

No. 19-1413

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

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303 CREATIVE LLC and LORIE SMITH,

*Plaintiffs-Appellants,*

v.

AUBREY ELENIS, *et al.*,

*Defendants-Appellees.*

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On Appeal from a Judgment of the United States District Court  
for the District of Colorado (before the Hon. Marcia S. Krieger)  
Case No. 1:16-cv-02372-MSK

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**BRIEF OF AMICI CURIAE MASSACHUSETTS, CALIFORNIA,  
CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA,  
HAWAI'I, ILLINOIS, MAINE, MARYLAND, MINNESOTA, NEVADA,  
NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA,  
OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT,  
VIRGINIA, AND WASHINGTON IN SUPPORT OF  
DEFENDANTS-APPELLEES AND AFFIRMANCE**

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## INTERESTS OF AMICI

The *Amici* States—Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington—file this brief pursuant to Fed. R. App. P. 29(a)(2) because we share sovereign and compelling interests in protecting our residents and visitors from discrimination. Like Colorado, we support civil rights protections for LGBTQ people, including prohibitions on discrimination in places of public accommodation: the diners, stores, and other businesses that are part of daily life in a free society. Such public accommodations laws respond to the pervasive discrimination LGBTQ people have long suffered and continue to suffer today, ensuring equal enjoyment of goods and services and combatting the severe personal, economic, and social harms caused by discrimination.

The *Amici* States also share interests in upholding the rights protected by the First Amendment. We respect and do not seek to abridge the right to hold and express views regarding the nature of marriage, including views founded in religious faith. But neither the Free Speech Clause nor the Free Exercise Clause shields businesses from content-neutral, generally applicable civil rights laws like

the one 303 Creative LLC (together with its proprietor, Ms. Lorie Smith, “Appellants”) proposes to violate.

Exempting businesses from public accommodations laws on the basis of the First Amendment would undermine the vital benefits these laws provide to residents and visitors. Many Americans would face exclusion from a host of everyday businesses or, at the very least, the ever-present threat that any business owner could refuse to serve them when they walk in the door—simply because of their sexual orientation, or their race, religion, or gender.

The *Amici* States therefore join Colorado in asking this Court to affirm the decision below.

## ARGUMENT

### **I. States across the country have enacted laws to combat discrimination against LGBTQ people in public accommodations.**

The States have sovereign and compelling interests in protecting their residents, and particularly members of historically disadvantaged groups, from the economic, personal, and social harms caused by invidious discrimination. *See Roberts v. United States Jaycees*, 468 U.S. 609, 624 (1984). Since the mid-nineteenth century, statutes focused on places of public accommodation have been a centerpiece of state efforts to combat discrimination. *See Romer v. Evans*, 517 U.S. 620, 627-28 (1996). These statutes have long been held constitutional as

applied to a range of public accommodations, including commercial businesses.

*See, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 260 (1964).

Because “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth,” many States and other jurisdictions throughout the country protect LGBTQ people from discrimination in places of public accommodation. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018); *see* Addendum Tables A and B, *infra* (collecting laws). These statutes recognize and work to redress the discrimination that continues to afflict LGBTQ Americans.

**A. LGBTQ Americans are a historically disadvantaged group.**

LGBTQ Americans have faced a long history of invidious discrimination—including legally sanctioned discrimination. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2596-97, 2604, 2606 (2015); *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 967-68 (Mass. 2003). LGBTQ people have been fired from their jobs, evicted from their homes, targeted by police, and denied service by businesses across the country simply because of their “distinct identity.” *Obergefell*, 135 S. Ct. at 2596.

Discrimination against LGBTQ people is a severe and continuing problem. LGBTQ Americans are still much more likely to be bullied, harassed, and attacked

in hate crimes than their non-LGBTQ peers.<sup>1</sup> LGBTQ people also report overt discrimination, particularly in the form of denial of service by businesses, at rates comparable to, or greater than, those for other historically disadvantaged groups.<sup>2</sup>

This continuing discrimination harms the health and well-being of LGBTQ people, their families, and their communities. A large and growing body of evidence shows that discriminatory social conditions have severe negative health impacts on LGBTQ people, including increased rates of mental health disorders and suicide attempts, especially for LGBTQ youth.<sup>3</sup> Notably, these outcomes are

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<sup>1</sup> See Tasseli McKay et al., *Understanding (and Acting On) 20 Years of Research on Violence and LGBTQ + Communities*, 20 *Trauma, Violence, & Abuse* 665, 669-70 (2019); Tim Fitzsimons, *Nearly 1 in 5 Hate Crimes Motivated by Anti-LGBTQ Bias, FBI Finds*, NBC News (Nov. 12, 2019), <https://www.nbcnews.com/feature/nbc-out/nearly-1-5-hate-crimes-motivated-anti-lgbtq-bias-fbi-n1080891>.

<sup>2</sup> See Christy Mallory & Brad Sears, *Refusing to Serve LGBT People: An Empirical Assessment of Complaints Filed under State Public Accommodations Non-Discrimination Laws*, 8 *J. Res. Gender Stud.* 106, 113-16 (2018); Christy Mallory & Brad Sears, *LGBT Discrimination, Subnational Public Policy, and Law in the United States*, in *Oxford Research Encyclopedia of Politics* 1, 2-8 (2020), <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1200?rskey=tI5wXR&result=7>.

<sup>3</sup> Center for the Study of Inequality, Cornell University, *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?*, What We Know Project (2019), <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-scholarly-research-say-about-the-effects-of-discrimination-on-the-health-of-lgbt-people/> (detailing findings from 300 peer-reviewed studies); see, e.g., Julia Raifman et al., *Association of State Laws Permitting Denial of Services to Same-Sex Couples with Mental Distress in Sexual* (footnote continued)

less severe and pervasive in communities that provide LGBTQ people with legal protection against discrimination.<sup>4</sup>

**B. States prohibit discrimination against LGBTQ people in public accommodations to prevent severe economic, personal, and social harms.**

Discrimination by places of public accommodation causes unique and severe economic, personal, and social harms. It denies equal access to important goods and services and, by segregating the market, has a well-established “substantial and harmful effect” on the economy. *Heart of Atlanta*, 379 U.S. at 258 (acknowledging broad impacts of seemingly local discrimination); *see also Roberts*, 468 U.S. at 625-26. Such discrimination also stigmatizes its victims, causing them intense dignitary injuries, and encourages social fragmentation and conflict. *See Roberts*, 468 U.S. at 625-26; *Daniel v. Paul*, 395 U.S. 298, 306

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*Minority Adults: A Difference-in-Difference-in-Differences Analysis*, 75 JAMA Psychiatry 671, 673-75 (2018); Julia Raifman et al., *Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 JAMA Pediatrics 350, 353-55 (2017); Mark L. Hatzenbuehler, *Structural Stigma: Research Evidence and Implications for Psychological Science*, 71 Am. Psychologist 742, 745-46 (2016); Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 Pediatrics 896, 899-901 (2011); Mark L. Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 Am. J. Pub. Health 2275, 2277-78 (2009).

