

**Exhibit 1**

## GENERAL PROVISIONS

### § 92.01 DECLARATION OF POLICY.

It is the policy of the Metro Government to safeguard all individuals within Jefferson County from discrimination in certain contexts because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation. Certain practices must be prohibited within the areas of employment, housing, public accommodation, resort or amusement as necessary to protect individuals's personal dignity and insure freedom from humiliation; to make available to Jefferson County all full productive capacities; to secure Jefferson County against strife and unrest which would menace its democratic institutions; and to preserve the public safety, health and general welfare.

(1994 Jeff. Code, § 92.01) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.01) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

### § 92.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATIVE CLOSURES.** Complaint closures other than on the merits, such as failure to locate, failure to cooperate and withdrawals.

**APPEAL PANEL.** A panel of not less than three Commissioners appointed by the Chair of the Human Relations Commission - Enforcement to hear appeals from decisions of the Hearing Officer.

**ARREST HISTORY.** A record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency or charged with, indicted, or tried and acquitted for a felony, misdemeanor, or other criminal offense.

**CANVASSING.** Includes door to door solicitation by the use of circular advertisements or any other means where the canvasser or his employer has not been requested by the owner to obtain a listing of any housing accommodation or to confer with the owner regarding a transaction involving a housing accommodation.

**COMMISSION.** The Louisville/Jefferson County Human Relations Commission as authorized by appointments, resolutions and ordinances of the Mayor and Metro Council.

**COMMISSIONER.** A member of the Louisville/Jefferson County Human Relations Commission.

**CONVICTION HISTORY.** Information regarding one or more convictions or unresolved arrests, transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the individual to whom the information pertains or a background check report, or a record from any jurisdiction that includes information indicating that person has been convicted of a felony or misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, and/or paroled.

**DISABILITY.** A physical or mental impairment which substantially limits one or more major life activities, a record of such impairment, or a condition which is regarded as causing such impairment. Current illegal use of drugs or chemicals shall not be considered a disability hereunder. Life activities shall be considered to include, but not necessarily limited to, communication, ambulation, socialization, self-care, education, vocational training, employment, transportation and adapting to housing.

**DISCRIMINATION.** Any direct or indirect act or practice of exclusion, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter. **DISCRIMINATION** also includes the unwanted touching of a person or persons, including the touching of hair.

**EMPLOYEE.** Any individual employed by an employer, but not including an individual employed by his or her parents, spouse or child, or an individual employed to render services as a nurse, domestic or personal companion in the home of the employer.

**EMPLOYER.** Any person who has two or more employees in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such person.

**EMPLOYMENT AGENCY.** Any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such a person.

**EXECUTIVE DIRECTOR.** The Executive Director of the Human Relations Commission - Enforcement.

**FAMILIAL STATUS.** One or more individuals who have not attained the age of 18 years and are being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

**FINANCIAL INSTITUTIONS.** Any person engaged in the business of lending money or guaranteeing losses.

**GENDER IDENTITY.** Manifesting an identity not traditionally associated with one's biological maleness or femaleness.

**HEARING OFFICER.** The Hearing Officer employed by the Human Relations Commission - Enforcement to hear complaints under applicable anti-discrimination laws.

**HOMELESS STATUS.** An individual whose life position is without a regular, fixed, permanent place of nighttime residence.

**HOUSING ACCOMMODATION.**

(1) Any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous located in Jefferson County, used for the building of one or more housing or rooming units or for mobile homes or mobile home parks owned by or otherwise subject to the control of one or more persons; or

(2) Any real property, including vacant land intended for sale or lease, or any interest therein, located in Jefferson County; or

(3) Any single-family dwelling or multi-family dwelling, or any portion thereof, including a housing unit or a rooming unit, or any interest therein, located in Jefferson County, which is used or occupied, or intended, arranged, assigned, or designated to be used or occupied, as the home, homesite, residence, or sleeping place of one or more persons.

**HOUSING UNIT.** A single room, suite of rooms, or apartment, containing cooking and kitchen facilities, occupied or intended for occupancy as living quarters, by a person, a family, or a group of persons living together.

**LABOR ORGANIZATION.** Any labor organization and an agent of such an organization, including an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged, which is subordinate to a national or international labor organization.

**LAWFUL SOURCE OF INCOME.** Shall include, but not be limited to, child support, alimony, foster care subsidies, income derived from social security, grants, pension, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income.

**NATIONAL ORIGIN.** The country where a person was born or, more broadly, the country from which his or her ancestors came. **NATIONAL ORIGIN** includes natural texture and color of hair, hair styles and protective hair styles, including, but not limited to, braids, locks, twists and coverings, related to a person's place of birth or ancestry. (Note: This subchapter is designed to prevent discrimination against people based upon ethnic distinctions commonly recognized at the time of discrimination. **NATIONAL ORIGIN** does not include the concept of United States regionalism.)

**OWNER.** Includes a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.

**PERSON.** Includes an individual and any group of one or more natural persons, such as, but not limited to, labor unions, joint apprenticeship committees, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint-stock companies, trusts, legal representatives, trustees in bankruptcy, receivers, or any individuals acting in a financial or representative capacity, either appointed by a court of otherwise, the Metro Government or any of its agencies, and any other legal, governmental or commercial entity as well as a natural person or persons. **PERSONS**, when applied to any of the foregoing, includes members, representatives, officers and directors.

**PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT.** Any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds; except that a private club is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests; and **PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT** does not include a rooming or boarding house containing not more than one room for rent or hire and which is within a building occupied by the proprietor as his or her residence.

**PRIOR MILITARY SERVICE.** The performance of military duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, and full-time National Guard duty.

**PURCHASER.** Includes any occupant, prospective tenant, assignee, prospective assignee, buyer, or any other person seeking the right of ownership or possession, or any agent of any of these.

**REAL ESTATE BROKER or REAL ESTATE SALESPERSON.** An individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who with the intention or expectation of receiving or collecting consideration, lists, sells, purchases, exchanges, rents, or leases any housing accommodation, including options thereupon, or who negotiates rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds oneself out as engaged in such activities; or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance on transfer of any housing accommodation or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby a person undertakes to promote the sale, purchase, exchange, rental, or lease of any housing

accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

**REAL PROPERTY.** Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditments, corporeal and incorporeal.

**ROOMING UNIT.** Any room or group of

rooms forming a single, habitable unit used for living or sleeping, but which does not contain cooking and kitchen facilities.

**SEXUAL ORIENTATION.** An individual's actual or imputed heterosexuality, homosexuality or bisexuality.

(1994 Jeff. Code, § 92.02) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.02) (Lou. Ord. No. 0088-2001, § 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004; Lou. Metro Am. Ord. No. 146-2020, approved 12-9-2020; Lou. Metro Am. Ord. No. 84-2021, approved 7-15-2021)

**Editor's note:**

*Louisville Metro Ord. No. 146-2020 takes effect December 9, 2020, except with regard to the references to "lawful source of income" which shall become effective on March 1, 2021.*

**§ 92.03 UNLAWFUL PRACTICES IN CONNECTION WITH HOUSING.**

In connection with any of the transactions set forth herein which affect any sale, purchase, exchange, rental, or lease of any housing accommodation, it shall be a prohibited, unlawful practice for a person, owner, financial institution, real estate broker, or real estate salesperson, or any representative of the above to:

(A) Refuse to sell, purchase, exchange, rent or lease, lend or deny brokerage service or otherwise deny to or withhold any housing accommodation from a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(B) Discriminate against a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status in terms, conditions, or privileges of the appraisal, purchasing of loans, financial assistance, sale, purchase, exchange, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith; or

(C) Refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent or lease any housing accommodation from or to a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(D) Refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing accommodation to any person because of race, color, religion, national origin, familial status, disability, handicap, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(E) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is available, or to refuse to permit a person to inspect any housing accommodation because of race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(F) Make, print, circulate, post, mail or cause to be printed, circulated, posted, or mailed any notice, statement, or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, exchange, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, exchange, rental, lease or financing of any housing accommodation which indicates directly or indirectly, any discrimination or any intent to discriminate as to race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(G) Offer, solicit, accept, or use a listing of any housing accommodation for sale, purchase, exchange, rental, or lease with the understanding that any person may be subjected to discrimination in connection with such sale, purchase, exchange, rental, or lease, or in the furnishing of facilities or services in connection therewith because of his/her race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(H) Induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, exchange, rental, or lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status in the area to be affected by such sale, purchase, exchange, rental, or lease will or may result in:

- (1) Lowering of property values in the area;
- (2) An increase in criminal or antisocial behavior in the area; or

(3) A decline in the quality of the schools in the area; or

(I) Make any misrepresentations concerning the listing for sale, purchase, exchange, rental, or lease or the anticipated listing for any of the above, or the sale, purchase, exchange, rental or lease of any housing accommodation in any area in Jefferson County for the purpose of inducing or attempting to induce any such listing or any of the above transactions; or

(J) Place a sign purporting to offer for sale, purchase, exchange, rental, or lease any housing accommodation that is not, in fact, so offered; or

(K) Advertise for sale, purchase, exchange, rental or lease any housing accommodation which is nonexistent, or which is not actually being offered for any of the above; or

(L) Engage in, hire to be done, or to conspire with others to commit threats or acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play on fear with the purpose of either discouraging or inducing or attempting to induce the sale, occupancy, purchase, exchange, rental, or lease, or the listing for any of the above, of any housing accommodation; or

(M) Do any of the unlawful practices prohibited by this subchapter by canvassing; or

(N) Otherwise deny to or withhold any housing accommodation from a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status; or

(O) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter; or to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection with such dwelling, because of a disability of that person, of a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or of any person associated with that person:

(1) For purposes of this subsection, **DISCRIMINATION** includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a housing accommodation; or

(c) In connection with the design and construction of covered multi-family housing accommodations for first occupancy after the effective date of passage of this chapter, a failure to design and construct those housing accommodations in a manner ensuring that they have at least one entrance on an accessible route unless impractical to do so because of the terrain or unusual characteristics of the site. Housing accommodations with a building entrance on an accessible route shall comply with the following requirements:

1. The public use and common use portions of the housing accommodations shall be readily accessible to and usable by disabled persons;

2. All the doors designed to allow passage into and within all premises within the housing accommodations shall be sufficiently wide to allow passage by disabled persons on wheelchairs; and

3. All premises within the housing accommodations shall contain the following features of adaptive design:

a. An accessible route into and through the housing accommodations;

b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

c. Reinforcements in bathroom walls to allow later installation of grab bars; and

d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space; and

(d) Compliance with the appropriate requirements of Chapter 11 of the Kentucky Building Code, Requirement for Accommodations in New Construction, as amended from time to time, suffices to satisfy the requirements of subsection (1) (c)2. or 3. of this section.

(2) As used in subsection (1) of this section, the term **COVERED MULTIFAMILY HOUSING ACCOMMODATION** means:

(a) Buildings consisting of four (4) or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of two or more units.

(3) Nothing in this section requires that a housing accommodation be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(P) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, sexual orientation, lawful source of income, conviction history or arrest history, prior military service, or homeless status consistent with the Kentucky Real Estate Commission ("KREC") and the U.S. Department of Housing and Urban Development ("HUD") regulations; or

(Q) Coerce, intimidate, harass, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter or Title VIII of the Civil Rights Act of 1968.

(1994 Jeff. Code, § 92.03) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.03) (Lou. Ord. No. 0088-2001, § 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004; Lou. Metro Am. Ord. No. 146-2020, approved 12-9-2020)

**Editor's note:**

*Louisville Metro Ord. No. 146-2020 takes effect December 9, 2020, except with regard to the references to "lawful source of income" which shall become effective on March 1, 2021.*

**§ 92.04 HOUSING EXCEPTIONS.**

(A) The provisions of this chapter, which prohibit discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply:

(1) To the rental or lease of any housing accommodations in a building which contains not more than two families living independently of each other, if the owner or a member of his or her family resides in one of the housing accommodations;

(2) To the rental of one room or one rooming unit in a housing accommodation by an owner if he or she or a member of his or her family resides therein;

(3) To a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, lease, rental, occupancy, assignment, or sublease of housing accommodation which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preference to those persons, unless membership in the religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodging to its members or from giving preference to its members.

(4) To a private individual homeowner disposing of his or her property through private sale without the aid of any real estate operator, broker, or salesperson and without advertising or public display except that attorneys, escrow agents, abstractors, title companies, and other professional assistance may be utilized as necessary to perfect or transfer the title.

(5) To persons with arrest history and conviction history that includes one or more of the following:

(a) Any arrest or conviction where state and/or federal law prohibits the person from being eligible for public housing and other federally subsidized housing; or

(b) Consistent with 24 C.F.R. 960.204(a)(4), 24 C.F.R. 5.856, any conviction that leads to the person becoming subject to a lifetime registration requirement under a State sex offender registration program; or

(c) Any conviction in which the person is deemed a "violent offender" under KRS 439.3401. A violent offender means any person who has been convicted of or pled guilty to the commission of:

1. A capital offense;

2. A Class A felony;

3. A Class B felony involving the death of the victim or serious physical injury to a victim;

4. An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer, firefighter, or emergency medical services personnel while the peace officer, firefighter, or emergency medical services personnel was acting in the line of duty;

5. A Class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer, firefighter, or emergency medical services personnel acting in the line of duty, regardless of whether an injury results;

6. The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;

7. Use of a minor in a sexual performance as described in KRS 531.310;

8. Promoting a sexual performance by a minor as described in KRS 531.320;

9. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

10. Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
  11. Criminal abuse in the first degree as described in KRS 508.100;
  12. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
  13. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040;
  14. Robbery in the first degree;
- (d) Any conviction or plea to any crime involving felony arson under Kentucky Revised Statute;
  - (e) Any conviction or plea for felony criminal mischief under Kentucky Revised Statute;
  - (f) Consistent with 24 C.F.R. 960.204(a)(3) and 24 C.F.R. 982.553 (a)(1)(ii)(C), conviction of drug related criminal activity for manufacture or production of methamphetamine on the premises of federal assisted housing;
  - (g) Consistent with 24 C.F.R. 960.204(a)(1), 24 C.F.R. 5.854(a), and 24 C.F.R. 553(a)(1)(i), for three years from the date of eviction, the household member has been evicted from federally assisted housing for drug-related criminal history;
  - (h) Consistent with 24 C.F.R. 960.204(a)(2), 24 C.F.R. 5.854(b)(1), and 23 C.F.R. 982.553(a)(1)(ii)(A) if any household member is currently engaging in illegal use of a drug;
  - (i) Consistent with 24 CFR 982.552(c)(iv), Section 8 based assistance is expressly prohibited if any member of the household has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal Housing program;
  - (j) Consistent with 24 C.F.R. 5.855(a) and 24 C.F.R. 982.553(a)(2)(ii) Section 8 based assistance and federally assisted housing is expressly prohibited if any household member is currently engaged in, or has engaged in during a reasonable time before the admission:
    1. Drug-related activity;
    2. Violent criminal activity;
    3. Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
    4. Other criminal activity which may threaten the health or safety of the owner, property management staff, or person performing a contract administration function or responsibility on behalf of the PHA.

