

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

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

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Now come Plaintiffs 303 Creative LLC and Lorie Smith, by and through counsel, and hereby move this Court for a preliminary injunction, pursuant to Federal Rule of Civil Procedure 65. This requested preliminary injunction will prohibit Defendants from enforcing Colo. Rev. Stat. § 24-34-601(2)(a) in a manner that (1) requires Plaintiffs to design, create, or publish custom wedding websites promoting and celebrating same-sex weddings if they design, create, or publish custom websites promoting and celebrating weddings between one man and one woman and (2) bans Plaintiffs from publishing speech explaining their religious reasons for declining to design, create, and publish custom wedding websites that celebrate any form of marriage not between one man and one woman, including the specific website (attached to the Verified Complaint as Exhibit B) that Plaintiffs want to publish but have not done so for fear of punishment. In support of this motion seeking as-applied relief, Plaintiffs rely upon the Verified Complaint, the affidavit and appendix filed in support of this motion, the memorandum of law filed herewith, and any oral argument set by the Court.

Lorie Smith is a graphic and website design artist who always dreamed of using her artistic ability for a higher purpose. To accomplish this goal, Lorie started her own business, 303 Creative LLC, so that she could more fully integrate her faith and her work, something she could not do at the traditional graphics and marketing companies where she had worked. As 303 Creative's sole owner/operator and employee, Lorie uses her substantial experience with graphic design, website design, social media management, and marketing to promote messages that align with her religious beliefs. Lorie declines to create any artwork, graphics, or textual content that communicates ideas or messages that are inconsistent with her beliefs. Ver. Compl. ¶ 115.

One key way in which Lorie felt called by God to serve Him through her work was by designing, creating, and publishing custom wedding websites that depict the beauty of God’s design for marriage between one man and one woman. This work is expressive in nature and uses images, words, symbols, and other modes of expression to tell a couple’s unique story of love and commitment. Lorie created a special addition to 303 Creative’s website announcing this new service and describing 303 Creative’s religious motivation for offering this artistic service. To be transparent about the services 303 Creative provides, this addition explains that she “will not be able to create websites for same-sex marriage or any other marriage that is not between one man and one woman” because “[d]oing that would compromise [her] Christian witness and tell a story about marriage that contradicts God’s true story of marriage—the very story He is calling [her] to promote.” Ver. Compl. ¶ 163. But this website addition never saw the light of day.

Colorado’s Anti-Discrimination Act (“CADA”) bars businesses from discriminating based on a person’s disability, race, creed, color, sex, sexual orientation, marital status, and national origin or ancestry. Colo. Rev. Stat. § 24-34-601(2)(a). It also bars businesses from publishing statements that would directly or indirectly indicate that service will be denied, or that a person’s patronage or presence is “unwelcome, objectionable, unacceptable, or undesirable,” based on these protected grounds. *Id.* This rule should have no effect on Lorie’s religious practice because she decides what expression to create based on its message, not any prospective client’s personal characteristics.¹ But Defendants have interpreted CADA as prohibiting

¹ For simplicity’s sake, this motion refers to both Plaintiffs collectively as “Lorie” whenever possible.

expressive businesses from declining to create speech that celebrates same-sex marriage for religious or moral reasons. App. in Supp. of Pls.’ Mot. for Prelim. Inj. (“App.”) 1-16, 43-52.

