

In the
Supreme Court of the United States

WALDER VACUFLO, INC.,

Petitioner,

v.

THE ILLINOIS HUMAN RIGHTS COMMISSION;
MARK WATHEN; and TODD WATHEN,

Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of Illinois**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Illinois Supreme Court and Appellate Court's refusal to consider this matter violates the First and Fourteenth Amendment rights of Petitioner Walder Vacuflo, Inc. to access to the Courts (by arbitrarily dismissing its appeal due to a procedural snafu).
2. Whether the decision below against Petitioner was out of step with this Court's recent decisions in *Masterpiece Cake Shop, Ltd. v. Colorado Civil Rights Com'n, et al.*, 171 S.Ct. 1719 (2018); and *Fulton v. City of Philadelphia*, 2021 U.S. LEXIS 3121, *23-24, 141 S. Ct. 1868, 28 Fla. L. Weekly Fed. S 882, 2021 WL 2459253 (U.S. June 17, 2021), and as such, does a circuit split exist between the Third and Tenth Circuits (in which the *Fulton* and *Masterpiece* cases were decided favorably towards the business proprietors asserting religious freedom) and the Seventh Circuit (which covers the jurisdiction of Illinois in which the Petitioner's religious freedom and access to the courts under the First and Fourteenth Amendments has been violated by the Illinois Human Rights Commission).
3. Whether the Illinois Human Rights Commission (IHRC) violated Petitioner's First and Fourteenth Amendments under the U.S. Constitution, to freedom of speech and freedom of religion, when it found Petitioner liable for discriminating against Respondents Mark and Todd Wathen because of their sexual orientation by denying them public accommodations, and assessing damages and attorney's fees against Petitioner totaling \$80,000, and ordering Petitioner to cease and desist from disallowing same sex weddings

to be performed on its premises, and ordering it to allow same sex weddings on its premises (including for Respondents Mark and Todd Wathen).

CORPORATE DISCLOSURE STATEMENT

Walder Vacuflo Inc. is not a public company and has no parent company, and no public company owns 10% or more of its stock.

LIST OF PROCEEDINGS

DIRECTLY PROCEEDINGS BELOW

Supreme Court of Illinois

No. 127463

In re: *Walder Vacuflo, Inc. v.*
The Illinois Human Rights Commission

Date of Final Order: July 30, 2021

State of Illinois Appellate Court, Fourth District

No. 4-16-0939

Walder Vacuflo, Inc., *Petitioner*, v.
The Illinois Human Rights Commission,
Mark Wathen and Todd Wathen, *Respondents*.

Date of Final Order: August 16, 2017

State of Illinois Human Rights Commission

In the Matter of: Todd & Mark Wathen., *Complainants*,
and Walder Vacuflo Inc., *Respondent*.

Charge Nos.: 2011 SP2488, 2011SP2489
ALS No.: 11-0703(C)

Date of Final Order: November 18, 2016

RELATED PROCEEDINGS

Illinois Supreme Court Case

No. 127472

Walder Vacuflo, Inc. v. Travers

Date of Final Order Denying Emergency Motion for
Supervisory Order: July 27, 2021

Illinois Appellate Court Case

No. 4-21-0425

*People of the State of Illinois ex rel. Illinois Department
of Human Rights, and Todd Wathen and Mark
Wathen v. Walder Vacuflo, Inc. and Jim Walder*

Denial of Motion to Stay: July 30, 2021

Ford County Illinois Circuit Court

No. 2018-CH-29

*People of the State of Illinois ex rel. Illinois Depart-
ment of Human Rights, and Todd Wathen and Mark
Wathen v. Walder Vacuflo, Inc. and Jim Walder*

Date of Final Order ordering turnover of
TimberCreek B & B Property to Satisfy Judgment in
the Instant Case: July 12, 2021

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OPINIONS BELOW

The Order of the Illinois Supreme Court, dated July 30, 2021, denying Petitioner's motion to file a petition for appeal as a matter of right is included below at App.1a. The Order of the Illinois Supreme Court, dated July 27, 2021 denying Petitioner's emergency motion for a supervisory order is included below at App.2a. The Order of the Illinois Court of Appeals, Fourth Appellate District, dated August 16, 2017 is included below at App.3a. The Order of the Illinois Human Rights Division, dated November 18, 2016 is included at App.8a.



JURISDICTION

This petition is filed within 90 days of the final order of the Illinois Supreme Court, dated July 30, 2021. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., amend. XIV § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

Petitioner Walder Vacuflo, Inc. owns and manages a bed and breakfast called TimberCreek Bed & Breakfast (the “B & B”) which is open to all guests, without discrimination. The B & B hosts weddings as well, but does not host civil unions. The Wathens sued alleging discrimination because the proprietor, Jim Walder, merely stated the B & B did not do civil union ceremonies (instead they only did weddings—at the time same sex marriage was illegal in Illinois). In a decision issued prior to *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Illinois Human Rights Commission ruled that Petitioner had violated the Illinois Human Rights Act and along with awarding damages, ordered the B & B to host the Wathens’ civil union ceremony.

A. Illinois Human Rights Commission, Charge Nos. 2011-SP-2488, 2011-SP-2489, Consolidated as ALS No. 11-0703C

On February 15, 2011, Respondents Todd Wathen inquired of Petitioner representative Jim Walder (owner of Walder Vacuflo, Inc. d/b/a Timbercreek Bed & Breakfast) via email as follows: "Do you plan on doing same sex civil unions starting on June 1???" Walder responded "No, we only do weddings." Todd replied: "starting june 1, a civil union is a wedding, you just have to get a licenses [sic] at the county clerks [sic] office, it is just not a marriage . . . but a legal wedding . . . so aren't you discriminating against me and my partner, because of our sexual orientation?????" Walder replied saying that "Civil unions and legal marriage are not the same thing, nor do they have the same legal status . . ." and has responded to several discovery requests by affirming that it never has and never will host civil union ceremonies whether same-sex or opposite-sex. It only hosts weddings. App.12a-13a; Appellate Court Record, C-1, C-3, C-1227-30.