(B) Nothing in this chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(C) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a housing accommodation. No provision in the chapter regarding familial status shall apply with respect to "housing for older persons," as defined in the Federal Fair Housing Act, 42 U.S.C. 3607.

(D) Nothing in this section prohibits conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) or KRS Chapter 218A.

(1994 Jeff. Code, § 92.04) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.04) (Lou. Ord. No. 0088-2001, § 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004; Lou. Metro Am. Ord. No. 146-2020, approved 12-9-2020)

**Editor's note:**

*Louisville Metro Ord. No. 146-2020 takes effect December 9, 2020, except with regard to the references to "lawful source of income" which shall become effective on March 1, 2021.*

**§ 92.05 UNLAWFUL PRACTICES IN CONNECTION WITH PUBLIC ACCOMMODATIONS.**

(A) Except as otherwise provided herein, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement as defined in § 92.02, on the ground of race, color, religion, national origin, disability, sexual orientation or gender identity.

(B) It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral or visual communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement, will be refused, withheld, or denied an individual on account of his race, color, religion, national origin, disability, sexual orientation or gender identity, or that patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual, on account of his race, color, religion, national origin, disability,

sexual orientation or gender identity is objectionable, unwelcome, unacceptable, or undesirable.

(C) It shall be an unlawful practice to deny an individual, because of sex, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(1) The provisions of this subsection shall not apply to:

(a) Restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;

(b) YMCA, YWCA and similar type dormitory lodging facilities;

(c) The exemptions contained in the definitions of "Place of Public Accommodations, Resort or Amusement" set forth in § 92.02;

(d) Hospitals, nursing homes, penal or similar facilities, to require that men and women be in the same room.

(1994 Jeff. Code, § 92.06) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.05) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.06 UNLAWFUL PRACTICES IN CONNECTION WITH EMPLOYMENT.**

(A) It is a prohibited, unlawful practice for an employer:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(B) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his or her race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, or to classify or refer for employment an individual on the basis of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation.

(C) It is an unlawful practice for a labor organization:

(1) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect one's status as an employee or as an applicant for employment because of such individual's race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) It is an unlawful practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, in admission to or employment in, any program established to provide such apprenticeship, training, or retraining.

(E) It is an unlawful practice for any employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or classification or referral for employment by such a labor organization or classification or limitation, specification, or discrimination based on race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, except that such a notice or advertisement may indicate a preference, limitation, or specification, based on religion, national origin, age 40 and over, disability or sex when religion, national origin, age 40 and over, disability or sex is a bona fide occupational qualification for employment.

(F) Nothing herein shall be construed to prevent an employer from:

(1) Enforcing a written employee dress policy; or

(2) Designating appropriate restroom and shower facilities.

(1994 Jeff. Code, § 92.06) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.06) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.07 EMPLOYMENT EXCEPTIONS.**

(A) Notwithstanding any other provisions of this chapter, it shall not be an unlawful practice for:

(1) An employer to hire and employ employees, or an employment agency to classify or refer for employment an individual; or for a labor organization to classify its membership or to classify or refer for employment an individual, or for an



employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program, on the basis of his religion or national origin in those certain instances where religion or nation origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) A religious corporation, association, or society to employ an individual on the basis of his or her religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(3) A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university, or other educational institution is in whole or substantial part owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion, and the choice of employees is calculated by such organization to promote the religious principles for which it is established or maintained;

(4) An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, national origin, sex, age 40 and over, disability, gender identity, or sexual orientation nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, age 40 and over, disability, gender identity, or sexual orientation.

(B) The provisions of § 92.06 in regard to sexual orientation or gender identity shall not apply to a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association or society.

(1994 Jeff. Code, § 92.07) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.07) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.08 HUMAN RELATIONS COMMISSION - ENFORCEMENT.**

(A) The administration and enforcement of this chapter shall be the responsibility of the Louisville/Jefferson County Human Relations Commission - Enforcement, and it shall have full operating responsibility for carrying out the provisions of this chapter.

(B) In addition to any powers or duties heretofore conferred on the Human Relations Commission - Enforcement, it shall have the power and duty to:

(1) Meet and exercise its powers at any place within Jefferson County;

(2) Employ attorneys, hearing examiners, clerks, and other employees and agents, and to appoint and empower committees and divisions to assist in effecting the purposes and provisions of this chapter;

(3) Accept gifts or bequests, grants, or other payments, public or private, to help finance its activities;

(4) Receive, initiate, investigate, seek to conciliate, hold hearings on, and pass on complaints alleging violations of this chapter. By itself or through the Executive Director of the Human Relations Commission - Enforcement ("Executive Director"), the Human Relations Commission - Enforcement may hold public or private hearings, administer oaths, and take the testimony of any person under oath relating to any matter under investigation or in question. If a person against whom a complaint of discriminatory practice is made is notified as hereinafter provided to attend any hearing, public or private, before the Human Relations Commission - Enforcement or the Executive Director, as the case may be, the Human Relations Commission - Enforcement or the Executive Director may proceed to make a determination in such person's absence;

(5) Compel the attendance of witnesses and the production of evidence before it by subpoena issued by the Jefferson Circuit Court;

(6) Issue remedial orders, after notice and hearing, requiring cessation of violations of this chapter;

(7) Publish or cause to be published conciliation agreements or enforcement agreements. All other records and information shall be confidential except as reasonably necessary to conduct an investigation and proceeding;

(8) Issue such affirmative orders as in the judgment of the Human Relations Commission - Enforcement will carry out the purposes of this chapter. Affirmative action ordered may include, but is not limited to, the remedies enumerated in KRS 344.230(3); and

(a) All other remedies detailed in KRS Chapter 344 and Title VIII of the Federal Civil Rights Act of 1968 as amended;

(b) Apply to the Jefferson Circuit Court for such temporary or permanent relief as it deems necessary; where such relief is granted, notice of the relief shall be promptly filed in the office of the County Clerk of Jefferson County, Kentucky.

(9) Subject to approval of the Metro Government, adopt, promulgate, amend, and rescind rules and regulations to effectuate the purposes and provisions of this chapter, including regulations requiring the posting of notices prepared or approved by the Human Relations Commission - Enforcement; and

(10) Receive, initiate as hereinafter provided, investigate, hear or determine charges, and remediate violations of unlawful practices prohibited by this chapter; and

(a) Enter into cooperative working agreements with the United States Equal Employment Opportunity Commission (EEOC) created by Section 705 of the Federal Civil Rights Act of 1964 (78 Stat. 241) in order to achieve the purpose of that Act; and with any federal or state agency in order to achieve the purposes of this chapter.

(b) In its discretion, or upon request of the Kentucky Commission of Human Rights (the "State Commission"), refer a matter under its jurisdiction to the State Commission for initial action or review.

(c) Refer to the State Commission for resolution a dispute over jurisdiction or other matter with another local commission.

(d) Provide a copy of its annual report to the State Commission.

(11) Institute proceedings in Jefferson Circuit Court for enforcement of the orders of the Human Relations Commission - Enforcement or its Executive Director, including appeal;

(12) Exercise all other applicable powers as provided in the Kentucky Civil Rights Act.

(1994 Jeff. Code, § 92.08) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.08) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

### **§ 92.09 COMPLAINT PROCEDURE.**

(A) Any person or persons claiming to be aggrieved by an unlawful practice that is prohibited by this chapter may file a written complaint in accordance with the rules and regulations of the Human Relations Commission - Enforcement. The complaint must be filed within 180 days after the alleged unlawful practice occurred. Any member of the Human Relations Commission - Enforcement who has reason to believe an unlawful practice has occurred may file a complaint. Any person or persons claiming to be aggrieved by an act in violation of this chapter may file an action in Jefferson Circuit Court and obtain civil remedies as provided in KRS Chapter 344 and Title VIII of the Federal Civil Rights Act of 1968 as amended and any other federal civil rights statute that grants state courts concurrent jurisdiction.

(B) Complaints filed with the Human Relations Commission - Enforcement by individuals should:

(1) Be executed and filed at the Human Relations Commission - Enforcement office; members of the Human Relations Commission - Enforcement staff will assist the complainant to prepare the complaint;

(2) Be verified by each complainant;

(3) Contain the name and address of each complainant;

(4) Contain the names and addresses of the respondent(s) who committed the unlawful practice prohibited by this chapter;

(5) Give fair notice of the facts relied upon to show the unlawful practice or practices;

(6) State clearly and concisely the alleged violation; and

(7) State the date of the violation.

(C) On receipt of a complaint, or acceptance of a complaint referred by the Kentucky Human Rights Commission, the EEOC or HUD, the Human Relations Commission - Enforcement shall serve the complaint and a written resume setting forth the rights of the parties and the procedures to be followed by the Human Relations Commission - Enforcement in the investigation and adjudication of the complaint on the person or persons charged with a violation of this chapter (hereinafter referred to as the respondent, whether one or more persons), and mail a copy to the complainant.

(D) On receipt of a complaint, the respondent shall, within 30 days, file with the Human Relations Commission - Enforcement an answer, under oath or affirmation, to the allegations in the complaint. The staff of the Human Relations Commission - Enforcement shall attempt to resolve the complaint and conduct a preliminary investigation of the complaint and shall within 100 days after service of the complaint on the respondent, unless there has been a settlement, render a final investigative written report detailing documentary and witness evidence to the Executive Director.

(E) The Executive Director, within 30 days after receipt from the staff of the Human Relations Commission - Enforcement of the report of the preliminary investigation, shall determine whether there is reasonable cause to believe that an unlawful practice has been committed.

(1) If the Executive Director determines that there is no such reasonable cause, the complaint shall be dismissed.

(2) If the Executive Director determines that there is such reasonable cause, the Human Relations Commission - Enforcement shall make an effort to eliminate the unlawful practice by conference and conciliation. All conciliation and/or enforcement agreements and administrative closures shall be approved by the Executive Director of the Commission.

(3) If reasonable cause concerning allegations of an unlawful practice in connection with housing is found, the complainant and respondent shall be advised in writing that either party may elect to have their claims asserted in the complaint decided in a civil action. Notice of this election must be made to the Human Relations Commission - Enforcement

and all other parties not later than the 20th day after receipt of the right of election. Upon receipt of such notice, the Human Relations Commission - Enforcement shall authorize, within 30 days thereafter, filing and maintaining an action on behalf of the complainant in Jefferson Circuit Court which may award all relief available under this chapter.

(4) Within 45 days after the Human Relations Commission - Enforcement has determined that reasonable cause exists, unless an order has been issued dismissing the complaint or stating the terms of a conciliation agreement, a hearing shall be set and necessary and reasonable discovery pursuant to KRS Chapter 344.

(F) Any endeavors or negotiations for conciliation shall not be received in evidence and shall be held in confidence by the Human Relations Commission - Enforcement and its staff.

(G) The determination of the Executive Director may be reconsidered on petition of any aggrieved party, except that an application to reconsider must be filed within 20 days of service of the adjudicative order on the aggrieved party. Dismissal after reconsideration is a final order by the Human Relations Commission - Enforcement.

(H) In connection with an investigation of a complaint filed under this chapter, the Human Relations Commission - Enforcement, or its designated representatives, may at any reasonable time request access to the premises, records and documents relevant to the complaint and shall have the right to examine, photograph, and copy evidence. If a person fails to permit access, examination, photographing, or copying of records or documents relative to the complaint, the Human Relations Commission - Enforcement may apply to the Jefferson County Circuit Court for an order requiring compliance.

(I) All hearings held under and pursuant to this chapter shall be open to the public.

(J) At any time after a complaint has been filed, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking appropriate temporary relief against the respondent, pending the final determination of proceedings under this section.

(K) At any time after a complaint has been filed, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking such appropriate relief against any person as it may deem necessary to prevent any change of position between the complaint(s) and the respondent(s) or to prevent the questions presented to the Human Relations Commission - Enforcement from becoming moot.

(L) If the Human Relations Commission - Enforcement determines that any respondent has committed an unlawful act prohibited by this chapter and the respondent refuses to comply with or obey the order issued by the Human Relations Commission - Enforcement, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking enforcement of the order.

(M) The Human Relations Commission - Enforcement may file suit in the Jefferson Circuit Court seeking enforcement of any of its orders issued pursuant to this chapter.

(1994 Jeff. Code, § 92.09) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.09) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.10 CONDUCT OF HUMAN RELATIONS COMMISSION - ENFORCEMENT HEARING.**

(A) In the event a complaint is not resolved under §92.09, a written notice, signed by the Director of the Human Relations Commission - Enforcement or authorized representative, together with a copy of the complaint, shall require the respondent to answer the charges of such complaint at a hearing before a Hearing Officer. The Executive Director shall not be eligible to serve as the Hearing Officer. The hearing shall be held no less than 60 days after service of the notice on the respondent and complainant.

(B) At the hearing, the case in support of the averments of the complaint may be presented by counsel designated by the Human Relations Commission - Enforcement. The order of proof shall be that set forth in the Kentucky Rules of Civil Procedure. The Hearing Officer may hear summations by counsel. While strict rules of evidence governing trials at law or in equity need not be applied, the Hearing Officer will abide by the general principles of evidence to the end that a rational investigation after the truth may be had.

(C) The Hearing Officer may grant continuances to either side for good cause shown. The introduction of issues not raised by pleadings is good cause for continuation of the hearing as to such issue.

(1994 Jeff. Code, § 92.10) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.10) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.11 CONSEQUENCE OF DEFAULT.**

(A) **DEFAULT** as used herein is defined as:

(1) The failure of a respondent to appear at a hearing shall be ruled as a default.

(2) Any act, counsel, deliberate omission, communication, signal, or the like, direct or indirect, made or done by a respondent or any of his or her agents or attorneys on his or her behalf, which:

(a) Induces or helps to induce a person other than the respondent to refrain from testifying before the Human

Relations Commission - Enforcement, to refrain from discussing a matter with the Human Relations Commission - Enforcement staff, to frustrate adjustments, or to misrepresent any fact to the Human Relations Commission - Enforcement; or

(b) Frustrates or attempts to frustrate adjustments, or cause the misrepresentation of a fact to the Human Relations Commission - Enforcement.

(B) Whenever the Hearing Officer decides by clear and convincing evidence that a default has occurred, he or she shall serve upon the respondent so charged an order of default against him or her. The making of such an order entitles the Hearing Officer forthwith to make findings of fact sustaining the averments of the complaint without resort to testimony.

(1994 Jeff. Code, § 92.11) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.11) (Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.12 FINDING OF FACT; CONCLUSIONS OF LAW.**

(A) Finding of fact and conclusions of law shall be made after all hearings have ended in a matter before the Hearing Officer and they shall be in the style prescribed in Rule 52.01, Kentucky Rules of Civil Procedure. Finding of fact made as a consequence to a default need merely recite the averments of the complaint are true because of the default. Conclusions of law must accompany findings of fact made upon a default.

(B) Based upon the findings of fact and conclusions of law, the Hearing Officer shall, as to each respondent, either dismiss the complaint on the merits or order the respondent to cease and desist from the prohibited discriminatory practice or practices and take such affirmative action as detailed in KRS Chapter 344, Title VIII of the Federal Civil Rights Act as amended, as the Hearing Officer deems necessary to remedy the violation and to prevent its continuation or recurrence. All Hearing Officer orders made under this rule shall be served upon each claimant and respondent affected by the order.