<sup>4</sup> *See* Raifman et al. (2018), *supra* n.3; Raifman et al. (2017), *supra* n.3; Hatzenbuehler et al., *supra* n.3.

(1969); *Heart of Atlanta*, 379 U.S. at 250; *see also Masterpiece*, 138 S. Ct. at 1727 (allowing wedding service providers to refuse to provide goods and services to same-sex couples would create “a community-wide stigma inconsistent with the history and dynamics of civil rights laws”).

As the Supreme Court has long recognized, “no action is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a . . . citizen who seeks only equal treatment”—than a denial of equal service by a business “ostensibly open to the general public.” *Daniel*, 395 U.S. at 306-08 (quotations omitted); *see also Heart of Atlanta*, 379 U.S. at 292 (Goldberg, J., concurring) (“Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color.” (quoting S. Rep. No. 88-872, at 16 (1964))).

Accordingly, the Court has instructed the lower courts to resolve public accommodations cases “without subjecting gay persons to indignities when they seek goods and services in an open market.” *Masterpiece*, 138 S. Ct. at 1732.

The American legal and political system has long recognized the importance of public accommodations being open to all. Modern statutes codify and expand upon a common law doctrine, dating back at least to the sixteenth century, that generally required public accommodations to serve all customers. *See Heart of*

*Atlanta*, 379 U.S. at 261 (recognizing that such statutes “codify the common-law innkeeper rule”); *see also, e.g., Lombard v. Louisiana*, 373 U.S. 267, 275-77 & n.6 (1963) (Douglas, J., concurring) (collecting references dating back to 1558). States began enacting public accommodations statutes in 1865 to prohibit discrimination against African Americans. *See Act Forbidding Unjust Discrimination on Account of Color or Race*, 1865 Mass. Acts, ch. 277 (May 16, 1865). Although there is some variation across the States, “public accommodations” laws generally guarantee that when customers enter a business that has opened its doors to the public, they will not be denied service simply because of the color of their skin, their gender, their disability, or—under many state and local laws—their sexual orientation.

A majority of Americans now live in communities that “carr[y] forward [this] tradition,” *Masterpiece*, 138 S. Ct. at 1725, by prohibiting places of public accommodation from discriminating on the basis of sexual orientation. Twenty-one States and the District of Columbia protect their residents against discrimination in public accommodations on the basis of sexual orientation. *See Addendum Table A, infra*. These state-level protections are supplemented by local laws and ordinances enacted by hundreds of cities, towns, and counties across the country. *See Addendum Table B, infra* (collecting citations to over 100 local laws and ordinances in twenty-four States that do not have statewide laws protecting

against discrimination in public accommodations based on sexual orientation). All told, according to U.S. Census Bureau data, the number of Americans living in jurisdictions that have such statewide or local protections is over 176 million (or 53.8% of the national population). *See* Addendum Tables A & B, *infra*.

These laws reflect recognition of the strong evidence of discrimination against LGBTQ people. *See, e.g.*, N.Y. Sexual Orientation Non-Discrimination Act of 2002, ch. 2, § 1 (prejudice on account of sexual orientation “has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering,” and “fostered a general climate of hostility and distrust, leading in some instances to physical violence”). And these laws ban the very “acts of . . . discrimination” that “cause [the] unique evils that government has a compelling interest to prevent,” thereby “‘respond[ing] precisely to the substantive problem which legitimately concerns’ the State[.]” *Roberts*, 468 U.S. at 628-29 (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984)) (describing gender discrimination).

In conjunction with bans on acts of discrimination, state public accommodations laws commonly also prohibit posting notices and advertisements that indicate that services will be denied on the basis of a protected characteristic. At least twenty-two states and the District of Columbia expressly prohibit such discriminatory advertising by public accommodations. *See* Addendum Table C,

*infra*. Twenty of those laws include terms similar to Colorado’s provision barring advertising “that indicates . . . that an individual’s patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of” a protected characteristic. Colo. Rev. Stat. § 24-34-601(2)(a).<sup>5</sup> Prohibitions against discriminatory advertising are also commonly included in anti-discrimination measures directed at housing and employment. *See, e.g.*, 42 U.S.C. § 3604 (barring housing advertising that “indicates any preference, limitation, or discrimination based on” a protected characteristic); 42 U.S.C. § 2000e-3(b) (similar prohibition for employment advertisements).

**II. The First Amendment does not exempt businesses open to the public from state anti-discrimination laws.**

There is no real dispute that Appellants’ business plan to refuse services to LGBTQ customers would violate Colorado’s anti-discrimination law: Appellants would “expand[] the scope of 303 Creative’s services to include the design, creation, and publication of wedding websites” while categorically refusing to “create websites for same-sex marriages.” App. 2-324 (¶ 77); *id.* 2-326 (¶ 91). An objection to two people of the same sex marrying cannot reasonably be divorced

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<sup>5</sup> Of the list of twenty-two States’ laws included in Table C, *infra*, only three States’ public accommodations laws do not use similar “unwelcome” terms. *See* Mass. Gen. Laws ch. 272, § 92A; Mont. Code Ann. § 49-2-304(1)(b); Or. Rev. Stat. § 659A.409.

from the status of being LGBTQ. *See Christian Legal Soc. v. U.C. Hastings*, 561 U.S. 661, 689 (2010); *Lawrence v. Texas*, 539 U.S. 558, 583 (2003). Nor is it a defense to provide *other* graphic and web design services to LGBTQ people, *cf.* Appellants' Br. 32. Public accommodations laws exist to prevent not only outright exclusion, but also separate and unequal treatment. Otherwise, our country would be blighted by segregated businesses that serve in perniciously unequal ways, reserving some services only for customers who are members of preferred groups. *See Katzenbach v. McClung*, 379 U.S. 294, 296-97 (1964) (discussing restaurant that served African-American customers through a take-out window but refused to serve them in the dining area).

The First Amendment does not require permitting such unequal treatment by businesses that offer their services to the public. No matter the sincerity of a business owner's religious beliefs or other deeply held views, the Free Speech Clause does not allow a business to pick and choose its customers in violation of laws that prohibit discriminatory conduct. Nor does the Free Exercise Clause excuse a business from complying with neutral and generally applicable civil rights laws based on its owner's religious beliefs.

**A. State public accommodations laws do not violate the Free Speech Clause when applied to people with objections to serving LGBTQ customers.**

The application of Colorado’s content- and viewpoint-neutral public accommodations law to prevent a commercial business from denying the full and equal enjoyment of their services to LGBTQ customers does not violate the Free Speech Clause of the First Amendment.

**1. Prohibiting businesses from discriminating against customers does not compel speech.**

Although the First Amendment prohibits States from “telling people what they must say” or requiring them to “speak the government’s message,” *Rumsfeld v. Forum for Acad. & Inst’l Rights, Inc.*, 547 U.S. 47, 61, 63 (2006) (“*FAIR*”), public accommodations statutes like Colorado’s do neither.