As a result, Defendants have prosecuted Masterpiece Cakeshop, a Christian bakery, under CADA for declining to create a custom wedding cake for a same-sex couple, even though Masterpiece Cakeshop declined that order based on the unwelcome message expressed by the cake and offered to make any number of other items for the prospective clients. Ver. Compl. ¶¶ 70-72; App. 5, 46, 51. Defendants, in contrast, deemed three secular bakeries—Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.—in compliance with CADA when they refused to create custom cakes expressing a religious message critical of same-sex marriage for a Christian client but would create other items for Christians. App. 17-34. Thus, with respect to expressive businesses that approve of same-sex marriage, Defendants recognized a distinction between (a) discrimination based on a protected status and declining a commission based on a disagreeable message and (b) the significance of the bakeries’ willingness to create other items for members of a protected group. App. 20. But Defendants refuse to apply either consideration to Masterpiece Cakeshop or other expressive businesses that oppose same-sex marriage, putting them at imminent risk of incurring investigations, re-education training, reporting requirements, and fines of up to \$500 for each violation of CADA. Colo. Rev. Stat. §§ 24-34-306(2)(a), -306(9), -602(1)(a), -605; App. 5-6, 15, 46, 51.

303 Creative holds the same religious beliefs regarding marriage as Masterpiece Cakeshop and has the same policy of not creating speech that promotes same-sex marriage. Ver. Compl. ¶¶ 113-14. And 303 Creative wishes to publish speech explaining its religious reasons for declining to promote any form of marriage not between a man and a woman. Ver. Compl.

¶¶ 162-63, 219-20. It is thus a clear target of Defendants' rules that no expressive business may decline to create speech promoting same-sex marriage on religious or moral grounds or publish speech explaining its religious reasons for celebrating only marriage between a man and a woman. As a direct result, 303 Creative has not published the new addition to its website announcing the availability of custom wedding websites and explaining its religious reasons for designing, creating, and publishing only speech that promotes God's design for marriage between a man and a woman. Ver. Compl. ¶¶ 177-79. But for CADA and Defendants' discriminatory application of it, 303 Creative would do so immediately. Ver. Compl. ¶¶ 180, 285.

Defendants' application of CADA to expressive businesses that oppose same-sex marriage on religious grounds—like 303 Creative—violates the First Amendment, the Unconstitutional Conditions Doctrine, and the Equal Protection Clause. Indeed, Defendants' application of CADA violates three aspects of the First Amendment: (1) the Free Speech Clause, (2) the Free Press Clause, and (3) the right of expressive association. The Free Speech Clause protects Lorie's right to speak about marriage and create art that aligns with her religious beliefs. But Defendants apply CADA in a content and viewpoint based fashion to target expressive businesses that disfavor same-sex marriage, like 303 Creative, for censure and punishment. Defendants also compel Lorie to create expression celebrating same-sex marriage against her will in violation of the Compelled Speech Doctrine. Defendants' application of CADA further violates the Free Press Clause by prohibiting Lorie from publishing a religious critique of same-sex marriage on 303 Creative's website because doing so might directly or indirectly indicate requests for custom same-sex wedding websites would be unwelcome or denied. Defendants'

application of CADA also unlawfully compels Lorie to engage in expressive association with persons seeking to partner with an artist to promote a view of marriage that directly opposes her own.

Furthermore, Defendants apply CADA to condition Lorie's right to create expression about marriage between a man and a woman on her agreement to create unwanted expression about other types of marital unions. This violates the Unconstitutional Conditions Doctrine by deterring or chilling Lorie's protected speech in an indirect attempt to do what Defendants cannot do directly, *i.e.*, force Lorie to engage in speech celebrating same-sex marriage. Likewise, Defendants' application of CADA only to expressive businesses that disfavor same-sex marriage—like 303 Creative—but not to expressive businesses that support same-sex marriage—like Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.—violates the Equal Protection Clause. Such unequal treatment based on expressive businesses' viewpoints on marriage has no rational, let alone compelling, basis.

Defendants' interpretation of CADA has barred, and will continue to bar, Lorie from engaging in protected speech about marriage. It is imperative that this Court enjoin Defendants' unconstitutional policy and practice of applying CADA to force Lorie to design, create, and publish speech promoting same-sex marriage and to forbid Lorie from broadcasting her religious views on marriage on 303 Creative's website. Lorie experiences irreparable harm each day Defendants prohibit her from engaging in free speech. Lorie thus respectfully requests that this Court rule on her Motion for Preliminary Injunction as soon as possible.

