

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

Civil Action No. 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.

JOINT STATEMENT OF STIPULATED FACTS

The parties jointly submit the following stipulated facts:

1. Colorado’s Anti-Discrimination Act (“CADA”), found at Colo. Rev. Stat. §§ 24-34-301, *et seq.* provides that “[i]t 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 disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation” Colo. Rev. Stat. § 24-34-601(2)(a).

2. CADA defines a “place of public accommodation” to include “any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public” Colo. Rev. Stat. § 24-34-601(1).

3. CADA also provides that it is unlawful for a person “directly or indirectly, to publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual’s patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.” Colo. Rev. Stat. § 24-34-601(2)(a).

4. If a person believes that an individual or business has violated CADA, that person can seek redress by either filing a civil action in state court or by filing a charge alleging discrimination or unfair practice with the Colorado Civil Rights Division (“Division”). Colo. Rev. Stat. §§ 24-34-306(1)(a), 24-34-602-603.

5. If a person files a civil action and the state court finds a violation of CADA, the court shall fine the individual or business between \$50.00 and \$500.00 for each violation. Colo. Rev. Stat. § 24-34-602(1)(a).

6. If a person files a charge alleging discrimination or unfair practice with the Division, the Director of the Division (“Director”), with the assistance of the Division’s staff, shall make a prompt investigation of the charge. Colo. Rev. Stat. § 24-34-306(2)(a).

7. The Colorado Civil Rights Commission (“Commission”), individual Commissioners, or the Colorado Attorney General also have independent authority to file charges alleging discrimination or unfair practice when they determine that the alleged discriminatory or unfair practice imposes a significant societal or community impact. Colo. Rev. Stat. § 24-34-306(1)(b).

8. If the Commission, individual Commissioners or the Colorado Attorney General file a charge alleging discrimination or unfair practice, the Director, with the assistance of the Division’s staff under the Director’s supervision, shall make a prompt investigation of the charge. Colo. Rev. Stat. §§ 24-34-306(1)(b) and (2)(a).

9. The Director, with the assistance of the Division’s staff, investigates all charges of discrimination or unfair practice received by the Division. Colo. Rev. Stat. § 24-34-306(2)(a).

10. The Director can issue subpoenas to witnesses and compel the testimony of witnesses. Colo. Rev. Stat. § 24-34-306(2)(a).

11. The Director, or the Director’s designee, who shall be an employee of the Division, determines whether probable cause exists for crediting charges of discrimination or unfair practice. Colo. Rev. Stat. § 24-34-306 (2)(b).

12. If the Director or the Director’s designee determines that probable cause does not exist, he or she shall dismiss the charge and provide notice to the charging party of their right to file an appeal of the dismissal to the Commission. Colo. Rev. Stat. § 24-34-306(2)(b)(I).

13. If the Director of the Division determines that probable cause does exist, the Director provides the parties a written notice of the finding and commences compulsory mediation. Colo. Rev. Stat. § 24-34-306(2)(b)(II).

14. The Commission hears appeals from the Director's findings. Colo. Rev. Stat. § 24-34-306(2)(b)(I).

15. The Commission can issue notices and complaints to set hearings either before the Commission, a Commissioner, or before an Administrative Law Judge. Colo. Rev. Stat. § 24-34-306(4).

16. After presentation of all the evidence at hearing, the Commission, Commissioner or Administrative Law Judge makes findings determining whether the individual or business engaged in any discriminatory or unfair practice as defined by CADA. Colo. Rev. Stat. § 24-34-306(9).

17. If either the Commission, a Commissioner or an Administrative Law Judge makes a finding that the individual or business under investigation violated CADA, the Commission has the power and authority under CADA to issue cease-and-desist orders to prevent violations of CADA and to issue orders requiring the charged party to "take such action" as the Commission, a Commissioner or an Administrative Law Judge may order. Colo. Rev. Stat. § 24-34-306(9).

18. Aubrey Elenis is the Director of the Division and is named as a Defendant in her official capacity only.

19. Ms. Elenis's authority in relation to CADA is specified in Colo. Rev. Stat. §§ 24-34-302, 24-34-306.

20. Commissioners Anthony Aragon, Ulysses J. Chaney, Miguel "Michael" Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, and Jessica Pocock are members of the Commission and are named as Defendants in their official capacities only.

21. Mr. Aragon's, Mr. Chaney's, Mr. Elias's, Ms. Fabrizio's, Ms. Hess's, Ms. Lewis's, and Ms. Pocock's authority to enforce CADA is specified in Colo. Rev. Stat. §§ 24-34-305, 24-34-306, 24-34-605.

22. Cynthia H. Coffman is the Colorado Attorney General and is named as a Defendant in her official capacity only.

23. Ms. Coffman's authority in relation to CADA is specified in Colo. Rev. Stat. § 24-34-306.

24. Prior to the filing of Plaintiffs' case, the Division received a charge of discrimination "because of" sexual orientation from a same-sex couple against a Colorado bakery, Masterpiece Cakeshop, Inc., a public accommodation, which is owned and operated by Jack Phillips ("Phillips"), a Christian cake artist.

25. The facts and procedure of the Masterpiece Cakeshop case is found in the decision published by the Colorado Court of Appeals on August 13, 2015, titled *Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc., and any successor entity, and Jack C. Phillips and Colorado Civil Rights Commission*, 2015 COA 115, for which the Court may take judicial notice, as well as the following documents: Colorado Civil Rights Division's Probable Cause Determination in *Charlie Craig v. Masterpiece Cakeshop, Inc.* dated March 5, 2013, attached as Exhibit C; Colorado Civil Rights Division's Probable Cause Determination in *David Mullins v. Masterpiece Cakeshop, Inc.* dated March 5, 2013, attached as Exhibit D; Administrative Law Judge's Initial Decision in *Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc. and Jack C. Phillips* dated December 6, 2013, attached as Exhibit E; and Colorado Civil Rights Commission's Final Agency Order in *Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc. and Jack C. Phillips* dated May 30, 2014, attached as Exhibit F.

