

**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.*

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**PLAINTIFFS 303 CREATIVE LLC AND LORIE SMITH’S RESPONSE TO SHOW  
CAUSE ORDER**

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Plaintiffs Lorie Smith and 303 Creative LLC (collectively Lorie) moved for a preliminary injunction and summary judgment to stop Colorado from applying the Colorado Anti-Discrimination Act (“CADA”) to compel her to create websites with objectionable content, ban her from posting a religiously motivated statement on her website, and target her faith for punishment. This Court denied both motions on May 17, 2019, and ordered Lorie to show cause why final judgment should not be entered in Colorado’s favor. Op. and Order

Denying Mot. for Prelim. Inj. and Mot. for Summ. J. 26, ECF No. 72 (“Op. and Order”). In response, Lorie asks that this Court analyze the merits of Lorie’s challenges to both the Accommodation Clause and the Communication Clause before entering final judgment.

This course is proper for two reasons. First, this Court should analyze and not assume the constitutionality of the Accommodation Clause or the illegality of Lorie’s desired statement based on that assumption. Courts have repeatedly declined to assume constitutionality in this way. *See Hous. Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644, 651 n.9 (6th Cir. 1991) (“When analyzing the constitutional protections accorded a particular commercial message, a court starts with the content of the message and not the label given the message under the relevant statute” otherwise it “would foreclose a court from ever considering the constitutionality of particular commercial speech because the statute would label such speech illegal.”) (citing *Bigelow v. Virginia*, 421 U.S. 809 (1975)); *BellSouth Telecomms., Inc. v. Farris*, 542 F.3d 499, 506 (6th Cir. 2008) (“The lawfulness of the activity does not turn on the existence of the speech ban itself; otherwise, all commercial speech bans would all be constitutional.”).<sup>1</sup>

As Lorie and this Court acknowledged, the merits of the Accommodation Clause and the Communication Clause are intertwined. Op. and Order 6, 16-17; Pls.’ Mot. for Summ. J. and Mem. in Supp. 16-17, ECF No. 48 (“Pls.’ MSJ”); Pls.’ Suppl. Br. regarding *Masterpiece*, *NIFLA*, and *Janus* 4, ECF No. 68 (“Pls.’ Suppl. Br.”). If Lorie has the constitutional right to decline to create objectionable websites, she has the constitutional right to state so publicly. But

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<sup>1</sup> Lorie’s desired statement is not commercial speech, but these cases illustrate that even in the commercial speech context courts will not assume that speech is illegal.

instead of analyzing whether Lorie can constitutionally decline to create objectionable website content, this Court *assumed* she could not. Op. and Order 6. Based on that assumption, this Court in turn assumed Lorie's desired statement seeks to engage in illegal discrimination. Op. and Order 16-17. But this was legal error.

And Lorie disputed those assumptions. Lorie has argued that her decision whether to create particular website content is not status discrimination but a content-based distinction that is constitutionally protected. Pls.' Suppl. Br. 1-2. Based on this point, Lorie has argued that her desired statement is constitutionally protected and thus legal. Pls.' Suppl. Br. 1-2; Pls.' MSJ 3-4, 49-51. Because Lorie disputed this Court's legal assumptions and because the merits of the Accommodation Clause and the Communication Clause are intertwined, this Court should evaluate whether the Accommodation Clause can compel Lorie to create objectionable website content in order to determine whether the Communication Clause can ban her desired statement. Indeed, courts regularly evaluate the merits of one provision when it is legally intertwined with another. *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 715 n.2 (4th Cir. 1999) (rejecting argument that plaintiffs have standing to challenge only one of two statutory provisions where the provisions were "inextricably intertwined").

Second, this Court failed to consider all of Lorie's Free Exercise arguments. Although this Court considered some of those arguments, this Court did not consider whether certain statements by members of the Colorado Civil Rights Commission (including past Commissioner Diane Rice) reveal hostility toward Lorie's religious beliefs on marriage. Op. and Order 20-25; *see also* Pls.' Suppl. Br. 2-4. The Supreme Court relied on these statements in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* as proof of religious hostility. 138 S. Ct.

1719, 1729-30 (2018). But the Commission has yet to disavow those statements. And Colorado Commission members recently embraced those hostile statements when they met to discuss the *Masterpiece* decision at a recorded public hearing of the Commission. This recent embrace of hostile statements again proves the Commission's religious hostility toward beliefs like Lorie's. See Transcript of Proceedings of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission, Full Transcript, Except Executive Session, Transcribed from Audio Recordings 10:5-9 (June 22, 2018), attached here as Exhibit A (Commissioner Lewis: "I support Commissioner Diann Rice and her comments. I don't think she said anything wrong. And if this was 1950s, it would have a whole different look. So I was very disappointed by the Supreme Court's decision."); see also Audio Recording of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission (June 22, 2018), filed conventionally herewith as Exhibit B, and the Public Session Minutes of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission (June 22, 2018), attached here as Exhibit C.

It is proper for the Court to take judicial notice and consider this new evidence because it is a public record. *Moore v. Tulsa*, 55 F. Supp. 3d 1337, 1341 (N.D. Okla. 2014) (taking judicial notice of a public record based on the law that "[a] court may take judicial notice of 'matters that are verifiable with certainty' ... includ[ing] public records") (quoting *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979)); see also *Van Woudenberg ex rel. Foor v. Gibson*, 211 F.3d 560, 568 (10th Cir. 2000), *abrogated on other grounds by McGregor v. Gibson*, 248 F.3d 946 (10th Cir. 2001) ("[T]he Court is permitted to take judicial notice of its own files and records, as well as facts which are a matter

of public record.”). The comments were made in the course of a public hearing of a government body—the Colorado Civil Rights Commission. *See* Aff. of Jacob P. Warner ¶ 6 (“Warner Aff.”); *N. Arapaho Tribe v. Burwell*, 118 F. Supp. 3d 1264, 1280 n.7 (D. Wyo. 2015) (taking judicial notice of a letter submitted during notice-and-comment process for tribal action because it was a public record). They were produced by the Commission in separate litigation in the District of Colorado. *See* Warner Aff. ¶ 5, 7. As such, it is a matter of public record. *See* Exhibit B. In the alternative, this Court can exercise its broad discretion to supplement the record with this additional evidence as it is highly relevant to this Court’s free exercise analysis. *Wilson v. Vill. of Los Lunas*, 572 Fed. Appx. 635, 638-39 (10th Cir. 2014) (recognizing court’s broad discretion over requests to supplement).

In light of Lorie’s past arguments and this recent transcript indicating religious hostility, this Court should evaluate whether Colorado can constitutionally apply CADA against Lorie to compel her to speak against her religious beliefs. If the Court declines to evaluate these two arguments, as requested, Lorie asks that this Court enter final judgment.

Respectfully submitted this 7th day of June, 2019.

*s/ Katherine L. Anderson*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2019, the foregoing was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following counsel of record. Additionally, a copy of Exhibit B, which is being filed conventionally, has been mailed to counsel via USPS.