Cross motions for Summary Decision were filed by the parties, and the Illinois Human Rights Commission ALJ Michael Robinson issued a Recommended Decision finding Petitioner liable. C-853. A damages hearing was held on November 20, 2015 (Appellate Court Record Vol. VII), and a Recommended Order and Decision was handed down on March 22, 2016 assessing against Petitioner as follows:

1. \$15,000 to each complainant (Respondents), totaling \$30,000;

2. \$50,000 in attorney's fees and \$1218.35 in costs; and
3. direction to "cease and desist from violating the Human Rights Act by discriminating on the basis of sexual orientation when denying same-sex couples access to its facilities and services for their civil union ceremonies and/or marriages" and "within one year after this decision becomes final, Respondent (Petitioner) be directed to grant Complainants (Respondents) access to its facility by hosting (at Complainants' option and expense) a ceremony celebrating Complainants' civil union under one of the wedding packages and prices offered by Respondent in February of 2011 . . ." (App.52a-53a; Appellate Court Record C-1152-53).

Petitioner timely filed exceptions to the ALJ's Recommended Order and Decision (C-1160), which were denied (C-1223) on November 18, 2016. App.55a.

B. Illinois Appellate Court, Fourth District, Case No. 4-16-0939

Plaintiff timely filed a Petition for Review in the Appellate Court on December 22, 2016. C-1225-26. The Appellate Court granted an extension to Petitioner until May 24, 2017 to file its brief. Exhibit 2. The Wathen Respondents filed a Motion to Reconsider and Dismiss Petitioner's appeal dated May 4, 2017. It was sent on that day to Petitioner's counsel, at an incorrect and long-former address—"29 S. LaSalle Street, Suite 440, Chicago, IL 60603." The undersigned has not had that address for 4 years, and his current

address has been made known to all counsel at all times during this litigation. See App.4a.

As a result, Petitioner's counsel did not receive Respondents' Motion until May 22, 2017, and then forthwith sent the Response as well as a Motion for Extension of time to file the brief, in an envelope bearing a postmark of May 24, 2017. See App.1a. Ostensibly, Petitioner's Response and Motion was not received or considered when the Court dismissed the appeal on May 30, 2017. See App.2a. Petitioner filed a Motion to Reconsider and Vacate the Dismissal before the Mandate issued, and the Appellate Court denied the same on August 16, 2017. See App.4a.

C. Illinois Supreme Court, Case No. 127463

Petitioner timely electronically submitted a Petition for Appeal as of Right or alternatively, for Leave to Appeal in the Illinois Supreme Court, on September 20, 2017. After several rejections of said submission for various technical reasons, the Illinois Supreme Court finally filed the submission, but denied the relief requested on July 30, 2021. App.56a.

D. Related Proceedings

- Ford County Illinois Circuit Court Case No. 2018-CH-29
- Illinois Appellate Court Case No. 4-21-0425;
- Illinois Supreme Court Case No. 127472

The State of Illinois filed this case to enforce the judgment of the Illinois Human Rights Commission, and a Citation to Discover Assets was litigated against Petitioner, resulting in a turnover of the property in question on July 12, 2021, which is currently being

appealed in the Illinois Appellate Court. Motions for Stay and for a Supervisory Order against the trial judge were denied by the Appellate Court and the Illinois Supreme Court respectively. App.57a. A Motion for Judgment Against Jim Walder was granted by the trial court on September 20, 2021, and is currently being appealed.



REASONS FOR GRANTING THE PETITION

I. THE ILLINOIS APPELLATE COURT VIOLATED PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO ACCESS TO THE COURTS BY DISMISSING ITS APPEAL, AND THE ILLINOIS SUPREME COURT AFFIRMED THE SAME

The Appellate Court's dismissal of Petitioner's appeal which was affirmed by the Illinois Supreme Court spawned a violation of the Fourteenth Amendment right to access to the courts. The procedural error supposedly warranting dismissal was not severe enough to evade the merits of the case. Indeed, Petitioner's Motion for Extension was postmarked May 24, 2017, the due date for the brief. It appears that Petitioner mistakenly wrote May 27, 2017 as the date the Motion was served on opposing counsel in the Certificate of Service and subsequent filings on this matter, but the postmark (which the court received) speaks for itself (see App.1a). This shows good faith on the part of Petitioner to follow the Court's briefing schedule. The Appellate Court thus erroneously found and wrote that Petitioner filed the Motion for Extension on "May 30, 2017." This happens to be the same

day that the Court dismissed the appeal. No Rule to Show Cause was issued and indeed the Appellate Court dismissed the appeal in less than a week after the due date of the brief (which hardly would have allowed time for mailing even if the brief had been mailed). In short, the Appellate Court has sidestepped constitutional and legal questions of great magnitude, and allowed a grave injustice to remain against Petitioner, merely over minor procedural matters where Petitioner did not even violate any rules or statutes.

It is manifestly unfair and prejudicial to Petitioner to grant such a severe sanction which completely avoids addressing the merits of what is now a critically disputed matter, over a procedural snafu. Dismissing the appeal amounts to a Constitutional violation in itself—against Petitioner’s right to access to courts to petition for redress of grievances. *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971), held that “due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard,” finding that that Connecticut inflexibly imposed filing fees which kept indigent persons from obtaining divorces, leaving them no other alternatives to resolving their disputes (since the State monopolizes the field of marriage and divorce, *i.e.*, only the State can terminate marriages).

In the instant case, the Illinois Appellate and Supreme Courts arbitrarily denied Petitioner meaningful access to the courts by preventing it from even briefing the matter on the merits, while giving Petitioner no other avenue available to resolve the dispute, all because of, ostensibly, a minor procedural snafu.

In this case, Petitioner being deprived of access to the courts also deprives him of his fundamental First Amendment rights to free exercise and freedom of speech (such rights will be discussed below).