(1994 Jeff. Code, § 92.12) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.12) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.13 APPEAL OF HEARING OFFICER DECISION.**

(A) An appeal from a determination of the Hearing Officer to the Appeal Panel can be made only by filing with the Human Relations Commission - Enforcement, a notice of appeal. The service of such filing shall be made within 30 days after the service of the Hearing Officer order. The notice of appeal shall specify the Hearing Officer errors and the relief sought by the appeal. A brief may be filed within 30 days of the notice of appeal. A reply brief may be filed within 30 days of service of the appellant's brief.

(B) The Appeal Panel shall either affirm, modify, reverse or remand after a review of the transcript, briefs, and the findings and orders of the Hearing Officer. The Human Relations Commission - Enforcement shall serve a copy of its final order upon each affected respondent and individual complainant. The Appeal Panel has the discretion to request oral argument.

(C) The Human Relations Commission - Enforcement shall complete its internal process within 365 days unless impractical to do so. The Human Relations Commission - Enforcement shall endeavor to meet all deadlines. The respondent and complainant shall be notified of any necessary extensions sought or granted by the Chair of the Human Relations Commission - Enforcement.

(D) The Human Relations Commission - Enforcement may make such investigations and hold such hearings as it sees fit to determine whether a respondent, who has been ordered to cease and desist from an unlawful practice or practices, has complied with the order.

(1994 Jeff. Code, § 92.13) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.13) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.14 APPEALS.**

Any respondent or complainant aggrieved by a final order of the Commission, or any complainant aggrieved by the final order of dismissal of his or her complaint by the Commission, may obtain a review of such order in the Jefferson Circuit Court by filing with the Clerk of the Court, within 30 days after service on him or her of the order, a written petition in duplicate praying that such order be modified or set aside, and by serving a duplicate copy of the petition on the Commission. The Commission shall then cause to be filed in the Court a certified transcript of the record in the proceedings before it, including the pleadings, testimony and order.

(1994 Jeff. Code, § 92.14) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.14) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.15 PENALTY.**

(A) In addition to any remedial order, if the Commission finds that any person has committed an unlawful practice with regard to housing, as defined in this chapter, it may subject such person to a fine not greater than civil penalties established by the Federal Fair Housing Act in Section 812. The Commission may, if such person refuses to pay the fine, file an action

in the Jefferson Circuit Court for the collection thereof.

(B) If a real estate broker, a real estate salesman, or an employee thereof has failed to comply with any order issued by the Commission, or has been found to have committed an unlawful housing discrimination practice in violation of this chapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

(1994 Jeff. Code, § 92.15) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.15) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.16 OBSTRUCTION AND RETALIATION.**

It shall be a prohibited, lawful practice for any person:

(A) To retaliate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter or because he or she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, hearing, or conference before the Commission under this chapter; or

(B) To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this chapter or to obstruct or prevent any person from complying with the provisions of this chapter; or

(C) To obstruct or prevent a person from complying with the provisions of this chapter, or any order of the Commission issued thereunder; or

(D) To resist, prevent, impede, or interfere with the Human Relations Commission or any of its members or representatives in the lawful performance of its or their duty under this chapter. Complaints filed with the Commission under this section shall be processed in conformity with §§ 92.09 et seq.

(1994 Jeff. Code, § 92.16) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.16) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.17 COMPUTATION OF TIME.**

In computing time or periods of time of less than ten days, under this chapter, Saturdays, Sundays and legal holidays shall be excluded.

(1994 Jeff. Code, § 92.17) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.17) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.18 FILING AND SERVING PAPERS.**

All papers required to be filed with the Commission may be mailed to the Commission for filing. All papers required to be served by the Commission shall be mailed to the person by certified mail, return receipt requested. Service or filing by mail is complete upon receipt by the addressee or five days after mailing, whichever first occurs.

(1994 Jeff. Code, § 92.18) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.18) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.19 AFFIRMATIVE MARKETING PLAN REQUIRED FOR COUNTY FUNDS.**

No person, firm, corporation, association or agency of Jefferson County that provides housing opportunities for citizens of Jefferson County with the direct or indirect assistance of Metro Government funds, shall be approved by the Metro Government or recommended for approval by any Metro Government entity without submission of an approved housing affirmative marketing plan.

(1994 Jeff. Code, § 92.19) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.19) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.20 ANALYSIS OF POPULATION BY RACE; GOALS AND TIMETABLES FOR APPROPRIATE REPRESENTATION.**

An approved housing affirmative marketing plan must be in writing and include an analysis of the eligible population by race which is likely to apply for the housing proposed because of neighborhood custom, price or past patterns of discrimination, development of a documentable outreach program to market the housing to the segment of the population by race least likely to apply and the establishment of goals and timetables to which the entity's good faith efforts will be directed to ensure appropriate representation by race.

(1994 Jeff. Code, § 92.20) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.20) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.21 PROGRAMS AND ACTIVITIES REQUIRED TO SUBMIT PLAN; EXCEPTIONS.**

Programs and activities required to submit an approved housing affirmative marketing plan before final approval include, but are not limited to, CDBG activities, low interest mortgage bond programs, public housing/Section 8 programs, UDAG applicant, IRB housing application, and sale of Metro Government owned property specifically for the purpose of providing housing. Program proposals which involve fewer than ten housing unit or lots are excluded from having an approved plan

except that all advertising shall include the fair housing logo or wording.

(1994 Jeff. Code, § 92.21) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.21) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.22 SUBMISSION OF MONTHLY REPORTS BY HOUSING DEVELOPMENTS REQUIRED.**

Housing developments receiving direct or indirect assistance of Metro Government funds or personnel and which are required to have approved affirmative action plans shall be required to submit monthly reports during the initial rent-up stage for not less than two months nor more than six months. Such reports shall include but are not limited to, a list of the media used to advertise availability, copies of advertising text, number of applicants by race, number of occupants by race and number of remaining available units.

(1994 Jeff. Code, § 92.22) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.22) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.23 ADMINISTRATION BY AFFIRMATIVE ACTION OFFICER.**

The Affirmative Action Officer for the Metro Government shall receive written reports on all affected projects and will approve, modify and reject proposals submitted through departmental offices.

(1994 Jeff. Code, § 92.23) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.23) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

#### **§ 92.24 SEVERABILITY.**

If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter.

(1994 Jeff. Code, § 92.24) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.24) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

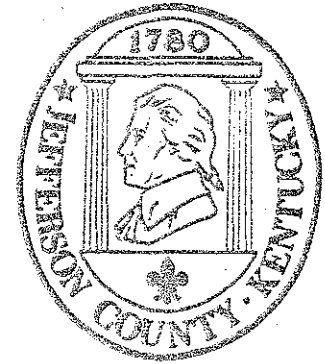
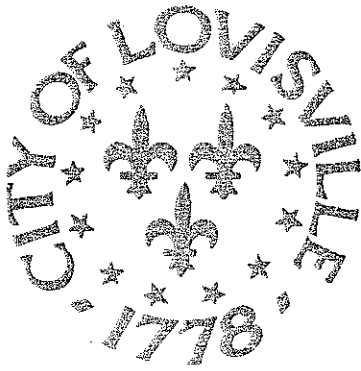
#### **§ 92.25 CONFLICT.**

If any section, subsection, sentence or clause of this chapter is found to be in conflict with a provision of any zoning, building, health, fire or safety code of Jefferson County or the Commonwealth of Kentucky, the provision which establishes the higher standard for the promotion and protection of the public health and safety shall prevail.

(1994 Jeff. Code, § 92.25) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.25) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

**Exhibit 2**

*Library Copy*



# **Annual Report**

## **1985-1986**

**The Louisville and Jefferson County  
Human Relations Commission**



**HUMAN  
RELATIONS  
COMMISSION**  
Louisville & Jefferson County

WILLIAM R. BOSTON  
Chairperson  
GWENDOLYN M. YOUNG  
Executive Director

200 SOUTH SEVENTH STREET · LOUISVILLE, KENTUCKY 40202 · (502) 587-3631

The Honorable Jerry Abramson  
Mayor, City of Louisville  
City Hall  
601 West Jefferson Street  
Louisville, Kentucky 40202

The Honorable Harvey I. Sloane  
County Judge/Executive  
Jefferson County Courthouse  
527 West Jefferson Street  
Louisville, Kentucky 40202

Gentlemen:

The Louisville and Jefferson County Human Relations Commission deals directly with the basic rights of our citizens for equal opportunity in the areas of employment, housing and public accommodations. Discrimination, left unchecked, can represent a significant barrier to an individual's economic opportunity and quality of life.

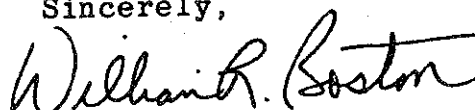
The Commission has as one of its primary responsibilities the enforcement of our Anti-Discrimination Ordinances. Recently recommended changes in our enforcement activities will strengthen these efforts and provide our citizens with more timely resolution of their discrimination complaints.

This past year the Commission took an active role in advocating the broadening of our Anti-Discrimination Ordinances to include sexual orientation. This recommendation came after a lengthy study and much community input, both for and against such efforts.

The challenge of the Commission in the coming years will be to better unify our community and help create an atmosphere where individual differences will be respected and viewed as an essential element in our local community life.

Your continued support will be essential as the Commission works to unite minority and majority in our community.

Sincerely,



William R. Boston  
Chairman

WRB/jfp

**"SEXUAL ORIENTATION"**

Beginning in early 1985, representatives from the Greater Louisville Human Rights Coalition, petitioned the Commission to support amendments to local Anti-Discrimination laws making "sexual orientation" a protected basis. During the year that followed, the Commission's Community Involvement Committee researched, analyzed and examined the propriety of the request. The primary focus of the Committee was on the legality of the matter.

After the submission of several varying legal briefs on the issues, several meetings with GLHRC members, receipt of pro/con letters and phone calls from the public, and a public hearing, on March 13, 1986 the Commission voted to support the amendments. The recommendation was in the following form:

"BE IT RESOLVED that the Louisville and Jefferson County Human Relations Commission supports amendments to local Anti-Discrimination laws making 'sexual orientation' a protected basis."

The Commission communicated this resolution to the Mayor of the City of Louisville and the County Judge/Executive.

**"GARY PEARL CASE"**

This action involved a claim filed with the Kentucky Worker's Compensation Board that drew national attention. Mr. Gary Pearl alleged in his petition for worker's compensation that his schizophrenia was re-aggravated by his employer who required him to work with members of the black race. The Kentucky Worker's Compensation Board found for Mr. Pearl, holding that Mr. Pearl was entitled to work in an all white setting. The employer, the City of Louisville, appealed the Board's ruling to the Jefferson Circuit Court. The Louisville and Jefferson County Human Relations Commission adopted a resolution denouncing the Board's ruling and attempted to enter as an Amicus Curiae, but was denied after the court determined that the Commission's position would be adequately represented by the parties. The Commission's brief was filed with the court, and the Circuit Court ruled against Mr. Pearl's claim.

**"WOMEN'S EQUALITY DAY"**

In August, 1985 the Commission was represented at the Central Park Women's Equality Day Celebration sponsored by several women's organizations. The Commission distributed literature publicizing Employment and Housing Discrimination laws that prohibited discrimination on the basis of sex.

*Library Copy*



# **Annual Report**

## **Fiscal Year 1987**

### **The Louisville and Jefferson County Human Relations Commission**

# **Working for Equality**

**FISCAL YEAR 1987**

**LOUISVILLE AND JEFFERSON COUNTY  
HUMAN RELATIONS COMMISSION**

200 South Seventh Street  
Suite 120  
Louisville, Kentucky 40202  
(502) 587-3631

**GWENDOLYN M. YOUNG, ESQ.**  
*Executive Director*

**HUMAN  
RELATIONS  
COMMISSION**  
Louisville & Jefferson County

JAMES E. McGOVERN  
Chairperson

GWENDOLYN M. YOUNG  
Executive Director

200 SOUTH SEVENTH STREET · LOUISVILLE, KENTUCKY 40202 · (502) 587-3631

The Honorable Jerry Abramson  
Mayor, City of Louisville  
City Hall  
601 West Jefferson  
Louisville, Kentucky 40202

The Honorable Harvey I. Sloane  
County Judge/Executive  
Jefferson County Courthouse  
527 West Jefferson Street  
Louisville, Kentucky 40202

Dear Mayor Abramson and Judge Sloane,

Thank you for appointing me Chair of the Louisville and Jefferson County Human Relations Commission in November, 1986. I am pleased to report that the work of the Commission has dramatically increased during fiscal year 1987.

In this annual report you will note the growth of our enforcement efforts. Under the authority of local government, the Commission addressed 39% more complaints of discrimination than last year. I am confident we are providing a real and desperately needed service for minorities and our entire community. We are a true demonstration of the best mission of our government -- to protect the weak from the strong, the few against the many.

The Commission also sought to address its procedures this year, which are cumbersome and fraught with delays at best and, in my opinion, unfair at worst. The effort to streamline our complaint process and assure its fairness and efficiency is now almost complete. A recommended procedure is on its way to local law makers.

We have also set a new emphasis for the Commission -- to encourage the protection of human rights before they are threatened. We intend to be proactive, and not reactive, whenever possible, and to deal with intolerance before it breaks into violence or overt discrimination.

The roster of Commission activities is long, from assuring contractor and vendor compliance with equal employment law to participating with community leaders in a large public rally against racist violence. Our annual report reflects the hard work and enthusiasm of our staff and our Commissioners. I am proud to present it to you on their behalf.

Sincerely,

*James E. McGovern*  
James E. McGovern

LOU METRO 02094

significant steps toward compliance with the new federal law. However, the state of Kentucky still falls far short of meeting the basic legal requirements.

The staff's involvement in disability rights has also resulted in our providing training and organizing workshops on disability issues and acting as advocates for people whose rights are not protected, particularly in public accommodations, or whose rights under state and federal laws are not being enforced.

### **EDUCATIONAL EQUITY**

Educational issues in Louisville and Jefferson County continue to be a staff priority. We are represented on the Human Resource Advisory Committee, an outgrowth of the plan approved by the federal court in 1984. The Committee has positively influenced the programs that encourage the participation of minority students in advanced and honors programs and efforts to reduce the gap between Black and white teachers. Other signposts of inequity lie ahead, including the number of minority administrators, the fate of historically Black schools, suspension rates of minority students, placements in so-called special education programs, the effect of one-way busing on minority students, diversity in curriculum, and, probably most importantly, achievement score gaps.

All these are issues staff members have also addressed as active participants in the Educational Equity Coalition where we have worked with representatives of a dozen other organizations and agencies committed to desegregation. The Coalition has served as a clearing house for racial equity issues and as an advocate for integrated public education. Currently, efforts are underway to secure the data that defines what needs to be done to achieve equity.

### **SEXUAL ORIENTATION**

The Commission declared its support of extending anti-discrimination laws to cover sexual orientation in March of 1986. During this fiscal year, local government officials asked the staff to document complaints, even without coverage, to determine the need for such extensions of the law. The Commission announced this program in June of 1987 and complaints have already come in from victims of discrimination in employment, housing and places of public accommodation.

\* \* \* \* \*

All these community efforts, although not always successful, have had a positive impact on the right to earn, learn and live in a peaceful environment. The fiscal year has been busy but the results have made our work worthwhile and have given the staff hope and direction for 1988.