Indeed, Colorado’s public accommodations law does not regulate speech at all. In *FAIR*, the Supreme Court rejected the argument that a prohibition on law schools discriminating against military recruiters when providing campus access to outside employers regulated the law schools’ speech. *Id.* at 60. The Court concluded that the prohibition regulated “conduct, not speech” given that “[i]t affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*.” *Id.*; *see also, e.g., Meyers v. E. Okl. Cty. Tech. Ctr.*, 776 F.3d 1201, 1207-08 (10th Cir. 2015) (following *FAIR* in holding that

employee’s act of disobeying employer’s directive was not protected speech).

That reasoning applies equally to this case. State anti-discrimination laws like Colorado’s affect what public accommodations “must *do*”—provide equal access to LGBTQ people—“not what they may or may not *say*.” *FAIR*, 547 U.S. at 60.

In other words, Colorado’s law does not require speaking or endorsing a government motto, pledge, or message. *See id.* at 62. Rather, the law simply prohibits refusing to “afford equal access” to the full range of a business’s services to LGBTQ couples. *Id.* at 60.

Moreover, even assuming that creating and arranging for the hosting of wedding websites is a form of speech, Colorado law does not “compel” making websites or otherwise regulate the process of website development. Appellants are under no legal obligation to offer the creation of wedding websites as a service of the business, nor to produce websites in any particular way. Colorado law simply requires that businesses offering their services to the public make wedding websites for LGBTQ customers if, and to the extent that, they make wedding websites for other customers—just as under the Solomon Amendment at issue in *FAIR*, recruiting assistance involving “elements of speech” like posting notices of employer visits was “only ‘compelled’ if, and to the extent, the school” chose to assist “other recruiters.” 547 U.S. at 61-62. This type of non-discrimination requirement is a “far cry” from laws “dictat[ing] the content of . . . speech.” *Id.*

(distinguishing cases like *Wooley v. Maynard*, 430 U.S. 705 (1977)). As the Supreme Court noted in *FAIR* with an example apposite here, “prohibit[ing] employers from discriminating in hiring on the basis of race” does not compel speech, 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.* (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)).<sup>6</sup>

**2. The First Amendment does not protect advertisements giving notice that public accommodations will refuse service on the basis of a protected characteristic.**

Public accommodations laws’ restrictions on discriminatory advertising do not violate the free speech rights of business owners who wish to post notices of their intent to deny services on the basis of a protected characteristic. As the District Court recognized with respect to Colorado’s “Communications Clause,” such advertisements may be prohibited for at least two reasons. App. 3-576-579.

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<sup>6</sup> Public accommodations laws also leave businesses like 303 Creative free to disclaim any message they worry may be communicated by providing non-discriminatory service. So long as businesses treat all customers equally, they may, for example, create and disseminate a disclaimer stating that the provision of a service does not constitute an endorsement or approval of any customer or conduct. *See FAIR*, 547 U.S. at 64-65; *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 86-88 (1980).

First, to the extent the notices constitute commercial speech, they can be banned outright simply because they advertise unlawful, discriminatory activities. *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 388-89 (1973) (employment discrimination ordinance validly prohibited newspaper from publishing sex-segregated employment advertisements).

Second, commercial speech doctrine aside, a state may prohibit such signs as part and parcel of, and incidental to, the public accommodations law's restriction on discriminatory conduct. Such laws in essence prohibit discriminatory refusals of service that are communicated preemptively in a notice, rather than only after service is requested by the customer. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011) ("That is why a ban on race-based hiring may require employers to remove 'White Applicants Only' signs." (quoting *FAIR*, 547 U.S. at 62 (internal quotation marks omitted))); *cf. Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) ("If an employer should announce his policy of discrimination by a sign reading 'Whites Only' on the hiring-office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs."). Indeed, even the Eighth Circuit decision on which Appellants chiefly rely, *see* Br. 44, recognizes that, insofar as a state can constitutionally prohibit a discriminatory refusal to provide services, the state can also "forbid the [business owners] from advertising their intent to engage in discriminatory conduct."

*Telescope Media Grp. v. Lucero*, 936 F.3d 740, 757 n.5 (8th Cir. 2019) (citing *FAIR*, 547 U.S. at 62).

**3. Public accommodations laws like Colorado’s satisfy any level of constitutional scrutiny.**

Even assuming Colorado’s statute incidentally affects some protected speech, “when ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.” *Bushco v. Shurtleff*, 729 F.3d 1294, 1304 (10th Cir. 2013) (quoting *United States v. O’Brien*, 391 U.S. 367, 376 (1968)). A content-neutral state law directed at conduct—like one requiring businesses to serve all customers equally regardless of race, gender, religion, or sexual orientation—that incidentally burdens freedom of speech is constitutional if (1) “it is within the constitutional power of the Government”; (2) “it furthers an important or substantial governmental interest”; (3) “the governmental interest is unrelated to the suppression of free expression”; and (4) “the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *Id.* (quoting *O’Brien*, 391 U.S. at 376-77). Such a law need only promote a substantial interest “that would be achieved less effectively absent the

regulation.” *FAIR*, 547 U.S. at 67-68 (quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985)).

Colorado’s law easily satisfies this *O’Brien* standard, which is the appropriate standard of constitutional scrutiny here if the law reaches protected speech at all. The law would, however, survive even strict scrutiny. As the Supreme Court has found time and again, “public accommodations laws ‘plainly serv[e] compelling state interests of the highest order.’” *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (quoting *Roberts*, 468 U.S. at 624).

**a. States have a compelling interest in eliminating sexual orientation discrimination in public accommodations.**

States have a “compelling interest of the highest order” in eradicating invidious discrimination against historically marginalized groups, *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624)—including LGBTQ persons. *See Masterpiece*, 138 S. Ct. at 1727 (“The exercise of their freedom on terms equal to others must be given great weight and respect by the courts.”). Courts across the country have joined the court below in recognizing as much. *See* App. 3-586-587 & n.11-12; *see also, e.g., Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919, 931, 935 (Haw. Ct. App. 2018); *Gifford v. McCarthy*, 137 A.D.3d 30, 40 (N.Y. App. Div. 2016); *N. Coast Women’s Care Med. Grp., Inc. v. San Diego Cty. Super. Ct.*,

189 P.3d 959, 968 (Cal. 2008); *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 31-37 (D.C. 1987).

As discussed above, LGBTQ Americans continue to suffer severe and pervasive discrimination in employment, housing, and places of public accommodation, among other facets of their everyday lives. *See* Part I, *supra*, at 3-4 & nn.1-2. And research bears out the terrible injuries this discrimination inflicts on LGBTQ people, their families, and their communities: not only lost employment or housing, but also severe harms to their health and wellbeing. *See* Part I, *supra*, at 4-5 & nn.3-4. Appellants’ assertion that refusals of service on the basis of sexual orientation are not an “actual problem,” Br. 54, thus belies the lamentable reality that is exemplified by Appellants’ own expressed intention to engage in discrimination. And the Supreme Court has long recognized the significant harm caused by such discrimination, as well as the States’ concomitant compelling interests in preventing these harms. *See, e.g., Masterpiece*, 138 S. Ct. at 1728-29; *Duarte*, 481 U.S. at 549.