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*Defendants.*

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**AFFIDAVIT OF JACOB P. WARNER IN SUPPORT OF PLAINTIFFS 303 CREATIVE  
LLC AND LORIE SMITH'S RESPONSE TO SHOW CAUSE ORDER**

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I, Jacob P. Warner, declare as follows:

1. I am a citizen of the United States and a resident of the State of Arizona. I am competent to make this declaration and the facts stated herein are within my personal knowledge.

2. I am an attorney for Alliance Defending Freedom and I was an attorney of record for Plaintiffs in the matter of *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-

02074-WYD-STV, previously pending in the United States District Court for the District of Colorado. The case was dismissed on March 5, 2019.

3. Attached as Exhibit A is a transcription of the proceedings of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission which took place on June 22, 2018.

4. Filed conventionally herewith as Exhibit B is the audio recording of the proceedings of the Eleventh (2017-2018) Monthly Meeting before the Colorado Civil Rights Commission which took place on June 22, 2018.

5. Colorado produced Exhibit B to Alliance Defending Freedom during the course of discovery in *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-02074-WYD-STV (D. Colo. dismissed Mar. 5, 2019).

6. Attached as Exhibit C are Public Session Minutes from the Eleventh (2017-2018) Monthly Meeting of the Colorado Civil Rights Commission which took place on June 22, 2018. These minutes state that this was a public session and that during the meeting Commissioners “voiced their opinion” about *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

7. Colorado produced Exhibit C to Alliance Defending Freedom during the course of discovery in *Masterpiece Cakeshop, Inc., et al. v. Elenis, et al.*, Case No. 1:18-cv-02074-WYD-STV (D. Colo. dismissed Mar. 5, 2019).

**DECLARATION UNDER PENALTY OF PERJURY**

I, JACOB P. WARNER, 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 7th day of June, 2019, at Scottsdale, Arizona.

s/ Jacob P. Warner  
Jacob P. Warner

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CYNTHIA H. COFFMAN, Colorado Attorney General,  
in her official capacity;

*Defendants.*

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**TRANSCRIPTION OF THE PROCEEDINGS OF THE  
ELEVENTH (2017-2018) MONTHLY MEETING BEFORE THE  
COLORADO CIVIL RIGHTS COMMISSION WHICH TOOK  
PLACE ON JUNE 22, 2018**

**EXHIBIT A TO PLAINTIFFS 303 CREATIVE LLC AND LORIE  
SMITH'S RESPONSE TO SHOW CAUSE ORDER**

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BEFORE THE COLORADO CIVIL RIGHTS COMMISSION

Eleventh (2017-2018) Monthly Meeting. )  
)  
)

At: Denver, Colorado  
Date: June 22, 2018

TRANSCRIPT OF PROCEEDINGS  
FULL TRANSCRIPT, EXCEPT EXECUTIVE SESSION

TRANSCRIBED FROM AUDIO RECORDINGS  
(Files: 6.22.18 1st Public Session.mp3 and 6.22.18 2nd  
Public Session.mp3.)

ARIZONA REPORTING SERVICE, INC.  
Audio Transcription Specialists  
2928 North Evergreen Street  
Phoenix, Arizona 85014-5508

Transcribed by:  
Katherine A. McNally  
CERTIFIED TRANSCRIBER  
CET\*\*D-323

1 BE IT REMEMBERED that a Monthly Meeting was held  
2 at the Civic Center Plaza, Conference Room 110-D, 1560  
3 Broadway, Denver, Colorado, commencing on the 22nd day  
4 of June, 2018.

5

6 BEFORE: ANTHONY ARAGON, Chairman  
7 RITA LEWIS, Commissioner  
8 CHARLES GARCIA, Commissioner  
9 CAROL FABRIZIO, Commissioner  
10 JESSICA POCOCK, Commissioner  
11 DR. MIGUEL ELIAS, Commissioner

12

APPEARANCES:

13

For the Colorado Civil Rights Commission:

14

Adriana Carmona, Coordinator

15

Aubrey Elenis, Director

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Billy Seiber, Attorney General's Office

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Katherine Aidala, Attorney General's Office

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1 (Commencement of audio recording file labeled  
2 6.22.18 1st Public Session at 00:00:00.)

3 CHAIR ARAGON: -- to order the 11th monthly  
4 meeting of the Colorado Civil Rights Commission. If we  
5 could all go around the room and introduce ourselves,  
6 please, starting with Commissioner Lewis from Denver.

7 MS. LEWIS: Rita Lewis from Denver.

8 MR. GARCIA: Charlie Garcia, Denver.

9 MS. FABRIZIO: Commissioner Carol Fabrizio,  
10 Denver.

11 MS. POCOCK: Jessie Pocock, Colorado Springs.

12 CHAIR ARAGON: Good morning, Commissioner  
13 Aragon, Chair of the Commission, from Denver.

14 And Commissioner --

15 DR. ELIAS: Dr. Miguel Elias (indiscernible)  
16 Commissioner from Pueblo.

17 MS. CARMONA: Adriana Carmona, with the  
18 Division.

19 MS. ELENIS: Aubrey Elenis, with the Division.

20 MR. SEIBER: Billy Seiber, counsel to the  
21 Commission.

22 MS. AIDALA: I'm Katherine Aidala from the  
23 Attorney General's Office, counsel to the -- for the  
24 Division and sitting in for Vince Morscher today.

25 CHAIR ARAGON: Good morning. Welcome.



1 was a presentation that I had prepared for one of the  
2 Staff meetings upstairs. So I'm going to talk about a  
3 few points from that.

4 COM. LEWIS: Commissioner Elias, can you put  
5 your phone on mute?

6 DR. ELIAS: I beg your pardon?

7 COM. LEWIS: Could you put your phone on mute so  
8 we can hear the Director?

9 DR. ELIAS: (Indiscernible.) Yeah. I'm going  
10 to move my dog. I'll be back. Okay.

11 CHAIR ARAGON: Okay.

12 MS. ELENIS: Thank you.

13 So on June 4th, 2018, the Supreme Court ruled  
14 that the Colorado Civil Rights Commission was neither  
15 tolerant nor respectful of Mr. Phillips' sincerely-held  
16 religious beliefs in this particular case.

17 Based on a Commissioner's statements, the Court  
18 found that the proceedings did not honor the State's  
19 solemn responsibility of fair and neutral enforcement of  
20 Colorado's antidiscrimination laws. In the Court's  
21 decision, the Justices found that while handling the  
22 claims against the cakeshop, the Commission had shown --

23 CHAIR ARAGON: Hold on. Aubrey, hold on.

24 So Commissioner Elias --

25 DR. ELIAS: I'm going to another room.

1 CHAIR ARAGON: Yeah. Or just mute your phone.

2 COM. LEWIS: Could you just mute your phone?

3 CHAIR ARAGON: If you could mute your phone that  
4 would be ideal. Sorry, Aubrey.

5 MS. ELENIS: I don't mind.

6 CHAIR ARAGON: Thank you.

7 COM. ELIAS: You bet.

8 MS. ELENIS: You think we're good?

9 CHAIR ARAGON: Yeah.

10 MS. ELENIS: Okay. So in the Court's  
11 decision -- I'll try to talk a little bit louder too. I  
12 know I have a small voice.

13 In the Court's decision, the Justices found that  
14 while handling the claims against the cakeshop, the  
15 Commission had shown hostility towards the baker's  
16 religious beliefs, and in doing so violated his  
17 religious rights under the First Amendment.

