

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

303 CREATIVE LLC and LORIE SMITH,
Plaintiffs-Appellants,

v.

AUBREY ELENIS, et al.,
Defendants-Appellees,

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

APPELLANTS' APPENDIX: VOLUME 2 OF 3

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December 18, 2017

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

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

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

Plaintiffs,

vs.

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

Defendants.

**AFFIDAVIT OF LORIE SMITH IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

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. I own and manage the website: www.303creative.com (“my website”). This is the website for my business, 303 Creative, LLC.

3. On my website, people can submit electronic requests for my creative services through the “contact” webpage.
4. Information received from requests for creative services submitted via the “contact” webpage on my website are immediately reduced to email form and sent to my email inbox once the requestor clicks “submit.”
5. When I receive emails containing requests for creative services from my website via the “contact” webpage, it is my routine business practice to keep these requests and, if appropriate, respond.
6. On September 21, 2016, I received a request through the “contact” webpage on my website from a person named, “Stewart,” reference number 9741406, to create graphic designs for invitations and other materials for a same-sex wedding (“same-sex wedding request”).
7. The same-sex wedding request indicated the prospective client may also desire me to create a website for a same-sex wedding.
8. A true and accurate copy of this same-sex wedding request is included in the Appendix at pages 001-002.
9. Expressive businesses in Colorado regularly maintain websites that share stories of their art and their clients.
10. On these websites, creative professionals often communicate social, political, and religious messages in telling the stories of their clients and sharing the messages they express with their art.
11. Many expressive businesses in Colorado freely express their views in favor of same-sex marriage.

12. For example, I personally visited each of the websites referred to in paragraphs 13, 17-18, 20, 26, 29, 31, and 33 *infra* on January 30, 2017.
13. 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.
14. This Brian Kraft Photography blog post excerpt was found on a webpage directly under a header titled “Brian Kraft Photography” that also served as a hyperlink back to the Brian Kraft Photography blog homepage.
15. This Brian Kraft Photography blog post excerpt was not found in a comment section or other place where members of the public could create content to be published on the website.
16. A true and accurate copy of this Brian Kraft Photography blog post excerpt is included in the Appendix at page 003.
17. 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.”

18. 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.”
19. True and accurate copies of these excerpts from the Sarah Roshan Wedding Photographer homepage are included in the Appendix at pages 004-005.
20. 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 judgement [sic] 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.

21. A true and accurate copy of this Sarah Roshan Wedding Photographer webpage excerpt is included in the Appendix at page 006.

22. These Sarah Roshan Wedding Photographer statements were found on a webpage directly under a header titled “Sarah Roshan Wedding Photographer,” a business logo, within a top menu containing links to other parts of the website.
23. These Sarah Roshan Wedding Photographer statements were not found in a comment section or other place where members of the public could create content to be published on the website.
24. Anginet Photography also expresses its views favoring same-sex marriage.
25. 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.
26. 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>.
27. 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.”
28. A true and accurate copy of this Castle Rock News-Press story is included in the Appendix at page 007.

29. 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.

30. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 008.

31. 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

32. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 009.
33. 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.
34. A true and accurate copy of this Nicole Nichols Photography blog post excerpt is included in the Appendix at page 010.
35. These Nicole Nichols Photography blog post excerpts were found on a webpage directly under a header titled "Nicole Nichols Photography," a business logo and hyperlink back to the Nichole Nichols Photography website homepage.
36. These Nicole Nichols Photography blog post excerpts were not found in a comment section or other place where members of the public could create content to be published on the website.

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 1st day of February, 2017, at Littleton, Colorado.



LORIE SMITH
303 CREATIVE LLC

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

Civil Action No. 1:16-cv-02372

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 COUNSEL FOR THE PLAINTIFFS, JEREMY D. TEDESCO, IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

I, Jeremy D. Tedesco, hereby declare as follows:

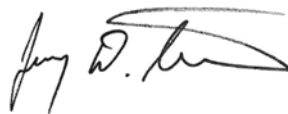
1. I am competent to testify and make this declaration based on my personal knowledge.
2. I serve as co-counsel for the respondent in *Craig v. Masterpiece Cakeshop, Inc.*, No. P20130008X.

3. On July 25, 2014, a meeting of the Colorado Civil Rights Commission (“Commission”) was held at which the Commission decided whether a stay should be issued following its final decision in the *Masterpiece* case.
4. Following this meeting, respondents, through counsel, requested that the Commission provide an audio recording of the meeting.
5. The Commission responded by providing respondents’ counsel a copy of the audio recording of the meeting, which I then caused to be delivered, unchanged, to a certified transcriber, Katherine A. McNally, at Arizona Reporting Service, Inc.
6. Ms. McNally produced a certified transcription of excerpts of the audio recording, a true and accurate copy of which is found at pages 041-053 of the Appendix.

DECLARATION UNDER PENALTY OF PERJURY

I, JEREMY TEDESCO, a citizen of the United States and a resident of the State of Arizona, 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 1st day of February, 2017, at Scottsdale, Arizona.



Jeremy Tedesco
Attorney for Plaintiffs

APPENDIX

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Kate Anderson

From: 303 Creative [info@303creative.com]
Sent: Wednesday, September 21, 2016 12:34 PM
To: Jeremy Tedesco
Subject: Fwd: 303RequestForm Result #9741406

Lorie Smith
 Sent from my iPhone

Begin forwarded message:

From: form_engine@fs21.formsite.com
Date: September 21, 2016 at 1:08:42 PM MDT
To: info@303creative.com
Subject: 303RequestForm Result #9741406
Reply-To: form_engine@fs21.formsite.com

Reference #	9741406
Status	Complete
Your Name *	Stewart
Email *	stewcurran@gmail.com
Phone	4155218593
Website:	onlymoreneverless.com
Briefly describe the nature of your business/organization *	Personal
If your inquiry relates to a specific event, please describe the nature of the event and its purpose:	My wedding. My name is Stewart and my fiancée is Mike. We are getting married early next year and would love some design work done for our invites, placenames etc. We might also stretch to a website.
How can 303creative help you? *	Website Design Services Graphic Design Services
Last Update	2016-09-21 14:08:43
Start Time	2016-09-21 14:06:36
Finish Time	2016-09-21 14:08:43
IP	12.27.99.35
Browser	Chrome

OS

Mac

Referrer

<http://303creative.com/contact/>

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

HOME • ABOUT • CONTACT

BLOG • INFO • FEATURED



PHILLIP + GARY | CHAUTAUQUA ELOPEMENT | SAME-SEX WEDDING PHOTOGRAPHER

FEBRUARY 10, 2015

ELOPEMENTS, SAME-SEX WEDDINGS

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

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

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

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

8/1/2016

News | Castle Rock Colorado | Castlerocknewspress.net



NEWS (/NEWS/)

ENTERTAINMENT (/ENTERTAINMENT/)

VOICES (/VOICES/)

Wedding photographer celebrates court ruling

'Huge step forward' seen in same-sex decision



(/uploads/original/1435431623_7797.jpg)

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

Antley Reimers (mailto:areimers@coloradocommunitymedia.com)

As long as she can remember, Angiel 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 EnGAYed 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=)

Tweet

Comments

NO COMMENTS ON THIS STORY | PLEASE LOG IN TO COMMENT BY [CLICKING HERE](#) (LOGOUT/HTML)

No buy-in fees! All month-to-month rentals!
 LincolnMeadowsSeniorLiving.com

(http://ccm.ads.community.com/www/delivery/ck.php?osparams=2_bannerid=1272_zoneid=35_ct=ds13e3cbf_padest=http%3A%2F%2Flincolnmeadowsseniorking.com)

THE LATEST

News (/news/)



(/stories/Early-returns-show-Castle-Rock-mayor-like-wont-be-recaled,231498)

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

TUESDAY, JULY 26

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

YESTERDAY AT 12:30 PM

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

MONDAY, JULY 26

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

MONDAY, JULY 26

Sports (/sports/)



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

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

MONDAY, JULY 26

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

MONDAY, JULY 26



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

Posted in: Weddings



Nicole Nichols Photography

wedding reception at House of Blues in New Orleans

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

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

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

Nicole Nichols

PHOTOGRAPHY

for the Rebellious & Romantic Free Spirit

Denver - New Orleans - Worldwide

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DENVER PRIDEFEST WITH CO GAY WEDDINGS

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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.

No. 16-111

In the Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.,
AND JACK C. PHILLIPS,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION,
CHARLIE CRAIG, AND DAVID MULLINS,

Respondents.

*On Petition for Writ of Certiorari
to the Colorado Court of Appeals*

**BRIEF OF THE COLORADO CIVIL RIGHTS
COMMISSION IN OPPOSITION**

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QUESTION PRESENTED

Colorado's public accommodations law forbids sexual-orientation discrimination by businesses engaged in sales to the public. The question presented is whether that law impermissibly compels speech when it is applied to a commercial bakery that refuses to sell a wedding cake of any kind to any same-sex couple.

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INTRODUCTION

Public accommodations laws have long operated across the country to “eliminat[e] discrimination and assur[e] citizens equal access to publicly available goods and services.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). Because they “plainly serve[] compelling state interests of the highest order,” *id.*, these laws have repeatedly survived First Amendment challenge. “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.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Bos.*, 515 U.S. 557, 572 (1995); *see also Bd. of Dirs. of Rotary Int’l v. Rotary Club*, 481 U.S. 537, 549 (1987); *Roberts*, 468 U.S. at 626–27; *cf. Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 259–60 (1964).

Colorado’s Anti-Discrimination Act, COLO. REV. STAT. § 24-34-301 *et seq.* (the “Act”), has been in effect for more than 100 years. It prohibits businesses that sell goods to the public from discriminating based on race, creed, sex, and other protected characteristics. In 2008, the Act was expanded to prohibit discrimination based on sexual orientation. In this case, the Act was applied to a commercial bakery that refused to sell any wedding cake, of any design, to any same-sex couple. Petitioners challenge that application of the Act as unconstitutional under the First Amendment.

Because the record does not support the claim of compelled speech on which Petitioners’ question presented is based, because there is no split in authority among lower courts, and because the decision

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below is consistent with this Court's precedents,
certiorari should be denied.

STATEMENT

Factual background. Petitioner Masterpiece Cakeshop, Ltd., is a Colorado limited liability company that sells both pre-made and custom-baked goods to the public, including birthday cakes, cookies, brownies, and wedding cakes. Petitioner Jack Phillips owns and operates the company. Petitioners are willing to serve gay and lesbian customers and will create custom cakes for them for a variety of occasions. But Petitioners have a policy, based on Phillips’s religious beliefs, of refusing to sell any wedding cake of any design to a same-sex couple. Pet. App. 53a, 65a.

Respondents Charlie Craig and David Mullins are a Colorado same-sex couple. In 2012, they planned to marry in Massachusetts and have a reception afterward in Colorado.¹ Accompanied by Craig’s mother, Craig and Mullins went to Masterpiece to buy a wedding cake for their reception. *Id.* at 5a, 64a.

At the shop, the couple was met by Phillips. When they told Phillips that they were interested in purchasing a wedding cake for their wedding, he replied that it was his standard business practice not to provide cakes for same-sex weddings. He explained that he would sell the couple other baked goods, including “birthday cakes, shower cakes, ... cookies and brownies.” But, he said, “I just don’t make cakes for same-sex weddings.” *Id.* at 4a–5a, 64a–65a.

¹ At the time, same-sex marriage was legal in Massachusetts but prohibited in Colorado. Pet. App. 5a.

Craig, Mullins, and Craig's mother immediately left. They never discussed details about the cake that Craig and Mullins were seeking, such as the cake's design or whether it would include any special features or messages. *Id.* at 4a, 65a.²

Review by the Civil Rights Division. Craig and Mullins each filed a discrimination complaint with the Colorado Civil Rights Division,³ charging a violation of the public accommodations provisions of the Act. *Id.* at 260a–62a, 269a–71a. Under those provisions, it is a discriminatory practice to deny to anyone “because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry ... the full and equal enjoyment of the goods [and] services ... of a place of public accommodation.” COLO. REV. STAT. § 24-34-601(2)(a), Pet. App. 93a–94a. A “place of public accommodation” includes any “place of business engaged in any sales to the public.” COLO. REV. STAT. § 24-34-601(1), Pet. App. 93a.⁴ “Sexual orientation”

² The next day, Craig's mother called Masterpiece to ask Phillips why he had turned them away. Phillips responded that he would not make a wedding cake for a same-sex couple due to his religious beliefs. Again, the two did not discuss any details regarding the cake that Craig and Mullins had hoped to buy. Pet. App. 65a.