26. Phillips and Masterpiece Cakeshop's petition for writ of certiorari to the Colorado Supreme Court was denied on April 25, 2016.

27. Phillips and Masterpiece Cakeshop's petition for writ of certiorari to the U.S. Supreme Court is currently pending.

28. During the pendency of Phillips and Masterpiece Cakeshop's case, the Division considered three claims of discrimination brought by William Jack ("Jack"), a professing Christian, against three Colorado bakeries, all public accommodations: Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd. The facts and procedure of these matters are discussed in the following documents: Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Azucar Bakery* dated June 30, 2015, attached as Exhibit G; Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Gateaux, Ltd.* dated June 30, 2015, attached as Exhibit H; Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Le Bakery Sensual, Inc.* dated June 30, 2015, attached as Exhibit I; Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Azucar Bakery* dated March 24, 2015, attached as Exhibit J; Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Gateaux, Ltd.* dated March 24, 2015, attached as Exhibit K; and Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Le Bakery Sensual, Inc.* dated March 24, 2015, attached as Exhibit L.

29. Plaintiff Lorie Smith is a lifelong resident of the State of Colorado and a citizen of the United States of America.

30. Ms. Smith is a Christian.

31. Ms. Smith's religious beliefs, including her religious understanding about marriage as an institution between one man and one woman, are central to her identity, her understanding of existence, and her conception of her personal dignity and identity.

32. Ms. Smith's decision to speak and act consistently with her religious understanding of marriage defines her personal identity.

33. Ms. Smith believes that her life is not her own, but that it belongs to God, and that He has called her to live a life free from sin.

34. Ms. Smith believes that everything she does – personally and professionally – should be done in a manner that glorifies God.

35. Ms. Smith believes that what is sinful versus what is good is rooted in the Bible and her personal relationship with Jesus Christ.

36. Ms. Smith believes that she will one day give an account to God regarding the choices she made in life, both good and bad.

37. Ms. Smith believes that God instructs Christians to steward the gifts He has given them in a way that glorifies and honors Him.

38. Ms. Smith believes that she must use the creative talents God has given to her in a manner that honors God and that she must not use them in a way that displeases God.

39. Ms. Smith's creative talents include artistic talents in graphic design, website design, and marketing.

40. She developed these skills at the University of Colorado Denver, where she received a business degree with an emphasis in marketing.

41. She was then employed by other companies to do graphic and web design before starting her own company, 303 Creative.

42. Ms. Smith started 303 Creative because she desired the freedom to use her creative talents to honor God to a greater degree than was possible while working at other companies.

43. 303 Creative is a for-profit limited liability company organized under Colorado law with its principal place of business in Colorado.

44. Ms. Smith is the sole member-owner of Plaintiff 303 Creative LLC.

45. Through 303 Creative, Ms. Smith offers a variety of creative services to the public, including graphic design, and website design, and in concert with those design services, social media management and consultation services, marketing advice, branding strategy, training regarding website management, and innovative approaches for achieving client goals.

46. All of Plaintiffs' graphic designs are expressive in nature, as they contain images, words, symbols, and other modes of expression that Plaintiffs use to communicate a particular message.

47. All of Plaintiffs' website designs are expressive in nature, as they contain images, words, symbols, and other modes of expression that Plaintiffs use to communicate a particular message.

48. As the sole owner and operator of 303 Creative, Ms. Smith controls the scope, mission, priorities, creative services, and standards of 303 Creative.

49. Ms. Smith does not employ or contract work to any other individuals.

50. Each website 303 Creative designs and creates is an original, customized creation for each client.

51. In her website design work, Ms. Smith devotes considerable attention to color schemes, fonts, font sizes, positioning, harmony, balance, proportion, scale, space, interactivity, movement, navigability, and simplicity.

52. Ms. Smith also considers color, positioning, movement, angle, light, complexity, and other factors when designing graphics.

53. Every aspect of the websites and graphics Plaintiffs design contributes to the overall messages that Plaintiffs convey through the websites and graphics and the efficacy of those messages.

54. Ms. Smith personally devotes herself to her design work, drawing on her inspiration and sense of beauty to create websites and graphics that effectively communicate the intended messages.

55. As a seasoned designer, Ms. Smith helps clients implement the ideal websites and graphics—oftentimes by designing custom graphics and textual content for their unique needs—to enhance and effectively communicate a message.

56. Although clients often have a very basic idea of what they wish for in a graphic or a website and sometimes offer specific suggestions, Ms. Smith's creative skills transform her clients' nascent ideas into pleasing, compelling, marketable graphics or websites conveying a message.

57. When designing and creating graphics or websites, Ms. Smith is typically in close contact with her clients as they each share their ideas and collaborate to develop graphics or websites that express a message in a way that is pleasing to both Ms. Smith and her clients.

58. Ms. Smith ultimately has the final say over what she does and does not create and over what designs she does and does not use for each website.

59. For each website 303 Creative makes, Ms. Smith typically creates and designs original text and graphics for that website and then combines that original artwork with text and graphics that Ms. Smith had created beforehand or that Ms. Smith receives from the client or from other sources. Ms. Smith then combines the original text and graphics she created with the already existing text and graphics to create an original website that is unique for each client.