Procedurally, the Illinois Courts and Human Rights Commission seem to follow in the steps of the entities condemned by this Court in *Masterpiece*. In *Masterpiece*, in which the Colorado Court of Appeals found that a bakery violated Colo. Rev. Stat. § 24-34-601(2)) (public accommodations) when it refused to make a wedding cake for a same-sex wedding, deeming the bakery owner's religious objection to making the cake to be discrimination against the potential customers' sexual orientation, this Court reversed, finding the Colorado Civil Rights Commission did not treat the baker with "neutral and respectful consideration" (which the First Amendment's free exercise clause requires) but rather, treated him with "clear and impermissible hostility" towards his religious beliefs which animated his declining to make a wedding cake for a same-sex wedding. In so doing, this Court held, the Colorado Commission violated the baker's First Amendment right to free exercise of his religion. *Id.*, at 1727-28. Indeed, in the instant case the agencies below evinced a similar hostility towards Petitioner because of disfavor for his religious beliefs, and the courts below covered this up by completely sidestepping and avoiding the issues. In both the instant case and *Masterpiece*, state anti-discrimination agencies punished Christian business owners for their faith-based objections to facilitating ceremonies for romantic unions they sincerely believe to be sinful according to the Bible. And in both cases the state agencies in question

treated Christian business owners with hostility towards their sincerely held religious beliefs.

In the interests of justice and equity, and for the above reasons, this Court should grant certiorari.

II. PETITIONER IS NOT A PUBLIC ACCOMMODATION FOR PURPOSES OF THIS MATTER

In *Masterpiece*, in which the Colorado Court of Appeals found a bakery violated Colo. Rev. Stat. § 24-34-601(2) (public accommodations) when it refused to make a wedding cake for a same-sex wedding, deeming the bakery owner's religious objection to making the cake to be discrimination against the potential customers' sexual orientation. This Court reversed, finding the Colorado Civil Rights Commission did not treat the baker with "neutral and respectful consideration" (which the First Amendment's free exercise clause requires) but rather, treated him with "clear and impermissible hostility" towards his religious beliefs which animated his declining to make a wedding cake for a same-sex wedding. In so doing, this Court held, the Colorado Commission violated the baker's First Amendment right to free exercise of his religion. *Id.* at 1727-28. Indeed, in the instant case the agencies below evinced a similar hostility towards Petitioner because of disfavor for his religious beliefs, and the courts below covered this up by completely sidestepping and avoiding the issues.

Further, this Court ruled in *Fulton v. City of Philadelphia*, 2021 U.S. LEXIS 3121, *23-24, 141 S. Ct. 1868 (June 17, 2021) a Catholic foster care agency was not a public accommodation and as such, the City of Philadelphia violated its First Amendment rights when it refused to renew its contract with the agency if it

did not place children with same-sex couples against its religious beliefs regarding marriage. The Court reasoned:

Certification as a foster parent, by contrast, is not readily accessible to the public. It involves a customized and selective assessment that bears little resemblance to staying in a hotel, eating at a restaurant, or riding a bus. The process takes three to six months. Applicants must pass background checks and a medical exam. Foster agencies are required to conduct an intensive home study during which they evaluate, among other things, applicants’ “mental and emotional adjustment,” “community ties with family, friends, and neighbors,” and “[e]xisting family relationships, attitudes and expectations regarding the applicant’s own children and parent/child relationships.” 55 Pa. Code § 3700.64. Such inquiries would raise eyebrows at the local bus station. And agencies understandably approach this sensitive process from different angles. As the City itself explains to prospective foster parents, “[e]ach agency has slightly different requirements, specialties, and training programs.” App. to Pet. for Cert. 197a. All of this confirms that the one-size-fits-all public accommodations model is a poor match for the foster care system.

Id., at 23-24.

Petitioner’s facility is not a place of public accommodation with respect to performing weddings. The Illinois Human Rights Commission (the “Commission”)

conflates Walder's comments expressing his religious beliefs about homosexuality with his informing Wathen that TimberCreek only allows weddings to be performed on its premises rather than including civil union ceremonies among the categories of services offered to the public. The Commission seeks to portray Petitioner's refusal to allow civil union ceremonies to be performed on its premises as discrimination on the basis of sexual orientation. There is no direct link between owner Walder's comments about homosexuality (which Respondents consider discriminatory), and his alleged adverse action of merely reporting that Petitioner does not do civil union ceremonies. Any statements about not performing same-sex weddings have no bearing in this lawsuit, as same-sex marriage was not legal at the time of this conversation.

This portrayal might be availing if Illinois law regarding civil unions were limited to same-sex. But it is not so. Both homosexual and heterosexual couples may enter into civil unions, per the Illinois Religious Freedom and Civil Unions Act, at 750 ILCS 75/10: “Civil union” means a legal relationship between 2 persons, of either the same or opposite sex, established pursuant to this Act.” (Emphasis added.) Petitioner has been adamant from the outset that it will not perform or allow civil union ceremonies on its premises, either homosexual or heterosexual. See C-415-427, and C-442 (Respondents admitting that Petitioner initially informed them that it “only [does] weddings”). The Commission’s attempts to cast this as anti-homosexual are unavailing. Petitioner is not required by the IHRA to offer a new category of services (*i.e.* civil union ceremonies) for those who choose not to enter into marriage as it was prescribed legally in Illinois.