³ The Colorado Civil Rights Division is the agency charged with enforcing Colorado's anti-discrimination laws in the areas of employment, housing, and public accommodations. COLO. REV. STAT. § 24-34-302. The Colorado Civil Rights Commission, Respondent here, is the bipartisan board that conducts hearings of cases investigated and prosecuted by the Division. COLO. REV. STAT. § 24-34-303.

⁴ The public accommodations provisions of the Act contain exceptions similar to those found in other state and federal public

means “an individual’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another individual’s perception thereof.” COLO. REV. STAT. § 24-34-301(7), Pet. App. 97a.

The Colorado Civil Rights Division conducted an investigation of Craig’s and Mullins’s complaints under COLO. REV. STAT. § 24-34-306(2)(a). After completing its investigation, the Division concluded that the claims of unlawful discrimination were supported by probable cause because Craig and Mullins are members of a protected class and had been denied a type of service usually offered by Masterpiece under circumstances that gave rise to an inference of unlawful discrimination. Pet. App. 5a. The Division attempted to resolve the charge through conciliation; when that effort failed, the case was referred to the Colorado Civil Rights Commission.

Administrative proceedings. The Commission issued notices of hearing and formal complaints. The cases were consolidated and assigned to an Administrative Law Judge. The parties agreed to various factual stipulations and filed cross-motions for summary judgment, both asserting that there were no genuine issues of material fact. *See id.* at 64a–65a. Based on the undisputed facts, the judge rejected

accommodations laws. *See* Pet. App. 42a–43a. For example, those provisions do not apply to churches, synagogues, mosques, or other places used primarily for religious purposes. COLO. REV. STAT. § 24-34-601(1), Pet. App. 93a. Moreover, a place of public accommodation may be restricted to one sex if a patron’s sex bears a bona fide relationship to the goods, services, or facilities offered there. COLO. REV. STAT. § 24-34-601(3), Pet. App. 94a–95a.

Petitioners' argument that requiring Phillips to bake a wedding cake for a same-sex couple was tantamount to compelling him to speak. Phillips "categorically refused" to accept the cake order "before there was any discussion about what that cake would look like." *Id.* at 75a. He "was not asked to apply any message or symbol to the cake" that could be reasonably interpreted as endorsing or advocating for same-sex marriage, and, the judge observed, "[f]or all Phillips knew at the time, [Craig and Mullins] might have wanted a nondescript cake that would have been suitable for consumption at any wedding." *Id.*

The judge distinguished hypothetical scenarios involving bakeries that might refuse to serve customers because of the particular design of a requested cake. "In [those] cases, it [would be] the explicit, unmistakable, offensive message" that would allow the baker to refuse the order. *Id.* at 78a. In this case, in contrast, Petitioners refused to bake any cake, without regard to what was written on it or what it might look like. *Id.*

The judge concluded that Petitioners had violated the Act and ordered them to cease and desist discriminating against same-sex couples by refusing to sell them a product that they would sell to heterosexual couples. *Id.* at 87a–88a. The Commission unanimously affirmed the judge's decision. *Id.* at 57a–58a.

The Colorado Court of Appeals decision. Petitioners appealed, and the Colorado Court of Appeals affirmed.

The court unanimously held that Petitioners had refused to serve Craig and Mullins “because of” their sexual orientation and concluded that under Colorado law, Petitioners could not “refuse services to Craig and Mullins that [they] otherwise offer[] to the general public.” *Id.* at 13a, 19a. In so holding, the court again distinguished circumstances under which other Colorado bakeries have refused to sell cakes to members of the public “because of the offensive nature of the requested message” that was to appear on the cakes. *Id.* at 20a n.8. Facts like those, the court held, are not presented by this case. *Id.*

The court also rejected Petitioners’ First Amendment claims, basing its decision largely on Petitioners’ refusal to make Craig and Mullins a cake “before any discussion of the cake’s design.” *Id.* at 28a; *see also id.* at 4a, 35a. The only conduct at issue, the court observed, was Petitioners’ “basing [their] decision to serve a potential client, at least in part, on the client’s sexual orientation.” *Id.* at 29a. Prohibiting that conduct, the court held, did not violate the First Amendment. *Id.* at 29a, 35a–36a, 45a–46a.

The Colorado Supreme Court denied review of the unanimous decision of the court of appeals. *Id.* at 54a–55a.

REASONS FOR DENYING THE PETITION

This Court should deny the Petition for three reasons.

First, this case is an improper vehicle to address Petitioners' compelled expression claim, which is the basis of the question presented. According to the stipulations and undisputed facts, Petitioners declined to sell Craig and Mullins a wedding cake of any design based solely on the fact that they are a same-sex couple. Had Petitioners refused to serve the couple because they sought a cake with a particular design or which featured a specific message, this case would have presented different legal issues. As postured, however, this case does not raise Petitioners' question.

Second, this case presents no split of authority that requires resolution by this Court. Jurisdictions across the country have consistently agreed with the position taken by the Colorado Court of Appeals—that public accommodations laws may prohibit businesses from refusing to serve same-sex couples. And any conflicts among the cases that Petitioners cite are inapplicable here.

Third, the ruling by the Colorado Court of Appeals adhered to this Court's precedents and does not conflict with this Court's compelled speech and free exercise decisions.

I. This case is an improper vehicle to address the question presented because the record does not support the compelled expression claim on which the question is based.

The question presented is premised on a factual assertion that is not supported by the record. Petitioners argue that under the decision below, Colorado’s public accommodations law “compel[s] Phillips to create expression that violates his sincerely held religious beliefs.” Pet. i. More specifically, Petitioners claim that “Colorado requires [Phillips] ... to interview the same-sex couple and develop a custom design celebrating their union,” to “research and draft [a] message” he disagrees with, and “to conceive and form an artistic monument to a concept of marriage he finds morally objectionable.” *Id.* at 16–17.

None of this is accurate. The parties stipulated that the “conversation between Phillips and [Craig and Mullins] was very brief, with no discussion between the parties about what the cake would look like.” Pet. App. 65a; *see also id.* at 287a (statement by Phillips conceding that the “entire interaction lasted no more than 20 seconds”). It is undisputed that Petitioners declined to serve Craig and Mullins without any consideration of whether the cake would be pre-made or custom-made, and regardless of what elements or design the particular cake would include. Petitioners acted not based on the design of the requested cake or the message it might have conveyed, but based on a blanket policy of refusing to sell a wedding cake of any kind to any same-sex couple. *See id.* at 65a (Phillips “informed [Craig and Mullins] that he does not create wedding cakes for same-sex weddings”); *id.* at 75a

(Phillips “categorically refused” to serve Craig and Mullins “before there was any discussion about what th[e] cake would look like”).⁵

The Colorado Court of Appeals repeatedly emphasized that the record did not allow it to determine whether the process of making Craig’s and Mullins’s cake, or the cake itself, would have been “sufficiently expressive” to raise First Amendment concerns. *Id.* at 29a. “[B]ecause Phillips refused to prepare a cake for Craig and Mullins before any discussion of the cake’s design,” the court held, “the ALJ could not determine whether Craig’s and Mullins’ desired wedding cake would constitute symbolic speech.” *Id.* at 28a. The court recognized that a case with different facts might require a different outcome:

We recognize that a wedding cake, in some circumstances, may convey a particularized message celebrating same-sex marriage and, in such cases, First Amendment speech protections maybe implicated. However, we need not reach this issue. We note, again, that Phillips denied

⁵ The Petition includes a discussion of the history of cake making, asserting that “wedding cakes are uniquely personal to the newly married couple and require significant collaboration between the couple and the artist to create the perfect design.” Pet. 4–5. This discussion is unsupported by record facts, and neither the administrative law judge nor the court of appeals below made any findings regarding those assertions. Instead, as support for its assertions, the Petition cites an instructional guide for cake decorating and an appellate brief that Petitioners filed before the Colorado Civil Rights Commission (which itself relies on the instructional guide). *Id.* (citing *The Essential Guide to Cake Decorating* (2010) and Pet. App. 185a).

Craig's and Mullins' request without any discussion regarding the wedding cake's design or any possible written inscriptions.

Id. at 34a–35a.

Indeed, in cases involving requests to create cakes that feature specific designs or messages that are offensive to the vendor, Colorado law dictates a different result. The Colorado Civil Rights Division has dismissed complaints by a customer who claimed that three bakeries refused to serve him because of his religion when they declined to create specific, custom-designed cakes featuring particular messages. The customer had requested that the bakeries make cakes shaped like an open Bible, inscribed with messages such as “Homosexuality is a detestable sin. Leviticus 18:2” or images such as two groomsmen holding hands before a cross, with a red “X” over them. *Id.* at 20a n.8; *see also id.* at 300a. Each bakery refused to create cakes with those specific designs. *Jack v. Le Bakery Sensual, Inc.*, Charge No. P20140070X, Pet. App. 310a; *Jack v. Azucar Bakery*, Charge No. P20140069X, Pet. App. 301a; *Jack v. Gateaux, Ltd.*, Charge No. P20140071X, Pet. App. 320a. The Division concluded that none of the bakeries had refused service because of the customer's religious beliefs, and they all would have refused to create cakes “for anyone, regardless of creed, where a customer requests derogatory language or imagery.” Pet. App. 307a; *see also id.* at 297a–98a, 316a.

Here, had Petitioners been asked to prepare a custom cake featuring a message concerning same-sex marriage, this case would present a different record and raise different issues. Petitioner is correct that,

under Colorado law, “[a]n African-American baker may decline to create a custom cake celebrating the racist ideals of a member of the Aryan Nation” and “a Muslim baker may refuse to create a custom cake denigrating his faith for the Westboro Baptist Church.” Pet. 31. And, of course, Phillips himself may not be compelled to create “cakes with offensive written messages” such as “anti-American or anti-family themes, atheism, racism, or indecency.” *Id.* at 5. But this is not because of the identity of the customer; it is because of the specific messages and designs that the customer would be requesting. The record here does not raise the compelled speech claim for which Petitioners seek review.

II. There is no split in authority for this Court to resolve.

The Petition implies that courts across the country are divided in their approach to various legal questions bearing on cases like this one. In fact, the courts are uniform. Petitioners cite not a single case that has exempted a wedding vendor from a public accommodations law due to an objection to same-sex marriage. And while First Amendment cases often present difficult legal questions, the various purported splits in authority that Petitioners do identify are not implicated by this case.

A. Courts have uniformly upheld the application of public accommodations laws in similar contexts.

In the past three years, a number of courts have applied public accommodations laws to wedding

vendors that have refused to serve same-sex couples. Each court has sided with the decision below.

In *Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013), *cert. denied*, 134 S. Ct. 1787 (2014), a wedding photographer refused to provide services for a same-sex couple's wedding. The photographer argued that New Mexico's antidiscrimination law violated her First Amendment speech and free exercise rights. The New Mexico Supreme Court rejected the photographer's challenge, holding that "if [the photographer] offers its services to the public, [it must] provide those same services to clients who are members of a protected class." *Id.* at 68.

In *Washington v. Arlene's Flowers, Inc.*, No. 13-2-00871-5, (Wash. Sup. Ct. Feb. 18, 2015), *hr'g granted*, 2016 Wash. LEXIS 349 (Wash. Mar. 2, 2016), a florist refused to provide flower arrangements for a same-sex couple's wedding. The florist argued that Washington's antidiscrimination law violated her First Amendment speech and religion rights. The court rejected those arguments, explaining that "[t]he existing jurisprudence on this issue ... is soundly against the [florist]." *Id.* slip op. 39–40.

In *Gifford v. McCarthy*, 137 A.D.3d 30 (N.Y. App. Div. 2016), the owners of a wedding venue refused to rent the venue for a same-sex couple's wedding. The venue owners argued that New York's human rights law violated their free speech and free exercise rights. *Id.* at 38–42. The New York appeals court rejected those challenges, concluding that state law "simply requires them to ... offer the same goods and services to same-sex couples that they offer to other couples." *Id.* at 41.

Finally, in *Brush & Nib Studio, LC v. City of Phoenix*, CV 2016-052251 (Sup. Ct. of Ariz., Maricopa Cty., Sept. 16, 2016) (unreported), a stationery vendor sought to refuse to serve same-sex couples. The stationer sued the City of Phoenix, arguing that it should be enjoined from enforcing its antidiscrimination law under the First Amendment. The court rejected this claim, explaining that “the only thing compelled by the ordinance is the sale of goods and services to persons regardless of their sexual orientation. There is nothing about the ordinance that prohibits free speech or compels undesired speech.” *Id.* slip op. 9.

Petitioners cite no example of a court that has disagreed with the analysis reflected in these decisions.