# **ANNUAL REPORTS**

**FISCAL YEARS 1988/1989**

**THE  
Louisville & Jefferson County  
*HUMAN RELATIONS  
COMMISSION***

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*. . . As The Fight For  
Equality Continues . . .*

# **FISCAL YEARS 1988 / 1989**

## **Louisville and Jefferson County *HUMAN RELATIONS COMMISSION***

200 South Seventh Street  
Suite 120  
Louisville, Kentucky 40202  
(502) 625-3631



**GWENDOLYN M. YOUNG**  
Executive Director





**HUMAN  
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The Honorable Harvey I. Sloane  
County Judge/Executive  
Jefferson County Courthouse  
527 West Jefferson Street  
Louisville, Kentucky 40202

December 29, 1989

Dear Mayor Abramson and Judge Sloane:

Enclosed is the Annual Report of the Louisville and Jefferson County Human Relations Commission. The Commission has been quite productive in its efforts to build peace and trust and to eliminate illegal discrimination in our community.

Complaint enforcement activities continue to be the main focus of our operations. The complaint level over the last two (2) years has remained relatively constant, with more cases going to public hearing and to Jefferson Circuit Court for review. Our batting average at the Circuit Court level is encouraging.

The Commission has a full time community liaison who works throughout our community to prevent and address racial strife.

The Commission now sponsors quarterly luncheon meetings open to the public that feature speakers on topics related to racial harmony. Also, the Commission publishes a newsletter, "The Grapevine", that highlights civil rights issues and related matters. We feel both of these new programs are invaluable educational tools.

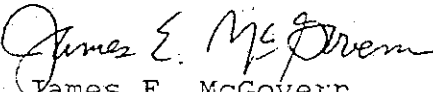
In recognition of our work, the Commission received a special grant from HUD in fiscal year 1989 to fund programs aimed at eliminating housing discrimination.

Page Two (2)  
December 29, 1989  
The Honorable Jerry Abramson  
and The Honorable Harvey I. Sloane

Of particular interest is the role the Commission played in helping to implement the City's minority, female and handicap business enterprise ordinance. Although much remains to be done before we realize our goals, the Commission has identified and certified a host of minority, female and handicap businesses and works closely with department heads to utilize these businesses.

The Annual Report summarizes most of our activities during fiscal years 1988 and 1989. I proudly present this report to you on behalf of my fellow Commissioners and staff.

Sincerely,

  
James E. McGovern  
Chairperson

JEM/law

Enclosure

The Education Committee is now in the process of securing a County-wide survey that will further inform and detail for our community any difficulties that may exist but have not mushroomed or been recognized.

We have also actively been involved with the monitoring of textbooks in use in the public education system, to critique the treatment of minority, women and the disabled in these texts.

#### SEXUAL ORIENTATION LEGISLATION

The Commission is committed to the documentation of alleged incidents of discrimination in employment, housing, and public accommodations directed towards members of the gay and lesbian community. At the present time, neither The City of Louisville nor Jefferson County have a law prohibiting discrimination in employment, housing, or public accommodations based on sexual orientation. However, the Human Relations Commission continues in its efforts to secure inclusion of this group into the present anti-discrimination laws.

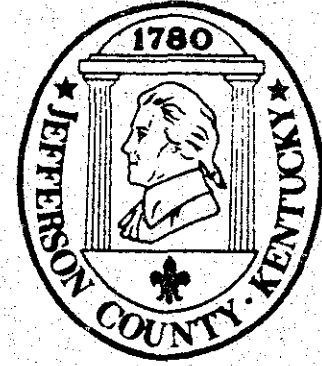
#### COMMUNITY OUTREACH

During fiscal year 1989 the Commission began publication of an Agency newsletter. Our newsletter is known as the Grapevine and it is published on a bi-monthly basis. Our first issue was July-August 1988 and the response has been very gratifying. Our primary goal in the newsletter's publication is to inform and challenge our avid readers about issues relevant to the work of the Commission.

Another special Commission program is the resurrection of a luncheon series, Not By Bread Alone. This program is hosted quarterly at a local community center and open to all interested persons. The luncheon features guest speakers addressing civil rights issues that are vitally important to our community. Since the first quarter of 1989, Topics included "Indigent Health Care in Jefferson County" and "Educating the Disadvantaged".

Also, the Commission was called upon this year to coordinate local activities to commemorate the twenty-fifth (25th) anniversary of the passage of the Civil Rights Act of 1964. The Commission hosted numerous meetings to gather ideas from

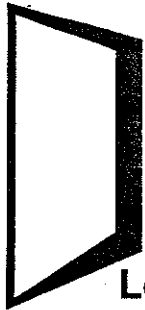
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# **Annual Report**

## **FISCAL YEARS 1990 & 1991**

# **The Louisville and Jefferson County Human Relations Commission**



# HUMAN RELATIONS COMMISSION

Louisville & Jefferson County

DR. ELEANOR YOUNG LOVE  
Chairperson

GWENDOLYN M. YOUNG  
Executive Director

200 SOUTH SEVENTH STREET • LOUISVILLE, KENTUCKY 40202 • (502) 625-3631 • FAX 625-3190

December 9, 1991

The Honorable Jerry Abramson  
Mayor, City of Louisville  
City Hall  
601 West Jefferson Street  
Louisville, Kentucky 40202

The Honorable David Armstrong  
County Judge/Executive  
Jefferson County Courthouse  
527 West Jefferson Street  
Louisville, Kentucky 40202

Dear Mayor Abramson and Judge Armstrong:

Enclosed are the 1990 and 1991 Annual Reports of the Louisville and Jefferson County Human Relations Commission. The Commission continues to be a vital arm of County and City governments, performing services that help to create harmony and respect among different racial, religious and socio-economic groups in our community.

While the processing of complaints alleging discrimination continued to represent the Commission's primary activities, the Commission has been active in other bridge-building projects.

The Commission monitors community issues and develops strategies that have led to more inclusive and fair policies for minorities, females, and disabled persons of our community.

The Agency publishes a Newsletter, "Grapevine", and hosts a Luncheon Series, "Not By Bread Alone", both of which serve as sources of information to the Community on vital civil rights matters.

These Reports summarize most of our activities during fiscal years 1990 and 1991. I proudly present these Reports to you on behalf of my fellow Commissioners and staff.

On a personal note, my service as Chairperson of the Commission for the last five years was one of the more satisfying chapters of my own public service. Thank you both for the opportunity.

Sincerely,

James E. McGovern  
Chairperson  
January 1986 through June 30, 1991

JEM/GMY/lh

An Equal Opportunity Employer

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**REPORTED CASES OF DISCRIMINATION BASED ON "SEXUAL ORIENTATION"**

In 1986, following the Commission's resolution urging the amendment of local anti-discrimination laws to include "sexual orientation", the Louisville Board of Aldermen requested that this Commission document claims of discrimination based on "sexual orientation".

In 1990 the Commission was contacted by six (6) persons alleging employment discrimination and harassment because of "sexual orientation".

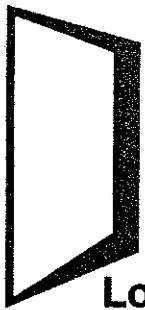
In 1991 the Commission was contacted by eight (8) persons alleging employment and housing discrimination and physical attacks because of "sexual orientation".



# **ANNUAL REPORTS**

**FISCAL YEARS 1992–1993**

**THE  
Louisville & Jefferson County  
*HUMAN RELATIONS  
COMMISSION***



# HUMAN RELATIONS COMMISSION

Louisville & Jefferson County

DR. ELEANOR YOUNG LOVE  
Chairperson

GWENDOLYN M. YOUNG  
Executive Director

200 S. SEVENTH ST. • SUITE 120 • LOUISVILLE, KY 40202 • (502) 574-3631 • FAX 574-3190

February 10, 1994

The Honorable Jerry Abramson  
Mayor, City of Louisville  
City Hall  
601 West Jefferson Street  
Louisville KY 40202

The Honorable David Armstrong  
County Judge/Executive  
Jefferson County Courthouse  
527 West Jefferson Street  
Louisville KY 40202

Dear Mayor Abramson and Judge Armstrong:

Enclosed is the 1992, 1993 Annual Report of the Louisville and Jefferson County Human Relations Commission. The Commission continues to be a vital arm of County and City governments, performing services that help to create harmony and respect among different racial, religious and socio-economic groups in our community.

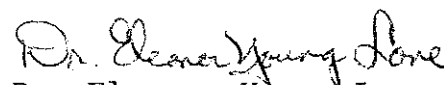
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These Reports summarize most of our activities during the 1992, 1993 fiscal years and are presented to you on behalf of my fellow Commissioners and staff.

Sincerely,

  
Dr. Eleanor Young Love  
Chairperson



## COMMUNITY RELATIONS

### SEXUAL ORIENTATION

In response to a request from the Board of Aldermen, the Commission held two (2) public hearings and co-sponsored with the organization Many People One Community a third hearing. These hearings provided a forum for the public to express opinions about the Fairness Campaign's efforts to prohibit discrimination on the basis of sexual orientation.

Equal time was given to speakers on each side. Several hundred people attended the hearings.

The transcripts of the proceedings taken by a court reporter and video tapes were provided to the Board of Aldermen.

This sensitive issue, the amendment to discrimination laws to include protection on the basis of sexual orientation was supported by the Commission when prior Commission public hearings on the subject were held in 1986.

In 1986 the Board of Aldermen requested the Commission to document allegations of discrimination on the basis of sexual orientation. The claims are increasing from six (6) in 1990, eight (8) in 1991, eleven (11) in 1992 and eleven (11) in 1993. Since the Commission has no authority regarding protection of homosexuals in the areas of employment, housing and public accommodations, only a few individuals complain to the Commission.

In June, 1993 the Commission endorsed the annual Gay Rights March.

### Non-English Speaking Ethnic Groups

Staff worked with Community Services to develop a manual for Non-English speaking ethnic groups.

### Resolution Supporting Native Americans

Tom Pearce, Executive Director of the Kentuckiana Native American Support Group, attended a Commission meeting and requested the Commission's support to ban the use of Native American symbols and names for high schools. The Commission passed a resolution requesting schools to stop this practice. Letters and the resolution were sent to the Superintendent of Jefferson County Schools, Seneca High School (Redskins), Shawnee High School (Indians), Iroquois High School (Raiders), and Bruce Middle School (Braves).

**Exhibit 3**

**In The Matter Of:**

*Public Hearing  
Fairness Ordinance*

---

*Various Speakers  
Vol. 1, April 15, 1999*

---

*KATHY NOLD & ASSOCIATES  
COURT REPORTERS  
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*Original File 990415pb.v1, 107 Pages  
Min-U-Script® File ID: 2224431133*

**Word Index included with this Min-U-Script®**

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 [3]  
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 [6] PUBLIC HEARING ON PROPOSED FAIRNESS ORDINANCE  
 [7]  
 [8] APRIL 15, 1999  
 [9]  
 [10]  
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 [12] LOUISVILLE, KENTUCKY  
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 [19] TAKEN BY: KATHY NOLD, COURT REPORTER  
 [20]  
 [21]  
 [22] KATHY NOLD & ASSOCIATES  
 [23] COURT REPORTERS  
 [24] SUITE 419  
 [25] 730 WEST MAIN STREET  
 LOUISVILLE, KENTUCKY 40202  
 (502) 589-1413

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[1] you.  
[2] COMMISSIONER CORRADINO: We've got Kay  
[3] Tillow. If I'm saying it wrong, I apologize. Kay  
[4] Tillow is the next For speaker. Is Kay here?  
[5] (NO RESPONSE FROM THOSE PRESENT.)  
[6] COMMISSIONER CORRADINO: Then I'm going to  
[7] ask Gemna, is the last name Gemna here, For  
[8] speaker? How about Ziegler, I can't tell if this is  
[9] Tim or Tom Ziegler. Is a Mister Ziegler or Ms.  
[10] Ziegler here?  
[11] (NO RESPONSE FROM THOSE PRESENT.)  
[12] COMMISSIONER CORRADINO: The next For  
[13] speaker is Maureen Keenan. Is Maureen here?  
[14] MS. KEENAN: Yes.  
[15] COMMISSIONER CORRADINO: We will now hear  
[16] from Alan McCutchen and then we will hear from  
[17] Maureen.  
[18]  
[19] MR. MCCUTCHEN: It is rather inconvenient  
[20] to have to come out to talk about such a thing as  
[21] this. Moreover, it's inappropriate that such an  
[22] issue as this should ever come before a governing  
[23] body to have to be decided for and against. It  
[24] speaks for itself.  
[25] The relationship between sodomites

[1] is manifestly a nonproductive relationship. How can  
[2] children be had? I don't know, I don't have the  
[3] answer for that, except modern law will provide the  
[4] sodomites with children. That's how it works.  
[5] It's a sad day for Louisville that  
[6] they have seen fit to enact a law. Employers ought  
[7] to be free to hire the kind of people that they want  
[8] to hire. And if there's a question whether  
[9] something is right or wrong, then we ought to decide  
[10] what - we ought to do what is right. And the fair  
[11] thing for the majority of people, not for the noisy  
[12] minority, the fair thing is to keep the law like it  
[13] is. The civil law is adequate for everybody that  
[14] lives under it at this time, except in Louisville,  
[15] they've already started to water it down.  
[16] It's a privilege to be here and to  
[17] see this many people who are interested in what  
[18] happens. And I agree with the one that spoke at  
[19] this mike a moment ago, it ought to be put out to a  
[20] vote. And it oughtn't to be decided by the  
[21] commissioners, unless there can be a tie vote and  
[22] the issue rejected, then it would be okay with me,  
[23] for one, that it was decided by the commissioners.  
[24] But if they plan to railroad it through, then I  
[25] think it ought to be put out to the people to vote.

[1] And regardless of what they decide, maybe it should  
[2] be. I don't know, I'm not a constitutional scholar,  
[3] none of that. But it's a privilege to be here and  
[4] to speak. And that's what I say.  
[5] COMMISSIONER CORRADINO: Thank you. Noelle  
[6] Dielman is the next speaker to speak Against. Is  
[7] Noelle here? Please come to this mike. Maureen.  
[8]  
[9] MS. KEENEN: My name is Maureen Keenen. I  
[10] live at 1708 Fernwood Avenue in the B District. I'm  
[11] here to tell my story because the law as it stands  
[12] in the county and the laws that used to stand in the  
[13] city did not work for me.  
[14] I was working in 1996 at a company  
[15] that investigates and negotiates medical malpractice  
[16] cases for major health care corporations. At my six  
[17] month review, I was given a fantastic review and a  
[18] ten percent salary increase. In the eighth month, a  
[19] new supervisor came on. In the ninth month, my  
[20] secretary inadvertently and without malice mentioned  
[21] that I was a lesbian.  
[22] In the tenth month, I received no  
[23] communication verbally from my supervisor, but  
[24] instead notes in my case files that critiqued things  
[25] that had never been critiqued before. Those notes

[1] were carbon copied to the president of the company  
[2] in New Jersey. Those notes persisted with no verbal  
[3] communication. Every time I was out of the office,  
[4] I would come back to those notes.  
[5] The verbal communication I did  
[6] receive consisted of, "I know you belong to that  
[7] Fairness organization and I know that those laws are  
[8] going to pass one day, but it shouldn't. Because if  
[9] it does, gay people would be allowed in the schools  
[10] with kids. I'm not judging gay people, God will  
[11] judge them them in hell. I understand that gay  
[12] people have sex with people of the same sex and the  
[13] opposite sex, do you? I know that you're in a  
[14] committed relationship, you say, but don't you also  
[15] have sex with men? Come on, you can tell me."  
[16] This was in the workplace, this was  
[17] from my supervisor. There were four people in the  
[18] office, she was the only person above me. I  
[19] petitioned the corporate office in New Jersey  
[20] because we had a discrimination policy that said  
[21] discrimination against sexual - or on the basis of  
[22] sexual orientation is against company policy. When  
[23] I talked to the corporate office, they said we  
[24] deeply regret that the best we can do is explain to  
[25] this woman that this is our policy. She will not

(1) receive a written reprimand, she cannot be fired.  
(2) So I had no choice but to leave. They could not  
(3) guarantee me in any way that the environment would  
(4) be any less hostile.

