CHAIR ARAGON: Yeah. The policy. I keep saying the rule. Sorry.

MR. SEIBER: We're not (indiscernible).

CHAIR ARAGON: Yeah. Policy, yeah. Okay.

MR. SEIBER: I just realize we have public that we never let back in. I don't know who that --

FEMALE SPEAKER: Oh.

MR. SEIBER: -- one lady was.

FEMALE SPEAKER: You know, she's a Staff.

MR. SEIBER: Oh, she's a Staff.

CHAIR ARAGON: Oh. And then Rita's son.

COM. LEWIS: Yeah.

CHAIR ARAGON: Okay.

COM. LEWIS: If he wants to come back, (indiscernible).

CHAIR ARAGON: Yeah. Okay.

FEMALE SPEAKER: She said he doesn't have to come back.

MR. SEIBER: Oh, he doesn't have to come back?

FEMALE SPEAKER: Yeah.

CHAIR ARAGON: Okay. Any further discussion?

FEMALE SPEAKER: I just texted him. I'm sorry.

CHAIR ARAGON: Any further discussion?

FEMALE SPEAKER: No.

CHAIR ARAGON: Okay. All those in favor signify by saying aye.

(A chorus of ayes.)

CHAIR ARAGON: Opposed? Abstention? Okay.

That motion carries.

FEMALE SPEAKER: Did -- was there a motion?

CHAIR ARAGON: Yeah.

FEMALE SPEAKER: First and second?

CHAIR ARAGON: Yes.

FEMALE SPEAKER: Was it? Sorry.

CHAIR ARAGON: Commissioner Fabrizio made the motion.

FEMALE SPEAKER: Yes.

CHAIR ARAGON: And I forget -- Commissioner Pocock seconded.

It'll be on the tape too.

No. And then the other item for discussion that I want to just mention in public session -- and this is sort of a question or just a comment of Billy is that you'll -- the Commission has requested that the Attorney General's Office review if we can have -- if the Commission can have emergency Commission meetings if oral arguments are presented so that we don't delay the time frame of the Commission or the Division losing jurisdiction. So I think that was the other sort of ask that we -- that came out of our discussion is that it would be beneficial to know, so that it's not a 30 days and (indiscernible).

MALE SPEAKER: Right.

CHAIR ARAGON: Okay. Okay. All right. Any other questions, comments on that process moving forward?

COM. GARCIA: On that, I -- from your response, if there's not a way for possibility, that it's -- that number is set for us and not for the parties.

MR. SEIBER: Yeah. And I'll get the --

COM. GARCIA: And I would ask you to just take a look --

MR. SEIBER: I'll get that and bring you the exact language.

COM. GARCIA: Okay.

CHAIR ARAGON: Okay.

Next on the item is executive session.

FEMALE SPEAKER: I move that the Commission enter into executive session at this time in order to consider the following matters:

To address the following cases on the June 22nd, 2018, agenda for appeal or review, hearing worthiness consideration, and settlements which are required to be kept confidential pursuant to Sections 24-34-3063 and 24-6-4023 (a)(III) CRS, CP 218-272543, CH 2018-738266, FE 2017-705809, FE 2018-502704, FE 2018-467368, FE 2018-334251, FH 2018-58 through 289, FH 2018-888481, FE 2017-887555, and FE 2017-298703. And for the purposes of receiving legal advice pursuant to Sections 24-6-4023 (a) (II) Colorado Revised Statutes.

CHAIR ARAGON: Okay.

FEMALE SPEAKER: So second.

CHAIR ARAGON: Oh, second.

FEMALE SPEAKER: I'll second.

CHAIR ARAGON: Second? Any discussion? Discussion?

Okay. We're now in the -- oh, all those in favor, signify by saying aye.

(A chorus of ayes.)

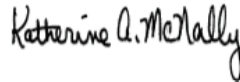
CHAIR ARAGON: Okay. We're now in executive session. So --

(Conclusion of audio recording file labeled 6.22.18 2nd Public Session at 00:09:56.)

C E R T I F I C A T E

I, Katherine McNally, Certified Transcriptionist, do hereby certify that the foregoing pages 1 to 38 constitute a full, true, and accurate transcript, from electronic recording, of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 4th day of March 2019.



Katherine McNally
Certified Electronic Transcriber
CET**D-323

**IN THE UNITED STATES DISTRICT
COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

303 CREATIVE LLC, a limited liability company;
and LORIE SMITH,

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil
Rights Division, in her official capacity;
ANTHONY ARAGON,
ULYSSES J. CHANEY,
MIGUEL "MICHAEL" RENE ELIAS,
CAROL FABRIZIO,
HEIDI HESS,
RITA LEWIS, and
JESSICA POCOCK, as members of the Colorado
Civil Rights Commission, in their official capacities,
and
CYNTHIA H. COFFMAN, Colorado Attorney
General, in her official capacity;

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Lorie Smith is the sole owner and operator of 303 Creative LLC, a company specializing in graphic and web design.
2. Lorie is also a Christian who believes that God has called her to use her talents and her company in a way that honors Him.
3. Because of her religious beliefs and her desire to affect the current cultural narrative regarding marriage that contradicts those beliefs, Lorie wants to use her talents and the expressive platform she has in 303 Creative to celebrate and promote God's design for marriage as an institution between one man and one woman.
4. Lorie believes that God is calling her to promote and celebrate His design for marriage by designing and creating custom wedding websites for weddings between one man and one woman only.
5. As part of discharging her religious duty, Lorie also desires to explain her religious beliefs about marriage on her website and in communications with prospective clients, including why those beliefs prevent her from designing websites celebrating and promoting same-sex weddings.
6. But Colorado law strips Lorie and 303 Creative of the freedom to choose what messages to create and to convey in the marriage context.
7. Colorado law makes it unlawful for Lorie and 303 Creative to publish, display, or mail any communication stating that they will not design, create, or publish websites celebrating same-sex marriages. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

8. Colorado law also makes it unlawful for Lorie and 303 Creative to publish, display, or mail any communication indicating that a person's patronage at 303 Creative is "unwelcome, objectionable, unacceptable, or undesirable" because of sexual orientation. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

9. Therefore, Lorie and 303 Creative cannot explain on 303 Creative's website their religious belief that God designed marriage as an institution between one man and one woman and why they cannot create wedding websites promoting and celebrating any other conception of marriage.

10. Colorado law also provides that if Lorie and 303 Creative design, create, and publish wedding websites celebrating and promoting marriages between one man and one woman, they must also willingly design, create, and publish wedding websites celebrating and promoting same-sex marriages. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

11. Therefore, if Lorie and 303 Creative speak their desired message celebrating and promoting marriage between one man and one woman, Colorado law requires that they also be willing to speak messages they find highly objectionable and that contradict their sincerely held religious beliefs.

12. Because Lorie and 303 Creative cannot speak messages promoting and celebrating conceptions of marriage contrary to their religious beliefs, Colorado law prevents them from expressing their desired message—that marriage is a God-ordained institution between one man and one woman—through the design, creation, and publication of wedding websites.

13. If Lorie and 303 Creative were to convey their desired messages and decline to convey objectionable messages, they would face costly and onerous investigations, fines of up to \$500 for each violation, and oppressive mandates—such as staff re-education training—that can themselves compel objectionable speech.

14. Thus, solely because of Colorado law, Lorie and 303 Creative are refraining from expressing their views of God’s design for marriage on 303 Creative’s website and from offering their services to design, create, and publish wedding websites expressing their desired message celebrating and promoting marriage as an institution between one man and one woman.

15. To restore their constitutional freedoms to speak their beliefs and not be compelled to speak messages contrary to those beliefs, and to ensure that other creative professionals in Colorado have the same freedoms, Lorie and 303 Creative ask this Court to enjoin Colo. Rev. Stat. § 24-34-601(2)(a) and declare that it violates their rights.

JURISDICTION AND VENUE

16. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

17. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

18. This Court has authority to award the requested declaratory relief under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57; the requested

injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65; and costs and attorneys' fees under 42 U.S.C. § 1988.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all events giving rise to the claims herein occurred within the District of Colorado and all Defendants reside in the District of Colorado.

IDENTIFICATION OF PLAINTIFFS

20. Plaintiff Lorie Smith is an evangelical Christian.

21. She is a resident of the State of Colorado and a citizen of the United States of America.

22. She is also the sole member-owner of Plaintiff 303 Creative LLC.

23. 303 Creative is a for-profit limited liability company organized under Colorado law.

24. 303 Creative's principal place of business is located in Colorado.

IDENTIFICATION OF DEFENDANTS

25. Aubrey Elenis, as Director of the relevant division of Colorado state government known as the Colorado Civil Rights Division, Colo. Rev. Stat. § 24-34-302, and as one with authority to enforce the law at issue, *see, e.g.*, Colo. Rev. Stat. §§ 24-34-302, 24-34-306, is named as a defendant in her official capacity.

26. Commissioners Anthony Aragon, Ulysses J. Chaney, Miguel "Michael" Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, and Jessica Pocock, as members of the Colorado Civil Rights Commission with authority to enforce the law at issue, *see, e.g.*,

Colo. Rev. Stat. §§ 24-34-305, 24-34-306, 24-34-605, are named as defendants in their official capacities.

27. Colorado Attorney General Cynthia H. Coffman, as one with authority to enforce the law at issue, *see, e.g.*, Colo. Rev. Stat. § 24-34-306, is named as a defendant in her official capacity.

28. All Defendants reside in the District of Colorado.

STATEMENT OF FACTS

Colorado Law Both Compels and Bans Speech

29. Colorado’s Anti-Discrimination Act (“CADA”) bans discrimination in places of public accommodation that occurs “because of” disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.

30. A “place of public accommodation” includes “any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public.” Colo. Rev. Stat. § 24-34-601(1).

31. This lawsuit challenges two provisions of CADA, both of which are codified in the same sentence of the law.

32. The first provision provides that it is unlawful for a person to do the following:

. . . directly or indirectly, to publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services,

facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.

33. This provision is codified at Colo. Rev. Stat. § 24-34-601(2)(a) and will be referred to as the "Banned-Speech Provision."

34. CADA does not define "unwelcome," "objectionable," "unacceptable," or "undesirable."

35. CADA does not include any standards or criteria for Defendants to abide by in determining whether a business's speech communicates that persons are "unwelcome," "objectionable," "unacceptable," or "undesirable."

36. The second provision provides that it is "unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation" Colo. Rev. Stat. § 24-34-601(2)(a).

37. This mandate, which compels expression when applied to expressive businesses, will be referred to as the "Compelled-Speech Provision."

38. As used herein, references to “CADA” encompass both the Banned-Speech Provision and the Compelled-Speech Provision, as well as related provisions, such as those pertaining to CADA’s enforcement.

39. If Defendants become aware of an alleged violation of CADA, Defendants will investigate the alleged violation.

40. If Defendants conclude that there has been a violation of CADA, Defendants will use their authority under CADA to end the violation.

41. Defendants’ power under CADA includes the ability to file a charge alleging discrimination.

42. Defendants’ power under CADA includes the ability to investigate charges of discrimination.

43. Defendants’ power under CADA includes the ability to determine whether probable cause exists for crediting charges of discrimination.

44. Defendants’ power under CADA includes the ability to hold hearings regarding charges of discrimination.

45. Defendants’ power under CADA includes the ability to issue subpoenas when evaluating charges of discrimination.

46. Defendants’ power under CADA includes the ability to compel mediation regarding charges of discrimination.

47. Defendants’ power under CADA includes the ability to determine whether the individual or business under investigation violated CADA.

48. Defendants' power under CADA includes the ability to issue notices of a right to sue to those alleging a violation of CADA.

49. Defendants' power under CADA includes the ability to issue cease-and-desist orders to prevent violations of CADA.

50. Defendants' power under CADA includes the authority to issue orders requiring the charged party to "take such action" as Defendants may order.

51. Remedial measures that Defendants have ordered in the past in enforcing CADA include those, such as re-education training, designed to indoctrinate persons charged with discrimination and compel them to profess Defendants' views on same-sex marriage and related subjects.

52. Defendants order these remedial measures to change the beliefs and speech of the charged parties.

53. Defendants even compel business owners to re-educate their staff, yet another form of compelled speech.

54. If a person believes that an individual or business has violated the Banned-Speech Provision or the Compelled-Speech Provision, that person can seek redress in court and, upon a finding of a violation, the court shall fine the individual or business between \$50.00 and \$500.00 for *each* violation.

Defendants Equate Opposing Same-Sex Marriage with Sexual Orientation Discrimination

55. Defendants interpret the Compelled-Speech Provision's ban on declining to provide services to

people “because of” sexual orientation as including a ban on declining to provide expressive services celebrating or promoting same-sex marriage because of political, moral, social, or religious objections to same-sex marriage.

56. Defendants have publically taken this position in litigation.

57. Because the Defendants consider it discrimination “because of” sexual orientation for a business to decline to provide expressive services promoting a same-sex marriage where it would provide expressive services promoting an opposite-sex marriage, the Banned-Speech Provision additionally bars public accommodations and their owners from publishing, circulating, issuing, displaying, posting, or mailing any communication that directly or indirectly indicates that the public accommodation will not provide expressive services that celebrate or promote same-sex marriage because of political, moral, social, or religious objections to same-sex marriage.

58. Such barred communications include statements that a business and its owners cannot provide expressive services celebrating or promoting same-sex marriage because of their religious beliefs.

59. Such barred communications include statements that a business and its owners believe that God designed marriage exclusively to be a union between one man and one woman and that any other conceptions of marriage are contrary to God’s design.

60. Such barred communications include statements that a business and its owners believe that marriages

between one man and one woman offer benefits to society or children that same-sex marriages do not offer.

Defendants Apply CADA in a Content and Viewpoint Based Manner

61. Defendants apply CADA in a way that allows certain views but punishes different views regarding marriage.

62. Defendants' viewpoint-based application of CADA is illustrated by the decisions of the Colorado Civil Rights Division ("Division") and the Colorado Civil Rights Commission ("Commission") regarding complaints of discrimination made against four Colorado bakeries.

63. The first Colorado bakery is Masterpiece Cakeshop, Inc., a public accommodation, which is owned and operated by Jack Phillips ("Phillips"), a Christian man.

64. A same-sex couple entered Masterpiece Cakeshop to order a wedding cake that they intended to use to celebrate their wedding at a wedding reception.

65. Because of his religious belief that God designed marriage to be a union between one man and one woman, Phillips respectfully declined to use his creative talents to create a wedding cake celebrating and promoting the marriage of the same-sex couple.

66. Phillips, however, informed the couple that while his religious beliefs prevented him from creating the requested wedding cake, he could provide other baked goods to them.