18 So while this was disappointing for us at the  
19 Division, one of the important things to remember was  
20 that the opinion was very narrow. So the Court made its  
21 decision based on a specific set of facts and left open  
22 many legal questions. So what's going to happen is  
23 unfortunately those questions are going to have to be  
24 decided in future litigation.

25 And the Court didn't answer the larger question

1 on whether businesses can use religious views to exempt  
2 themselves from antidiscrimination laws. And so that's  
3 a question that's likely to come up again in front of  
4 the Supreme Court pretty soon; right?

5 So what we know at this point is that the  
6 Colorado antidiscrimination laws -- they've remained  
7 unaffected. So the Court made clear in its finding that  
8 states like Colorado will continue to protect the LGBTQ  
9 community.

10 The general rule was, before the finding, and  
11 still is, that the First Amendment does not allow  
12 business owners to deny members of the community equal  
13 access to business services. So that means that the law  
14 still protects members of the LGBTQ community who visit  
15 places of public accommodation.

16 So what now in looking at the analysis of these  
17 cases going forward? So in these cases going forward,  
18 Commissioners and ALJs and others, including the Staff  
19 at the Division, have to be careful how these issues are  
20 framed so that it's clear that full consideration was  
21 given to sincerely -- what is termed as sincerely-held  
22 religious objections.

23 So the Court is basically sending a signal to  
24 administrative bodies that that decision-making must be  
25 consistent and objective with the guarantee that all

1 laws are applied in a manner that is neutral towards  
2 religion.

3 So for us, that's a bit interesting, because  
4 there aren't any real tools for analysis of what a  
5 sincerely-held religious objection means and how to  
6 measure that, so we are going to just rely on really  
7 adding analysis to those cases when they come in. And  
8 we're also going to be running stuff through our  
9 wonderful AG's as well.

10 So basically, keep fighting the good fight  
11 because the laws haven't changed. It's still the same.

12 COM. GARCIA: Where did that statement come from  
13 what you read?

14 MS. ELENIS: Me.

15 COM. GARCIA: Okay. Well done.

16 MS. ELENIS: Thank you.

17 FEMALE SPEAKER: Yep.

18 CHAIR ARAGON: Is the Division noticing a number  
19 of additional claims now? Or has there been an uptick,  
20 in terms --

21 MS. ELENIS: Not -- not thus far.

22 CHAIR ARAGON: Okay.

23 MS. ELENIS: But it's pretty -- still pretty  
24 new, so I anticipate that there would be because people  
25 are going to still continue to experience the same

1 thing. And because the question wasn't answered, I  
2 think they're going to want answers.

3 COM. FABRIZIO: I think -- thank you for --

4 MS. ELENIS: You're welcome.

5 COM. FABRIZIO: -- reading that. I would say  
6 I -- you know, I've had a couple of reactions to the  
7 holding. Just that -- even though it's narrow, I've  
8 also, of course, think that people will use that, and  
9 you know, continue to see things like religious freedom  
10 restoration acts, you know, come into conflict with a  
11 number of civil rights pieces of legislation.

12 So I'm a little worried about what that kind of  
13 lets -- kind of allows in the future, as far as, like,  
14 giving people some momentum in taking that forward.

15 And then I would say the other thing -- I wasn't  
16 on the Commission when -- so I have no idea what  
17 happened then. But I would also say, you know, I felt a  
18 little bit like even though I think they -- it was  
19 correctly decided from the outside, but I also hope that  
20 anything that is taken out of here or listened to or --  
21 that we're open to being respectful of everybody's  
22 views.

23 And so I kind of thought just about that in a --  
24 as one, like, key takeaway to make sure, even sometimes  
25 when we have a case that seems really obvious and easy,

1 to make sure we're being respectful of things that show  
2 up here, so --

3 FEMALE SPEAKER: Absolutely.

4 CHAIR ARAGON: Commissioner Lewis.

5 COM. LEWIS: I support Commissioner Diann Rice  
6 and her comments. I don't think she said anything  
7 wrong. And if this was 1950s, it would have a whole  
8 different look. So I was very disappointed by the  
9 Supreme Court's decision.

10 COM. GARCIA: Even for one thought the -- I  
11 agree with the opinion, but I also agree a lot with the  
12 dissent. And the dissent was very clear; they agreed  
13 with the opinion. They were disappointed that the Court  
14 didn't go ahead and resolve the real issues. So I  
15 thought the dissent was right on.

16 CHAIR ARAGON: A process question, though. So  
17 if the case were being discussed, I guess where were  
18 Commissioner Rice's comments publicly released? If  
19 those -- if the case was being discussed in executive  
20 session, was there -- did it go -- and I don't recall  
21 the steps it took -- was there another process where  
22 that information or her opinion was shared that then  
23 became a key piece of the case? Do you --

24 MR. SEIBER: I can answer, if you don't know.

25 MS. ELENIS: You can answer.

1 MR. SEIBER: I've read the transcript. And what  
2 had come before the Commission was a request to stay  
3 enforcement until, you know, the next phase. The --  
4 that was the legal question before the Commission.  
5 There was a motion to stay. Stay what exactly, I can't  
6 tell you, but there was a motion to stay.

7 In the process of the motion to deny the request  
8 to stay and the second, there was some discussion. And  
9 that was when Commissioner Rita -- Commissioner Rice  
10 made that -- I'm sorry -- Commissioner Rice -- made --

11 COM. LEWIS: Commissioner Rita? No.

12 MR. SEIBER: -- made that -- made that  
13 statement. So it wasn't in the review of the facts; it  
14 wasn't in executive session; it wasn't anywhere else.  
15 It wasn't even in the review of the initial decision  
16 from the Administrative Law Judge. It was simply  
17 discussion surrounding motion to stay.

18 I don't know the answer, whether the recording  
19 came from the Division or if it came from someone in the  
20 room. It was --

21 MS. ELENIS: Someone from the Alliance Defending  
22 Freedom was present during that meeting and recorded and  
23 then released that recording.

24 CHAIR ARAGON: Okay.

25 MR. SEIBER: And, of course, there's no

1 restriction on recording of meetings, surreptitiously or  
2 otherwise, as far as I'm aware. Attorneys can't make  
3 recordings without warning the other people that they're  
4 doing the -- making the recording under Colorado law. I  
5 don't know who that person was; I don't know what source  
6 of background is there. But at any point in time anyone  
7 in a room could be recording the entire meeting.

8 CHAIR ARAGON: If it's in public session; right?

9 MR. SEIBER: Including -- in public session.

10 CHAIR ARAGON: Yeah.

11 MR. SEIBER: Including by video, you know, they  
12 could bring a video camera in, so --

13 CHAIR ARAGON: Okay. And then I just have one  
14 other sort of process question.

15 So I had e-mailed you the day that it came out  
16 to find out what -- what should we, as Commissioners, be  
17 doing. And you said that -- I think in your e-mail, you  
18 said that you were going to be sending a press release  
19 or information to us on what we should and shouldn't be  
20 doing. I never saw that. So --

21 MS. ELENIS: So I didn't send anything to the  
22 Commission themselves. What we ended up doing is just  
23 doing a general press release and releasing it to the  
24 public. And then in terms of, like, any media requests  
25 or anything like that, the directive would have still

1 been the same, to contact me so that I could forward the  
2 stuff to Rebecca Laurie.