(5) That is a two minute version of my  
(6) story. My story and the story of anyone else who  
(7) has been discriminated against is a good deal  
(8) longer. We can't in three minutes relate to you the  
(9) hell that we've lived through. Whether that kind of  
(10) hell is intended by the people you see here or not  
(11) really isn't relevant to me. That hell gets worse  
(12) with every time I have to come here.

(13) To say that it's inappropriate to  
(14) come talk about this, I could not agree more,  
(15) because it's my personal life that's under a  
(16) microscope, it is my personal life that's being  
(17) attacked. It is the hell I'm living through because  
(18) someone feels inconvenienced by my need for human  
(19) and civil rights. I urge you to pass this law, not  
(20) just to protect me and my people, but my brothers  
(21) and sisters of color, of disability, of age. Thank  
(22) you.

(23) **COMMISSIONER CORRADINO:** Thank you,  
(24) Maureen. After Noelle, we've got Alicia Pedreira.  
(25) Alicia, if you can come to this mike, I'd appreciate

Page 23

(1) it.

(2)  
(3) **MS. DIELMAN:** Good evening. My name is  
(4) Noelle Dielman. I live at 4635 Southcrest Drive in  
(5) Louisville. And I'm not going to quote from the  
(6) Bible this evening because I believe that probably  
(7) you're going to hear from some people who will. But  
(8) I do want to quote something that came from Samuel  
(9) Adams, who was one of our founding fathers, a man  
(10) who came from tyranny and who is considered the  
(11) Father of the American Revolution. And he said, a  
(12) general dissolution of principles and manners will  
(13) more surely overthrow the liberties of America than  
(14) the whole force of the common enemy.

(15) What he was referring to when he  
(16) referred to principles and manners, are the  
(17) principles of the Bible. And I can tell you that we  
(18) have reached the point where liberties are being  
(19) trampled. I'm talking about the liberties of  
(20) business owners, people who pour their money into  
(21) starting a business, many times their life savings,  
(22) own that business, they should have the right to  
(23) hire and fire at will. You're putting an employer  
(24) in great jeopardy by passing this so called Fairness  
(25) ordinance in the county, and I'll explain why.

Page 24

(1) If you have a man who is sexually  
(2) harassing women, you can fire him, as rightly you  
(3) should. If you don't fire him, you are open to a  
(4) lawsuit. However, if you have a homosexual man  
(5) sexually harassing another man, or homosexual woman  
(6) sexually harassing another woman on the job, you're  
(7) in the position of having to fire that person also.  
(8) But if you do, the business owner is being opened up  
(9) for a lawsuit. And they will claim that they were  
(10) discriminated against because they were homosexual.  
(11) If you don't fire that person, then you are being  
(12) opened up for a lawsuit by the person who has been  
(13) harassed. And I'm asking you for the sake of the  
(14) business people in this county, please do not pass  
(15) this ordinance. Owners of businesses pour their  
(16) life into their work, pour their life into their  
(17) businesses. Please don't take away their right to  
(18) have good employees.

(19) Now, let me explain something. If  
(20) an employer chooses to fire someone for the plain  
(21) and simple fact that they're homosexual, it's the  
(22) businessman's loss. If he has a good employee and  
(23) he's going to fire them for that reason, it's his  
(24) loss. That fired employee can go to the competition  
(25) and offer their skills to the next man or the next

Page 25

(1) business owner. And I thank you for listening to me  
(2) this evening.

(3) **COMMISSIONER CORRODINO:** Thank you very  
(4) much, Ma'am. Following Alicia Pedreira, we'd like  
(5) Mike Alzman. Alicia.

(6)  
(7) **MS. PEDREIRA:** Good evening. My name is  
(8) Alicia Pedreira. I live at 1128 Charles Street in  
(9) the B District. And many of you have probably heard  
(10) my story. I was fired from Kentucky Baptist Homes  
(11) For Children, simply because I was gay, something  
(12) that I had told before I was hired in the  
(13) interviewing process. And I won't go through the  
(14) whole story because it takes longer than three  
(15) minutes.

(16) However, my story is a little  
(17) different than most people that I know who have been  
(18) fired from their jobs, because, one, my employer was  
(19) willing to say that they fired me solely on that  
(20) basis and, two, is that I talked about it. Because  
(21) most employers won't fire someone directly and say  
(22) well, I'm going to fire you because you're gay, get  
(23) out. They're going to say no, you're not doing a  
(24) good job, you're not doing excellent work like  
(25) you're supposed to be. They'll come up with the

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**In The Matter Of:**

*Public Hearing  
Proposed Fairness Ordinance*

---

*Various Speakers  
Vol. 1, May 6, 1999*

---

*KATHY NOLD & ASSOCIATES  
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[2] OFFICE OF THE COUNTY COMMISSIONER, "B" DISTRICT  
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[7]  
[8] MAY 6, 1999  
[9]  
[10] SHIVELY CITY HALL  
[11] 3920 DIXIE HIGHWAY  
[12] LOUISVILLE, KENTUCKY 40216  
[13]  
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[18]  
[19] REPORTER: KATHY NOLD  
[20]  
[21]  
[22] KATHY NOLD & ASSOCIATES REPORTERS  
[23] SUITE 419  
730 WEST MAIN STREET  
[24] LOUISVILLE, KENTUCKY 40202  
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[9] HIGHWAY, LOUISVILLE, KENTUCKY, ON MAY 6, 1999.  
[10]  
[11] APPEARANCES  
[12]  
[13]  
[14] JOE CORRADINO  
OFFICE OF THE COUNTY COMMISSIONER, B DISTRICT  
[15] 203 JEFFERSON COUNTY COURTHOUSE  
LOUISVILLE, KENTUCKY 40202-2817  
[16]  
STUART ADAMS  
[17] COUNTY ATTORNEY'S OFFICE  
531 COURT PLACE  
[18] LOUISVILLE, KENTUCKY 40202  
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LOU METRO 00099



[1] it. Thank you.  
[2] **COMMISSIONER CORRADINO:** Thank you, Ma'am.  
[3] On this microphone is Mister Howard, Alex Howard.  
[4] Dan Farrell.  
[5] **DAN FARRELL:** Commissioner Corradino, thank  
[6] you for your time and for giving the deliberate  
[7] consideration to the issue of discrimination in our  
[8] community. As you know, on January 26th of this  
[9] year the City of Louisville passed historic  
[10] legislation that prohibited employment  
[11] discrimination on the basis of sexual orientation  
[12] and gender identity. Now Jefferson County Fiscal  
[13] Court is considering similar legislation.  
[14] The law passed by the city was a  
[15] good first step, but discrimination against lesbian,  
[16] gay, bisexual and transgendered people does not  
[17] begin and end in the workplace. This is why tonight  
[18] I challenge you and Fiscal Court to do more.  
[19] Housing discrimination is prevalent  
[20] in our community. Dozens of people have told the  
[21] Fairness campaign about being denied housing or  
[22] being evicted because of their sexual orientation or  
[23] gender identity.  
[24] In October of 1997, in response to  
[25] the growing number of these complaints, the campaign

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[1] and lesbian couples, but not to the heterosexual  
[2] couples. One such rule was that the gay couple was  
[3] told that they only rent to married couples, while  
[4] the heterosexual couple was not told that, even  
[5] though the managers knew that they were not  
[6] married.  
[7] With this blatant evidence - not  
[8] inuendo, not rumor, but evidence - I ask that  
[9] Fiscal Court enact legislation to prohibit  
[10] discrimination in housing on the basis of sexual  
[11] orientation and gender identity. Thank you,  
[12] Commissioner.  
[13] **COMMISSIONER CORRADINO:** Thank you, Mister  
[14] Farrell. Folks, there are a few chairs up in the  
[15] front. You're welcome to join us up in this area,  
[16] taking chairs that are next to where we're sitting,  
[17] if you so desire. There are a few chairs up in here  
[18] and these brown chairs, you're welcome to sit at.  
[19] And we're going to ask Reverend Crysler to step to  
[20] this microphone. Mister Howard, begin, please.  
[21] **ALEX HOWARD:** Yes, I am Reverend Howard  
[22] and I come to speak against the Fairness Act as far  
[23] as going to set up a special law, because all of us  
[24] are treated equally under the law, or supposed to  
[25] be, on things that happen on an individual level.

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[1] began working with other fair housing advocates to  
[2] create a discrimination testing program.  
[3] Discrimination testing is a widely used, legally  
[4] acceptable method of determining the merit of  
[5] discrimination claims. It is currently used  
[6] throughout the country to test housing  
[7] discrimination for bias against race, sex,  
[8] disability, age, and familial status.  
[9] The way it works is that two  
[10] applicants go to the same landlord, two applicants  
[11] that are the same except for one distinct  
[12] characteristic, what's being tested for. What we  
[13] did in this case is that we did our own test. In  
[14] each test, a heterosexual couple first requested a  
[15] one bedroom apartment in an apartment complex.  
[16] Following within thirty minutes, a gay or lesbian  
[17] couple went to the same complex and asked for a one  
[18] bedroom apartment.  
[19] Almost all of these apartments that  
[20] were tested were located right here in the C  
[21] District. The results were disheartening. Four of  
[22] the six apartment complexes tested denied equal  
[23] housing to the gay or lesbian couple, based solely  
[24] on their sexual orientation. In all cases, the  
[25] apartment complex had a rule that applied to the gay

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[1] And according to the word of God,  
[2] homosexual action is an abomination of his law. So  
[3] what it is, is we are not against the practice, and  
[4] we are not trying to keep anyone from work, we are  
[5] not trying to keep anyone from fair housing, because  
[6] we realize that everyone needs a place to stay and  
[7] everyone needs a job.  
[8] But also, we have to realize that we  
[9] have children and we have grandchildren that are  
[10] coming up within the community, and with the - I  
[11] have had friends to die from AIDS and the AIDS is  
[12] real popular among the black community. And because  
[13] once they contract AIDS, there is nothing - they  
[14] are not able to afford the money to buy the medicine  
[15] to keep them alive.  
[16] So if we are going to say it's all  
[17] right for a man to be with a man and it's all right  
[18] for a woman to be with a woman, then we are just  
[19] throwing out the rules of God because when God  
[20] created heaven and earth, he created - when he  
[21] created man, he created man and woman, and he told  
[22] them to go be fruitful and multiply.  
[23] He has never - and there's nowhere  
[24] in the holy writ where he has said that it's okay  
[25] for a man to be with a man or it's okay for a woman

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**In The Matter Of:**

*Public Hearing on Proposed  
Fairness Ordinance*

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*Hearing Volume Number 1  
June 10, 1999*

---

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Public Hearing on Proposed  
Fairness Ordinance

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 [8] JUNE 10, 1999  
 [9]  
 [10]  
 [11] ATHERTON HIGH SCHOOL  
 3000 DUNDEE ROAD  
 LOUISVILLE, KENTUCKY  
 [12]  
 [13]  
 [14]  
 [15]  
 [16]  
 [17] TAKEN BY: KATHY NOLD, COURT REPORTER  
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[1] straighten that out. Others who want a hard copy of  
[2] the transcript, just let us know and we'll provide  
[3] that to you.

[4] So I'm going to begin and ask the  
[5] first person, and we'll start with those who have  
[6] signed up on the Against sheet to speak from that  
[7] roster, and those that want to speak For here. And  
[8] as we've done in the past, if we can keep two up at  
[9] the same time - I know it's a little bit of a  
[10] problem, but it will allow us to get through the  
[11] meeting fairly quickly. So I'm going to leave this  
[12] mike - I can yell pretty loudly. I can yell the  
[13] name and I'm sure you'll hear me, but so these two  
[14] mikes do and will work. Okay.

[15] The first person is Chris VanMeter.  
[16] He will speak to this microphone and then Johnnie  
[17] Hardin will speak at this microphone. But Chris,  
[18] you'll go first, okay. Three minutes, please.

[19] CHRIS VANMETER: Okay, thank you. One,  
[20] two, okay. Make sure it works here. I didn't know  
[21] I was going to have three minutes, I was thinking I  
[22] was going to have about thirty seconds. So I guess  
[23] I'll speak from my heart. For one, I'm against this  
[24] bill to be passed and I am a youth minister in town  
[25] and I do have my set of morals that I believe, and

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[1] people, and God loves them, but his word does say  
[2] it's sin. I am a sinner just as much as they are a  
[3] sinner, but I have been forgiven by asking Jesus  
[4] Christ to forgive me of my sins. And his word does  
[5] say that Jesus came to die for those. And if we  
[6] confess our sins, he will forgive us of our sins.

[7] I don't know how much time I have  
[8] left, I guess you'll let me know when I get to one.  
[9] Thank you, Brother, thank you. The thing I don't  
[10] want to see happen - thank you, sir.

[11] I don't want to see this get  
[12] accepted into the schools, but I do understand  
[13] separation of church and state. But I do not want  
[14] my children in the future, someone telling them this  
[15] is an acceptable life-style. It's different if  
[16] they're in the world and they pick up on it there,  
[17] but I don't want it to be taught in school  
[18] organizations or from people that work with children  
[19] to be able to openly express their feelings about  
[20] this to my children. I believe it's up to us in our  
[21] homes to raise our children in the way they should  
[22] know and as the Bible says, when they grow older,  
[23] they'll not depart from it. And I believe a lot of  
[24] things that have happened and gone wrong in this  
[25] country have been in the breakdown of the home. We

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[1] one being the Bible being one hundred percent true.

[2] So God's word does tell us that this  
[3] life-style is not acceptable in his eyes. And  
[4] there's a lot of people who can argue with what the  
[5] word and what it says and how it's been interpreted,  
[6] but there are countless times in the word, cities  
[7] like Sodom and Gomorrah that have been destroyed  
[8] because of their life-style, and other instances  
[9] where God said it was not acceptable. And just like  
[10] if you were in the Garden of Eden, where you had man  
[11] and woman and they procreate their own kind.

[12] I guess aside from the Bible, if you  
[13] want to look at it in this aspect, is this little  
[14] precious one here, my son. He would not have been  
[15] able to be created if there was not a man and woman  
[16] together. And the people who are here for the bill  
[17] being passed, of the Fairness Ordinance, they  
[18] themselves would not even be here if it was not for  
[19] a male and female together, to create them  
[20] themselves.

