

21-476 303 CREATIVE LLC V. ELENIS

DECISION BELOW: 6 F.4th 1160

LOWER COURT CASE NUMBER: 19-1413

QUESTION PRESENTED:

Artist Lorie Smith is a website designer who creates original, online content consistent with her faith. She plans to (1) design wedding websites promoting her understanding of marriage, and (2) post a statement explaining that she can only speak messages consistent with her faith. But the Colorado Anti-Discrimination Act (CADA) requires her to create custom websites celebrating same-sex marriage and prohibits her statement--even though Colorado stipulates that she "work[s] with all people regardless of ... sexual orientation." App.53a, 184a.

The Tenth Circuit applied strict scrutiny and astonishingly concluded that the government may, based on content and viewpoint, *force* Lorie to convey messages that violate her religious beliefs and *restrict* her from explaining her faith. The court also upheld CADA under *Employment Division v. Smith*, 494 U.S. 872 (1990), even though CADA creates a "gerrymander" where secular artists can decline to speak but religious artists cannot, meaning the government can compel its approved messages. The questions presented are:

1. Whether applying a public-accommodation law to compel an artist to speak or stay silent, contrary to the artist's sincerely held religious beliefs, violates the Free Speech or Free Exercise Clauses of the First Amendment.
2. Whether a public-accommodation law that authorizes secular but not religious exemptions is generally applicable under *Smith*, and if so, whether this Court should overrule *Smith*.

GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER APPLYING A PUBLIC-ACCOMMODATION LAW TO COMPEL AN ARTIST TO SPEAK OR STAY SILENT VIOLATES THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT.

CERT. GRANTED 2/22/2022