Lorie also respectfully requests that this Court waive the bond requirement for a preliminary injunction because this case serves the public interest by vindicating her First and

Fourteenth Amendment rights, *see City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (upholding the waiver of bond where “plaintiffs were engaged in public-interest litigation”), and there is no likelihood of harm to Defendants, as they already recognize the free speech rights of expressive businesses that support same-sex marriage, *see Coquina Oil Corp. v. Transwestern Pipeline Co.*, 825 F.2d 1461, 1462 (10th Cir. 1987) (“[A] trial court may ... determine a bond is unnecessary to secure a preliminary injunction if there is an absence of proof showing a likelihood of harm.” (quotation omitted)). Lorie’s ability to protect her constitutional “rights should not be contingent upon an ability to pay.” *Doctor John’s, Inc. v. City of Sioux City*, 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004); *see also Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 128-29 (D. Mass. 2003) (noting that “requiring a security bond ... might deter others from exercising their constitutional rights”).

In keeping with Local Rule 7.1(a), counsel for Plaintiffs conferred with the Office of the Colorado Attorney General about this motion via telephone on September 20, 2016. Deputy Attorney General Vincent Morscher indicated to Plaintiffs’ counsel that he and Assistant Attorney General Jack D. Patten, III intend to appear as attorney of record in this case on behalf of Defendant Aubrey Elenis in her official capacity as Director of the Colorado Civil Rights Division; First Assistant Attorney General Eric Maxfield indicated to Plaintiffs’ counsel that he intends to appear as attorney of record in this case on behalf of Defendants Anthony Aragon, Ulysses J. Chaney, Miguel “Michael” Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, and Jessica Pocock in their official capacities as member of the Colorado Civil Rights Commission, and First Assistant Attorney General LeeAnn Morrill indicated to Plaintiffs’ counsel that she

intends to appear as attorney of record in this case on behalf of Defendant Cynthia H. Coffman in her official capacity as Colorado Attorney General. Attorneys for Defendants indicated that they were unable to state their position regarding Plaintiffs' motion at this time, but Plaintiffs' will notify the Court upon receiving Defendants' positions on the motion unless Defendants notify the Court directly. Accordingly, Plaintiffs' counsel filed the present motion with the Court.

Respectfully submitted this 20th day of September, 2016.

s/ Jeremy D. Tedesco

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CERTIFICATE OF SERVICE

I hereby certify that on September 20th, 2016, the foregoing was filed with the Clerk of Court using the CM/ECF system. This Plaintiffs' Motion for Preliminary Injunction will be served along with the Complaint and Summons via process server to all defendants.

s/ Jeremy D. Tedesco

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303 CREATIVE LLC, a limited liability company; and
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AUBREY ELENIS, as Director of the Colorado Civil
Rights Division, in her official capacity;
ANTHONY ARAGON,
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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 PRELIMINARY INJUNCTION**

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. On March 5, 2013, the Colorado Civil Rights Division found that Masterpiece Cakeshop violated Colorado’s Anti-Discrimination Act (“CADA”). Then, on December 6, 2013, an

administrative law judge (“ALJ”) of the State of Colorado Office of Administrative Courts also found Masterpiece Cakeshop in violation of CADA.