**b. Public accommodations laws are narrowly tailored to serve the States’ compelling interest in combatting discrimination.**

Just as employment discrimination laws are “precisely tailored” to advance a state interest in providing “equal opportunity to participate in the workforce,” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 733 (2014), public

accommodations laws like Colorado’s are precisely tailored to advance a state interest in ensuring equal access to the businesses that sustain our everyday life. *See Roberts*, 468 U.S. at 628. Colorado’s law is therefore constitutional, notwithstanding Appellants’ attempt to rely on two out-of-circuit cases that run contrary to a century of precedent.

Public accommodations laws directly combat the economic, personal, and social harms caused by discrimination. By guaranteeing full and equal access to the commercial marketplace, these laws ensure that LGBTQ residents are not denied—or forced to overcome artificial barriers to acquire—“tangible goods and services.” *Id.* at 625-26; *see also Romer*, 517 U.S. at 631 (“[T]hese are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life.”). Appellants’ assertion that LGBTQ people can simply find other wedding website designers to serve them, Br. 54, ignores this central purpose of anti-discrimination laws: to ensure that people will *not* be turned away from a business on account of their race, gender, religion, or sexual orientation. Appellants’ “just go elsewhere” argument would eviscerate this purpose and justify segregated businesses throughout Colorado and the Tenth Circuit.

Public accommodations laws also provide protection from the “stigmatizing injury” and “deprivation of personal dignity” that necessarily “accompanies denials

of equal access to public establishments.” *Roberts*, 468 U.S. at 625 (quoting *Heart of Atlanta*, 379 U.S. at 250); see *Masterpiece*, 138 S. Ct. at 1727, 1729, 1732. By ensuring that such public establishments are indeed open to the entire public, these laws foster not only the economic, but also the social and political integration of residents. *Roberts*, 468 U.S. at 625-26. In so doing, these laws deliver many benefits, including counteracting the negative health effects caused by stigmatization and social exclusion, see *supra* n.3. In short, Colorado’s law and its analogues across the country serve to vindicate the “equal dignity” of LGBTQ people. *Obergefell*, 135 S. Ct. at 2608.

Given these “compelling state interests of the highest order” directly served by public accommodations laws, they are constitutional, including as applied to business owners who would prefer to discriminate based on their personal views. *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624). As the District Court recognized, any exception for such businesses would not constitute better tailoring; rather, it would frustrate the laws’ very purpose. App. 3-587 n.12. Laws like Colorado’s effectively ensure equal access and combat discrimination’s harms only when they comprehensively cover places open to the public; states cannot both combat discrimination and, at the same time, license businesses to discriminate. See *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203, 1235 (Wash. 2019) (“carv[ing] out a patchwork of exceptions for ostensibly justified discrimination” would

“fatally undermine[]” this interest), *petition for cert. pending*, No. 19-333 (filed Sept. 11, 2019).

Accordingly, for well over a century, courts have upheld the constitutionality of public accommodations laws against challenges by businesses seeking to discriminate based on personal convictions. *See, e.g., McClung*, 379 U.S. at 298 n.1 (rejecting argument that restaurant could discriminate against African Americans based on “personal convictions and...choice of associates,” as argued in the Brief for Appellees, No. 543, 1964 WL 81100, at \*32-33 (U.S. Oct. 2, 1964)). The Supreme Court has long decried discrimination in public establishments as a “unique evil” entitled to “no constitutional protection,” *Roberts*, 468 U.S. at 628-29, and has described state laws prohibiting such discrimination as “unquestionab[ly]” constitutional, *Heart of Atlanta*, 379 U.S. at 260-61.

The two recent cases on which Appellants rely—*Telescope*, 936 F.3d at 740, and *Brush & Nib Studio, LC v. City of Phoenix*, 448 P.3d 890 (Ariz. 2019), *see* Br. 34—cannot overcome this weight of authority. These cases recast *Hurley v. Irish American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), in an effort to claim that commercial businesses’ refusal to serve customers from a historically disadvantaged group should receive the same First Amendment protection afforded to private, non-commercial organizations engaged in

expressive associational activities at the core of the First Amendment’s protections. This effort fails for at least two reasons.

First, *Telescope* and *Brush & Nib* ignore the fundamental distinction between a private speaker sharing its own message and a public accommodation that offers services to the general public. *See Telescope*, 936 F.3d at 775 (Kelly, J., concurring in part and dissenting in part) (“Steven Spielberg is not a public accommodation; he does not make his filmmaking services generally ‘available to the public.’”); *Brush & Nib*, 448 P.3d at 933-34 (Bales, J., dissenting).

While *Hurley* noted that “business corporations generally” enjoy a speaker’s “autonomy to choose the content of his *own* message,” and that a private parade organizer may “customar[ily] determin[e]” which expressive units it wishes to present, 515 U.S. at 573-75 (emphasis added), *Hurley* nowhere suggested that a business that offers as a service to the general public the creation of a product could refuse to provide the service to customers on the basis of their sexual orientation. *See FAIR*, 547 U.S. at 63 (“The expressive nature of a parade was central to our holding in *Hurley*.”). Rather, just as a commercial business has no protected expressive interest in its relationship with its customers, *see Roberts*, 468 U.S. at 638 (O’Connor, J., concurring); *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1073 (7th Cir. 2013), a business offering services to the general public does not have the right to express a message by only offering particular services to

clients of particular sexual orientations. *See Elane Photography, LLC v. Willock*, 309 P.3d 53, 68 (N.M. 2013) (“While photography may be expressive, the operation of a photography business is not.”).

Second and relatedly, the compelling state interests in prohibiting discrimination in the marketplace are far more directly implicated by a business’s refusal to serve same-sex couples than by a non-commercial, distinctly private group’s parade. *Cf. Hurley*, 515 U.S. at 578. Whereas *Hurley* involved a “peculiar” attempt to use a public accommodations law to regulate the expressive activities of a private association, *id.* at 559, 572-73, there is nothing “peculiar” about a state’s application of its public accommodations law to prevent a business, open to the general public, from discriminating against a certain class of potential customers. Eliminating discrimination in such transactions is the core concern of public accommodations laws. *See supra* at 5-9; *see also Roberts*, 468 U.S. at 637-38 (O’Connor, J., concurring). Because Colorado’s compelling interests are thus directly furthered by application of its public accommodations law in the circumstances here, the law passes even strict scrutiny.

**B. State public accommodations laws do not violate the Free Exercise Clause.**

Prohibiting a business from refusing to provide wedding website services to LGBTQ customers also does not violate the Free Exercise Clause.