60. As required by her sincerely held religious beliefs, Ms. Smith seeks to live and operate 303 Creative in accordance with the tenets of her Christian faith.

61. This means Ms. Smith seeks to use 303 Creative to bring glory to God and to share His truth with its clients and the community.

62. Ms. Smith strives to serve 303 Creative's customers with love, honesty, fairness, transparency, and excellence.

63. Ms. Smith designs unique visual and textual expression to promote the purposes, goals, services, products, organizations, events, causes, values, and messages of her clients insofar as they do not, in the sole discretion of Ms. Smith, (1) conflict with Plaintiffs' religious beliefs or (2) detract from Plaintiffs' goal of publicly honoring and glorifying God through the work they perform.

64. Plaintiffs are willing to work with all people regardless of classifications such as race, creed, sexual orientation, and gender.

65. Plaintiffs do not object to and will gladly create custom graphics and websites for gay, lesbian, or bisexual clients or for organizations run by gay, lesbian, or bisexual persons so long as the custom graphics and websites do not violate their religious beliefs, as is true for all customers.

66. Among other things, Plaintiffs will decline any request to design, create, or promote content that: contradicts biblical truth; demeans or disparages others; promotes sexual immorality; supports the destruction of unborn children; incites violence; or promotes any conception of marriage other than marriage between one man and one woman.

67. Therefore, Plaintiffs' "Contract for Services" includes the following provision:

Consultant has determined that the artwork, graphics, and textual content Client has requested Consultant to produce either express messages that promote aspects of the Consultant's religious beliefs, or at least are not inconsistent with those beliefs. Consultant reserves the right to terminate this Agreement if Consultant subsequently determines, in her sole discretion, that Client desires Consultant to create artwork, graphics, or textual content that communicates ideas or messages, or promotes events, services, products, or organizations, that are inconsistent with Consultant's religious beliefs.

68. When considering a potential project, Ms. Smith will view the prospective client's website (if applicable) and ask questions of the prospective client to assist in the vetting process of determining whether the requested project conflicts with Plaintiffs' religious beliefs and whether it is a good fit given Plaintiffs' skills, schedule, preferences, and workload.

69. If Plaintiffs determine that they are unable to assist with a project promoting particular purposes, goals, services, products, organizations, events, causes, values, and messages they find objectionable, Plaintiffs endeavor to refer the prospective client to a different company that can assist them.

70. Even if Plaintiffs were to hire additional employees or contract out work, it would violate their sincerely held religious beliefs to have the employees or independent contractors do work for Plaintiffs that Plaintiffs cannot do themselves due to their religious beliefs.

71. Another purpose of 303 Creative is to develop and design unique visual and textual expression that promotes, celebrates, and conveys messages that promote aspects of Ms. Smith's Christian faith.

72. In furtherance of this end, 303 Creative regularly provides services to various religious and non-religious organizations that are advocating purposes, goals, services, events, causes, values, or messages that align with Plaintiffs' religious beliefs.

73. Ms. Smith believes that our cultural redefinition of marriage conflicts with God's design for marriage as a lifelong union between one man and one woman.

74. Ms. Smith believes that this is not only problematic because it violates God's will, but also because it harms society and children because marriage between one man and one woman is a fundamental building block of society and the ideal arrangement for the rearing of children.

75. Ms. Smith believes that our culture's movement away from God's design for marriage is particularly pronounced in the wake of the Supreme Court's *Obergefell v. Hodges* decision, which held that there is a constitutional right to same-sex marriage.

76. Ms. Smith is compelled by her religious beliefs to use the talents God has given her to promote God's design for marriage in a compelling way.

77. Ms. Smith is compelled by her religious beliefs to do this by expanding the scope of 303 Creative's services to include the design, creation, and publication of wedding websites.

78. Consistent with Plaintiffs' religious beliefs, the wedding websites that Plaintiffs wish to design, create, and publish will promote and celebrate the unique beauty of God's design for marriage between one man and one woman.

79. By creating wedding websites, Ms. Smith and 303 Creative will collaborate with prospective brides and grooms in order to use their unique stories as source material to express Ms. Smith's and 303 Creative's message celebrating and promoting God's design for marriage as the lifelong union of one man and one woman.

80. The collaboration between Plaintiffs and their clients who desire custom wedding websites will also allow Plaintiffs to strengthen and encourage marriages by sharing biblical truths with their clients as they commit to lifelong unity and devotion as man and wife.

81. Plaintiffs' custom wedding websites will be expressive in nature, using text, graphics, and in some cases videos to celebrate and promote the couple's wedding and unique love story.

82. All of these expressive elements will be customized and tailored to the individual couple and their unique love story.

83. Viewers of the wedding websites will know that the websites are Plaintiffs' original artwork because all of the wedding websites will say "Designed by 303Creative.com."

84. An example of the type of wedding website that Plaintiffs desire to design for their prospective clients is attached as Exhibit A.¹

85. Plaintiffs wish to immediately announce their services for the creation of wedding websites.

86. Plaintiffs have already designed an addition to 303 Creative's website announcing the expansion of their services to include custom wedding websites, but this addition is not yet viewable by the public.

¹Exhibit A is a compilation of captured images of the website that are modified in size and scope to enhance readability in printed form.

87. This addition to the website is attached as Exhibit B.²

88. Plaintiffs' intended message of celebration and promotion of their religious belief that God designed marriage as an institution between one man and one woman will be unmistakable to the public after viewing the addition to 303 Creative's webpage.

