

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

DOCKETING STATEMENT

Appeal Number	19-1413
Case Name	303 Creative LLC, et al. v. Elenis, et al.
Party or Parties Filing Notice of Appeal Or Petition	Plaintiffs 303 Creative LLC and Lorie Smith
Appellee(s) or Respondent(s)	Defendants Aubrey Elenis, Charles Garcia, Kendra Anderson, Sergio Cordova, Miguel “Michael” Rene Elias, Ajay Menon, Richard Lewis, Jessica Pocock, and Phil Weiser
List all prior or related appeals in this court with appropriate citation(s).	303 Creative LLC v. Elenis, 746 F. App’x 709 (10th Cir. 2018)

I. JURISDICTION OVER APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date final judgment or order to be reviewed was **entered** on the district court docket: 9-26-19
2. Date notice of appeal was **filed**: 10-25-19
3. State the time limit for filing the notice of appeal (cite the specific provision of Fed. R. App. P. 4 or other authority): within 30 days after entry of the judgment appealed from, per Fed. R. App. P. 4(a)(1)(A)

- a. Was the United States or an officer or an agency of the United States a party below? No
- b. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing the notice of appeal: No

4. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):
N/A
- b. Has an order been entered by the district court disposing of any such motion, and, if so, when?
N/A

5. Is the order or judgment final (i.e. does it dispose of **all** claims by and against **all** parties)? *See* 28 U.S.C. § 1291. Yes

(If your answer to Question 5 is no, please answer the following questions in this section.)

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?
N/A
- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? N/A
- c. If none of the above applies, what is the **specific** legal authority for determining that the judgment or order is appealable? N/A

6. Cross Appeals.

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals).
N/A

- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n.18 (10th Cir. 2010) (discussing protective or conditional cross appeals). N/A

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the court of appeals.)

1. Date of the order to be reviewed: N/A
2. Date petition for review was filed: N/A
3. Specify the statute or other authority granting the Tenth Circuit Court of Appeals jurisdiction to review the order: N/A
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): N/A

C. APPEAL OF TAX COURT DECISION

1. Date of entry of decision appealed: N/A
2. Date notice of appeal was filed: N/A
(If notice was filed by mail, attach proof of postmark.)
3. State the time limit for filing notice of appeal (cite specific statutory section or other authority): N/A
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See Fed. R. App. P. 13(a)* N/A

II. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18 U.S.C. § 3742(a) or (b) of the sentence imposed? N/A
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? N/A
- C. Describe the sentence imposed. N/A

- D. Was the sentence imposed after a plea of guilty? N/A
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? N/A
- F. Is the defendant on probation or at liberty pending appeal? N/A
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? N/A

NOTE: In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

Appellants 303 Creative LLC and Lorie Smith (“Lorie”) filed this civil rights lawsuit to stop Appellees (“Colorado”) from enforcing Colorado Revised Statute § 24-34-601(2)(a) (“CADA”) in a manner that (1) requires Lorie to design, create, or publish custom wedding websites promoting and celebrating same-sex weddings if she designs, creates or publishes custom websites promoting and celebrating weddings between one man and one woman (“Accommodation Clause” challenges), and (2) bans Lorie from publishing speech explaining her religious reasons for declining to design, create, and publish custom wedding websites that celebrate any form of marriage not between one man and one woman, including a specific website that Lorie included in the Verified Complaint and wants to publish but has not done so for fear of punishment (“Communication Clause” challenges). Lorie also brought a facial challenge to one provision of the Communication Clause that purports to ban speech that may indicate a person is “unwelcome, objectionable, unacceptable, or undesirable” based on a protected status. Lorie moved the district court for a preliminary injunction, and Colorado filed a motion to dismiss.

The district court held a hearing on both motions on January 11, 2017. At that hearing, the district court ordered Lorie to file for summary judgment and stated that it would rule on the motions for preliminary injunction, dismissal, and summary judgment simultaneously. Lorie did so.

On September 1, 2017 (ECF No. 52), the district court denied Lorie’s motion for preliminary injunction and summary judgment in part, granted Colorado’s motion to dismiss Lorie’s Accommodation Clause challenges, and stayed Lorie’s challenges to the Communication Clause.

On May 17, 2019 (ECF No. 72), the district court entered an order denying Lorie’s motion for summary judgment on her Communication Clause challenges and ordered her to show cause why a final judgment should not be entered. Lorie responded and on September 26, 2019 (ECF No. 79), the district court entered another order again denying Lorie’s motion for summary judgment. The court entered Final Judgment (ECF No. 80) in Colorado’s favor.

Lorie now appeals that Final Judgment, ECF No. 80 (September 26, 2019), and the three Orders that underlie that Judgment: ECF No. 52 (September 1, 2017), ECF No. 72 (May 17, 2019), and ECF No. 79 (September 26, 2019).

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL. You must attempt to identify the issues even if you were not counsel below. See 10th Cir. R. 3.4(B).

1. Whether Lorie has standing to challenge CADA’s Accommodation Clause.
2. Whether CADA’s Accommodation Clause or Communication Clause violate Lorie’s First Amendment rights to free speech and free exercise of her religious beliefs.
3. Whether a statute that bans speech that may indicate a person is “unwelcome, objectionable, unacceptable, or undesirable” based on a protected status facially violates the First and Fourteenth Amendments because it is overbroad, vague, and grants the government unbridled discretion.

V. ATTORNEY FILING DOCKETING STATEMENT:

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s/ Katherine L. Anderson

November 8, 2019

Signature

Date

NOTE: The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov.

The Docketing Statement must be accompanied by proof of service. The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, Katherine L. Anderson, hereby certify that on November 8, 2019, a copy of the foregoing **Docketing Statement** was served via the CM/ECF system on the following counsel of record, pursuant to Fed. R. App. P. 25(c)(2) and 10th Cir. R. 25.4:

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