The IHRA deems it a civil rights violation to “[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation.” 775 ILCS 5/5-102(A). Clearly the above quoted statutory provision from the IHRA must be read as referring to the “facilities, goods, and services” already offered by the particular public place of accommodation in question. In other words, this statutory provision directs that a public place of accommodation offer the “facilities, goods, and services” it already offers to the public without discriminating against protected classes in the offering of said “facilities, goods, and services.” To twist this provision to make it require that a place of public accommodation (and this is not a concession that Petitioner is a place of public accommodation) offer a service it does not already offer just because members of a protected group desire this service (especially when the service is not exclusively for members of that protected class), defies even the most imaginative reading of the IHRA’s provision on public accommodations (not to mention logic and common sense). An analogy would be if someone sued McDonald’s restaurants for not selling food items desired by a particular ethnic group (since after all they sell other types of food), or suing Baskin Robbins for not selling a particular flavor of ice cream that members of a certain group like (since after all they do sell several flavors of ice cream). Clearly the IHRA does not demand such of places of public accommodation, as such would result in great absurdity and injustice. Such would go beyond ensuring that places offering services to the public refrain from discrimination; it would be tantamount to government dictating what products and services corporations may or may

not offer, which is certainly not the intent of the IHRA.

The Commission's arguments regarding what Petitioner must do to conduct weddings vs. what it must do to conduct civil unions ceremonies is similarly unavailing. The IHRA does not require businesses to offer categories of service they do not already offer merely because it would be able to do so. Such a rule would give government the authority to dictate what products and services businesses must offer, which is a frightening and unconstitutional prospect. The Commission is punishing Petitioner for not offering civil union ceremonies, and tagging on his comments about homosexuality to make it appear like it is discrimination.

The Commission's argument that civil unions were the equivalent of marriage similarly defies the expressed intent of the Illinois legislature and the rules of statutory construction at the time, as well as logic and common sense. If the legislature intended civil unions to be no different than marriage, they would not have found it necessary to pass a civil unions statute. The fact that twice in recent years the Illinois legislature had failed to pass legislation legalizing same-sex marriage reflects that it intended a distinction between civil unions and marriage at the time of the events in question. See HB 5170.

Another item of evidence that, at the time of the events in question, civil unions were not intended by the legislature relate to the statutory provisions restricting marriage to one man and woman in the Illinois Marriage and Dissolution of Marriage Act. *See* 750 ILCS 5/201 (authorizing marriages "between a man and a woman"); 750 ILCS 5/212(a)(5) (prohib-

iting marriages “between 2 individuals of the same sex”); 750 ILCS 5/213.1 (marriages of same-sex couples are “contrary to the public policy of this State”); 750 ILCS 5/216 (denying respect to marriages of same-sex couples entered into in other jurisdictions). If civil unions, which are allowed for same-sex couples, were intended to be equal to marriage, then the civil unions statute and the law limiting marriage to one man and one woman would contradict each other. To follow the cardinal rules of statutory construction, these two statutes must be read to harmonize with each other, and the only way that can be done is by affirming that civil unions were never intended to be the equivalent of marriage, at least at the time of the events in question.

Further, there was a court case pending in the Circuit Court of Cook County, Chancery Division, where several plaintiffs were challenging the above cited statutes limiting marriage to one man and one woman. If civil unions were the equivalent of marriage in Illinois, such a case would have been moot at the very least. The bottom line is that a civil union was not and is not a marriage, and it is not discriminatory for an establishment such as Petitioner to allow one type of ceremony (*i.e.*, weddings) on its premises and not another (*i.e.*, civil unions).

Next, the Commission rejected the argument that Petitioner is not a place of public accommodation with respect to renting space for weddings or other events, by essentially claiming that Petitioner didn’t pre-screen and qualify those seeking to book such events to enough of a degree, and pointing to language in the IHRA that specifically lists places of overnight accommodation. Petitioner has never disputed that

the motel portion of its business is a place of public accommodation. But wedding chapels are not listed as places of public accommodation in the IHRA, and thus the wedding chapel part of Petitioner's facility is not a place of public accommodation. None of the cases relevant to this issue proscribe any quota of pre-screening and qualifying of potential customers in order to not be a place of public accommodation.

The wedding portion of Petitioner's business resembles the foster care placement model in *Fulton* much more than the hotel, restaurant, or bus model. Petitioner pre-screens those requesting to do weddings at his facility and reserves the discretion to decline services. C-588. In response to Respondents' Interrogatory 42, Petitioner states: "There have been several guests who wanted TimberCreek to host their weddings/receptions to which we have declined. We were not a good fit for them . . . foul language, unreasonable demands, poor attitudes." Appellate Court Record C-588. And again in Interrogatory 16, "Petitioner has declined to host a few weddings, and declined to let a bedoir photographer rent the B&B for photography sessions, due to conflicts over payment due, and other business reasons, none of which had anything to do with sexual orientation." Appellate Court Record C-549.

In addition, this Court has likewise noted the limited scope of the traditional concept of a public accommodation: "State public accommodation laws were originally enacted to prevent discrimination in traditional places of public accommodation—like inns and trains." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 656 (2000); *see also* Joseph William Singer, *No Right to Exclude: Public Accommodations and Private Prop-*

erty, 90 NW. U. L. REV. 1283, 1298 (1996) (noting the “common-law rule” that defines public accommodations to include “innkeepers and common carriers (and, in some states, places of entertainment)”). Petitioner’s motel rooms and public eating areas would be public accommodations; its wedding and event services are not.

III. THERE IS NEITHER DIRECT NOR INDIRECT EVIDENCE OF SEXUAL ORIENTATION DISCRIMINATION BY PETITIONER

The flaw in the Commission’s logic rests largely in its treating civil unions and weddings as indistinguishable, and then conflating this with Walder’s comments about homosexuality. Recognizing that legally civil unions and weddings are not the same thing (even legally, at the time) compels a finding and conclusion that Petitioner is not liable for discrimination.