89. For example, the addition to 303 Creative's webpage states the following:

I firmly believe that God is calling me to this work. Why? I am personally convicted that He wants me – during these uncertain times for those who believe in biblical marriage – to shine His light and not stay silent. He is calling me to stand up for my faith, to explain His true story about marriage, and to use the talents and business He gave me to publicly proclaim and celebrate His design for marriage as a life-long union between one man and one woman.

90. As part of Plaintiffs' religious calling to celebrate God's design for marriage and due to their sincerely held religious belief that they must be honest and transparent about the services that they can and cannot provide, the webpage also states that their religious beliefs prevent them from creating websites celebrating same-sex marriages or any other marriage that contradicts God's design for marriage.

91. For example, the addition to 303 Creative's webpage states the following:

These same religious convictions that motivate me also prevent me from creating websites promoting and celebrating ideas or messages that violate my beliefs. So I will not be able to create websites for same-sex marriages or any other marriage that is not between one man and one woman. Doing that would compromise my Christian witness and tell a story about marriage that contradicts God's true story of marriage – the very story He is calling me to promote.

92. As part of their religiously-motivated speech, Plaintiffs desire to—and are prepared to—publish this webpage immediately.

²Exhibit B is a compilation of captured images of the website that are modified in size and scope to enhance readability in printed form.

93. As a Colorado place of business engaged in sales to the public and offering services to the public, 303 Creative is a “place of public accommodation” subject to CADA. Colo. Rev. Stat. § 24-34-601(1), (2)(a).

94. Plaintiffs believe it would violate Plaintiffs’ sincerely held religious beliefs to create a wedding website for a same-sex wedding because, by doing so, Plaintiffs would be expressing a message celebrating and promoting a conception of marriage that they believe is contrary to God’s design for marriage.

95. Unwilling to violate their sincerely held religious beliefs, but similarly unwilling to violate CADA and suffer the consequences, Plaintiffs are refraining from publishing the website referenced above and from designing, creating, and publishing wedding websites that celebrate and promote marriages between one man and one woman.

96. If not for CADA, Plaintiffs would have already made the addition to 303 Creative’s webpage referenced above viewable to the public and begun offering their creative services for the design, creation, and publication of wedding websites that celebrate and promote marriages between one man and one woman.

97. If Plaintiffs obtain the relief requested in the Complaint, they will immediately publish the addition to 303 Creative’s webpage referenced above and begin work designing, creating, and publishing wedding websites.

98. There are numerous companies in the State of Colorado and across the nation that offer custom website design services, the areas of 303 Creative’s specialization.

99. For example, the online directory <http://sortfolio.com/> lists 245 web design companies in Denver alone and hundreds more nationwide.

100. Likewise, the online directory <http://www.designfirms.org> lists 114 web design companies in Colorado and 5,618 in the United States as a whole.

101. The online directory <http://unitedstateswebdesigndirectory.com> further lists 127 web design companies in Colorado and 4,097 countrywide.

102. Ms. Smith has a contact form on 303 Creative's webpage where the public can contact her to request her graphic and website design work.

103. The parties also stipulate to the admissibility of the following exhibits:

- Exhibit A – An example of the type of wedding website that Plaintiffs desire to design for their prospective clients. The attached exhibit is a compilation of captured images of the sample wedding website, modified in size and scope to enhance readability in printed form.
- Exhibit B - A compilation of captured images of Plaintiffs' desired addition to 303 Creative's website that are modified in size and scope to enhance readability in printed form.
- Exhibit C - Colorado Civil Rights Division's Probable Cause Determination in *Charlie Craig v. Masterpiece Cakeshop, Inc.* dated March 5, 2013.
- Exhibit D - Colorado Civil Rights Division's Probable Cause Determination in *David Mullins v. Masterpiece Cakeshop, Inc.* dated March 5, 2013.
- Exhibit E - Administrative Law Judge's Initial Decision in *Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc. and Jack C. Phillips* dated December 6, 2013.

- Exhibit F - Colorado Civil Rights Commission's Final Agency Order in *Charlie Craig and David Mullins v. Masterpiece Cakeshop, Inc. and Jack C. Phillips* dated May 30, 2014.
- Exhibit G - Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Azucar Bakery* dated June 30, 2015.
- Exhibit H - Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Gateaux, Ltd.* dated June 30, 2015.
- Exhibit I - Colorado Civil Rights Commission's Final Agency Order in *William Jack v. Le Bakery Sensual, Inc.* dated June 30, 2015.
- Exhibit J - Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Azucar Bakery* dated March 24, 2015. Pursuant to Colo. Rev. Stat. § 24-34-306(3), Defendants are prohibited from disclosing information gathered during the Division's investigation of a charge unless the information is disclosed as a result of the Commission noticing the matter for public hearing. Exhibit J contains information covered by this prohibition. Since Exhibit J was not disclosed by Defendants, and was referenced in the Masterpiece Cakeshop decision, Defendants stipulate to its admissibility
- Exhibit K - Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Gateaux, Ltd.* dated March 24, 2015. Pursuant to Colo. Rev. Stat. § 24-34-306(3), Defendants are prohibited from disclosing information gathered during the Division's investigation of a charge unless the information is disclosed as a result of the Commission noticing the matter for public hearing. Exhibit K contains information

covered by this prohibition. Since Exhibit K was not disclosed by Defendants, and was referenced in the Masterpiece Cakeshop decision, Defendants stipulate to its admissibility

- Exhibit L - Colorado Civil Rights Division's No Probable Cause Determination in *William Jack v. Le Bakery Sensual, Inc.* dated March 24, 2015. Pursuant to Colo. Rev. Stat. § 24-34-306(3), Defendants are prohibited from disclosing information gathered during the Division's investigation of a charge unless the information is disclosed as a result of the Commission noticing the matter for public hearing. Exhibit L contains information covered by this prohibition. Since Exhibit L was not disclosed by Defendants, and was referenced in the Masterpiece Cakeshop decision, Defendants stipulate to its admissibility

Respectfully submitted this 1st day of February, 2016.

s/ Jeremy D. Tedesco

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2017, the foregoing was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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EXHIBIT A



You're Invited



LILY AND LUKE

SATURDAY NOVEMBER 17, 2017
LITTLETON, COLORADO

- WE INVITE YOU TO CELEBRATE OUR MARRIAGE -





LILY ROBINSON

THE BRIDE



449
DAYS

:

1
HOURS

...UNTIL WE GET MARRIED!