67. Despite this offer of service, the couple filed complaints with the Division alleging discrimination “because of” sexual orientation in violation of the Compelled-Speech Provision.

68. Former Interim Director Jennifer McPherson, on behalf of the Division, issued a probable cause determination concluding that Masterpiece Cakeshop violated the Compelled-Speech Provision’s prohibition of discrimination “because of” sexual orientation by declining to create the wedding cake due to Phillips and Masterpiece Cakeshop’s religious beliefs about marriage.

69. Phillips and Masterpiece Cakeshop challenged this determination, but Defendants maintained their position all the way to the Colorado Supreme Court where Phillips and Masterpiece Cakeshop’s petition for writ of certiorari was denied on April 25, 2016.

70. In defending themselves, Phillips and Masterpiece Cakeshop repeatedly expressed their willingness to serve everyone, regardless of sexual orientation, but their unwillingness to design and make cakes celebrating events or ideas that violate their Christian views.

71. For example, Phillips and Masterpiece Cakeshop noted that they will not create cakes promoting Halloween, anti-American themes, anti-family themes, atheism, racism, or indecency.

72. Despite these facts, Defendants maintained their position that Phillips and Masterpiece Cakeshop violated the Compelled-Speech Provision by declining to design and prepare the cake due to their objection to the cake’s message, which promoted and celebrated

same-sex marriage, and that determination was upheld by the Colorado Court of Appeals.

73. During the pendency of Phillips' and Masterpiece Cakeshop's case, the Division considered claims of discrimination brought against three other Colorado bakeries.

74. William Jack ("Jack"), a professing Christian, brought three complaints against the following public accommodations: Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

75. Regarding Azucar Bakery, Jack requested that the bakery provide him with price quotes for two cakes to express his religious views in opposition to same-sex marriage.

76. Jack requested that both cakes be made to look like Bibles; that both cakes bear the image of two groomsmen with a red "x" over the image; and that the cakes include three citations to the Bible and their accompanying text that conveyed the religious basis for his opposition to same-sex marriage.

77. Azucar Bakery said that it would not make cakes bearing the references to the Bible verses or the image that Jack requested.

78. Jack then filed a "creed" discrimination claim with the Division under CADA's Compelled-Speech Provision.

79. Defendants define CADA's prohibition on "creed" discrimination as encompassing "all aspects of religious beliefs, observances or practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong, and/or addresses ultimate ideas or questions regarding the meaning of existence, as well

as the beliefs or teachings of a particular religion, church, denomination or sect.” 3 CCR 708-1:10.2(H).

80. Former Interim Director Jennifer McPherson, on behalf of the Division, issued a “No Probable Cause” determination regarding Jack’s claim of “creed” discrimination.

81. The Division reached this determination by concluding that Azucar Bakery did not refuse to make the cakes due to Jack’s religion, but because Azucar Bakery objected to the message that would be expressed by the cakes.

82. In concluding that Azucar Bakery did not commit religious discrimination by refusing to make a cake for a Christian that expressed religious messages in opposition to same-sex marriage, the Division also noted that the bakery was willing to make other goods for Christians.

83. The matters involving Le Bakery Sensual, Inc. and Gateaux, Ltd. involved substantially similar facts, charges, rationales, and resolutions as those involved in the Azucar Bakery matter.

84. Thus, the Division concluded that the three bakeries did *not* violate the Compelled-Speech Provision’s prohibition of discrimination “because of” creed/religion when they refused to design and make a cake promoting religious messages opposing same-sex marriage because (1) their objection was message-based and (2) they gladly serve Christian customers who do not promote messages they find objectionable. The Commission affirmed these determinations.

85. In stark contrast, the Division and Commission concluded that Jack Phillips and Masterpiece

Cakeshop violated the Compelled-Speech Provision's prohibition of discrimination "because of" sexual orientation because they declined to design and make a cake celebrating and promoting messages supporting same-sex marriage due to their objection to that message. The Division and Commission reached this conclusion despite the fact that Phillips and Masterpiece Cakeshop happily serve gay and lesbian customers who are not asking them to promote messages they find objectionable.

86. All four bakeries willingly served people that fell within the protected classifications of CADA, and objected to the requested cakes based on their message—not any protected status of the customers.

87. However, when the requested message was one celebrating same-sex marriage, the Division and Commission concluded that declining to express it violates the Compelled-Speech Provision.

88. Whereas, when the requested message was one opposing same-sex marriage, the Division and Commission concluded that declining to express it did not violate the Compelled-Speech Provision.

89. Thus, Defendants force expressive businesses to express messages supporting same-sex marriage but they allow expressive businesses to refuse to express messages opposing same-sex marriage.

90. This is a content- and viewpoint-based interpretation and application of CADA.

Lorie Smith and Her Faith

91. Lorie Smith is a lifelong resident of Colorado, a devoted wife, a caring mother, and a dedicated Christian who is very involved in ministry.

92. Although she is a daughter, a wife, and a mother, Lorie identifies first and foremost as a Christian—a follower of Jesus Christ.

93. In addition to attending church and Bible study weekly, Lorie volunteers as an instructor in her church's ministry program for toddlers, leads multiple women's ministry events, and handles all of her church's print and electronic marketing and website outreach.

94. Lorie's religious beliefs are central to her identity, her understanding of existence, and her conception of her personal dignity and autonomy.

95. As a Christian, Lorie believes that her life is not her own, but that it belongs to God (1 Corinthians 6:19-20) and that He has called her to live a life free from sin (Romans 6:12-13).

96. Lorie also believes that everything she does—personally and professionally—should be done in a manner that glorifies God. (1 Corinthians 10:31; 2 Corinthians 5:15; Colossians 3:17; 1 Peter 4:11.)

97. Lorie believes that she will one day give an account to God regarding the choices she made in life, both good and bad. (2 Corinthians 5:10; Romans 14:12.)

98. Lorie's understanding of what is sinful versus what is pure, lovely, admirable, excellent, or praiseworthy are rooted in the Bible and her personal relationship with Jesus Christ.

99. Lorie believes that God instructs Christians to steward the gifts He has given them in a way that glorifies and honors Him. (1 Peter 4:10-11.)

100. Therefore, Lorie believes that she must use the creative talents God has given to her in a manner that honors God and that she must not use them in a way that displeases God.

303 Creative: Making Dreams Come True

101. Lorie has always been a creative, artistic, outgoing person, and has used and honed these traits at various companies in the fields of graphic design, website design, and marketing.

102. She also developed her skills at the University of Colorado Denver, where she received a business degree with an emphasis in marketing.

103. Desiring to have the freedom to use her creative talents to honor God to a greater degree than possible while working at other companies, Lorie started 303 Creative LLC.

104. 303 Creative is a business in Colorado that offers a variety of services to the public, including the following: graphic design, website design, social media management and consultation services, marketing advice, branding strategy, training regarding website management, and innovative approaches for achieving client goals.

105. As the sole owner and operator of 303 Creative, Lorie controls the scope, mission, priorities, services, and standards of 303 Creative.

106. 303 Creative does not employ or contract work to any other individuals, and Lorie is solely responsible for all of the services provided by 303 Creative.

107. As required by her sincerely held religious beliefs, Lorie seeks to live her life and operate 303 Creative in accordance with the tenets of her Christian faith.

108. One reason 303 Creative exists is to bring glory to God and to share His truth with its clients and the community by operating according to principles that honor and glorify God.

109. To this end, Lorie and 303 Creative seek to fulfill Jesus' command to love their neighbors as themselves and to do unto others as they would have done unto themselves by serving their customers with love, honesty, fairness, transparency, and excellence.

110. One purpose of 303 Creative is to develop and design unique visual and textual expression to promote the purposes, goals, services, products, events, causes, values, and messages of its clients insofar as they do not, in the sole discretion of Lorie, (1) conflict with Plaintiffs' religious beliefs or (2) detract from Plaintiffs' goal of publicly honoring and glorifying God through the work they perform.

111. Plaintiffs are willing to work with all people regardless of classifications such as race, creed, sexual orientation, and gender.

112. Plaintiffs do not object to and will gladly create custom graphics and websites for gay, lesbian, or bisexual clients or for organizations run by gay, lesbian, or bisexual persons so long as the custom graphics and websites do not violate their religious beliefs, as is true for all customers.

113. Lorie and 303 Creative are unwilling to use their creative services to promote purposes, goals,

services, products, organizations, events, causes, values, or messages that conflict with Plaintiffs' beliefs.

114. Among other things, Plaintiffs will decline any request to design, create, or promote content that: contradicts biblical truth; demeans or disparages others; promotes sexual immorality; supports the destruction of unborn children; incites violence; or promotes any conception of marriage other than as between one man and one woman.

115. Therefore, Plaintiffs' "Contract for Services" includes the following provision:

Consultant has determined that the artwork, graphics, and textual content Client has requested Consultant to produce either express messages that promote aspects of the Consultant's religious beliefs, or at least are not inconsistent with those beliefs. Consultant reserves the right to terminate this Agreement if Consultant subsequently determines, in her sole discretion, that Client desires Consultant to create artwork, graphics, or textual content that communicates ideas or messages, or promotes events, services, products, or organizations, that are inconsistent with Consultant's religious beliefs.

116. When considering a potential project, Lorie will view the prospective client's website (if applicable) and ask questions of the prospective client to assist in the vetting process of determining whether the requested project conflicts with Plaintiffs' religious beliefs and whether it is a good fit

given Plaintiffs' skills, schedule, preferences, and workload.

117. If Plaintiffs determine that they are unwilling to assist with a project promoting particular purposes, goals, services, organizations, products, events, causes, values, or messages they find objectionable, Plaintiffs endeavor to refer the prospective client to a different company that can assist them.

118. There are numerous companies specializing in the areas of 303 Creative's specializations.

119. Even if Plaintiffs were to hire additional employees or contract out work, it would violate their sincerely held religious beliefs to have the employees or independent contractors do work for Plaintiffs that Plaintiffs cannot do themselves due to their religious beliefs.

120. Another purpose of 303 Creative is to develop and design unique visual and textual expression that promotes, celebrates, and conveys messages that promote aspects of Lorie's Christian faith.

121. In furtherance of this end, 303 Creative regularly provides services to various religious and non-religious organizations that are advocating purposes, goals, services, events, causes, values, or messages that align with Plaintiffs' religious beliefs.

122. One of 303 Creative's specializations is custom graphic design for use online and in print.

123. One of 303 Creative's other specialties is custom website design and maintenance.

124. All of the graphic designs Plaintiffs create are expressive in nature, as they contain images, words, symbols, and other modes of expression that Plaintiffs use to communicate a particular message.

125. All websites designed by Plaintiffs are also expressive in nature, as they contain images, words, symbols, and other modes of expression that Plaintiffs use to communicate a particular message.

126. The visual and textual content Plaintiffs produce in both graphic design and website design are their own expression.

127. As a seasoned designer, Lorie helps individuals and entities implement the ideal websites and graphics—oftentimes by designing custom graphics and textual content for the unique needs involved—to enhance and effectively communicate the desired messages.

128. Although clients often have a very basic idea of what they wish for in a graphic or a website and sometimes offer specific suggestions, Lorie's creative skills transform her clients' nascent ideas into pleasing, compelling, marketable graphics or websites conveying the intended messages.

129. When designing and creating graphics or websites, Lorie is typically in close contact with her clients as they each share their ideas and collaborate to develop graphics or websites that express a message in a way that is pleasing to both Lorie and her clients.

130. Lorie ultimately has the final say over what she does and does not create and over what designs she does and does not use for each website.

131. For each website 303 Creative makes, Lorie typically creates and designs original text and graphics for that website and then combines that original artwork with text and graphics that Lorie had created beforehand or that Lorie receives from the client or from other sources. Lorie then combines the original text and graphics she created with the already existing text and graphics to create a wholly new, original website that is unique for each client.

132. Each website 303 Creative designs and creates is an original, customized creation for each client.

133. In her website design work, Lorie devotes considerable attention to color schemes, fonts, font sizes, positioning, harmony, balance, proportion, scale, space, interactivity, movement, navigability, and simplicity.

134. Lorie also considers color, positioning, movement, angle, light, simplicity, complexity, and other factors when designing graphics.

135. Lorie takes these factors and more into account to design websites and graphics that express the desired messages in a compelling manner.

136. Every aspect of the websites and graphics Plaintiffs design contributes to the overall messages that Plaintiffs convey through the websites and graphics and the efficacy of those messages.

137. Lorie personally devotes herself to her design work, drawing on her inspiration and sense of beauty to create websites and graphics that effectively communicate the intended messages.

303 Creative: Promoting God's Design for Marriage

138. Lorie believes that our cultural redefinition of marriage conflicts with God's design for marriage as a lifelong union between one man and one woman.

139. Lorie believes that this is not only problematic because it violates God's will, but also because it harms society and children because marriage between one man and one woman is a fundamental building block of society and the ideal arrangement for the rearing of children.

140. Lorie believes that our culture's movement away from God's design for marriage is particularly pronounced in the wake of the Supreme Court's *Obergefell v. Hodges* decision, which held that there is a constitutional right to same-sex marriage.

141. Lorie believes that the graphic design, web design, and marketing talents God blessed her with equip her to convey messages to the public in a compelling way.

142. Lorie's sincerely held religious belief is that she should use the talents God has given her to promote God's design for marriage.

143. Lorie is compelled by her religious beliefs to accomplish this by expanding the scope of 303 Creative's services to include the design, creation, and publication of wedding websites.

144. Consistent with her religious beliefs, Lorie desires to use her graphic design, web design, and marketing talents to promote and celebrate only marriages involving one man and one woman.

145. The wedding websites Plaintiffs wish to design, create, and publish will promote and celebrate the weddings of unique one-man, one-woman couples.

146. By celebrating and promoting the weddings of unique one-man, one-woman couples, Lorie and 303 Creative will be expressing messages that promote God's design for marriage as an institution between one man and one woman.

147. By creating wedding websites, Lorie and 303 Creative will also be collaborating with individuals who are marrying and will be using their unique stories as source material to express Lorie's and 303 Creative's message celebrating and promoting marriage as a union of one man and one woman.

148. The interaction between Plaintiffs and their clients who desire wedding websites will also allow Plaintiffs to strengthen and encourage marriages by sharing biblical truths with their clients as they commit to lifelong unity and devotion as man and wife.

149. The wedding websites will always be expressive in nature, using text, graphics, and in some cases videos to celebrate and promote the couple's wedding and unique love story.

150. All of these expressive elements will be customized and tailored to the individual couple and their unique love story.