B. Petitioners’ asserted inter-jurisdictional conflicts are not implicated by this case.

Unable to identify a split among courts confronting similar factual and legal issues, Petitioners cite cases arising in a wide variety of contexts, claiming that the decision below either creates or exacerbates splits with those cases on three separate legal questions. None of those alleged splits in authority—to the extent they exist at all—are implicated here.

Zoning cases. First, Petitioners claim that the decision below conflicts with cases from the Ninth and Eleventh Circuits involving municipal codes that banned tattoo parlors. Pet. 18–22. Those cases—*Buehrle v. City of Key West*, 813 F.3d 973 (11th Cir. 2015) and *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (9th Cir. 2010)—have no relevance here. Neither case involved a claim of compelled expression,

and neither case involved a public accommodations law. The tattoo parlors in those cases did not seek to avoid serving a subset of customers; they sought instead to avoid government regulation that entirely prohibited them from engaging in expressive conduct. The constitutional doctrine that was central to those cases—the “time, place, manner” doctrine—played no role in the decision below.

Petitioners nonetheless assert that because *Buehrle* and *Anderson* found that tattoos are, as a general matter, a form of protected expression, the ruling below necessarily conflicts with those decisions. Pet. 21. This is incorrect for two reasons.

First, a ruling about the expressive nature of tattoos has limited relevance to a ruling about the claimed medium of expression at issue here. The First Amendment is necessarily fact-specific. *Hurley*, 515 U.S. at 567 (“[T]he reaches of the First Amendment are ultimately defined by the facts it is held to embrace, and we must thus decide for ourselves whether a given course of conduct falls on the near or far side of the line of constitutional protection.”). Here, the record does not disclose the features or the messages that might have been part of the particular cake at issue and instead involves a business’s categorical policy not to serve a particular product to a particular subset of customers.

Second, the Colorado Court of Appeals recognized that the act of creating a cake could, in certain circumstances, be expressive and could therefore implicate the First Amendment. *See* Pet. App. 34a–35a. Thus, a “municipal ban” on cake shops, *cf. Anderson*, 621 F.3d at 1055, or “an ordinance strictly limiting the number of [cake shops] permitted to operate,” *Buehrle*,

813 F.3d at 975, could give rise to a First Amendment claim—just as bans on tattoo parlors can. Here, however, under the particular facts and legal framework of this case, “the compelled conduct [at issue] is the Colorado government’s mandate that [Petitioners] comport with [Colorado law] by not basing [the] decision to serve a potential client, at least in part, on the client’s sexual orientation.” Pet. App. 29a. In applying that mandate to the facts presented here, the court below did not conflict with *Buehrle* or *Anderson*.

Cases applying the Spence-Johnson factors.

Petitioners next claim that the federal circuits disagree regarding the legal test that determines whether conduct is “expressive” and therefore protected by the First Amendment. Pet. 22–25. Petitioners assert that the circuits have used three separate approaches: some, Petitioners argue, adhere to *Texas v. Johnson*, 491 U.S. 397 (1989) and *Spence v. Washington*, 418 U.S. 405 (1974); some hew to what Petitioners describe as a more lenient test under *Hurley*; and some take what Petitioners call “an intermediate approach.” Pet. 23–24. Petitioners do not argue that the Colorado Court of Appeals explicitly chose one of these three approaches but that its analysis “most closely resembles” what Petitioners call the “stringent approach.” *Id.* at 24–25.

Whether or not the purported split is real, the decision below does not implicate it. All of the cases that Petitioners cite recognize that, regardless of what legal test is employed, the outcome of a Free Speech claim depends heavily on the facts and the context, and it is the person seeking to avoid the application of state law that bears the burden of proving the

expressiveness of the relevant conduct.⁶ Here, the court of appeals applied both the *Spence-Johnson* test and the approach from *Hurley*. Pet. App. 26a, 32a–33a. Rather than attempt to narrow the scope of its analysis to a single formulation of the expressive-conduct test, the court rejected Petitioners’ claims under *both* lines of cases. *Id.* And it repeatedly emphasized that the outcome was dictated by the stipulated and undisputed facts, not by reliance on any particular analytical approach: “Phillips refused to prepare a cake for Craig and Mullins before any discussion of the cake’s design, [and] the [administrative law judge] could not determine whether Craig’s and Mullins’ desired wedding cake would constitute symbolic speech subject to First Amendment protection.” *Id.* at 28a; *id.* at 32a (“Nothing in the record supports the conclusion that a reasonable observer would interpret Masterpiece’s providing a wedding cake for a same-sex couple as an

⁶ *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 389–90 (6th Cir. 2005) (examining the record to conclude that the plaintiffs “ha[d] not met their burden of showing that the First Amendment protects” a middle-schooler’s desire to “wear clothing that she likes”); *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004) (holding that “the record amply supports Holloman’s contention that the defendants violated his constitutional right to be free from compelled speech”); *Church of the Am. Knights of the KKK v. Kerik*, 356 F.3d 197, 205–07 (2d Cir. 2004) (stating that “[t]he party asserting that its conduct is expressive bears the burden of demonstrating that the First Amendment applies” and carefully examining the evidentiary record to determine whether wearing masks amounted to expressive conduct); *Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 309 F.3d 144, 161–65 (3d Cir. 2002) (noting the plaintiffs’ burden to prove the expressiveness of their conduct and concluding that “the plaintiffs ha[d] not introduced evidence” of expressiveness).

endorsement of same-sex marriage”); *see also id.* at 29a–30a.

Even Petitioners concede that the test the court applied below was not dispositive; they assert only that they “would be far more likely to receive free speech protection” under their preferred test. Pet. 25. Given the record, this case does not present the opportunity to resolve the purported conflict that Petitioners identify.

Cases examining the unequal application of government policy. Finally, Petitioners claim that the decision below conflicts with cases from the Third, Sixth, and Tenth Circuits. *Id.* at 30–31. Those cases hold that if a state law or policy contains various exceptions, but refuses to permit an exception for religious exercise, then the law or policy must be reviewed under heightened scrutiny. Again, those cases are inapposite here, and the decision below did not diverge from them.

In Petitioners’ view, the Act contains a “myriad of exceptions”:

An African-American baker may decline to create a custom cake celebrating the racist ideals of a member of the Aryan Nation. Likewise, a Muslim baker may refuse to create a custom cake denigrating his faith for the Westboro Baptist Church. Three secular cake artists may reject a Christian’s custom cake order because they find his religious message critical of same-sex marriage offensive.

Id. at 31–32. These factual scenarios do not describe “exceptions” to Colorado law. They describe how public

accommodations laws work in general. A business may refuse service for a number of reasons, such as the specific design of the product a customer asks the business to create. They may not refuse service based on the identity of the customer.

The cases Petitioners cite, in contrast, *did* involve government policies that denied exceptions to accommodate religion but granted exceptions for other reasons. *Ward v. Polite*, 667 F.3d 727, 735–37 (6th Cir. 2012) (allowing counseling students to decline to engage in various counseling-related services, but not for religious reasons); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1298–99 (10th Cir. 2004) (excusing a Jewish student from coursework, but not a Mormon student, and applying exceptions to the Mormon student inconsistently); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 365 (3d Cir. 1999) (allowing police officers to grow beards for medical but not religious reasons). None of those cases suggests—as Petitioners do—that a public accommodations law forbidding discrimination against same-sex couples must be subject to heightened scrutiny if it allows a “Muslim baker [to] refuse to create a custom cake denigrating his faith.” Pet. 31. Petitioners identify no court that has taken that radical position. They thus present no split in authority for this Court to resolve.

III. The decision below does not conflict with this Court’s compelled-speech and free-exercise precedent.

As a final matter, Petitioners claim that the decision below conflicts with this Court’s compelled speech and free exercise precedent. Neither assertion is correct.

Compelled Speech. Petitioners assert that the court of appeals rejected their compelled speech claim “based on the feeble justification that Phillips’ speech is legally required.” Pet. 18. That is not an accurate description of the court of appeals’ analysis. The court instead determined that the “compelled conduct” at issue—ceasing to discriminate based on a customer’s identity—cannot reasonably be misconstrued as carrying a message about same-sex marriage. Pet. App. 29a–30a. Thus, the court rested its conclusion not only on the fact that nondiscrimination is legally required in Colorado but also on the fact that the mandated conduct, in the context of this case, did not amount to forced expression. *Id.* at 36a (“[W]e conclude that the compelled conduct here is not expressive . . .”). Identical reasoning led to a similar conclusion in *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47 (2006). There, the Court held that law schools could be compelled to host military recruiters despite First Amendment objections because “a law school’s decision to allow recruiters on campus is not inherently expressive.” *Id.* at 64.

Of course, if businesses or individuals are in fact forced to express the messages of the government⁷ or a third party,⁸ the First Amendment is implicated. But mandating nondiscrimination by a business open to the public “is a far cry from the compelled speech” that violates the Constitution. *Id.* at 62.

This Court’s decision in *Hurley* does not suggest otherwise. Contrary to Petitioners’ characterization, Pet. 17, it illustrates why the decision below, and its understanding of Colorado law and the First Amendment, is correct. *Hurley* involved a “peculiar” application of a public accommodations law and was decided in the specific “context of an expressive parade.” 515 U.S. at 572, 577. The parade’s organizers did not exclude any person from marching because of that person’s identity; they excluded a particular “contingent” of marchers that wished to engage in an “expressive demonstration of their own.” *Id.* at 572–73. Here, consistent with the First Amendment, Colorado law does not prohibit a business from exercising its

⁷ *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321 (2013) (prohibiting the government from mandating that aid organizations publish a policy opposing prostitution); *Wooley v. Maynard*, 430 U.S. 705 (1977) (prohibiting a State from requiring citizens to display an ideological motto on their license plates); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (prohibiting a State from punishing students who decline to salute the flag and recite the pledge of allegiance).

⁸ *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1 (1986) (prohibiting a regulator from requiring a utility company to include a consumer group’s message in its mailings); *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974) (requiring a newspaper to publish a politician’s speech).

speech rights: “an Islamic cake artist [may] refus[e] to create a cake denigrating the Quran.” Pet. 1. And the conduct that Colorado law prohibits—declining to serve couples because of their sexual orientation—does not raise the First Amendment concerns that motivated *Hurley*. “[S]elling a wedding cake to all customers free of discrimination does not convey a celebratory message” Pet. App. 30a. Marching as a “parade unit carrying its own banner,” in contrast, does. *Hurley*, 515 U.S. at 572.

Free exercise. Petitioners’ final argument, Pet. 25–26, is that the court of appeals’ decision conflicts with this Court’s holding in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). That case involved an ordinance whose “object” was “suppression of the central element of the ... worship service” of a disfavored religion. *Id.* at 534. Its reasoning has never been extended to suggest that a generally applicable public accommodations law like Colorado’s—which “serves the State’s compelling interest in eliminating discrimination,” *Bd. of Dirs. of Rotary Int’l*, 481 U.S. at 549—cannot be applied to prevent discrimination against same-sex couples or any other identifiable group of customers.⁹ This Court has

⁹ Petitioners quote a statement of one Colorado Civil Rights Commissioner expressing the opinion that religion has been used to justify discrimination. Pet. at 29. This statement, Petitioners claim, reflected hostility to religious belief. Even if that were true, that statement did not reflect the views of the Commission as a whole, nor does it show that the Act, generally or as applied here, singles out religious conduct for unfavorable treatment in contravention of *Lukumi*. No other member of the Commission supported the statement, nor was that statement or any similar sentiment included in the Commission’s Order.

“never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.” *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 878–79 (1990). In rejecting Petitioners’ claims below, the court of appeals did not depart from this Court’s free exercise precedent.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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Counsel for Respondent
Colorado Civil Rights Commission

November 29, 2016

1 STATE OF COLORADO
2 CITY AND COUNTY OF DENVER

3 _____
4 Colorado Civil Rights Commission Meeting
5 Held on July 25, 2014
6 Colorado State Capitol
7 200 East Colfax Avenue, Old Supreme Court Chambers

8 _____
9 In re: CHARLIE CRAIG and DAVID MULLINS v.
10 MASTERPIECE CAKESHOP, INC.
11 Case No: P20130008X, CR2013-0008

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P R O C E E D I N G S

* * * * *

(Commencement of audio at 00:00.0.)

THE CHAIRMAN: Calling the meeting to order.

This is the Friday, July 25th, 2014, meeting of the
Colorado Civil Rights Commission.

Would all of those that are present please feed
your name into the record?

COMMISSIONER VELASQUEZ: Susie Velasquez,
Greeley, Colorado.