28
MINUTES

:

44
SECONDS



LUKE WILLIAMS

THE GROOM



OUR WEDDING EVENTS

CEREMONY

5:30 PM
6:00 PM

SATURDAY
NOVEMBER 17,
2017

Ring ceremony, exchange of vows, and yes the kiss

[LEARN MORE →](#)

RECEPTION

6:00 PM
11:00 PM

SATURDAY
NOVEMBER 17,
2017

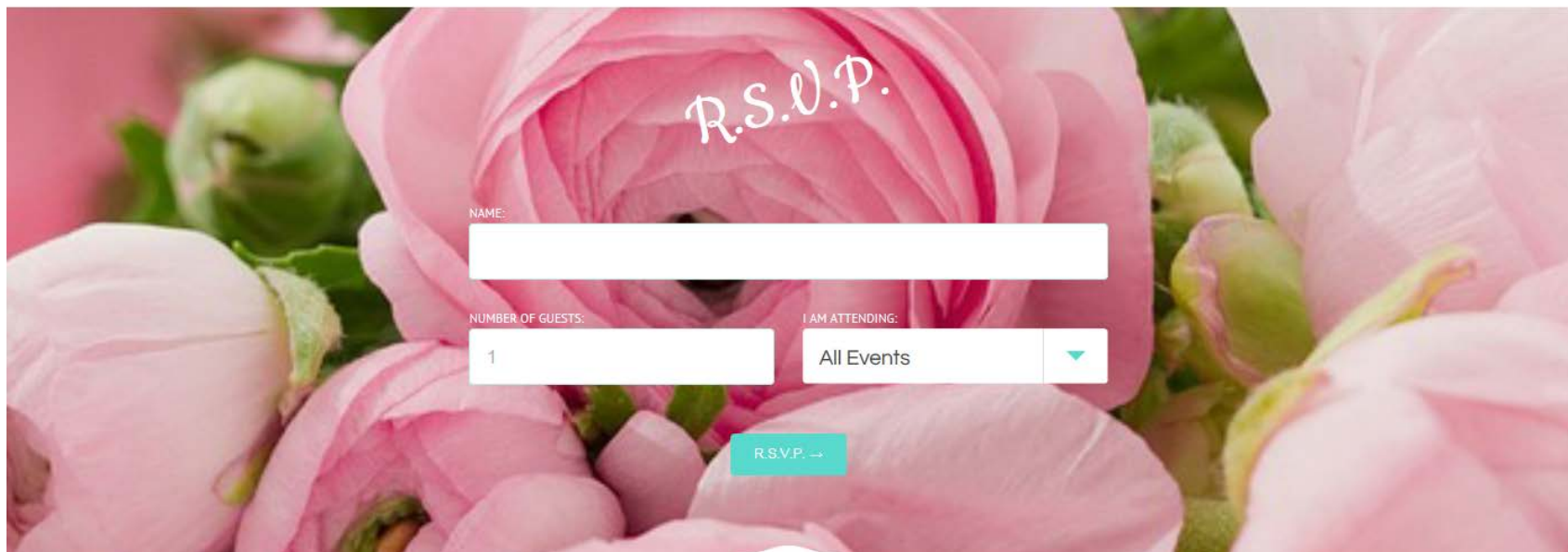
Dinner, dancing, celebrate with us!

[LEARN MORE →](#)

Our Special Day!

"FOR THIS REASON A MAN SHALL LEAVE HIS FATHER AND HIS MOTHER, AND BE JOINED TO HIS WIFE; AND THEY SHALL BECOME ONE FLESH."

~ Genesis 2:24 ~



R.S.V.P.

NAME:

NUMBER OF GUESTS: I AM ATTENDING: ▼

OUR PHOTO GALLERY

[All](#) Gallery



[VIEW OUR PHOTO GALLERY →](#)

OUR BLOG



Lily's Favorite Scripture

March 16, 2016

I've spent a lot of time thinking about our upcoming wedding day and the significance...

Posted in: [Thoughts](#)



Meet our Flower Girl & Ring Bearer

March 16, 2016

Sara, our Flower Girl, and Sam, our Ring Bearer have very important roles in our...

Posted in: [Love](#)



Funny Dating Story

March 15, 2016

Luke is going to laugh when I tell this story, but as I think back...

Posted in: [Love](#)

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Bring your
Dancing
Shoes!



JOKES FROM

- GROOMSMEN, BRIDESMAIDS & FRIENDS -

#LILY&LUKE

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OUR TWEETS

- LILY & LUKE -

@LILY & @LUKE

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It All Began Seven Years Ago

LILY'S VERSION

Luke and I met about seven years ago in a place quite familiar to both of us – the slopes. As Colorado natives, Luke and I enjoy all that Colorado's beautiful outdoors has to offer and it was only fitting that we would meet doing something that the both of us enjoy. Seven years later, we enjoy your trip to the slopes...together. I am beyond blessed by Luke's presence in my life. We cherish every moment together and look forward to committing to lifelong love and devotion as we tie the knot in November 2017. Together we want to express our heartfelt appreciation to our family and friends for being by our side for this special occasion!