3 CHAIR ARAGON: Right.

4 MS. ELENIS: She's our Director of  
5 Communications in our PIO.

6 But in terms of, you know, making public  
7 statements to the media or anything like that, there  
8 wasn't really anything that we could tell you to do  
9 because we didn't really have any further guidance, and  
10 we were still reading through the 56-page opinion at  
11 that point.

12 CHAIR ARAGON: Okay. But I -- I mean, so I got  
13 a couple of questions. And at least because I reached  
14 out to you, I knew the answer.

15 MS. ELENIS: Um-hmm.

16 CHAIR ARAGON: But I think in fairness to the  
17 Commission as a whole, I think it's really important  
18 that even if it is a press release or we're going to  
19 just put this up on the --

20 MS. ELENIS: That you know where it's coming  
21 from?

22 CHAIR ARAGON: -- web site, it would have been  
23 good to know that something --

24 MS. ELENIS: Yes.

25 CHAIR ARAGON: -- happened or -- because again,

1 when it was -- really, it was all the Colorado Civil  
2 Rights Commission was the -- you know, involved in the  
3 case, then, of course, you know, well, you're on the  
4 Commission, what's going on?

5 MS. ELENIS: Um-hmm.

6 CHAIR ARAGON: I'm, like, I'm not able to answer  
7 that. But at least because I reached out that morning,  
8 I knew that what you said to me was that, you know, if  
9 it's anything related to the Division, it goes Division.  
10 If it's you as a Commissioner, that it's -- you're going  
11 to -- if it goes to the Governor's Office.

12 But I mean, to your point, you were contacted  
13 several times. And I just think it would have been  
14 beneficial to even know that there was a statement on  
15 the web site. I mean, it's just I feel like there was a  
16 lack of communication for the Commission.

17 MS. ELENIS: So going -- going forward, I'll  
18 make sure that --

19 CHAIR ARAGON: Yeah.

20 MS. ELENIS: -- if there's any information, that  
21 it'll be shared with you guys right away.

22 CHAIR ARAGON: Yeah.

23 MS. ELENIS: Even if it's going to be posted,  
24 I'll send you an e-mail --

25 CHAIR ARAGON: Yeah. That would be -- yeah.

1 MS. ELENIS: -- saying please check the web  
2 site. And I apologize for that.

3 CHAIR ARAGON: Because then we could use that  
4 too to be a resource. Yeah.

5 MS. ELENIS: Um-hmm. Exactly.

6 COM. POCOCK: Interestingly, I was contacted by  
7 a member of the public who found my cell phone number  
8 too, just asking for help with their case, in which it  
9 was, like, I -- you know, I directed them to come to the  
10 Division, and, you know, ask for clarification and never  
11 ended up (indiscernible), but --

12 MS. ELENIS: Okay.

13 COM. POCOCK: -- which is generally how I --  
14 unless someone's calling to tell me, you know, maybe  
15 they need help with the process, and I can direct them  
16 to the right people. But --

17 MS. ELENIS: Right.

18 COM. POCOCK: -- that's the first time that  
19 happened. I have received e-mails before.

20 MS. ELENIS: Okay. And you've been really  
21 awesome about forwarding those along too. All of you  
22 have, when you receive something, so that's great. But  
23 yeah, noted.

24 CHAIR ARAGON: Okay.

25 MS. ELENIS: Going forward, we'll definitely --

1 I'll make sure to reach out and share that stuff right  
2 away.

3 CHAIR ARAGON: Yeah. And the community is  
4 interested. I was at a public forum yesterday with  
5 National Gay and Lesbian Real Estate Professionals, and  
6 we were with One Colorado and the Gill Foundation. And  
7 some -- somebody asked me a question about the  
8 Masterpiece. I said, you know, I said, I'm here as  
9 Anthony. I'm not here representing the Commission. I  
10 don't feel comfortable answering your question.

11 MS. ELENIS: Right.

12 CHAIR ARAGON: But then Daniel was there, and he  
13 could at least help -- he was able to speak about it.

14 MS. ELENIS: Perfect.

15 CHAIR ARAGON: You know, the appointment process  
16 moving forward with the legislation. But, yeah, I'm  
17 just very mindful to (indiscernible).

18 COM. GARCIA: Well, I would assume that, as with  
19 any other Commission similar to this one, when they ask  
20 those kind of questions, you simply do what you do  
21 (indiscernible). The first thing you say is, I'm not  
22 speaking on behalf of the Commission; and I'm speaking  
23 on behalf of Anthony Aragon, and here I go.

24 CHAIR ARAGON: Yeah. Well, even then, I'm  
25 like -- I don't do that.

1 Commissioner Lewis, did you have  
2 (indiscernible)?

3 COM. LEWIS: Yes. I think it would be a good  
4 idea if you did release your statement to the media  
5 outlets because they're still talking about it.

6 MS. ELENIS: Oh, we have.

7 COM. LEWIS: (Indiscernible) you have?

8 MS. ELENIS: Yes.

9 COM. LEWIS: Okay.

10 MS. ELENIS: We released it on the date, the day  
11 of, that one on the 4th.

12 COM. LEWIS: Okay. I haven't heard much about  
13 it.

14 MS. ELENIS: There's been quite a few news  
15 articles, not necessarily about the statement that we  
16 released. But we've been getting kind of pings every  
17 morning about the number of media articles that are  
18 released. There's been a fair amount of commentary on  
19 both sides about it.

20 COM. LEWIS: Um-hmm. And would you be  
21 comfortable giving us a copy of your statement --

22 MS. ELENIS: Of course, yes, yes.

23 COM. LEWIS: -- so that we can send it to our  
24 outlets?

25 MS. ELENIS: Yes. I'll send that out right

1 after this as well. Yes.

2 CHAIR ARAGON: Great.

3 COM. LEWIS: Great.

4 CHAIR ARAGON: Okay. Any other --

5 MR. SEIBER: I just (indiscernible) and, of  
6 course, always you carry the Division's phone number  
7 cards in your wallet. And if you are asked specific  
8 questions, direct them to the Division. I think your  
9 point of "I don't speak for the Commission" is really  
10 salient.

11 MS. ELENIS: Right.

12 MR. SEIBER: But here is a Division person,  
13 public information officer, so on and so forth.

14 CHAIR ARAGON: I did tell them after, I said, I  
15 felt like -- that felt like such a political response.  
16 I said, and I apologize. But it just -- it's the nature  
17 of the work that we do, and what we can and can't say,  
18 sorry.

19 Okay. Great. Anything else (indiscernible)?

20 MS. ELENIS: That's it.

21 CHAIR ARAGON: Okay. Wonderful.

22 MS. ELENIS: Thank you.

23 CHAIR ARAGON: Thank you.

24 Attorney General's report?

25 MS. AIDALA: Good morning. I have two cases

1 here. The first is Denise Fulkerson v. Wonderland at  
2 Centerra. It was a housing discrimination case that was  
3 filed at OAC. And pursuant to statute, the respondents  
4 have elected to have the charge removed to state  
5 district court.