[21] So if we look at it in that respect,  
[22] how can we even be here to grow as a society in the  
[23] future and to have children and grandchildren and to  
[24] cultivate as human beings? So I guess from that  
[25] aspect, and back to the Bible, is that I love these

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[1] need to concentrate on our homes and our families  
[2] and not make our jobs and careers number one, but  
[3] our families, because they are our future. Thank  
[4] you and God bless.

[5] COMMISSIONER CORRADINO: Thank you, Mister  
[6] VanMeter. Johnnie Hardin is going to speak next and  
[7] we'll ask Rita Haag, I believe it is, H-A-A-G, to  
[8] please step to this microphone or sit in the seat  
[9] close to the microphone. Mister Hardin.

[10] JOHNNIE HARDIN: Thank you very much. I  
[11] appreciate everyone here who are speaking tonight.  
[12] First, I would like to say that no person is without  
[13] sin. And I do love all of you as well. We are all  
[14] sinners on a daily basis. The only way you can be  
[15] without sin is to be called home. You have not been  
[16] called home yet so you are indeed a sinner. Your  
[17] child may grow up to be gay one day, you don't  
[18] know.

[19] But I want to get back to why this  
[20] is so important to protect this child as well, being  
[21] straight or gay. And the reason is, I work in a  
[22] salon in St. Matthews, have been there for three  
[23] months, had a return clientele of eighty-two  
[24] percent. The manager only had a return clientele of  
[25] twenty percent. Someone - I was living in the

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LOU METRO 00195

[1] closet – told the manager, through a friend,  
[2] through a friend, that I was gay in my private  
[3] life.  
[4] They went to the manager of the Mall  
[5] itself and they got together and came to me and said  
[6] you're a good hairdresser, you're a good person, we  
[7] found out you're gay, we can't have this in St.  
[8] Matthews. A lot of gay people live in St. Matthews,  
[9] believe me. Luckily, through the love and support  
[10] of my mother, as a young boy was told by my aunt, do  
[11] you realize Johnnie is different. My mother said  
[12] yes. She said what are we going to do, my aunt did,  
[13] and my mother said we're going to love him that much  
[14] more because he has a harder road to travel.  
[15] My mother just died last year. I  
[16] took care of her for the last five years of her  
[17] life. I agreed to take care of my stepfather now,  
[18] who is eighty-two, because his straight children did  
[19] not want him. They wanted his money every month,  
[20] but not him. I also take care of my husband's  
[21] mother, who we just bought a home two doors down  
[22] from ours so that we can take care of her as well.  
[23] If I didn't have a job, I couldn't take care of my  
[24] family.  
[25] My family is at my home each and

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[1] labels for those of us who oppose a sinful perverted  
[2] behavior so we can appear wrong or bad. If you  
[3] oppose them, you're called homophobes, mean  
[4] spirited, full of hate. They endorse a cause that  
[5] considers gay and lesbians living an alternate  
[6] life-style in domestic partnerships.  
[7] Gay parades endorse sexual  
[8] perversion and orgies in the streets. God calls  
[9] them sodomites and fornicators for practicing sin.  
[10] He also calls them an abomination. That's in  
[11] Leviticus 18, 22. Isaiah 5, 20 states, woe to them  
[12] that call evil good and good evil, that puts  
[13] darkness for light and light for darkness.  
[14] Something you are considering doing.  
[15] Proverbs 6, 16 to 17, states, these  
[16] six things the Lord hates, yeah, seven are an  
[17] abomination to him, a proud look, a lying tongue, a  
[18] hand that sheds innocent blood. If you allow this  
[19] to become law in Jefferson County, the blood of  
[20] every child destroyed, whether body, soul or spirit,  
[21] at the hands of the homosexual, will be on your  
[22] hands. You can stop this if you so choose. You can  
[23] make special rights for sodomites legal, but you  
[24] will never make it right or moral or acceptable in  
[25] God's sight.

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[1] every weekend. His family, every single weekend.  
[2] That is what family values is all about, being a  
[3] family and supporting one another. When I was  
[4] fired, I couldn't get my unemployment. I was told,  
[5] because I was fired legally. My mother had just had  
[6] her first heart attack, was totally disabled, she  
[7] got three hundred and forty-two dollars a month. I  
[8] don't know if any of you all could live on that. If  
[9] I had not had a job, I could not help her. She  
[10] raised eleven children by herself, making a dollar  
[11] thirty-three cents an hour. Support this bill, it  
[12] is going to support everybody's family throughout.  
[13] Thank you.  
[14] COMMISSIONER CORRADINO: Yes, sir. The  
[15] next person who will speak at this microphone For is  
[16] Jennifer Post and we'll now listen to Rita Haag.  
[17] Thank you. State your name just for the record.  
[18] RITA HAAG: My name is Rita Haag. When I  
[19] became a christian, I realized God only decided what  
[20] was good or bad, righteousness or sin, acceptable or  
[21] unacceptable to him. It is not for me to decide.  
[22] He has laid out absolutes in his word that mandates  
[23] to society what is right and wrong so we can't do  
[24] what we want and have society condone it. The  
[25] homosexual community has used negative emotional

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[1] You, Mister Corradino, have a very  
[2] important decision to make. I hope for your sake  
[3] you make the right one. Galatians 6, 7, states, be  
[4] not deceived, God is not mocked. For what sort of a  
[5] man soweth, that shall he also reap. Is this really  
[6] what you want for your community, for your  
[7] grandchildren and for the children and grandchildren  
[8] of your family and friends? Thank you.  
[9] COMMISSIONER CORRADINO: Thanks, Ms. Haag.  
[10] After Ms. Haag will be Tom Elbert, coming to the  
[11] microphone on your right. Tom Elbert. Ms. Post.  
[12] JENNIFER POST: I support the Fairness  
[13] Ordinance for the county. The reason I support the  
[14] ordinance is because I feel every person who works  
[15] should be protected against discrimination in the  
[16] workplace. I speak from experience as a postop  
[17] transsexual who has experienced harassment in the  
[18] workplace, such as name calling and being ostracized  
[19] by coworkers, which in turn caused me to be treated  
[20] by a psychiatrist for job-related stress. After  
[21] reporting these incidents to management, I was told  
[22] to get a thick skin, if you can't take the heat, get  
[23] out of the kitchen.  
[24] As a taxpayer, I feel I should get  
[25] the same protection as everyone else in the

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LOU METRO 00196

**Exhibit 4**

166/364



ORDINANCE NO. 36  
Series 1999

# ORDINANCE

## Jefferson Fiscal Court

### An Ordinance Relating To:

AN ORDINANCE REPEALING THE CURRENT CHAPTER 92 OF THE JEFFERSON COUNTY CODE OF ORDINANCES AND RECODIFYING CHAPTER 92 TO PROHIBIT DISCRIMINATORY PRACTICES IN EMPLOYMENT, PUBLIC ACCOMMODATIONS AND HOUSING.

INTRODUCED 9-14-99 BY COMMISSIOENRS MAPLE, CORRADINO, AND OWENS  
FIRST READING 9-14-99  
SECOND READING 10-12-99  
ADOPTED 10-12-99 COUNTY JUDGE/EXECUTIVE JACKSON - NAY  
COMMISSIONER OWENS - AYE  
COMMISSIONER MAPLE - AYE  
COMMISSIONER CORRADINO - AYE

**ORDINANCE NO. 36, SERIES 1999**

**AN ORDINANCE REPEALING THE CURRENT CHAPTER 92  
OF THE JEFFERSON COUNTY CODE OF ORDINANCES  
AND RECODIFYING CHAPTER 92 TO PROHIBIT DISCRIMINATORY PRACTICES  
IN EMPLOYMENT, PUBLIC ACCOMMODATIONS AND HOUSING**

**WHEREAS**, the General Assembly of the Commonwealth of Kentucky in Kentucky Revised Statutes, Chapter 344, has enacted a statutory scheme prohibiting acts of discrimination; and

**WHEREAS**, the Fiscal Court is cognizant of its duty, in accordance with the laws of the Commonwealth of Kentucky, to protect and foster the health, safety and welfare of all persons residing in Jefferson County and to prevent, insofar as possible, any discrimination on account of a person's disability, sex, race, color, religion, age, national origin, sexual orientation or gender identity; and

**WHEREAS**, the Fiscal Court has found that some Jefferson County citizens are subject to discrimination based on their sexual orientation or gender identity and that these findings are supported by the transcripts of the public hearings held on April 15 and 22, May 6 and 13, and June 10 and 17, 1999, all of which is hereby incorporated by reference, as if fully set forth, as findings of Fiscal Court; and

**WHEREAS**, Jefferson County Fiscal Court desires to restate and recodify Chapter 92 of the Jefferson County Code of Ordinances as an omnibus regulatory scheme to prohibit and remedy discrimination;

**NOW, THEREFORE, BE IT ORDAINED BY THE JEFFERSON COUNTY FISCAL COURT:**

**SECTION 1. REPEAL OF CHAPTER 92 AND ENFORCEMENT OF EXISTING ACTIONS**

Chapter 92 of the Jefferson County Code of Ordinances is repealed in its entirety for purposes of recodification. It is the intent of this Ordinance that all actions and prosecution of actions for violation of Chapter 92, which accrued prior to the effective date of this repeal of Chapter 92, shall be continued in full force and effect. The mere repeal of Chapter 92 shall not, by itself, be cause for dismissal or abatement of any enforcement actions, nor shall it be construed to diminish or interrupt any rights, remedies or enforcement of rights which accrued pursuant to Chapter 92 before repeal.



**SECTION 2. A New Section of Chapter 92 is enacted as Follows:  
Section 92.01 DECLARATION OF POLICY.**

It is the policy of Jefferson County to safeguard all individuals within the County from discrimination in certain contexts because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation. Certain practices must be prohibited within the areas of employment, housing, public accommodation, resort or amusement as necessary to protect individual's personal dignity and insure freedom from humiliation; to make available to the County all full productive capacities; to secure the County against strife and unrest which would menace its democratic institutions; and to preserve the public safety, health and general welfare.

**SECTION 3. A New Section of Chapter 92 is enacted as Follows:  
Section 92.02 DEFINITIONS.**

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. **ADMINISTRATIVE CLOSURES.** Complaint closures other than on the merits, such as failure to locate, failure to cooperate and withdrawals.
- B. **ANTI-DISCRIMINATION PANEL.** A panel composed of not less than five commissioners appointed by the Chairperson or Executive Committee of the Commission.
- C. **APPEAL PANEL.** A panel of not less than five commissioners appointed by the Chairperson or Executive Committee of the Commission to hear an appeal from the decision of a Hearing Panel.
- D. **CANVASSING.** Includes door to door solicitation by the use of circular advertisements or any other means where the canvasser or his employer has not been requested by the owner to obtain a listing of any housing accommodation or to confer with the owner regarding a transaction involving a housing accommodation.
- E. **COMMISSION.** The Louisville and Jefferson County Human Relations Commission as authorized by resolutions and ordinances of Jefferson County Fiscal Court and the City of Louisville.
- F. **COMMISSIONER.** A member of the Louisville and Jefferson County Human Relations Commission.

- G. **DISABILITY.** A physical or mental impairment which substantially limits one or more major life activities, a record of such impairment, or a condition which is regarded as causing such impairment. Current illegal use of drugs or chemicals shall not be considered a disability hereunder. Life activities shall be considered to include, but not necessarily limited to, communication, ambulation, socialization, self-care, education, vocational training, employment, transportation and adapting to housing.
- H. **DISCRIMINATION.** Any direct or indirect act or practice of exclusion, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter.
- I. **EMPLOYEE.** Any individual employed by an employer, but not including an individual employed by his or her parents, spouse or child, or an individual employed to render services as a nurse, domestic or personal companion in the home of the employer.
- J. **EMPLOYER.** Any person who has two or more employees in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such person.
- K. **EMPLOYMENT AGENCY.** Any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such a person.
- L. **FAMILIAL STATUS.** One or more individuals who have not attained the age of eighteen (18) years and are domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.
- M. **FINANCIAL INSTITUTIONS.** Any person engaged in the business of lending money or guaranteeing losses.
- N. **GENDER IDENTITY.** Manifesting an identity not traditionally associated with one's biological maleness or femaleness.

O. HEARING PANEL. A panel of three persons, one of whom must be a present Commissioner appointed by the Chairperson or Executive Committee of the Commission.

P. HOUSING ACCOMMODATION.

(1) Any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous located in Jefferson County, used for the building of one or more housing or rooming units or for mobile homes or mobile home parks owned by or otherwise subject to the control of one or more persons; or

(2) Any real property, including vacant land intended for sale or lease, or any interest therein, located in Jefferson County; or

(3) Any single-family dwelling or multi-family dwelling, or any portion thereof, including a housing unit or a rooming unit, or any interest therein, located in Jefferson County, which is used or occupied, or intended, arranged, assigned, or designated to be used or occupied, as the home, homesite, residence, or sleeping place of one or more persons.

Q. HOUSING UNIT. A single room, suite of rooms, or apartment, containing cooking and kitchen facilities, occupied or intended for occupancy as living quarters, by a person, a family, or a group of persons living together.

R. LABOR ORGANIZATION. Any labor organization and an agent of such an organization, including an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged, which is subordinate to a national or international labor organization.

S. OWNER. Includes a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.

T. PERSON. Includes an individual and any group of one or more natural persons, such as, but not limited to, labor unions, joint apprenticeship committees, partner-ships, associations, corporations, unincorporated organizations, mutual companies, joint-stock companies, trusts, legal representatives, trustees in bankruptcy, receivers, any individuals acting in a financial or representative capacity, either appointed by a court of other-wise, the city and county or any of

its agencies, and any other legal, governmental or commercial entity as well as a natural person or persons. *PERSONS*, when applied to any of the foregoing, includes members, representatives, officers and directors.

- U. *PLACE OF PUBLIC ACCOMMODATION, RESORT or AMUSEMENT*. Any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds; except that a private club is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests; and *PLACE OF PUBLIC ACCOMMODATION, RESORT or AMUSEMENT* does not include a rooming or boarding house containing not more than one (1) room for rent or hire and which is within a building occupied by the proprietor as his residence.
- V. *PURCHASER*. Includes any occupant, prospective tenant, assignee, prospective assignee, buyer, or any other person seeking the right of ownership or possession, or any agent of any of these.
- W. *REAL ESTATE BROKER or REAL ESTATE SALESPERSON*. An individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who with the intention or expectation of receiving or collecting consideration, lists, sells, purchases, exchanges, rents, or leases any housing accommodation, including options thereupon, or who negotiates rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds oneself out as engaged in such activities; or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance on transfer of any housing accommodation or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby a person undertakes to promote the sale, purchase, exchange, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.
- X. *REAL PROPERTY*. Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal.
- Y. *ROOMING UNIT*. Any room or group of rooms forming a single, habitable unit used for living or sleeping, but which does not contain cooking and kitchen facilities.

- Z. **SEXUAL ORIENTATION.** An individual's actual or imputed heterosexuality, homosexuality or bisexuality.