COMMISSIONER RICE: Diane Rice, Loveland,
Colorado.

MS. McPHERSON: Jennifer McPherson, with the
Division.

MS. MALONE: Shayla Malone, with the Division.

MR. MORTURE: Vince Morture (phonetic), Deputy
Attorney General, counsel for the Division.

MR. MAXFIELD: Eric Maxfield, First Assistant
AG, from the Division.

COMMISSIONER ADAMS: Commissioner Adams,
Fountain, Colorado Springs, Colorado.

COMMISSIONER HESS: Commissioner Hess, from
Grand Junction, Colorado.

COMMISSIONER SAENZ: Rosa Saenz, from Denver.

1 COMMISSIONER JAIRAM: Raju Jairam, Fort Collins
2 Colorado.

3 THE CHAIRMAN: And --

4 MS. MARTIN: Oh, I'm just observing.

5 THE CHAIRMAN: Yes, ma'am. But you need to tell
6 us who you are, please.

7 MS. MARTIN: Oh, I'm Nicolle Martin.

8 THE CHAIRMAN: Okay. Nicolle Martin with --

9 MS. MARTIN: Counsel for complainants -- I'm
10 sorry. Counsel for respondents and appellants --

11 THE CHAIRMAN: Oh. Okay, (indiscernible).

12 MS. MARTIN: -- (indiscernible) Masterpiece.

13 THE CHAIRMAN: Okay. Thank you.

14 And I guess we do have a quorum.

15 (Conclusion of audio at 01:13.8; commencement of
16 audio at 08:40.0.)

17 THE CHAIRMAN: Okay. Eric.

18 MR. MAXFIELD: So there is a Motion to Stay
19 final agency order filed by respondents in the Craig v.
20 Masterpiece Cakeshop case. There is a complainant's
21 response in option to the Motion for Stay that was
22 filed, I think, yesterday. And (indiscernible) has to
23 take a look at that.

24 Procedurally, the -- either party
25 (indiscernible) a stay of the final agency order from

1 the Commission. And then if that is granted, there'll
2 be a stay in place. If it's denied, then they may also
3 seek a stay from the Court of Appeals. The Court of
4 Appeals could grant or deny the stay during the pendency
5 of the appeal, which was also noticed by Masterpiece,
6 Inc.

7 So if there are questions about the Commission's
8 authority and the reasoning around the possible granting
9 of the stay or denial, I can try to answer those. It
10 is -- and then that's something that I can do here and
11 now to you, you know, in open session, or if you would
12 want to waive attorney/client privilege, or you could
13 ask to go into -- make a motion to go into executive
14 session, and we could have a closed session for attorney
15 advice on the merits of the Motion to Stay.

16 THE CHAIRMAN: My question is, Do we need to
17 respond to this or make a motion today or need a motion
18 today?

19 MR. MAXFIELD: Yes. This -- this ought to
20 receive action today, either a grant or denial of the
21 stay.

22 THE CHAIRMAN: Okay.

23 MALE SPEAKER: I would like to have an
24 opportunity to read this. I don't know about the
25 others.

1 FEMALE SPEAKER: And maybe we can sometime take
2 a short break, and when we finish the public -- and at
3 the beginning of our executive session and a few minutes
4 to read this stuff, because we --

5 MALE SPEAKER: Yes.

6 FEMALE SPEAKER: -- I don't think we've seen it
7 until now.

8 MALE SPEAKER: (Indiscernible) last night.

9 MR. MAXFIELD: One thing that I could offer is
10 that the -- the legal standard identified by both
11 parties in the general sense is the same. So I don't
12 think that there's a contest about that. And so you'll
13 see the elements -- four elements set out clearly by
14 both parties, and for which I think there's agreement.

15 FEMALE SPEAKER: Okay.

16 MALE SPEAKER: And then if we need any advice,
17 then we could go into closed session?

18 MR. MAXFIELD: Yes.

19 THE CHAIRMAN: Okay.

20 MR. MAXFIELD: Yeah.

21 THE CHAIRMAN: So it -- I guess we all finished
22 through the public session, take maybe a 10-, 15-minute
23 break, give everyone have a chance to read this --

24 MALE SPEAKER: Um-hmm.

25 THE CHAIRMAN: -- and then we'll discuss it.

1 MALE SPEAKER: Okay.

2 THE CHAIRMAN: Does that work?

3 FEMALE SPEAKER: Um-hmm. And then if we --
4 before we break up executive session --

5 THE CHAIRMAN: Before -- yeah, if we need to go
6 into executive session (indiscernible).

7 FEMALE SPEAKER: Okay. (Indiscernible) --

8 THE CHAIRMAN: (Indiscernible) merit.

9 FEMALE SPEAKER: -- if we have this on the
10 agenda, we'll (indiscernible) --

11 THE CHAIRMAN: Yes.

12 FEMALE SPEAKER: -- have to go into executive
13 session (indiscernible), okay?

14 THE CHAIRMAN: Is that acceptable?

15 FEMALE SPEAKER: Yes.

16 THE CHAIRMAN: All right. Any audience
17 participation?

18 (Conclusion of audio at 11:48.4; commencement of
19 audio at 17:35.1.)

20 THE CHAIRMAN: Okay. What we have here in front
21 of us is -- anyway, we're here to discuss the
22 Masterpiece Cakeshop, Case (indiscernible). Anyway,
23 here's the agenda.

24 FEMALE SPEAKER: Oh, yeah.

25 THE CHAIRMAN: Oh, here it is. Okay. We're

1 here to discuss Case P2013008X, CR2013-00H, Charlie
2 Craig and David Mullins versus Masterpiece Cakeshop.

3 MALE SPEAKER: Um-hmm.

4 THE CHAIRMAN: There's a motion for a stay of
5 the final Commission -- I mean, the Commission's final
6 order, and then there's a response by the defendant in
7 opposition. And then there's -- we've also been given a
8 notice of appeal regarding a court, the appellate court,
9 I guess.

10 So anyone want to lead off?

11 FEMALE SPEAKER: I'll lead.

12 Mr. Chair, I move that the Commission deny the
13 Motion to Stay in -- for the Commission case.

14 FEMALE SPEAKER: Second.

15 THE CHAIRMAN: Okay. There's a motion on the
16 floor and a second to deny the respondent's motion for a
17 stay of the final order by this Commission.

18 MALE SPEAKER: Um-hmm.

19 THE CHAIRMAN: Okay. Are there any comments or
20 discussions about this before I put it to a vote?

21 FEMALE SPEAKER: Yes, sir.

22 THE CHAIRMAN: Go ahead.

23 FEMALE SPEAKER: I'd like to make a couple
24 comments.

25 First of all, I think for us to grant a stay

1 would be to say that we disagree with our own order,
2 final order. And of the arguments that are made, I
3 think there is -- by virtue of our order, we determined
4 that there is a public -- bless you --

5 FEMALE SPEAKER: Thank you.

6 FEMALE SPEAKER: -- there is a public interest
7 in enforcing this, that clearly the public is hurt by
8 actions such as those taken by Masterpiece Cake.
9 Complying with the order is not harmful or irreparable
10 to Masterpiece Cake. I don't see that any harm is done
11 there.

12 I -- I further believe that if you're going to
13 do business in Colorado, you have to follow the Colorado
14 Antidiscrimination Act, and for us to give a stay in
15 this case would be to say, oh, unless you don't want to.
16 So anyway, I -- I believe that we have to live by our
17 convictions and our orders (indiscernible) the
18 respondent to do so.

19 THE CHAIRMAN: Susan?

20 FEMALE SPEAKER: I would just like to point out,
21 and I agree with the documents of the plaintiffs that --
22 that the document that was in front of us from the --
23 the plaintiffs' response.

24 THE CHAIRMAN: Oh, okay.

25 FEMALE SPEAKER: -- that they have not

1 demonstrated a likelihood of success, because they were
2 rejected three times before. And as Diane pointed out,
3 we made a decision then. And I don't believe that --
4 that they have a likelihood of success.

5 THE CHAIRMAN: Okay. Commissioner Saenz?

6 FEMALE SPEAKER: I --

7 THE CHAIRMAN: No comments?

8 FEMALE SPEAKER: No.

9 THE CHAIRMAN: Commissioner Hess?

10 COMMISSIONER HESS: I agree with what's been
11 said.

12 THE CHAIRMAN: Commissioner Adams?

13 COMMISSIONER ADAMS: I would agree with
14 Commissioner Rice's and (indiscernible) assessment of
15 what has transpired.

16 FEMALE SPEAKER: I have one more comment.

17 THE CHAIRMAN: Go ahead.

18 FEMALE SPEAKER: In regard to the respondent's
19 argument -- endless argument, this is that they -- this
20 argument's been made before, and it -- it holds no
21 water, as far as I'm concerned, whatsoever. You -- and
22 we said this in the hearing, and we need to repeat this
23 over and over, you cannot separate the fact that these
24 men -- their -- their sexual orientation from the action
25 of wanting to celebrate the marriage, anymore than you

1 could a case between races in many years gone past.

2 And the U.S. Supreme Court has found over and
3 over that you cannot discriminate on the basis of race,
4 and sexual orientation is a status absolutely like race
5 or -- so -- and you can't separate the fact that these
6 gentlemen want to marry from the fact that they are
7 homosexual.

8 THE CHAIRMAN: Okay. (Indiscernible.)

9 I have some comments, and that is, you know,
10 Mr. Phillips says that he wants to be respected or his
11 views and religious views to be respected, and I believe
12 that the general public also needs to -- you know, their
13 views need to be respected.

14 The -- the issue here is whether or not the
15 couple that went in to get service were treated with
16 dignity and respect, and the fact of the matter are they
17 were not, and it's also clear that they were turned
18 away. And those have all been established.

19 And I don't believe that the individual's right
20 to practice his religion violates other people's rights
21 to free access, especially when the business is open to
22 the public and serving the public.

23 Now, what Mr. Phillips does in private is his
24 own business. And I agree that, you know, we cannot
25 separate same sex marriage and say that I'm not

1 discriminating against gay couples, because I mean, by
2 the very definition, when two people of the same sex
3 want to get married, it tells me that they are of a
4 certain sexual orientation. So that argument, again,
5 fails.

6 Go ahead.

7 FEMALE SPEAKER: Well, I just want to point out
8 that this -- this case is really not about same sex
9 marriage. It's -- it's about a couple -- it's just
10 about a gay couple that wanted a cake to celebrate a
11 life event in their life.

12 FEMALE SPEAKER: Um-hmm.

13 FEMALE SPEAKER: That doesn't really -- it could
14 have been a civil union. It could have been a -- you
15 know, let's wrap, you know, ribbon around a tree and --
16 and -- and say that we hope, you know, the world gets to
17 be a better place with us in it as a couple. So it's
18 not -- I mean, I think there's some rhetoric that this
19 is a case about same sex marriage. Well, it's really
20 not. It's really about a case about denial of service.

21 FEMALE SPEAKER: You -- yeah, you're exactly
22 right --

23 MALE SPEAKER: Um-hmm.

24 FEMALE SPEAKER: -- Commissioner Hess.

25 I would also like to reiterate what we said in

1 the hearing or the last meeting. Freedom of religion
2 and religion has been used to justify all kinds of
3 discrimination throughout history, whether it be
4 slavery, whether it be the holocaust, whether it be -- I
5 mean, we -- we can list hundreds of situations where
6 freedom of religion has been used to justify
7 discrimination. And to me it is one of the most
8 despicable pieces of rhetoric that people can use to --
9 to use their religion to hurt others. So that's just my
10 personal point of view.

11 THE CHAIRMAN: Okay. Any other comments?

12 Okay. So there's a motion on the floor to deny
13 the respondent's Motion for Stay of our final order.
14 And all those in favor, please signify by saying aye.

15 (A chorus of ayes.)

16 THE CHAIRMAN: Those opposed?

17 Any abstentions?

18 Therefore the Commission denies the respondent's
19 motion for a stay of our final order.

20 (Conclusion of audio at 27:54.1.)

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C E R T I F I C A T E

I, Katherine McNally, Certified
Transcriptionist, do hereby certify that the foregoing
pages 1 through 12 constitute a full, true, and accurate
transcript, from electronic recording, of the
proceedings had in the foregoing matter, all done to the
best of my skill and ability.

SIGNED and dated this 8th day of August
2014.



KATHERINE A. McNALLY
Certified Electronic Transcriber
CET**D323

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

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

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

Plaintiffs,

vs.

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

Defendants.