151. The messages communicated on the wedding websites will be Plaintiffs' speech.

152. Viewers of the wedding websites will know that the websites are Plaintiffs' speech because all of

the wedding websites will say “Designed by 303Creative.com.”

153. Even if this designation did not exist, many viewers of the wedding websites would still know that the websites are Plaintiffs’ speech because couples that marry frequently inform their guests which entities provided services for the wedding and guests frequently make inquiries regarding the same.

154. A true and correct copy of an example of the type of wedding website that Plaintiffs desire to design for their prospective clients is attached as Exhibit A.¹

155. Plaintiffs are prepared to announce their services for the creation of wedding websites.

156. In fact, Plaintiffs have already designed an addition to 303 Creative’s website announcing the expansion of their services to include custom wedding websites, but this addition is not yet viewable by the public.

157. A true and correct copy of this addition to the website is attached as Exhibit B.²

158. This webpage expresses Plaintiffs’ love for weddings and the unique story of love and

¹ Exhibit A is a compilation of captured images of the website that are modified in size and scope to enhance readability in printed form.

² Exhibit B is a compilation of captured images of the website that are modified in size and scope to enhance readability in printed form.

commitment told by each wedding and the wedding websites that describe them.

159. The webpage also expresses Plaintiffs' religious motivation for creating wedding websites.

160. Plaintiffs' intended message of celebration and promotion of their religious belief that God designed marriage as an institution between one man and one woman will be unmistakable to the public after viewing the webpage.

161. For example, the webpage states the following:

I firmly believe that God is calling me to this work. Why? I am personally convicted that He wants me – during these uncertain times for those who believe in biblical marriage – to shine His light and not stay silent. He is calling me to stand up for my faith, to explain His true story about marriage, and to use the talents and business He gave me to publicly proclaim and celebrate His design for marriage as a life-long union between one man and one woman.

162. As part of Plaintiffs' religious calling to celebrate God's design for marriage and due to their sincerely held religious belief that they must be honest and transparent about the services that they can and cannot provide, the webpage also states that their religious beliefs prevent them from creating websites celebrating same-sex marriages or any other marriage that contradicts God's design for marriage.

163. For example, the webpage states the following:

These same religious convictions that motivate me also prevent me from creating websites promoting and celebrating ideas or messages that violate my beliefs, so I will not be able to create websites for same-sex marriages or any other marriage that is not between one man and one woman. Doing that would compromise my Christian witness and tell a story about marriage that contradicts God’s true story of marriage – the very story He is calling me to promote.

164. As part of their religiously-motivated speech, Plaintiffs desire to—and are prepared to—publish this webpage immediately.

303 Creative: Suffering from CADA’s Usurpation of Freedom

165. As a Colorado place of business engaged in sales to the public and offering services to the public, 303 Creative is a “place of public accommodation” subject to CADA. Colo. Rev. Stat. § 24-34-601(1), (2)(a).

166. The Banned-Speech Provision makes it illegal for Plaintiffs to publish the webpage referenced in paragraphs 156–157.

167. This is because the Banned-Speech Provision makes it unlawful for a public accommodation to publish, display, or post any written or electronic communication indicating that it will not provide expressive services celebrating or promoting a same-sex marriage that it will provide for marriages involving one man and one woman.

168. Plaintiffs' webpage announcing their services includes such communications.

169. The Compelled-Speech Provision also prevents Plaintiffs from publishing the website.

170. If, as the website referenced in paragraphs 156–157 does, Plaintiffs were to offer their creative services for the design and creation of wedding websites celebrating and promoting marriages between one man and one woman, the Compelled-Speech Provision would require Plaintiffs to also provide their creative services for the design and creation of wedding websites celebrating and promoting other types of marriages, including those between people of the same sex.

171. If Plaintiffs publish the website referenced in paragraphs 156–157, thereby advertising that they will design and create wedding websites, Plaintiffs will receive requests to provide those expressive services for same-sex weddings.

172. It would violate their sincerely held religious beliefs to create a wedding website for a same-sex wedding because, by doing so, they would be expressing a message celebrating and promoting a conception of marriage that is contrary to God's design for marriage.

173. Plaintiffs are unwilling to express a message celebrating and promoting any conception of marriage outside of the understanding of marriage as a union of one man and one woman.

174. Not only would creating a wedding website for a same-sex wedding express a message that Plaintiffs are unwilling to express, but it would also undercut

the effectiveness of Plaintiffs' desired expression promoting marriage as a union between one man and one woman, harm Plaintiffs' reputation among their Christian clients and friends, and adversely impact Plaintiffs' ability to share additional biblical truths with others.

175. Therefore, if Plaintiffs begin creating wedding websites, they will only be able to create wedding websites celebrating and promoting marriages involving one man and one woman.

176. However, the Compelled-Speech Provision, and Defendants' application thereof, does not allow Plaintiffs this freedom.

177. Unwilling to violate their sincerely held religious beliefs, but similarly unwilling to violate CADA and suffer the consequences, Plaintiffs are compelled to refrain from publishing the website referenced in paragraphs 156–157 and from designing, creating, and publishing wedding websites that celebrate and promote marriages between one man and one woman.

178. If not for CADA, Plaintiffs would have already made the webpage referenced in paragraphs 156–157 viewable to the public and begun offering their creative services for the design, creation, and publication of wedding websites that celebrate and promote marriages between one man and one woman.

179. CADA is the only reason that Plaintiffs are not engaging in their desired religious, political, moral, and social speech promoting marriage as an institution between one man and one woman and expressing their opposition to same-sex marriage.

180. If Plaintiffs obtain the relief requested in this Complaint, they will immediately publish the webpage referenced in paragraphs 156–157 and begin work designing, creating, and publishing wedding websites.

181. Website design services are widely available from businesses in the State of Colorado and across the nation.

182. For example, the online directory <http://sortfolio.com/> lists 243 web design companies in Denver alone and hundreds more nationwide.

183. Likewise, the online directory <http://www.designfirms.org> lists 131 web design companies in Colorado and 6,745 in the United States as a whole.

184. The online directory <http://unitedstateswebdesigndirectory.com> further lists 127 web design companies in Colorado and 4,097 countrywide.

185. Accordingly, persons will be able to easily access web design services to promote same-sex marriages if Plaintiffs are permitted to follow their convictions by declining to promote same-sex marriages while promoting marriages between one man and one woman.

Expressive Businesses in Colorado Advocate for Same-Sex Marriage

186. As explained, CADA is preventing Plaintiffs from celebrating and promoting their religious views about marriage in the manner they desire.

187. However, CADA allows other expressive businesses that are public accommodations under

CADA to celebrate and promote their views about marriage.

188. This distinction in treatment is based on the particular view that an expressive business holds regarding marriage.

189. If an expressive business wishes to oppose same-sex marriage, Defendants, through CADA, silence them.

190. If, however, an expressive business wishes to support same-sex marriage, Defendants allow them to do so.

191. For example, Nicole Nichols Photography, a wedding photography company based in Denver, Colorado, has a history of advocating for and celebrating same-sex marriage.

192. On October 22, 2010, the owner of Nicole Nichols Photography stated on her business's webpage that she photographed a gay wedding and loved how the pastor "focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people sharing their love & lives together. Throughout history gays have always been a part of reality, and always will be, it[]s just unfortunate government & religion has not always recognized it."

193. The webpage with this quote is available here: <http://nicolenichols.com/blog/weddings/wedding-gay-new-orleans/>.

194. On June 29, 2012, the photography company announced its participation in the Denver Pridefest and noted that the owner is "a big supporter of gay rights," is "a strong believer that ALL should have the

right to marry whomever he or she wants,” and believes that “love can change the world.”

195. The webpage with these quotes is available here: <http://nicolenichols.com/blog/specialevents/denver-pridefest-co-gay-weddings/>.

196. The owner of the photography company also published the following statement celebrating the Supreme Court’s *Obergefell* decision and advocating for the expansion of same-sex marriage to the remainder of the world: “I’m so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows Hopefully the rest of the world will soon follow.”

197. The webpage with this quote is available here: <http://nicolenichols.com/blog/weddings/denver-gay-wedding-photographer-denver-botanicalgardens-tivoli-hall/>.

198. Upon information and belief, many other Colorado expressive businesses and their owners promote their views in favor of same-sex marriage via the platforms of their public accommodations and publish their willingness to create expression celebrating those unions.

199. Plaintiffs support the rights of these expressive businesses and their owners to express their beliefs and conduct their businesses in a way that promotes those beliefs and does not promote contrary beliefs. Plaintiffs simply wish to enjoy those same freedoms. Yet CADA strips Plaintiffs of these freedoms. That is the foundational reason for this

lawsuit – to restore Plaintiffs to an equal footing with other expressive business owners in regard to their right to express messages that are consistent with their beliefs, and to avoid expressing those messages that are not.

ALLEGATIONS OF LAW

200. Plaintiffs Lorie Smith and 303 Creative LLC are subject to and must comply with Colorado laws, including Colo. Rev. Stat. § 24-34-601(2)(a).

201. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to Defendants, which acted under color of a statute, regulation, custom, or usage of the State of Colorado.

202. The impact of chilling and deterring Plaintiffs Lorie Smith and 303 Creative LLC from exercising their constitutional rights constitutes imminent and irreparable harm to Lorie Smith and 303 Creative LLC as a result of Defendants' policy and practice.

203. Plaintiffs Lorie Smith and 303 Creative LLC have no adequate or speedy remedy at law to correct or redress the deprivation of its rights under the United States Constitution by Defendants.

204. Unless the conduct of Defendants is enjoined, Plaintiffs Lorie Smith and 303 Creative LLC will continue to suffer irreparable injury.

CAUSES OF ACTION

First Cause of Action:

Violation of the Free Speech and Free Press Clauses of the First Amendment of the United States Constitution: Content and Viewpoint Discrimination, Compelled Speech, Expressive

**Association, Unconstitutional Conditions,
Unbridled Discretion, and Overbreadth**

205. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

206. Plaintiff Lorie Smith is the sole owner and operator of Plaintiff 303 Creative, a closely-held limited liability company.

207. Plaintiff Lorie Smith is a Christian who operates 303 Creative in accordance with her sincerely held religious beliefs.

208. Plaintiffs, in accordance with their sincerely held religious belief that all of their actions must be in accordance with the teachings of the Bible and their understanding of God’s plan, will only design, create, publish and sell custom websites that are consistent with their religious beliefs.

209. It is the sincerely held religious belief of Plaintiffs that the only proper conception of marriage is a marital covenant between one man and one woman.

210. Plaintiffs design, create, and publish artistic, custom websites promoting and celebrating various messages.

211. In doing so, Plaintiffs create and promulgate speech.

212. Each website Plaintiffs create is their own speech.

213. Plaintiffs’ custom websites, including the choice of graphics, format, sizing, color scheme, font size, font color, text, and interface; the process of

designing and creating the websites; the process of marketing, selling, and promoting the websites; the act of publishing the websites; and the business of designing, creating, publishing, and selling websites, all constitute protected speech under the First Amendment.

214. When Plaintiffs design and create a wedding website, they intend to and are creating speech celebrating and promoting the wedding described on the website.

215. Plaintiffs desire to design wedding websites to celebrate and promote their religious understanding of marriage as an institution between one man and one woman and as a fundamental building block of society.

216. Plaintiffs also desire to use their talents and platform to disseminate their view of God's design for marriage as an institution between one man and one woman and the benefits that such marriages have for society.

217. It would violate Plaintiffs' religious beliefs and conflict with their message about marriage to design and create a wedding website for any wedding, such as a same-sex wedding, that does not celebrate the marital union of one man and one woman.

218. Plaintiffs' design and creation of websites celebrating and promoting marriage between one man and one woman, and their decision to decline to design and create websites promoting any other conception of marriage, are protected by the First Amendment.

219. Plaintiffs also wish to inform the public that they are unwilling to create speech for events promoting marriages that are not between one man and one woman, including same-sex marriages. Along with this explanation, Plaintiffs wish to elucidate their religious reasons for not creating custom websites that violate their religious beliefs regarding marriage.

220. Plaintiffs wish to make such statements on their website and in electronic communications with prospective clients.

221. This desired speech is protected by the First Amendment.

CADA is Content Based and Viewpoint Discriminatory

222. The First Amendment's Free Speech Clause prohibits laws that regulate protected speech based on its content or viewpoint.

223. The Banned-Speech Provision is content-based because it regulates speech about a handful of topics—specifically disability, race, creed, color, sex, sexual orientation, marital status, national origin, and ancestry—while leaving as unregulated speech on the virtually unlimited number of other topics not listed in CADA.

224. For example, the Banned-Speech Provision prohibits statements asserting that political positions supporting same-sex marriage are misguided but allows statements opposing other political positions of all sorts.

225. This is content-based discrimination forbidden by the First Amendment.

226. The Banned-Speech Provision is also viewpoint discriminatory.

227. Defendants enforce the Banned-Speech Provision in a viewpoint discriminatory manner at least in relation to the topic of marriage.

228. Defendants will not prosecute or threaten to prosecute under the Banned-Speech Provision expressive businesses or their owners that provide wedding services and state that they support same-sex marriage and create for and promote messages in favor of same-sex marriage.

229. Defendants will, however, prosecute under the Banned-Speech Provision expressive businesses and their owners that provide wedding services and who state that they oppose same-sex marriage, that they exclusively favor marriages between one man and one woman, or that they decline to express messages favoring same-sex marriage.

230. Thus, in order to avoid prosecution and punishment, Colorado expressive businesses and their owners providing expressive wedding services must refrain from speaking messages that exclusively favor marriages between one man and one woman, that oppose same-sex marriage, or that decline to affirmatively promote or celebrate same-sex marriage.

231. This singling out, punishing, suppressing, and deterring certain speech solely based on its viewpoint about marriage is unlawful viewpoint discrimination.

232. If Plaintiffs were to make their desired statements, they would violate the Banned-Speech

Provision's content- and viewpoint-based restrictions on speech and face investigation and other penalties for the violation.

233. The Compelled-Speech Provision is also content and viewpoint based.

234. The First Amendment prevents the government from compelling people to create, express, or support a message not of their own choosing or to speak when they would rather remain silent.

235. Plaintiffs will only design and create wedding websites that promote and celebrate marriages between one man and one woman.

236. If Plaintiffs enter the business of designing and creating wedding websites for weddings celebrating and promoting the lifelong commitment of one man and one woman, the Compelled-Speech Provision requires them to also design and create wedding websites celebrating and promoting same-sex weddings.

237. Thus, the Compelled-Speech Provision requires Plaintiffs to engage in expression that they do not desire to convey—expression that violates their core religious beliefs—by requiring them to design and create websites celebrating and promoting same-sex marriage.

