

**Case No. 17-1344**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**303 CREATIVE LLC and LORIE SMITH,**  
*Plaintiffs-Appellants,*

v.

**AUBREY ELENIS, et al.,**  
*Defendants-Appellees,*

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On appeal from the United States District Court  
for the District of Colorado  
The Honorable Chief Judge Marcia S. Krieger  
Case No. 1:16-cv-02372-MSK-CBS

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**APPELLANTS' APPENDIX: VOLUME 1 OF 3**

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**Oral Argument is Requested**

December 18, 2017

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## Certificate Of Digital Submission

1. I hereby certify that all required privacy redactions have been made.

2. I hereby certify that hard copies of the foregoing Appellants' Appendix (Vol. 1-3) will be submitted to the Court pursuant to 10th Cir. R. 31.5 and will be exact copies of the version submitted electronically via the court's ECF system.

3. I hereby certify that this document has been scanned for viruses with the most recent version of a commercial virus scanning program, Traps Advanced Endpoint Protection, Version 4.1.2, and is free of viruses according to that program.

Date: December 18, 2017

s/ Jonathan A. Scruggs  
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## CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2017, a true and accurate copy of this Appendix (Vol. 1-3) was electronically filed with the Court using the CM/ECF system, which will send notification of such filing to the following:

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**U.S. District Court  
District of Colorado (Denver)  
CIVIL DOCKET FOR CASE #: 1:16-cv-02372-MSK**

303 Creative LLC et al v. Elenis et al  
Assigned to: Chief Judge Marcia S. Krieger  
Case in other court: USCA, 17-01344  
Cause: 42:1983 Civil Rights Act

Date Filed: 09/20/2016  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/20/2016	<a href="#"><u>1</u></a>	COMPLAINT <i>for Declaratory and Injunctive Relief</i> against All Defendants (Filing fee \$ 400,Receipt Number 1082-5162084)Attorney Jeremy David Tedesco added to party 303 Creative LLC(pty:pla), Attorney Jeremy David Tedesco added to party Lorie Smith(pty:pla), filed by Lorie Smith, 303 Creative LLC. (Attachments: # <a href="#"><u>1</u></a> Exhibit A to Complaint, # <a href="#"><u>2</u></a> Exhibit B to Complaint, # <a href="#"><u>3</u></a> Summons of Aubrey Elenis, # <a href="#"><u>4</u></a> Summons of Anthony Aragon, # <a href="#"><u>5</u></a> Summons of

		Ulysses J. Chaney, # <a href="#">6</a> Summons of Miguel Rene Elias, # <a href="#">7</a> Summons of Carol Fabrizio, # <a href="#">8</a> Summons of Heidi Hess, # <a href="#">9</a> Summons of Rita Lewis, # <a href="#">10</a> Summons of Jessica Pocock, # <a href="#">11</a> Summons of Cynthia Coffman, # <a href="#">12</a> Civil Cover Sheet)(Tedesco, Jeremy) (Entered: 09/20/2016)
09/20/2016	<a href="#">2</a>	Case assigned to Magistrate Judge Craig B. Shaffer. Text Only Entry (dbera, ) (Entered: 09/20/2016)
09/20/2016	<a href="#">3</a>	SUMMONS issued by Clerk. (Attachments: # <a href="#">1</a> Summons, # <a href="#">2</a> Summons, # <a href="#">3</a> Summons, # <a href="#">4</a> Summons, # <a href="#">5</a> Summons, # <a href="#">6</a> Summons, # <a href="#">7</a> Summons, # <a href="#">8</a> Summons, # <a href="#">9</a> Magistrate Judge Consent Form) (dbera, ) (Entered: 09/20/2016)
09/20/2016	<a href="#">4</a>	CORPORATE DISCLOSURE STATEMENT. (Tedesco, Jeremy) (Entered: 09/20/2016)
09/20/2016	<a href="#">5</a>	NOTICE OF CASE ASSOCIATION by Jeremy David Tedesco on behalf of 303 Creative LLC, Lorie Smith (Tedesco, Jeremy) (Entered: 09/20/2016)
09/20/2016	<a href="#">6</a>	MOTION for Preliminary Injunction by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # <a href="#">1</a> Affidavit of Lorie Smith in Support of Plaintiffs' Preliminary Injunctio, # <a href="#">2</a> Appendix Part 1, # <a href="#">3</a> Appendix Part 2, # <a href="#">4</a> Appendix Part 3, # <a href="#">5</a> Proposed Order (PDF Only))(Tedesco, Jeremy) (Entered: 09/20/2016)
09/20/2016	<a href="#">7</a>	BRIEF in Support of <a href="#">6</a> MOTION for Preliminary Injunction filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 09/20/2016)
09/21/2016	<a href="#">8</a>	NOTICE of Entry of Appearance by Jonathan Andrew Scruggs on behalf of All Plaintiffs Attorney Jonathan Andrew Scruggs added to party 303 Creative LLC (pty:pla), Attorney Jonathan Andrew Scruggs added to party Lorie Smith (pty:pla) (Scruggs, Jonathan) (Entered: 09/21/2016)
09/21/2016	<a href="#">9</a>	NOTICE of Entry of Appearance by Michael L. Francisco on behalf of All Plaintiffs Attorney Michael L. Francisco added to party 303 Creative LLC (pty:pla), Attorney Michael L. Francisco added to party Lorie Smith(pty:pla) (Francisco, Michael) (Entered: 09/21/2016)
09/21/2016	<a href="#">10</a>	NOTICE of Entry of Appearance by Katherine Leone Anderson on behalf of All Plaintiffs Attorney Katherine Leone Anderson added to party 303 Creative LLC (pty:pla), Attorney Katherine Leone Anderson added to party Lorie Smith (pty:pla) (Anderson, Katherine) (Entered: 09/21/2016)
09/22/2016	<a href="#">11</a>	NOTICE of Entry of Appearance by Rory Thomas Gray on behalf of All Plaintiffs Attorney Rory Thomas Gray added to party 303 Creative LLC (pty:pla), Attorney Rory Thomas Gray added to party Lorie Smith(pty:pla) (Gray, Rory) (Entered: 09/22/2016)
09/22/2016	<a href="#">12</a>	NOTICE of Entry of Appearance by David Andrew Cortman on behalf of All Plaintiffs Attorney David Andrew Cortman added to party 303 Creative LLC (pty:pla), Attorney David Andrew Cortman added to party Lorie Smith(pty:pla) (Cortman, David) (Entered: 09/22/2016)
09/26/2016	<a href="#">13</a>	NOTICE of Entry of Appearance by Samuel David Green on behalf of All Plaintiffs Attorney Samuel David Green added to party 303 Creative LLC

		(pty:pla), Attorney Samuel David Green added to party Lorie Smith(pty:pla) (Green, Samuel) (Entered: 09/26/2016)
09/26/2016	<a href="#">14</a>	NOTICE re <a href="#">6</a> MOTION for Preliminary Injunction <i>Notice of Updated Results of Conferral Per Local Rule 7.1(a)</i> by Plaintiffs 303 Creative LLC, Lorie Smith (Tedesco, Jeremy) (Entered: 09/26/2016)
09/29/2016	<a href="#">15</a>	NOTICE of Entry of Appearance by Jack Davy Patten, III on behalf of Cynthia H. Coffman, Aubrey ElenisAttorney Jack Davy Patten, III added to party Cynthia H. Coffman(pty:dft), Attorney Jack Davy Patten, III added to party Aubrey Elenis(pty:dft) (Patten, Jack) (Entered: 09/29/2016)
09/30/2016	<a href="#">16</a>	NOTICE of Entry of Appearance by Vincent Edward Morscher on behalf of Cynthia H. Coffman, Aubrey ElenisAttorney Vincent Edward Morscher added to party Cynthia H. Coffman(pty:dft), Attorney Vincent Edward Morscher added to party Aubrey Elenis(pty:dft) (Morscher, Vincent) (Entered: 09/30/2016)
10/04/2016	<a href="#">17</a>	CONSENT to Jurisdiction of Magistrate Judge by Plaintiffs 303 Creative LLC, Lorie Smith All parties do not consent.. (Tedesco, Jeremy) (Entered: 10/04/2016)
10/05/2016	18	CASE REASSIGNED pursuant to <a href="#">17</a> Consent to Jurisdiction of Magistrate Judge. All parties do not consent. This case is reassigned to Judge Lewis T. Babcock. All future pleadings should be designated as 16-cv-02372-LTB. (Text Only Entry) (nmarb, ) (Entered: 10/05/2016)
10/05/2016	<a href="#">19</a>	MEMORANDUM RETURNING CASE. (dkals, ) (Entered: 10/05/2016)
10/05/2016	20	CASE REASSIGNED pursuant to <a href="#">19</a> Memorandum Returning Case: This case is reassigned to Chief Judge Marcia S. Krieger. All future pleadings should be designated as 16-cv-02372-MSK. (Text Only Entry) (dkals, ) (Entered: 10/05/2016)
10/05/2016	<a href="#">21</a>	Unopposed MOTION for Hearing/Conference <i>Regarding Case Status</i> by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Patten, Jack) (Entered: 10/05/2016)
10/06/2016	<a href="#">22</a>	NOTICE of Entry of Appearance by Eric Holden Maxfield on behalf of Anthony Aragon, Ulysses J. Chaney, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica PocockAttorney Eric Holden Maxfield added to party Anthony Aragon(pty:dft), Attorney Eric Holden Maxfield added to party Ulysses J. Chaney(pty:dft), Attorney Eric Holden Maxfield added to party Miguel Rene Elias(pty:dft), Attorney Eric Holden Maxfield added to party Carol Fabrizio(pty:dft), Attorney Eric Holden Maxfield added to party Heidi Hess (pty:dft), Attorney Eric Holden Maxfield added to party Rita Lewis(pty:dft), Attorney Eric Holden Maxfield added to party Jessica Pocock(pty:dft) (Maxfield, Eric) (Entered: 10/06/2016)
10/06/2016	23	ORDER REFERRING CASE to Magistrate Judge Craig B. Shaffer: <b>IT IS ORDERED</b> that pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate

		Judge to:(1)Convene a scheduling conference under Fed. R. Civ. P. 16(b), enter a Scheduling Order meeting the requirements of D.C.COLO.LCivR 16.2, enter such orders as appropriate to enforce the Scheduling Order, and resolve discovery matters;(2)ADR: Court sponsored alternative dispute resolution is governed by D.C.COLO.LCivR 16.6. Early Neutral Evaluation is approved. On the informal request of the magistrate judge or on the request of the parties by motion, the Court may direct the parties to engage in a settlement conference conducted by the magistrate judge if the parties have engaged in an Early Neutral Evaluation and are unable to afford or otherwise attain private settlement assistance;(3)Hear and determine referred matters in accordance with 28 U.S.C. § 636(b)(1)(A) and (B). by Chief Judge Marcia S. Krieger on 10/6/16. Text Only Entry (mkssec, ) (Entered: 10/06/2016)
10/06/2016	24	MINUTE ORDER: A Scheduling Conference is set for 11/7/2016 at 11:00 AM in Courtroom A 402 before Magistrate Judge Craig B. Shaffer. ORDERED that the parties shall adhere to the deadlines and instructions as set forth in <a href="#">Preparation for Rule 16(b) Scheduling Conference</a> , located on the court's website under "Judicial Officers." By Magistrate Judge Craig B. Shaffer on 10/6/2016. Text Only Entry (cbslc2) (Entered: 10/06/2016)
10/06/2016	25	ORDER REGARDING CUSTODY OF EXHIBITS AND DEPOSITIONS USED IN EVIDENTIARY HEARINGS AND TRIALS: Any exhibits and depositions used during evidentiary hearings or trials, counsel for the parties shall retrieve the originals of such exhibits and depositions from the Court following the evidentiary hearing or trial, and shall retain same for 60 days beyond the later of the time to appeal or conclusion of any appellate proceedings. The Court will retain its copy of the exhibits for the same time period after which the documents will be destroyed. by Chief Judge Marcia S. Krieger on 10/6/16. Text Only Entry (pglov) (Entered: 10/06/2016)
10/06/2016	<a href="#">26</a>	NOTICE re <a href="#">21</a> Unopposed MOTION for Hearing/Conference <i>Regarding Case Status</i> by Plaintiffs 303 Creative LLC, Lorie Smith (Tedesco, Jeremy) (Entered: 10/06/2016)
10/07/2016	<a href="#">27</a>	SUMMONS Returned Executed by All Plaintiffs. Anthony Aragon served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">28</a>	SUMMONS Returned Executed by All Plaintiffs. Aubrey Elenis served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">29</a>	SUMMONS Returned Executed by All Plaintiffs. Carol Fabrizio served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">30</a>	SUMMONS Returned Executed by All Plaintiffs. Cynthia H. Coffman served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">31</a>	SUMMONS Returned Executed by All Plaintiffs. Heidi Hess served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">32</a>	SUMMONS Returned Executed by All Plaintiffs. Jessica Pocock served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">33</a>	

		SUMMONS Returned Executed by All Plaintiffs. Miguel Rene Elias served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">34</a>	SUMMONS Returned Executed by All Plaintiffs. Rita Lewis served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/07/2016	<a href="#">35</a>	SUMMONS Returned Executed by All Plaintiffs. Ulysses J. Chaney served on 9/28/2016, answer due 10/19/2016. (Tedesco, Jeremy) (Entered: 10/07/2016)
10/14/2016	<a href="#">36</a>	NOTICE of Entry of Appearance <i>Entry of Appearance</i> by Leanne B. De Vos on behalf of Anthony Aragon, Ulysses J. Chaney, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock Attorney Leanne B. De Vos added to party Anthony Aragon(pty:dft), Attorney Leanne B. De Vos added to party Ulysses J. Chaney(pty:dft), Attorney Leanne B. De Vos added to party Aubrey Elenis(pty:dft), Attorney Leanne B. De Vos added to party Miguel Rene Elias(pty:dft), Attorney Leanne B. De Vos added to party Carol Fabrizio (pty:dft), Attorney Leanne B. De Vos added to party Heidi Hess(pty:dft), Attorney Leanne B. De Vos added to party Rita Lewis(pty:dft), Attorney Leanne B. De Vos added to party Jessica Pocock(pty:dft) (De Vos, Leanne) (Entered: 10/14/2016)
10/19/2016	<a href="#">37</a>	MOTION to Dismiss <i>Verified Complaint for Declaratory and Injunctive Relief</i> by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 10/19/2016)
10/19/2016	<a href="#">38</a>	RESPONSE to <a href="#">6</a> MOTION for Preliminary Injunction filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Patten, Jack) (Entered: 10/19/2016)
10/31/2016	<a href="#">39</a>	Proposed Scheduling Order by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 10/31/2016)
11/02/2016	<a href="#">40</a>	REPLY to Response to <a href="#">6</a> MOTION for Preliminary Injunction filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 11/02/2016)
11/07/2016	<a href="#">41</a>	COURTROOM MINUTES/MINUTE ORDER for proceedings held before Magistrate Judge Craig B. Shaffer: Scheduling Conference held on 11/7/2016. Pursuant to the request of counsel, discovery is STAYED pending a ruling on <a href="#">6</a> Motion for Preliminary Injunction and <a href="#">37</a> Motion to Dismiss. FTR: Courtroom A-402. (amont, ) (Entered: 11/07/2016)
11/08/2016	42	MEMORANDUM regarding <a href="#">37</a> MOTION to Dismiss <i>Verified Complaint for Declaratory and Injunctive Relief</i> filed by Heidi Hess, Ulysses J. Chaney, Jessica Pocock, Carol Fabrizio, Miguel Rene Elias, Cynthia H. Coffman, Rita Lewis, Aubrey Elenis, Anthony Aragon. Motions referred to Magistrate Judge Craig B. Shaffer by Chief Judge Marcia S. Krieger on 11/8/16. Text Only Entry (msksec, ) (Entered: 11/08/2016)
11/09/2016	<a href="#">43</a>	RESPONSE to <a href="#">37</a> MOTION to Dismiss <i>Verified Complaint for Declaratory and Injunctive Relief</i> filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 11/09/2016)

11/21/2016	44	ORDER: The Court will conduct a non-evidentiary hearing on the Plaintiffs' Motion for Preliminary Injunction <a href="#">6</a> on 1/11/2017 at 09:00 AM. The parties shall be prepared to address: (i) each Plaintiff's standing to request the various items of relief they seek; (ii) whether the facts pertinent to the Motion for Preliminary Injunction are disputed, such that an evidentiary hearing is necessary; (iii) if there are factual disputes, what facts are disputed; and (iv) how long of an evidentiary hearing is necessary and when that hearing should be scheduled. By Chief Judge Marcia S. Krieger on 11/21/16. Text Only Entry (msklc2, ) (Entered: 11/21/2016)
11/23/2016	<a href="#">45</a>	REPLY to Response to <a href="#">37</a> MOTION to Dismiss <i>Verified Complaint for Declaratory and Injunctive Relief</i> filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 11/23/2016)
01/11/2017	<a href="#">46</a>	MINUTE ENTRY for Law and Motion Hearing held before Chief Judge Marcia S. Krieger on 1/11/2017. Deadlines and other matters addressed are as set forth in the Minutes. Court Reporter: Mary George. (pglov) (Entered: 01/11/2017)
01/30/2017	<a href="#">47</a>	TRANSCRIPT of Law and Motion Hearing held on January 11, 2017 before Judge Krieger. Pages: 1-15.   <b>NOTICE - REDACTION OF TRANSCRIPTS: Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of Transcripts document at <a href="http://www.cod.uscourts.gov">www.cod.uscourts.gov</a>.</b>   Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. (mgeor, ) (Entered: 01/30/2017)
02/01/2017	<a href="#">48</a>	MOTION for Summary Judgment <i>and Memorandum</i> by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # <a href="#">1</a> Affidavit of Lorie Smith, # <a href="#">2</a> Affidavit of Jeremy Tedesco, # <a href="#">3</a> Appendix in Support of Plaintiffs' Motion for Summary Judgment)(Tedesco, Jeremy) (Entered: 02/01/2017)
02/01/2017	<a href="#">49</a>	STIPULATION re <a href="#">48</a> MOTION for Summary Judgment <i>and Memorandum Joint Statement of Stipulated Facts</i> by Plaintiffs 303 Creative LLC, Lorie Smith. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L)(Tedesco, Jeremy) (Entered: 02/01/2017)
02/22/2017	<a href="#">50</a>	RESPONSE to <a href="#">48</a> MOTION for Summary Judgment <i>and Memorandum</i> filed by Defendants Anthony Aragon, Ulysses J. Chaney, Cynthia H. Coffman, Aubrey Elenis, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock. (Morscher, Vincent) (Entered: 02/22/2017)
03/08/2017	<a href="#">51</a>	REPLY to Response to <a href="#">48</a> MOTION for Summary Judgment <i>and Memorandum</i> filed by Plaintiffs 303 Creative LLC, Lorie Smith. (Tedesco, Jeremy) (Entered: 03/08/2017)

09/01/2017	<a href="#">52</a>	ORDER granting in part and denying in part <a href="#">37</a> Motion to Dismiss, and denying <a href="#">6</a> Motion for Preliminary Injunction and <a href="#">48</a> Motion for Summary Judgment, by Chief Judge Marcia S. Krieger on 9/1/17. (dkals, ) (Entered: 09/01/2017)
09/28/2017	<a href="#">53</a>	NOTICE OF APPEAL as to <a href="#">52</a> Order on Motion to Dismiss, Order on Motion for Summary Judgment, Order on Motion for Preliminary Injunction by Plaintiffs 303 Creative LLC, Lorie Smith (Filing fee \$ 505, Receipt Number 1082-5731693) (Anderson, Katherine) (Entered: 09/28/2017)
09/29/2017	<a href="#">54</a>	LETTER Transmitting Notice of Appeal to all counsel advising of the transmittal of the <a href="#">53</a> Notice of Appeal filed by 303 Creative LLC, Lorie Smith to the U.S. Court of Appeals. ( Retained Counsel, Fee paid,) (Attachments: # <a href="#">1</a> Preliminary Record)(dkals, ) (Entered: 09/29/2017)
09/29/2017	<a href="#">55</a>	USCA Case Number 17-1344 for <a href="#">53</a> Notice of Appeal filed by 303 Creative LLC, Lorie Smith. (dkals, ) (Entered: 09/29/2017)
10/12/2017	<a href="#">56</a>	TRANSCRIPT ORDER FORM re <a href="#">53</a> Notice of Appeal, by Plaintiffs 303 Creative LLC, Lorie Smith (Scruggs, Jonathan) (Entered: 10/12/2017)
10/12/2017	57	LETTER TO USCA and all counsel certifying the record is complete as to <a href="#">53</a> Notice of Appeal filed by 303 Creative LLC, Lorie Smith. A transcript order form was filed stating that the necessary transcript is already on file. ( Appeal No. 17-1344) Text Only Entry (dkals, ) (Entered: 10/12/2017)

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

Civil Action No. \_\_\_\_\_

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.*

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. Lorie Smith is the sole owner and operator of 303 Creative LLC, a company specializing in graphic and web design.
2. Lorie is also a Christian who believes that God has called her to use her talents and her company in a way that honors Him.
3. Because of her religious beliefs and her desire to affect the current cultural narrative regarding marriage that contradicts those beliefs, Lorie wants to use her talents and the

expressive platform she has in 303 Creative to celebrate and promote God’s design for marriage as an institution between one man and one woman.