JOINT STATEMENT OF STIPULATED FACTS

The parties jointly submit the following stipulated facts:

1. Colorado’s Anti-Discrimination Act (“CADA”), found at Colo. Rev. Stat. §§ 24-34-301, *et seq.* provides that “[i]t is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation” Colo. Rev. Stat. § 24-34-601(2)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30. Ms. Smith is a Christian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87. This addition to the website is attached as Exhibit B.²
88. Plaintiffs' intended message of celebration and promotion of their religious belief that God designed marriage as an institution between one man and one woman will be unmistakable to the public after viewing the addition to 303 Creative's webpage.
89. For example, the addition to 303 Creative's webpage states the following:
- I firmly believe that God is calling me to this work. Why? I am personally convicted that He wants me – during these uncertain times for those who believe in biblical marriage – to shine His light and not stay silent. He is calling me to stand up for my faith, to explain His true story about marriage, and to use the talents and business He gave me to publicly proclaim and celebrate His design for marriage as a life-long union between one man and one woman.
90. As part of Plaintiffs' religious calling to celebrate God's design for marriage and due to their sincerely held religious belief that they must be honest and transparent about the services that they can and cannot provide, the webpage also states that their religious beliefs prevent them from creating websites celebrating same-sex marriages or any other marriage that contradicts God's design for marriage.
91. For example, the addition to 303 Creative's webpage states the following:
- These same religious convictions that motivate me also prevent me from creating websites promoting and celebrating ideas or messages that violate my beliefs. So I will not be able to create websites for same-sex marriages or any other marriage that is not between one man and one woman. Doing that would compromise my Christian witness and tell a story about marriage that contradicts God's true story of marriage – the very story He is calling me to promote.
92. As part of their religiously-motivated speech, Plaintiffs desire to—and are prepared to—publish this webpage immediately.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted this 1st day of February, 2016.

s/ Jeremy D. Tedesco

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CERTIFICATE OF SERVICE

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

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EXHIBIT A



You're Invited



LILY AND LUKE

SATURDAY NOVEMBER 17, 2017
LITTLETON, COLORADO

- WE INVITE YOU TO CELEBRATE OUR MARRIAGE -





LILY ROBINSON

THE BRIDE



449	:	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

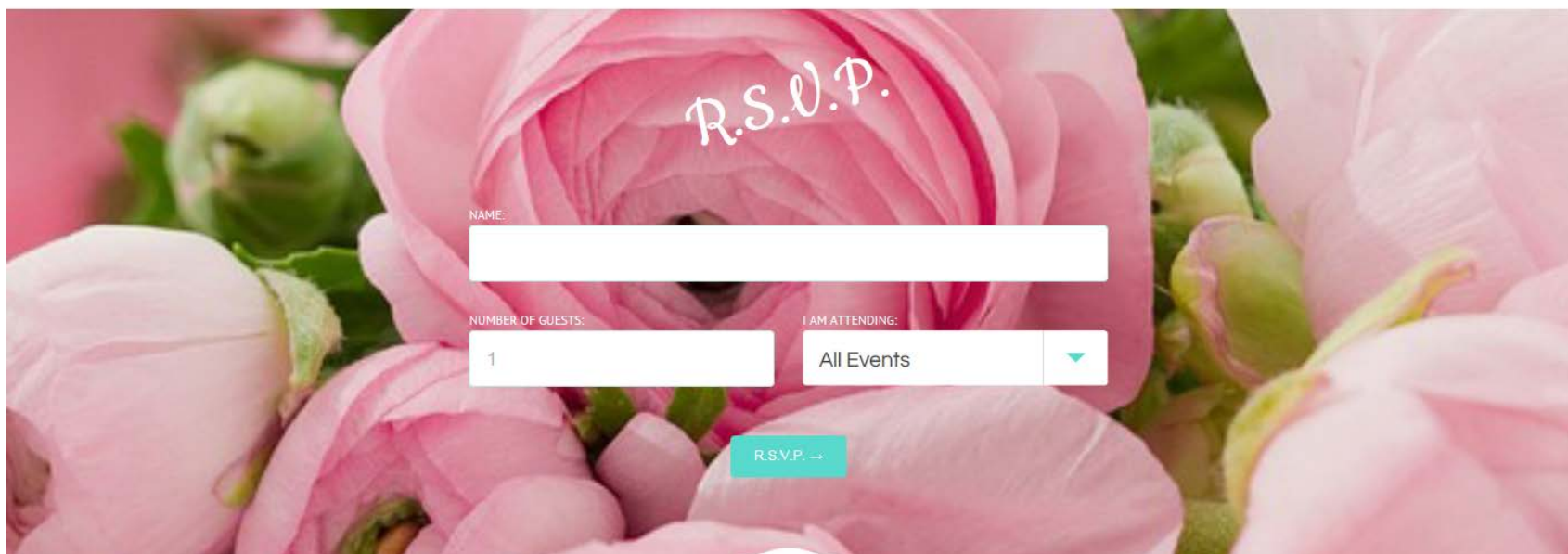
Dinner, dancing, celebrate with us!

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: All Events

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 continued...

*Bring your
Dancing
Shoes!*

11.17.17

LITTLETON, COLORADO

- PLEASE JOIN US AS WE CELEBRATE OUR LOVE -





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



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

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

CEREMONY DETAILS



5:30 PM
6:00 PM



Saturday November 17, 2017

LOCATION

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

PARKING

Complimentary valet parking is available for our guests

WEATHER

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

ATTIRE

Formal



TO FOLLOW CEREMONY
SIX O'CLOCK IN THE EVENING

RECEPTION DETAILS


6:00 PM
11:00 PM




Saturday November 17, 2017

LOCATION

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

SPIRITS

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

DINNER MENU

First Course

Roasted Red Pepper Bisque
Served with Cilantro Creme Fraiche

Second Course

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

Entree

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

Dessert

Wedding Cake

DANCING

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



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

Complimentary valet parking is available for our guests



- 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 -

#ASHLEY&MICHAELWEDDING

[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



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Our Registry

Luke & Lily are registered at the following:



Or make a monetary gift via PayPal:



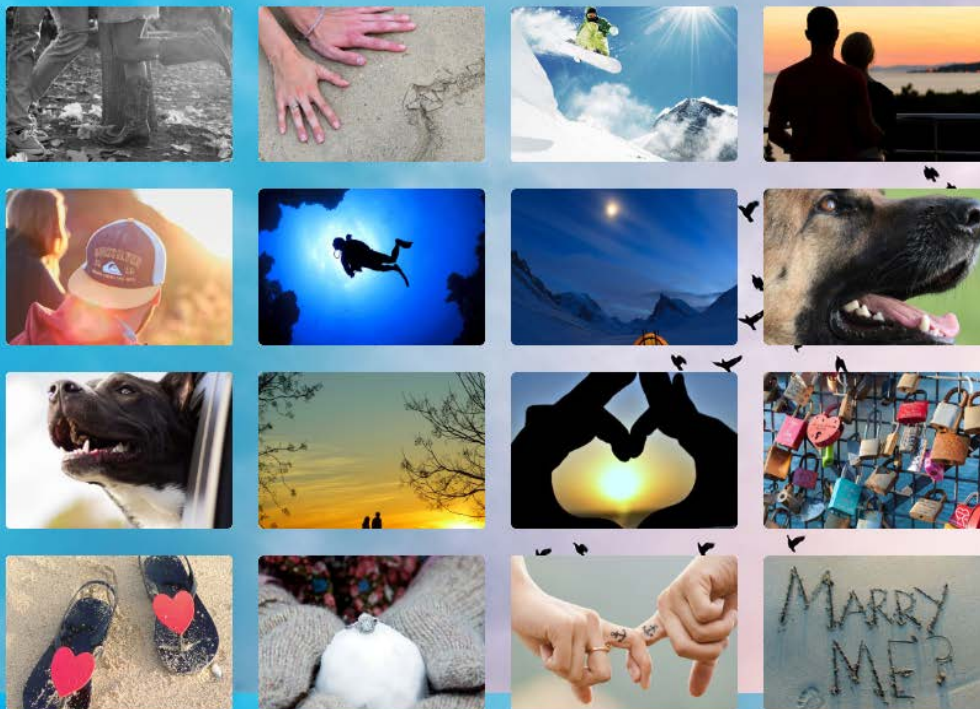
If unable to attend our event, we graciously ask you mail gifts to:

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



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

Our Photo Gallery



- Designed by 303creative.com -



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

Our Blog



Lily's Favorite Scripture

March 16, 2016

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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](#)

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



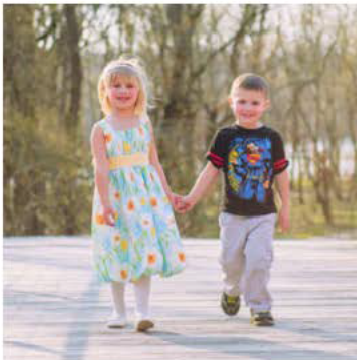


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MEET OUR FLOWER GIRL & RING BEARER



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



signed by 303creative.com



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HONEYMOON PLANS SECURED



Luke Williams February 16, 2016



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

Love



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 -

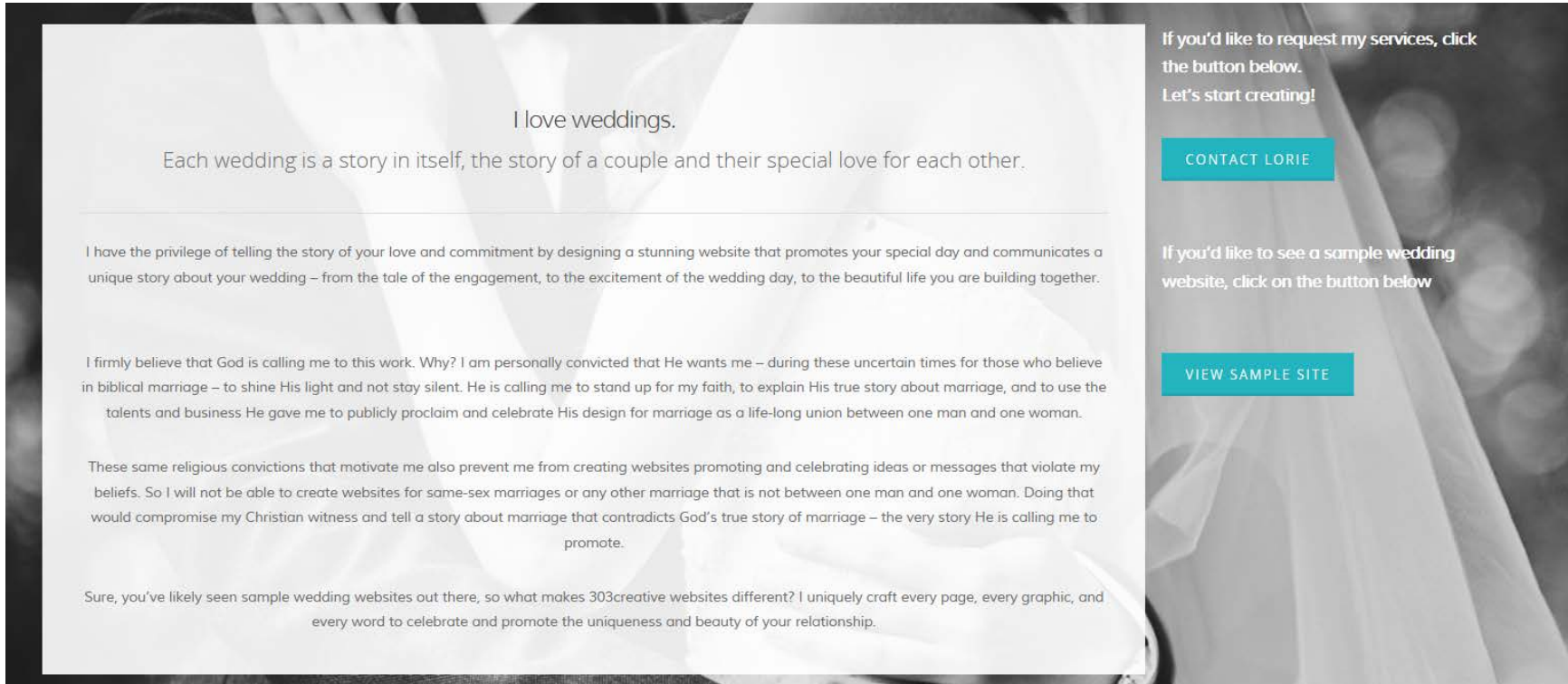
EXHIBIT B



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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!