The Free Exercise Clause does not excuse businesses from complying with neutral laws of general applicability. *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990); *see also Masterpiece*, 138 S. Ct. at 1727 (While a person’s “religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.”). Appellants do not dispute that Colorado’s law is neutral and generally applicable on its face, because it does not target religion and “prohibit[s] conduct that the State is free to regulate.” *Smith*, 494 U.S. at 878-79.

Appellants nevertheless claim the law will not be neutral “when applied” here, due to Colorado’s alleged “hostility” to religious beliefs and its “subjective” “system of individualized assessments” to determine whether a business has violated the public accommodations law. Br. 46-49 (citing, *inter alia*, *Masterpiece*, 138 S. Ct. at 1732, and *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1297-98 (10th Cir. 2004)). But, as the District Court recognized, App. 3-758-759, in this pre-enforcement challenge, Colorado’s Civil Rights Commission has not decided Appellants’ case, so its past comments and decisions have had no bearing on Appellants. *Cf. Masterpiece*, 138 S. Ct. at 1732 (baker was “entitled to a neutral decisionmaker . . . in all of the circumstances in which *this* case was

presented, considered, and decided” (emphasis added)). Moreover, there is nothing nefarious or otherwise inappropriate about an agency’s duly investigating individual complaints to determine whether services were denied “because of” certain characteristics of the customer, like race, sex, or sexual orientation. Colo. Rev. Stat. § 24-34-601. Nor would a conclusion here that this business’s proposed actions constitute unlawful discrimination reflect improper “subjective” judgment: Appellants admit their intention to refuse to provide a service for same-sex couples that the business would provide for other customers, based solely on the sexual orientation of the couple marrying. *See* Appellants’ Br. 7-8.

Because Colorado’s law is neutral and generally applicable, Appellants’ free exercise claim should be rejected. And, even if strict scrutiny applied, Colorado’s application of the law to this business should be upheld. *See* Part II.A.3, *supra*.

**III. Colorado’s prohibition on discriminatory advertising, like similar prohibitions across the country, is not unconstitutionally overbroad or vague.**

Provisions in twenty state laws like Colorado’s, barring advertising that customers’ patronage at public accommodations is “unwelcome,” are neither overbroad nor vague. *See Fort Des Moines Church of Christ v. Jackson*, 215 F. Supp. 3d 776, 796-97 (S.D. Iowa 2016) (rejecting such challenges to Iowa’s law). Instead, these provisions ensure that anti-discrimination laws are effective by prohibiting public accommodations from “communicating publicly—likely

through advertisements or similar postings—that their goods and services [are] not intended to be available to members of protected classes.” *Id.*

First, the overbreadth doctrine’s “strong medicine” is unwarranted. *Faustin v. City & Cty. of Denver, Colo.*, 423 F.3d 1192, 1199 (10th Cir. 2005) (quotation omitted). A statute must be upheld unless its overbreadth is “substantial” in relation to its legitimate applications, with a “real” chilling effect on protected expression. *Id.* (collecting cases). Here, the law has a plainly legitimate sweep: it targets advertisements that are not protected by the First Amendment because they both (1) communicate an intention to discriminate unlawfully, and (2) carry out the act of unlawful discrimination itself, to the extent that excluded customers avoid the business as intended. *See supra* at 13-15. And Appellants have “presented no evidence and made no showing that [this provision] has ever been applied to prohibit any” protected expression, nor “that [the provision] has ever been so broadly interpreted by the public in a way that it has chilled any such speech.” *Faustin*, 423 F.3d at 1201. Mere “speculation” is not sufficient. *Id.*

Second, such provisions are not unconstitutionally vague.<sup>7</sup> They do not, for example, require factfinders to make “wholly subjective judgments” about whether

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<sup>7</sup> This Court need not reach this question. The District Court correctly rejected Appellants’ vagueness challenge to the term “unwelcome” in the statute’s Communications Clause because the proposed notice was clearly prohibited by  
(footnote continued)

a statement is “annoying.” *United States v. Williams*, 553 U.S. 285, 306 (2008).

Rather, they ask a factfinder to determine whether “the reasonable import of a [business’s] statement[]” is that the business intends that its services not be used by a protected group. *Jackson*, 215 F. Supp. 3d at 799 (quoting *Williams*, 553 U.S. at 306). And “the ordinary reader standard provides constitutionally adequate notice of the prohibited conduct.” *Ragin v. New York Times Co.*, 923 F.2d 995, 999, 1002 (2d Cir. 1991) (rejecting vagueness challenge to Fair Housing Act’s ban on discriminatory advertising). Colorado’s provision, like those in countless state and federal anti-discrimination statutes, similarly provides sufficient guidance to enforcement officials and the public.

**IV. A First Amendment exemption to public accommodations laws of the kind sought by Appellants would dramatically undermine anti-discrimination laws.**

Although the claim here on its face relates to just one web design business, the consequences of ruling in its favor would have far broader consequences for our public accommodations laws, our residents, and our society.

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that clause’s unchallenged prohibition on advertisements “indicat[ing] 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” because of sexual orientation. *See* App. 3-573 (citing *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1151 (2017)). Despite Appellants’ contentions, Br. 59, they cannot prevail on vagueness when their conduct is “clearly proscribed.” *United States v. Miller*, 868 F.3d 1182, 1189 (10th Cir. 2017).

Appellants offer no principled basis for distinguishing a web design business from myriad other businesses that may seek to claim an exemption from public accommodations laws. An architect, sign-maker, hairdresser, make-up artist, chef: each is engaged in a business that its operator may view as involving “expressive” activity. Indeed, there is no reason that Appellants’ sweeping view of *Hurley* would be limited to their category of “expressive” businesses, as opposed to other businesses that offer services with potentially expressive aspects—like a hotel ballroom that posts signs to announce its events. Under Appellants’ view of *Hurley*’s reach, LGBTQ people could be exposed to discrimination in a broad swath of the commercial marketplace, particularly when attempting to exercise their fundamental right to marry or to celebrate other important life events.

Moreover, the free-speech exemption Appellants seek would not be limited to opposition to marriage between same-sex couples or to beliefs rooted in religious convictions. Under their theory, for example, a baker opposed to mixed-race relationships could refuse to bake wedding cakes for inter-racial couples, or a real estate agent opposed to racial integration could refuse to represent non-white couples. It remains a sad fact of American society that such views remain

disturbingly prevalent.<sup>8</sup> Although the First Amendment tolerates all manner of odious speech in the public square, *see, e.g., Snyder v. Phelps*, 562 U.S. 443 (2011), it does not require insulating from liability businesses that violate content-neutral laws by turning away customers because of their race, religion, gender, or sexual orientation.

This Court should heed the Supreme Court’s instruction to ensure that LGBTQ persons are not subjected “to indignities when they seek goods and services in an open market.” *Masterpiece*, 138 S. Ct. at 1732. The States must be permitted to preserve their residents’ social and economic well-being and protect all within their borders from the manifest harms of discrimination.

## CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

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<sup>8</sup> *See, e.g., Reuters/Ipsos/UVA Center for Politics Race Poll* (Sept. 11, 2017), <http://www.centerforpolitics.org/crystalball/wp-content/uploads/2017/09/2017-Reuters-UVA-Ipsos-Race-Poll-9-11-2017.pdf> (showing 16% of U.S. adults—*i.e.*, approximately 35 million people—agree that “[m]arriage should only be allowed between people of the same race,” and 5% of adults—*i.e.*, approximately 12 million people—disagree that “[p]eople of different races should be free to live wherever they choose”).

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## **CERTIFICATES OF COMPLIANCE AND SERVICE**

### **CERTIFICATE OF COMPLIANCE**

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), because it contains 6,253 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman style, 14-point font.

/s/ Eric Gold  
*Counsel of Record*

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I hereby certify to the following:

1. All required privacy redactions have been made per 10th Cir. R. 25.5.
2. If required to file hard copies, those documents will be an exact copy of the ECF submission.
3. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Windows Defender Antivirus, most recently updated on April 29, 2020, and according to the program, it is free of viruses.

/s/ Eric Gold  
*Counsel of Record*

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I hereby certify that on April 29, 2020, I electronically filed the foregoing document with the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. All counsel of record are registered as ECF Filers and will be served by the CM/ECF system.

/s/ Eric Gold  
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**ADDENDUM****Table A: State Laws**

The following States have laws prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The population data is taken from the United States Census Bureau's estimate of State populations as of July 1, 2019.<sup>9</sup>

<i>State</i>	<i>Population</i>	<i>State Law</i>
California	39,512,223	Cal. Civ. Code § 51 (2018).
Colorado	5,758,736	Colo. Rev. Stat. § 24-34-601 (2014).
Connecticut	3,565,287	Conn. Gen. Stat. § 46a-64 (2019).
Delaware	973,764	Del. Code Ann. tit. 6, § 4504 (2013).
District of Columbia	705,749	D.C. Code § 2-1402.31 (2001).
Hawaii	1,415,872	Haw. Rev. Stat. § 489-3 (2006).
Illinois	12,671,821	775 Ill. Comp. Stat. 5/1-102, 5/5-102 (2015).
Iowa	3,155,070	Iowa Code § 216.7 (2007).
Maine	1,344,212	Me. Rev. Stat. tit. 5, § 4592 (2019).
Maryland	6,045,680	Md. Code Ann., State Gov't § 20-304 (West 2018).
Massachusetts	6,892,503	Mass. Gen. Laws. ch. 272, § 98 (2018).
Minnesota	5,639,632	Minn. Stat. § 363A.11 (2019).
Nevada	3,080,156	Nev. Rev. Stat. § 651.070 (2011).
New Hampshire	1,359,711	N.H. Rev. Stat. § 354-A:17 (2009).

<sup>9</sup> See U.S. Census Bureau, *Annual Estimates of Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019* (Dec. 2019), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-total.html>.

New Jersey	8,882,190	N.J. Stat. § 10:5-4 (2007).
New Mexico	2,096,829	N.M. Stat. § 28-1-7 (2008).
New York	19,453,561	N.Y. Exec. Law § 291 (McKinney 2010).
Oregon	4,217,737	Or. Rev. Stat. § 659A.403 (2019).
Rhode Island	1,059,361	R.I. Gen. Laws § 11-24-2 (2019).
Vermont	623,989	Vt. Stat. tit. 9, § 4502 (2019).
Washington	7,614,893	Wash. Rev. Code § 49.60.030 (2019).
Wisconsin	5,822,434	Wis. Stat. § 106.52 (2018).

**Table B: Local Laws**

The following local jurisdictions have laws or ordinances prohibiting discrimination on the basis of sexual orientation in places of public accommodation and are jurisdictions *not* covered by the State-level public accommodations laws listed in Table A. The list is not exhaustive but includes the laws and ordinances that could be readily identified and reviewed through publicly available sources. The population data is taken from the U.S. Census Bureau’s estimates of local populations as of July 1, 2018.<sup>10</sup> (This table omits the numerous local non-discrimination ordinances in the States listed in Table A.)

<i>Population</i>	<i>Ordinance</i>
<b>Alabama</b>	
210,089	Birmingham, Ala., Ordinance No. 17-121 (2017).
<b>Alaska</b>	
291,538	Anchorage, Alaska, Anchorage Municipal Code tit. 5, ch. 5.20, § 5.20.050 (2015).
32,113	Juneau, Alaska, Compiled Laws of the City and Borough of Juneau, Alaska tit. 41, ch. 41.05, § 41.05.020 (2019).

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<sup>10</sup> See U.S. Census Bureau Population Estimate Program, *Population and Housing Unit Estimates: July 1, 2018*, <https://www.census.gov/programs-surveys/popest/data/tables.2018.html>; U.S. Census Bureau, *Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2018 Population: April 1, 2010 to July 1, 2018* (May 2019) (data accessible at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>); U.S. Census Bureau, *Annual Estimates of the Resident Population for Minor Civil Divisions: April 1, 2010 to July 1, 2018* (May 2019) (data accessible at same link); U.S. Census Bureau QuickFacts: United States (Dec. 2019) (<https://www.census.gov/quickfacts/>).

<b>Arizona</b>	
1,660,272	Phoenix, Ariz., Phx. City Code art 1, ch. 18, §18-4 (2013).
545,975	Tucson, Ariz., Tucson City Code ch. 17, art. 3, § 17-12 (1999).
192,364	Tempe, Ariz., Tempe City Code ch. 2, § 2-603(1) (2019).
73,964	Flagstaff, Ariz., Flagstaff City Code ch. 14-02-001-0003(A) (2013).
<b>Florida</b>	
2,761,581	Miami-Dade County, Fla., The Code of Miami-Dade County ch. 11A, art. 3, § 11A-19 (2014).
1,951,260	Broward County, Fla., Broward County, Fla., Code of Ordinances ch. 16½, §§ 16½-3(p), 16½-34 (2011).
1,436,888	Hillsborough County, Fla., Hillsborough County Code of Ordinances and Laws ch. 30, § 30-23 (2014).
1,380,645	Orange County, Fla., Orange County Code of Ordinances ch. 22, art. 3, § 22-42 (2013).
975,280	Pinellas County, Fla., Pinellas County Code of Ordinances ch. 70, art. 2, § 70-214 (2014).
547,538	Volusia County, Fla., Municipal Code of Ordinances ch. 36, art. 3, § 36-41 (2019).
292,502	Leon County, Fla., Leon County Code of Ordinances ch. 9, art. 3, § 9-42 (2019).
269,956	Alachua County, Fla., Alachua County Code of Ordinances ch. 111, art. 1, § 111.06 (2013).
<b>Georgia</b>	
498,044	Atlanta, Ga., Atlanta Code of Ordinances ch. 94, art. 3, § 94-68 (2000).
<b>Idaho</b>	
228,790	Boise, Idaho, Boise City Code ch. 6, § 6-02-03(B) (2012).
56,266	Pocatello, Idaho, City Code tit. 9, ch. 9.36, § 9.36.030(B) (2013).
51,303	Coeur D'Alene, Idaho, Coeur d'Alene, Idaho City Code tit. 9, ch. 9.56, § 9.56.030(B) (2019).