LUKE'S VERSION

From the moment Lily crossed my path, I could tell there was something about this woman that I wanted to know more about. Lily and I met through mutual friends during a winter weekend trip to Copper Mountain. "It has been said and heard before, if something is too good to be true, it usually is." This was the first thing that crossed my mind when I met Lily. I couldn't imagine this beautiful, smart, humble, and loving person wasn't in a relationship with someone else.



we love each other, and...



COFFEE



CO



JESUS



DOGS



DIVING

This day I marry my friend, the one I laugh
live for, dream of, and love

It was a cold, cold night and we had a long drive ahead of us
so I was grateful for the beverage and didn't even think about
about where the delicious coffee had come from

That's it, simple & very romantic
To be celebrated...

*Bring your
Dancing
Shoes!*

11.17.17

LITTLETON, COLORADO

- PLEASE JOIN US AS WE CELEBRATE OUR LOVE -





HOME OUR STORY WEDDING EVENTS WEDDING PARTY RSVP GUEST BOOK REGISTRY PHOTOS BLOG CONNECT



SATURDAY NOVEMBER 17, 2017
HALF PAST FIVE O'CLOCK IN THE EVENING

An old superstition claims that being married on the half hour brings good fortune because the minute hand is ascending toward Heaven.

CEREMONY DETAILS



5:30 PM
6:00 PM



Saturday November 17, 2017

LOCATION

The Barn at Deer Creek Open Space
555 West Deer Creek Drive
Littleton, Colorado 80128

PARKING

Complimentary valet parking is available for our guests

WEATHER

Our ceremony location is set in an outdoor mountain setting during the Fall months. We encourage you to dress accordingly.

ATTIRE

Formal



TO FOLLOW CEREMONY
SIX O'CLOCK IN THE EVENING

RECEPTION DETAILS


6:00 PM
11:00 PM




Saturday November 17, 2017

LOCATION

The Barn at Deer Creek Open Space
555 West Deer Creek Drive
Littleton, Colorado 80128

SPIRITS

Fine selection of local Colorado wines, full bar, and virgin cocktails

DINNER MENU

First Course

Roasted Red Pepper Bisque
Served with Cilantro Creme Fraiche

Second Course

Petite Hearts of Romaine with Parmigiano, Seasoned Croutons, and Zesty Citrus Dressing

Entree

Filet Mignon with Zinfandel Reduction, Truffled Potatoes and California Vegetables or Grilled Pacific Salmon Served Over Risotto Cake, Accompanied by Spinach and Tomato Coulis

Dessert

Wedding Cake

DANCING

Bring your dancing shoes; it's time to celebrate!



THE BARN AT DEER CREEK OPEN SPACE
555 WEST DEER CREEK DRIVE
LITTLETON, COLORADO 80128

Complimentary valet parking is available for our guests





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Bridesmaids

"Each of these ladies has a special place in my heart and I am honored that they'll be standing by my side on my special day." ~ Lily ~



KYLIE SHANNON

MAID OF HONOR



Kylie and Lily have been friends since their early years in middle school where they met on the school bus and they have been best friends ever since.



KIRA JAMESON

BRIDESMAID



Kira and Lily have been close friends since meeting through a mutual friend while attending the same college.



AVA SONOMA

BRIDESMAID



Ava and Lily met during their Junior year at the University of Colorado.

Groomsmen

"You guys have been there for me (and Lily) since the very beginning. I'm honored to have you support us in our next chapter of life." ~Luke



MARK SUTTON

BEST MAN

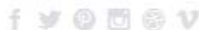


Mark and Luke have been great friends since about the age of five when they met at the local neighborhood pool.



JUDE TRAVOS

GROOMSMAN



Jude and Luke met through mutual friends during their high school years in Littleton, Colorado.



ZACHARY JONES

GROOMSMAN



Zachary and Luke met at work about four years ago. Both enjoy skiing and weekend outdoor adventures with "the guys".

*Pastor
Phil*



PHIL JACOBS

Pastor Phil has known both Luke and Lily for three years

*Flower Girl
Ring Bearer*



SARA AND SAM

These two cuties, our niece and nephew, will be helping us on our special day

Bride's Family

GRACE ROBINSON

Mother of the Bride

BRADLY ROBINSON

Father of the Bride

HELENA ROBINSON

Grandmother of the Bride

ISABELLE SONG

Sister of the Bride

KERRY ROBINSON

Sister of the Bride

Groom's Family

JESSICA WILLIAMS

Mother of the Groom

MARK WILLIAMS

Father of the Groom

WILMA WILLIAMS

Grandmother of the Groom

LARRY WILLIAMS

Brother of the Groom

Ushers

ALAN GREEN

Bride's Uncle

SAMUEL FINE

Groom's Uncle

TOM SMITH

Groom's Uncle



JOKES FROM

- GROOMSMEN, BRIDESMAIDS & FRIENDS -

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OUR TWEETS

- ASHLEY & MICHAEL -

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R.S.V.P.
 RESPONDEZ, S'IL VOUS PLAÎT
 LET US KNOW YOU'RE COMING!