238. If Plaintiffs begin designing and creating wedding websites, as they desire, they will be subject to penalties for declining to design and create websites that promote and celebrate a conception of marriage that violates their deeply held religious beliefs.

239. The penalties that Plaintiffs may face for declining to promote messages they deem objectionable can include fines of up to \$500 for *each* violation, Colo. Rev. Stat. § 24-34-602(1)(a), a costly and onerous investigation, Colo. Rev. Stat. § 24-34-306(2)(a), an order requiring them to comply with CADA, Colo. Rev. Stat. § 24-34-306(9), and an order requiring them to take a variety of steps, such as reporting their own behavior to the Commission, engaging in indoctrination training, and affirmatively informing the public that they lack the First Amendment right to decline to produce and promote objectionable messages, see Colo. Rev. Stat. §§ 24-34-306(9), 24-34-605.

240. Notably, many of the potential penalties are themselves government-compelled speech.

241. The content and viewpoint-based nature of CADA is further illustrated by the punishment Jack Phillips and Masterpiece Cakeshop received for declining to celebrate and promote messages favoring same-sex marriage while Colorado businesses such as Azucar Bakery were permitted to decline to promote messages opposing same-sex marriage.

242. The fact that the Compelled-Speech Provision requires businesses to express messages consistent with government orthodoxy about same-sex marriage, while allowing them to decline to express messages contrary to such orthodoxy, is rank content and viewpoint discrimination.

The Compelled-Speech Provision Violates Plaintiffs' Right to Free Association

243. The First Amendment prohibits the government from compelling persons to expressively associate with others in the process of creating and disseminating speech.

244. The First Amendment also prohibits the government from banning people from expressively associating with others in the process of creating and disseminating speech.

245. Plaintiffs engage in expressive association when they decide to accept a client and collaborate with them to use the client's unique story and wedding event as source material for Plaintiffs' creation of speech that furthers Plaintiffs' beliefs.

246. The Compelled-Speech Provision harms Plaintiffs' ability to promote their beliefs about religion and marriage by requiring them to either decline to associate with clients and events that will help them promote messages celebrating marriages between one man and one woman or to willingly associate with clients and events that will require them to speak messages that completely contradict their desired messages.

247. Plaintiffs cannot authentically or convincingly promote their beliefs about religion and marriage if they are forced to associate with clients or events that will require Plaintiffs to express contradictory messages about religion and marriage.

CADA Conditions Benefits on Surrendering Rights

248. The First Amendment's Free Speech Clause prohibits the government from conditioning a benefit on the relinquishment of a constitutional right.

249. CADA imposes a content and viewpoint-based litmus test on the ability of Coloradans to own and operate an expressive business.

250. Plaintiffs have the First Amendment right to choose the content of their expression, to promote the messages they desire to promote, to participate in the creation of the speech they deem desirable, to exercise their religion by promoting messages consistent with their religious beliefs, and to decline to promote messages contrary to their religious beliefs.

251. But the Compelled-Speech Provision mandates that Plaintiffs create messages celebrating and promoting same-sex marriage and the Banned-Speech Provision bars them from expressing their religious views about same-sex marriage, thereby unconstitutionally conditioning the receipt of an essential benefit—specifically, the right to make a living in the occupation of one’s choice, the right to run a business, and the right to sell speech—on the willingness of Plaintiffs to surrender these First Amendment rights.

CADA’s Provisions Grant Defendants Unbridled Discretion

252. The First Amendment’s Free Speech Clause prohibits the government from regulating expression based on guidelines that give officials unbridled discretion to arbitrarily allow some expression and prohibit other expression.

253. In its application of the Compelled-Speech Provision, Defendants have shown that they have unbridled discretion to arbitrarily allow some expression and prohibit other expression.

254. If an expressive business is asked to create expression consistent with the ideology of Defendants and inconsistent with the beliefs of the expressive business, Defendants can oftentimes punish the expressive business if it adheres to its beliefs by declining to create the objectionable expression.

255. Defendants can do so by saying that the business owner declined to create the requested expression “because of” the protected classification of the customer rather than the objectionable nature of the message.

256. Defendants’ actions with respect to Jack Phillips and Masterpiece Cakeshop illustrate this point.

257. However, if a prospective customer asks an expressive business to produce a message that the business *and* Defendants find objectionable, Defendants are happy to afford the business owner the right to decline the objectionable speech.

258. Defendants can do so by saying that the business owner declined to create the requested expression due to the objectionable nature of the message rather than “because of” the protected classification of the customer.

259. Defendants’ actions with respect to Azucar Bakery and other bakeries illustrate this point.

260. Thus, Defendants have unbridled discretion to determine arbitrarily that one declination to create objectionable speech is “because of” a protected classification, and therefore illegal under the Compelled-Speech Provision, and to determine that another declination is because of the objectionable

nature of the speech rather than the protected classification of the customer.

261. The Banned-Speech Provision also grants unbridled discretion to Defendants by making it unlawful for a public accommodation to “publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates . . . that an individual’s patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.”

262. CADA does not define “unwelcome,” “objectionable,” “unacceptable,” or “undesirable,” and does not explain what statements “indicate” that someone would be unwelcome, objectionable, unacceptable, or undesirable “because of” a protected classification.

263. This language allows Defendants to censor speech out of dislike for particular viewpoints, allows Defendants to hide inappropriate viewpoint discrimination behind this language, and prevents potential speakers from knowing whether their speech violates the law.

264. Anytime a public accommodation or its owner opposes or criticizes someone’s ideas, someone’s beliefs, someone’s actions, or someone’s speech, Defendants could determine that that statement indicates someone is unwelcome, objectionable, unacceptable, or undesirable.

265. Because almost any statement could violate the wide reach of the Banned-Speech Provision, Defendants have unbridled discretion to pick and choose which statements violate the law, thereby subjecting the First Amendment rights of Plaintiffs and similarly situated citizens to the whims of government officials.

The Banned-Speech Provision is an Overbroad Prior Restraint on Speech

266. The Banned-Speech Provision is overbroad because it prohibits public accommodations from directly or indirectly publishing, circulating, issuing, displaying, posting, or mailing “any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual . . . because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.”

267. This language applies to both expressive and non-expressive businesses.

268. Nothing in the Banned-Speech Provision limits its scope to statements about non-expressive activities.

269. This language is overbroad because it restricts the right of expressive businesses like newspapers, book publishers, printers, musicians, authors, movie studios, playwrights, web designers, and others to create speech and communicate it in

accordance with their beliefs and to decline to speak and create speech that violates their beliefs.

270. The Banned-Speech Provision is also overbroad because it prohibits public accommodations from “directly or indirectly” publishing, circulating, issuing, displaying, posting, or mailing “any written, electronic, or printed communication, notice, or advertisement that indicates . . . that an individual’s patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.”

271. This prohibits too many protected statements—including political and religious ones—that oppose or criticize someone’s ideas, beliefs, actions, or speech.

272. It also prohibits too many protected statements—including political and religious ones—that exclusively favor someone’s ideas, beliefs, actions, or speech.

273. Further, the Banned-Speech Provision’s restriction on communications that even “indirectly” communicate a barred message imperils even more protected expression because what constitutes an “indirect” communication is completely undefined and thus permits enforcement officials to hide their viewpoint discrimination.

The Banned-Speech Provision Violates the Free Press Clause

274. The Free Press Clause prevents previous restraints upon publication and guarantees each

individual's right to make their thoughts public before the community.

275. The Free Press Clause protects Plaintiffs' right to discuss their religious beliefs about marriage on their website without previous restraint or fear of subsequent punishment by the government.

276. Defendants unlawfully apply the Banned-Speech Provision to forbid Plaintiffs from publishing religious speech critical of same-sex marriage on their website because such speech might "directly or indirectly" indicate that requests for custom same-sex wedding websites would be "unwelcome, objectionable, unacceptable, or undesirable."

277. Defendants' unlawful application of CADA to expressive activity is the only reason Plaintiffs have refrained from publishing speech on their website explaining their religious reasons for promoting only marriage between a man and a woman.

278. Defendants' application of CADA to prevent Plaintiffs from engaging in the free and general discussion of public matters, like marriage, violates the Free Press Clause.

The First Amendment Violations Chill Plaintiffs' Speech and Fail Strict Scrutiny

279. Absent the Banned-Speech and Compelled-Speech Provisions, Plaintiffs would immediately enter the field of promoting and celebrating marriages between one man and one woman through custom wedding websites.

280. Plaintiffs are prepared to begin this work by making the website reflected in Exhibit B announcing

their wedding-website design services available online for public consumption.

281. The only things preventing Plaintiffs from designing and creating websites celebrating and promoting marriage as an institution between one man and one woman are the Banned-Speech Provision and the Compelled-Speech Provision and Defendants' application thereof in a way that punishes those who decline to celebrate and promote same-sex marriage.

282. Because of CADA, Plaintiffs are chilled, deterred, and restricted from engaging in their desired expression celebrating and promoting marriage as an institution between one man and one woman.

283. Plaintiffs currently suffer the ongoing harm of self-censorship of their desired, protected speech, in order to avoid penalties under the Compelled-Speech and Banned-Speech Provisions.

284. The Banned-Speech Provision prohibiting statements indicating that someone is unwilling to celebrate and promote same-sex marriage and prohibiting other political, religious, or social commentary that may indicate that someone is "unwelcome, objectionable, unacceptable, or undesirable," and Defendants' enforcement of the Banned-Speech Provision, chills, deters, and restricts not only Plaintiffs' speech but the speech of third parties as well.

285. If not for CADA, Plaintiffs would immediately publish on their website the webpage attached as Exhibit B announcing their desire to celebrate

marriages between one man and one woman through the creation of custom wedding websites, their religious views regarding marriage, and their inability to celebrate same-sex marriages or other conceptions of marriage that are not between one man and one woman.

286. Because CADA infringes First Amendment free speech rights, it must further a compelling interest in a narrowly tailored way.

287. CADA does not serve any legitimate, rational, substantial, or compelling interest by forcing Plaintiffs to violate their First Amendment free speech or free press rights.

288. CADA does not serve any legitimate interest in a narrowly tailored way by forcing Plaintiffs to violate their First Amendment free speech or free press rights.

289. Defendants have alternative, less restrictive means to achieve any legitimate interests rather than forcing Plaintiffs to abandon their First Amendment free speech and free press rights.

290. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision's requirement that Plaintiffs create custom websites celebrating and promoting same-sex marriage if they decide to create custom websites celebrating marriages between one man and one woman infringes Plaintiffs' rights to speak and refrain from speaking, and to associate or refrain from associating, as protected by the First and Fourteenth Amendments of the United States Constitution.

291. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision's prohibition of statements indicating that someone is unwilling to celebrate and promote same-sex marriage and its prohibition on other political, religious, or social commentary that may indicate that someone is "unwelcome, objectionable, unacceptable, or undesirable" because they are part of a protected class violates Plaintiffs' right to speak freely as guaranteed by the First and Fourteenth Amendments of the United States Constitution.

292. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

Second Cause of Action:
Violation of Plaintiffs' First Amendment Right
to Free Exercise of Religion

293. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

294. Plaintiffs' sincerely held religious beliefs prohibit them from celebrating or promoting messages contrary to their understanding of the teachings of the Bible.

295. Plaintiffs sincerely believe that the Bible teaches that marriage is designed by God to be a lifelong union between one man and one woman only.

296. Therefore, Plaintiffs cannot design a wedding website for a same-sex wedding because that requires Plaintiffs to promote and celebrate messages contrary to their religious beliefs.

297. Plaintiffs hold sincere religious beliefs that require them to tell their clients and the general public that they cannot create custom expression that conflicts with their religious beliefs and the reasons they cannot create such custom expression.

298. Plaintiffs would violate their religious beliefs if they misled their customers to think that they create custom expression celebrating and promoting same-sex marriage when they do not.

299. Plaintiffs hold sincere religious beliefs requiring them to explain their religious beliefs about marriage and the religious reasons for and meaning of their expression.

300. Plaintiffs' religious beliefs about marriage, expression, honesty, and business come from the Bible and Christian doctrine.

301. The Compelled-Speech Provision forces Plaintiffs to choose between three unacceptable options: (1) decline to create custom expression celebrating and promoting same-sex wedding ceremonies because of their religious beliefs and suffer investigation, prosecution, and penalties as a result; (2) violate their religious beliefs by creating custom expression celebrating and promoting same-sex wedding ceremonies in order to comply with the law; or (3) restrict their religious exercise by refraining from using their God-given talents and platform to create custom expression celebrating and promoting marriages as God designed them.

302. The Banned-Speech Provision forces Plaintiffs to choose between two impossible options: (1) adhere to their religious beliefs, publish their

religiously motivated and required statements, and suffer investigation, prosecution, and penalties; or (2) violate their religious beliefs and refrain from publishing their religiously motivated and required statements.

303. The Compelled-Speech Provision violates Plaintiffs' right to the free exercise of religion by conditioning the right to own and operate a business that designs wedding websites celebrating and promoting marriage as God designed it on their willingness to violate their religious beliefs by celebrating and promoting same-sex marriage.

304. The Banned-Speech Provision violates Plaintiffs' right to the free exercise of religion by stopping them from operating their business in an open and honest way by barring them from stating what messages they will not express due to their religious beliefs.

305. The Banned-Speech Provision violates Plaintiffs' right to the free exercise of religion by preventing them from using their closely-held business as a platform to express their religious beliefs about marriage, the expression of which are religiously motivated.

306. The Compelled-Speech Provision and Defendants' enforcement thereof impermissibly prefer some religious views over others by allowing those whose religion is consistent with same-sex marriage to own and operate an expressive business in the wedding industry while punishing those who own and operate marriage-related expressive businesses in accordance with their religious beliefs

that prohibit them from celebrating or promoting same-sex marriage.

307. The Banned-Speech Provision and Defendants' enforcement thereof impermissibly prefer some religious views over others by allowing those who own and operate public accommodations to express religious beliefs in favor of same-sex marriage but not allowing them to express religious beliefs against same-sex marriage.

308. CADA is not facially or operationally neutral or generally applicable and imposes special disabilities on Plaintiffs due to their religious beliefs.

309. CADA, facially and as applied by Defendants, is not neutral or generally applicable because Defendants enforce it through a system of individualized exemptions under which they assess the reasons for an exemption and grant exemptions for nonreligious reasons but not for religious reasons.

310. CADA, facially and as applied by Defendants, is not neutral or generally applicable because it contains categorical exemptions, including one for any "church, synagogue, mosque, or other place that is principally used for religious purposes." Colo. Rev. Stat. § 24-34-601(1).