Here, the mere fact that the Petitioner will allow weddings, but not same-sex civil union commitment ceremonies does not show that its owners are motivated by unlawful animus against those with a same-sex “sexual orientation.” That evidence simply does not inform the “ultimate issue” of Petitioner’s motivation, and thus, it does not constitute direct evidence of invidious discrimination. While claiming that Walder’s statements constitute “direct proof” of discrimination, again, Walder’s statements are irrelevant to the ultimate issue, which is whether Petitioner’s failure to include civil unions among its category of services for both heterosexual and homosexual couples constitutes unlawful discrimination on the basis of sexual orientation. But “evidence is not ‘direct’ if an inference of discrimination is required.” *Riggs v. AirTran Airways*,

497 F.3d 1118. (10th Cir. 2007). One would be forced to infer that Petitioner's decision to not allow civil unions ceremonies was not really related to its view of marriage, but rather because it has animus against homosexuals, which negates any notion of direct proof here.

And there is no indirect evidence of sexual orientation discrimination, either. *McDonnell-Douglas v. Green*, 411 U.S. 792 (1973). The first step of this analysis requires the Respondents to demonstrate her prima facie case. "A prima facie case of discrimination may be made out by showing that the [Respondent] is a member of the protected group, that [she] was qualified to continue in [her] position, that [her] employment was terminated, and that [her] position was filled by someone not a member of the protected class." *Id.* Obviously, these prima facie factors, which were established in the context of racial employment discrimination claims, are not readily applicable when determining whether an allegedly public accommodation has discriminated on the basis of "sexual orientation." It is thus unclear which prima facie factors apply in this context, but the Court need not dwell on this unsettled issue because Respondents cannot satisfy any other step of the burden-shifting analysis.

After a party demonstrates each element of a prima facie case, this "may then be rebutted by evidence that the [party] was [refused service] based on a nondiscriminatory motivation." *Id.* Here, Petitioner testified they do not offer their premises for civil union commitment ceremonies, heterosexual or homosexual, because "the Walders' religious faith forbids them from directly supporting or promoting unions

that mimic or undermine marriage, yet that is what they would be forced to do if they were required to host civil-union ceremonies.” In fact, Petitioner acknowledged that it would allow individuals to stay overnight in its hotel rooms regardless of “sexual orientation,” but it could not hold a civil union commitment ceremony for any couple regardless of sexual orientation, because of the message conveyed by such event. Appellate Court Record C-549.

In sum, then, Petitioner’s business decision not to host civil union ceremonies was motivated by its owners’ religious convictions to refrain from furthering, promoting, or commemorating a message that conflicted with their sincerely held religious beliefs and moral beliefs regarding marriage, and not from any sort of unlawful discriminatory animus. This is not an irrational, arbitrary, *post-hoc* justification for the Petitioner’s actions. The legitimacy of Petitioner’s non-discriminatory reason for not hosting civil union ceremonies is demonstrated by a simple illustration: suppose a Ku Klux Klan member approached a black hotel owner and inquired regarding rental facilities (*i.e.*, banquet halls and/or conference rooms) for Klan events, and the hotel owner stated she did not rent her facilities out for Klan events because she did not want to further, promote, or commemorate the message conveyed by the Klan. It would be absurd to find the hotel owner discriminated against the Klan member on the basis of race. Instead, the owner declined the request for the lawful reason of not wanting to further, promote, or commemorate a message conflicting with personal beliefs. For this entirely lawful reason, Petitioner made a business decision not to host civil union ceremonies of any kind. Thus, under the burden-

shifting analysis, Petitioner satisfied its burden of putting forth a legitimate, nondiscriminatory reason for withholding its services.

The Respondents fail the second and third prongs of the test for a *prima facie* case of discrimination via indirect evidence because, as demonstrated above, Petitioner is not a public accommodation for purposes of the services Respondents allegedly sought. Next, for the reasons demonstrated above, Petitioner did not deny Respondents the full enjoyment of its facilities and services. It merely informed Respondents the services they inquired about were not available, which as demonstrated above cannot legislatively be considered denial of the full enjoyment of its facilities and services. As for the third prong of the test, Respondents identified no similarly situated individuals outside of their class who were treated differently. Petitioner has never performed a civil union ceremony for any couple, heterosexual or homosexual. Petitioner does weddings and other celebrations, but Respondents did not request these services from Petitioner. Similarly situated heterosexual couples have never had civil union ceremonies performed at Petitioner's bed and breakfast establishment. Appellate Court Record C-540. For Respondents to use heterosexual couples whose weddings were performed at Petitioner's facility as examples of similarly situated individuals to themselves is to compare apples to oranges.

Petitioner's proffered motivations for its actions alleged to have been discriminatory are not pretextual. First, Walder's comments about homosexuality are incidental because civil union ceremonies in Illinois are and were legally available to homosexual and heterosexual couples. Petitioner has never performed

or allowed a civil union ceremony for any couple, heterosexual or homosexual, nor does it intend to do so. Appellate Court Record C-477. The IHRA contains no language saying policies which favor traditional marriage by definition constitute discrimination on the basis of sexual orientation. The Commission cites no case from Illinois which supports this proposition.

IV. THE CONSTITUTION PROTECTS PETITIONER'S FREEDOM OF SPEECH

The U.S. Constitution protects the right to freedom of expression against state coercion. The First Amendment to the U.S. Constitution states: "Congress shall make no law . . . abridging the freedom of speech[.]" As will be demonstrated, for the Commission to apply the IHRA to Petitioner's decision not to host civil union commitment ceremonies would violate the Petitioner's freedom-of-expression rights.

Expression can qualify as speech for purposes of First Amendment protection. See *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995) ("[T]he Constitution looks beyond written or spoken words as mediums of expression."); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915 (6th Cir. 2003) ("The protection of the First Amendment is not limited to written or spoken words. . . .").