NAME:

NUMBER OF GUESTS:

I AM ATTENDING:

[R.S.V.P. →](#)

From Our Blog



Lily's Favorite Scripture

March 16, 2016

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Honeymoon Plans Secured

February 16, 2016

Many of you know that Lily and I share the love of the ocean. It's...
 Posted In: [Love](#)

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Guestbook

PLEASE FEEL FREE TO SHARE YOUR JOY WITH US.
WE CHERISH YOUR COMMENTS AND WILL HAVE THEM FOREVER AFTER...

Message:

Write us something nice or just a funny joke...

Name: John Doe

Email: Your email address will not be published.
email@example.com

Add message

3 PEOPLE WROTE TO US:

“

HELENA

I love this quote and it reminds me of you... "Love doesn't make the world go round, love is what makes the ride worthwhile." Elizabeth Browning

—

MARCH 6, 2016

“

MIKE ANDERSEN

"I am my beloved's, and my beloved is mine." Song of Solomon 6:3

—

MARCH 6, 2016

“

YOUR SISTER, ISABELLE

You two are so meant for one another. I am honored to witness your special day.

—

MARCH 6, 2016



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Our Registry

Luke & Lily are registered at the following:



Or make a monetary gift via PayPal:



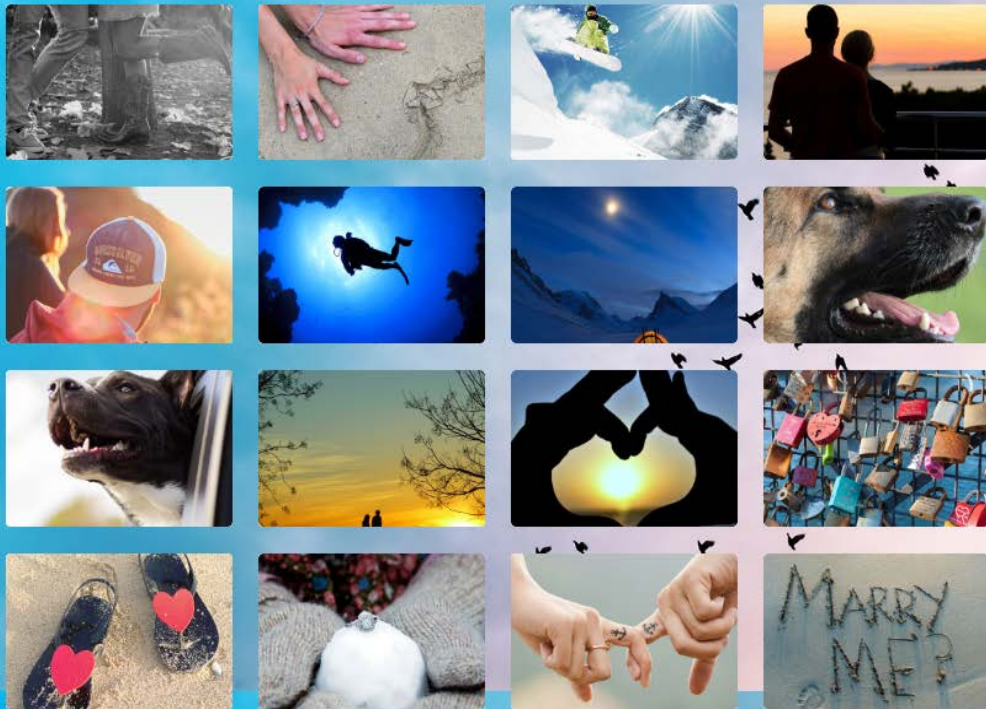
If unable to attend our event, we graciously ask you mail gifts to:

Luke & Lily
555 W. 3rd Street
Littleton, Colorado 80122



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Our Photo Gallery





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Our Blog



Lily's Favorite Scripture

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Posted In: [Love](#)



Honeymoon Plans Secured

February 16, 2016

Many of you know that Lily and I share the love of the ocean. It's...

Posted In: [Love](#)



He Proposed!

January 10, 2016

0

He Asked. I Said Yes!

Posted In: [Love](#)

LILY'S FAVORITE SCRIPTURE



Lily Robinson March 04, 2016



I've spent a lot of time thinking about our upcoming wedding day and the scriptures that have for me spiritually. I'm reminded of a verse of scripture in the New Testament and it's one of my favorites...

"And He answered and said, "Have you not read that He who created them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. What therefore God has joined together, let no man separate."

Matthew 19:4-6 NIVB

Thoughts





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MEET OUR FLOWER GIRL & RING BEARER



Lily Robinson March 16, 2016



Sara, our Flower Girl, and Sam, our Ring Bearer have very important roles in our special day. These two darlings are Luke's sister's children. We couldn't be more happy to have them share this special day with us.

■ Love





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FUNNY DATING STORY



Lily Robinson · March 15, 2016



Luke is going to laugh when I tell this story, but as I think back to our seven years together, it's one of those memories that stands out in my mind.

After dating for three or four months, Luke planned a romantic evening and took me to an Italian restaurant for dinner. We enjoyed a romantic meal, wonderful conversation, and as we headed to the car, Luke realized he had locked the keys inside! Our romantic evening ended with a visit from the local locksmith.

Love

[f Like](#) [Tweet](#) [+1](#) [Pin it](#)



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HONEYMOON PLANS SECURED



Luke Williams February 16, 2016



Many of you know that Lily and I share the love of the ocean. It's only fitting that our honeymoon would take us on a dive vacation to Belize in December 2017.

Love

[f Like](#) [Tweot](#) [8+ +1](#) [Pin it](#)

HE PROPOSED!



Lily Robinson January 09, 2016



He Asked. I Said Yes!

Love

Like Tweet +1 Pin it

Write a comment:

Message:

Write us something nice or just a funny joke...