6 So I would ask -- and they're, you know,  
7 authorized by statute to do that -- ask for a motion to  
8 dismiss the case from OAC and remove it to state court.

9 MALE SPEAKER: So moved.

10 COM. LEWIS: Second.

11 CHAIR ARAGON: Okay. Any discussion?

12 All those in favor signify by saying aye.

13 (A chorus of ayes.)

14 CHAIR ARAGON: Opposed? Abstention? That  
15 motion carries.

16 MS. AIDALA: Great. Thank you.

17 And then the second case is Jayme Seybold and  
18 Candy Harman v. Regulator Industries, LLC. This case  
19 was presented at the Commission's meeting in March, and  
20 the settlement was approved.

21 So at this point, I would just ask for a motion  
22 to close the case.

23 COM. LEWIS: So moved.

24 CHAIR ARAGON: A motion by Commissioner Lewis.

25 Second?

1 FEMALE SPEAKER: Second.

2 CHAIR ARAGON: Second. Any discussion?

3 All those in favor, signify by saying aye.

4 (A chorus of ayes.)

5 CHAIR ARAGON: Opposed? Abstention? All right.

6 That motion carries.

7 MS. AIDALA: Great. Thank you.

8 CHAIR ARAGON: Great. And you'll have me sign  
9 those? Okay.

10 Audience, audience participation. I think we  
11 have one person that wanted to share this morning.

12 Good morning, if you'd introduce yourself for  
13 the Commission that would be great. Thank you.

14 MALE SPEAKER: Members of the Commission, my  
15 name is Jim Katin [phonetic]. I'm a resident of the  
16 city and county of Denver. Ten years ago I suffered a  
17 severe traumatic brain injury. Today I'm sharing  
18 information about traumatic brain injury in Colorado.

19 The Colorado Department of Human Services says  
20 that every year there are approximately 950 deaths,  
21 5,200 hospitalizations, and 27,000 emergency room visits  
22 related to traumatic brain injury.

23 According to research performed by Denver-based  
24 Craig Rehabilitation Hospital, approximately 500,000  
25 Coloradans have sustained some sort of brain injury in

1 their lifetime.

2 My message today is twofold. One, the  
3 population of Coloradans living with a traumatic brain  
4 injury is growing; and my second point is that as a  
5 growing population, we are often subject to unfair and  
6 unequal treatment, including discriminatory practices.  
7 Thank you.

8 CHAIR ARAGON: I know you've come to the  
9 Commission to speak before.

10 Did we ever connect you with -- is it Billy?  
11 I'm always drawing a blank on his name. I apologize.  
12 Our outreach person.

13 FEMALE SPEAKER: Sam, yes.

14 CHAIR ARAGON: Sam. Did you get to sort of  
15 connect with him at the Division, who does outreach, to  
16 determine sort of if there's an opportunity for  
17 partnership or for education purposes? I was just  
18 wondering.

19 I know that Senator Hernandez had come in as  
20 well as the woman with her young son. So I was just  
21 curious if there's been any movement on that front.

22 MALE SPEAKER: This is Jim Katin again. No, I  
23 haven't received any communication since that gathering.

24 CHAIR ARAGON: Okay.

25 MALE SPEAKER: You know, and I think it -- from

1 my perspective, my purpose is really to share  
2 information about this growing population. I think it's  
3 part of the disabled community that's often forgotten.

4 CHAIR ARAGON: Um-hmm. Okay.

5 MALE SPEAKER: So whatever connection we could  
6 make, that would be great. If not, I understand. And  
7 you know, in light of the time of year, it's an election  
8 cycle, all that kind of stuff. You know, whenever they  
9 have time, feel free to reach out to me.

10 CHAIR ARAGON: Okay.

11 MS. ELENIS: Can we have Tracy speak to that?

12 CHAIR ARAGON: Sure.

13 MS. ELENIS: Tracy, can you kind of give an  
14 update on what's going on --

15 TRACY: Sure.

16 MS. ELENIS: -- since that last visit.

17 TRACY: So --

18 MS. ELENIS: Thank you.

19 TRACY: Sam Anderson has reached out to folks  
20 over at Robert Hernandez, and has been in contact with  
21 him and with Maureen --

22 (Indiscernible - simultaneous speech.)

23 TRACY: Maureen Welch on several occasions, as  
24 well as they've come into our office. So --

25 CHAIR ARAGON: Okay.

1 TRACY: -- we have been in contact with them on  
2 multiple occasions, so --

3 CHAIR ARAGON: Great. Okay. All right. Well,  
4 I appreciate you coming in and speaking with the  
5 Commission this morning.

6 MALE SPEAKER: Thanks for the time.

7 CHAIR ARAGON: All right. Thank you, sir.

8 Other business, Division's outreach and  
9 education update?

10 Oh, Commissioner Lewis.

11 COM. LEWIS: I have a comment. I'm very  
12 disappointed that Juneteenth is not listed. Juneteenth  
13 is a 30-year-old tradition here in Colorado. And for  
14 people that don't know what Juneteenth is, it's a  
15 celebration of descendents of slaves that found out --  
16 the slaves found out two years later in Texas that they  
17 were freed.

18 So I hope going forward that you will list  
19 Juneteenth. And Juneteenth is actually -- it was the  
20 16th. So please put that on the calendar going forward.

21 MS. ELENIS: We actually had an internal  
22 discussion a couple of days ago, based on some of our  
23 disappointment that we didn't --

24 COM. LEWIS: Okay.

25 MS. ELENIS: -- participate this year. So next

1 year, we most definitely will be there, as well.

2 CHAIR ARAGON: Again, I believe the Division did  
3 last year, though, didn't they not?

4 MS. ELENIS: Yes. Last year we did.

5 CHAIR ARAGON: Yes, they did. Okay. Yeah.

6 MS. ELENIS: Not this year.

7 COM. LEWIS: (Indiscernible.)

8 CHAIR ARAGON: Okay.

9 FEMALE SPEAKER: And also they will be at the  
10 Blackhawks Festival coming up.

11 MS. ELENIS: Yes.

12 COM. LEWIS: Okay. Good. Thank you.

13 CHAIR ARAGON: Okay. Any question -- I do  
14 believe everybody saw in the report that Sam included in  
15 the outreach, everybody saw that (indiscernible).

16 MS. ELENIS: And Sam isn't here today. He took  
17 a day of leave. So --

18 CHAIR ARAGON: Yeah. This is very helpful.  
19 Thank you for that.

20 FEMALE SPEAKER: Awesome.

21 CHAIR ARAGON: I know that was something we  
22 requested, so thank you for that.

23 COM. LEWIS: And real quick, are you going to do  
24 this every month, the outreach events?

25 MS. ELENIS: Yes.

1 COM. GARCIA: The calendar is very helpful  
2 (indiscernible).

3 MS. ELENIS: Good.

4 CHAIR ARAGON: Yeah. Great. Thank you.

5 COM. GARCIA: (Indiscernible.)

6 CHAIR ARAGON: So the next item on the agenda is  
7 the process and decision-making regarding  
8 Rule 10.6(b)(2).

9 And what I'd like to do is entertain a motion to  
10 go into executive session to obtain legal counsel and  
11 discuss the policy. And then once we discuss the policy  
12 and asked our questions, we will go out of executive  
13 session. And then any further discussion that we do  
14 have in terms of drafting or moving the policy forward  
15 will be done in public session.