Petitioner's status as a commercial entity does not diminish its First Amendment rights. "[S]peech does not lose its protection because of the corporate identity of the speaker." *Pacific Gas and Elec. Co. v. Public Utils. Comm'n of Cal.*, 475 U.S. 1, 16 (1986). "It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker

is no less a speaker because he or she is paid to speak.” *Riley v. National Fed’n of the Blind of North Carolina*, 487 U.S. 781, 801 (1988); *see also City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 756 n.5 (1988) (“Of course, the degree of First Amendment protection is not diminished merely because the . . . speech is sold rather than given away.”). *See also* generally *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

Petitioner is associated with, and thus implicitly endorses, the messages conveyed in every event or ceremony it holds on its premises. Petitioner’s business is intimately associated with, and, by logical extension, promotes and endorses, the messages conveyed by each publicly visible event it holds on its premises. Thus, to require Petitioner to use its premises to host civil union commitment ceremonies is in essence to compel Petitioner to use its expressive First Amendment rights to convey (and thus implicitly endorse) the message that two individuals in love can enter into a relationship which mimics marriage but is not really marriage (which would yield fornication, or sex outside of the bond of marriage), which violates the Bible (including but not limited to 1 Corinthians 6:9-11, 7:2, and Hebrews 13:4: “Marriage is honorable among all, and the bed undefiled; but fornicators and adulterers God will judge”).

In addition, a ruling against Petitioner would compel it to use its expressive First Amendment rights to convey (and thus implicitly endorse) the message that a romantic relationship between two people of the same sex seeking to cloak itself as something resembling a marriage is morally acceptable and worth celebrating, contrary to Matthew 19:4-

6, where Jesus Christ (believed by Petitioner's owners to be God Himself, with the Bible being His inerrant, inspired, infallible Word to humanity and the ultimate standard of right and wrong) states authoritatively: “Have you not read that He who made them at 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 then, they are no longer two but one flesh. Therefore what God has joined together, let not man separate.” *See also* 1 Corinthians 6:9-11, Romans 1:26-27, Leviticus 18:22 and 20:13.

To compel Petitioner to convey a message with which its owners disagree violates its First Amendment rights. “At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.” *Turner Broadcasting Sys. Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994); *see also* *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (“The First Amendment protects the right of individuals . . . to refuse to foster . . . an idea they find morally objectionable.”). “[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995) (quotations omitted); *see also* *Wooley*, 430 U.S. at 714 (“[T]he right of freedom of thought protected by the First Amendment . . . includes both the right to speak freely and the right to refrain from speaking at all”); *Pacific Gas and Elec.*, 475 U.S. at 11 (“[F]reedom not to speak publicly . . . serves the same ultimate end as freedom of speech in its affirmative aspect.”); *United States v.*

United Foods, Inc., 533 U.S. 405, 410 (2001) (recognizing the First Amendment “prevent[s] the government from compelling individuals to express certain views”); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1283 (10th Cir. 2004) (“The Supreme Court has long held that the government may not compel the speech of private actors.”).

The “choice of a speaker not to propound a particular point of view . . . is presumed to lie beyond the government’s power to control,” *Hurley*, 515 U.S. at 575, and the government may not “compromise” or otherwise invade “the speaker’s right to autonomy over the message,” *id.* at 576. This Court has found that the government has unconstitutionally invaded a speaker’s autonomy by, for example, (1) requiring the speaker “to assist in disseminating” the views of another, *see Pacific Gas and Elec.*, 475 U.S. at 14; (2) requiring the speaker “to associate with speech with which [she] may disagree” because that “force[s]” her “to appear to agree with [those] views,” *see id.* at 15; (3) forcing dissemination of a contrary view “upon a speaker intimately connected with the communication advanced,” *see Hurley*, 515 U.S. at 576; or (4) requiring the speaker “to foster . . . an idea [she] find[s] morally objectionable,” *see Wooley*, 430 U.S. at 715.

The Commission forced Petitioner to host same sex commitment ceremonies, and punished Petitioner for declining to host civil union commitment ceremonies, thus unconstitutionally compelling Petitioner to express messages with which it vehemently disagrees, namely, fornication and other sexual immorality (according to the Bible) is not only acceptable but worth celebrating and morally acceptable. Such a mandate impermissibly invades the Petitioner’s right

of belief and autonomy over its expression by requiring it to “associate” with messages finds sinful, forcing the Petitioner “to appear to agree with [those] views.” *See Pacific Gas and Elec.*, 475 U.S. at 15. Worse yet, the Commission has forced the Petitioner into the role of actively assisting in the dissemination of a message its owners deem “morally objectionable,” (*see Wooley*, 430 U.S. at 715), eradicating the Petitioner’s constitutional right of autonomy over the messages it conveys through its expressive activities.

The prohibition against compelled speech is well established. See, *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (holding “the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment . . . to reserve from all official control”); *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 24 (1974) (Florida statute requiring a newspaper to offer a right-to-reply to political candidates amounted to unconstitutional compelled speech); *Wooley*, 430 U.S. at 714 (requiring the State’s message “Live Free or Die” on state-issued license plates was unconstitutional compelled speech); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 232-35 (1977) (requiring government employees to contribute financially “to the support of an ideological cause [they] may oppose” was unconstitutional under the First Amendment).

An instructive case is *Hurley*, 515 U.S. 557 (1995), in which a homosexual activist group alleged “sexual orientation” discrimination under a Massachusetts public-accommodation antidiscrimination statute (similar to the IHRA) against the private organizers

of a Saint Patrick's Day parade, which refused to allow the activist group advocating in favor of homosexual conduct to march in the parade. The state courts ordered the parade organizers to include the activist group, finding unlawful "sexual orientation" discrimination as the reason for the group's exclusion. But this Court unanimously reversed, as compelling the parade organizers to include the plaintiffs and their message in the parade unconstitutionally interfered with the organizers' freedom of expression.

Since every participating unit affects the message conveyed by the private organizers, the state courts' application of the statute produced an order essentially requiring petitioners to alter the expressive content of their parade. . . . But this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.

Id. at 572-73 (emphasis added).

Similarly, each event Petitioner allows on its premises affects the message conveyed through its holding of such events. Requiring Petitioner to hold a civil union ceremony on its premises, and thus forcing the Petitioner to promote the message conveyed by such a ceremony, infringes on the Petitioner's expressive autonomy by forcing it to support, endorse, and commemorate a message that conflicts with company policy and its owners' religious beliefs. Like *Hurley*, the present case is a quintessential example of a compelled-speech violation.