311. Given CADA's broad exemption for such religious entities, Defendants have no legitimate basis for refusing to extend a religious exemption to Plaintiffs who have at least as strong of a religious objection to celebrating and promoting same-sex marriage as any of the exempted entities and at least as strong of a religious motivation to express

messages about their religious beliefs regarding God's design for marriage as any of the exempted entities.

312. Additionally, Defendants apply CADA in a way that protects the religious beliefs of expressive business owners who share their views, but punishes expressive business owners who hold religious beliefs contrary to Defendants' views.

313. For example, when an expressive business owner's religious beliefs prevent her from promoting and celebrating same-sex marriage, Defendants enforce the Compelled-Speech Provision in a manner that requires the expressive business owner to violate her religious beliefs by promoting and celebrating same-sex marriage if she wishes to be in the marriage industry.

314. In contrast, when an expressive business owner's beliefs lead her to refuse to promote and celebrate a religious message opposing same-sex marriage, Defendants interpret the Compelled-Speech Provision as allowing the business to decline to create the message that both the business owner and Defendants find objectionable.

315. CADA also violates Plaintiffs' free exercise rights under the hybrid rights doctrine because it implicates free exercise rights in conjunction with other constitutional protections, like the right to free speech.

316. Plaintiffs' compliance with their religious beliefs constitutes a religious exercise under the First Amendment.

317. CADA substantially burdens Plaintiffs' religious exercise.

318. CADA imposes severe coercive pressure on Plaintiffs to change or violate their religious beliefs and chills and deters Plaintiffs' religious exercise by suppressing their religiously motivated and required messages.

319. Absent the Compelled-Speech Provision, Plaintiffs would immediately act in accordance with their religious beliefs by entering the field of designing and creating wedding websites celebrating and promoting marriage as God designed it.

320. Absent the Banned-Speech Provision, Plaintiffs would immediately speak and publish their religiously motivated and required messages about God's design for marriage and the religious reasons that they are unwilling to celebrate other views of marriage.

321. If not for CADA, Plaintiffs would immediately publish on their website the webpage attached as Exhibit B announcing their desire to celebrate marriages as God designed them, their religious views regarding marriage, and their inability to celebrate same-sex marriages or other conceptions of marriage that are not between one man and one woman.

322. Plaintiffs currently suffer ongoing harm because of CADA—namely, the self-censorship and suppression of their religiously motivated and required messages to avoid violating the law and incurring resulting penalties.

323. Because CADA is not facially or operationally neutral or generally applicable and imposes special disabilities on Plaintiffs due to their religious beliefs,

and because it also burdens other fundamental constitutional rights, it must further a compelling interest in a narrowly tailored way.

324. Defendants do not serve any legitimate, rational, substantial, or compelling interest in forcing Plaintiffs to violate their religious beliefs by designing and creating a wedding website that celebrates and promotes same-sex marriage.

325. Defendants do not serve any legitimate, rational, substantial, or compelling interest in forcing Plaintiffs to violate their religious beliefs by refraining from expressing their religiously motivated and required statements.

326. To achieve any legitimate interests that Defendants may assert, Defendants have many alternative, less restrictive mechanisms available.

327. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision violates their free-exercise rights.

328. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision violates their free-exercise rights.

329. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

Third Cause of Action:
Violation of Plaintiffs' Fourteenth Amendment
Right to Equal Protection

330. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

331. The government may not treat someone disparately as compared to similarly situated persons and businesses when such disparate treatment burdens a fundamental right.

332. Plaintiffs are similarly situated to other persons and expressive businesses that provide marriage-related services and express religious and political messages about marriage.

333. The Compelled-Speech Provision and Defendants' enforcement thereof treat Plaintiffs' religious and political speech and religious exercise differently from those similarly situated to Plaintiffs by permitting those whose religious and political beliefs support same-sex marriage to own and operate a marriage-related expressive business according to their religious and political beliefs without fear of punishment, while imposing penalties on those who own and operate marriage-related expressive businesses according to their religious and political beliefs that bar them from celebrating and promoting same-sex marriage.

334. The Compelled-Speech Provision and Defendants' enforcement thereof make it illegal for public accommodations and their owners to decline to express views favoring one conception of marriage that they may find objectionable—namely, the view that it is good for two people of the same sex to marry—but permissible to decline to express views favoring a contrary conception of marriage that they may find objectionable—namely, the view that it is not good for two people of the same sex to marry.

335. That CADA permits public accommodations to decline to express one view about marriage but does

not allow them to decline to express another view about marriage is revealed by the different outcomes reached by Defendants in applying the Compelled-Speech Provision to Masterpiece Cakeshop and the similarly situated Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

336. The Banned-Speech Provision and Defendants' enforcement thereof treat Plaintiffs' religious and political speech and religious exercise differently from those similarly situated to Plaintiffs by permitting those whose religious and political beliefs support same-sex marriage to express their beliefs without fear of punishment, while imposing penalties on those who express political and religious beliefs opposing same-sex marriage.

337. CADA, and Defendants' discriminatory enforcement thereof, violates several fundamental rights of Plaintiffs, such as their freedom of speech and free exercise of religion.

338. When the enforcement of laws, like CADA, infringe on such fundamental rights, courts presume discriminatory intent.

339. In this case, the presumption of discriminatory intent is borne out by Defendants' intentional discrimination against the rights of free speech and free exercise of religion by Plaintiffs and those like Plaintiffs who hold traditional Christian beliefs about marriage as an institution between one man and one woman.

340. The discriminatory intent is also shown by the different outcomes reached by Defendants in applying the Compelled-Speech Provision to

Masterpiece Cakeshop and the similarly situated Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

341. Defendants lack any legitimate, rational, substantial, or compelling state interest for such disparate treatment of Plaintiffs.

342. Defendants' disparate treatment of Plaintiffs is not narrowly tailored to further any legitimate government interest Defendants' may allege.

343. CADA, as applied to Plaintiffs, therefore violates their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

344. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

Fourth Cause of Action:
Violation of Plaintiffs' Fourteenth Amendment
Right to Due Process

345. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

346. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to due process of law, which includes the right to own and operate a business and earn a livelihood free from unreasonable governmental interference.

347. CADA unreasonably interferes with Plaintiffs' due process rights by threatening them with punishment if they operate 303 Creative in accordance with their religious convictions.

348. The Due Process Clause of the Fourteenth Amendment also prohibits the government from censoring speech or outlawing behavior pursuant to vague standards that grant unbridled discretion to government officials to arbitrarily prohibit some expression and action and that fail to give speakers and actors sufficient notice whether their speech or actions violate the law.

349. The Banned-Speech Provision contains vague language because it prohibits the publication of statements indicating that an individual is “unwelcome, objectionable, unacceptable, or undesirable” because that individual belongs to one of the particular classifications, such as “sexual orientation,” covered by CADA.

350. CADA never defines “unwelcome,” “objectionable,” “unacceptable,” or “undesirable.”

351. CADA also fails to explain what statements indicate that someone is “unwelcome, objectionable, unacceptable, or undesirable” “because” that individual belongs to one of the classifications stated in CADA.

352. CADA also fails to define what constitutes an “indirect” communication versus a “direct” communication.

353. This vague language grants Defendants unbridled discretion to censor speech out of dislike for particular viewpoints and to hide their viewpoint discrimination behind vague language.

354. This vague language, and Defendants’ unbridled discretion to choose how to enforce the

language, prevents potential speakers from knowing whether their speech violates the law.

355. Anytime a public accommodation or its owner opposes or criticizes someone's ideas, someone's beliefs, someone's actions, or someone's speech, Defendants could determine that the statement communicates that a person is unwelcome, objectionable, unacceptable, or undesirable.

356. Thus, citizens of common intelligence must guess about what it means to make a statement indicating that someone is "unwelcome, objectionable, unacceptable, or undesirable" because that person belongs to a protected classification and they will differ in the conclusions they reach in making this assessment.

357. The Banned-Speech Provision provides insufficient warning or notice as to what expression is prohibited.

358. Because almost any statement could violate the Banned-Speech Provision, Defendants must pick and choose which statements violate the law.

359. Therefore, the rights of Plaintiffs and other Coloradans now turn on the whim of government officials, and Plaintiffs and other Coloradans therefore cannot know whether their desired speech violates the law.

360. Because the Banned-Speech Provision does not provide sufficient clarity to those who desire to speak and empowers Defendants to impose severe penalties on speakers whose views they disfavor, Plaintiffs have not and will not publish their desired statements about the speech they are unwilling to

engage in and their religious views on marriage in order to avoid violating the law and incurring the accompanying penalties.

361. If not for the vagueness in the Banned-Speech Provision, Plaintiffs would speak their desired messages immediately.

362. The Banned-Speech Provision chills and deters Plaintiffs' speech.

363. Plaintiffs currently suffer ongoing harm because of the Banned-Speech Provision—namely, the self-censorship and suppression of their protected speech to avoid violating CADA and incurring penalties.

364. Because CADA chills, deters, and infringes on the due process rights of Plaintiffs and other citizens, CADA must further a compelling interest in a narrowly tailored way.

365. Defendants have no legitimate, rational, substantial, or compelling interest in stopping Plaintiffs from owning and operating a business and from earning a livelihood.

366. CADA and Defendants do not serve any legitimate interest in a narrowly tailored way by stopping Plaintiffs from owning and operating a business and from earning a livelihood.

367. Defendants do not serve any legitimate, rational, substantial, or compelling interest in using vague language to deter Plaintiffs from communicating as they desire.

368. The Banned-Speech Provision and Defendants do not serve any legitimate interest in a

narrowly tailored way in using vague language to deter Plaintiffs' speech.

369. Defendants have many alternative, less restrictive mechanisms to achieve any legitimate interests.

370. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision violates their right to due process as guaranteed by the Fourteenth Amendment of the United States Constitution.

371. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision violates their right to due process as guaranteed by the Fourteenth Amendment of the United States Constitution.

Fifth Cause of Action:
Fourteenth Amendment Substantive Due
Process and Equal Protection Challenge to
Denial of Religious Identity, Personal Dignity,
Personal Autonomy, and Personal Liberty

372. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

373. The Supreme Court's majority opinion in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and other Supreme Court precedent, dictates that the Fourteenth Amendment protects the liberty of individuals to make choices central to their own dignity and autonomy, including choices that define their personal identity and beliefs.

374. Lorie's religious understanding is that human dignity arises from God's creation of man in His own image. *See* Genesis 1:26-27.

375. Lorie understands that a Christian becomes a “new creation in Christ” and this knowledge is a key aspect of her identity as a Christian. 2 Corinthians 5:17.

376. According to the Supreme Court’s decision in *Obergefell*, the Fourteenth Amendment protects the rights of individuals to serve their God in accordance with the dictates of their own consciences, thereby allowing them to make the decisions that define their personal identity and inseparable religious beliefs.

377. The Fourteenth Amendment, under longstanding caselaw, also guarantees the right to pursue one’s entrepreneurial dreams, engage in the common occupations of life, operate a business, earn a livelihood, and continue employment unmolested.

378. In the United States, the right to pursue one’s entrepreneurial dreams is fundamental as a matter of history and tradition.

379. The Fourteenth Amendment protects such personal rights essential to individuals’ orderly pursuit of happiness.

380. The desire of individuals to use their own talents and imaginations to pursue a livelihood is part of the deeply held ethos of the American dream. To deny that dream to those with certain deeply held religious beliefs is to devalue their identity, dignity, liberty, and potential to find fulfillment, and imposes on them an abhorrent degree of stigma and injury.

381. According to Supreme Court precedent, such as *Obergefell*, while a state can have its own views of the ideal ordering of society, when it imposes those beliefs through law with the necessary consequence of

putting the imprimatur of the State on excluding people with certain personal beliefs from the pursuit of basic liberties, they demean and stigmatize those individuals in a manner forbidden by the Fourteenth Amendment.

382. Under the Supreme Court's precedent, to deny certain people the right to engage in business in a way that is consistent with their own concepts of existence and identity is to deny them liberty, disparage their intimate personal choices and identity, and devalue their personhood.

383. Lorie's religious beliefs, including her religious understanding about marriage as an institution between one man and one woman, are central to her dignity, autonomy, and identity. Mark 10:6-9; Ephesians 5: 31-33.

384. Although she is a daughter, a wife, and a mother, Lorie identifies first and foremost as a Christian—a follower of Jesus Christ—and her decision to act consistently with her religious understanding of marriage defines her personal identity.

385. Lorie's sincerely held religious understanding is that she must conduct herself in accordance with the teachings of the Bible whether at home or at work. Colossians 3:23-25.

386. Lorie cannot live consistently with her religious understanding and Christian identity if she is required to say or do things that are inconsistent with her faith or if she is forbidden to say or do what she desires to further or promote her Christian beliefs.

387. Lorie's sincerely held religious understanding that God designed marriage as a lifelong institution between one man and one woman, and that any other conception of marriage violates God's plan, is inextricably intertwined with her own identity, beliefs, equal dignity as a citizen, and personal autonomy.

388. Lorie's desire to engage in the marketplace by celebrating weddings as she believes God designed them is an expression of her personal identity and her religious understanding of marriage, both of which are central to her equal dignity as a citizen and personal autonomy.

389. Lorie's decision to publically express her beliefs about marriage is a religious calling that defines her personal identity and beliefs and is central to her equal dignity as a citizen and personal autonomy.

390. Lorie's ability to follow her chosen expressive profession, in keeping with her religious beliefs, free from unreasonable government interference also comes within the definition of "liberty" and "property" under the Due Process Clause.

391. The Due Process Clause's definition of "liberty" further protects Lorie's right to express her religious understanding of marriage and establish her religious self-definition in the political, civic, and economic life of the larger community.

392. The Compelled-Speech Provision's requirement that Lorie facilitate, participate in, celebrate, and promote same-sex weddings if she uses her business to celebrate and promote weddings that she

believes are wonderful in the eyes of God devalues her self-identity, dignity, liberty, intimate personal choices, and personhood and instead denies her dignity as an equal citizen, stigmatizes her as a social pariah, disallows her from pursuing her chosen profession, and punishes her in violation of the Fourteenth Amendment.

393. The Banned-Speech Provision's requirement that Lorie refrain from speaking about her religious understanding of marriage denies her the right to make intimate personal choices central to her equal dignity as a citizen, personal autonomy, identity, beliefs, liberty, and personhood and devalues her dignity as an equal citizen, stigmatizes her as a social pariah, disallows her from pursuing her chosen profession, and punishes her in violation of the Fourteenth Amendment.

394. Because CADA infringes these rights under the Fourteenth Amendment, it must further a compelling interest in a narrowly tailored way.