25,766	Moscow, Idaho, Moscow City Code tit. 10, ch. 19, § 19-23(B) (2013).
<b>Indiana</b>	
954,670	Indianapolis-Marion County, Ind., Rev. Code of the Consolidated City and County ch. 581, art. 1, § 581-101 (2008).
267,633	Fort Wayne, Ind., Fort Wayne City Code tit. 9, ch. 93, § 93.018 (2003).
193,048	Tippecanoe County, Code of Tippecanoe County tit. 3, ch. 31, §§ 31.75, 31.76 (2001).
180,974	Vanderburgh County, Ind., Vanderburgh County Code tit. 2, ch. 2.56, § 2.56.020 (2020).
146,917	Monroe County, Ind., Monroe County Code ch. 520-2 (2020).
101,860	South Bend, Ind., Municipal Code of South Bend, Ind. ch. 2, art. 9, § 2-127.1 (2012).
75,795	Hammond, Ind., City of Hammond, Ind. Code of Ordinances tit. 3, ch. 37, § 37.057 (2019).
68,529	Muncie, Ind., Code of Ordinances tit. 3, ch. 34, div. 5, § 34.87(F) (2015).
33,729	Valparaiso, Ind. Ordinance No. 16-09 (2017).
31,118	Michigan City, Ind., Michigan City Code ch. 66, div. 3, § 66-114 (2019).
27,153	Zionsville, Ind., Zionsville Town Code tit. 9, ch. 103, § 103.07 (2019).
<b>Kansas</b>	
97,286	Lawrence, Kan., City Code of Lawrence ch. 10, art. 1, § 10-110 (2019).
54,959	Manhattan, Kan., Code of Ordinances City of Manhattan, Kan. ch. 10, art. 3, § 10-17 (2019).
<b>Kentucky</b>	
620,118	Louisville-Jefferson County, Ky., Metro Code tit. 9, ch. 92, § 92.05 (2004).

323,780	Lexington-Fayette County, Ky., Charter and Code of Ordinances Lexington-Fayette Urban County Gov't ch. 2, art. 2, § 2-33 (1999).
40,366	Covington, Ky., Covington, Ky. Code of Ordinances tit. 3, ch. 37, § 37.07 (2003).
27,679	Frankfort, Ky., City of Frankfort, Ky. Code of Ordinances tit. 9, ch. 96, § 96.08 (2013).
7,634	Morehead, Ky., City of Morehead, Ky. Code of Ordinances tit. 9, ch. 96, § 96.07 (2013).
<b>Louisiana</b>	
391,006	New Orleans, La., Code of the City of New Orleans, Louisiana ch. 86, art. 6, § 86-33 (1999).
188,987	Shreveport, La., City Code of Ordinances City of Shreveport ch. 39, art. 1, § 39-2 (2013).
<b>Michigan</b>	
672,662	Detroit, Mich., Detroit City Code ch. 27, art. 6, § 27-6-1 (2008).
121,890	Ann Arbor, Mich., Code City of Ann Arbor tit. 9, ch. 112, §§ 9:150, 9:153 (2020).
118,427	Lansing, Mich., Codified Ordinances of Lansing, Mich. tit. 12, ch. 297.04 (2019).
76,545	Kalamazoo, Mich., Kalamazoo City Code ch. 18, art. 2, § 18-20 (2009).
47,988	East Lansing, Mich., Code of Ordinances City of East Lansing, Mich. ch. 22, art. 2, § 22-35 (2012).
20,075	Ferndale, Mich., Code of Ordinances City of Ferndale, Mich. ch. 28, §28-4 (2006).
15,651	Traverse City, Mich., Codified Ordinances of Traverse City, Mich. Pt. 6, ch. 605, § 605.04 (2010).
2,463	Pleasant Ridge, Mich., Code of Ordinances City of Pleasant Ridge, Mich. ch. 40, § 40-4 (2013).

<b>Mississippi</b>	
164,422	Jackson, Miss., Code of Ordinances City of Jackson, Miss. ch. 86, art. 10, § 86-302 (2019).
<b>Missouri</b>	
996,945	St. Louis County, Mo., Code of Ordinances, tit. 7, ch. 718, § 718.020 (2012).
491,918	Kansas City, Mo., Code of Ordinances of Kansas City, Mo. vol. 1, ch. 38, art. 3, § 38-113 (2013).
302,838	St. Louis, Mo., The Charter, the Scheme, and the General Ordinances of the City of St. Louis, Mo. tit. 3, ch. 3.44, § 3.44.080(E) (2003).
123,180	Columbia, Mo., Code of Ordinances ch. 12, art. 3, div. 1, §12-35 (2012).
70,764	St. Charles, Mo., Code of Ordinances of the City of St. Charles ch. 240, art. 3, § 240.090 (2019).
<b>Montana</b>	
74,428	Missoula, Mont., Missoula Municipal Code tit. 9, ch. 64, §9.64.040 (2010).
48,532	Bozeman, Mont., Municipal Code of the City of Bozeman, Mont. Ch. 24, art. 10, § 24.10.050 (2014).
34,284	Butte-Silver Bow, Mont., Butte-Silver Bow Municipal Code tit. 5, ch. 5.68, §5.68.040 (2014).
32,315	Helena, Mont., Municipal Code of the City of Helena, Mont. tit. 1, ch. 8, § 1-8-4 (2019).
7,870	Whitefish, Mont., The City Code of the City of Whitefish, Mont. tit. 1, ch. 10, § 1-10-4 (2019).
<b>Nebraska</b>	
468,262	Omaha, Neb., Omaha Municipal Code, Charter, and General Ordinances of the City vol. I, ch. 13, art. 3, div. 1, § 13-84 (2012).
<b>Ohio</b>	
892,533	Columbus, Ohio, Columbus – City Code of Ordinances tit. 23, ch. 2331, § 2331.04 (2008).