Government actions compelling private speech are subject to strict scrutiny. *See Turner Broadcasting*, 512 U.S. at 642 (“Our precedents . . . apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content. Laws that compel speakers to utter or distribute speech bearing a particular message are subject to the same rigorous scrutiny.”) (emphasis added) (citations omitted). Under such high level of scrutiny, government actions are presumed to be unconstitutional unless they are a “narrowly tailored means of serving a compelling state interest.” *See Pacific Gas & Elec.*, 475 U.S. at 19; *see also Wooley*, 430 U.S. at 715-16 (acknowledging once the court determines First Amendment protections apply, it must then “determine whether the State’s countervailing interest is sufficiently compelling” to justify the infringement):

On its face, the object of the law is to ensure by statute for gays and lesbians desiring to make use of public accommodations what the old common law promised to any member of the public wanting a meal at the inn, that accepting the usual terms of service, they will not be turned away merely on the proprietor’s exercise of personal preference. When the law is applied to expressive activity in the way it was done here, its apparent object is simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. But in the absence of some further, legitimate end, this object is merely to allow

exactly what the general rule of speaker's autonomy forbids.

It might, of course, have been argued that a broader objective is apparent: that the ultimate point of forbidding acts of discrimination toward certain classes is to produce a society free of the corresponding biases. . . . But if this indeed is the point of applying the state law to expressive conduct, it is a decidedly fatal objective. . . . The very idea that a . . . speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression. The Speech Clause has no more certain antithesis.

Hurley, 515 U.S. at 578-79; *see also Wooley*, 430 U.S. at 717 (“[W]here the State’s interest is to disseminate an ideology, . . . such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”).

There is likewise no legitimate reason for the Commission to apply the IHRA to Petitioner’s expressive enterprises. To the extent a legitimate (or even compelling) government interest exists for the IHRA on its face, such interest does not pertain when the law is applied to expressive activity as it is here. But even if a compelling government interest does exist, applying the IHRA to Petitioner’s expressive activities is not the least restrictive means of achieving such interest. Many statutes allow private individuals and businesses to “opt out” of performing services

where such would violate conscience, even when third parties would be “harmed.” See Health Care Right of Conscience Act, 745 ILCS 70/1 et seq. And “third parties” are always “harmed” when the First Amendment rights of the Plaintiffs are upheld at their expense. In *Hurley*, for example, the gay rights organization wishing to march in the parade was denied such, due to the more compelling interest in upholding the First Amendment rights of the Plaintiff veterans’ organization. Accordingly, the Commission would violate the First Amendment by applying the IHRA to Petitioner’s decision not to use its expressive constitutional rights to promote or commemorate a message conflicting with its owners’ sincerely held religious beliefs.

V. THE U.S. CONSTITUTION PROTECT PETITIONER’S FREEDOM OF RELIGIOUS EXPRESSION

The U.S. Constitution protects the free exercise of religion, forbidding government from making any law “respecting an establishment of religion, or prohibiting the free exercise thereof[.]” The Commission’s applying the IHRA against Petitioner’s decision not to host civil union commitment ceremonies on its premises severely infringes on the Petitioner’s exercise of religion under the U.S. Constitution. Indeed, Petitioner has testified its Bed and Breakfast “which is designated and known as a Christian business in the community – to allow public expressions on its premises such as civil union ceremonies, which are not the equivalent of marriage as defined by the Bible (*see* Genesis 1: 26-31, 2: 20-25, Matthew 19: 4-6, Hebrews 13:4, 1 Corinthians 6:9-20), would be the equivalent of acquiescing to, “taking pleasure in,” promoting such, or giving approval to such, which is

as much against the beliefs of the owners/shareholders of Timbercreek as would be participating in such (see Romans 1:26-32)."

In *Masterpiece*, the Colorado Court of Appeals found that a bakery violated Colo. Rev. Stat. § 24-34-601(2) (public accommodations) when it refused to make a wedding cake for a same-sex wedding, deeming the bakery owner's religious objection to making the cake to be discrimination against the potential customers' sexual orientation. This Court reversed, finding the Colorado Civil Rights Commission did not treat the baker with "neutral and respectful consideration" (which the First Amendment's free exercise clause requires) but rather, treated him with "clear and impermissible hostility" towards his religious beliefs which animated his declining to make a wedding cake for a same-sex wedding. In so doing this Court held, the Colorado Commission violated the baker's First Amendment right to free exercise of religion. *Id.* at 1727-28.

In *Fulton*, this Court found the City of Philadelphia violated the First Amendment rights of a Catholic foster care agency when it refused to renew its contract with the agency if it did not place children with same-sex couples against its religious beliefs regarding marriage:

CSS seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else. The refusal of Philadelphia to contract with CSS for the provision of foster care services unless it agrees to certify same-sex couples as

foster parents cannot survive strict scrutiny, and violates the First Amendment.

Id., at 27-28.

In both of these cases and in the instant case, government enforcement of so-called “anti-discrimination” laws and policies punished Christian business owners and agencies for their faith-based objections to facilitating what they sincerely believed to be sinful according to the Bible. And in all three cases the state agencies in question treated these Christian business owners and agencies with hostility towards their sincerely held religious beliefs.

Requiring Petitioner to host civil union ceremonies on its premises forces it to either to attend religious ceremonies violating conscience or face additional punishment. The IHRC ruled private business owners must attend religious services advocating ideas which violate personal religious beliefs, or suffer formal punishment. This egregious rule violates the First Amendment “exercise of religion” which includes “abstention from[] physical acts” such as “assembling with others for a worship service[.]” *Employment Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990).