395. CADA does not serve any legitimate, rational, substantial, or compelling interest by forcing Lorie to abandon her religious identity, equal dignity as a citizen, personal autonomy, and liberty, and instead imposing gross stigma and denying Lorie's equal dignity as a citizen.

396. In addition to CADA not serving a legitimate—let alone compelling—interest, it is not narrowly tailored to do so regardless.

397. Defendants have alternative, less restrictive means to achieve any legitimate interest rather than forcing Lorie to abandon her religious identity, equal

dignity as a citizen, personal autonomy, and personal liberty and face government-imposed stigma.

398. Accordingly, as applied to Lorie, CADA denies Lorie the right to make intimate choices that define her religious identity, personal dignity, personal autonomy, and personal liberty and instead stigmatizes Lorie and denies her equal dignity as a citizen in violation of the Fourteenth Amendment of the United States Constitution.

399. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to enter judgment against Defendants and to provide the following relief:

1. A preliminary injunction and permanent injunction to stop Defendants and any person acting in concert with them from enforcing the Banned-Speech Provision facially, and as-applied to Plaintiffs' desired communications (a) promoting marriage exclusively as an institution between one man and one woman, (b) declining to create websites or graphics promoting events or ideas that violate their beliefs about marriage, such as websites for same-sex weddings, and (c) explaining their religious beliefs about what they can and cannot create;

2. A declaration that the Banned-Speech Provision violates the United States Constitution's Free Speech Clause, Free Press Clause, Free Exercise Clause, Equal Protection Clause, and Due Process Clause facially, and as-applied to Plaintiffs' desired

communications (a) promoting marriage exclusively as an institution between one man and one woman, (b) declining to create websites or graphics promoting events or ideas that violate their beliefs about marriage, such as websites for same-sex weddings, and (c) explaining their religious beliefs about what they can and cannot create;

3. A preliminary injunction and permanent injunction to stop Defendants and any person acting in concert with them from enforcing the Compelled-Speech Provision to require Plaintiffs to create websites or graphics promoting events or ideas that violate their beliefs that marriage should only be an institution between one man and one woman, such as websites promoting same-sex weddings;

4. A declaration that the Compelled-Speech Provision violates the United States Constitution's Free Speech Clause, Free Exercise Clause, Equal Protection Clause, and Due Process Clause when the Compelled-Speech Provision is applied to force Plaintiffs to create websites or graphics promoting events or ideas that violate their beliefs that marriage should only be an institution between one man and one woman, such as websites promoting same-sex weddings;

5. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy so that these declarations shall have the force and effect of a final judgment;

6. That this Court retain jurisdiction of this matter for the purpose of enforcing its orders;

7. That this Court award Plaintiffs' costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;

8. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and

9. That this Court grant any other relief that it deems equitable and just in the circumstances.

Respectfully submitted this 20th day of September, 2016.

s/ *Jeremy D. Tedesco*

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Attorneys for Plaintiffs

**DECLARATION UNDER PENALTY OF
PERJURY**

I LORIE SMITH, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of September, 2016, at Littleton, Colorado.



LORIE SMITH
303 CREATIVE LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-02372-MSK

303 CREATIVE LLC, and
LORIE SMITH,

Plaintiffs,

V.

AUBREY ELENIS,
CHARLES GARCIA,
AJAY MENON,
MIGUEL RENE ELIAS,
RICHARD LEWIS,
KENDRA ANDERSON,
SERGIO CORDOVA,
JESSICA POCOCK, and
PHIL WEISER,

Defendants.

FINAL JUDGMENT

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Opinion and Order Granting Summary Judgment, filed September 26, 2019, by the Honorable Marcia S. Krieger, Senior United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that judgment is hereby entered in favor of defendants, Aubrey Elenis, Charles Garcia, Ajay Menon, Miguel Rene Elias, Richard Lewis, Kendra Anderson, Sergio Cordova, Jessica Pockock,

and Phil Weiser, and against plaintiffs, 303 Creative LLC and Lorie Smith. It is further

ORDERED that plaintiffs' complaint and action are dismissed with prejudice.

DATED at Denver, Colorado this 26th day of September, 2019.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

s/ Robert R. Keech

Robert R. Keech,
Deputy Clerk



REQUEST FOR INFORMATION

Please submit the following specific, written information and/or documentation by the deadline indicated. Your failure to do so may result in our issuing a finding based on the available evidence.

Please be advised that you are expected to provide a complete response to each question. If you, or your representative, believe that a question is impermissible, is not relevant, or is overly broad in scope, do not simply object and/or decline to answer. Rather, contact the assigned investigator to discuss your concerns. Failure to do so will be viewed as a refusal to cooperate. The investigator is always willing to discuss the scope of the request, and in most instances, can narrow, modify and/or clarify it to ensure that only information essential to the specific facts and allegations of your case is required.

SUBPOENA POWER NOTICE: You should be aware that the State of Colorado's Anti-Discrimination statute grants the Director of the Colorado Civil Rights Division the authority to subpoena witnesses and to compel the production of books, papers and records relevant to the charge [C.R.S. 24-34-306(2)(a)]. Such subpoena is enforceable in the district court in which the alleged discriminatory practice occurred. Subpoena authority is exercised only when, in the judgment of the

Director, the Respondent's failure to voluntarily cooperate makes it necessary.

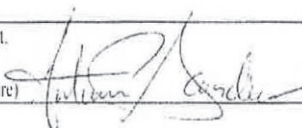
1. Written Position Statement in response to the Charge of Discrimination to include:
 - a. a specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.
 - b. General nature of your business or organization and the service it provides.
 - c. Your response should contain the name, job/position title; the comparative protected class information (e.g. if the Charging Party is alleging racial discrimination, indicate race) of the official(s) who made the business decision which is the basis of this complaint.
 - d. Also, identify by job/position title and any other employee(s) who was/were involved in this business decision and provide the protected class information for these individuals.
 - e. Provide supporting documentation substantiating the reason(s) for the business decision.
2. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reason(s) for Charging Party's asserted denial of the goods, services, benefits or privileges offered. *For each witness,*

give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and protected class identification:

- a. *If a person named above is no longer a member/employee*, provide the above requested identifying information, the affiliation separation date and a brief reason for the separation.
3. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. *If not available in written form*, please provide a written explanation of how such situations have been handled in the past.
4. Provide any other information/documentation/witnesses you deem relevant to the merits of this complaint or which you believe will support your position.
5. Note if the Charging Party is currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?
6. Provide a list of any individuals you have denied goods, services, benefits, or privileges to in the past. Provide the protected class

information for the individuals listed and briefly state the reason for each denial.

**COLORADO DIVISION
July 20 2017
OF CIVIL RIGHTS**

CHARGE OF DISCRIMINATION The Privacy Act of 1974 affects this form. See Privacy Act Statement before completing this form.		CCRD Charge No. CP2018011310
<i>COLORADO CIVIL RIGHTS DIVISION</i>		
Name (Charging Party) Autumn Scardina		(Area Code) Telephone (818) 205-5560
Street Address 7779 Everett Way	City, State, and Zip Code Arvada, CO 80005	County Jefferson
Name of Place of Public Accommodation (Respondent) Masterpiece Cakeshop Incorporated		(Area Code) Telephone (303) 763-5754
Street Address 3355 S. Wadsworth Blvd	City, State, and Zip Code Lakewood, CO 80227	County Jefferson
Discrimination Based on: Sex (Female); Transgender (Gender Identity)		Date Most Recent Discrimination Occurred June 26, 2017
<p>I. Jurisdiction: The Colorado Civil Rights Division has jurisdiction over the subject matter of this charge; that each named Respondent is subject to the jurisdiction of the Colorado Civil Rights Division and is covered by the provisions of the Colorado Revised Statutes (C.R.S. 1973, 24-34-301, et. seq.), as reenacted.</p> <p>II. Personal Harm: That on or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation based on my sex (female) and/or transgender (gender identity).</p> <p>III. Respondent's Position: N/A</p> <p>IV. Discrimination Statement: I believe I was unlawfully discriminated against because: of my protected class (es) in violation of the Colorado Anti-Discrimination Act (CADA). 1.) On or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation. Specifically, the Respondent refused to prepare my order for a cake with pink interior and blue exterior, which I disclosed was intended for the celebration of my transition from male to female. Furthermore, the Respondent indicated to me that to prepare such a cake would be against their religious beliefs. 2.) I believe I was discriminated against because of my protected class (es).</p> <p>V. WHEREFORE: The Charging Party prays that the Colorado Civil Rights Division grant such relief as may exist within the Division's power and which the Division may deem necessary and proper.</p>		
I declare under penalty of perjury that the foregoing is true and correct.		
Date	7/20/17	(Charging Party/Complainant (Signature) 

Statement of Discrimination

First Date of Occurrence

Why you think the incident or action taken was discriminatory (e.g. “This incident shows that I was denied service because of my age”).

On June 26, 2017, I contacted Masterpiece Cakeshop to request that they prepare a birthday cake to celebrate my upcoming birthday. They asked what I wanted the cake to look like, and I explained I was celebrating my birthday on July 6, 2017 and that it would also be the 7th year anniversary of my transition from male to female. When I explained I am a transgender and that I wanted my birthday cake to celebrate my transition by having a blue exterior and a pink interior, they told me they will not make the cake based on their religious beliefs. I was stunned and asked for the woman’s name. The phone was disconnected. I called back and explained we got disconnected and believe I was hung up on. I called again and asked that they give me the employees name, and I was hung up on again.

Was anyone treated more favorably than you? Who? Provide information related to their protected classes (e.g., if you are alleging race discrimination, what is the person’s race? If age discrimination, what was the person’s age?)

I believe so. I cannot be sure because I am not a part of all their sales, but the woman on the phone did not object to my request for a birthday cake until I told her I was celebrating my transition from male to female. I believe that other people who request birthday cakes get to select the color and theme of the

cake. I believe that I was not allowed to order a birthday cake because I requested that its color and theme celebrate my transition from male to female. The woman on the phone told me they do not make cakes celebrating gender changes.

STATE OF COLORADO COLORADO CIVIL RIGHTS COMMISSION	▲ COURT USE ONLY ▲
AUTUMN SCARDINA, Complainant, v. MASTERPIECE CAKESHOP INCORPORATED and JACK PHILLIPS, Respondents.	
Charge No. CP2018011310 Case Number: CR 2018_____	
NOTICE OF HEARING AND FORMAL COMPLAINT	

YOU ARE HEREBY NOTIFIED pursuant to § 24-34-306(4) C.R.S., that a hearing will be held before an Administrative Law Judge at 9:00 a.m. on **Monday February 4, 2019** on the fourth floor at the Office of Administrative Courts, 1525 Sherman Street, Denver, Colorado 80203, to determine whether Respondents violated § 24-34-601 *et seq.*, C.R.S. (2018) by denying Complainant Autumn Scardina (Scardina) the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations at its place of public accommodation because of Scardina's sexual orientation (transgender status).

Pursuant to the authority set forth in §§ 24-34-305(1)(d) and 24-34-306(4), C.R.S. (2018), the Colorado Civil Rights Commission (Commission),

having determined that the circumstances warrant a hearing, hereby charges and alleges as follows:

1. Respondent, Masterpiece Cakeshop Incorporated (Masterpiece or “the bakery”), is a bakery that engages in sales of goods and services to the public. Masterpiece is a place of public accommodation as defined by § 24-34-601(1), C.R.S., and is therefore subject to the jurisdiction of the Commission.

2. Respondent, Jack Phillips (Phillips) is the owner and operator of Masterpiece, and is a person as defined by §24-34-301(5)(a), C.R.S. As Masterpiece’s owner, Phillips is responsible for providing the full and equal enjoyment of its goods and services to the public regardless of protected class, and is therefore subject to the jurisdiction of the Commission.

3. Timeliness and all other jurisdictional and procedural requirements of title 24, article 34, parts 3 and 4 have been satisfied.

4. Upon information and belief, on June 26, 2017, Scardina contacted Masterpiece by telephone to order a cake to celebrate her birthday. Scardina asked if the bakery sold made-to-order birthday cakes. The individual on the phone answered in the affirmative and asked for the date of her birthday. Scardina responded that it was on July 6th and asked if that would be enough time to make the cake. Masterpiece’s representative indicated that that the bakery could accommodate that timing.

5. Upon information and belief, Scardina requested a cake with a blue exterior and a pink

interior, and indicated that she would need a cake big enough to serve 6-8 people.

6. Upon information and belief, Masterpiece's representative stated that the bakery would make the cake as requested by Scardina. Scardina then mentioned that the design was a reflection of the fact that she had transitioned from male to female and that she had come out as transgender on her birthday. Masterpiece's representative then stated that the bakery would not make the cake as requested by Scardina because it does not make cakes to celebrate a sex-change and terminated the call.

7. Upon information and belief, Scardina called Masterpiece back and spoke to a different individual about the exchange that took place during her initial call and confirmed that the cake she had ordered was to celebrate her birthday. Masterpiece's representative responded that the bakery would not make a cake for Scardina and terminated the call.

8. On July 20, 2017, Scardina filed a charge of discrimination with the Colorado Civil Rights Division alleging that Respondents discriminated against her in a place of public accommodation based on her sex (female) and/or sexual orientation (transgender status).

9. During the Colorado Civil Rights Division's investigation of the charge, Phillips affirmed his employees' decision to not fulfill Scardina's order, and cited his religious beliefs as the reason why the bakery would not do so.

10. Upon information and belief, the bakery sells made-to-order birthday cakes to non-transgendered individuals.

11. On June 28, 2018, following the investigation, the Division Director's authorized designee found probable cause for crediting the allegations of the charge that Masterpiece discriminated against Scardina in a place of public accommodation based on her sexual orientation (transgender status).

12. As required by § 24-34-306(2)(b)(II), C.R.S. (2018), the Division Director's authorized designee ordered the parties to attempt amicable resolution of the charge by compulsory mediation.

13. Upon information and belief, efforts to resolve the matter amicably through the ordered mediation have been unsuccessful.

14. On October 2, 2018, the Commission voted to notice this matter for a hearing and to file this formal complaint.

15. The Commission alleges that Masterpiece denied service to Scardina based on her sexual orientation (transgender status), as defined by § 24-34-301(7), C.R.S. (2018), in a violation of § 24-34-601(2)(a), C.R.S. (2018).

16. The Commission further alleges that Masterpiece is not a place that is principally used for religious purposes, as contemplated by § 24-34-601(1), C.R.S. (2018).

The Commission seeks the following relief:

1. That Masterpiece and Phillips be ordered to allow Scardina and all customers that seek goods and

services from the bakery, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations of this place of public accommodation, regardless of their sexual orientation.