EXHIBIT C



Dora
Department of Regulatory Agencies

John W Hickenlooper
Governor

Barbara J. Kelley
Executive
Director

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

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(303) 894-7830 (fax)
(800) 262-4845 (toll free)

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

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

<http://www.dora.iris.state.co.us/dora/npa.htm>

Charge No. P20130008X

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

Charging Party

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

Respondent

DETERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. Schmalz states that after learning of the Respondent's policy, she later contacted the Respondent's place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a "dog wedding" between one of her dogs and a neighbor's dog. Phillips did not object to preparing a cake for S. Schmalz's "dog wedding."

In an affidavit provided by the Charging Party during the Division's investigation, Samantha Saggio ("Saggio") states that on May 19, 2012, she visited the Respondent's place of business with her partner, Shana Chavez ("Chavez") to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent's female representative stated that the Respondent would be unable to provide a cake because "according to the company, Saggio and Chavez were doing something 'illegal.'"

In an affidavit provided by the Charging Party during the Division's investigation, Katie Allen ("Allen") and Alison Sandlin ("Sandlin") state that on August 6, 2005, they visited the Respondent's place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women's intent to wed one another, the Respondent's female representative stated, "We can't do it then" and explained that the Respondent had established a policy of not taking cake orders for same-sex weddings, "because the owners believed in the word of Jesus."

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that "he is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake."

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

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

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

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

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

On Behalf of the Colorado Civil Rights Division


Steven Chavez, Director
of Authorized Designee

3/5/2013
Date

CERTIFICATE OF MAILING

This is to certify that on March 7, 2013 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the United States mail, postage prepaid, addressed to the parties listed below.

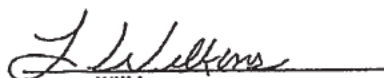
CCRD #
P20130008X

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

Sara Rich
ACLU Foundation of Colorado
303 E. 17th Ave., Ste. 350
DENVER, CO 80203

Masterpiece Cakeshop
3355 S. Wadsworth Boulevard
LAKEWOOD, CO 80227

Nicolle Martin
7175 W. Jefferson Ave., Ste 4000
Lakewood, CO 80235



Lauren Wilkins
Colorado Department of
Regulatory Agencies
Division of Civil Rights
1560 Broadway, Suite 1050
Denver, CO 80202
P 303.894.2997
www.dora.state.co.us

EXHIBIT D



John W. Hickenlooper
Governor

Barbara J. Kaley
Executive
Director

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

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(719) 542-1226
(303) 869-0498 (fax)

222 S 6th Street, Suite 301
Grand Junction, CO 81505
(970) 248-2363
(970) 248-2364
(970) 242-1262 (fax)

<http://www.dora.state.co.us/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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. Schmalz states that after learning of the Respondent's policy, she later contacted the Respondent's place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a "dog wedding" between one of her dogs and a neighbor's dog. Phillips did not object to preparing a cake for S. Schmalz's "dog wedding."

In an affidavit provided by the Charging Party during the Division's investigation, Samantha Saggio ("Saggio") states that on May 19, 2012, she visited the Respondent's place of business with her partner, Shana Chavez ("Chavez") to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent's female representative stated that the Respondent would be unable to provide a cake because "according to the company, Saggio and Chavez were doing something 'illegal.'"

In an affidavit provided by the Charging Party during the Division's investigation, Katie Allen ("Allen") and Alison Sandlin ("Sandlin") state that on August 6, 2005, they visited the Respondent's place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women's intent to wed one another, the Respondent's female representative stated, "We can't do it then" and explained that the Respondent had established a policy of not taking cake orders for same-sex weddings, "because the owners believed in the word of Jesus."

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that "he is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake."

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

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

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

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

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

On Behalf of the Colorado Civil Rights Division


Steven Chavez, Director
of Authorized Designee

3/5/2013
Date

CERTIFICATE OF MAILING

This is to certify that on March 7, 2013 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the United States mail, postage prepaid, addressed to the parties listed below.

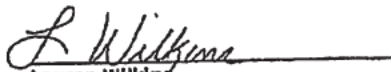
CCRD #
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EXHIBIT E

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

Complainants allege that Respondents discriminated against them due to their sexual orientation by refusing to sell them a wedding cake in violation of Colorado's anti-discrimination law. The material facts are not in dispute and both parties filed motions for summary judgment. Following extensive briefing by both sides, oral argument was held before Administrative Law Judge (ALJ) Robert Spencer at the Office of Administrative Courts on December 4, 2013. Complainants were represented by Paula Greisen, Esq., and Dana Menzel, Esq., King & Greisen, LLC; Amanda Goad, Esq., American Civil Liberties Union Foundation LGBT & AIDS Project; and Sara Rich, Esq., and Mark Silverstein, Esq., American Civil Liberties Union Foundation of Colorado. Respondents were represented by Nicolle H. Martin, Esq.; Natalie L. Decker, Esq., The Law Office of Natalie L. Decker, LLC; and Michael J. Norton, Esq., Alliance Defending Freedom. Counsel in Support of the Complaint was Stacy L. Worthington, Senior Assistant Attorney General.

Case Summary

Complainants, a gay couple, allege that on July 19, 2012, Jack C. Phillips, owner of Masterpiece Cakeshop, Inc., refused to sell them a wedding cake because of their sexual orientation. Complainants filed charges of discrimination with the Colorado Civil Rights Commission, which in turn found probable cause to credit the allegations of discrimination. On May 31, 2013, Counsel in Support of the Complaint filed a Formal Complaint with the Office of Administrative Courts alleging that Respondents discriminated against Complainants in a place of public accommodation due to sexual orientation, in violation of § 24-34-601(2), C.R.S. Counsel in Support of the Complaint seeks an order directing Respondents to cease and desist from further discrimination,

as well as other administrative remedies.¹

Hearing began on September 26, 2013 and was continued until December 4, 2013 to give the parties time to complete discovery and fully brief cross-motions for summary judgment. Complainants and Counsel in Support of the Complaint contend that because there is no dispute that Masterpiece Cakeshop is a place of public accommodation, or that Respondents refused to sell Complainants a wedding cake for their same-sex wedding, that Respondents violated § 24-34-601(2) as a matter of law. Respondents do not dispute that they refused to sell Complainants a cake for their same-sex wedding, but contend that their refusal was based solely upon a deeply held religious conviction that marriage is only between a man and a woman, and was not due to bias against Complainants' sexual orientation. Therefore, Respondents' conduct did not violate the public accommodation statute which only prohibits discrimination "because of . . . sexual orientation." Furthermore, Respondents contend that application of the law to them under the circumstances of this case would violate their rights of free speech and free exercise of religion, as guaranteed by the First Amendment of the U.S. Constitution and Article II, sections 4 and 10 of the Colorado Constitution.

Because it appeared that the essential facts were not in dispute and that the case could be resolved as a matter of law, the ALJ vacated the merits hearing of December 4, 2013 in favor of a hearing upon the cross-motions for summary judgment. For the reasons explained below, the ALJ now grants Complainants' motion for summary judgment and denies Respondents' motion.

Findings of Fact

The following facts are undisputed:

1. Phillips owns and operates a bakery located in Lakewood, Colorado known as Masterpiece Cakeshop, Inc. Phillips and Masterpiece Cakeshop are collectively referred to herein as Respondents.
2. Masterpiece Cakeshop is a place of public accommodation within the meaning of § 24-34-601(1), C.R.S.
3. Among other baked products, Respondents create and sell wedding cakes.
4. On July 19, 2012, Complainants Charlie Craig and David Mullins entered Masterpiece Cakeshop in the company of Mr. Craig's mother, Deborah Munn.
5. Complainants sat down with Phillips at the cake consulting table. They introduced themselves as "David" and "Charlie" and said that they wanted a wedding cake for "our wedding."
6. Phillips informed Complainants that he does not create wedding cakes for same-sex weddings. Phillips told the men, "I'll make you birthday cakes, shower cakes, sell you cookies and brownies, I just don't make cakes for same-sex weddings."
7. Complainants immediately got up and left the store without further

¹ The fines and imprisonment provided for by § 24-34-602, C.R.S. may only be imposed in a proceeding before a civil or criminal court, and are not available in this administrative proceeding.

discussion with Phillips.

8. The whole conversation between Phillips and Complainants was very brief, with no discussion between the parties about what the cake would look like.

9. The next day, Ms. Munn called Masterpiece Cakeshop and spoke with Phillips. Phillips advised Ms. Munn that he does not create wedding cakes for same-sex weddings because of his religious beliefs, and because Colorado does not recognize same-sex marriages.

10. Colorado law does not recognize same-sex marriage. Colo. Const. art. II, § 31 (“Only a union of one man and one woman shall be valid or recognized as a marriage in this state”); § 14-2-104(1), C.R.S. (“[A] marriage is valid in this state if: . . . It is only between one man and one woman.”)

11. Phillips has been a Christian for approximately 35 years, and believes in Jesus Christ as his Lord and savior. As a Christian, Phillips’ main goal in life is to be obedient to Jesus and His teachings in all aspects of his life.

12. Phillips believes that the Bible is the inspired word of God, that its accounts are literally true, and that its commands are binding on him.

13. Phillips believes that God created Adam and Eve, and that God’s intention for marriage is the union of one man and one woman. Phillips relies upon Bible passages such as Mark 10:6-9 (NIV) (“[F]rom the beginning of creation, God made them male and female, for this reason, a man will leave his father and mother and be united with his wife and the two will become one flesh. So they are no longer two, but one. Therefore, what God has joined together, let not man separate.”)

14. Phillips also believes that the Bible commands him to avoid doing anything that would displease God, and not to encourage sin in any way.

15. Phillips believes that decorating cakes is a form of art and creative expression, and that he can honor God through his artistic talents.

16. Phillips believes that if he uses his artistic talents to participate in same-sex weddings by creating a wedding cake, he will be displeasing God and acting contrary to the teachings of the Bible.

Discussion

Standard for Summary Judgment

Summary judgment is proper when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. C.R.C.P. 56(c); *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 570 (Colo. 2008). A genuine issue of material fact is one which, if resolved, will affect the outcome of the case. *City of Aurora v. ACJ P’ship*, 209 P.3d 1076, 1082 (Colo. 2009).

The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when,

as a matter of law, based on undisputed facts, one party could not prevail. *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546, 548 (Colo. 2006). However, summary judgment is a drastic remedy and should be granted only upon a clear showing that there is no genuine issue as to any material fact. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139, 146 (Colo. 2007). Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate. *Dominguez Reservoir Corp. v. Feil*, 854 P.2d 791, 795 (Colo. 1993).

The fact that the parties have filed cross-motions does not decrease either party's burden of proof. When a trial court is presented with cross-motions for summary judgment, it must consider each motion separately, review the record, and determine whether a genuine dispute as to any fact material to that motion exists. If there are genuine disputes regarding facts material to both motions, the court must deny both motions. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988).

Having carefully reviewed the parties' cross-motions, together with the documentation supporting those motions, the ALJ concludes that the undisputed facts are sufficient to resolve both motions.

Colorado Public Accommodation Law

At first blush, it may seem reasonable that a private business should be able to refuse service to anyone it chooses. This view, however, fails to take into account the cost to society and the hurt caused to persons who are denied service simply because of who they are. Thus, for well over 100 years, Colorado has prohibited discrimination by businesses that offer goods and services to the public.² The most recent version of the public accommodation law, which was amended in 2008 to add sexual orientation as a protected class, reads in pertinent part:

It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, *because of . . . sexual orientation . . .* the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

Section 24-34-601(2), C.R.S. (emphasis added).

A "place of public accommodation" means "any place of business engaged in any sales to the public, including but not limited to any business offering wholesale or retail sales to the public." Section 24-34-601(1), C.R.S. "Sexual orientation" means "orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person's perception thereof." Section 24-34-301(7), C.R.S. "Person" includes individuals as well as business and governmental entities. Section 24-34-301(5), C.R.S.

There is no dispute that Respondents are "persons" and that Masterpiece Cakeshop is a "place of public accommodation" within the meaning of the law. There is also no dispute that Respondents refused to provide a cake to Complainants for their

² See § 1, ch. 61, Laws of 1895, providing that "all persons" shall be entitled to the "equal enjoyment" of "places of public accommodation and amusement."

same-sex wedding. Respondents, however, argue that the refusal does not violate § 24-34-601(2) because it was due to their objection to same-sex weddings, not because of Complainants' sexual orientation. Respondents deny that they hold any animus toward homosexuals or gay couples, and would willingly provide other types of baked goods to Complainants or any other gay customer. On the other hand, Respondents would refuse to provide a wedding cake to a heterosexual customer if it was for a same-sex wedding. The ALJ rejects Respondents' argument as a distinction without a difference.