4. Lorie believes that God is calling her to promote and celebrate His design for marriage by designing and creating custom wedding websites for weddings between one man and one woman only.

5. As part of discharging her religious duty, Lorie also desires to explain her religious beliefs about marriage on her website and in communications with prospective clients, including why those beliefs prevent her from designing websites celebrating and promoting same-sex weddings.

6. But Colorado law strips Lorie and 303 Creative of the freedom to choose what messages to create and to convey in the marriage context.

7. Colorado law makes it unlawful for Lorie and 303 Creative to publish, display, or mail any communication stating that they will not design, create, or publish websites celebrating same-sex marriages. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

8. Colorado law also makes it unlawful for Lorie and 303 Creative to publish, display, or mail any communication indicating that a person’s patronage at 303 Creative is “unwelcome, objectionable, unacceptable, or undesirable” because of sexual orientation. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

9. Therefore, Lorie and 303 Creative cannot explain on 303 Creative’s website their religious belief that God designed marriage as an institution between one man and one woman and why they cannot create wedding websites promoting and celebrating any other conception of marriage.

10. Colorado law also provides that if Lorie and 303 Creative design, create, and publish wedding websites celebrating and promoting marriages between one man and one woman, they must also willingly design, create, and publish wedding websites celebrating and promoting same-sex marriages. *See* Colo. Rev. Stat. § 24-34-601(2)(a).

11. Therefore, if Lorie and 303 Creative speak their desired message celebrating and promoting marriage between one man and one woman, Colorado law requires that they also be willing to speak messages they find highly objectionable and that contradict their sincerely held religious beliefs.

12. Because Lorie and 303 Creative cannot speak messages promoting and celebrating conceptions of marriage contrary to their religious beliefs, Colorado law prevents them from expressing their desired message—that marriage is a God-ordained institution between one man and one woman—through the design, creation, and publication of wedding websites.

13. If Lorie and 303 Creative were to convey their desired messages and decline to convey objectionable messages, they would face costly and onerous investigations, fines of up to \$500 for each violation, and oppressive mandates—such as staff re-education training—that can themselves compel objectionable speech.

14. Thus, solely because of Colorado law, Lorie and 303 Creative are refraining from expressing their views of God’s design for marriage on 303 Creative’s website and from offering their services to design, create, and publish wedding websites expressing their desired message celebrating and promoting marriage as an institution between one man and one woman.

15. To restore their constitutional freedoms to speak their beliefs and not be compelled to speak messages contrary to those beliefs, and to ensure that other creative professionals in

Colorado have the same freedoms, Lorie and 303 Creative ask this Court to enjoin Colo. Rev. Stat. § 24-34-601(2)(a) and declare that it violates their rights.

### **JURISDICTION AND VENUE**

16. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

17. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

18. This Court has authority to award the requested declaratory relief under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57; the requested injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65; and costs and attorneys' fees under 42 U.S.C. § 1988.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all events giving rise to the claims herein occurred within the District of Colorado and all Defendants reside in the District of Colorado.

### **IDENTIFICATION OF PLAINTIFFS**

20. Plaintiff Lorie Smith is an evangelical Christian.

21. She is a resident of the State of Colorado and a citizen of the United States of America.

22. She is also the sole member-owner of Plaintiff 303 Creative LLC.

23. 303 Creative is a for-profit limited liability company organized under Colorado law.

24. 303 Creative's principal place of business is located in Colorado.

### **IDENTIFICATION OF DEFENDANTS**

25. Aubrey Elenis, as Director of the relevant division of Colorado state government known as the Colorado Civil Rights Division, Colo. Rev. Stat. § 24-34-302, and as one with authority to enforce the law at issue, *see, e.g.*, Colo. Rev. Stat. §§ 24-34-302, 24-34-306, is named as a defendant in her official capacity.

26. Commissioners 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 with authority to enforce the law at issue, *see, e.g.*, Colo. Rev. Stat. §§ 24-34-305, 24-34-306, 24-34-605, are named as defendants in their official capacities.

27. Colorado Attorney General Cynthia H. Coffman, as one with authority to enforce the law at issue, *see, e.g.*, Colo. Rev. Stat. § 24-34-306, is named as a defendant in her official capacity.

28. All Defendants reside in the District of Colorado.

### **STATEMENT OF FACTS**

#### **Colorado Law Both Compels and Bans Speech**

29. Colorado’s Anti-Discrimination Act (“CADA”) bans discrimination in places of public accommodation that occurs “because of” disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.

30. A “place of public accommodation” includes “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).

31. This lawsuit challenges two provisions of CADA, both of which are codified in the same sentence of the law.

32. The first provision provides that it is unlawful for a person to do the following:

. . . 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.

33. This provision is codified at Colo. Rev. Stat. § 24-34-601(2)(a) and will be referred to as the "Banned-Speech Provision."

34. CADA does not define "unwelcome," "objectionable," "unacceptable," or "undesirable."

35. CADA does not include any standards or criteria for Defendants to abide by in determining whether a business's speech communicates that persons are "unwelcome," "objectionable," "unacceptable," or "undesirable."

36. The second provision provides that it is "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).

37. This mandate, which compels expression when applied to expressive businesses, will be referred to as the "Compelled-Speech Provision."

38. As used herein, references to “CADA” encompass both the Banned-Speech Provision and the Compelled-Speech Provision, as well as related provisions, such as those pertaining to CADA’s enforcement.

39. If Defendants become aware of an alleged violation of CADA, Defendants will investigate the alleged violation.

40. If Defendants conclude that there has been a violation of CADA, Defendants will use their authority under CADA to end the violation.

41. Defendants’ power under CADA includes the ability to file a charge alleging discrimination.

42. Defendants’ power under CADA includes the ability to investigate charges of discrimination.

43. Defendants’ power under CADA includes the ability to determine whether probable cause exists for crediting charges of discrimination.

44. Defendants’ power under CADA includes the ability to hold hearings regarding charges of discrimination.

45. Defendants’ power under CADA includes the ability to issue subpoenas when evaluating charges of discrimination.

46. Defendants’ power under CADA includes the ability to compel mediation regarding charges of discrimination.

47. Defendants’ power under CADA includes the ability to determine whether the individual or business under investigation violated CADA.

48. Defendants' power under CADA includes the ability to issue notices of a right to sue to those alleging a violation of CADA.

49. Defendants' power under CADA includes the ability to issue cease-and-desist orders to prevent violations of CADA.

50. Defendants' power under CADA includes the authority to issue orders requiring the charged party to "take such action" as Defendants may order.

51. Remedial measures that Defendants have ordered in the past in enforcing CADA include those, such as re-education training, designed to indoctrinate persons charged with discrimination and compel them to profess Defendants' views on same-sex marriage and related subjects.

52. Defendants order these remedial measures to change the beliefs and speech of the charged parties.

53. Defendants even compel business owners to re-educate their staff, yet another form of compelled speech.

54. If a person believes that an individual or business has violated the Banned-Speech Provision or the Compelled-Speech Provision, that person can seek redress in court and, upon a finding of a violation, the court shall fine the individual or business between \$50.00 and \$500.00 for *each* violation.

**Defendants Equate Opposing Same-Sex Marriage with Sexual Orientation Discrimination**

55. Defendants interpret the Compelled-Speech Provision's ban on declining to provide services to people "because of" sexual orientation as including a ban on declining to provide

expressive services celebrating or promoting same-sex marriage because of political, moral, social, or religious objections to same-sex marriage.

56. Defendants have publically taken this position in litigation.

57. Because the Defendants consider it discrimination “because of” sexual orientation for a business to decline to provide expressive services promoting a same-sex marriage where it would provide expressive services promoting an opposite-sex marriage, the Banned-Speech Provision additionally bars public accommodations and their owners from publishing, circulating, issuing, displaying, posting, or mailing any communication that directly or indirectly indicates that the public accommodation will not provide expressive services that celebrate or promote same-sex marriage because of political, moral, social, or religious objections to same-sex marriage.

58. Such barred communications include statements that a business and its owners cannot provide expressive services celebrating or promoting same-sex marriage because of their religious beliefs.

59. Such barred communications include statements that a business and its owners believe that God designed marriage exclusively to be a union between one man and one woman and that any other conceptions of marriage are contrary to God’s design.

60. Such barred communications include statements that a business and its owners believe that marriages between one man and one woman offer benefits to society or children that same-sex marriages do not offer.

**Defendants Apply CADA in a Content and Viewpoint Based Manner**

61. Defendants apply CADA in a way that allows certain views but punishes different views regarding marriage.

62. Defendants' viewpoint-based application of CADA is illustrated by the decisions of the Colorado Civil Rights Division ("Division") and the Colorado Civil Rights Commission ("Commission") regarding complaints of discrimination made against four Colorado bakeries.

63. The first Colorado bakery is Masterpiece Cakeshop, Inc., a public accommodation, which is owned and operated by Jack Phillips ("Phillips"), a Christian man.

64. A same-sex couple entered Masterpiece Cakeshop to order a wedding cake that they intended to use to celebrate their wedding at a wedding reception.

65. Because of his religious belief that God designed marriage to be a union between one man and one woman, Phillips respectfully declined to use his creative talents to create a wedding cake celebrating and promoting the marriage of the same-sex couple.

66. Phillips, however, informed the couple that while his religious beliefs prevented him from creating the requested wedding cake, he could provide other baked goods to them.

67. Despite this offer of service, the couple filed complaints with the Division alleging discrimination "because of" sexual orientation in violation of the Compelled-Speech Provision.

68. Former Interim Director Jennifer McPherson, on behalf of the Division, issued a probable cause determination concluding that Masterpiece Cakeshop violated the Compelled-Speech Provision's prohibition of discrimination "because of" sexual orientation by declining to create the wedding cake due to Phillips and Masterpiece Cakeshop's religious beliefs about marriage.

69. Phillips and Masterpiece Cakeshop challenged this determination, but Defendants maintained their position all the way to the Colorado Supreme Court where Phillips and Masterpiece Cakeshop's petition for writ of certiorari was denied on April 25, 2016.

70. In defending themselves, Phillips and Masterpiece Cakeshop repeatedly expressed their willingness to serve everyone, regardless of sexual orientation, but their unwillingness to design and make cakes celebrating events or ideas that violate their Christian views.

71. For example, Phillips and Masterpiece Cakeshop noted that they will not create cakes promoting Halloween, anti-American themes, anti-family themes, atheism, racism, or indecency.

72. Despite these facts, Defendants maintained their position that Phillips and Masterpiece Cakeshop violated the Compelled-Speech Provision by declining to design and prepare the cake due to their objection to the cake's message, which promoted and celebrated same-sex marriage, and that determination was upheld by the Colorado Court of Appeals.

73. During the pendency of Phillips' and Masterpiece Cakeshop's case, the Division considered claims of discrimination brought against three other Colorado bakeries.

74. William Jack ("Jack"), a professing Christian, brought three complaints against the following public accommodations: Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

75. Regarding Azucar Bakery, Jack requested that the bakery provide him with price quotes for two cakes to express his religious views in opposition to same-sex marriage.

76. Jack requested that both cakes be made to look like Bibles; that both cakes bear the image of two groomsmen with a red "x" over the image; and that the cakes include three citations to the Bible and their accompanying text that conveyed the religious basis for his opposition to same-sex marriage.

77. Azucar Bakery said that it would not make cakes bearing the references to the Bible verses or the image that Jack requested.

78. Jack then filed a “creed” discrimination claim with the Division under CADA’s Compelled-Speech Provision.

79. Defendants define CADA’s prohibition on “creed” discrimination as encompassing “all aspects of religious beliefs, observances or practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong, and/or addresses ultimate ideas or questions regarding the meaning of existence, as well as the beliefs or teachings of a particular religion, church, denomination or sect.” 3 CCR 708-1:10.2(H).

80. Former Interim Director Jennifer McPherson, on behalf of the Division, issued a “No Probable Cause” determination regarding Jack’s claim of “creed” discrimination.

81. The Division reached this determination by concluding that Azucar Bakery did not refuse to make the cakes due to Jack’s religion, but because Azucar Bakery objected to the message that would be expressed by the cakes.

82. In concluding that Azucar Bakery did not commit religious discrimination by refusing to make a cake for a Christian that expressed religious messages in opposition to same-sex marriage, the Division also noted that the bakery was willing to make other goods for Christians.

83. The matters involving Le Bakery Sensual, Inc. and Gateaux, Ltd. involved substantially similar facts, charges, rationales, and resolutions as those involved in the Azucar Bakery matter.

84. Thus, the Division concluded that the three bakeries did *not* violate the Compelled-Speech Provision’s prohibition of discrimination “because of” creed/religion when they refused to design and make a cake promoting religious messages opposing same-sex marriage because (1) their objection was message-based and (2) they gladly serve Christian customers who do not promote messages they find objectionable. The Commission affirmed these determinations.

85. In stark contrast, the Division and Commission concluded that Jack Phillips and Masterpiece Cakeshop violated the Compelled-Speech Provision’s prohibition of discrimination “because of” sexual orientation because they declined to design and make a cake celebrating and promoting messages supporting same-sex marriage due to their objection to that message. The Division and Commission reached this conclusion despite the fact that Phillips and Masterpiece Cakeshop happily serve gay and lesbian customers who are not asking them to promote messages they find objectionable.

86. All four bakeries willingly served people that fell within the protected classifications of CADA, and objected to the requested cakes based on their message—not any protected status of the customers.

87. However, when the requested message was one celebrating same-sex marriage, the Division and Commission concluded that declining to express it violates the Compelled-Speech Provision.

88. Whereas, when the requested message was one opposing same-sex marriage, the Division and Commission concluded that declining to express it did not violate the Compelled-Speech Provision.

89. Thus, Defendants force expressive businesses to express messages supporting same-sex marriage but they allow expressive businesses to refuse to express messages opposing same-sex marriage.

90. This is a content- and viewpoint-based interpretation and application of CADA.

**Lorie Smith and Her Faith**

91. Lorie Smith is a lifelong resident of Colorado, a devoted wife, a caring mother, and a dedicated Christian who is very involved in ministry.

92. Although she is a daughter, a wife, and a mother, Lorie identifies first and foremost as a Christian—a follower of Jesus Christ.

93. In addition to attending church and Bible study weekly, Lorie volunteers as an instructor in her church's ministry program for toddlers, leads multiple women's ministry events, and handles all of her church's print and electronic marketing and website outreach.

94. Lorie's religious beliefs are central to her identity, her understanding of existence, and her conception of her personal dignity and autonomy.

95. As a Christian, Lorie believes that her life is not her own, but that it belongs to God (1 Corinthians 6:19-20) and that He has called her to live a life free from sin (Romans 6:12-13).

96. Lorie also believes that everything she does—personally and professionally—should be done in a manner that glorifies God. (1 Corinthians 10:31; 2 Corinthians 5:15; Colossians 3:17; 1 Peter 4:11.)

97. Lorie believes that she will one day give an account to God regarding the choices she made in life, both good and bad. (2 Corinthians 5:10; Romans 14:12.)

98. Lorie's understanding of what is sinful versus what is pure, lovely, admirable, excellent, or praiseworthy are rooted in the Bible and her personal relationship with Jesus Christ.

99. Lorie believes that God instructs Christians to steward the gifts He has given them in a way that glorifies and honors Him. (1 Peter 4:10-11.)

100. Therefore, Lorie 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.

**303 Creative: Making Dreams Come True**

101. Lorie has always been a creative, artistic, outgoing person, and has used and honed these traits at various companies in the fields of graphic design, website design, and marketing.

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

103. Desiring to have the freedom to use her creative talents to honor God to a greater degree than possible while working at other companies, Lorie started 303 Creative LLC.

104. 303 Creative is a business in Colorado that offers a variety of services to the public, including the following: graphic design, website design, social media management and consultation services, marketing advice, branding strategy, training regarding website management, and innovative approaches for achieving client goals.

105. As the sole owner and operator of 303 Creative, Lorie controls the scope, mission, priorities, services, and standards of 303 Creative.

106. 303 Creative does not employ or contract work to any other individuals, and Lorie is solely responsible for all of the services provided by 303 Creative.

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

108. One reason 303 Creative exists is to bring glory to God and to share His truth with its clients and the community by operating according to principles that honor and glorify God.

109. To this end, Lorie and 303 Creative seek to fulfill Jesus' command to love their neighbors as themselves and to do unto others as they would have done unto themselves by serving their customers with love, honesty, fairness, transparency, and excellence.

110. One purpose of 303 Creative is to develop and design unique visual and textual expression to promote the purposes, goals, services, products, events, causes, values, and messages of its clients insofar as they do not, in the sole discretion of Lorie, (1) conflict with Plaintiffs' religious beliefs or (2) detract from Plaintiffs' goal of publicly honoring and glorifying God through the work they perform.

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

112. 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.

113. Lorie and 303 Creative are unwilling to use their creative services to promote purposes, goals, services, products, organizations, events, causes, values, or messages that conflict with Plaintiffs' beliefs.