3. A true and accurate copy of the Colorado Civil Rights Division’s Masterpiece Cakeshop decisions is included in the Appendix in Support of Plaintiffs’ Motion for Preliminary Injunction (“Appendix”) at pages 43-52 and a true and accurate copy of the ALJ’s initial decision finding Masterpiece Cakeshop in violation of CADA is included in the Appendix at pages 1-13.
4. On May 30, 2014, the Colorado Civil Rights Commission issued a final order adopting in full the ALJ’s decision that Masterpiece Cakeshop violated CADA.
5. A true and accurate copy of the Colorado Civil Rights Commission’s final order adopting the ALJ’s decision finding Masterpiece Cakeshop in violation of CADA is included in the Appendix at pages 14-16.
6. On March 24, 2015, the Colorado Civil Rights Division found that Azucar Bakery did not violate CADA.
7. A true and accurate copy of the Colorado Civil Rights Division’s Azucar Bakery decision is included in the Appendix at pages 17-21.
8. On March 24, 2015, the Colorado Civil Rights Division found that Gateaux, Ltd. did not violate CADA.
9. A true and accurate copy of the Colorado Civil Rights Division’s Gateaux, Ltd. decision is included in the Appendix at pages 22-26.
10. On March 24, 2015, the Colorado Civil Rights Division found that Le Bakery Sensual, Inc. did not violate CADA.

11. A true and accurate copy of the Colorado Civil Rights Division’s Le Bakery Sensual, Inc. decision is included in the Appendix at pages 27-31.
12. On June 30, 2015, the Colorado Civil Rights Commission affirmed the Colorado Civil Rights Division’s decisions finding that Azucar Bakery, Gateaux, Ltd., and Le Bakery Sensual, Inc. did not violate CADA. True and accurate copies of the Commission’s decisions in each case are included in the Appendix at pages 32-34.
13. Many expressive businesses freely express their views in favor of same-sex marriage. Examples of such expression, all by Colorado businesses, are provided below.
14. 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.
15. A true and accurate copy of this Brian Kraft Photography blog post excerpt is included in the Appendix at page 35.
16. 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.”

17. 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.”

18. True and accurate copies of these excerpts from the Sarah Roshan Wedding Photographer homepage are included in the Appendix at pages 36-37.

19. 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-sex-wedding-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 judgment 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.

20. A true and accurate copy of this Sarah Roshan Wedding Photographer webpage excerpt is included in the Appendix at page 38.

21. Anginet Photography also expresses its views favoring same-sex marriage.
22. 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.
23. Castle Rock News-Press's story explaining Anginet Photography's support for same-sex marriage is located at <http://castlerocknewspress.net/stories/Wedding-photographer-celebrates-court-ruling,192421>.
24. 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."

25. A true and accurate copy of this Castle Rock News-Press story is included in the Appendix at page 39.
26. 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.

27. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 40.

28. On its blog at <http://nicolenichols.com/blog/special-events/denver-pridefest-co-gay-weddings/>, 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. . . .

29. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 41.

30. 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*:

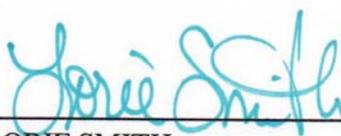
It was an honor to witness and be able to document the strong endearing love Ashley & Paige share. And I'm so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows, from getting 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.

31. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 42.

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

APPENDIX

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STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	▲ COURT USE ONLY ▲
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. MASTERPIECE CAKESHOP, INC., and any successor entity, and JACK C. PHILLIPS, Respondents.	
INITIAL DECISION GRANTING COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT	

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

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

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.

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 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

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."

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.

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).

2971, 2990 (2010). In rejecting the Chapter's argument that denying membership to students who engaged in "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 § 24-34-601(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 making any

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

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).

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 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

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 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.

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 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-

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.

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 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 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

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*.

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

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 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,

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).

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

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 successor entity, and JACK C. PHILIPS 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 30 th 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:

Nicolle 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
1300 Broadway, 10th Floor
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





COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

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.

7

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 Bordo ("Bordo") (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. Bordo 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 Bordo if “he consider[ed] not baking [his] cake discrimination against [him] as a Christian,” to which Bordo 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.

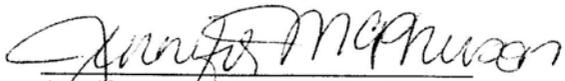
In accordance with C.R.S. 24-34-306(2)(b)(1)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

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(l)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee

3/24/2015
Date



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

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 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 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.