16 But I think that for all of us to ask questions  
17 and to get legal counsel that I would like to approach  
18 it that way -- if people are comfortable with that  
19 approach -- keeping in mind that any decisions that we  
20 do reach after our questions are answered, we will do in  
21 public session.

22 Is everybody comfortable with that?

23 FEMALE SPEAKER: Sure.

24 CHAIR ARAGON: Okay. So do you want to move it?

25 FEMALE SPEAKER: Sure. I move that we go into

1 executive session to receive legal advice regarding the  
2 process and decision-making regarding Rule 10.6(b)(2).

3 FEMALE SPEAKER: Second.

4 CHAIR ARAGON: Second?

5 Any discussion?

6 MR. SEIBER: Could I modify that a little bit?

7 CHAIR ARAGON: Oh.

8 FEMALE SPEAKER: Um-hmm.

9 MR. SEIBER: Pursuant to  
10 Section 24-6-4023(a)(II) CRS?

11 CHAIR ARAGON: Yeah.

12 FEMALE SPEAKER: The last one?

13 MR. SEIBER: Yeah.

14 FEMALE SPEAKER: Okay. For the purpose of  
15 receiving legal advice pursuant to Sections  
16 24-6-4023(a)(II) CRS.

17 CHAIR ARAGON: Commission Lewis, second?

18 COM. LEWIS: Thank you. Second.

19 CHAIR ARAGON: Second. Okay. Any discussion?  
20 All those in favor, signify by saying aye.

21 (A chorus of ayes.)

22 CHAIR ARAGON: Opposed? Okay.

23 So any audience members that are not part of the  
24 Division or the Commission will need to exit the room.

25 FEMALE SPEAKER: Does that include the teenager

1 over there?

2 CHAIR ARAGON: I think so, yes.

3 FEMALE SPEAKER: Yes.

4 CHAIR ARAGON: Yes, it does.

5 FEMALE SPEAKER: We're not --

6 CHAIR ARAGON: Unfortunately. But it's her  
7 fault, not mine. And then when we're done, we'll bring  
8 you back up.

9 FEMALE SPEAKER: (Indiscernible) Welcome Center.

10 FEMALE SPEAKER: Okay.

11 FEMALE SPEAKER: (Indiscernible.)

12 FEMALE SPEAKER: And then she'll come back.

13 CHAIR ARAGON: Okay. Great. Thank you. Okay.

14 And then we are now in executive session.

15 MR. SEIBER: Great. Do we have a separate  
16 recording for this?

17 (Conclusion of audio recording file labeled  
18 6.22.18 1st Public Session at 00:23:05.)

19 (Executive session held, but not transcribed.)

20 (Commencement of audio recording file labeled  
21 6.22.18 2nd Public Session at 00:00:00.)

22 CHAIR ARAGON: So we're back in public session  
23 to discuss the process of decision-making regarding  
24 Rule 10.6(b)(2).

25 And at this time, I think that -- why don't we

1 open it up for discussion.

2 So the Commission has been discussing this rule.  
3 And we think that it is a good idea to establish a  
4 working group of a couple of Commissioners, or however  
5 many would like to be involved, in sort of creating new  
6 language that helps clarify this rule further.

7 And again, we want to determine, you know, do  
8 both parties need to be present? And confidentiality?

9 So if someone would like -- do we need a -- we  
10 probably need a motion to create a working group for  
11 this purpose?

12 MR. SEIBER: I think it shores it up. Sure.  
13 Yeah.

14 CHAIR ARAGON: So I'll entertain a motion.

15 COM. FABRIZIO: Yeah. I'll move to create a  
16 working group to further clarify the Rule 10.6(b)(2).

17 CHAIR ARAGON: Great. And a second?

18 COM. GARCIA: Second.

19 CHAIR ARAGON: Second. Okay. Discussion.

20 So who from the Commission would like to be a  
21 part of this process? Commissioner Lewis, Commissioner  
22 Garcia, Commissioner Elias, any interest?

23 COM. ELIAS: Yeah.

24 CHAIR ARAGON: Commissioner Elias. And I will  
25 as well. Okay. So -- and Commissioner Aragon. So that

1 will be the four of us.

2 So then do we -- does the Division then reach  
3 out to, This is an Adriana "herd the cat" sort of  
4 scenario, where you kind of send an e-mail, you find a  
5 time that's convenient for all of us to meet? Great.  
6 Okay.

7 COM. FABRIZIO: Can I just say one more thing on  
8 the surface?

9 CHAIR ARAGON: Go ahead. Yeah.

10 COM. FABRIZIO: I do think we -- we talked about  
11 a couple of things I think are worth resaying in the  
12 discussion.

13 CHAIR ARAGON: Yeah.

14 COM. FABRIZIO: One is the concern -- there's  
15 substantive concerns with the rule and how it affects  
16 the Commission, and then there's some logistical  
17 concerns about how it's implemented and how it might  
18 conflict with other rules.

19 I am personally fully supportive of figuring out  
20 the logistical concerns and making sure that works.

21 I also just want to touch on something about how  
22 when -- you know, the more kind of open argument we  
23 have -- not that I -- totally valid concerns that we  
24 talked about from counsel. But I also, you know, I  
25 do -- thinking about the Masterpiece case, I would say,

1 as much as -- as much as I kind of took to heart the  
2 opinion and what it said, I also very much stand behind  
3 Commissioner Rice's statements. And as much -- I  
4 wouldn't want to be in that position. But I also --  
5 there is a transparency there that I was actually proud  
6 of what she said, and I agree with her.

7 And from the kind of transparency perspective, I  
8 would hate to personally be used in a case, but also  
9 would rather have it be that than have it be kind of in  
10 secret that it couldn't come out. There's -- there's a  
11 part of me that's, like, whether or not the case is  
12 right or I'm personally under scrutiny or candidly any  
13 of you are under scrutiny for your thing, the thing I  
14 like that there is a little bit of transparency there,  
15 you know, as long as we're -- if we are being  
16 respectful -- and I think she was.

17 And so I do -- you know, I think -- I almost  
18 think of it in kind of the other conclusion, which is  
19 that this was like a situation that was tough and her  
20 comments got used publicly. And I think that's okay.  
21 I'm almost glad that something the Commissioner said  
22 ended up public and used, because I think it was the  
23 right thing.

24 So there's part of me on this rule that's  
25 thinking the kind of same substantive concerns, but I

1 come out on the other side. So I just -- I wanted to  
2 say that.

3 CHAIR ARAGON: Great. And I think if this is  
4 the rule in its entirety that there needs to -- we need  
5 to make sure that there's language in here that this  
6 is -- this is discussed in public session, so that if  
7 it's not included in there, I think that as much  
8 information as we can provide to the Complainant that if  
9 you -- if you're requesting oral argument, that these  
10 are the steps that have -- you have to take. And so  
11 that there's sort of even a -- almost a checklist.