114. 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 as between one man and one woman.

115. 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.

116. When considering a potential project, Lorie 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.

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

118. There are numerous companies specializing in the areas of 303 Creative's specializations.

119. 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.

120. 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 Lorie's Christian faith.

121. 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.

122. One of 303 Creative's specializations is custom graphic design for use online and in print.

123. One of 303 Creative's other specialties is custom website design and maintenance.

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

125. All websites designed by Plaintiffs are also expressive in nature, as they contain images, words, symbols, and other modes of expression that Plaintiffs use to communicate a particular message.

126. The visual and textual content Plaintiffs produce in both graphic design and website design are their own expression.

127. As a seasoned designer, Lorie helps individuals and entities implement the ideal websites and graphics—oftentimes by designing custom graphics and textual content for the unique needs involved—to enhance and effectively communicate the desired messages.

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

129. When designing and creating graphics or websites, Lorie 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 Lorie and her clients.

130. Lorie 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.

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

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

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

134. Lorie also considers color, positioning, movement, angle, light, simplicity, complexity, and other factors when designing graphics.

135. Lorie takes these factors and more into account to design websites and graphics that express the desired messages in a compelling manner.

136. 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.

137. Lorie 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.

**303 Creative: Promoting God’s Design for Marriage**

138. Lorie believes that our cultural redefinition of marriage conflicts with God’s design for marriage as a lifelong union between one man and one woman.

139. Lorie 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.

140. Lorie 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.

141. Lorie believes that the graphic design, web design, and marketing talents God blessed her with equip her to convey messages to the public in a compelling way.

142. Lorie’s sincerely held religious belief is that she should use the talents God has given her to promote God’s design for marriage.

143. Lorie is compelled by her religious beliefs to accomplish this by expanding the scope of 303 Creative’s services to include the design, creation, and publication of wedding websites.

144. Consistent with her religious beliefs, Lorie desires to use her graphic design, web design, and marketing talents to promote and celebrate only marriages involving one man and one woman.

145. The wedding websites Plaintiffs wish to design, create, and publish will promote and celebrate the weddings of unique one-man, one-woman couples.

146. By celebrating and promoting the weddings of unique one-man, one-woman couples, Lorie and 303 Creative will be expressing messages that promote God's design for marriage as an institution between one man and one woman.

147. By creating wedding websites, Lorie and 303 Creative will also be collaborating with individuals who are marrying and will be using their unique stories as source material to express Lorie's and 303 Creative's message celebrating and promoting marriage as a union of one man and one woman.

148. The interaction between Plaintiffs and their clients who desire 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.

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

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

151. The messages communicated on the wedding websites will be Plaintiffs' speech.

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

153. Even if this designation did not exist, many viewers of the wedding websites would still know that the websites are Plaintiffs' speech because couples that marry frequently inform their guests which entities provided services for the wedding and guests frequently make inquiries regarding the same.

154. A true and correct copy of an example of the type of wedding website that Plaintiffs desire to design for their prospective clients is attached as Exhibit A.<sup>1</sup>

155. Plaintiffs are prepared to announce their services for the creation of wedding websites.

156. In fact, 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.

157. A true and correct copy of this addition to the website is attached as Exhibit B.<sup>2</sup>

158. This webpage expresses Plaintiffs' love for weddings and the unique story of love and commitment told by each wedding and the wedding websites that describe them.

159. The webpage also expresses Plaintiffs' religious motivation for creating wedding websites.

160. 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 webpage.

161. For example, the 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.

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

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

162. 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.

163. For example, the 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.

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

**303 Creative: Suffering from CADA’s Usurpation of Freedom**

165. 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).

166. The Banned-Speech Provision makes it illegal for Plaintiffs to publish the webpage referenced in paragraphs 156–157.

167. This is because the Banned-Speech Provision makes it unlawful for a public accommodation to publish, display, or post any written or electronic communication indicating that it will not provide expressive services celebrating or promoting a same-sex marriage that it will provide for marriages involving one man and one woman.

168. Plaintiffs’ webpage announcing their services includes such communications.

169. The Compelled-Speech Provision also prevents Plaintiffs from publishing the website.

170. If, as the website referenced in paragraphs 156–157 does, Plaintiffs were to offer their creative services for the design and creation of wedding websites celebrating and promoting marriages between one man and one woman, the Compelled-Speech Provision would require Plaintiffs to also provide their creative services for the design and creation of wedding websites celebrating and promoting other types of marriages, including those between people of the same sex.

171. If Plaintiffs publish the website referenced in paragraphs 156–157, thereby advertising that they will design and create wedding websites, Plaintiffs will receive requests to provide those expressive services for same-sex weddings.

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

173. Plaintiffs are unwilling to express a message celebrating and promoting any conception of marriage outside of the understanding of marriage as a union of one man and one woman.

174. Not only would creating a wedding website for a same-sex wedding express a message that Plaintiffs are unwilling to express, but it would also undercut the effectiveness of Plaintiffs’ desired expression promoting marriage as a union between one man and one woman, harm Plaintiffs’ reputation among their Christian clients and friends, and adversely impact Plaintiffs’ ability to share additional biblical truths with others.

175. Therefore, if Plaintiffs begin creating wedding websites, they will only be able to create wedding websites celebrating and promoting marriages involving one man and one woman.

176. However, the Compelled-Speech Provision, and Defendants' application thereof, does not allow Plaintiffs this freedom.

177. Unwilling to violate their sincerely held religious beliefs, but similarly unwilling to violate CADA and suffer the consequences, Plaintiffs are compelled to refrain from publishing the website referenced in paragraphs 156–157 and from designing, creating, and publishing wedding websites that celebrate and promote marriages between one man and one woman.

178. If not for CADA, Plaintiffs would have already made the webpage referenced in paragraphs 156–157 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.

179. CADA is the only reason that Plaintiffs are not engaging in their desired religious, political, moral, and social speech promoting marriage as an institution between one man and one woman and expressing their opposition to same-sex marriage.

180. If Plaintiffs obtain the relief requested in this Complaint, they will immediately publish the webpage referenced in paragraphs 156–157 and begin work designing, creating, and publishing wedding websites.

181. Website design services are widely available from businesses in the State of Colorado and across the nation.

182. For example, the online directory <http://sortfolio.com/> lists 243 web design companies in Denver alone and hundreds more nationwide.

183. Likewise, the online directory <http://www.designfirms.org> lists 131 web design companies in Colorado and 6,745 in the United States as a whole.

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

185. Accordingly, persons will be able to easily access web design services to promote same-sex marriages if Plaintiffs are permitted to follow their convictions by declining to promote same-sex marriages while promoting marriages between one man and one woman.

**Expressive Businesses in Colorado Advocate for Same-Sex Marriage**

186. As explained, CADA is preventing Plaintiffs from celebrating and promoting their religious views about marriage in the manner they desire.

187. However, CADA allows other expressive businesses that are public accommodations under CADA to celebrate and promote their views about marriage.

188. This distinction in treatment is based on the particular view that an expressive business holds regarding marriage.

189. If an expressive business wishes to oppose same-sex marriage, Defendants, through CADA, silence them.

190. If, however, an expressive business wishes to support same-sex marriage, Defendants allow them to do so.

191. For example, Nicole Nichols Photography, a wedding photography company based in Denver, Colorado, has a history of advocating for and celebrating same-sex marriage.

192. On October 22, 2010, the owner of Nicole Nichols Photography stated on her business's webpage that she photographed a gay wedding and loved how the pastor "focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people

sharing their love & lives together. Throughout history gays have always been a part of reality, and always will be, it[']s just unfortunate government & religion has not always recognized it.”

193. The webpage with this quote is available here: <http://nicolenichols.com/blog/weddings/wedding-gay-new-orleans/>.

194. On June 29, 2012, the photography company announced its participation in the Denver Pridefest and noted that the owner is “a big supporter of gay rights,” is “a strong believer that ALL should have the right to marry whomever he or she wants,” and believes that “love can change the world.”

195. The webpage with these quotes is available here: <http://nicolenichols.com/blog/special-events/denver-pridefest-co-gay-weddings/>.

196. The owner of the photography company also published the following statement celebrating the Supreme Court’s *Obergefell* decision and advocating for the expansion of same-sex marriage to the remainder of the world: “I’m so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows . . . . Hopefully the rest of the world will soon follow.”

197. The webpage with this quote is available here: <http://nicolenichols.com/blog/weddings/denver-gay-wedding-photographer-denver-botanical-gardens-tivoli-hall/>.

198. Upon information and belief, many other Colorado expressive businesses and their owners promote their views in favor of same-sex marriage via the platforms of their public accommodations and publish their willingness to create expression celebrating those unions.

199. Plaintiffs support the rights of these expressive businesses and their owners to express their beliefs and conduct their businesses in a way that promotes those beliefs and does not promote contrary beliefs. Plaintiffs simply wish to enjoy those same freedoms. Yet CADA strips Plaintiffs of these freedoms. That is the foundational reason for this lawsuit – to restore Plaintiffs to an equal footing with other expressive business owners in regard to their right to express messages that are consistent with their beliefs, and to avoid expressing those messages that are not.

#### **ALLEGATIONS OF LAW**

200. Plaintiffs Lorie Smith and 303 Creative LLC are subject to and must comply with Colorado laws, including Colo. Rev. Stat. § 24-34-601(2)(a).

201. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to Defendants, which acted under color of a statute, regulation, custom, or usage of the State of Colorado.

202. The impact of chilling and deterring Plaintiffs Lorie Smith and 303 Creative LLC from exercising their constitutional rights constitutes imminent and irreparable harm to Lorie Smith and 303 Creative LLC as a result of Defendants' policy and practice.

203. Plaintiffs Lorie Smith and 303 Creative LLC have no adequate or speedy remedy at law to correct or redress the deprivation of its rights under the United States Constitution by Defendants.

204. Unless the conduct of Defendants is enjoined, Plaintiffs Lorie Smith and 303 Creative LLC will continue to suffer irreparable injury.

## CAUSES OF ACTION

### First Cause of Action:

### Violation of the Free Speech and Free Press Clauses of the First Amendment of the United States Constitution: Content and Viewpoint Discrimination, Compelled Speech, Expressive Association, Unconstitutional Conditions, Unbridled Discretion, and Overbreadth

205. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

206. Plaintiff Lorie Smith is the sole owner and operator of Plaintiff 303 Creative, a closely-held limited liability company.

207. Plaintiff Lorie Smith is a Christian who operates 303 Creative in accordance with her sincerely held religious beliefs.

208. Plaintiffs, in accordance with their sincerely held religious belief that all of their actions must be in accordance with the teachings of the Bible and their understanding of God’s plan, will only design, create, publish and sell custom websites that are consistent with their religious beliefs.

209. It is the sincerely held religious belief of Plaintiffs that the only proper conception of marriage is a marital covenant between one man and one woman.

210. Plaintiffs design, create, and publish artistic, custom websites promoting and celebrating various messages.

211. In doing so, Plaintiffs create and promulgate speech.

212. Each website Plaintiffs create is their own speech.

213. Plaintiffs’ custom websites, including the choice of graphics, format, sizing, color scheme, font size, font color, text, and interface; the process of designing and creating the

websites; the process of marketing, selling, and promoting the websites; the act of publishing the websites; and the business of designing, creating, publishing, and selling websites, all constitute protected speech under the First Amendment.

214. When Plaintiffs design and create a wedding website, they intend to and are creating speech celebrating and promoting the wedding described on the website.

215. Plaintiffs desire to design wedding websites to celebrate and promote their religious understanding of marriage as an institution between one man and one woman and as a fundamental building block of society.

216. Plaintiffs also desire to use their talents and platform to disseminate their view of God's design for marriage as an institution between one man and one woman and the benefits that such marriages have for society.

217. It would violate Plaintiffs' religious beliefs and conflict with their message about marriage to design and create a wedding website for any wedding, such as a same-sex wedding, that does not celebrate the marital union of one man and one woman.

218. Plaintiffs' design and creation of websites celebrating and promoting marriage between one man and one woman, and their decision to decline to design and create websites promoting any other conception of marriage, are protected by the First Amendment.

219. Plaintiffs also wish to inform the public that they are unwilling to create speech for events promoting marriages that are not between one man and one woman, including same-sex marriages. Along with this explanation, Plaintiffs wish to elucidate their religious reasons for not creating custom websites that violate their religious beliefs regarding marriage.

220. Plaintiffs wish to make such statements on their website and in electronic communications with prospective clients.

221. This desired speech is protected by the First Amendment.

**CADA is Content Based and Viewpoint Discriminatory**

222. The First Amendment's Free Speech Clause prohibits laws that regulate protected speech based on its content or viewpoint.

223. The Banned-Speech Provision is content-based because it regulates speech about a handful of topics—specifically disability, race, creed, color, sex, sexual orientation, marital status, national origin, and ancestry—while leaving as unregulated speech on the virtually unlimited number of other topics not listed in CADA.

224. For example, the Banned-Speech Provision prohibits statements asserting that political positions supporting same-sex marriage are misguided but allows statements opposing other political positions of all sorts.

225. This is content-based discrimination forbidden by the First Amendment.

226. The Banned-Speech Provision is also viewpoint discriminatory.

227. Defendants enforce the Banned-Speech Provision in a viewpoint discriminatory manner at least in relation to the topic of marriage.

228. Defendants will not prosecute or threaten to prosecute under the Banned-Speech Provision expressive businesses or their owners that provide wedding services and state that they support same-sex marriage and create for and promote messages in favor of same-sex marriage.

229. Defendants will, however, prosecute under the Banned-Speech Provision expressive businesses and their owners that provide wedding services and who state that they oppose same-

sex marriage, that they exclusively favor marriages between one man and one woman, or that they decline to express messages favoring same-sex marriage.

230. Thus, in order to avoid prosecution and punishment, Colorado expressive businesses and their owners providing expressive wedding services must refrain from speaking messages that exclusively favor marriages between one man and one woman, that oppose same-sex marriage, or that decline to affirmatively promote or celebrate same-sex marriage.

231. This singling out, punishing, suppressing, and deterring certain speech solely based on its viewpoint about marriage is unlawful viewpoint discrimination.

232. If Plaintiffs were to make their desired statements, they would violate the Banned-Speech Provision's content- and viewpoint-based restrictions on speech and face investigation and other penalties for the violation.

233. The Compelled-Speech Provision is also content and viewpoint based.

234. The First Amendment prevents the government from compelling people to create, express, or support a message not of their own choosing or to speak when they would rather remain silent.

235. Plaintiffs will only design and create wedding websites that promote and celebrate marriages between one man and one woman.

236. If Plaintiffs enter the business of designing and creating wedding websites for weddings celebrating and promoting the lifelong commitment of one man and one woman, the Compelled-Speech Provision requires them to also design and create wedding websites celebrating and promoting same-sex weddings.

237. Thus, the Compelled-Speech Provision requires Plaintiffs to engage in expression that they do not desire to convey—expression that violates their core religious beliefs—by requiring them to design and create websites celebrating and promoting same-sex marriage.

238. If Plaintiffs begin designing and creating wedding websites, as they desire, they will be subject to penalties for declining to design and create websites that promote and celebrate a conception of marriage that violates their deeply held religious beliefs.

239. The penalties that Plaintiffs may face for declining to promote messages they deem objectionable can include fines of up to \$500 for *each* violation, Colo. Rev. Stat. § 24-34-602(1)(a), a costly and onerous investigation, Colo. Rev. Stat. § 24-34-306(2)(a), an order requiring them to comply with CADA, Colo. Rev. Stat. § 24-34-306(9), and an order requiring them to take a variety of steps, such as reporting their own behavior to the Commission, engaging in indoctrination training, and affirmatively informing the public that they lack the First Amendment right to decline to produce and promote objectionable messages, *see* Colo. Rev. Stat. §§ 24-34-306(9), 24-34-605.

240. Notably, many of the potential penalties are themselves government-compelled speech.

241. The content and viewpoint-based nature of CADA is further illustrated by the punishment Jack Phillips and Masterpiece Cakeshop received for declining to celebrate and promote messages favoring same-sex marriage while Colorado businesses such as Azucar Bakery were permitted to decline to promote messages opposing same-sex marriage.

242. The fact that the Compelled-Speech Provision requires businesses to express messages consistent with government orthodoxy about same-sex marriage, while allowing them to decline to express messages contrary to such orthodoxy, is rank content and viewpoint discrimination.

**The Compelled-Speech Provision Violates Plaintiffs' Right to Free Association**

243. The First Amendment prohibits the government from compelling persons to expressively associate with others in the process of creating and disseminating speech.

244. The First Amendment also prohibits the government from banning people from expressively associating with others in the process of creating and disseminating speech.

245. Plaintiffs engage in expressive association when they decide to accept a client and collaborate with them to use the client's unique story and wedding event as source material for Plaintiffs' creation of speech that furthers Plaintiffs' beliefs.

246. The Compelled-Speech Provision harms Plaintiffs' ability to promote their beliefs about religion and marriage by requiring them to either decline to associate with clients and events that will help them promote messages celebrating marriages between one man and one woman or to willingly associate with clients and events that will require them to speak messages that completely contradict their desired messages.

247. Plaintiffs cannot authentically or convincingly promote their beliefs about religion and marriage if they are forced to associate with clients or events that will require Plaintiffs to express contradictory messages about religion and marriage.

**CADA Conditions Benefits on Surrendering Rights**

248. The First Amendment's Free Speech Clause prohibits the government from conditioning a benefit on the relinquishment of a constitutional right.

249. CADA imposes a content and viewpoint-based litmus test on the ability of Coloradans to own and operate an expressive business.

250. Plaintiffs have the First Amendment right to choose the content of their expression, to promote the messages they desire to promote, to participate in the creation of the speech they deem desirable, to exercise their religion by promoting messages consistent with their religious beliefs, and to decline to promote messages contrary to their religious beliefs.

251. But the Compelled-Speech Provision mandates that Plaintiffs create messages celebrating and promoting same-sex marriage and the Banned-Speech Provision bars them from expressing their religious views about same-sex marriage, thereby unconstitutionally conditioning the receipt of an essential benefit—specifically, the right to make a living in the occupation of one’s choice, the right to run a business, and the right to sell speech—on the willingness of Plaintiffs to surrender these First Amendment rights.

**CADA’s Provisions Grant Defendants Unbridled Discretion**

252. The First Amendment’s Free Speech Clause prohibits the government from regulating expression based on guidelines that give officials unbridled discretion to arbitrarily allow some expression and prohibit other expression.

253. In its application of the Compelled-Speech Provision, Defendants have shown that they have unbridled discretion to arbitrarily allow some expression and prohibit other expression.

254. If an expressive business is asked to create expression consistent with the ideology of Defendants and inconsistent with the beliefs of the expressive business, Defendants can oftentimes punish the expressive business if it adheres to its beliefs by declining to create the objectionable expression.

255. Defendants can do so by saying that the business owner declined to create the requested expression “because of” the protected classification of the customer rather than the objectionable nature of the message.

256. Defendants’ actions with respect to Jack Phillips and Masterpiece Cakeshop illustrate this point.

257. However, if a prospective customer asks an expressive business to produce a message that the business *and* Defendants find objectionable, Defendants are happy to afford the business owner the right to decline the objectionable speech.