The salient feature distinguishing same-sex weddings from heterosexual ones is the sexual orientation of its participants. Only same-sex couples engage in same-sex weddings. Therefore, it makes little sense to argue that refusal to provide a cake to a same-sex couple for use at their wedding is not "because of" their sexual orientation.

Respondents' reliance on *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) is misplaced. In *Bray*, a group of abortion clinics alleged that anti-abortionist demonstrators violated federal law by conspiring to deprive women seeking abortions of the right to interstate travel. In rejecting this challenge, the Supreme Court held that opposition to abortion was not the equivalent of animus to women in general. *Id.* at 269. To represent unlawful class discrimination, the discrimination must focus upon women "by reason of their sex." *Id.* at 270 (emphasis in original). Because the demonstrators were motivated by legitimate factors other than the sex of the participants, the requisite discriminatory animus was absent. That, however, is not the case here. In this case, Respondents' objection to same-sex marriage is inextricably tied to the sexual orientation of the parties involved, and therefore disfavor of the parties' sexual orientation may be presumed. Justice Scalia, the author of the majority opinion in *Bray*, recognized that "some activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed. A tax on wearing yarmulkes is a tax on Jews." *Id.* at 270. Similarly, the ALJ concludes that discrimination against same-sex weddings is the equivalent of discrimination due to sexual orientation.³

If Respondents' argument was correct, it would allow a business that served all races to nonetheless refuse to serve an interracial couple because of the business owner's bias against interracial marriage. That argument, however, was rejected 30 years ago in *Bob Jones Univ. v. U.S.*, 461 U.S. 574 (1983). In *Bob Jones*, the Supreme Court held that the IRS properly revoked the university's tax-exempt status because the university denied admission to interracial couples even though it otherwise admitted all races. According to the Court, its prior decisions "firmly establish that discrimination on the basis of racial affiliation and association is a form of racial discrimination." *Id.* at 605. This holding was extended to discrimination on the basis of sexual orientation in *Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, ___ U.S. ___, 130 S.Ct.

³ In a case similar to this one but involving a photographer's religiously motivated refusal to photograph a same-sex wedding, the New Mexico Supreme Court stated that, "To allow discrimination based on conduct so closely correlated with sexual orientation would severely undermine the purpose of the [state public accommodation law]." *Elane Photography, LLC v. Willock*, 2013 N.M. Lexis 284 at p. 4, 309 P.3d 53 (N.M. 2013).

2971, 2990 (2010). In rejecting the Chapter's argument that denying membership to students who engaged in "unrepentant homosexual conduct" did not violate the university's policy against discrimination due to sexual orientation, the Court observed, "Our decisions have declined to distinguish between status and conduct in this context." *Id.*

Nor is the ALJ persuaded by Respondents' argument that they should not be compelled to recognize same-sex marriages because Colorado does not do so. Although Respondents are correct that Colorado does not recognize same-sex marriage, that fact does not excuse discrimination based upon sexual orientation. At oral argument, Respondents candidly acknowledged that they would also refuse to provide a cake to a same-sex couple for a commitment ceremony or a civil union, neither of which is forbidden by Colorado law.⁴ Because Respondents' objection goes beyond just the act of "marriage," and extends to any union of a same-sex couple, it is apparent that Respondents' real objection is to the couple's sexual orientation and not simply their marriage. Of course, nothing in § 24-34-601(2) compels Respondents to recognize the legality of a same-sex wedding or to endorse such weddings. The law simply requires that Respondents and other actors in the marketplace serve same-sex couples in exactly the same way they would serve heterosexual ones.

Having rejected Respondents' arguments to the contrary, the ALJ concludes that the undisputed facts establish that Respondents violated the terms of § 24-34-601(2) by discriminating against Complainants because of their sexual orientation.

Constitutionality of Application

To say that Respondents' conduct violates the letter of § 24-34-601(2) does not resolve the case if, as Respondents assert, application of that law violates their constitutional right to free speech or free exercise of religion. Although the ALJ has no jurisdiction to declare a state law unconstitutional, the ALJ does have authority to evaluate whether a state law has been unconstitutionally applied in a particular case. *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1204 n. 4 (1993) (although the state personnel board has no authority to determine whether legislative acts are constitutional on their face, the board "may evaluate whether an otherwise constitutional statute has been unconstitutionally applied with respect to a particular personnel action"); *Pepper v. Indus. Claim Appeals Office*, 131 P.3d 1137, 1146 (Colo. 2005). The ALJ will, therefore, address Respondents' arguments that application of § 24-34-601(2) to them violates their rights of free speech and free exercise of religion.⁵

Free Speech

The state and federal constitutions guarantee broad protection of free speech. The First Amendment of the United States Constitution bars congress from making any

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

⁵ Corporations like Masterpiece Cakeshop have free speech rights. *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010). In addition, at least in the Tenth Circuit, closely held for-profit business entities like Masterpiece Cakeshop also enjoy a First Amendment right to free exercise of religion. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1137 (10th Cir. 2013).

law “abridging the freedom of speech, or of the press,” and the Fourteenth Amendment applies that protection to the states. Article II, § 10 of the Colorado Constitution states that, “No law shall be passed impairing the freedom of speech.” Free speech holds “high rank . . . in the constellation of freedoms guaranteed by both the United States Constitution and our state constitution.” *Bock v. Westminster Mall Co.*, 819 P.2d 55, 57 (Colo. 1991). The guarantee of free speech applies not only to words, but also to other mediums of expression, such as art, music, and expressive conduct. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569 (1995) (“the Constitution looks beyond written or spoken words as mediums of expression . . . symbolism is a primitive but effective way of communicating ideas.”)

Respondents argue that compelling them to prepare a cake for a same-sex wedding is equivalent to forcing them to “speak” in favor of same-sex weddings – something they are unwilling to do. Indeed, the right to free speech means that the government may not compel an individual to communicate by word or deed an unwanted message or expression. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (compelling a student to pledge allegiance to the flag “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control”); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (compelling a motorist to display the state’s motto, “Live Free or Die,” on his license plate forces him “to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.”)

The ALJ, however, rejects Respondents’ argument that preparing a wedding cake is necessarily a medium of expression amounting to protected “speech,” or that compelling Respondents to treat same-sex and heterosexual couples equally is the equivalent of forcing Respondents to adhere to “an ideological point of view.” There is no doubt that decorating a wedding cake involves considerable skill and artistry. However, the finished product does not necessarily qualify as “speech,” as would saluting a flag, marching in a parade, or displaying a motto. *United States v. O’Brien*, 391 U.S. 367, 376 (1968) (“We cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”)⁶ The undisputed evidence is that Phillips categorically refused to prepare a cake for Complainants’ same-sex wedding before there was any discussion about what that cake would look like. Phillips was not asked to apply any message or symbol to the cake, or to construct the cake in any fashion that could be reasonably understood as advocating same-sex marriage. After being refused, Complainants immediately left the shop. For all Phillips knew at the time, Complainants might have wanted a nondescript cake that would have been suitable for consumption at any wedding.⁷ Therefore, Respondents’ claim that they refused to provide a cake because it would convey a message supporting same-sex marriage is specious. The act of preparing a cake is simply not “speech” warranting First

⁶ Upholding O’Brien’s conviction for burning his draft card.

⁷ Respondents point out that the cake Complainants ultimately obtained from another bakery had a filling with rainbow colors. However, even if that fact could reasonably be interpreted as the baker’s expression of support for gay marriage, which the ALJ doubts, the fact remains that Phillips categorically refused to bake a cake for Complainants without any idea of what Complainants wanted that cake to look like.

Amendment protection.⁸

Furthermore, even if Respondents could make a legitimate claim that § 24-34-601(2) impacts their right to free speech, such impact is plainly incidental to the state's legitimate regulation of discriminatory conduct and thus is permissible. In *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (2006), the Supreme Court rejected the argument that withholding federal funding from schools that denied access to military recruiters violated the schools' right to protest the military's sexual orientation policies. In the Court's opinion, any impact upon the schools' right of free speech was "plainly incidental" to the government's right to regulate objectionable conduct. "The compelled speech to which the law schools point is plainly incidental to the Solomon Amendment's regulation of conduct, and 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" *Id.* at 62 (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949)). "Congress, for example, can prohibit employers from discriminating in hiring on the basis of race. The fact that this will require an employer to take down a sign reading 'White Applicants Only' hardly means that the law should be analyzed as one regulating the employer's speech rather than conduct." *Rumsfeld, supra*. "Compelling a law school that sends scheduling e-mails for other recruiters to send one for a military recruiter is simply not the same as forcing a student to pledge allegiance, or forcing a Jehovah's Witness to display the motto 'Live Free or Die,' and it trivializes the freedom protected in *Barnette* and *Wooley* to suggest that it is." *Id.*

Similarly, compelling a bakery that sells wedding cakes to heterosexual couples to also sell wedding cakes to same-sex couples is incidental to the state's right to prohibit discrimination on the basis of sexual orientation, and is not the same as forcing a person to pledge allegiance to the government or to display a motto with which they disagree. To say otherwise trivializes the right to free speech.

This case is also distinguishable from cases like *Barnette* and *Wooley* because in those cases the individuals' exercise of free speech (refusal to salute the flag and refusal to display the state's motto) did not conflict with the rights of others. This is an important distinction. As noted in *Barnette*, "The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin." *Barnette*, 319 U.S. at 630. Here, the refusal to provide a wedding cake to Complainants directly harms Complainants' right to be free of discrimination in the marketplace. It is the state's prerogative to minimize that harm by determining where Respondents' rights end and Complainants' rights begin.

Finally, Respondents argue that if they are compelled to make a cake for a same-sex wedding, then a black baker could not refuse to make a cake bearing a white-

⁸ The ALJ also rejects Respondents' argument that § 24-34-601(2), C.R.S. bars them from "correcting the record" by publicly disavowing support for same-sex marriage. The relevant portion of § 24-34-601(2) only bars businesses from publishing notice that individuals will be denied service or are unwelcome because of their disability, race, creed, sex, sexual orientation, marital status, national origin, or ancestry. Nothing in § 24-34-601(2) prevents Respondents from posting a notice that the design of their products is not an intended to be an endorsement of anyone's political or social views.

supremacist message for a member of the Aryan Nation; and an Islamic baker could not refuse to make a cake denigrating the Koran for the Westboro Baptist Church. However, neither of these fanciful hypothetical situations proves Respondents' point. In both cases, it is the explicit, unmistakable, offensive message that the bakers are asked to put on the cake that gives rise to the bakers' free speech right to refuse. That, however, is not the case here, where Respondents refused to bake any cake for Complainants regardless of what was written on it or what it looked like. Respondents have no free speech right to refuse because they were only asked to bake a cake, not make a speech.

Although Respondents cite *Bock v. Westminster Mall Co.*, *supra*, for the proposition that Colorado's constitution provides greater protection than does the First Amendment, Respondents cite no Colorado case, and the ALJ is aware of none, that would extend protection to the conduct at issue in this case.

For all these reasons the ALJ concludes that application of § 24-34-601(2) to Respondents does not violate their federal or state constitutional rights to free speech.

Free Exercise of Religion

The state and federal constitutions also guarantee broad protection for the free exercise of religion. The First Amendment bars congress from making any law "respecting an establishment of religion or prohibiting the free exercise thereof," and the Fourteenth Amendment applies that protection to the states. Article II, § 4 of the Colorado Constitution states that, "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his opinions concerning religion." The door of these rights "stands tightly closed against any governmental regulation of religious beliefs as such." *Sherbert v. Verner*, 374 U.S. 398, 402 (1963).

The question presented by this case, however, does not involve an effort by the government to regulate what Respondents *believe*. Rather, it involves the state's regulation of *conduct*, specifically, Respondents' refusal to make a wedding cake for a same-sex marriage due to a religious conviction that same-sex marriage is abhorrent to God. Whether regulation of conduct is permissible depends very much upon the facts of the case.

The types of conduct the United States Supreme Court has found to be beyond government control typically involve activities fundamental to the individual's religious belief, that do not adversely affect the rights of others, and that are not outweighed by the state's legitimate interests in promoting health, safety and general welfare. Examples include the Amish community's religious objection to public school education beyond the eighth grade, where the evidence was compelling that Amish children received an effective education within their community, and that requiring public school education would threaten the very existence of the Amish community, *Wisconsin v. Yoder*, 406 U.S. 205 (1972); a Jewish employee's right to refuse Saturday employment without risking loss of unemployment benefits, *Sherbert v. Verner*, *supra*; and a religious sect's right to engage in religious soliciting without being required to have a license,

Cantwell v. Connecticut, 310 U.S. 296 (1940).