383,793	Cleveland, Ohio, Code of Ordinances § 667.01 (2019).
302,605	Cincinnati, Ohio, Municipal Code of Cincinnati, Ohio § 914-7 (2006).
274,975	Toledo, Ohio, Toledo Municipal Code § 554.05 (2019).
198,006	Akron, Ohio, Code of Ordinances tit. 3, ch. 38, § 38.04 (2019).
140,640	Dayton, Ohio, Code of Ordinances City of Dayton, Ohio tit. III, div. I, § 32.04 (2007).
64,958	Youngstown, Ohio, Codified Ordinances of the City of Youngstown, Ohio pt. 5, ch. 147, § 547.04 (2019).
50,100	Lakewood, Ohio, Codified Ordinances of Lakewood, Ohio pt. 5, § 516.04 (2019).
50,029	Newark, Ohio, City of Newark Code of Ordinances pt. 6, ch. 632, §632.03(c) (2007).
44,373	Cleveland Heights, Ohio, Codified Ordinances of the City of Cleveland Heights, Ohio pt. 7, ch 749, § 749.15 (2019).
31,578	Bowling Green, Ohio, City of Bowling Green Code of Ordinances tit. 3, ch. 39, §§ 39.01, 39.03 (2018).
24,688	Athens, Ohio, Code of Ordinances tit. 3, ch. 3.07, §3.07.62 (2019).
22,885	Oxford, Ohio, Codified Ordinances of the City of Oxford, Ohio pt. 1, ch. 143, § 143.04 (2019).
13,854	Bexley, Ohio, Bexley City Codes ch. 637, § 637.04 (2018).
11,054	Coshocton, Ohio, Codified Ordinances of the City of Coshocton, Ohio pt. 1, tit. 5, ch. 159, § 159.03(c) (2014).
<b>Oklahoma</b>	
123,471	Norman, Okla., Norman, Oklahoma - Code of Ordinances, ch. 7, § 7-104 (2020).
<b>Pennsylvania</b>	
1,584,138	Phila., Pa., The Philadelphia Code tit. 9, § 9-1106 (2016).
1,218,452	Allegheny County, Pa., Administrative Code div. 2, ch. 215, art. 5, § 215-35 (2009).
272,061	Erie County, Pa., Erie County Code, ord. 59, art. 11 (2004).

121,433	Allentown, Pa., The Ordinances of the City of Allentown, Pa. tit. 11, art. 181, § 181.06 (2019).
88,495	Reading, Pa., Reading, Pa. Code of Ordinances pt. 5, ch. 23, § 23-509 (2019).
49,229	Harrisburg, Pa., The Harrisburg Municipal Code tit. 4, pt. 1, ch. 4- 101, § 4-105.3 (2018).
42,352	State College, Pa., Borough Codification of Ordinances ch. 5, pt. E, § 505 (2018).
40,806	Wilkes-Barre, Pa., Code of Ordinances City of Wilkes-Barre, Pa. ch. 14, §§ 14-1, 14-3 (2018).
2,528	New Hope, Pa., Code of the Borough of New Hope ch. 129, art. 1, § 129-4 (2007).
<b>South Carolina</b>	
414,576	Richland County, S.C., Code of Ordinances of Richland County, S.C. ch. 16, art. 6, §16-68 (2017).
136,208	Charleston, S.C., Code of the City of Charleston, S.C. ch. 16, art. IV, § 16-29 (2019).
<b>South Dakota</b>	
24,509	Brookings, South Dakota, Brookings, South Dakota - Code of Ordinances, ch. 2, art. V, div. 2, § 2-143(5) (2019).
<b>Texas</b>	
1,532,233	San Antonio, Tex., Code City of San Antonio Tex. ch. 2, art. 10, div. 5, § 2-592 (2018).
1,345,047	Dallas, Tex., The Dallas City Code vol. II, ch. 46, art. II, § 46-6.1 (2019).
964,254	Austin, Tex., The Code of the City of Austin, Tex. Tit. 5, ch. 5-2, § 5-2- 4 (1992).
895,008	Fort Worth, Tex., City of Fort Worth Code of Ordinances pt. 2, ch. 17, art. 2, § 17-48 (2019).
682,669	El Paso, Tex., A Codification of the General Ordinances of El Paso, Tex. Tit. 10, ch. 10.16, § 10.16.010 (2003).
288,061	Plano, Tex., Code of Ordinances City of Plano, Tex. ch. 2, art. I, § 2- 11(d) (2019).

<b>Virginia</b>	
237,521	Arlington County, Va., Arlington County Code ch. 31 § 31-3(C) (2012).
160,530	Alexandria, Va., The General Ordinance of Alexandria, Va. Tit. 12, ch. 4, § 12.4.8 (1991).
48,117	Charlottesville, Va., Code of the City of Charlottesville ch. 2, art. XV, § 2-431 (2018).
<b>West Virginia</b>	
47,215	Charleston, W. Va., Code of the City of Charleston, W. Va. Ch. 62, art. 3, § 62-81(6) (2007).
46,048	Huntington, W. Va., Codified Ordinances of Huntington, W. Va. pt. 1, ch. 5, art. 147, § 147.08(f) (2018).
6,064	Charles Town, W. Va., Codified Ordinances of Charles Town pt. 1, ch. 5, art. 154, § 154.03(6) (2018).
3,831	Lewisburg, W. Va., Codified Ordinances of Lewisburg, W. Va. Pt. 1, ch. 5, art. 137, § 137.08(f) (2019).
<b>Wyoming</b>	
32,473	Laramie, Wyo., Laramie, Wyo. Municipal Code tit. 9, ch. 9.32, § 9.32.040 (2015).

**Table C: Discriminatory Advertising Laws**

The following States prohibit discriminatory advertising or notices as part of their public accommodations laws.

<i>State</i>	<i>State Law</i>
<b>Alaska</b>	Alaska Stat. § 18.80.230 (2000).
<b>Colorado</b>	Colo. Rev. Stat. §§ 24-34-601(2)(a), 701 (2008).
<b>Delaware</b>	Del. Code Ann. tit. 6, § 4504(b) (West 2013).
<b>District of Columbia</b>	D.C. Code § 2-1402.31(a)(2) (2006).
<b>Idaho</b>	Idaho Code Ann. § 67-5909(5)(b) (2005).
<b>Illinois</b>	775 Ill. Comp. Stat. § 5/5-102(B) (2007).
<b>Iowa</b>	Iowa Code § 216.7(1)(b) (2007).
<b>Kentucky</b>	KY. Rev. Stat. Ann. § 344.140 (West 1992).
<b>Maine</b>	Me. Rev. Stat. tit. 5, § 4592(2) (2005).
<b>Massachusetts</b>	Mass. Gen. Laws ch. 272, § 92A (1998).
<b>Michigan</b>	Mich. Comp. Laws § 37.2302(b) (1977).
<b>Montana</b>	Mont. Code Ann. § 49-2-304(1)(b) (1993).
<b>New Hampshire</b>	N.H. Rev. Stat. Ann. § 354-A:17 (1998).
<b>New Jersey</b>	N.J. Stat. Ann. § 10:5-12(f)(1) (West 2013).
<b>New York</b>	N.Y. Civ. Rights Law § 40 (McKinney 1945).

<b>North Dakota</b>	N.D. Cent. Code § 14-02.4-16 (1995).
<b>Oregon</b>	Or. Rev. Stat. § 659A.409 (2007).
<b>Pennsylvania</b>	43 Pa. Cons. Stat. § 955(i)(2) (2009).
<b>Rhode Island</b>	R.I. Gen. Laws § 11-24-2 (2001).
<b>South Dakota</b>	S.D. Codified Laws § 20-13-25 (1986).
<b>Tennessee</b>	Tenn. Code Ann. § 4-21-502 (West 1978).
<b>West Virginia</b>	W. Va. Code § 5-11-9(6)(B) (2010).
<b>Wisconsin</b>	Wis. Stat. § 106.52(3)(3)-(3m) (2011).