258. Defendants can do so by saying that the business owner declined to create the requested expression due to the objectionable nature of the message rather than “because of” the protected classification of the customer.

259. Defendants’ actions with respect to Azucar Bakery and other bakeries illustrate this point.

260. Thus, Defendants have unbridled discretion to determine arbitrarily that one declination to create objectionable speech is “because of” a protected classification, and therefore illegal under the Compelled-Speech Provision, and to determine that another declination is because of the objectionable nature of the speech rather than the protected classification of the customer.

261. The Banned-Speech Provision also grants unbridled discretion to Defendants by making it unlawful for a public accommodation to “publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates . . . 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.”

262. CADA does not define “unwelcome,” “objectionable,” “unacceptable,” or “undesirable,” and does not explain what statements “indicate” that someone would be unwelcome, objectionable, unacceptable, or undesirable “because of” a protected classification.

263. This language allows Defendants to censor speech out of dislike for particular viewpoints, allows Defendants to hide inappropriate viewpoint discrimination behind this language, and prevents potential speakers from knowing whether their speech violates the law.

264. Anytime a public accommodation or its owner opposes or criticizes someone’s ideas, someone’s beliefs, someone’s actions, or someone’s speech, Defendants could determine that that statement indicates someone is unwelcome, objectionable, unacceptable, or undesirable.

265. Because almost any statement could violate the wide reach of the Banned-Speech Provision, Defendants have unbridled discretion to pick and choose which statements violate the law, thereby subjecting the First Amendment rights of Plaintiffs and similarly situated citizens to the whims of government officials.

**The Banned-Speech Provision is an Overbroad Prior Restraint on Speech**

266. The Banned-Speech Provision is overbroad because it prohibits public accommodations from directly or indirectly publishing, circulating, issuing, displaying, posting, or mailing “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 . . . because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.”

267. This language applies to both expressive and non-expressive businesses.

268. Nothing in the Banned-Speech Provision limits its scope to statements about non-expressive activities.

269. This language is overbroad because it restricts the right of expressive businesses like newspapers, book publishers, printers, musicians, authors, movie studios, playwrights, web designers, and others to create speech and communicate it in accordance with their beliefs and to decline to speak and create speech that violates their beliefs.

270. The Banned-Speech Provision is also overbroad because it prohibits public accommodations from “directly or indirectly” publishing, circulating, issuing, displaying, posting, or mailing “any written, electronic, or printed communication, notice, or advertisement that indicates . . . 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.”

271. This prohibits too many protected statements—including political and religious ones—that oppose or criticize someone’s ideas, beliefs, actions, or speech.

272. It also prohibits too many protected statements—including political and religious ones—that exclusively favor someone’s ideas, beliefs, actions, or speech.

273. Further, the Banned-Speech Provision’s restriction on communications that even “indirectly” communicate a barred message imperils even more protected expression because what constitutes an “indirect” communication is completely undefined and thus permits enforcement officials to hide their viewpoint discrimination.

### **The Banned-Speech Provision Violates the Free Press Clause**

274. The Free Press Clause prevents previous restraints upon publication and guarantees each individual's right to make their thoughts public before the community.

275. The Free Press Clause protects Plaintiffs' right to discuss their religious beliefs about marriage on their website without previous restraint or fear of subsequent punishment by the government.

276. Defendants unlawfully apply the Banned-Speech Provision to forbid Plaintiffs from publishing religious speech critical of same-sex marriage on their website because such speech might "directly or indirectly" indicate that requests for custom same-sex wedding websites would be "unwelcome, objectionable, unacceptable, or undesirable."

277. Defendants' unlawful application of CADA to expressive activity is the only reason Plaintiffs have refrained from publishing speech on their website explaining their religious reasons for promoting only marriage between a man and a woman.

278. Defendants' application of CADA to prevent Plaintiffs from engaging in the free and general discussion of public matters, like marriage, violates the Free Press Clause.

### **The First Amendment Violations Chill Plaintiffs' Speech and Fail Strict Scrutiny**

279. Absent the Banned-Speech and Compelled-Speech Provisions, Plaintiffs would immediately enter the field of promoting and celebrating marriages between one man and one woman through custom wedding websites.

280. Plaintiffs are prepared to begin this work by making the website reflected in Exhibit B announcing their wedding-website design services available online for public consumption.

281. The only things preventing Plaintiffs from designing and creating websites celebrating and promoting marriage as an institution between one man and one woman are the Banned-Speech Provision and the Compelled-Speech Provision and Defendants' application thereof in a way that punishes those who decline to celebrate and promote same-sex marriage.

282. Because of CADA, Plaintiffs are chilled, deterred, and restricted from engaging in their desired expression celebrating and promoting marriage as an institution between one man and one woman.

283. Plaintiffs currently suffer the ongoing harm of self-censorship of their desired, protected speech, in order to avoid penalties under the Compelled-Speech and Banned-Speech Provisions.

284. The Banned-Speech Provision prohibiting statements indicating that someone is unwilling to celebrate and promote same-sex marriage and prohibiting other political, religious, or social commentary that may indicate that someone is "unwelcome, objectionable, unacceptable, or undesirable," and Defendants' enforcement of the Banned-Speech Provision, chills, deters, and restricts not only Plaintiffs' speech but the speech of third parties as well.

285. If not for CADA, Plaintiffs would immediately publish on their website the webpage attached as Exhibit B announcing their desire to celebrate marriages between one man and one woman through the creation of custom wedding websites, their religious views regarding marriage, and their inability to celebrate same-sex marriages or other conceptions of marriage that are not between one man and one woman.

286. Because CADA infringes First Amendment free speech rights, it must further a compelling interest in a narrowly tailored way.

287. CADA does not serve any legitimate, rational, substantial, or compelling interest by forcing Plaintiffs to violate their First Amendment free speech or free press rights.

288. CADA does not serve any legitimate interest in a narrowly tailored way by forcing Plaintiffs to violate their First Amendment free speech or free press rights.

289. Defendants have alternative, less restrictive means to achieve any legitimate interests rather than forcing Plaintiffs to abandon their First Amendment free speech and free press rights.

290. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision's requirement that Plaintiffs create custom websites celebrating and promoting same-sex marriage if they decide to create custom websites celebrating marriages between one man and one woman infringes Plaintiffs' rights to speak and refrain from speaking, and to associate or refrain from associating, as protected by the First and Fourteenth Amendments of the United States Constitution.

291. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision's prohibition of statements indicating that someone is unwilling to celebrate and promote same-sex marriage and its prohibition on other political, religious, or social commentary that may indicate that someone is "unwelcome, objectionable, unacceptable, or undesirable" because they are part of a protected class violates Plaintiffs' right to speak freely as guaranteed by the First and Fourteenth Amendments of the United States Constitution.

292. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

**Second Cause of Action:**  
**Violation of Plaintiffs' First Amendment Right to Free Exercise of Religion**

293. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

294. Plaintiffs' sincerely held religious beliefs prohibit them from celebrating or promoting messages contrary to their understanding of the teachings of the Bible.

295. Plaintiffs sincerely believe that the Bible teaches that marriage is designed by God to be a lifelong union between one man and one woman only.

296. Therefore, Plaintiffs cannot design a wedding website for a same-sex wedding because that requires Plaintiffs to promote and celebrate messages contrary to their religious beliefs.

297. Plaintiffs hold sincere religious beliefs that require them to tell their clients and the general public that they cannot create custom expression that conflicts with their religious beliefs and the reasons they cannot create such custom expression.

298. Plaintiffs would violate their religious beliefs if they misled their customers to think that they create custom expression celebrating and promoting same-sex marriage when they do not.

299. Plaintiffs hold sincere religious beliefs requiring them to explain their religious beliefs about marriage and the religious reasons for and meaning of their expression.

300. Plaintiffs' religious beliefs about marriage, expression, honesty, and business come from the Bible and Christian doctrine.

301. The Compelled-Speech Provision forces Plaintiffs to choose between three unacceptable options: (1) decline to create custom expression celebrating and promoting same-sex wedding ceremonies because of their religious beliefs and suffer investigation, prosecution, and penalties as a result; (2) violate their religious beliefs by creating custom expression celebrating and

promoting same-sex wedding ceremonies in order to comply with the law; or (3) restrict their religious exercise by refraining from using their God-given talents and platform to create custom expression celebrating and promoting marriages as God designed them.

302. The Banned-Speech Provision forces Plaintiffs to choose between two impossible options: (1) adhere to their religious beliefs, publish their religiously motivated and required statements, and suffer investigation, prosecution, and penalties; or (2) violate their religious beliefs and refrain from publishing their religiously motivated and required statements.

303. The Compelled-Speech Provision violates Plaintiffs' right to the free exercise of religion by conditioning the right to own and operate a business that designs wedding websites celebrating and promoting marriage as God designed it on their willingness to violate their religious beliefs by celebrating and promoting same-sex marriage.

304. The Banned-Speech Provision violates Plaintiffs' right to the free exercise of religion by stopping them from operating their business in an open and honest way by barring them from stating what messages they will not express due to their religious beliefs.

305. The Banned-Speech Provision violates Plaintiffs' right to the free exercise of religion by preventing them from using their closely-held business as a platform to express their religious beliefs about marriage, the expression of which are religiously motivated.

306. The Compelled-Speech Provision and Defendants' enforcement thereof impermissibly prefer some religious views over others by allowing those whose religion is consistent with same-sex marriage to own and operate an expressive business in the wedding industry while punishing those who own and operate marriage-related expressive businesses in accordance with their religious beliefs that prohibit them from celebrating or promoting same-sex marriage.

307. The Banned-Speech Provision and Defendants' enforcement thereof impermissibly prefer some religious views over others by allowing those who own and operate public accommodations to express religious beliefs in favor of same-sex marriage but not allowing them to express religious beliefs against same-sex marriage.

308. CADA is not facially or operationally neutral or generally applicable and imposes special disabilities on Plaintiffs due to their religious beliefs.

309. CADA, facially and as applied by Defendants, is not neutral or generally applicable because Defendants enforce it through a system of individualized exemptions under which they assess the reasons for an exemption and grant exemptions for nonreligious reasons but not for religious reasons.

310. CADA, facially and as applied by Defendants, is not neutral or generally applicable because it contains categorical exemptions, including one for any "church, synagogue, mosque, or other place that is principally used for religious purposes." Colo. Rev. Stat. § 24-34-601(1).

311. Given CADA's broad exemption for such religious entities, Defendants have no legitimate basis for refusing to extend a religious exemption to Plaintiffs who have at least as strong of a religious objection to celebrating and promoting same-sex marriage as any of the exempted entities and at least as strong of a religious motivation to express messages about their religious beliefs regarding God's design for marriage as any of the exempted entities.

312. Additionally, Defendants apply CADA in a way that protects the religious beliefs of expressive business owners who share their views, but punishes expressive business owners who hold religious beliefs contrary to Defendants' views.

313. For example, when an expressive business owner's religious beliefs prevent her from promoting and celebrating same-sex marriage, Defendants enforce the Compelled-Speech Provision in a manner that requires the expressive business owner to violate her religious beliefs by promoting and celebrating same-sex marriage if she wishes to be in the marriage industry.

314. In contrast, when an expressive business owner's beliefs lead her to refuse to promote and celebrate a religious message opposing same-sex marriage, Defendants interpret the Compelled-Speech Provision as allowing the business to decline to create the message that both the business owner and Defendants find objectionable.

315. CADA also violates Plaintiffs' free exercise rights under the hybrid rights doctrine because it implicates free exercise rights in conjunction with other constitutional protections, like the right to free speech.

316. Plaintiffs' compliance with their religious beliefs constitutes a religious exercise under the First Amendment.

317. CADA substantially burdens Plaintiffs' religious exercise.

318. CADA imposes severe coercive pressure on Plaintiffs to change or violate their religious beliefs and chills and deters Plaintiffs' religious exercise by suppressing their religiously motivated and required messages.

319. Absent the Compelled-Speech Provision, Plaintiffs would immediately act in accordance with their religious beliefs by entering the field of designing and creating wedding websites celebrating and promoting marriage as God designed it.

320. Absent the Banned-Speech Provision, Plaintiffs would immediately speak and publish their religiously motivated and required messages about God’s design for marriage and the religious reasons that they are unwilling to celebrate other views of marriage.

321. If not for CADA, Plaintiffs would immediately publish on their website the webpage attached as Exhibit B announcing their desire to celebrate marriages as God designed them, their religious views regarding marriage, and their inability to celebrate same-sex marriages or other conceptions of marriage that are not between one man and one woman.

322. Plaintiffs currently suffer ongoing harm because of CADA—namely, the self-censorship and suppression of their religiously motivated and required messages to avoid violating the law and incurring resulting penalties.

323. Because CADA is not facially or operationally neutral or generally applicable and imposes special disabilities on Plaintiffs due to their religious beliefs, and because it also burdens other fundamental constitutional rights, it must further a compelling interest in a narrowly tailored way.

324. Defendants do not serve any legitimate, rational, substantial, or compelling interest in forcing Plaintiffs to violate their religious beliefs by designing and creating a wedding website that celebrates and promotes same-sex marriage.

325. Defendants do not serve any legitimate, rational, substantial, or compelling interest in forcing Plaintiffs to violate their religious beliefs by refraining from expressing their religiously motivated and required statements.

326. To achieve any legitimate interests that Defendants may assert, Defendants have many alternative, less restrictive mechanisms available.

327. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision violates their free-exercise rights.

328. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision violates their free-exercise rights.

329. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

**Third Cause of Action:**  
**Violation of Plaintiffs' Fourteenth Amendment Right to Equal Protection**

330. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

331. The government may not treat someone disparately as compared to similarly situated persons and businesses when such disparate treatment burdens a fundamental right.

332. Plaintiffs are similarly situated to other persons and expressive businesses that provide marriage-related services and express religious and political messages about marriage.

333. The Compelled-Speech Provision and Defendants' enforcement thereof treat Plaintiffs' religious and political speech and religious exercise differently from those similarly situated to Plaintiffs by permitting those whose religious and political beliefs support same-sex marriage to own and operate a marriage-related expressive business according to their religious and political beliefs without fear of punishment, while imposing penalties on those who own and operate marriage-related expressive businesses according to their religious and political beliefs that bar them from celebrating and promoting same-sex marriage.

334. The Compelled-Speech Provision and Defendants' enforcement thereof make it illegal for public accommodations and their owners to decline to express views favoring one conception of marriage that they may find objectionable—namely, the view that it is good for two people of the same sex to marry—but permissible to decline to express views favoring a contrary conception of marriage that they may find objectionable—namely, the view that it is not good for two people of the same sex to marry.

335. That CADA permits public accommodations to decline to express one view about marriage but does not allow them to decline to express another view about marriage is revealed

by the different outcomes reached by Defendants in applying the Compelled-Speech Provision to Masterpiece Cakeshop and the similarly situated Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

336. The Banned-Speech Provision and Defendants' enforcement thereof treat Plaintiffs' religious and political speech and religious exercise differently from those similarly situated to Plaintiffs by permitting those whose religious and political beliefs support same-sex marriage to express their beliefs without fear of punishment, while imposing penalties on those who express political and religious beliefs opposing same-sex marriage.

337. CADA, and Defendants' discriminatory enforcement thereof, violates several fundamental rights of Plaintiffs, such as their freedom of speech and free exercise of religion.

338. When the enforcement of laws, like CADA, infringe on such fundamental rights, courts presume discriminatory intent.

339. In this case, the presumption of discriminatory intent is borne out by Defendants' intentional discrimination against the rights of free speech and free exercise of religion by Plaintiffs and those like Plaintiffs who hold traditional Christian beliefs about marriage as an institution between one man and one woman.

340. The discriminatory intent is also shown by the different outcomes reached by Defendants in applying the Compelled-Speech Provision to Masterpiece Cakeshop and the similarly situated Azucar Bakery, Le Bakery Sensual, Inc., and Gateaux, Ltd.

341. Defendants lack any legitimate, rational, substantial, or compelling state interest for such disparate treatment of Plaintiffs.

342. Defendants' disparate treatment of Plaintiffs is not narrowly tailored to further any legitimate government interest Defendants' may allege.

343. CADA, as applied to Plaintiffs, therefore violates their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

344. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

**Fourth Cause of Action:**  
**Violation of Plaintiffs' Fourteenth Amendment Right to Due Process**

345. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

346. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to due process of law, which includes the right to own and operate a business and earn a livelihood free from unreasonable governmental interference.

347. CADA unreasonably interferes with Plaintiffs' due process rights by threatening them with punishment if they operate 303 Creative in accordance with their religious convictions.

348. The Due Process Clause of the Fourteenth Amendment also prohibits the government from censoring speech or outlawing behavior pursuant to vague standards that grant unbridled discretion to government officials to arbitrarily prohibit some expression and action and that fail to give speakers and actors sufficient notice whether their speech or actions violate the law.

349. The Banned-Speech Provision contains vague language because it prohibits the publication of statements indicating that an individual is “unwelcome, objectionable, unacceptable, or undesirable” because that individual belongs to one of the particular classifications, such as “sexual orientation,” covered by CADA.

350. CADA never defines “unwelcome,” “objectionable,” “unacceptable,” or “undesirable.”

351. CADA also fails to explain what statements indicate that someone is “unwelcome, objectionable, unacceptable, or undesirable” “because” that individual belongs to one of the classifications stated in CADA.

352. CADA also fails to define what constitutes an “indirect” communication versus a “direct” communication.

353. This vague language grants Defendants unbridled discretion to censor speech out of dislike for particular viewpoints and to hide their viewpoint discrimination behind vague language.

354. This vague language, and Defendants' unbridled discretion to choose how to enforce the language, prevents potential speakers from knowing whether their speech violates the law.

355. Anytime a public accommodation or its owner opposes or criticizes someone's ideas, someone's beliefs, someone's actions, or someone's speech, Defendants could determine that the statement communicates that a person is unwelcome, objectionable, unacceptable, or undesirable.

356. Thus, citizens of common intelligence must guess about what it means to make a statement indicating that someone is "unwelcome, objectionable, unacceptable, or undesirable" because that person belongs to a protected classification and they will differ in the conclusions they reach in making this assessment.

357. The Banned-Speech Provision provides insufficient warning or notice as to what expression is prohibited.

358. Because almost any statement could violate the Banned-Speech Provision, Defendants must pick and choose which statements violate the law.

359. Therefore, the rights of Plaintiffs and other Coloradans now turn on the whim of government officials, and Plaintiffs and other Coloradans therefore cannot know whether their desired speech violates the law.

360. Because the Banned-Speech Provision does not provide sufficient clarity to those who desire to speak and empowers Defendants to impose severe penalties on speakers whose views

they disfavor, Plaintiffs have not and will not publish their desired statements about the speech they are unwilling to engage in and their religious views on marriage in order to avoid violating the law and incurring the accompanying penalties.

361. If not for the vagueness in the Banned-Speech Provision, Plaintiffs would speak their desired messages immediately.

362. The Banned-Speech Provision chills and deters Plaintiffs' speech.

363. Plaintiffs currently suffer ongoing harm because of the Banned-Speech Provision—namely, the self-censorship and suppression of their protected speech to avoid violating CADA and incurring penalties.