## **PROHIBITION OF DISCRIMINATORY PRACTICES**

### **HOUSING**

#### **Section 4 A New Section of Chapter 92 is enacted as Follows:**

#### **Section 92.03 UNLAWFUL PRACTICES IN CONNECTION WITH HOUSING.**

In connection with any of the transactions set forth herein which affect any sale, purchase, exchange, rental, or lease of any housing accommodation, it shall be a prohibited, unlawful practice for a person, owner, financial institution, real estate broker, or real estate salesperson, or any representative of the above to:

(A) Refuse to sell, purchase, exchange, rent or lease, lend or deny brokerage service or otherwise deny to or withhold any housing accommodation from any person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(B) Discriminate against any person because of race, color, religion, national origin, familial status, disability, sex, gender identity or sexual orientation in terms, conditions, or privileges of the appraisal, purchasing of loans, financial assistance, sale, purchase, exchange, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith; or

(C) Refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent or lease any housing accommodation from or to any person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(D) Refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing accommodation to any person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(E) Represent to any person that any housing accommodation is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is available, or to refuse to permit a person to inspect any housing accommodation because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(F) Make, print, circulate, post, mail or cause to be printed, circulated, posted, or mailed any notice, statement, or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, exchange, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, exchange, rental, lease or financing of any housing accommodation which indicates directly or indirectly, any discrimination or any intent to discriminate as to race, color, religion, national origin, familial status, disability, sex, gender identity or sexual orientation; or

(G) Offer, solicit, accept, or use a listing of any housing accommodation for sale, purchase, exchange, rental, or lease with the understanding that any person may be subjected to discrimination in connection with such sale, purchase, exchange, rental, or lease, or in the furnishing of facilities or services in connection therewith because of his/her race, color, religion, national origin, familial status, disability, sex, gender identity or sexual orientation; or

(H) Induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, exchange, rental, or lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation in the area to be affected by such sale, purchase, exchange, rental, or lease will or may result in:

(1) Lowering of property values in the area;

(2) An increase in criminal or antisocial behavior in the area; or

(3) A decline in the quality of the schools in the area, or

(I) Make any misrepresentations concerning the listing for sale, purchase, exchange, rental, or lease or the anticipated listing for any of the above, or the sale, purchase, exchange, rental or lease of any housing accommodation in any area in Jefferson County for the purpose of inducing or attempting to induce any such listing or any of the above transactions; or

(J) Place a sign purporting to offer for sale, purchase, exchange, rental, or lease any housing accommodation that is not, in fact, so offered; or

(K) Advertise for sale, purchase, exchange, rental or lease any housing accommodation which is nonexistent, or which is not actually being offered for any of the above; or

(L) Engage in, hire to be done, or to conspire with others to commit threats or acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play on fear with the purpose of either discouraging or inducing or attempting

to induce the sale, occupancy, purchase, exchange, rental, or lease, or the listing for any of the above, of any housing accommodation; or

(M) Do any of the unlawful practices prohibited by this section by canvassing; or

(N) Otherwise deny to or withhold any housing accommodation from a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation.

(O) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter; or to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection with such dwelling, because of a disability of that person, of a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or of any person associated with that person:

(1) For purposes of this subsection, DISCRIMINATION includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by a person, if the modifications may be necessary to afford the person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted,

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a housing accommodation; or

(c) In connection with the design and construction of covered multi-family housing accommodations for first occupancy after the effective date of passage of this Ordinance, a failure to design and construct those housing accommodations in a manner ensuring that they have at least one (1) entrance on an accessible route unless impractical to do so because of the terrain or unusual characteristics of the site. Housing accommodations with a building entrance on an accessible route shall comply with the following requirements:

1. The public use and common use portions of the housing accommodations shall be readily accessible to and usable by disabled persons;

2. All the doors designed to allow passage into and within all premises within the housing accommodations shall be sufficiently wide to allow passage by disabled persons in wheelchairs; and

3. All premises within the housing accommodations shall contain the following features of adaptive design:

a. An accessible route into and through the housing accommodation;

b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

c. Reinforcements in bathroom walls to allow later installation of grab bars; and

d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

and

(d) Compliance with the appropriate requirements of Chapter 11 of the Kentucky Building Code, Requirement for Accommodations in New Construction, as amended from time to time, suffices to satisfy the requirements of subsection (1)(c) (2) or(3) of this section.

(2) As used in subsection (1) of this section, the term *COVERED MULTIFAMILY HOUSING ACCOMMODATION* means:

(a) Buildings consisting of four (4) or more units if the buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of two (2) or more units.

(3) Nothing in this section requires that a housing accommodation be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(P) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation.



of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation.

(Q) Coerce, intimidate, harass, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Chapter or Title VIII of the Civil Rights Act of 1968.

**Section 5 A New Section of Chapter 92 is enacted as Follows:  
Section 92.04 HOUSING EXCEPTIONS.**

(A) Those provisions of this Chapter, which prohibit discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply:

(1) To the rental of a housing accommodation in a building which contains not more than two (2) families living independently of each other, if the owner or a member of his family resides in one of the housing accommodations;

(2) To the rental of one (1) room or one (1) rooming unit in a housing accommodation by an owner if he or a member of his family resides therein;

(3) To a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, lease, rental, occupancy, assignment, or sublease of a housing accommodation which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to those persons, unless membership in the religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(4) To a private individual homeowner disposing of his property through private sale without the aid of any real estate operator, broker, or salesperson and without advertising or public display except that attorneys, escrow agents, abstractors, title companies, and other professional assistance may be utilized as necessary to perfect or transfer the title.

(B) Nothing in this Chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(C) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a housing accommodation. No provision in this Chapter regarding familial status shall apply with respect to "housing for older persons", as defined in the Federal Fair Housing Act, 42 USC 3607.

(D) Nothing in this section prohibits conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 USC 802) or KRS Chapter 218A.

## **PLACES OF PUBLIC ACCOMMODATION**

**Section 6                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.05 UNLAWFUL PRACTICES IN CONNECTION WITH  
PUBLIC ACCOMMODATIONS.**

(A) Except as otherwise provided herein, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement as defined in Section 92.02, on the ground of race, color, religion, national origin, disability, sexual orientation or gender identity.

(B) It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral or visual communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement, will be refused, withheld, or denied an individual on account of his race, color, religion, national origin, disability, sexual orientation or gender identity, or that patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual, on account of his race, color, religion, national origin, disability, sexual orientation or gender identity is objectionable, unwelcome, unacceptable, or undesirable.

(C) It shall be an unlawful practice to deny an individual, because of sex, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(1) The provisions of this subsection shall not apply to:

- a. Restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;
- b. YMCA, YWCA and similar type dormitory lodging facilities;
- c. The exemptions contained in the definitions of "Place of public accommodation, resort or amusement" set forth in Section 92.02;
- d. Hospitals, nursing homes, penal or similar facilities, to require that men and women be in the same room.

## EMPLOYMENT PRACTICES

**SECTION 7. A New Section of Chapter 92 is enacted as Follows:  
Section 92.06 UNLAWFUL PRACTICES IN CONNECTION WITH  
EMPLOYMENT.**

- (A) It is a prohibited, unlawful practice for an employer:
- (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or
  - (2) To limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or
- (B) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation, or to classify or refer for employment an individual on the basis of race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation.
- (C) It is an unlawful practice for a labor organization:

(1) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect one's status as an employee or as an applicant for employment because of such individual's race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) It is an unlawful practice for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation, in admission to or employment in, any program established to provide such apprenticeship, training, or retraining.

(E) It is an unlawful practice for any employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer, or membership in or any classification or referral for employment by such a labor organization or classification or referral for employment by the employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation, except that such a notice or advertisement may indicate a preference, limitation, or specification, based on religion, national origin, age forty (40) and over, disability or sex when religion, national origin, age forty (40) and over, disability or sex is a bona fide occupational qualification for employment.

(F) Nothing herein shall be construed to prevent an employer from:

1. enforcing a written employee dress policy; or
2. designating appropriate restroom and shower facilities.

**SECTION 8. A New Section of Chapter 92 is enacted as Follows:  
Section 92.07 EMPLOYMENT EXCEPTIONS.**

(A) Notwithstanding any other provisions of this Chapter, it shall not be an unlawful practice for:

(1) An employer to hire and employ employees, or an employment agency to classify or refer for employment an individual; or for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program, on the basis of his religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(2) A religious corporation, association, or society to employ an individual on the basis of his or her religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(3) A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university, or other educational institution is in whole or substantial part owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion, and the choice of employees is calculated by such organization to promote the religious principles for which it is established or maintained;

(4) An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, religion, national origin, sex, age forty (40) and over, disability, gender identity or sexual orientation nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, age forty (40) and over, disability, gender identity or sexual orientation.

(B) The provisions of Section 92.06 in regard to sexual orientation or gender identity shall not apply to a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association or society.

**SECTION 9. A New Section of Chapter 92 is enacted as Follows:  
Section 92.08 HUMAN RELATIONS COMMISSION:**

(A) The administration and enforcement of this Chapter shall be the responsibility of the Louisville and Jefferson County Human Relations Commission, and it shall have full operating responsibility for carrying out the provisions of this Chapter.

(B) In addition to any powers or duties heretofore conferred on the Commission, it shall have the power and duty to:

- (1) Meet and exercise its powers at any place within Jefferson County;
- (2) Employ attorneys, hearing examiners, clerks, and other employees and agents, and to appoint and empower committees and divisions to assist in effecting the purposes and provisions of this Chapter;
- (3) Accept gifts or bequests, grants, or other payments, public or private, to help finance its activities;
- (4) Receive, initiate, investigate, seek to conciliate, hold hearings on, and pass on complaints alleging violations of this Chapter. By itself or through its Anti-Discrimination Panel, hold public or private hearings, administer oaths, and take the testimony of any person under oath relating to any matter under investigation or in question. If a person against whom a complaint of discriminatory practice is made is notified, as hereinafter provided, to attend any hearing, public or private, before the Commission or the Anti-Discrimination Panel and he shall fail to attend such hearing, the Commission or the Anti-Discrimination Panel, as the case may be, may proceed to make a determination in such person's absence.
- (5) Compel the attendance of witnesses and the production of evidence before it by subpoena issued by the Jefferson Circuit Court;
- (6) Issue remedial orders, after notice and hearing, requiring cessation of violations of this Chapter;
- (7) Publish or cause to be published conciliation or enforcement agreements. All other records and information shall be confidential except as reasonably necessary to conduct an investigation and proceeding;

(8) Issue such affirmative orders as in the judgement of the Commission will carry out the purposes of this Chapter. Affirmative action ordered may include, but is not limited to, the remedies enumerated in KRS 344.230(3) and;

(a) All other remedies detailed in KRS 344 and Title VIII of the Federal Civil Rights Act of 1968 as amended;

(b) Applying to the Jefferson Circuit Court for such temporary or permanent relief as it deems necessary, and where such relief is granted, notice of the relief shall be promptly filed in the office of the County Clerk of Jefferson County, Kentucky;

(9) Subject to approval of the Jefferson County Fiscal Court, adopt, promulgate, amend, and rescind rules and regulations to effectuate the purposes and provisions of this Chapter, including regulations requiring the posting of notices prepared or approved by the Commission; and

(10) Receive, initiate as hereinafter provided, investigate, hear or determine charges, and remediate violations of unlawful practices prohibited by this Chapter, and;

(a) Enter into cooperative working agreements with the United States Equal Employment Opportunity Commission (EEOC) created by Section 705 of the Federal Civil Rights Act of 1964 (78 Stat. 241) in order to achieve the purposes of that act; and with any federal or state agency in order to achieve the purposes of this Chapter.

(b) In its discretion, or upon request of the Kentucky Commission of Human Rights (the "State Commission"), refer a matter under its jurisdiction to the state commission for initial action or review.

(c) Refer to the State Commission for resolution a dispute over jurisdiction or other matter with another local commission.

(d) Provide a copy of its annual report to the State Commission.

(11) Institute proceedings in Jefferson Circuit Court for enforcement of the orders of the Commission or its Anti-Discrimination Panel, including appeal.

(12) Exercise all other applicable powers as provided in the Kentucky Civil Rights Act.

**Section 10 A New Section of Chapter 92 is enacted as Follows:  
Section 92.09 COMPLAINT PROCEDURE.**

(A) Any person or persons claiming to be aggrieved by an unlawful practice that is prohibited by this Chapter may file a written complaint in accordance with the rules and regulations of the Commission. The complaint must be filed within 180 days after the alleged unlawful practice occurred. Any member of the Commission who has reason to believe an unlawful practice has occurred may file a complaint. Any person or persons claiming to be aggrieved by an act in violation of this Chapter may file an action in Jefferson Circuit Court and obtain Civil Remedies as provided in KRS 344, Title VIII of the Federal Civil Rights Act of 1968 as amended and any other federal civil rights statute that grants state courts concurrent jurisdiction.

(B) Complaints filed with the Commission by individuals should:

(1) Be executed and filed at the Commission office; members of the Commission staff will assist the complainant to prepare the complaint;

(2) Be verified by each complainant;

(3) Contain the name and address of each complainant;

(4) Contain the names and addresses of the respondent(s) who committed the unlawful practice prohibited by this Chapter;

(5) Give fair notice of the facts relied upon to show the unlawful practice or practices;

(6) State clearly and concisely the alleged violation; and

(7) State the date of the violation.

(C) On receipt of a complaint, or acceptance of a complaint referred by the Kentucky Human Rights Commission, the EEOC or HUD, the Commission shall serve the complaint and a written resume setting forth the rights of the parties and the procedures to be followed by the Commission in the investigation and adjudication of the complaint on the person or persons charged with a violation of this Chapter (hereinafter referred to as the respondent, whether one or more persons), and mail a copy to the complainant.

(D) On receipt of a complaint, the respondent shall, within 30 days, file with the Commission an answer, under oath or affirmation, to the allegations in the complaint. The staff of the Commission shall attempt to resolve the complaint and conduct a preliminary investigation of the complaint and shall within one hundred (100) days after



service of the complaint on the respondent, unless there has been a settlement, render a final investigative written report detailing documentary and witness evidence to the Anti-Discrimination Panel.

(E) The Commission Anti-Discrimination Panel, within thirty (30) days after receipt from the staff of the Commission of the report of the preliminary investigation, shall determine whether there is reasonable cause to believe that an unlawful practice has been committed.

(1) If the Commission Anti-Discrimination Panel determines that there is no such reasonable cause, the complaint shall be dismissed.

(2) If the Commission Anti-Discrimination Panel determines that there is such reasonable cause, the Commission shall make an effort to eliminate the unlawful practice by conference and conciliation. All conciliation and/or enforcement agreements and administrative closures shall be approved by the Executive Director of the Commission.

(3) If reasonable cause is found, the complainant and respondent shall be advised in writing that either party may elect to have their claims asserted in the complaint decided in a civil action. Notice of this election must be made to the Commission and all other parties not later than the twentieth (20th) day after receipt of the right of election. Upon receipt of such notice, the Commission shall authorize, within 30 days thereafter, filing and maintaining an action on behalf of the complainant in Jefferson Circuit Court which may award all relief available under this Chapter.

(4) Within forty-five (45) days after the Commission has determined that reasonable cause exists, unless an order has been issued dismissing the complaint or stating the terms of a conciliation agreement, a hearing shall be set and necessary and reasonable discovery allowed pursuant to KRS 344.