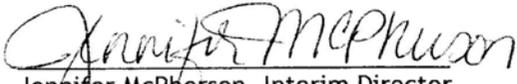
In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

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(l)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee

3/24/2015
Date



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

Charge No. P20140070X

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

Charging Party

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 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 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

3/24/2015
Date



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

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

Rufina Hernández,
Director

cc: Azucar Sweet Shop and Bakery
David Goldberg





COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

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', is written over the typed name.

Rufina Hernández,
Director

cc: Gateaux, Ltd.
Kathleen Davia

1560 Broadway Street, Suite 1050, Denver, CO 80202 P 303.894.2997 F 303.894.7830 www.dora.colorado.gov/crd





COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

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', is written over the typed name.

Rufina Hernández,
Director

cc: Le Bakery Sensual, Inc.
Jack Robinson



8/1/2016

Denver Art Museum Wedding - Brian Kraft Photography

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 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

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PHILLIP + GARY | CHAUTAUQUA ELOPEMENTS | 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 therefor 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 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.

8/1/2016

News | Castle Rock Colorado | Castlerocknewspress.net



NEWS (/NEWS/)

ENTERTAINMENT (/ENTERTAINMENT/)

VOICES (/VOICES/)

Wedding photographer celebrates court ruling

'Huge step forward' seen in same-sex decision



(/uploads/original/1435431623_7797.jpg)

Anginet Page has been photographing same sex wedding ceremonies for years. Courtesy photo
Posted Saturday, June 27, 2015 2:02 am

Ashley Reimers (mailto:areimers@coloradocommunitymedia.com)

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."

Page is a photojournalist and has been shooting weddings for over a decade, many of them same-sex ceremonies. She lives in Brighton, but works in the Denver metro area, along the Front Range and even internationally.

Upon hearing the news of the U.S. Supreme Court's ruling that legalized same-sex marriages across the United States, Page was overwhelmed with emotion. She said she never thought the day would come that all of her friends, regardless of their beliefs and regardless of how they love, could get married legally in all 50 states.

"It's a huge blessing to be part of the excitement and to be able to see this happen," said Page, holding back tears. "It's been a long time coming. It's one more step towards everybody truly understanding that love is pure and nonjudgmental."

Page, owner of Anginet Photography, is a member of EnGAYged Weddings, an LGBT wedding planning directory and forum for lesbian, gay, bisexual, transgender and straight couples. She said the organization has done an incredible job to rally around and support all couples.

Following the Supreme Court ruling, Page said she expects her business to get busier, which she welcomes with open arms.

"Just thinking about my friends who don't have to live in fear any longer is very exciting," Page said. "So many same-sex couples try to convince themselves that the paperwork doesn't matter, but it does. It's just a huge step forward."

Keywords

gay marriage (/search_mode/keyword/browse.htm?search_filter=gay+marriage), Supreme Court (/search_mode/keyword/browse.htm?search_filter=Supreme+Court), Colorado (/search_mode/keyword/browse.htm?search_filter=Colorado), Anginet Photography (/search_mode/keyword/browse.htm?search_filter=Anginet+Photography), (/search_mode/keyword/browse.htm?search_filter=)

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THE LATEST

News (/news/)



(/stories/Early-returns-show-Castle-Rock-mayor-likely-wont-be-recalled,231498)

Recall fails, Castle Rock mayor remains in office (/stories/Early-returns-show-Castle-Rock-mayor-likely-wont-be-recalled,231498)

TUESDAY, JULY 26

Behavior changes may signal dementia onset (/stories/Behavior-changes-may-signal-dementia-onset,232744)

YESTERDAY AT 12:56 PM

Ranch resident launches nonprofit to combat human trafficking (/stories/Ranch-resident-launches-nonprofit-to-combat-human-trafficking,231449)