364. Because CADA chills, deters, and infringes on the due process rights of Plaintiffs and other citizens, CADA must further a compelling interest in a narrowly tailored way.

365. Defendants have no legitimate, rational, substantial, or compelling interest in stopping Plaintiffs from owning and operating a business and from earning a livelihood.

366. CADA and Defendants do not serve any legitimate interest in a narrowly tailored way by stopping Plaintiffs from owning and operating a business and from earning a livelihood.

367. Defendants do not serve any legitimate, rational, substantial, or compelling interest in using vague language to deter Plaintiffs from communicating as they desire.

368. The Banned-Speech Provision and Defendants do not serve any legitimate interest in a narrowly tailored way in using vague language to deter Plaintiffs' speech.

369. Defendants have many alternative, less restrictive mechanisms to achieve any legitimate interests.

370. Accordingly, facially and as applied to Plaintiffs, the Banned-Speech Provision violates their right to due process as guaranteed by the Fourteenth Amendment of the United States Constitution.

371. Accordingly, as applied to Plaintiffs, the Compelled-Speech Provision violates their right to due process as guaranteed by the Fourteenth Amendment of the United States Constitution.

**Fifth Cause of Action:**  
**Fourteenth Amendment Substantive Due Process and Equal Protection Challenge to Denial of Religious Identity, Personal Dignity, Personal Autonomy, and Personal Liberty**

372. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–204 of this Complaint.

373. The Supreme Court’s majority opinion in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and other Supreme Court precedent, dictates that the Fourteenth Amendment protects the liberty of individuals to make choices central to their own dignity and autonomy, including choices that define their personal identity and beliefs.

374. Lorie’s religious understanding is that human dignity arises from God’s creation of man in His own image. *See* Genesis 1:26-27.

375. Lorie understands that a Christian becomes a “new creation in Christ” and this knowledge is a key aspect of her identity as a Christian. 2 Corinthians 5:17.

376. According to the Supreme Court’s decision in *Obergefell*, the Fourteenth Amendment protects the rights of individuals to serve their God in accordance with the dictates of their own consciences, thereby allowing them to make the decisions that define their personal identity and inseparable religious beliefs.

377. The Fourteenth Amendment, under longstanding caselaw, also guarantees the right to pursue one’s entrepreneurial dreams, engage in the common occupations of life, operate a business, earn a livelihood, and continue employment unmolested.

378. In the United States, the right to pursue one’s entrepreneurial dreams is fundamental as a matter of history and tradition.

379. The Fourteenth Amendment protects such personal rights essential to individuals' orderly pursuit of happiness.

380. The desire of individuals to use their own talents and imaginations to pursue a livelihood is part of the deeply held ethos of the American dream. To deny that dream to those with certain deeply held religious beliefs is to devalue their identity, dignity, liberty, and potential to find fulfillment, and imposes on them an abhorrent degree of stigma and injury.

381. According to Supreme Court precedent, such as *Obergefell*, while a state can have its own views of the ideal ordering of society, when it imposes those beliefs through law with the necessary consequence of putting the imprimatur of the State on excluding people with certain personal beliefs from the pursuit of basic liberties, they demean and stigmatize those individuals in a manner forbidden by the Fourteenth Amendment.

382. Under the Supreme Court's precedent, to deny certain people the right to engage in business in a way that is consistent with their own concepts of existence and identity is to deny them liberty, disparage their intimate personal choices and identity, and devalue their personhood.

383. Lorie's religious beliefs, including her religious understanding about marriage as an institution between one man and one woman, are central to her dignity, autonomy, and identity. Mark 10:6-9; Ephesians 5: 31-33.

384. Although she is a daughter, a wife, and a mother, Lorie identifies first and foremost as a Christian—a follower of Jesus Christ—and her decision to act consistently with her religious understanding of marriage defines her personal identity.

385. Lorie's sincerely held religious understanding is that she must conduct herself in accordance with the teachings of the Bible whether at home or at work. Colossians 3:23-25.

386. Lorie cannot live consistently with her religious understanding and Christian identity if she is required to say or do things that are inconsistent with her faith or if she is forbidden to say or do what she desires to further or promote her Christian beliefs.

387. Lorie's sincerely held religious understanding that God designed marriage as a lifelong institution between one man and one woman, and that any other conception of marriage violates God's plan, is inextricably intertwined with her own identity, beliefs, equal dignity as a citizen, and personal autonomy.

388. Lorie's desire to engage in the marketplace by celebrating weddings as she believes God designed them is an expression of her personal identity and her religious understanding of marriage, both of which are central to her equal dignity as a citizen and personal autonomy.

389. Lorie's decision to publically express her beliefs about marriage is a religious calling that defines her personal identity and beliefs and is central to her equal dignity as a citizen and personal autonomy.

390. Lorie's ability to follow her chosen expressive profession, in keeping with her religious beliefs, free from unreasonable government interference also comes within the definition of "liberty" and "property" under the Due Process Clause.

391. The Due Process Clause's definition of "liberty" further protects Lorie's right to express her religious understanding of marriage and establish her religious self-definition in the political, civic, and economic life of the larger community.

392. The Compelled-Speech Provision's requirement that Lorie facilitate, participate in, celebrate, and promote same-sex weddings if she uses her business to celebrate and promote weddings that she believes are wonderful in the eyes of God devalues her self-identity, dignity, liberty, intimate personal choices, and personhood and instead denies her dignity as an equal citizen, stigmatizes her as a social pariah, disallows her from pursuing her chosen profession, and punishes her in violation of the Fourteenth Amendment.

393. The Banned-Speech Provision's requirement that Lorie refrain from speaking about her religious understanding of marriage denies her the right to make intimate personal choices central to her equal dignity as a citizen, personal autonomy, identity, beliefs, liberty, and personhood and devalues her dignity as an equal citizen, stigmatizes her as a social pariah, disallows her from pursuing her chosen profession, and punishes her in violation of the Fourteenth Amendment.

394. Because CADA infringes these rights under the Fourteenth Amendment, it must further a compelling interest in a narrowly tailored way.

395. CADA does not serve any legitimate, rational, substantial, or compelling interest by forcing Lorie to abandon her religious identity, equal dignity as a citizen, personal autonomy, and liberty, and instead imposing gross stigma and denying Lorie's equal dignity as a citizen.

396. In addition to CADA not serving a legitimate—let alone compelling—interest, it is not narrowly tailored to do so regardless.

397. Defendants have alternative, less restrictive means to achieve any legitimate interest rather than forcing Lorie to abandon her religious identity, equal dignity as a citizen, personal autonomy, and personal liberty and face government-imposed stigma.

398. Accordingly, as applied to Lorie, CADA denies Lorie the right to make intimate choices that define her religious identity, personal dignity, personal autonomy, and personal liberty and instead stigmatizes Lorie and denies her equal dignity as a citizen in violation of the Fourteenth Amendment of the United States Constitution.

399. WHEREFORE, Plaintiffs respectfully ask that the Court grant the relief specified in the Prayer for Relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court to enter judgment against Defendants and to provide the following relief:

1. A preliminary injunction and permanent injunction to stop Defendants and any person acting in concert with them from enforcing the Banned-Speech Provision facially, and as-applied to Plaintiffs' desired communications (a) promoting marriage exclusively as an institution between one man and one woman, (b) declining to create websites or graphics promoting events or ideas that violate their beliefs about marriage, such as websites for same-sex weddings, and (c) explaining their religious beliefs about what they can and cannot create;

2. A declaration that the Banned-Speech Provision violates the United States Constitution's Free Speech Clause, Free Press Clause, Free Exercise Clause, Equal Protection Clause, and Due Process Clause facially, and as-applied to Plaintiffs' desired communications (a) promoting marriage exclusively as an institution between one man and one woman, (b) declining to create websites or graphics promoting events or ideas that violate their beliefs about marriage, such as websites for same-sex weddings, and (c) explaining their religious beliefs about what they can and cannot create;

3. A preliminary injunction and permanent injunction to stop Defendants and any person acting in concert with them from enforcing the Compelled-Speech Provision to require Plaintiffs to create websites or graphics promoting events or ideas that violate their beliefs that marriage should only be an institution between one man and one woman, such as websites promoting same-sex weddings;

4. A declaration that the Compelled-Speech Provision violates the United States Constitution's Free Speech Clause, Free Exercise Clause, Equal Protection Clause, and Due Process Clause when the Compelled-Speech Provision is applied to force Plaintiffs to create websites or graphics promoting events or ideas that violate their beliefs that marriage should only be an institution between one man and one woman, such as websites promoting same-sex weddings;

5. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy so that these declarations shall have the force and effect of a final judgment;

6. That this Court retain jurisdiction of this matter for the purpose of enforcing its orders;

7. That this Court award Plaintiffs' costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;

8. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and

9. That this Court grant any other relief that it deems equitable and just in the circumstances.

Respectfully submitted this 20th day of September, 2016.

s/ Jeremy D. Tedesco

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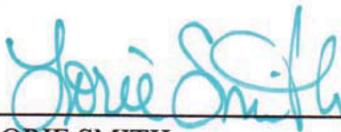
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**DECLARATION UNDER PENALTY OF PERJURY**

I, LORIE SMITH, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of September, 2016, at Littleton, Colorado.

  
\_\_\_\_\_  
LORIE SMITH  
303 CREATIVE LLC

# 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	:	1
DAYS		HOURS
...UNTIL WE GET MARRIED!		
28	:	44
MINUTES		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

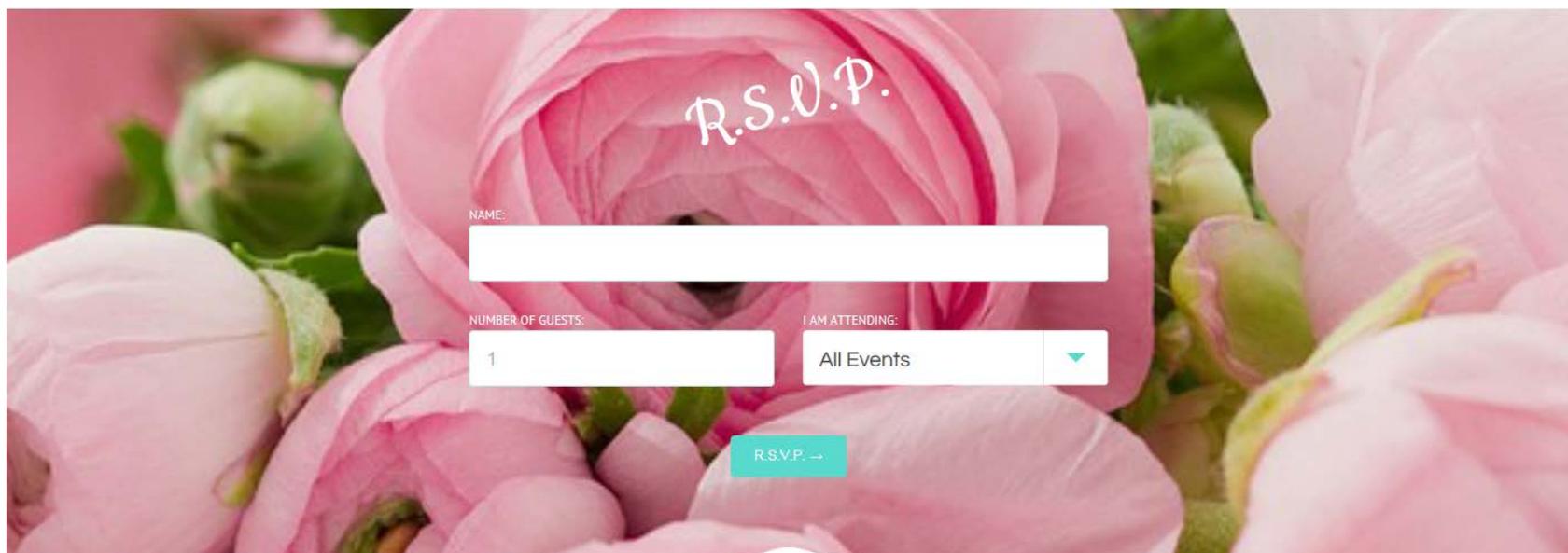
Dinner, dancing, celebrate with us!

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](#)

[VIEW ALL POSTS →](#)

*Bring your  
Dancing  
Shoes!*



## JOKES FROM

- GROOMSMEN, BRIDESMAIDS & FRIENDS -

#LILY&LUKE

[View all →](#)



## OUR TWEETS

- LILY & LUKE -

@LILY & @LUKE

[View all →](#)

- Designed by 303creative.com -



[HOME](#) [OUR STORY](#) [WEDDING EVENTS](#) [WEDDING PARTY](#) [RSVP](#) [GUEST BOOK](#) [REGISTRY](#) [PHOTOS](#) [BLOG](#) [CONNECT](#)

## *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 we drank when I 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  
6:30 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



- Designed by 303creative.com -



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



# 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 -

#ASHLEYMICHAELWEDDING

[View all](#)



### OUR TWEETS

- ASHLEY & MICHAEL -

@ASHLEY & @MICHAEL

[View all](#)





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

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

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](#)



### 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](#)

[VIEW ALL POSTS →](#)

Designed by [303creative.com](#)



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

# 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



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

## Our Registry

Luke & Lily are registered at the following:



Or make a monetary gift via PayPal:



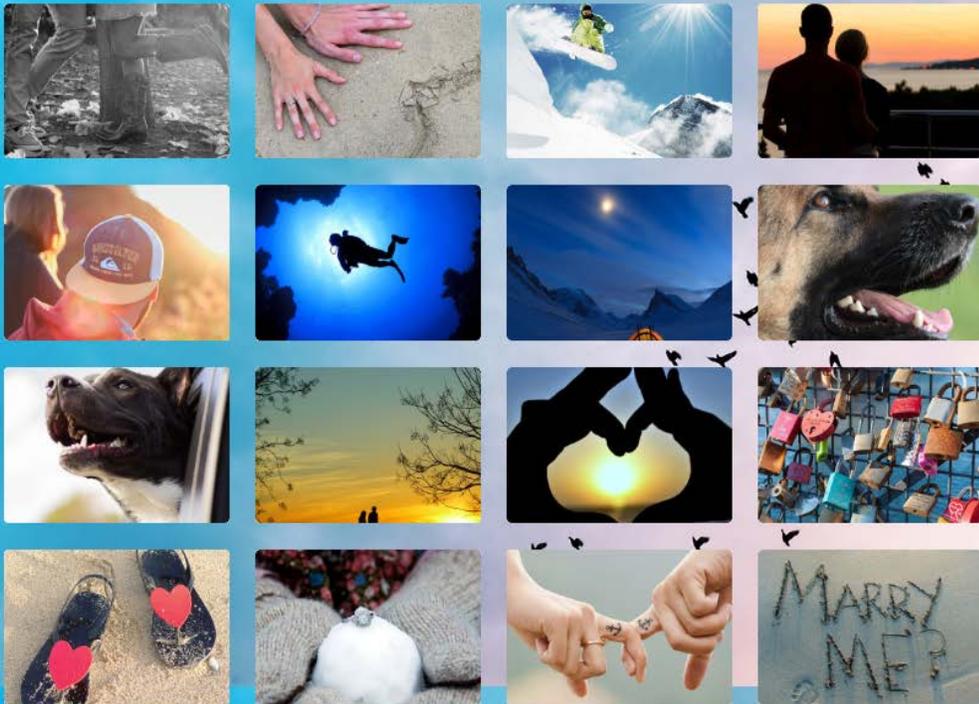
If unable to attend our event, we graciously ask you mail gifts to:

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



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

# Our Photo Gallery



- Designed by 303creative.com -



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# 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...

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### Funny Dating Story

March 15, 2016

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

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](#)



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

## LILY'S FAVORITE SCRIPTURE



Lily Robinson March 04, 2016



I've spent a lot of time thinking about our upcoming wedding day and the significance it has for me spiritually. I'm reminded of a piece 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](#)

signed by 303creative.com



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

## 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



Designed by 303creative.com

## HE PROPOSED!



Lily Robinson January 09, 2016



He Asked. I Said Yes!

Love



### 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



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

*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

- Designed by 303creative.com -

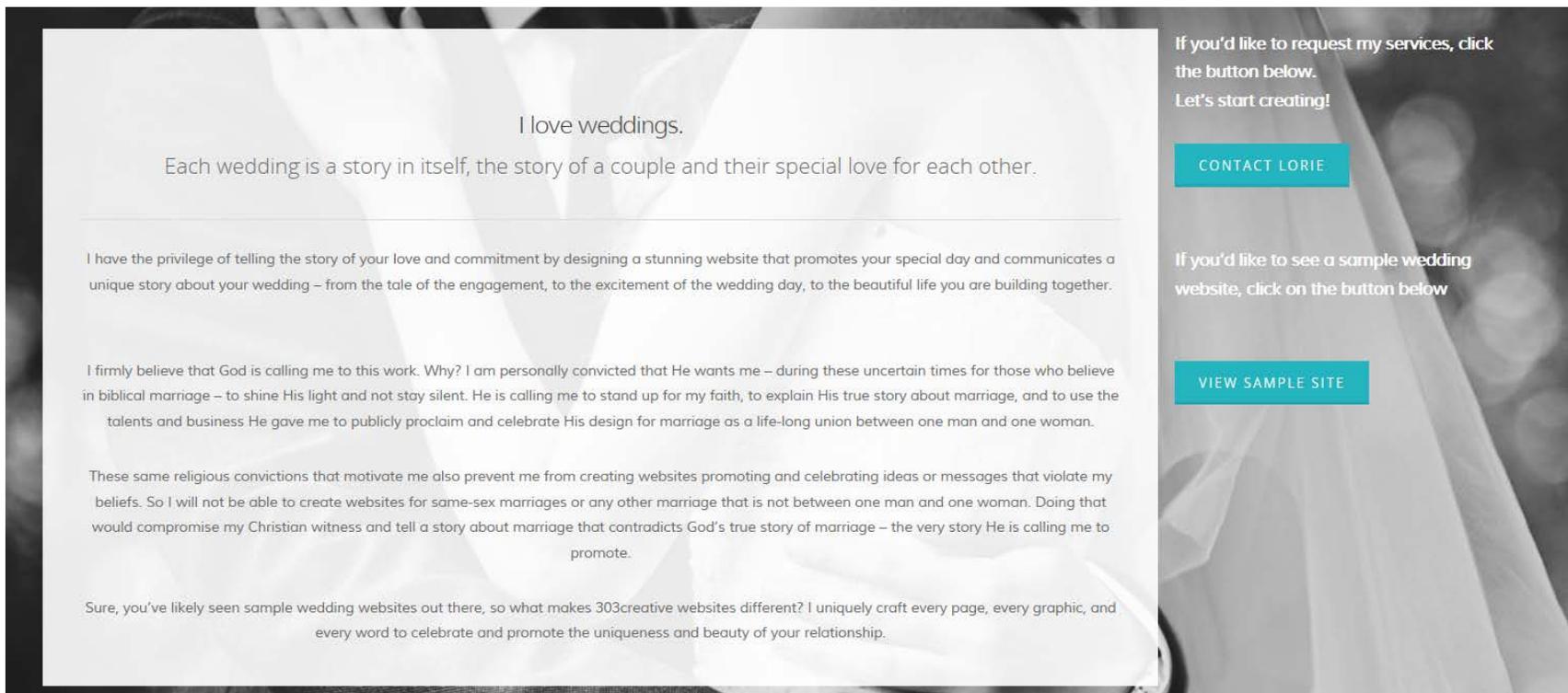
# EXHIBIT B



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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!

