

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

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

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

Plaintiffs,

vs.

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

Defendants.

**PLAINTIFFS’ NOTICE REGARDING DEFENDANTS’ UNOPPOSED REQUEST
FOR A STATUS CONFERENCE**

1. Plaintiffs file this notice to clarify their position on Defendants' Unopposed Request for a Status Conference. Plaintiffs agree with Defendants that their responses to Plaintiffs' complaint and preliminary injunction motion are due on October 19, 2016 (Doc. 21 at 2 ¶ 2). However, in light of Defendants' apparent intention to file a motion to dismiss in response to the complaint, Plaintiffs do not oppose a status conference to discuss setting a mutually agreeable briefing schedule and consolidated hearing for both motions.

2. Plaintiffs also seek to clarify that there is no reason for the Court to delay consideration of Plaintiffs' motion until it rules on Defendants' forthcoming motion to dismiss. Defendants' assertions regarding comity, standing, ripeness, jurisdiction, and the status of *Craig v. Masterpiece Cakeshop* can be properly raised and briefed in response to Plaintiffs' preliminary injunction motion. If Defendants desire to also raise these issues in a separate motion to dismiss, they may certainly do so. Plaintiffs stand ready to fully brief both motions on a prompt concurrent schedule and then consolidate them for hearing.

3. Delaying a ruling on Plaintiffs' preliminary injunction motion is also not warranted and not in the interest of justice given the irreparable harm that delay will cause. Each day Plaintiff Lorie Smith waits for a ruling on the preliminary injunction she suffers irreparable harm to her First Amendment rights. Lorie desires to immediately post statements on her website explaining her religious beliefs about marriage and announcing her entry into the wedding industry. She also desires to immediately begin creating websites promoting one-man, one-woman marriages. Yet she cannot speak as she desires without violating the Colorado Anti-Discrimination Act ("CADA") and facing its penalties. CADA is chilling her constitutionally protected expression and causing her irreparable harm. *Ward v. Utah*, 321 F.3d 1263, 1267 (10th

Cir. 2003) (“[A] First Amendment plaintiff who faces a credible threat of future prosecution suffers from an ‘ongoing injury resulting from the statute’s chilling effect on [her] desire to exercise [her] First Amendment rights.’”) (citation omitted); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). A prompt ruling on the motion for preliminary injunction is needed so that Lorie can start speaking as soon as possible.

4. Plaintiffs object to the substantive legal assertions in Defendants’ Unopposed Request for a Status Conference, but reserve those objections for briefing.

Respectfully submitted this 6th day of October, 2016.

s/ Jeremy D. Tedesco

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2016, I electronically filed the foregoing PLAINTIFFS' NOTICE REGARDING DEFENDANTS' UNOPPOSED REQUEST FOR A STATUS CONFERENCE with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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