Forcing persons to attend religious ceremonies which violate their conscience is unconstitutional. See *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 9 (1947) (religious persecution in the colonies included requiring all persons, “whether believers or non-believers,” to attend religious services); *Locke v. Davey*, 540 U.S. 712, 722 n.6 (2004) (discussing Jefferson’s “Bill for Religious Liberty,” guaranteeing “that no man shall be compelled to frequent . . . any religious

worship . . . ”). Yet, applying the IHRA to Petitioner in this case violates the Free Exercise Clause by forcing it to either violate sincerely held religious beliefs by promoting a message antithetical to its beliefs or face civil liability for so-called “sexual orientation” discrimination. See *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18 (1981). “Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [them] for [maintaining their religious beliefs].” *Sherbert*, 374 U.S. at 404. This satisfies the colorable showing requirement, invokes the hybrid-rights theory, and mandates the application of strict scrutiny.

IHRC’s Order violates the free exercise rights of Petitioner also because the IHRA is neither neutral towards religion nor generally applicable. When a law contains a class of particularized exemptions, the State “may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” *Smith*, 494 U.S. at 884. IHRA contains no exemption to protect religion here, which demonstrates it’s not neutral or generally applicable. See *Fulton*, *supra*.

The statutory exemptions existent in the IHRA are neither neutral nor generally applicable because they fail to protect free-exercise rights and expose much protected religious activity to civil liability. First, the statute (as it relates to public accommodations) exempts only “a non-sectarian nursery, day care center, elementary, secondary, undergraduate, or postgraduate school, or other place of education,” when exercising “free speech, free expression, free exercise of religion or expression of religiously based

views by any individual or group of individuals . . . is protected under the First Amendment to the United States Constitution or under Section 3 of Article I, or Section 4 of Article I, of the Illinois Constitution.” 775 ILCS 5/5-102.1(b) . The exemptions do not extend to organizations such as Petitioner, whose owners are motivated by religious precepts. Second, these exemptions do not guard the religious freedoms of individuals or other types of businesses, but only those of places of education, thus leaving individuals like Walder (along with the employees of his business) vulnerable to infringements on religious liberties. IHRA fails to protect the free-exercise rights of religiously motivated business owners in this State like Petitioner, not falling under the above-cited exemption. As a result, the IHRA infringes on the free-exercise rights of all these unprotected individuals and organizations by compelling some religiously motivated business owners, like the Walders, to attend religious ceremonies violating their consciences and forcing individuals and organizations, like Petitioner, to express messages contrary to their sincerely held religious beliefs. This overbreadth problem is compounded by the Order’s broad interpretation of the term “public accommodation,” as discussed above. In sum, then, as applied to Petitioner, IHRA violates its free-exercise rights and is unconstitutional.

IHRC must justify the burden it imposes on the Petitioner’s free-exercise rights by demonstrating a compelling state interest implemented by the least restrictive means. *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718 (1981); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963);

Wisconsin v. Yoder, 406 U.S. 205, 215 (1972). IHRC lacks a compelling state interest, and it has not implemented its state interest by the least restrictive means. IHRC's main interest in this case can only be to "eliminate discrimination" broadly, or specifically, to eliminate "sexual orientation" discrimination. However, this Court in *Hurley* ruled the state cannot justify enforcing a nondiscrimination statute by compelling private citizens to promote advocacy they oppose:

On its face, the object of the law is to ensure by statute for gays and lesbians desiring to make use of public accommodations what the old common law promised to any member of the public wanting a meal at the inn, that accepting the usual terms of service, they will not be turned away merely on the proprietor's exercise of personal preference. When the law is applied to expressive activity in the way it was done here, its apparent object is simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. But in the absence of some further, legitimate end, this object is merely to allow exactly what the general rule of speaker's autonomy forbids.

It might, of course, have been argued that a broader objective is apparent: that the ultimate point of forbidding acts of discrimination toward certain classes is to produce a society free of the corresponding biases. . . . But if this indeed is the point of applying the state law to expressive conduct, it is a

decidedly fatal objective. . . . The very idea that a . . . speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression. The Speech Clause has no more certain antithesis.

Hurley, 515 U.S. at 578-79

And as stated above, even if IHRC could be said to have a compelling interest in eliminating discrimination, punishing Petitioner for declining to add civil unions to its menu of services is certainly not the least restrictive means of advancing such interest. Many statutes allow private individuals and businesses to “opt out” of performing services where such would violate conscience, even when third parties would be “harmed.” See the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 et seq. And “third parties” are always “harmed” when the First Amendment rights of the Plaintiffs are upheld at their expense. In *Hurley*, for example, the gay rights organization wishing to march in the St. Patrick’s Day parade was denied such, due to the more compelling interest in upholding the First Amendment rights of the Plaintiff veterans’ organization.

IHRC’s application of the IHRA to punish and compel Petitioner’s owners to attend and host a religious ceremony violating their conscience also fails rational-basis scrutiny. See *Axson-Flynn*, 356 F.3d at 1294 (“Depending on the nature of the challenged law or government action, a free exercise claim can prompt either strict scrutiny or rational basis review). Compelling someone to attend—not to mention to

use her premises which are in other respects open to the public—a ceremony advocating ideas that conflict with her conscience is an egregious violation of the constitutional guarantee of the free exercise of religion; it cuts to the very heart of our Nation’s First Amendment liberties.

VI. THE AWARD OF DAMAGES AND INJUNCTIVE RELIEF SHOULD BE REVERSED

For the reasons stated above, IHRC’s award of damages and injunctive relief to Respondents should be reversed.



CONCLUSION

This Court should grant certiorari and reverse IHRC's finding that Petitioner violated the express terms of the IHRA, as declining to offer a service it never offered in the first place (hosting civil union ceremonies, same-sex or opposite sex) does not violate the IHRA and is not discrimination on the basis of sexual orientation. Further, this Court should find that the Commission's application of the IHRA to Petitioner under these circumstances infringes it and it's owners' First and Fourteenth Amendment rights. Petitioner urges this Court to reverse IHRC's Order on both liability and damages (as well as injunctive relief), and grant any and all relief it deems just.

Respectfully submitted,

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