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

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

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

*Plaintiffs,*

vs.

AUBREY ELENIS, as 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.*

---

**AFFIDAVIT OF LORIE SMITH IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

---

I, Lorie Smith, hereby declare as follows:

1. I am competent to testify, and, in addition to my sworn testimony in the Verified Complaint, make this declaration based on my personal knowledge.
2. On March 5, 2013, the Colorado Civil Rights Division found that Masterpiece Cakeshop violated Colorado’s Anti-Discrimination Act (“CADA”). Then, on December 6, 2013, an

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

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

11. A true and accurate copy of the Colorado Civil Rights Division’s Le Bakery Sensual, Inc. decision is included in the Appendix at pages 27-31.
12. On June 30, 2015, the Colorado Civil Rights Commission affirmed the Colorado Civil Rights Division’s decisions finding that Azucar Bakery, Gateaux, Ltd., and Le Bakery Sensual, Inc. did not violate CADA. True and accurate copies of the Commission’s decisions in each case are included in the Appendix at pages 32-34.
13. Many expressive businesses freely express their views in favor of same-sex marriage. Examples of such expression, all by Colorado businesses, are provided below.
14. Brian Kraft Photography, before the legalization of same-sex marriage in Colorado, posted on its blog at <http://blog.briankraft.com/denver-art-museum-wedding/>:

It’s a shame that I even feel the need to mention it—as it should be a non-issue, but as you enjoy these wedding photos of this wonderful same sex couple, please note how “right” everything is between these two and everyone that surrounds them, yet in the State of Colorado it is still not “right” (by law) to consider their union a “marriage,” with the benefits that come with that. Fortunately, Adam and Brian live in California, where they are finally offered the rights they so deserve. Hopefully all states will follow suit as soon as possible.
15. A true and accurate copy of this Brian Kraft Photography blog post excerpt is included in the Appendix at page 35.
16. Sarah Roshan Wedding Photographer similarly states on its homepage at <http://sarahroshan.com/>, under the heading “We Believe”: “There doesn’t always have to be one bride and one groom. We fully support and love our LGBT couples. We are so happy that the US [sic] government is finally recognizing you for the beautiful people you are.”

17. Sarah Roshan Wedding Photographer also states on its homepage at <http://sarahroshan.com/>, under the heading “Meet Sarah”: “I believe one voice is enough to change the world.”
18. True and accurate copies of these excerpts from the Sarah Roshan Wedding Photographer homepage are included in the Appendix at pages 36-37.
19. In the introduction to a gallery of same-sex wedding pictures posted on its website at <http://www.sarahroshanphoto.com/phillip-gary-chautauqua-elopement-same-sex-wedding-photographer/>, Sarah Roshan Wedding Photographer further states:

After Colorado ruled that a ban on gay marriage was unconstitutional I had a wave of peace and just started to cry. This topic always is rooted so deep in what I believe not only about gay marriage but the world. I grew up doing theatre and so, as the stereotype would have it about half of my male friends were gay and a decent amount of my female friends as well. I truly believe that our differences and hate are taught. I was never taught that same-sex couples love any different than a heterosexual couple and therefor[e] my views on this subject have always been love is love. I stand for love period. I am so happy that our country is moving in a direction of less and less judgment and more and more equality and love for each other. We are all different. That is what makes us beautiful. How we love is all the same.

When I got a phone call for Phillip and Gary’s elopement back in October, I was so excited! This was to be my first same-sex wedding since the law took effect.... I found myself tearing up behind my lens. This means so much to so many people. Something that I took for granted they were finally able to do. Reading the piece of paper that said marriage. All of it was magical ....

....

Colorado is not yet 6 months into allowing gay marriage so I am looking forward to many more weddings, and someday I hope that people won’t even give it a second thought. Love is love after all.

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

21. Anginet Photography also expresses its views favoring same-sex marriage.
22. Anginet Photography, through its owner Anginet Page, expressed its views regarding same-sex marriage to Castle Rock News-Press following the U.S. Supreme Court's *Obergefell* decision.
23. Castle Rock News-Press's story explaining Anginet Photography's support for same-sex marriage is located at <http://castlerocknewspress.net/stories/Wedding-photographer-celebrates-court-ruling,192421>.
24. This Castle Rock News-Press story, entitled "Wedding photographer celebrates court ruling," explains that Anginet Page left the Mormon church because of her support for same-sex marriage:

As long as she can remember, Anginet Page said, she supported same-sex marriage rights. Her passion for marriage equality even led her to leave the Mormon church.

"I was raised LDS, and one of the main reasons I left the church was because they didn't support the right for people to love freely," she said. "And so my whole life has been geared towards having same-sex marriage be legalized. The fact that it has is incredible."

25. A true and accurate copy of this Castle Rock News-Press story is included in the Appendix at page 39.
26. In introducing pictures of a same-sex wedding on its website at <http://nicolenichols.com/blog/weddings/wedding-gay-new-orleans/>, Nicole Nichols Photography also notes its support for same-sex marriage and criticizes religions that express a different view:

.... I loved their pastor's English accent & how he focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people sharing their love & lives together. Throughout history gays have

always been a part of reality, and always will be, its [sic] just unfortunate government & religion has not always recognized it. It was great to see that Jeremie & Jonathan's wedding was certainly full of lots of family & friends celebrating their love & bond.

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

28. On its blog at <http://nicolenichols.com/blog/special-events/denver-pridefest-co-gay-weddings/>, Nicole Nichols Photography further publicized its support for same-sex marriage and participation in Denver Pridefest:

I am a strong believer that ALL should have the right to marry whomever he or she wants.

Other than for the art and the challenge, one of the reasons I became a wedding photographer is because I'm a lover...a sentimental romantic that has always "awed" when I see *any* two people in love. I have no enemies, I love everyone. Sure some have called me a naive idealistic hippie, but I *really* do believe love can change the world. And if someone wants to express their love to another person through a wedding, well they should have the right do [sic] get married, and get divorced, just like everyone else!

Not only am I a big supporter of gay rights...but also of brightly colored costumes, parades, and just having fun! So, on Sunday June 17th I was proud to be walking in support of CO gay weddings in the annual Denver Pridefest Parade. Wedding planner extraordinaire Mark . . . started CO Gay Weddings to help the gay and transgender community find LGBT friendly wedding professionals that don't discriminate on sexual orientation. . . .

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

30. In introducing pictures of a same-sex wedding on its blog at <http://nicolenichols.com/blog/weddings/denver-gay-wedding-photographer-denver-botanical-gardens-tivoli-hall/>, Nicole Nichols Photography also expressed its support for the Supreme Court's decision in *Obergefell*:

It was an honor to witness and be able to document the strong endearing love Ashley & Paige share. And I'm so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows, from getting to file taxes together to being allowed to visit their spouse in severe hospital situations. Hopefully the rest of the world will soon follow. Love conquers all.

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

**DECLARATION UNDER PENALTY OF PERJURY**

I, LORIE SMITH, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of September, 2016, at Littleton, Colorado.



\_\_\_\_\_  
LORIE SMITH  
303 CREATIVE LLC

# APPENDIX

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

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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

#### *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

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

<sup>5</sup> 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 (10<sup>th</sup> 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.”)<sup>6</sup> 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.<sup>7</sup> 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

<sup>6</sup> Upholding O’Brien’s conviction for burning his draft card.

<sup>7</sup> 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.<sup>8</sup>

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-

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<sup>8</sup> 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.<sup>9</sup> This standard is followed in the Tenth Circuit, *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10<sup>th</sup> 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.”)<sup>10</sup> 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

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<sup>9</sup> 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*.

<sup>10</sup> 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.<sup>11</sup> *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 (3<sup>rd</sup> 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 (10<sup>th</sup> 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,

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<sup>11</sup> 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

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ROBERT N. SPENCER  
Administrative Law Judge

Hearing digitally recorded in CR#1

<b>STATE OF COLORADO</b> <b>COLORADO CIVIL RIGHTS COMMISSION</b> 1560 Broadway, Suite 1050, Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>CHARLIE CRAIG and DAVID MULLINS,</b>  Complainant/Appellant,  vs.  <b>MASTERPIECE CAKESHOP, INC., and any  successor entity, and JACK C. PHILIPS</b>  Respondent/Appellee.	
<b>FINAL AGENCY ORDER</b>	

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 2<sup>nd</sup> 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. 90<sup>th</sup> 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. 17<sup>th</sup> Avenue, Suite 350

Paula Greisen  
King & Greisen  
1670 York Street  
Denver, CO 80206

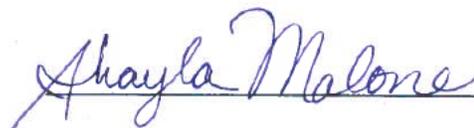
Amanda Goad  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

Stacy Worthington  
Assistant Attorney General  
Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

Charmaine C. Rose  
Assistant Attorney General  
Office of the Attorney General  
1300 Broadway, 8<sup>th</sup> Floor  
Denver, CO 80203

Counsel in support of the Complaint

Counsel for the Commission

  
\_\_\_\_\_



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140069X

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

Charging Party

Azucar Bakery  
1886 S. Broadway  
Denver, CO 80210

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

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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.

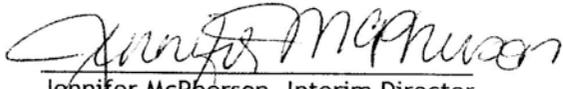
In accordance with C.R.S. 24-34-306(2)(b)(1)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(l)].

On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140071X

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

Charging Party

Gateaux, Ltd.  
1160 N. Speer Blvd.  
Denver, CO 80204

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake order requested by the Charging Party was denied because the cakes included what was deemed to contain "offensive" or "derogatory" messages and imagery. In addition, the Respondent was uncertain whether it could technically create the cakes as described by the Charging Party.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof,



then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Manager Michelle Karmona ("Karmona"). The Charging Party asked Karmona for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble an open Bible. He also requested that each cake be decorated with Biblical verses. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands, with a red "X" over the image. On one cake, he requested that one side read "God hates sin. Psalm 45:7" and on the opposite side of the cake "Homosexuality is a detestable sin. Leviticus 18:2." On the second cake, with the image of the two groomsmen covered by a red "X," the Charging Party requested that it read: "God loves sinners" and on the other side "While we were yet sinners Christ died for us. Romans 5:8." The Charging Party did not state to the Respondent or the Division whether the cake was intended for a specific purpose or event.

The parties dispute the events that occurred next. The Charging Party alleges that Karmona initially indicated that the Respondent would be able to make the Bible shaped cakes, but once she read the Biblical verses, she excused herself from the counter. The Charging Party further alleges that Karmona returned a short time later, informing him that she had spoken with the Respondent's Owner, Kathleen Davia ("Davia") (Catholic). The Charging Party claims that at this time Karmona informed him that the Respondent would bake the cakes, but would not include such a "strong message." The Respondent denies that this occurred, claiming instead that the Charging Party had indicated that he wanted the groomsmen to be three-dimensional figurines with a "Ghostbusters X" over the figures. Karmona felt the Respondent would be unable to accommodate the request as described by the Charging Party, based on "technical capabilities." The Respondent claims that the Charging Party was told that the

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Bible-shaped cakes, with the Biblical verses, *sans* the groomsmen figurines and “Ghostbusters X,” could be made.

The Respondent avers that, as with all customers, the Charging Party was asked to elaborate as to the purpose of the cakes, how he wished to present it, and how he would use it. The Charging Party would not provide an explanation to the Respondent. The Respondent alleges that it was the Charging Party’s refusal to elaborate that left it with the impression that it would not be able to produce the cakes as requested by the Charging Party. The Respondent avers that it consistently requests that customers provide an image for them to replicate when it is something the Respondent does not “stock.” For example, the Respondent avers that a customer requesting a cake with the image of a popular cartoon character can easily be created; however, when a customer requests a specific image without a photo reference or elaboration of the image, the Respondent will decline the request. Karmona then referred the Charging Party to another bakery with the belief that that bakery would be better suited to create the cakes as envisioned by the Charging Party.

The Respondent does not have a specific policy regarding the declination of a customer request, but states that the employee who receives the order also decorates the cake. It is the Respondent’s position that, based on its individual employees’ pastry knowledge, experience, and qualifications, they are best able to determine whether they have the ability to create the cake that a customer requests. Therefore, in the case of the Charging Party’s request, Karmona determined that she would be unable to create the cakes as the Charging Party described.

The Respondent states that it has previously denied customer requests based on technical requirements, including inability to create the requested image, and requests for buttercream iced cakes where the Respondent maintained a fondant decorated cake would be preferable. Additionally, the Respondent states that it has denied customer requests for cakes that included crude language such as “eat me” or “ya old bitch” or “naughty images,” on the basis that the imagery and messages were not what the Respondent wished to represent in its products. The Respondent’s other reasons for declining customers’ request include: availability of the product, insufficient time to create the cake requested, and scheduling conflicts.

The Charging Party avers that he did not ask the Respondent, or any of its employees, to agree with or endorse the message of his envisioned cakes.

Comparative data indicates that the Respondent employs six persons, of whom two are non-Catholic Christian, two are Agnostic, one is Catholic, and one is Atheist. The record reflects that the Respondent regularly creates Christian themed cakes and pastries, including items for several Catholic and non-Catholic Christian church events. Additionally, the evidence demonstrates that they have produced a number of cakes with Christian imagery and symbolism during the relevant time period.

The Respondent states that the Charging Party is welcome to return to the bakery.

#### Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons outside of his protected class by “demeaning his beliefs.” The evidence demonstrates that the Respondent attempted to engage the Charging Party in a dialogue regarding the cakes in more detail, which the Charging Party declined. There is insufficient evidence to demonstrate that the Respondent treated the Charging Party differently based on his creed. The evidence demonstrates that the Respondent would not create cakes with wording and images it deemed derogatory. The Respondent has denied other customers request for derogatory language without regard to the customer’s creed.

### **Denial of Service**

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Respondent denied the Charging Party’s request to make cakes that included the Biblical verses and an image of groomsmen with a red “X” over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence suggests that based on the Respondent’s understanding of the Charging Party’s request, it would be unable to create the cake that he envisioned. The record reflects that the Respondent has denied customer requests for similar reasons. Additionally, the evidence demonstrates that the Respondent regularly produces cakes and other baked goods with Christian symbolism and messages, and continues to welcome the Charging Party in its bakery.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

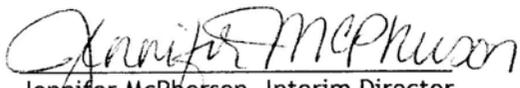
In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(l)].

On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140070X

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

Charging Party

Le Bakery Sensual, Inc.  
300 E. 6<sup>th</sup> Ave.  
Denver, CO 80203

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or service based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake requested by the Charging Party was denied solely on the basis that the writing and imagery were "hateful."

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in



the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Owner John Spotz ("Spotz") (no religious affiliation). The Charging Party asked Spotz for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble open Bibles. Spotz informed the Charging Party that he "had done open Bibles and books many times and that they look amazing." The Charging Party then elaborated that on one cake, he wanted an image of two groomsmen, appearing before a cross, with a red "X" over the image. The Charging Party described the image as "a Ghostbusters symbol over the illustration to indicate that same-sex unions are un-Biblical and inappropriate." The Charging Party wanted Biblical verses on both cakes. The Charging Party showed Spotz the verses, which he had written down on a sheet of paper, and read them aloud. The verses were: "God hates sin. Psalm 45:7" "Homosexuality is a detestable sin. Leviticus 18:2" and on the cake with the image of groomsmen before a cross with a red "X", the verses: "God loves sinners" and "While we were yet sinners Christ died for us. Romans 5:8."

After the Charging Party made the request for the image of the groomsmen with the "X" over them, Spotz asked if the Charging Party was "kidding him." The Charging Party responded that his request was serious. Spotz then informed the Charging Party that he would have to decline the order as envisioned by the Charging Party because he deemed the requested cake "hateful." The Charging Party did not state to Spotz or the Division whether the cakes were intended for a specific purpose or event. The Charging Party then left the bakery, after Spotz declined to create the cakes as the Charging Party had requested.

The Charging Party maintains that he did not ask the Respondent, or its employees, to agree with or endorse the message of his envisioned cakes.

The Respondent avers that everyone, including the Charging Party, is welcome at its bakery, regardless of creed, race, sex, sexual orientation or disability. The Respondent states that its refusal to create the specific cake requested by the Charging Party was based on its policy “not [to] make a cake that is purposefully hateful and is intended to discriminate against any person’s creed, race, sex, sexual orientation, disability, etc.” The Respondent avers that the Charging Party’s request was intended to “denigrate individuals of a specific sexual orientation.”

The record reflects that the Respondent specializes in making unique and intricate cakes for various occasions. The Respondent’s website provides “[it] can design cakes that look like people, cars, motorcycles, houses, magazines, and just about anything you can imagine.” The Respondent’s website also includes images of cakes it has created for customers in the past, including cakes made to look like books and magazines. The Respondent also makes wedding cakes for both opposite sex and same sex couples, as well cakes for the Christian holidays of Christmas and Easter.

The Respondent denies that it has ever denied services or goods to customers based on their creed and/or religion.

It is the Respondent’s position that production of the cake requested by the Charging Party would run afoul of C.R.S. § 24-34-701, which provides that a place of public accommodation may not “publish . . . or display in any way manner, or shape by any means or method . . . any communication . . . of any kind, nature or description that is intended or calculated to discriminate or actually discriminates against any . . . sexual orientation . . . .”

Spotz states that the only time he recalls denying a cake request was when he received a phone call in which the caller asked if he could decorate a cake with “a sexy little school girl.”

Comparative data reflects that the Respondent employs four persons, of whom one is Catholic, one is Jewish, and two have no religious affiliation. The record reflects that the Respondent creates at least one Christian themed cake per month, increasing to three or four Christian themed cakes in the month of December.

### Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by “demeaning his beliefs.” There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than other customers because of his creed.

The Charging Party's request was denied because he requested the cakes include language and images the Respondent deemed hateful.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to make cakes that included the requested Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence demonstrates that the Respondent was prepared to create the cakes as described by the Charging Party, until he requested the specific imagery of the two groomsmen with a red "x" placed over image and the "hateful" Biblical verses. Additionally, the record reflects that the Respondent has produced cakes featuring Christian symbolism in the past, which were presumably ordered by Christian customers.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601 (2), as re-enacted.

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

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

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

Charge Number: P20140069X; William Jack vs. Azucar Sweet Shop and Bakery.

Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

Rufina Hernández,  
Director

cc: Azucar Sweet Shop and Bakery  
David Goldberg

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





**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

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

Charge Number: 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

Rufina Hernández,  
Director

cc: Gateaux, Ltd.  
Kathleen Davia

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





**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

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

Charge Number: P20140070X; William Jack vs. Le Bakery Sensual, Inc.

Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

Rufina Hernández,  
Director

cc: Le Bakery Sensual, Inc.  
Jack Robinson

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



8/1/2016

Denver Art Museum Wedding - Brian Kraft Photography

BRIAN KRAFT PHOTOGRAPHY +++ The Blog +++

## Denver Art Museum Wedding

**Denver Art Museum Wedding.** What a fun wedding this was. Brian and Adam live in Los Angeles, but planned their wedding for Denver at the C. Duncan Pavilion at the DAM (Denver Art Museum). Adam and Brian both work in the entertainment industry and wanted their wedding to feel a bit like one of the movie premier parties they attend in Hollywood. That, in combination with the couple having such a sense of humor and having family and friends that really know how to have fun, it was a sure recipe for a great day to celebrate their love. There were so many great moments all day and night, but one of my favorites was over at the Hotel Monaco, where the two grooms got ready in a suite together. They got to spend time together beforehand, but when it came time to get dressed, they did so in separate rooms within the suite and revealed their wedding day outfits once dressed. It was a really special moment. So, now I'm going to get out of the way with less words and get on with the photos, but I just want to mention one more thing. It's a shame that I even feel the need to mention it— as it should be a non-issue, but as you enjoy these wedding photos of this wonderful same sex couple, please note how "right" everything is between these two and everyone that surrounds them, yet in the State of Colorado it is still not "right" (by law) to consider their union a "marriage," with the benefits that come with that. Fortunately, Adam and Brian live in California, where they are finally offered the rights they so deserve. Hopefully all states will follow suit as soon as possible. Ok, now on to the photos! Congratulations, guys!





## WE BELIEVE



The mountains are the best place to get married. Followed by a beach on the ocean.

A bride is not complete without her groom. (or her bride or a groom without his groom) It is a day not just about one person, it is about the whole that you are about to make. The day is about connection. To each other, to the people you choose to celebrate this union with.

There doesn't always have to be one bride and one groom. We fully support and love our LGBT couples. We are so happy that the US government is finally recognizing you for the beautiful people you are.

In always loving graciously.

There are no rules for your wedding. Traditional to non traditional, a wedding is what you make it because of what YOU believe in and how you envision it. There is no right or wrong way to do a wedding.

There are no accidents. The universe has a way of working it self out.

Dogs are often more loyal than a person. The uncomplicated love they have for you is the best thing ever. They are always welcome wherever you go, especially to your wedding or engagement session.

Romantic is more how you see the world than how you see your partner. They just happen to coincide.

Marriage is the most epic adventure. One that doesn't end until the day you die and one that is constantly challenging you and changing you into the person you were meant to be.

In carefree living and letting the life roll off your back.



## MEET SARAH

I was born for the theatre, and the magic of getting lost in someone else's story.

I could live on Jelly Bellies... and perfectly salted margaritas.

I believe My cabin is the best place on earth. It is filled with family stories, memories of my Grandpa, fishing, hiking, and the best stargazing in the world.

I believe one voice is enough to change the world.

I believe hot chocolate and puppy snuggles could solve most the world's problems.

I thrive on afternoon naps (outside in a hammock, of course). And I love rain...period (Especially on a tin roof, thanks Nora.)

If I could Stitch Fix everything in my life, I would. I hate shopping but love clothes and pretty things for my home.

I believe that all true beauty lives in imperfection.

The feeling of the water over your waders and the cast of a fly rod is the epitome of relaxation to me. No distractions - just me, the water, and the fish.

I've been known to disappear into the mountain roads for entire afternoons. Just me, my Jeep and the most beautiful state on earth.

I could live in Chacos or hiking boots. Going barefoot always works too.

I believe all people deserve to be loved graciously.

I believe being wrapped in hand-crafted blankets and being hypnotized by a fire that is too-large is heaven on earth.

I believe love is best as an adventure, because surprises should always be shared.

I believe in falling in love, over and over. Every. Single. Day.

XO,  
Sarah

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# PHILLIP + GARY | CHAUTAUQUA ELOPEMENTS | SAME-SEX WEDDING PHOTOGRAPHER

FEBRUARY 10, 2015

ELOPEMENTS, SAME-SEX WEDDINGS

After Colorado ruled that a ban on gay marriage was unconstitutional I had a wave of peace and just started to cry. This topic always is rooted so deep in what I believe not only about gay marriage but the world. I grew up doing theatre and so, as the stereotype would have it about half of my male friends were gay and a decent amount of my female friends as well. I truly believe that our differences and hate are taught. I was never taught that same-sex couples love any different than a heterosexual couple and therefor my views on this subject have always been love is love. I stand for love period. I am so happy that our country is moving in a direction of less and less judgement and more and more equality and love for each other. We are all different. That is what makes us beautiful. How we love is all the same.

When I got a phone call for Phillip and Gary's elopement back in October, I was so excited! This was to be my first same-sex wedding since the law took effect. They are from Texas and were visiting friends and decided that since they were in Colorado they would make it official. I found myself tearing up behind my lens. This means so much to so many people. Something that I took for granted they were finally able to do. Reading the piece of paper that said marriage. All of it was magical and such sweet people.

My favorite part may be the incorporation of Gary's birth son and all the super heroes. It was beautiful to see all their relationships and how their family was made and will continue to be made.

Colorado is not yet 6 months into allowing gay marriage so I am looking forward to many more weddings, and someday I hope that people won't even give it a second thought. Love is love after all.

8/1/2016

News | Castle Rock Colorado | Castlerocknewspress.net



0 NEWS (/NEWS/)

ENTERTAINMENT (/ENTERTAINMENT/)

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## Wedding photographer celebrates court ruling

'Huge step forward' seen in same-sex decision



(/uploads/original/1435431623\_7797.jpg)

Anginet Page has been photographing same sex wedding ceremonies for years. Courtesy photo

Posted Saturday, June 27, 2015 2:02 am

**Ashley Reimers** (mailto:areimers@coloradocommunitymedia.com)

As long as she can remember, Anginet Page said, she supported same-sex marriage rights. Her passion for marriage equality even led her to leave the Mormon church.

"I was raised LDS, and one of the main reasons I left the church was because they didn't support the right for people to love freely," she said. "And so my whole life has been geared towards having same-sex marriage be legalized. The fact that it has is incredible."

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

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

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

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

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

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

### Keywords

gay marriage (/search\_mode/keyword/browse.htm?search\_filter=gay+marriage), Supreme Court (/search\_mode/keyword/browse.htm?search\_filter=Supreme+Court), Colorado (/search\_mode/keyword/browse.htm?search\_filter=Colorado), Anginet Photography (/search\_mode/keyword/browse.htm?search\_filter=Anginet+Photography), (/search\_mode/keyword/browse.htm?search\_filter=)

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

Posted in: Weddings



Nicole Nichols Photography

wedding reception at House of Blues in New Orleans

Jeremie & Jonathan recently celebrated their love with a beautiful ceremony at the [Metropolitan Community Church](#) followed by a reception at the [House of Blues](#) in the French Quarter.

We started with pictures of the wedding party in front of the church on Carrollton St., and we got even got lucky enough to have a streetcar stop for us to take some pictures in front of it. I loved their pastor's English accent & how he focused his sermon on how normal a gay union is, perhaps not popular, but certainly just as normal as any two people sharing their love & lives together. Throughout history gays have always been a part of reality, and always will be, its just unfortunate government & religion has not always recognized it. It was great to see that Jeremie & Jonathan's wedding was certainly full of lots of family & friends celebrating their love & bond.

After the wedding everyone jumped on a bus to the House of Blues downtown. Everyone danced & partied into the night with the awesome band, [The Bucktown All Stars](#). Their cake & custom designed Mardi Gras beads were a perfect match to the antique New Orleans decor of the House of Blues. And the HOB's motto, "unity in diversity" couldn't have fit better. Thanks Jeremie & Jonathan for allowing me to be a part of your special event! Check out just a few of the shots from the wedding day below, much more to come!

# Nicole Nichols

PHOTOGRAPHY

*for the Rebellious & Romantic Free Spirit*

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## DENVER PRIDEFEST WITH CO GAY WEDDINGS

Posted in: [Special Events/ Documentary](#)



2012 Denver Pridefest Pictures in Civic Center Park

**PRIDEFEST – COLORS, CULTURE, FASHION, LOVE**

I am a strong believer that ALL should have the right to marry whomever he or she wants.

Other than for the art and the challenge, one of the reasons I became a wedding photographer is because I'm a lover...a sentimental romantic that has always "awed" when I see *any* two people in love. I have no enemies, I love everyone. Sure some have called me a naive idealistic hippie, but I *really* do believe love can change the world. And if someone wants to express their love to another person through a wedding, well they should have the right to get married, and get divorced, just like everyone else!

Not only am I a big supporter of gay rights...but also of brightly colored costumes, parades, and just having fun! So, on Sunday June 17th I was proud to be walking in support of CO gay weddings in the annual [Denver Pridefest](#) Parade. Wedding planner extraordinaire [Mark of Events Unwrapped](#) started [CO Gay Weddings](#) to help the gay and transgender community find LGBT friendly wedding professionals that don't discriminate on sexual orientation. The parade started early Sunday morning at [Cheeseman Park](#), headed downtown

through [Capitol Hill](#), and ended at [Civic Center Park](#) in the heart of the city. Pridefest went all weekend long, filling Civic Center Park with live music, community booths, and lots of colorful people and entertainment.

Play the slideshow below to see some of my pictures of the parade, the party, and lots of unique interesting people! And if you are looking for a photographer for your commitment ceremony or gay wedding, please contact me. Even though it may not be yet technically legal in Colorado, I would love to document your special celebration. Check out this [gay wedding in New Orleans](#) I photographed a couple years ago for some inspiration.

## CO WEDDING PHOTOGRAPHER: DENVER BOTANICAL GARDENS & TIVOLI

Posted in: Weddings

### ASHLEY & PAIGE'S FUN MODERN WEDDING AT DENVER BOTANIC GARDENS



sunset pictures in front of the Tivoli in downtown Denver

I knew after photographing Ashley & Paige's engagement session that these two would be laid back and a lot of fun to work with. You can check out [their engagement pictures around downtown Denver here](#). And their wedding day was certainly just that. These two ladies got married at [Denver Botanical Gardens](#) last summer. We set up a first sight with the brides in the Tropical Conservatory, which was such a beautiful romantic moment it almost brought me to tears. The first sight allowed us to get a lot of their family and wedding party pictures out of the way, which is always a nice bonus on the wedding day. Then when it was time to walk down the aisle, they each walked up to the ceremony site with their fathers, coming from different sides of the garden. They pronounced their love in front of their family and closest friends in the "All American Selections Garden" and then afterwards we walked around the botanical gardens for more pictures.

We then all headed to the historic [Tivoli building](#) on the Auraria Campus in downtown Denver. We did more pictures with the wedding party around this historic landmark which was originally home to the Tivoli Brewing Company. And then it was time for the party to begin! Ashley & Paige rented out the [Turnhalle in the Tivoli](#), a unique urban venue with brick walls, a wrap-around balcony, and great views of the Denver city skyline. They decorated the venue with their wedding colors of navy blue, mint green, and grey, and added modern DIY touches such as painted vases and table cards named after different parts of Denver. After they did their first dance they each danced with their father and then they swapped and danced with each other's dads, which was a great personal touch. The brides and all their guests certainly enjoyed a fun-filled party. Their friends and family got down on the dance floor, enjoyed the fun photo booth, playing corn hole, and choosing treats from the all green candy bar. And for their bouquet toss Ashley & Paige each tossed their bouquet of flowers to male and female single guests. It was fun non-traditional twist to the bouquet toss and gave people two chances to catch the bouquet. When it was time for the party to end the guests gathered outside for a fun sparkler send-off and the brides were whisked away in a bike buggy.

It was an honor to witness and be able to document the strong endearing love Ashley & Paige share. And I'm so proud of not only our state of Colorado, but the nation, for finally legalizing gay and lesbian marriages. All men and women should share the same rights that a legal marriage allows, from getting to file taxes together to being allowed to visit their spouse in severe hospital situations. Hopefully the rest of the world will soon follow. Love conquers all.



**Dora**  
Department of Regulatory Agencies

John W. Hickenlooper  
Governor

Barbara J. Kehey  
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 734  
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(970) 542-1298  
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222 S. 6th Street, Suite 301  
Grand Junction, CO 81505  
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(970) 242-1252 (fax)  
http://www.dora.state.co.us/dora/eng

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 (zay)**

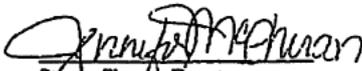
To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

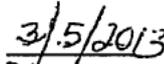
The Charging Party is a member of a protected class based on his sexual orientation. The Charging Party visited the Respondent's place of business for the purpose of ordering a wedding cake for his wedding reception. The evidence indicates that the Charging Party and his partner were otherwise qualified to receive services or goods from the Respondent's bakery. During this visit, the Respondent informed the Charging Party that his standard business practice is to deny baking wedding cakes to same-sex couples based on his religious beliefs. The evidence shows that on multiple occasions, the Respondent turned away potential customers on the basis of their sexual orientation, stating that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. The Respondent's representatives stated that it would be unable to provide a cake because "according to the company, [the potential same-sex customers] were doing something 'illegal,'" and "because the owners believed in the word of Jesus." The Respondent indicates it will bake other goods for same sex couples such as birthday cakes, shower cakes or any other type of cake, but not a wedding cake. As such, the evidence shows that the Respondent refused to allow the Charging Party and his partner to patronize its business in order to purchase a wedding cake under circumstances that give rise to an inference of unlawful discrimination based on the Charging Party's sexual orientation.

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

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division

  
Steven Chavez, Director  
or Authorized Designee

  
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  
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Lauren Wilkins  
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John W. Hickenlooper  
Governor

Barbara J. Kolkey  
Executive  
Director

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

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(970) 248-7364  
(970) 742 1262 (fax)  
<http://www.colorado.gov/divisions/dora>

Charge No. P20130007X

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

Charging Party

Masterpiece Cakeshop  
3355 S. Wadsworth Blvd.  
Lakewood, CO 80227

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is sufficient evidence to support the Charging Party's claim of denial of full and equal enjoyment of a place of public accommodation based on his sexual orientation. As such, a Probable Cause determination hereby is issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about July 19, 2012, the Respondent, a place of public accommodation, denied him the full and equal enjoyment of a place of accommodation on the basis of his sexual orientation (gay). The Respondent avers that its standard business practice is to deny service to same-sex couples based on religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

The Charging Party states that on or about July 19, 2012, he visited the Respondent's place of business for the purpose of ordering a wedding cake with his significant other, Charlie Craig ("Craig"), and his mother Deborah Munn ("Munn"). The Charging Party and his partner planned to travel to Massachusetts to marry and intended to have a wedding reception in Denver upon their return. The Charging Party and his significant other were attended to by the Respondent's Owner, Jack Phillips ("Phillips"). The Charging Party asserts that while viewing photos of the available wedding cakes, he informed the owner that the cake was for him and his significant other. The Charging Party states that in response, Phillips replied that his standard business practice is to deny service to same-sex couples based on his religious beliefs. The Charging Party states that based on Phillips response and refusal to provide service, the group left the Respondent's place of business.

The Charging Party states that on July 20, 2012, in an effort to obtain more information as to why her son was refused service, Munn telephoned Phillips. During this telephone conversation, Phillips stated that "because he is a Christian, he was opposed to making cakes for same-sex weddings for any same-sex couples."

The record reflects that Phillips subsequently commented to various news organizations, that he had turned approximately six same-sex couples away for this same reason. The Respondent has not argued that it is a business that is principally used for religious purposes.

Respondent Owner Jack Phillips ("Phillips") states that on July 19, 2012, the Charging Party, Craig, and Munn visited his bakery and stated that they wished to purchase a wedding cake. Phillips asserts that he informed the Charging Party that he does not create wedding cakes for same-sex weddings. According to Phillips, this interaction lasted no more than 20 seconds. Phillips states that the Charging Party, Craig, and Munn subsequently exited the Respondent's place of business. The Respondent avers that on July 20, 2012, during a conversation with Munn, he informed her that he refused to create a wedding cake for her son based on his religious beliefs and because Colorado does not recognize same-sex marriages.

The Respondent states that the aforementioned situation has occurred on approximately five or six past occasions. The Respondent contends that in those situations, he advised potential customers that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. He adds that he told the Charging Party and his partner that he "could

create birthday cakes, shower cakes, or any other cakes." The Respondent asserts that this decision rested in part based on the fact that the state of Colorado does not recognize same sex marriages.

In an affidavit provided by the Charging Party during the Division's investigation, Stephanie Schmalz ("S. Schmalz") states that on January 16, 2012, she and her partner Jeanine Schmalz ("J. Schmalz") visited the Respondent's place of business to purchase cupcakes for their family commitment ceremony. S. Schmalz states that when she confirmed that the cupcakes were to be part of a celebration for her and her partner, the Respondent's female representative stated that she would not be able to place the order because "the Respondent had a policy of not selling baked goods to same-sex couples for this type of event." Following her departure from the Respondent's place of business, S. Schmalz telephoned the Respondent to clarify its policies. During this telephone conversation, S. Schmalz learned that the female representative was an owner of the business and that it was the Respondent's stated policy not to provide cakes or other baked goods to same-sex couples for wedding-type celebrations.

S. Schmalz subsequently posted a review on the website Yelp describing her experiences with the Respondent. An individual identifying himself as "Jack P. of Masterpiece Cakeshop" posted a reply to Schmalz's review, in which he stated that "... a wedding for [gays and lesbians] is something that, so far, not even the State of Colorado will allow" and did not dispute that he refuses to serve gay and lesbian couples planning weddings or commitment celebrations.

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)

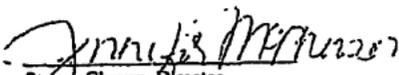
To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise 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.

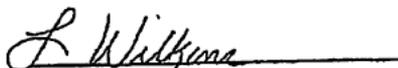
CCRD #  
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David Mullins  
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Lakewood, CO 80235



Lauren Wilkins  
Colorado Department of  
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Division of Civil Rights  
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Denver, CO 80202  
P 303.894.2997  
[www.dora.state.co.us](http://www.dora.state.co.us)

MIME-Version:1.0  
From:COD\_ENotice@cod.uscourts.gov  
To:COD\_NEF@coddb.cod.circ10.dcn  
Message-Id:5759757@cod.uscourts.gov  
Subject:Activity in Case 1:16-cv-02372-MSK-CBS 303 Creative LLC et al v. Elenis et al  
Order  
Content-Type: text/html

**U.S. District Court**

**District of Colorado**

**Notice of Electronic Filing**

The following transaction was entered on 11/21/2016 at 9:26 AM MST and filed on 11/21/2016

**Case Name:** 303 Creative LLC et al v. Elenis et al

**Case Number:** 1:16-cv-02372-MSK-CBS

**Filer:**

**Document Number:** 44(No document attached)

**Docket Text:**

**ORDER: The Court will conduct a non-evidentiary hearing on the Plaintiffs' Motion for Preliminary Injunction [6] on 1/11/2017 at 09:00 AM. The parties shall be prepared to address: (i) each Plaintiff's standing to request the various items of relief they seek; (ii) whether the facts pertinent to the Motion for Preliminary Injunction are disputed, such that an evidentiary hearing is necessary; (iii) if there are factual disputes, what facts are disputed; and (iv) how long of an evidentiary hearing is necessary and when that hearing should be scheduled. By Chief Judge Marcia S. Krieger on 11/21/16. Text Only Entry (msklc2, )**

**1:16-cv-02372-MSK-CBS Notice has been electronically mailed to:**

Leanne B. De Vos leanne.devos@coag.gov, anna.barrick@coag.gov

Eric Holden Maxfield eric.maxfield@state.co.us

David Andrew Cortman dcortman@alliancedefendingfreedom.org,  
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Jonathan Andrew Scruggs jscruggs@ADFlegal.org, jpeterson@ADFlegal.org

**1:16-cv-02372-MSK-CBS Notice has been mailed by the filer to:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
CHIEF JUDGE MARCIA S. KRIEGER**

Courtroom Deputy: Patricia Glover  
Court Reporter: Mary George

Date: January 11, 2017

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

Parties:

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

Plaintiffs,

v.