MONDAY, JULY 26

I caught a Pikachu in her kitchen (/stories/I-caught-a-Pikachu-in-her-kitchen,231044)

MONDAY, JULY 26

Sports (/sports/)



(/stories/Drivers-share-their-Bandimere-memories,231031)

Drivers share their Bandimere memories (/stories/Drivers-share-their-Bandimere-memories,231031)

MONDAY, JULY 26

The Force is with the father (/stories/The-Force-is-with-the-father,231032)

MONDAY, JULY 26



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

Posted in: Weddings



Nicole Nichols Photography

wedding reception at House of Blues in New Orleans

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!

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

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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 BOTANIC 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 dance they each danced with their father and then they swapped and danced with each other's dads, 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.



Dora
Department of Regulatory Agencies

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Governor

Barbara J. Kelley
Executive
Director

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

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Charge No. P20130008X

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

Charging Party

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, 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)

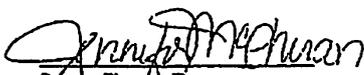
To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by 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 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
Colorado Department of
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Barbara J. Kolkey
Executive
Director

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Steven Chavez
Director of Division of Civil Rights

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(800) 262-4945 (toll free)

200 West "D" Street, Suite 214
Pueblo CO 81003
(719) 542 1298
(303) 869 0498 (fax)

222 S 6th Street, Suite 301
Grand Junction, CO 81505
(970) 248-7363
(970) 248-7304
(970) 742 1262 (fax)

<http://www.colorado.gov/dora>

Charge No. P20130007X

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

Charging Party

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 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.

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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.'"

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

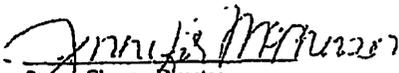
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Based on the evidence contained above, I determine that the Respondent has violated C.R.S. 24-34-402, as re-enacted

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
of 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.

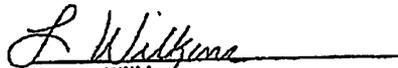
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY
INJUNCTION**

This Court has reviewed Plaintiffs’ motion for preliminary injunction as well as all the briefing submitted by the parties regarding that motion. For the reasons set forth in this Court’s accompanying opinion and in accordance with Federal Rule of Civil Procedure 65, this Court grants Plaintiffs’ motion for preliminary injunction. Thus,

IT IS ORDERED THAT:

All named Defendants, their officers, their agents, their servants, their employees, their attorneys, and those persons in active concert or participation with Defendants who receive actual notice of this Order, are temporarily enjoined from directly or indirectly

- Applying Colorado Revised Statute § 24-34-601(2)(a) to prevent Plaintiffs from publishing or otherwise communicating their desired statement about marriage (attached to the Verified Complaint as Exhibit B) or any similar statements that (a) promote marriage as an institution between one man and one woman exclusively, or that (b) decline to design, create, or publish text, graphics, or websites promoting events (such as same-sex wedding ceremonies) or ideas inconsistent with Plaintiffs' beliefs about marriage as an institution that should only be between one man and one woman, or that (c) explain Plaintiffs' beliefs about what they can create and why they cannot design, create, or publish text, graphics, or websites promoting events (such as same-sex wedding ceremonies) or ideas inconsistent with their beliefs about marriage as an institution that should only be between one man and one woman.
- Applying Colorado Revised Statute § 24-34-601(2)(a) to force Plaintiffs to design, create, or publish any text, graphics, or websites promoting events (such as same-sex wedding ceremonies) or ideas inconsistent with Plaintiffs' beliefs about marriage as an institution that should only be between one man and one woman.

This injunction shall remain in place during the course of this litigation until this Court orders otherwise. Because this injunction protects fundamental constitutional rights and Defendants suffer no harm from refraining to enforce laws in an unconstitutional manner, this Court issues this preliminary injunction without a bond or any other security.

DONE IN OPEN COURT: _____

U.S. District Court Judge/Magistrate