2. That Masterpiece and Phillips be ordered to cease and desist their practices of discriminating against persons based on their sexual orientation and to immediately discontinue their policy and practice of refusing to provide goods and services to persons due to their sexual orientation.

3. That Masterpiece and Phillips be ordered to adopt a corrective policy which will allow Scardina and other similarly situated persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the bakery regardless of their sexual orientation.

4. That Masterpiece and Phillips be ordered to report to the Commission all remedial action taken to eliminate the discriminatory practices until such time as it has been established that all discriminatory practices have ceased.

5. That Masterpiece and Phillips be ordered not to retaliate against Scardina in any way.

6. That Masterpiece and Phillips be ordered to provide any other relief which may be available to Scardina by virtue of operation of law and any other relief the Commission deems just and proper.

Masterpiece and Phillips may file a verified answer prior to the date of the hearing. The hearing will be conducted pursuant to sections 24-34-306 and 24-4-105, C.R.S. (2018). Failure to answer the

complaint at hearing may result in entry of default judgment against Masterpiece and Phillips.

Dated this 9th day of October, 2018.

BY THE COMMISSIONER:

COMMISSIONER

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **NOTICE OF HEARING AND FORMAL COMPLAINT** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 9 day of October, 2018 addressed as follows:

Autumn Scardina
7779 Everett Way
Arvada, CO 80005

John McHugh
Reilly Pozner LLP
1700 Lincoln Street,
Suite 3400
Denver, CO 80203

Masterpiece Cakeshop,
Incorporated
3355 S. Wadsworth Blvd.,
H-117
Lakewood, CO 80227

Jacob Warner, Esq.
Alliance Defending
Freedom
15100 N. 90th St.
Scottsdale, AZ 85260

By interdepartmental mailing services, copies were sent to:

Matthew Azer
Director/Chief ALJ
Office of Administrative
Courts
1525 Sherman St,
4th Floor
Denver, CO 80203

Michelle Brissette Miller
First Assistant Attorney
General
Employment/Personnel
& Civil Rights Unit
Civil Litigation &
Employment Law
Section
1300 Broadway, 10th
Floor
Denver, CO 80203

By Hand Delivery for filing on October 9, 2018:

Office of Administrative Courts
1525 Sherman St, 4th Floor
Denver, CO 80203

Adriana Camonca

COLORADO CIVIL RIGHTS COMMISSION DEPARTMENT OF REGULATORY AGENCIES	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
AUTUMN SCARDINA, Complainant, v.	
MASTERPIECE CAKESHOP INCORPORATED and JACK PHILLIPS, Respondents.	Charge No. CP2018011310 OAC Case No: CR 2018-0012
CLOSURE ORDER	

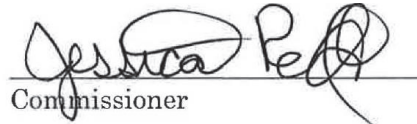
This matter came before the Colorado Civil Rights Commission at a meeting on March 5, 2019, at which time the Commission members present unanimously voted to dismiss the Notice of Hearing and Formal Complaint in OAC Case No. CR 2018-0012. The Commission instructed its counsel to direct counsel in support of the complaint to file an Order of Administrative Closure, which was done that same day.

On March 7, 2019, the presiding Administrative Law Judge entered the Order of Administrative Closure and vacated the hearing set for August 28-30, 2019. That Order, which is now included in and made part of the Commission file, is attached hereto.

The Commission hereby **ORDERS** that Charge No. CP2018011310 is now formally closed and all administrative proceedings under part 3 of article 34 of title 24, C.R.S. have been exhausted.

Dated: March 22, 2019.

BY THE COLORADO CIVIL
RIGHTS COMMISSION


Commissioner

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **CLOSURE ORDER** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 26 day of March, 2019 addressed as follows:

John M. McHugh
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**3 C.C.R. § 708-1:10.1.
Statement of Purpose.**

The purpose of the Rules and Regulations of the Colorado Civil Rights Commission (hereinafter the “Rules”) is to implement Parts 3 through 7 of Article 34 of Title 24, Colorado Revised Statutes (C.R.S.), as amended. These Rules are to serve as a set of standards, to provide guidance, and indicate factors which will be taken into consideration in determining whether or not there has been a violation of the Law. These Rules shall be liberally construed to prohibit discriminatory or unfair practices in employment, housing, places of public accommodation and advertising.

3 C.C.R. § 708-1:10.2.
Definitions.

(A) “Administrative Law Judge” (ALJ) means a hearing officer appointed by the Commission through the Office of Administrative Courts of the Department of Personnel and Administration or a hearing officer appointed by the Governor at the request of the Commission, for purposes of conducting an administrative hearing authorized by the Law.

(B) “Auxiliary Aids” means services or devices that enable persons with disabilities to have an equal opportunity to participate in, and enjoy the benefits of public accommodations, public entities, and other activities, programs, employment, housing, and services. Such services or devices may include, but are not limited to, the following: qualified readers, qualified interpreters, service animals, breathing equipment, wheelchairs, walkers, and orthopedic appliances.

(C) “Bona Fide Occupational Qualification” (BFOQ) means employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees. The qualification should relate to an essential job duty and is necessary for operation of the particular business.

(D) “Charging Party” or “Complainant” means a person alleging a discriminatory or unfair practice prohibited by the Law.

(E) “Commission” means the Colorado Civil Rights Commission created by § 24-34-303, C.R.S.

(F) “Commissioner” means a duly appointed member of the Commission.

(G) “Covered Entity” means any person, business, or institution required to comply with the anti-discrimination provisions of the Law.

(H) “Creed” means all aspects of religious beliefs, observances or practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong, and/or addresses ultimate ideas or questions regarding the meaning of existence, as well as the beliefs or teachings of a particular religion, church, denomination or sect. A creed does not include political beliefs, association with political beliefs or political interests, or membership in a political party.

(I) “Days” means calendar days.

(J) “Director” means the director of the Colorado Civil Rights Division, which office is created by § 24-34-302, C.R.S.

(K) “Discriminatory or Unfair Practice” means one or more acts, practices, commissions or omissions prohibited by the Law.

(L) “Division” means the Colorado Civil Rights Division, created by § 24-34-302, C.R.S.

(M) “Domestic Service” means the performance of tasks such as housecleaning, cooking, childcare, gardening and personal services by an individual in a private household.

(N) “Employee,” within the meaning of § 24-34-401(2), C.R.S., means any person who performs services for remuneration on behalf of an employer. An “employee” does not include the following:

- (1) A person in the domestic service of any person;

(2) An independent contractor, as provided in Rule 75;

(3) A non-paid or uncompensated volunteer of a nonprofit organization or governmental agency;

(4) A partner, officer, member of a board of directors, or major shareholder, however if the individual is subject to the organization's direction and control and/or does not participate in managing the organization, then the individual shall be considered an employee;

(5) An elected governmental official or a person appointed to serve the remainder of a term of an elected governmental official; or

(6) A religious minister, whether lay or ordained, or other employee of a church or religious organization whose job duties are primarily of a ministerial, religious, spiritual or non-secular nature.

(O) "Employer" shall have the meaning set forth in § 24-34-401, C.R.S., and references in these rules to "employers" shall include employment agencies and labor organizations.

(P) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(Q) "Gender identity" means an innate sense of one's own gender.

(R) "Gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.

(S) “Investigation” means the systematic inquiry into the allegations of a charge by the Division and its Staff pursuant to its authority under 24-34-302 and 306.

(T) “Law” means Parts 3 through 7 of Article 34 of Title 24, of the Colorado Revised Statutes. Whenever these Rules refer to a provision of the Law or any other statutory or regulatory provision, the reference shall mean the current statutory or regulatory provision in effect, as hereinafter amended, revised, or re-codified.

(U) “Mail” means first class, postage pre-paid, United States mail, facsimile, or electronic mail.

(V) “Major life activities” means life functions, including, but not limited to, the following: caring for one’s self, performing manual tasks, walking, standing, seeing, hearing, speaking, breathing, eating, sleeping, procreating, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions, including, but not limited to the following: functions of the immune system; cell growth; digestive, bladder and bowel functions; neurological and brain functions; respiratory and circulatory functions; endocrine functions; and reproductive functions.

(W) “Mental impairment” means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “mental impairment” includes, but is not limited to, such diseases and conditions as the following: emotional illness, anxiety disorders, mood disorders, post-

traumatic stress disorder, depression, schizophrenia, and bipolar disorder.

(X) “National origin” refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.

(Y) “Party” or “parties” means the Charging Party/Complainant and/or the Respondent.

(Z) “Petitioner” means a party who applies to the appropriate court for judicial review or enforcement of final agency action or a party seeking declaratory relief under these Rules.

(AA) “Physical impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems including, but not limited to, the following: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. The term “physical impairment” also includes, but is not limited to, such diseases and conditions as the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, cancer, heart disease, diabetes, and human immunodeficiency virus (HIV) infection.

(BB) “Religion” means all aspects of religious observance, belief and practice. A person does not have to be a member or follower of a particular organized religion, sect or faith tradition to have a religion.

(CC) “Respondent” means any person, agency, organization, or other entity against whom a charge is filed pursuant to any provisions of the Law.

(DD) “Sexual orientation,” means a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person’s perception thereof.

(EE) “Substantially limits” means the inability to perform a major life activity that most people in the general population can perform, or a significant restriction as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which most people in the general population can perform that same major life activity.

(FF) “Staff” means the Director and all persons employed to carry out the functions and duties of the Division pursuant to § 24-34-302, C.R.S.

(GG) “Transgender” means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.

3 C.C.R. 708-1:10.12.
**Charges Initiated by the Commission, a
Commissioner, or the Attorney General.**

(A) General.

The procedures set forth in this Rule govern the practice and procedure for charges initiated by the Commission, a Commissioner or the Attorney General pursuant to § 24-34-306(1) (b), C.R.S. All procedures not specified in this Rule shall be governed by the general rules of practice and procedure provided by Rules 10.3 through 10.8 and rules 10.10 through 10.12. The Commission, Commissioner, or Attorney General is subject to a duty to follow all applicable administrative rules.

(B) Who May File.

The Commission, a Commissioner, or the Attorney General may make, sign, and file a charge alleging a discriminatory or unfair practice in cases where the Commission, a Commissioner, or the Attorney General determines that the alleged discriminatory or unfair practice imposes a significant societal or community impact.

(C) Charges.

(1) Basis for Charge.

A charge may be initiated when the Commission, Commissioner, or Attorney General has cause to believe that any person or entity has been engaged in a discriminatory or an unfair practice that imposes a significant societal or community impact as described under Parts 4 through 7 of the Law. The basis of belief for initiating a charge

is information from any source sufficient to suggest that a discriminatory or unfair practice has been or is being committed.

(2) Initiating a Charge.

(a) Commission-Initiated Charges.

Initiation of a charge alleging a discriminatory or unfair practice by the Commission shall be by motion at a Commission meeting. The Commission Chair shall then file the charge on behalf of the Commission with the Division.

(b) Commissioner-Initiated Charges.

A Commissioner initiating a charge, as an individual, shall file a charge directly with the Division.

(c) Attorney General-Initiated Charges.

The Attorney General, through its representative, shall file a charge directly with the Division.

(3) Filing a Charge.

A charge filed by the Commission, a Commissioner, or the Attorney General shall be filed with the Division in the same manner and shall contain the same information as required for a charge filed by an individual pursuant to the provisions of Rule 10.4.

(4) Withdrawal of a Charge.

The Commission may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action. The withdrawal must be in writing and state the

reasons for the withdrawal request. A Commissioner and Attorney General may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action, without prior approval from the Commission. Upon approval of withdrawal of the charge by the Director, the investigation shall cease.

(5) New Charges.

The Commission, a Commissioner, or the Attorney General may file new charges alleging discriminatory or unfair practices that have occurred since the date of the original charges, consistent with the procedures set forth in this Rule. Nothing herein shall preclude the Commission from filing a new charge against the original Respondent or a new Respondent, whenever new facts deem it in the public interest, provided that all time limits and other jurisdictional requirements are met.

(D) No Probable Cause Determinations.

(1) If the Commission, a Commissioner, or the Attorney General disagrees with the Director's Determination of No Probable Cause and dismissal of the charge, the Commission, Commissioner, or the Attorney General shall proceed to district court to file a civil action pursuant to § 24-34-306(2)(b)(I)(B).

(2) Time Limits.

If the Commission, Commissioner, or Attorney General wishes to proceed to district court, the

action must be filed within ninety (90) days after the date the notice of dismissal is mailed.

(E) Whenever a party to a charge initiated by the Commission, a Commissioner, or the Attorney General requests an extension of time to complete the investigative process pursuant to § 24-34-306(11), such request shall automatically be granted.

Docket Entry Excerpts
United States District Court for the District of
Colorado
16-cv-02372-MSK

* * * * *

Date Filed	Docket Text
09/20/2016	Complaint for Declaratory and Injunctive Relief against All Defendants (Attachments: # 1 Exhibit A to Complaint, # 2 Exhibit B to Complaint) (Tedesco, Jeremy) (Entered: 09/20/2016).

* * * * *

09/20/2016	Motion for Preliminary Injunction by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # 1 Affidavit of Lorie Smith in Support of Plaintiffs' Preliminary Injunction, # 2 Appendix Part 1, # 3 Appendix Part 2, # 4 Appendix Part 3, # 5 Proposed Order) (Tedesco, Jeremy) (Entered: 09/20/2016).
09/20/2016	Brief in Support of Motion for Preliminary Injunction filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 09/20/2016)

* * * * *

10/19/2016	Motion to Dismiss Verified Complaint for Declaratory and
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Date Filed	Docket Text
	Injunctive Relief by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 10/19/2016).
10/19/2016	Response to Motion for Preliminary Injunction filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Patten, Jack) (Entered: 10/19/2016).
* * * * *	
11/02/2016	Reply to Response to Motion for Preliminary Injunction filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 11/02/2016).
* * * * *	
11/08/2016	Memorandum regarding Motion to Dismiss Verified Complaint for Declaratory and Injunctive Relief filed by Defendants Heidi Hess, Ulysses J. Chaney, Jessica Pocock, Carol Fabrizio, Miguel Rene Elias, Cynthia H. Coffman, Rita Lewis, Aubrey Elenis, Anthony Aragon.. Motions referred to Magistrate

Date Filed	Docket Text
	Judge Craig B. Shaffer by Chief Judge Marcia S. Krieger on 11/8/16. Text Only Entry (msksec) (Entered: 11/08/2016)
11/09/2016	Response to Motion to Dismiss Verified Complaint for Declaratory and Injunctive Relief filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 11/09/2016)
* * * * *	
11/23/2016	Reply to Response to Motion to Dismiss Verified Complaint for Declaratory and Injunctive Relief filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 11/23/2016).
01/11/2017	Minute Entry for Law and Motion Hearing held before Chief Judge Marcia S. Krieger on 1/11/2017. Deadlines and other matters addressed are as set forth in the Minutes. Court Reporter: Mary George. (pglov) (Entered: 01/11/2017)
01/30/2017	Transcript of Law and Motion Hearing held on January 11, 2017.