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 POCOK, as members of the Colorado Civil  
Rights Commission, in their official capacities, and  
CYNTHIA COFFMAN, Colorado Attorney General in her  
official capacity,

Defendants.

Counsel Appearing:

Jeremy Tedesco  
Katherine Anderson  
Michael Francisco

Vincent Morscher

---

**COURTROOM MINUTES**

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HEARING: Law and Motion

**9:30 a.m. Court in session**

The Court addresses the issues outlined in its Order setting this hearing (Doc. #44)

Statements from counsel.

Courtroom Minutes  
Chief Judge Marcia S. Krieger  
Page 2

The parties agree that there is no need for an evidentiary hearing.

**ORDER:** Plaintiffs' motion for summary judgment will be filed by February 1, 2017; responses will be filed by February 22, 2017 and reply filed by March 8, 2017. The parties will also file a separate stipulation of facts.

**ORDER:** The reference of the Motion to Dismiss (**Doc. #37**) to Magistrate Judge Shaffer is withdrawn. The Court will rule on the motion(s) for preliminary injunction, summary judgment and dismissal simultaneously.

**9:49 a.m. Court in recess.**

**Total Time: 19 minutes.  
Hearing concluded.**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-2372-MSK-CBS

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

Plaintiffs,

vs.

AUBREY ELENIS, Director of the Colorado Civil Rights  
Division in her official capacity;  
ANTHONY ARAGON, Member of the Colorado Civil Rights  
Commission in his official capacity;  
ULYSSES J. CHANEY, Member of the Colorado Civil Rights  
Commission in his official capacity;  
MIGUEL RENE ELIAS, "MICHAEL," Member of the Colorado Civil  
Rights Commission in his official capacity;  
CAROL FABRIZIO, Member of the Colorado Civil Rights  
Commission in her official capacity;  
HEIDI HESS, Member of the Colorado Civil Rights Commission  
in her official capacity;  
RITA LEWIS, Member of the Colorado Civil Rights Commission  
in her official capacity;  
JESSICA POCOCK, Member of the Colorado Civil Rights  
Commission in her official capacity;  
CYNTHIA H. COFFMAN, Colorado Attorney General, in her  
official capacity,

Defendants.

-----  
REPORTER'S TRANSCRIPT  
(Law and Motion Hearing)  
-----

Proceedings before the HONORABLE MARCIA S. KRIEGER,  
Judge, United States District Court for the District of  
Colorado, commencing at 9:30 a.m., on the 11th day of  
January, 2017, in Courtroom A901, United States Courthouse,  
Denver, Colorado.

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APPEARANCES

KATHERINE L. ANDERSON and JEREMY D. TEDESCO, Alliance  
Defending Freedom - Scottsdale, 15100 North 90th Street,  
Suite 165, Scottsdale, Arizona 85260, AND

MICHAEL L. FRANCISCO, MRDLaw, 3301 West Clyde Place,  
Denver, Colorado 80211, appearing for the plaintiffs.

VINCENT E. MORSCHER, Colorado Attorney General's  
Office, Ralph L. Carr Colorado Judicial Center, 1300  
Broadway, Denver, Colorado 80203, appearing for the  
defendants.

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Proceedings Reported by Mechanical Stenography  
Transcription Produced via Computer

P R O C E E D I N G S

(Call to order of the court at 9:30 a.m.)

THE COURT: Court is convened today in case No. 16  
cv 2372. This is encaptioned 303 Creative LLC and Lorie  
Smith versus a number of defendants: Aubrey Elenis,  
Anthony Aragon, Ulysses Chaney, Miguel Elias, Carol  
Fabrizio, Heidi Hess, Rita Lewis, Jessica Pocock and  
Cynthia Coffman.

And the matter's set down for a law and motion  
hearing because there's been a motion for a preliminary  
injunction filed here, and there also has a pending motion  
to dismiss.

Could I have entries of appearance, please.

MS. ANDERSON: Yes. Kate Anderson here on behalf  
of plaintiffs. I'm joined by cocounsel Jeremy Tedesco and

1 Michael Francisco.

2 THE COURT: Thank you. And, counsel, you need to  
3 speak into the microphone. You have a soft voice and it  
4 kind of dissipates in the courtroom, so either pull that  
5 microphone toward you or go to the lectern, please.

6 MS. ANDERSON: All right.

7 THE COURT: Good morning and welcome to all of  
8 you.

9 MR. MORSCHER: Good morning, Your Honor. Vincent  
10 Morscher, Deputy Attorney General, representing all  
11 defendants in this matter.

12 THE COURT: Good morning and welcome to you as  
13 well.

14 MR. MORSCHER: Thank you.

15 THE COURT: Before setting this hearing down, I  
16 asked you to be prepared to -- or I said -- when I set it  
17 down, I asked you to be prepared to address a number of  
18 issues. And I've had an opportunity to review what you've  
19 filed. I think some of those issues may have clarified in  
20 the subsequent filings.

21 The purpose of our hearing here is to streamline  
22 what's going on and get a path forward. First of all, let  
23 me ask the plaintiffs why you named all of the defendants,  
24 Aragon through Pocock, as defendants when essentially all  
25 you're suing is the Colorado Civil Rights Division.

1 MS. ANDERSON: Your Honor, this is a case of  
2 pre-enforcement challenge, challenging the  
3 constitutionality of state statute.

4 THE COURT: I know that.

5 MS. ANDERSON: And the reason we named each of  
6 those defendants is following the history of *ex parte Young*  
7 and *Muskogee* in the Tenth Circuit and *Wilson v. Stocker*  
8 saying that the way to avoid sovereign immunity when you're  
9 challenging the constitutionality of a state statute is to  
10 sue the people with enforcement power. And what's required  
11 is some enforcement power. So each of those defendants has  
12 some enforcement power and that is why we named them.

13 THE COURT: They have enforcement power if they  
14 act as a unit and they direct the director, correct?

15 MS. ANDERSON: Their enforcement power, as we  
16 understand it, is to file complaints, to investigate, to  
17 order hearings, and on down the line.

18 THE COURT: Individually?

19 MS. ANDERSON: The -- the A.G. and the  
20 commissioners and the commission can all file complaints,  
21 which is part of the enforcement power.

22 THE COURT: All right. So the members of the  
23 commission can file complaints; that's -- that's their  
24 enforcement power that you're concerned about?

25 MS. ANDERSON: Yes.

1 THE COURT: All right. Then let me ask the  
2 defendant -- or counsel for the defendants: What I  
3 understand is that simply the posting of this website,  
4 notwithstanding the content, would not cause any  
5 prosecution; is that correct?

6 MR. MORSCHER: That's correct, Your Honor. Just  
7 by having this service out there, it still takes a number  
8 of steps by independent actors to actually get it before,  
9 initially, the division and then eventually the commission,  
10 assuming, you know, various things happen.

11 So, you know, only if someone approaches a  
12 website, seeks out the service, is denied the service based  
13 on, you know, presumably their sexual orientation, and then  
14 they file a charge, then it would be an issue. However, as  
15 we mentioned, the independent party can still go to state  
16 court on their own and completely bypass the filing with  
17 the division and they could seek relief in state court  
18 automatically.

19 THE COURT: All right. But we're not concerned  
20 about that. We're concerned about enforcement. And what I  
21 just heard you say comports with what I read, which is that  
22 the plaintiffs -- or plaintiffs here will not suffer any  
23 injury unless service is denied; is that correct? Because  
24 there will be no enforcement unless service is denied.

25 MR. MORSCHER: Well, that's correct. I mean,

1 they -- yes, they cannot take any action until facts  
2 happen, and service would have to be denied before they  
3 could take action and face --

4 THE COURT: All right. So what I understand  
5 you're saying is that the plaintiffs composed the website,  
6 there would be no enforcement taken simply because the  
7 website is posted.

8 MR. MORSCHER: I mean, that's correct. The --  
9 that's correct.

10 THE COURT: Okay. And that the only enforcement  
11 that would occur, if any, would be after someone has  
12 requested service and the plaintiffs have denied service;  
13 is that correct?

14 MR. MORSCHER: Well, I guess when you are talking  
15 enforcement, you know, what does that mean? Because they  
16 still -- there still needs to be an investigation, there  
17 still needs to be all these other steps before it's  
18 actually noticed for a hearing --

19 THE COURT: Well, we're not talking about that.  
20 We're talking about what is the triggering event? Is the  
21 triggering event the posting of the website or is the  
22 triggering of the -- triggering event the denial of  
23 service?

24 MR. MORSCHER: The -- as far as defendants are  
25 concerned, Your Honor?

1 THE COURT: Uhm-hum.

2 MR. MORSCHER: As far as defendants are concerned,  
3 the triggering event is when a charge is filed and probable  
4 cause is found.

5 THE COURT: Well, let me -- let me run down some  
6 concepts, then, here. Let's hypothetically say that the  
7 plaintiffs post the website and somebody complains about  
8 the language on the website. Would that constitute a  
9 complaint?

10 MR. MORSCHER: If they filed a charge alleging  
11 that?

12 THE COURT: Uhm-hum.

13 MR. MORSCHER: I -- that would be a complaint,  
14 correct.

15 THE COURT: And would the defendants take any  
16 action to investigate that?

17 MR. MORSCHER: If it was determined that they had  
18 jurisdiction, for instance, it was filed timely, and it  
19 fell under the statute, then the Civil Rights Division  
20 would initiate an investigation.

21 THE COURT: Okay. Do you understand what I'm  
22 really asking you? Because if it is, as you have listed in  
23 your pleadings, a requirement that service be denied, then  
24 the plaintiffs have no standing with regard to any claim  
25 based on free speech. But if you are saying that

1 enforcement could occur based on someone complaining about  
2 the language on the website, not the denial of service,  
3 then they may have standing.

4 MR. MORSCHER: Well, if they -- if you're going  
5 towards the issue of posting the information under that  
6 part of the statute that talks about a public accommodation  
7 and not putting that out there, then, yes, certainly I  
8 think someone would have an argument that they are not  
9 being denied service but someone is committing an illegal  
10 act by posting this discriminatory language on a website.

11 THE COURT: Well, there the injury that is alleged  
12 would be an injury based on a denial of free speech, a  
13 chilling effect. And if I understand the Government here,  
14 the State of Colorado, to say we're not going to prosecute  
15 simply because people put statements on their websites  
16 about what services they do and do not intend to render,  
17 we're going to wait until some service is denied before we  
18 begin prosecution, then there's very little chilling effect  
19 as to the speech; it is, indeed, conduct that is being  
20 prosecuted. So what is the State's position?

21 MR. MORSCHER: Well, the State's position is that  
22 a matter needs to be initiated before any prosecution is  
23 made. And that really depends on the independent actor  
24 looking at what is posted and filing a charge with the  
25 division. Or it could be that they're denied service. It

1       could be either one.

2               THE COURT:   Okay.   Sounds like the State exercises  
3       no discretion as to the complaints it pursues.

4               MR. MORSCHER:   The only discretion it exercises is  
5       jurisdictional and -- yes, I mean, that's correct.   It has  
6       no discretion whether it could accept a complaint as long  
7       as it is filed.

8               THE COURT:   Okay.   All right.   Then let's turn to  
9       the motion for preliminary injunction.   Have you discussed  
10       what facts are in dispute and whether or not you need an  
11       evidentiary hearing?

12              MR. MORSCHER:   We did have a discussion, Your  
13       Honor.   You know, we don't believe that any facts are in  
14       dispute in this matter.   Certainly the facts that we think  
15       are material to this are defendants' business and their  
16       operations and their intent and their personal beliefs.  
17       Seeing as nothing has been filed or done here, we don't  
18       dispute that.

19              We certainly dispute their statement of what the  
20       law is and who has the authority and jurisdiction to take  
21       action.   They -- they put all the defendants in one group,  
22       and all defendants have independent authority, so we  
23       don't -- you know, certainly we dispute that.   But  
24       otherwise, there's no disputed facts here.

25              THE COURT:   So you're prepared to resolve this on

1       briefs?

2               MR. MORSCHER: That's correct, Your Honor.

3               THE COURT: All right. Let me hear from the  
4       plaintiffs.

5               MS. ANDERSON: Your Honor, we agree that there's  
6       no need for an evidentiary hearing, there's no facts in  
7       dispute, and this could be decided on the briefs.

8               THE COURT: All right. Sounds to me like the  
9       relief that you're requesting in the motion for preliminary  
10      injunction is exactly the same relief that you're  
11      requesting on the merits, correct?

12              MS. ANDERSON: No, Your Honor. We are -- on the  
13      merits we also have a facial challenge asking for facial  
14      relief. On the motion for preliminary injunction we're  
15      only asking for as-applied relief, that she be able to  
16      speak freely on her website and that she be able to enter  
17      the industry and begin creating custom wedding websites --

18              THE COURT: What's the difference with regard to  
19      the evidence that would be considered?

20              MS. ANDERSON: There could -- probably none, Your  
21      Honor. There could be --

22              THE COURT: That's right.

23              MS. ANDERSON: Yeah.

24              THE COURT: All right. Then why shouldn't I just  
25      combine the determination of the motion for preliminary

1 injunction with the determination on the merits under Rule  
2 42(b)?

3 MS. ANDERSON: I think you could, Your Honor, as  
4 long as you decided promptly the issues. There's  
5 irreparable harm going on right now with her chilling of  
6 her speech, so we would urge the Court to make a decision  
7 quickly.

8 THE COURT: Well, I'm not inclined to make two  
9 rulings.

10 MS. ANDERSON: So what would Your Honor -- what is  
11 Your Honor thinking?

12 THE COURT: When are you going to be prepared to  
13 address your issues?

14 MS. ANDERSON: I'm sorry?

15 THE COURT: When are you going to be prepared to  
16 address your issues?

17 MS. ANDERSON: Could I take just a brief moment?

18 THE COURT: Sure.

19 MS. ANDERSON: Thank you.

20 Your Honor, we would propose, then, that we  
21 file -- on an expedited briefing schedule, that within  
22 about three weeks we file summary judgment.

23 THE COURT: How long will it take the State to  
24 respond?

25 MR. MORSCHER: Your Honor, we're fine with

1 whatever the Court decides. We can respond within 20 days  
2 of that.

3 THE COURT: All right. Then I'll set a deadline  
4 for filing of motion for summary judgment. There will need  
5 to be stipulated facts. Please understand if you do not  
6 stipulate to all the facts, I'll deny the motion  
7 outright --

8 MS. ANDERSON: Yes, Your Honor.

9 THE COURT: -- because that means we need to have  
10 a hearing. So you'll need to have stipulated facts.  
11 Please do not put those stipulated facts in your brief.  
12 Please list the stipulated facts that you agree to.

13 Motion for summary judgment will be filed three  
14 weeks from today. Ms. Glover, can you give us a deadline.

15 COURTROOM DEPUTY: Yes, I can. Three weeks from  
16 today is February 1st.

17 THE COURT: All right. The response will be filed  
18 three weeks from that date.

19 COURTROOM DEPUTY: Which would be February 22d.

20 THE COURT: All right. And the reply, if any,  
21 will be filed 14 days thereafter.

22 COURTROOM DEPUTY: March 8th.

23 THE COURT: Okay. Court withdraws the reference  
24 of the motion to dismiss docket No. 37 to Magistrate Judge  
25 Shaffer and will rule on the motion for preliminary

1 injunction, motion for summary judgment, and motion to  
2 dismiss simultaneously.

3 Any need for clarification, further explanation,  
4 anything else we need to do?

5 MR. TEDESCO: I have one point of clarification.

6 THE COURT: Would you speak into a microphone,  
7 please.

8 MR. TEDESCO: Thank you, Your Honor. I just  
9 wondered if the State was going to be filing a cross-motion  
10 for summary judgment. Right now --

11 THE COURT: Why would the State file a motion for  
12 cross -- a cross-motion for summary judgment?

13 MR. TEDESCO: I don't know if they intend to or  
14 not. And since we were figuring out the schedule --

15 THE COURT: Let me be real honest about motions  
16 for summary judgment. Cross-motions for summary judgment  
17 are not helpful. The only issue on a motion for summary  
18 judgment is whether or not we need a trial. If we do not  
19 need a trial, meaning there's no genuine dispute as to a  
20 material fact, then the Court can enter judgment to the  
21 party entitled as a matter of law. It does not matter who  
22 files the motion.

23 MR. TEDESCO: Thank you, Your Honor.

24 THE COURT: All right. Anything else we need to  
25 do today?

1 MS. ANDERSON: No, Your Honor.

2 MR. MORSCHER: Nothing from defendants, Your  
3 Honor.

4 THE COURT: All right. I have one last question  
5 for the plaintiffs, and that is whose website would this  
6 be? You have two plaintiffs here.

7 MS. ANDERSON: It's her business website, 303  
8 Creative.

9 THE COURT: Okay. So who owns -- would own the  
10 website and whose speech would be involved?

11 MS. ANDERSON: It would be both. She's the sole  
12 owner of the company --

13 THE COURT: Well, it doesn't work that way. Under  
14 *Hobby Lobby*, we know that entities can't have speech. So  
15 are you saying this is the speech of 303 Creative LLC, or  
16 are you saying that essentially this is Lorie Smith, not an  
17 LLC?

18 MS. ANDERSON: We are saying it is her speech  
19 through her company. So it's her company speech.

20 THE COURT: Okay. Then you may want to think  
21 about dismissing Lorie Smith from the caption of the  
22 action.

23 MS. ANDERSON: We will consider it, Your Honor.

24 THE COURT: Okay. Great. Thank you all very  
25 much. I look forward to receiving your briefs, and we will

1 take it from there.

2 MS. ANDERSON: Thank you, Your Honor.

3 MR. MORSCHER: Thank you, Your Honor.

4 THE COURT: We will stand in recess.

5 (Proceedings concluded at 9:49 a.m.)

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8 REPORTER'S CERTIFICATE

9

10 I certify that the foregoing is a correct transcript  
11 from the record of proceedings in the above-entitled  
12 matter.

13 Dated at Denver, Colorado, this 18th day of January,  
14 2017.

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MARY J. GEORGE, FCRR, CRR, RMR

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