12 COM. FABRIZIO: Right.

13 CHAIR ARAGON: You know, you have to sign the  
14 confidentiality waiver; both parties have to agree to be  
15 present; you know, that just as much information -- you  
16 know, inform -- the discussion will occur in public  
17 session; and even to the point of what they may and may  
18 not present, I think is also of importance.

19 COM. FABRIZIO: Um-hmm.

20 CHAIR ARAGON: If we're going to -- if we're  
21 going to sort of travel down this road of really  
22 clarifying what this rule is, so that it's clear moving  
23 forward, that we just -- I think the more information we  
24 include in the rule --

25 COM. FABRIZIO: Right.

1 CHAIR ARAGON: -- that I think transparent --  
2 again, to your point of transparency --

3 COM. FABRIZIO: Right.

4 CHAIR ARAGON: -- that there's not, well, no,  
5 that's not what -- that's what we thought this was going  
6 to (indiscernible) you clearly -- you reviewed the  
7 checklist.

8 Okay. Is it realistic to think that we can have  
9 a new policy in place by the next Commission meeting in  
10 July, with it being summer? Or do we want to --

11 MR. SEIBER: Well, you're going to have to --  
12 you'll have to bring that back for the Commission to  
13 vote on.

14 CHAIR ARAGON: Well, right. We have to -- we  
15 have to create it first, yeah.

16 MR. SEIBER: Oh.

17 CHAIR ARAGON: Yeah.

18 MR. SEIBER: For the Committee to create it,  
19 yeah.

20 CHAIR ARAGON: Yeah. For the Committee to  
21 create or pre -- so what the process would be is the  
22 Committee will meet to create a new rule; right; or an  
23 amended rule?

24 MR. SEIBER: Or a -- well, a rule -- I think the  
25 Committee is going to sort of flesh out what the options

1 are.

2 CHAIR ARAGON: Okay, uh-uh.

3 MR. SEIBER: Do we need to amend the rule? Can  
4 we create a policy from within the rule? Or you know,  
5 what -- what is the Committee thing that needs to happen  
6 here?

7 CHAIR ARAGON: Got it. Okay. So to the  
8 Committee that are involved, do we think within 30 --  
9 within the next 30 days that we -- we can have at least  
10 one -- I mean, we may need more than one meeting.

11 FEMALE SPEAKER: One draft (indiscernible).

12 COM. GARCIA: I would defer to the AG.

13 CHAIR ARAGON: Yeah. You're out to be a part of  
14 this too; right?

15 (Indiscernible - simultaneous speech.)

16 MR. SEIBER: Yeah. Well, I think -- I'm trying  
17 to think. This is -- do I -- do you want me to be part  
18 of your meetings? And -- or do you want to put  
19 together -- does the Committee want to put together  
20 something, ship it off to the AG's office --

21 COM. LEWIS: Yes.

22 MR. SEIBER: -- for review? And maybe you could  
23 have it to me by July. And then --

24 CHAIR ARAGON: Okay. Let's do that. I think --

25 COM. LEWIS: Yes. That makes more sense.

1 CHAIR ARAGON: I think -- what is it, somebody  
2 said slow is -- slow is better or something?

3 COM. LEWIS: Yes.

4 CHAIR ARAGON: What is it? There's a phrase  
5 somewhere that -- do it right, not fast.

6 COM. LEWIS: Right.

7 CHAIR ARAGON: That's what it was, yes. So --

8 COM. LEWIS: We might end up having some drafts,  
9 you know.

10 CHAIR ARAGON: Yeah. Exactly. Okay. So I  
11 think that -- I will -- the plan would be to have one  
12 Committee meeting before the next Commission meeting,  
13 which is July the 27th, I believe.

14 And then possibly have a draft to the Attorney  
15 General's Office for review. And then the Commission  
16 could vote -- the full Commission would vote on the new  
17 rule, or the amended rule, at the August Commission  
18 meeting.

19 MR. SEIBER: The policy.

20 CHAIR ARAGON: The policy.

21 MR. SEIBER: Yeah.

22 CHAIR ARAGON: Yeah. The policy. I keep saying  
23 the rule. Sorry.

24 MR. SEIBER: We're not (indiscernible).

25 CHAIR ARAGON: Yeah. Policy, yeah. Okay.

1 MR. SEIBER: I just realize we have public that  
2 we never let back in. I don't know who that --

3 FEMALE SPEAKER: Oh.

4 MR. SEIBER: -- one lady was.

5 FEMALE SPEAKER: You know, she's a Staff.

6 MR. SEIBER: Oh, she's a Staff.

7 CHAIR ARAGON: Oh. And then Rita's son.

8 COM. LEWIS: Yeah.

9 CHAIR ARAGON: Okay.

10 COM. LEWIS: If he wants to come back,  
11 (indiscernible).

12 CHAIR ARAGON: Yeah. Okay.

13 FEMALE SPEAKER: She said he doesn't have to  
14 come back.

15 MR. SEIBER: Oh, he doesn't have to come back?

16 FEMALE SPEAKER: Yeah.

17 CHAIR ARAGON: Okay. Any further discussion?

18 FEMALE SPEAKER: I just texted him. I'm sorry.

19 CHAIR ARAGON: Any further discussion?

20 FEMALE SPEAKER: No.

21 CHAIR ARAGON: Okay. All those in favor signify  
22 by saying aye.

23 (A chorus of ayes.)

24 CHAIR ARAGON: Opposed? Abstention? Okay.

25 That motion carries.

1 FEMALE SPEAKER: Did -- was there a motion?

2 CHAIR ARAGON: Yeah.

3 FEMALE SPEAKER: First and second?

4 CHAIR ARAGON: Yes.

5 FEMALE SPEAKER: Was it? Sorry.

6 CHAIR ARAGON: Commissioner Fabrizio made the  
7 motion.

8 FEMALE SPEAKER: Yes.

9 CHAIR ARAGON: And I forget -- Commissioner  
10 Pocock seconded.

11 It'll be on the tape too.

12 No. And then the other item for discussion that  
13 I want to just mention in public session -- and this is  
14 sort of a question or just a comment of Billy is that  
15 you'll -- the Commission has requested that the Attorney  
16 General's Office review if we can have -- if the  
17 Commission can have emergency Commission meetings if  
18 oral arguments are presented so that we don't delay the  
19 time frame of the Commission or the Division losing  
20 jurisdiction. So I think that was the other sort of ask  
21 that we -- that came out of our discussion is that it  
22 would be beneficial to know, so that it's not a 30 days  
23 and (indiscernible).

24 MALE SPEAKER: Right.

25 CHAIR ARAGON: Okay. Okay. All right. Any

1 other questions, comments on that process moving  
2 forward?

3 COM. GARCIA: On that, I -- from your response,  
4 if there's not a way for possibility, that it's -- that  
5 number is set for us and not for the parties.

