

In the  
**Supreme Court of the United States**

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MELISSA ELAINE KLEIN and AARON WAYNE KLEIN,

*Applicants,*

v.

OREGON BUREAU OF LABOR AND INDUSTRIES,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME TO  
FILE A PETITION FOR WRIT OF CERTIORARI**

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**Directed to the Honorable John G. Roberts, Jr.,  
Chief Justice of the United States and Circuit Justice for the  
United States Court of Appeals for the Ninth Circuit**

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September 6, 2018

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## **APPLICATION FOR EXTENSION OF TIME**

Applicants Melissa and Aaron Klein respectfully request a 30-day extension of time to file a petition for writ of certiorari. This request, if granted, would extend the deadline from September 19, 2018, to October 19, 2018.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The Kleins will be asking this Court to review a judgment of the Oregon Court of Appeals, issued on July 31, 2018. App. B. The judgment of the Oregon Court of Appeals affirms a Final Order of the Oregon Bureau of Labor and Industries, which found that Melissa and Aaron Klein violated Oregon's public accommodations law when they refused to design and create a custom wedding cake to celebrate a same-sex wedding contrary to their sincerely-held religious beliefs. App. A-10. The Bureau's Final Order compelled the Kleins to pay \$135,000 in damages. App. A-49. In affirming that order, the Oregon Court of Appeals rejected the Kleins' arguments that the Final Order violates their free speech and free exercise rights under the First Amendment to the U.S. Constitution. App. A-4 to A-5, A-18 to A-42.

## **JURISDICTION**

On June 21, 2018, the Oregon Supreme Court denied the Kleins' petition for review. App. C. Pursuant to this Court's Rules, the Kleins' petition for a writ of certiorari is due September 19, 2018. This application is made at least 10 days before that date. The Court's jurisdiction would be invoked under 28 U.S.C. § 1257.

## REASONS JUSTIFYING AN EXTENSION OF TIME

The Kleins request this extension of time for the following reasons:

1. This case raises complex legal questions of exceptional importance. This Court determined that the legal principles at stake here were worthy of consideration when it granted certiorari in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. \_\_\_\_, 138 S. Ct. 1719 (2018). This case presents at least two issues of exceptional importance that were considered but not resolved in *Masterpiece Cakeshop*.

*First*, this case squarely presents the question whether custom wedding cakes constitute fully protected expression under the Free Speech Clause of the First Amendment. In *Masterpiece Cakeshop*, this court could not answer that question because of “uncertainties about the record. Specifically, the parties dispute[d] whether [the baker in that case] refused to create a *custom* wedding cake for the individual respondents, or whether he refused to sell them *any* wedding cake (including a premade one).” 138 S. Ct. at 1740 (Thomas, J., concurring). As Justice Kennedy’s opinion for the Court observed, “these details might make a difference.” *Id.* at 1723. No such uncertainty clouds the present case, because the Kleins do not sell premade cakes. The Oregon Court of Appeals found that “the Kleins do not offer such ‘standardized’ or ‘off the shelf’ wedding cakes.” App. A-30. Instead, for every cake the Kleins produce, “Melissa uses her customers’ preferences to develop a custom design” employing “her own design skills and aesthetic judgments.” App. A-31. Thus, the court found, “the Kleins’ argument that their products entail artistic expression

is entitled to be taken seriously.” App. A-32. Even so, the court was “not persuaded that the Kleins’ wedding cakes are entitled to the same level of constitutional protection as pure speech or traditional forms of artistic expression.” *Id.* This case therefore directly presents the compelled speech question that this Court could not decide in *Masterpiece Cakeshop*.

*Second*, this case also squarely presents the question whether the Free Exercise Clause protects an artist from being forced to celebrate a wedding ritual to which she objects on the basis of “decent and honorable religious . . . premises.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015). Although this Court held in *Employment Division v. Smith* that “free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability.’” 494 U.S. 872, 879 (1990), “*Smith* remains controversial in many quarters.” *Masterpiece Cakeshop*, 138 S. Ct. at 1734 (Gorsuch, J., concurring). And at the same time the Court adopted its controversial reading of the Free Exercise Clause in *Smith*, the Court recognized its past decisions holding that “the First Amendment bars application of a neutral, generally applicable law to religiously motivated action” in cases implicating “the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech.” *Smith*, 494 U.S. at 881. The Oregon Court of Appeals dismissed this Court’s hybrid rights doctrine in *Smith* as mere “dictum.” App. A-41. This case therefore squarely raises questions about the continuing viability of *Smith*’s narrow view of the Free Exercise Clause, and of this Court’s hybrid rights doctrine.

Counsel for the Kleins need more time to do justice to these complex and important legal issues in their petition for certiorari.

2. Boyden Gray & Associates is a small law firm of only four attorneys. The firm's attorneys are responsible for drafting the Kleins' petition for certiorari but have multiple ongoing and pressing commitments to other clients.

3. On September 1, 2018, counsel conferred in person with the Kleins about their objectives following the Oregon Supreme Court's denial of the Petition for Review. Counsel needs more time to craft a petition for certiorari in accordance with the Kleins' objectives.

### **CONCLUSION**

For the foregoing reasons, the Kleins respectfully request that this Court grant them a 30-day extension of time to file their petition for writ of certiorari, up to and including October 19, 2018.

Dated: September 6, 2018

Respectfully submitted,

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