Date Filed	Docket Text
	before Judge Krieger. (mgeor) (Entered: 01/30/2017)
02/01/2017	Motion for Summary Judgment and Memorandum by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # 1 Affidavit of Lorie Smith, # 2 Affidavit of Jeremy Tedesco, # 3 Appendix in Support of Plaintiffs' Motion for Summary Judgment)(Tedesco, Jeremy) (Entered: 02/01/2017)
02/01/2017	Stipulation re Motion for Summary Judgment and Memorandum Joint Statement of Stipulated Facts by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L) (Tedesco, Jeremy) (Entered: 02/01/2017)
02/22/2017	Response to Motion for Summary Judgment and Memorandum filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 02/22/2017).

Date Filed	Docket Text
03/08/2017	Reply to Response to Motion for Summary Judgment and Memorandum filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 03/08/2017)
* * * * *	
09/01/2017	Order granting in part and denying in part Motion to Dismiss, and denying Motion for Preliminary Injunction and Motion for Summary Judgment, by Chief Judge Marcia S. Krieger on 9/1/17. (dkals) (Entered: 09/01/2017).
09/28/2017	Notice of Appeal as to Order on Motion to Dismiss, Order on Motion for Summary Judgment, Order on Motion for Preliminary Injunction by Plaintiffs 303 Creative LLC, Lorie Smith (Anderson, Katherine) (Entered: 09/28/2017)
* * * * *	
08/14/2018	USCA Order and Judgment as to Notice of Appeal, filed by 303 Creative LLC, Lorie Smith: this appeal is dismissed. (USCA Case No. 17-1344) (This document is not the Mandate) (dkals) (Entered: 08/14/2018)
09/05/2018	Mandate of USCA as to Notice of Appeal, filed by 303 Creative LLC,

Date Filed	Docket Text
	Lorie Smith (USCA Case No. 17-1344) (dkals) (Entered: 09/05/2018).
* * * * *	
05/17/2019	Opinion and Order denying Motion for Preliminary Injunction and Motion for Summary Judgment by Judge Marcia S. Krieger on 5/17/19. (dkals) (Entered: 05/17/2019).
06/07/2019	Response to Order denying Motion for Preliminary Injunction and Motion for Summary Judgment by Plaintiffs (Attachments: # 1 Affidavit of Jacob P. Warner, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C) (Anderson, Katherine) (Entered: 06/07/2019).
* * * * *	
09/26/2019	Opinion and Order Granting Summary Judgment entered by Judge Marcia S. Krieger on 9/26/19. The Court finds that the Defendants are entitled to summary judgment on all of Ms. Smiths claims in this action. The Clerk of the Court shall enter judgment in favor of the Defendants on all claims and close this case. (rkeec) (Entered: 09/26/2019)
09/26/2019	Final Judgment by Clerk in favor of Defendants Aubrey Elenis, Charles

Date Filed	Docket Text
	Garcia, Ajay Menon, Miguel Rene Elias, Richard Lewis, Kendra Anderson, Sergio Cordova, Jessica Pocock, and Phil Weiser and against Plaintiffs 303 Creative LLC and Lorie Smith re: Opinion and Order Granting Summary Judgment entered by Judge Marcia S. Krieger on 9/26/19.
10/25/2019	Notice of Appeal as to Order, Order on Motion to Dismiss, Order on Motion for Summary Judgment, Order on Motion for Preliminary Injunction, Clerk's Judgment, Order by Plaintiffs 303 Creative LLC, Lorie Smith. (rkeec) (Entered: 09/26/2019)
* * * * *	
07/26/2021	USCA Judgment as to Notice of Appeal, filed by 303 Creative LLC, Lorie Smith: (USCA Case No. 19-1413) (This document is not the Mandate). The judgment of that court is AFFIRMED. (Attachments: # 1 U.S. Court of Appeals Opinion) (sphil) (Entered: 07/27/2021).
08/17/2021	Mandate of USCA as to USCA Order/Opinion/Judgment, 81 Notice of Appeal, filed by 303 Creative LLC, Lorie Smith: (USCA Case No. 19-1413) (sphil) (Entered: 08/17/2021).

Date Filed	Docket Text
09/28/2021	Letter from U.S. Supreme Court regarding Petition for Writ of Certiorari re 81 Notice of Appeal; assigned Supreme Court No. 21-476 (Appeal No. 19-1413) (sphil) (Entered: 10/01/2021).
02/22/2022	Letter from U.S. Supreme Court regarding Order Granting Certiorari Filed 02/22/2022 re 81 Notice of Appeal; assigned Supreme Court No. 21-476 (sdunb) (Entered: 02/22/2022)

**Docket Entry Excerpts
United States Court of Appeals
for the Tenth Circuit
No. 19-1413**

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Date Filed	Docket Text
10/28/2019	[10690195] Civil case docketed. Preliminary record filed. DATE RECEIVED: 10/28/2019. Docketing statement and transcript order form due 11/12/2019 for 303 Creative LLC and Lorie Smith. Notice of appearance due on 11/12/2019 for 303 Creative LLC, Anthony Aragon, Ulysses J. Chaney, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock, Lorie Smith and Phil Weiser. [19-1413] [Entered: 10/28/2019 10:17 AM]

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12/30/2019	[10705954] Amicus Curiae brief filed by Foundation for Moral Law. Original and 7 copies . Served on 12/26/2019. Manner of Service: email. [19-1413] [Entered: 12/30/2019 12:23 PM]
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01/22/2020	[10712139] Appellant/Petitioner's brief filed by 303 Creative LLC and Lorie Smith. Served on 01/22/2020
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Date Filed	Docket Text
	by email, US mail. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes.-[Edited 01/23/2020 by LAB to attach document with corrected case number.] [19-1413] JAS [Entered: 01/22/2020 09:15 PM]
01/22/2020	[10712140] Appellant's appendix filed by 303 Creative LLC and Lorie Smith. Total number of volumes filed: 3 (copy of CD at Vol. 3, page 639). Served on 01/22/2020. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. -[Edited 01/29/2020 by LAB to note location of CD.][19-1413] JAS [Entered: 01/22/2020 09:23 PM]
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01/29/2020	[10713803] Amicus Curiae brief filed by Cato Institute. Served on 01/29/2020. Manner of Service: email. [19-1413] [Entered: 01/29/2020 07:57 AM]
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01/29/2020	[10713986] Amicus Curiae brief filed by Catholicvote.org Education Fund. Original and 7 copies .. Served on 01/29/2020. Manner of Service: US

Date Filed	Docket Text
	mail, email. [19-1413] [Entered: 01/29/2020 01 :57 PM]
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01/29/2020	[10714017] Amicus Curiae brief filed by Law and Economic Scholars. Served on 01/29/2020. Manner of Service: email. [19-1413] [Entered: 01/29/2020 02:46 PM]
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01/29/2020	[10714034] Amicus Curiae brief filed by Center for Religious Expression. Original and 7 copies. Served on 01/29/2020. Manner of Service: email. [19-1413] [Entered: 01/29/2020 03:04 PM]
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01/29/2020	[10714046] Amicus Curiae brief filed by Crossroads Productions, Inc., The Briner Institute, Inc., Tyndale House Publishers and Whitaker Portrait Design, Inc. Served on 01/29/2020. Manner of Service: email. [19-1413] [Entered: 01/29/2020 03:20 PM]
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01/30/2020	[10714139] Amicus Curiae brief filed by State of Alabama, State of Alaska, State of Arizona, State of Arkansas, State of Kentucky, State of Louisiana, State of Missouri, State of

Date Filed	Docket Text
	Montana, State of Nebraska, State of Oklahoma, State of South Carolina, State of Tennessee, State of Texas and State of West Virginia. Original and 7 copies .. Served on 01/29/2020. Manner of Service: US mail, email. [19-1413] [Entered: 01/30/2020 07:08 AM]
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01/30/2020	[10714350] Amicus Curiae brief filed by Robert P. George. Served on 01/30/2020. Manner of Service: email. [19-1413] [Entered: 01/30/2020 01:27 PM]
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04/23/2020	[10735058] Appellee/Respondent's brief filed by Aubrey Elenis, Kendra Anderson, Sergio Cordova, Miguel Rene Elias, Ajay Menon, Richard Lewis, Jessica Pocock and Phil Weiser. Served on: 04/23/2020. Manner of service: email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-1413] [Note, the brief was filed on 4/22/20 in the closed appeal. Counsel was requested to re-file in the open case today-- Edited 04/23/2020 by NA] SSS [Entered: 04/23/2020 08:47 AM]

Date Filed	Docket Text
04/23/2020	[10735060] Supplemental appendix filed by Aubrey Elenis, Mr. Charles Garcia, Kendra Anderson, Miguel Rene Elias, Ajay Menon, Richard Lewis, Jessica Pocock and Phil Weiser. Total number of volumes filed: 1. Served on 04/23/2020. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-1413] [Note, counsel filed the appendix on 4/22/20 in the closed case. Counsel was requested to re-file in the open case on 4/23/20-- Edited 04/23/2020 by NA] SSS [Entered: 04/23/2020 08:50 AM]
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04/28/2020	[10736520] Amicus Curiae brief filed by American Civil Liberties Union Foundation and American Civil Liberties Union of Colorado. Served on 04/28/2020. Manner of Service: email. [brief redocketed by clerk to show as filed] [19-1413] [Entered: 04/29/2020 07:26 AM]
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04/29/2020	[10736620] Amici Curiae brief filed by Americans United for Separation of Church and State, AntiDefamation League, Bend the

Date Filed	Docket Text
	<p>Arc: A Jewish Partnership for Justice, Central Conference of American Rabbis, Global Justice Institute, Metropolitan Community Churches, Hadassah, The Women's Zionist Organization of America, Inc., Hindu American Foundation, Interfaith Alliance Foundation, Interfaith Alliance of Colorado, Men of Reform Judaism, Reconstructionist Rabbinical Association, Sikh Coalition, Union for Reform Judaism and Women of Reform Judaism. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 04/29/2020 11:23 AM]</p>
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04/29/2020	<p>[10736830] Amicus Curiae brief filed by Meaghan Mclaine VerGow and Marie Bonitatibus for Walter Dellinger, Kermit Roosevelt, Floyd Abrams, Amanda Shanor, and Rebecca Tushnet Erwin Chemerlinsky, in case 19-1413. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 04/30/2020 07:48 AM]</p>
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04/29/2020	<p>[10736851] Amicus Curiae brief filed by Adam W. Hofmann, Josephine</p>

Date Filed	Docket Text
	Kendra Petrick, David Carrillo Casarrubias for Mary-Hunter McDonnell, Lauren E. Willis, David Laibson, Adam J. Levitin, Monica C. Bell, Tom R. Tyler, Max H. Bazerman, Nina Strohminger, Neeru Pahari, and Issa Kohler-Hausmann, in case 19-1413. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 04/30/2020 08:28 AM]

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04/29/2020	[10736703] Amicus Curiae brief filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Massachusetts, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Pennsylvania, State of Rhode Island, State of Vermont, State of Virginia and State of Washington. Original and 7 copies. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 04/29/2020 02:21 PM]
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Date Filed	Docket Text
04/29/2020	[10736738] Amicus Curiae brief filed by Law Professors from the State of Kansas, Law Professors from the State of New Mexico, Law Professors from the State of Oklahoma, Law Professors from the State of Utah, Law Professors from the State of Wyoming, and Law Professors of the State of Colorado. Original and. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 04/29/2020 03:35 PM]
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05/01/2020	[10737886] Amicus Curiae brief filed by Lambda Legal Defense & Education Fund, Inc. Served on 04/29/2020. Manner of Service: email. [19-1413] [Entered: 05/05/2020 09:41 AM]
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05/22/2020	[10742148] Amicus Curiae brief filed by Asian American Legal Defense & Education Fund, LatinoJustice PRLDEF, Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil and Human Rights, National Action Network, Southern Poverty Law Center and The Center for Constitutional Rights. Served on 05/22/2020.

Date Filed	Docket Text
	Manner of Service: email. [19-1413] [Entered: 05122/2020 10:14 AM]
05/28/2020	[10743577] Appellant/Petitioner's reply brief filed by 303 Creative LLC and Lorie Smith. Served on 05/28/2020. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [19-1413] JAS [Entered: 05/28/2020 04:35 PM]
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09/18/2020	[10771567] Oral argument notice filed. This matter is set for oral argument on 11/16/2020 at 9:00 A.M. Mountain Time in Courtroom I. Oral arguments in November 2020 will be heard REMOTELY via video conference using Zoom for Government. COUNSEL WILL NOT REPORT TO THE COURTHOUSE. Arguing counsel must carefully review the attached notice. Within 10 days of today's date, arguing counsel must download, complete, and e-file the required oral argument form(s). Counsel for amici parties may not participate in argument without written permission from the court. [19-1413] [Entered: 09/18/2020 01:30 PM]
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Date Filed	Docket Text
11/16/2020	[10786275] Case argued and submitted to Judges Tymkovich, Briscoe and Murphy. Kristen Waggoner argued for the Appellants. Eric Olson argued for the Appellees. [19-1413] [Entered: 11/16/2020 01:26 PM]
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07/26/2021	[10846086] Affirmed; Terminated on the merits after oral hearing; Written, signed, published; Judges Tymkovich (dissenting), Briscoe (authoring) and Murphy. Mandate to issue.-[Edited 07127/2021 by SDS to replace opinion pdf with one that corrects a typographical error] [19-1413] [Entered: 07126/2021 03:01 PM]
07/26/2021	[10846093] Judgment for opinion filed. [19-1413] [Entered: 07/26/2021 03:08 PM]
08/17/2021	[10850865] Mandate issued. [19-1413] [Entered: 08/17/2021 08:08 AM]
09/29/2021	[10861569] Petition for writ of certiorari filed by 303 Creative LLC on 09/24/2002. Supreme Court Number 21-476. [19-1413] [Entered: 09/29/2021 01:53 PM]

Date Filed	Docket Text
02/22/2022	[10894420] Supreme court order dated 02/22/2022 granting certiorari filed. [19-1413] [Entered: 02/22/2022 01 :49 PM]