Name:

John Doe

Email:

email@example.com

Your email address will not be published.

Post Comment



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Connect With Us

LUKE WILLIAMS

555.443.1538

LUKEWILLIAMS@SAMPLE.COM



LILY ROBINSON

555.443.1536

LILYROBINSON@SAMPLE.COM



Mail

555 WEST THIRD STREET
LITTLETON, COLORADO 80122

"I have found the one whom my soul loves."
Song of Solomon 3:4

EXHIBIT B



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I am very excited to announce a new endeavor for 303creative:
designing and creating custom wedding websites!

I love weddings.

Each wedding is a story in itself, the story of a couple and their special love for each other.

I have the privilege of telling the story of your love and commitment by designing a stunning website that promotes your special day and communicates a unique story about your wedding – from the tale of the engagement, to the excitement of the wedding day, to the beautiful life you are building together.

I firmly believe that God is calling me to this work. Why? I am personally convicted that He wants me – during these uncertain times for those who believe in biblical marriage – to shine His light and not stay silent. He is calling me to stand up for my faith, to explain His true story about marriage, and to use the talents and business He gave me to publicly proclaim and celebrate His design for marriage as a life-long union between one man and one woman.

These same religious convictions that motivate me also prevent me from creating websites promoting and celebrating ideas or messages that violate my beliefs. So I will not be able to create websites for same-sex marriages or any other marriage that is not between one man and one woman. Doing that would compromise my Christian witness and tell a story about marriage that contradicts God's true story of marriage – the very story He is calling me to promote.

Sure, you've likely seen sample wedding websites out there, so what makes 303creative websites different? I uniquely craft every page, every graphic, and every word to celebrate and promote the uniqueness and beauty of your relationship.

If you'd like to request my services, click the button below.
Let's start creating!

[CONTACT LORIE](#)

If you'd like to see a sample wedding website, click on the button below

[VIEW SAMPLE SITE](#)

Why a Wedding Website?

A custom, easy, and unique way to take your invitation far beyond the envelope.

Website Features:



Custom Website Domain – A website address of your choice (ie: www.bride&groom.com).



Personal Assistant – Unlike many of the out-of-the-box wedding website options out there, you can rest assured that I will be your one and only contact throughout the design process. No 1-800 numbers, no generic email addresses, no support tickets. You'll have my direct line and personal email address for every step of the process.



Custom Design – I fully customize the look, feel, theme, message, color palettes, and design to celebrate you and your special day.



Engagement Story Page – A page inspired by you and written by Lorie, that captures and conveys the cherished storybook details of your love story.



Ceremony Page – A place where I communicate details about your wedding ceremony including the time, place, decor, and other personal details.



Reception Page – A place where I share details about your celebration.



Wedding Party Page – A place where I introduce your bridesmaids and groomsmen.



Location Page – A place where I communicate details about where your wedding and reception will be held, maps, directions, and anything else needed to get people from A to B.



Online Guestbook – A place for guests to share their excitement, leave notes, and communicate with you leading up to your big day.



Guest RSVP Page – A place for people to indicate whether or not they will attend.



Photo Gallery – A place where I display highlights of your life together, including your engagement, wedding, reception, and even your honeymoon.



Couple Blog – A place to share your thoughts and updates as you lead up to your special day.



Gift Registry Page – A place to share details of your wish list.



Social Media Integration – Share, post, tweet, snap on your favorite social media sites and automatically post them to your wedding website.



"I have the privilege of telling the story of your love and commitment by designing a stunning website that promotes your special day and communicates a unique story, that includes the tale of the engagement, the excitement of the wedding day, and the beautiful life you are building together."

LS

For this reason a man shall leave his father and his mother, and be joined to his wife; and they shall become one flesh.

Genesis 2:24 NASB

And He answered and said, "Have you not read that He who created them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. What therefore God has joined together, let no man separate."

Matthew 19:4-6 NASB

So, are you interested yet?

LET'S START CREATING!

EXHIBIT C



Dora
Department of Regulatory Agencies

John W Hickenlooper
Governor

Barbara J. Kelley
Executive
Director

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

1560 Broadway, Suite 1050
Denver, CO 80202
(303) 894-2997
(303) 894-7830 (fax)
(800) 262-4845 (toll free)

200 West 7th Street, Suite 234
Fueblo, CO 81003
(719) 542-1298
(303) 859-0498 (fax)

222 S. 6th Street, Suite 301
Grand Junction, CO 81505
(970) 248-7303
(970) 248-7304
(970) 242-1262 (fax)

<http://www.dora.ora.co.gov>

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
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.

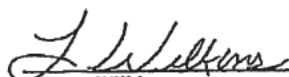
CCRD #
P20130008X

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
Regulatory Agencies
Division of Civil Rights
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EXHIBIT D



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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.

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 (gav)

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
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.

CCRD #
P20130007X

David Mullins
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EXHIBIT E

| | |
|---|--------------------|
| 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

EXHIBIT F

| | |
|---|---|
| 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




EXHIBIT G



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



EXHIBIT H



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



EXHIBIT I



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

Rufina Hernández,
Director

cc: Le Bakery Sensual, Inc.
Jack Robinson



EXHIBIT J



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.

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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.

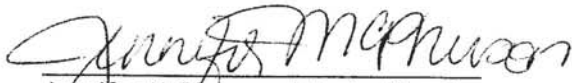
In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

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

EXHIBIT K



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(1)].

On Behalf of the Colorado Civil Rights Division


Jennifer McPherson, Interim Director
Or Authorized Designee

3/24/2015
Date

EXHIBIT L



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