On the other hand, the Supreme Court has held that “activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare.” *Wisconsin v. Yoder*, 406 U.S. at 220. To excuse all religiously-motivated conduct from state control would “permit every citizen to become a law unto himself.” *Employment Division v. Smith*, 494 U.S. 872, 879 (1990). Thus, for example, the Court has upheld a law prohibiting religious-based polygamy, *Reynolds v. United States*, 98 U.S. 145 (1879); upheld a law restricting religious-based child labor, *Prince v. Massachusetts*, 321 U.S. 158 (1944); upheld a Sunday closing law that adversely affected Jewish businesses, *Braunfeld v. Brown*, 366 U.S. 599 (1961); upheld the government’s right to collect Social Security taxes from an Amish employer despite claims that it violated his religious principles, *United States v. Lee*, 455 U.S. 252 (1982); and upheld denial of unemployment compensation to persons who were fired for the religious use of peyote, *Employment Division v. Smith*, *supra*.

As a general rule, when the Court has held religious-based conduct to be free from regulation, “the conduct at issue in those cases was not prohibited by law,” *Employment Division v. Smith*, 494 U.S. at 876; the freedom asserted did not bring the appellees “into collision with rights asserted by any other individual,” *Braunfeld v. Brown*, 366 U.S. at 604 (“It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin”); and the regulation did not involve an incidental burden upon a commercial activity. *United States v. Lee*, 455 U.S. at 261 (“When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.”)

Respondents’ refusal to provide a cake for Complainants’ same-sex wedding is distinctly the type of conduct that the Supreme Court has repeatedly found subject to legitimate regulation. Such discrimination is against the law (§ 24-34-601. C.R.S.); it adversely affects the rights of Complainants to be free from discrimination in the marketplace; and the impact upon Respondents is incidental to the state’s legitimate regulation of commercial activity. Respondents therefore have no valid claim that barring them from discriminating against same-sex customers violates their right to free exercise of religion. Conceptually, Respondents’ refusal to serve a same-sex couple due to religious objection to same-sex weddings is no different from refusing to serve a biracial couple because of religious objection to biracial marriage. However, that argument was struck down long ago in *Bob Jones Univ. v. United States*, *supra*.

Respondents nonetheless argue that, because § 24-34-601(2) limits their religious freedom, its application to them must meet the strict scrutiny of being narrowly drawn to meet a compelling governmental interest. The ALJ does not agree. In *Employment Division v. Smith*, *supra*, the Court announced the standard applicable to cases such as this one; namely, that “the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes

(or proscribes).” *Employment Division v. Smith*, 494 U.S. at 879.⁹ This standard is followed in the Tenth Circuit, *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10th Cir. 2006) (a law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest to survive a constitutional challenge).

Only if a law is not neutral and of general applicability must it meet strict scrutiny. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (because a city ordinance outlawing rituals of animal sacrifice was adopted to prevent church’s performance of religious animal sacrifice, it was not neutral and of general applicability and therefore had to be narrowly drawn to meet a compelling governmental interest). *Town of Foxfield v. Archdiocese of Denver*, 148 P.3d 339 (Colo. App. 2006) is an example of how this test has been applied in Colorado. In *Town of Foxfield*, the court of appeals held that a parking ordinance was subject to strict scrutiny because it was not of general applicability in that it could only be enforced after receipt of three citizen complaints, and was not neutral because there was ample evidence that it had been passed specifically in response to protests by the church’s neighbors. *Id.* at 346.

Section 24-34-601(2) is a valid law that is both neutral and of general applicability; therefore, it need only be rationally related to a legitimate government interest, and need not meet the strict scrutiny test. There is no dispute that it is a valid law. *Hurley*, 515 U.S. at 572 (“Provisions like these are well within the State’s usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments.”)¹⁰ Colorado’s public accommodation law is also neutral and of general applicability because it is not aimed at restricting the activities of any particular group of individuals or businesses, nor is it aimed at restricting any religious practice. Any restriction of religious practice that results from application of the law is incidental to its focus upon preventing discrimination in the marketplace. Unlike *Church of Lukumi Babalu Aye* and *Town of Foxfield*, the law is not targeted to restrict religious activities in general or Respondents’ activities in particular. Therefore, § 24-34-601(2) is not subject to strict scrutiny and Respondents are not free to ignore its restrictions even though it may incidentally conflict with their religiously-driven conduct.

Respondents contend that § 24-34-601 is not a law of general applicability because it provides for several exceptions. Where a state’s facially neutral rule contains a “system” of individualized exceptions, the state may not refuse to extend that system of exceptions to cases of “religious hardship” without compelling reason. *Smith*, 494 U.S. at 881-82. But, the only exception in § 24-34-601 that has anything to do with religious practice is that for churches or other places “principally used for religious purposes.” Section 24-34-601(1). It cannot reasonably be argued that this exception is targeted to restrict religious-based activities. To the contrary, the exemption for

⁹ Respondents have not cited the ALJ to any Colorado law that requires a higher standard. Although Congress made an attempt to legislatively overrule *Smith* when it passed the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1(a), the Supreme Court has held that RFRA cannot be constitutionally applied to the states. *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997). Colorado has not adopted a state version of RFRA, and no Colorado case imposes a higher standard than *Smith*.

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

churches and other places used primarily for religious purposes underscores the legislature's respect for religious freedom.¹¹ *Conestoga Wood Specialties Corp. v. Sebelius*, 917 F.Supp.2d 394, 410 (E.D. Pa. 2013) (the fact that exemptions were made for religious employers "shows that the government made efforts to accommodate religious beliefs, which counsels in favor of the regulations' neutrality"), *aff'd* 724 F.3d 377 (3rd Cir. 2013).

The only other exception in § 24-34-601 is a secular one for places providing public accommodations to one sex, where the restriction has a bona fide relationship to the good or service being provided; such as a women's health clinic. Section 24-34-601(3). The Tenth Circuit, however, has joined other circuits in refusing to interpret *Smith* as standing for the proposition that a narrow secular exception automatically exempts all religiously motivated activity. *Grace United*, 451 F.3d at 651 ("Consistent with the majority of our sister circuits, however, we have already refused to interpret *Smith* as standing for the proposition that a secular exemption automatically creates a claim for a religious exemption.") The ALJ likewise declines to do so.

Respondents argue that § 24-34-601(2) must nevertheless meet the strict scrutiny test because the Supreme Court has historically applied strict scrutiny to "hybrid" situations involving not only the free exercise of religion but also other constitutional rights such as freedom of speech. *Smith*, 494 U.S. at 881-82. Respondents contend that this case is a hybrid situation because the public accommodation law not only restricts their free exercise of religion, but also restricts their freedom of speech and amounts to an unconstitutional "taking" of their property without just compensation in violation of the Fifth and Fourteenth Amendments. Therefore, they say, application of the law to them must be justified by a compelling governmental interest, which cannot be shown.

The mere incantation of other constitutional rights is not sufficient to create a hybrid claim. See *Axson-Flynn v. Johnson*, 356 F.3d. 1277, 1295 (10th Cir. 2004) (requiring a showing of "'fair probability, or a likelihood,' of success on the companion claim.") As discussed above, Respondents have not demonstrated that § 24-34-601(2) violates their rights of free speech; and, there is no evidence that the law takes or impairs any of Respondents' property or harms Respondents' business in any way. On the contrary, to the extent that the law prohibits Respondents from discriminating on the basis of sexual orientation, compliance with the law would likely increase their business by not alienating the gay community. If, on the other hand, Respondents choose to stop making wedding cakes altogether to avoid future violations of the law; that is a matter of personal choice and not a result compelled by the state. Because Respondents have not shown a likelihood of success in a hybrid claim, strict scrutiny does not apply.

Summary

The undisputed facts show that Respondents discriminated against Complainants because of their sexual orientation by refusing to sell them a wedding cake for their same-sex marriage, in violation of § 24-34-601(2), C.R.S. Moreover,

¹¹ In fact, such an exception may be constitutionally required. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, ___ U.S. ___, 132 S.Ct. 694, 705-06 (2012).

application of this law to Respondents does not violate their right to free speech or unduly abridge their right to free exercise of religion. Accordingly, Complainants' motion for summary judgment is GRANTED and Respondents' motion for summary judgment is DENIED.

Initial Decision

Respondents violated § 24-34-601(2), C.R.S. substantially as alleged in the Formal Complaint. In accordance with §§ 24-34-306(9) and 605, C.R.S., Respondents are ordered to:

(1) Cease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any other product Respondents would provide to heterosexual couples; and

(2) Take such other corrective action as is deemed appropriate by the Commission, and make such reports of compliance to the Commission as the Commission shall require.

Done and Signed

December 6, 2013

ROBERT N. SPENCER
Administrative Law Judge

Hearing digitally recorded in CR#1

EXHIBIT F

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

This matter came before the Colorado Civil Rights Commission (“Commission”) at its regularly scheduled monthly meeting on May 30, 2014. During the public session portion of the monthly meeting the Commission considered the record on appeal, including but not limited to the following:

- Initial Decision of Administrative Law Judge Robert N. Spencer (“ALJ”) in this matter (“Initial Decision”);
- Respondents’ Brief in Support of Appeal;
- Complainants’ Opposition to Respondents’ Appeal;
- Counsel in Support of the Complainants’ Answer Brief; and
- Documents listed in the Certificate of Record.

Based upon the Commission’s review and consideration, it is hereby ORDERED that the Initial Decision is ADOPTED IN FULL. In doing so, we further AFFIRM the following:

1. The Order Granting Complainants’ Motion for Protective Order is AFFIRMED; and
2. The Order concerning Respondents’ Motion to Dismiss the Formal Complaint and Motion to Dismiss Phillips is AFFIRMED;

REMEDY


It is further ORDERED by the Commission that the Respondents take the following actions:

1. Pursuant to § 24-34-306(9) and 605, C.R.S., the Respondents shall cease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any product Respondents would sell to heterosexual couples; and

2. Pursuant to 24-34-306(9) and 605, C.R.S., the following REMEDIAL MEASURES shall be taken:

- a. The Respondents shall take remedial measures to ensure compliance with the Public Accommodation section of the Colorado Anti-Discrimination Act, § 24-34-601(2), C.R.S., including but not limited to comprehensive staff training on the Public Accommodations section of the Colorado Anti-Discrimination Act and changes to any and all company policies to comply with § 24-34-601(2), C.R.S. and this Order.
- b. The Respondents shall provide quarterly compliance reports to the Colorado Civil Rights Division for two years from the date of this Order. The compliance reports shall contain a statement describing the remedial measures taken.
- c. The Respondents' compliance reports shall also document the number of patrons denied service by Mr. Phillips or Masterpiece Cakeshop, Inc., and the reasons the patrons were denied service.

Dated this 30 th day of May, 2014, at Denver Colorado



Katina Banks, Chair
Colorado Civil Rights Commission
1560 Broadway, Suite 1050
Denver, CO 80202

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **FINAL AGENCY ORDER** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 2nd day of June 2014 addressed as follows:

Nicolle H. Martin
7175 W. Jefferson Avenue, Suite 4000
Lakewood, CO 80235

Natalie L. Decker
26 W. Dry Creek Cr., Suite 600
Littleton, CO 80120

Michael J. Norton
Alliance Defending Freedom
7351 E. Maplewood Avenue, Suite 100
Greenwood Village, CO 80111

Jeremy D. Tedesco
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260

Kristen K. Waggoner
Alliance Defending Freedom
14241 N.E. Woodinville-Duvall Rd., No.
488
Woodinville, WA 98072

David Mullins
Charlie Craig
c/o Sara J. Rich
ACLU Foundation of Colorado
303 E. 17th Avenue, Suite 350

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

Amanda Goad
American Civil Liberties Union
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New York, NY 10004

Stacy Worthington
Assistant Attorney General
Office of the Attorney General
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Denver, CO 80203

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

Counsel in support of the Complaint

Counsel for the Commission



EXHIBIT G



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

June 30, 2015

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

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

Dear Mr. Jack:

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

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

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

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández', is written over the typed name.

Rufina Hernández,
Director

cc: Azucar Sweet Shop and Bakery
David Goldberg



EXHIBIT H



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

June 30, 2015

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

Charge Number: P20140071X; William Jack vs. Gateaux, Ltd.

Dear Mr. Jack:

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

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

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

On behalf of the Commission

Rufina Hernández,
Director

cc: Gateaux, Ltd.
Kathleen Davia



EXHIBIT I



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

June 30, 2015

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

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

Dear Mr. Jack:

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

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

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

On behalf of the Commission

Rufina Hernández,
Director

cc: Le Bakery Sensual, Inc.
Jack Robinson