6 MR. SEIBER: Yeah. And I'll get the --

7 COM. GARCIA: And I would ask you to just take a  
8 look --

9 MR. SEIBER: I'll get that and bring you the  
10 exact language.

11 COM. GARCIA: Okay.

12 CHAIR ARAGON: Okay.

13 Next on the item is executive session.

14 FEMALE SPEAKER: I move that the Commission  
15 enter into executive session at this time in order to  
16 consider the following matters:

17 To address the following cases on the June 22nd,  
18 2018, agenda for appeal or review, hearing worthiness  
19 consideration, and settlements which are required to be  
20 kept confidential pursuant to Sections 24-34-3063 and  
21 24-6-4023 (a)(III) CRS, CP 218-272543, CH 2018-738266,  
22 FE 2017-705809, FE 2018-502704, FE 2018-467368, FE  
23 2018-334251, FH 2018-58 through 289, FH 2018-888481, FE  
24 2017-887555, and FE 2017-298703. And for the purposes  
25 of receiving legal advice pursuant to Sections 24-6-4023

1 (a)(II) Colorado Revised Statutes.

2 CHAIR ARAGON: Okay.

3 FEMALE SPEAKER: So second.

4 CHAIR ARAGON: Oh, second.

5 FEMALE SPEAKER: I'll second.

6 CHAIR ARAGON: Second? Any discussion?

7 Discussion?

8 Okay. We're now in the -- oh, all those in  
9 favor, signify by saying aye.

10 (A chorus of ayes.)

11 CHAIR ARAGON: Okay. We're now in executive  
12 session. So --

13 (Conclusion of audio recording file labeled  
14 6.22.18 2nd Public Session at 00:09:56.)

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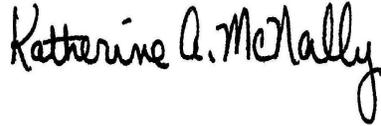
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C E R T I F I C A T E

I, Katherine McNally, Certified Transcriptionist, do hereby certify that the foregoing pages 1 to 38 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 4th day of March 2019.



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Katherine McNally  
Certified Electronic Transcriber  
CET\*\*D-323

**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.*

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**AUDIO RECORDING OF THE PROCEEDINGS OF THE  
ELEVENTH (2017-2018) MONTHLY MEETING BEFORE THE  
COLORADO CIVIL RIGHTS COMMISSION WHICH TOOK  
PLACE ON JUNE 22, 2018**

**EXHIBIT B TO PLAINTIFFS 303 CREATIVE LLC AND LORIE  
SMITH'S RESPONSE TO SHOW CAUSE ORDER**

**(filed conventionally)**

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

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

*Plaintiffs,*

vs.

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

*Defendants.*

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**PUBLIC SESSION MINUTES FROM THE ELEVENTH  
(2017-2018) MONTHLY MEETING OF THE COLORADO CIVIL  
RIGHTS COMMISSION WHICH TOOK PLACE ON  
JUNE 22, 2018**

**EXHIBIT C TO PLAINTIFFS 303 CREATIVE LLC AND LORIE  
SMITH'S RESPONSE TO SHOW CAUSE ORDER**

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## **PUBLIC SESSION MINUTES**

### **ELEVENTH (2017-2018) MONTHLY MEETING of the COLORADO CIVIL RIGHTS COMMISSION**

**Friday, June 22, 2018  
Civic Center Plaza  
Conference Room 110-D  
1560 Broadway  
Denver, CO 80202**

**Convened: 10:00am**

**Public Session**

The eleventh 2017-2018 Monthly Public Session of the Colorado Civil Rights Commission was held Friday, June 22, 2018, at the Civic Center Plaza Conference Room 110-D, 1560 Broadway Denver CO 80202 at 10:00am. Commissioner Anthony Aragon, Chair presiding.

Commissioners present were: Anthony Aragon, Chair, Jessie Pocock, Vice Chair, Carol Fabrizio, Rita Lewis, and Charles Garcia. Via telephone Dr. Miguel Elias.

Present from the Civil Rights Division:

Aubrey Elenis, Director  
Adriana Carmona, Commission Liaison  
Traci Green, Manager  
Wes Fry, Investigator  
Jennifer Ambacher, Investigator  
Jaclyn Kjellsen, Investigator  
Luke Pears-Dickson, Investigator  
Rebecca Laurie, Director of Communications

Present from the Colorado Office of the Attorney General:

Counsel for the Commission, First Assistant Attorney General, Billy Seiber  
Counsel for the Division, Assistant Attorney General, Kate Aidala

Members of the Public present:

Jim Tatten.

### **CALL TO ORDER**

Commissioner Aragon called the meeting to order and asked the Commissioners present to read their names into the record for the purpose of establishing a quorum. Also present were attorneys from the Colorado Office of the Attorney General, staff from the Colorado Civil Rights Division and members of the public.

## **APPROVAL OF PUBLIC SESSION MINUTES**

### **May 24, 2018 Minutes**

Commissioner Elias moved to approve the minutes of the Public Session, Commissioner Pocock seconded, Commissioner Fabrizio abstained, and the motion passed.

### **DIRECTOR'S REPORT**

Director Elenis discussed and highlighted items from the Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission ruling by the Supreme Court of the United States. Commissioners asked questions regarding the ruling and voiced their opinion.

### **ATTORNEY GENERAL'S REPORT**

#### **-Denise Fulkerson v. Wonderland at Centerra, LLC and Michael Davidson –**

Discussion about election to remove case.

Commissioner Garcia motioned to accept the case be moved to a state court, Commissioner Lewis seconded, and the motion passed.

#### **-Jayme Seybold and Candy Harman v. Regulator Industries, LLC et al – Closure Order**

Commissioner Lewis motioned to accept the closure order, Commissioner Pocock seconded, and the motion passed.

### **AUDIENCE PARTICIPATION**

Jim Tatten shared information regarding traumatic brain injury in Colorado.

### **Other Business**

Director Elenis provided an update regarding the Division's Outreach and Education for the past month. Commissioners Lewis inquired about the Division's participation in the Juneteenth celebration next year.

Process and Decision making regarding Rule 10.6 (b)(2):

Commissioner Pocock made the following motion, Commissioner Lewis seconded, and the motion passed: I move that the Commission enter into Executive Session at this time for the purpose of receiving legal advice, regarding Rule 10.6 (b)(2) and pursuant to Section 24-6-402(3)(a)(II), C.R.S.

At 10:49am the Commission returned to Public Session.

Chair Aragon announced that the Commission had been in discussion regarding rule 10.6(b)(2) and decided to create a working group to clarify such rule. Commissioner Fabrizio motioned to create a working group to clarify rule 10.6(b)(2), Commissioner Garcia seconded, and the motion passed. Commissioner Lewis, Garcia, Elias, and Aragon volunteered to be part of the working group. The group will meet before the July 27, 2018 scheduled Commission meeting in order to present their recommendations.

**EXECUTIVE SESSION**

Commissioner Pocock made the following motion, Commissioner Fabrizio seconded, and the motion passed:

I move that the Commission enter into Executive Session at this time in order to consider the following matters: To address the following cases on the June 22, 2018 consent agenda, hearing worthy review cases, and settlements: CP2018272543, CH2018738266, FE2017705809, FE2018502704, FE2018467368, FE2018334251, FH2018583389, FH2018888481, FE2017887555, FE2017298703, and for the purpose of receiving legal advice, pursuant to Section 24-6-402(3)(a)(II), C.R.S.

Commission returned to Public Session at 11:23am.

**Next Meeting July 27, 2018 in Denver Colorado**

**ADJOURNMENT**  
**Commission Public Meeting adjourned**