(F) Any endeavors or negotiations for conciliation shall not be received in evidence and shall be held in confidence by the Commission and its staff.

(G) The determination of the Anti-Discrimination Panel may be reconsidered on petition of any aggrieved party, except that an application to reconsider must be filed within twenty (20) days of service of the adjudicative order on the aggrieved party. Dismissal after reconsideration is a final order by the Commission.

(H) In connection with an investigation of a complaint filed under this ordinance, the Commission, or its designated representatives, may at any reasonable time request access to the premises, records and documents relevant to the complaint and shall have the right to examine, photograph, and copy evidence. If a person fails to permit access, examination, photographing, or copying of records or documents relative to the

complaint, the Commission may apply to the Jefferson County Circuit Court for an order requiring compliance.

(I) All hearings held under and pursuant to this Chapter shall be open to the public.

(J) At any time after a complaint has been filed, the Commission may file an action in the Jefferson Circuit Court seeking appropriate temporary relief against the respondent, pending the final determination of proceedings under this section.

(K) At any time after a complaint has been filed, the Commission may file an action in the Jefferson Circuit Court seeking such appropriate relief against any person as it may deem necessary to prevent any change of position between the complainant(s) and the respondent(s) or to prevent the questions presented to the Commission from becoming moot.

(L) If the Commission determines that any respondent has committed an unlawful act prohibited by this Chapter and the respondent refuses to comply with or obey the order issued by the Commission, the Commission may file an action in the Jefferson Circuit Court seeking enforcement of the order.

(M) The Commission may file suit in the Jefferson Circuit Court seeking enforcement of any of its orders issued pursuant to this Chapter.

**Section 11 A New Section of Chapter 92 is enacted as Follows:**

**Section 92.10 CONDUCT OF HUMAN RELATIONS COMMISSION HEARING.**

(A) In the event a complaint is not resolved under Section 92.09, a written notice, signed by the Director of the Commission or authorized representative, together with a copy of the complaint, shall require the respondent to answer the charges of such complaint at a hearing before a Hearing Panel. Members of the Anti-Discrimination Panel who participated in the initiation, conferences, or negotiations of the complaint shall not be eligible to serve on the Hearing Panel. The hearing shall be held no less than sixty (60) days after service of the notice on the respondent and complainant.

(B) At the hearing, the case in support of the averments of the complaint may be presented by counsel designated by the Commission. The order of proof shall be that set forth in the Kentucky Rules of Civil Procedure. The Hearing Panel may hear summations by counsel. While strict rules of evidence governing trials at law or in equity need not be applied, the Hearing Panel will abide by the general principles of evidence to the end that a rational investigation after the truth may be had.

(C) The Hearing Panel may grant continuances to either side for good cause shown. The introduction of issues not raised by pleadings is good cause for continuation of the hearing as to such issue.

**Section 12                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.11 CONSEQUENCES OF DEFAULT.**

(A) *DEFAULT* as used herein is defined as:

(1) The failure of a respondent to appear at a hearing shall be ruled as a default.

(2) Any act, counsel, deliberate omission, communication, signal, or the like, direct or indirect, made or done by a respondent or any of his agents or attorneys on his behalf, which:

(a) Induces or helps to induce a person other than the respondent to refrain from testifying before the Commission, to refrain from discussing a matter with the Commission staff, to frustrate adjustments, or to misrepresent any fact to the Commission; or

(b) Frustrates or attempts to frustrate adjustments, or cause the misrepresentation of a fact to the Commission.

(B) Whenever the Hearing Panel decides by clear and convincing evidence that a default has occurred, it shall serve upon the respondent so charged an order of default against him. The making of such an order entitles the panel forthwith to make findings of fact sustaining the averments of the complaint without resort to testimony.

**Section 13                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.12 FINDINGS OF FACT; CONCLUSIONS OF LAW.**

(A) Findings of fact and conclusions of law shall be made after all hearings have ended in a matter before the Hearing Panel and they shall be in the style prescribed in Rule 52.01, Kentucky Rules of Civil Procedure. Findings of fact made as a consequence to a default need merely recite the averments of the complaint are true because of the default. Conclusions of law must accompany findings of fact made upon a default.

(B) Based upon the findings of fact and conclusions of law, the Hearing Panel, by a majority of those present and voting, shall, as to each respondent, either dismiss the complaint on the merits or order the respondent to cease and desist from the prohibited discriminatory practice or practices and take such affirmative action as detailed in KRS 344, Title VIII of the Federal Civil Rights Act as amended, as the Hearing Panel deems necessary to remedy the violation and to prevent its continuation or recurrence. All

Hearing Panel orders made under this rule shall be served upon each claimant and respondent affected by the order.

**Section 14            A New Section of Chapter 92 is enacted as Follows:  
Section 92.13 APPEAL OF HEARING PANEL DECISION.**

(A) An appeal from a determination of the Hearing Panel to the Commission Appeal Panel can be made only by filing with the Commission, a notice of appeal. The service of such filing shall be made within thirty (30) days after the service of the Hearing Panel order. The notice of appeal shall specify the Hearing Panel errors and the relief sought by the appeal. A brief may be filed within 30 days of the notice of appeal. A reply brief may be filed within 30 days of service of the appellants brief.

(B) The Commission Appeal Panel shall either affirm, modify, reverse or remand after a review of the transcript, briefs, and the findings and orders of the Hearing Panel. The Commission shall serve a copy of its final order upon each affected respondent and individual complainant. The Appeal Panel has the discretion to request oral arguments.

(C) The Human Relations Commission shall complete its internal process within 365 days unless impractical to do so. The Commission shall endeavor to meet all deadlines. The respondent and complainant shall be notified of any necessary extensions sought or granted by the Chair of the Commission.

(D) The Commission may make such investigations and hold such further hearings as it sees fit to determine whether a respondent, who has been ordered to cease and desist from an unlawful practice or practices, has complied with the order.

**Section 15            A New Section of Chapter 92 is enacted as Follows:  
Section 92.14 APPEALS.**

Any respondent or complainant aggrieved by a final order of the Commission, or any complainant aggrieved by the final order of dismissal of his complaint by the Commission, may obtain a review of such order in the Jefferson Circuit Court by filing with the Clerk of the Court, within 30 days after service on him of the order, a written petition in duplicate praying that such order be modified or set aside, and by serving a duplicate copy of the petition on the Commission. The Commission shall then cause to be filed in the Court a certified transcript of the record in the proceedings before it, including the pleadings, testimony and order.

**Section 16                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.15 PENALTY.**

(A) In addition to any remedial order, if the Commission finds that any person has committed an unlawful practice with regard to housing, as defined in this Chapter, it may subject such person to a fine not greater than civil penalties established by the Federal Fair Housing Act in section 812. The Commission may, if such person refuses to pay the fine, file an action in the Jefferson Circuit Court for the collection thereof.

(B) If a real estate broker, a real estate salesman, or an employee thereof has failed to comply with any order issued by the Commission, or has been found to have committed an unlawful housing discrimination practice in violation of this Chapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

**Section 17                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.16 Obstruction and Retaliation**

It shall be a prohibited, unlawful practice for any person:

1. To retaliate in any manner against a person because he has opposed a practice declared unlawful by this Chapter or because he has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, hearing, or conference before the Commission under this Chapter; or
2. To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this Chapter or to obstruct or prevent any person from complying with the provisions of this Chapter; or
3. To obstruct or prevent a person from complying with the provisions of this Chapter, or any order of the Commission issued thereunder; or
4. To resist, prevent, impede, or interfere with the Human Relations Commission or any of its members or representatives in the lawful performance of its or their duty under this Chapter; or
5. Complaints filed with the Commission under this section shall be processed in conformity with Section 92.09 et seq.

**Section 18                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.17 COMPUTATION OF TIME.**

In computing time of periods of time of less than ten (10) days under this Chapter, Saturdays, Sundays and legal holidays shall be excluded.

**Section 19                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.18 FILING AND SERVING PAPERS.**

All papers required to be filed with the Commission may be mailed to the Commission for filing. All papers to be served by the Commission shall be mailed to the person by certified mail, return receipt requested. Service for filing by mail is complete upon receipt by the addressee or five (5) days after mailing, which ever first occurs.

**APPROVED HOUSING AFFIRMATIVE ACTION PLAN**

**Section 20                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.19 AFFIRMATIVE MARKETING PLAN REQUIRED  
FOR COUNTY FUNDS.**

No person, firm, corporation, association or agency of the county which provides housing opportunities for citizens of Jefferson County with the direct or indirect assistance of Jefferson County funds, shall be approved by the Fiscal Court or recommended for approval by any county entity without submission of an approved housing affirmative marketing plan.

**Section 21                    A New Section of Chapter 92 is enacted as Follows:  
Section 92.20 ANALYSIS OF POPULATION BY RACE; GOALS  
AND TIMETABLES FOR APPROPRIATE REPRESENTATION.**

An approved housing affirmative marketing plan must be in writing and include an analysis of the eligible population by race which is least likely to apply for the housing proposed because of neighborhood custom, price or past patterns of discrimination, development of a documentable outreach program to market the housing to the segment of the population by race least likely to apply and the establishment of goals and timetables to which the entity's good faith efforts will be directed to ensure appropriate representation by race.

**Section 22**                    **A New Section of Chapter 92 is enacted as Follows:**  
**Section 92.21 PROGRAMS AND ACTIVITIES REQUIRED TO**  
**SUBMIT PLAN; EXCEPTIONS.**

Programs and activities required to submit an approved housing affirmative marketing plan before final approval include, but are not limited to, CDBG activities, low interest mortgage bond programs, public housing/section 8 programs, UDAG applicant, IRB housing application, and sale of county owned property specifically for the purpose of providing housing. Program proposals which involve fewer than ten housing unit or lots are excluded from having an approved plan except that all advertising shall include the fair housing logo or wording.

**Section 23**                    **A New Section of Chapter 92 is enacted as Follows:**  
**Section 92.22 SUBMISSION OF MONTHLY REPORTS BY**  
**HOUSING DEVELOPMENTS REQUIRED.**

Housing developments receiving direct or indirect assistance of Jefferson County funds or personnel and which are required to have approved affirmative action plans shall be required to submit monthly reports during the initial rent-up stage for not less than two months nor more than six months. Such reports shall include but are not limited to, a list of the media used to advertise availability, copies of advertising text, number of applicants by race, number of occupants by race and number of remaining available units.

**Section 24**                    **A New Section of Chapter 92 is enacted as Follows:**  
**Section 92.23 ADMINISTRATION BY AFFIRMATIVE ACTION**  
**OFFICER.**

The Affirmative Action Officer for Jefferson County government shall receive written reports on all affected projects and will approve, modify and reject proposals submitted through departmental offices.

**Section 25**                    **A New Section of Chapter 92 is enacted as Follows:**  
**Section 92.24 SEVERABILITY**

If any section, subsection, sentence or clause of this Chapter is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Chapter.

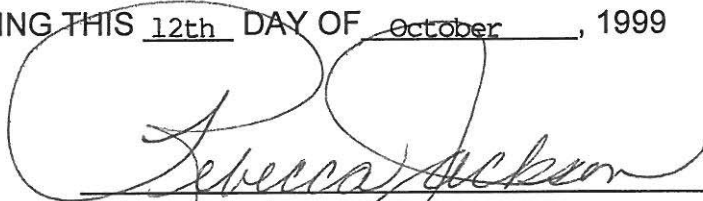
**Section 26            A New Section of Chapter 92 is enacted as Follows:  
Section 92.25 CONFLICT**

If any section, subsection, sentence or clause of this Chapter is found to be in conflict with a provision of any zoning, building, health, fire or safety code of the County or state, or any city in the County, the provision which establishes the higher standard for the promotion and protection of the public health and safety shall prevail.

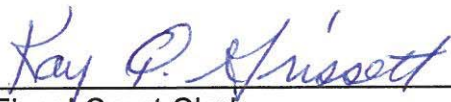
**SECTION 27            EFFECTIVE DATE**

This Ordinance shall be effective on passage.

DONE IN REGULAR MEETING THIS 12th DAY OF October, 1999

  
\_\_\_\_\_  
Rebecca Jackson  
Jefferson County Judge/Executive

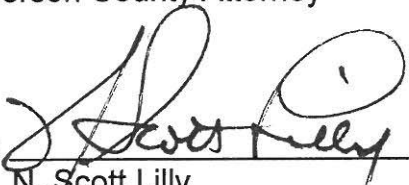
Attest:

*Deputy*   
\_\_\_\_\_  
Fiscal Court Clerk

Dated: 10-12-99

APPROVED AS TO FORM  
AND LEGALITY:

Irv Maze,  
Jefferson County Attorney

BY:   
\_\_\_\_\_  
N. Scott Lilly  
First Assistant County Attorney



**Exhibit 5**

## **HUMAN RELATIONS COMMISSION**

### **§ 32.755 RESERVED.**

### **§ 32.756 YOUTH REPRESENTATIVES.**

(A) Pursuant to the ordinances and resolutions establishing the Louisville Metro Community Action Partnership, the Louisville and Jefferson County Human Relations Commission - Advocacy, and the Louisville Metro Criminal Justice Commission, the Mayor may appoint as members of each of the three said Commissions up to two persons who during the tenure of their appointment, shall not attain their 21st birthday. Those persons shall be bona fide students at the time of their appointment, and shall be of a good character and demonstrated leadership capabilities.

(B) The selection of these persons as youth representatives shall be made, to the maximum extent possible, with the advice of various youth groups within the community.

(1999 Lou. Code, § 33.071) (Lou. Ord. No. 213-1969, approved 9-30-1969; Lou. Metro Am. Ord. No. 119-2007, approved 7-2-2007)

### **§ 32.757 ASSISTANCE TO VICTIMS OF BIAS-RELATED CRIMES.**

Whenever the Division of Police has provided information concerning a victim of a bias-related crime, as defined in § 130.50, to the Executive Director of the Louisville/Jefferson County Human Relations Commission, either the Executive Director or his or her designee shall make reasonable efforts to contact the victim for the purpose of offering to help the victim deal with the Division of Police and other interested agencies.

(1999 Lou. Code, § 33.072) (Lou. Ord. No. 166-1990, approved 7-16-1990; Lou. Metro Am. Ord. No. 119-2007, approved 7-2-2007)

### **§ 32.758 COMMISSION TO STUDY BIAS-RELATED CRIMES.**

The Louisville/Jefferson County Human Relations Commission is directed to make studies of bias-related tensions in the Metro Government arising from bias-related crimes as defined in § 130.50. The Louisville/Jefferson County Human Relations Commission shall report the findings of such studies semi-annually to the Metro Council and the Mayor, and shall make recommendations on remedial actions to relieve, reduce, or prevent bias-related tensions in particular areas of the Metro Government or on a Metro Government-wide basis.

(1999 Lou. Code, § 33.073) (Ord. No. 166-1990, approved 7-16-1990; Lou. Metro Am. Ord. No. 119-2007, approved 7-2-2007)

### **§ 32.759 COMMISSION TO HAVE PROGRAMS TO REDUCE BIAS-RELATED CRIMES.**

The Louisville/Jefferson County Human Relations Commission is authorized to develop and initiate educational and other programs designed to reduce bias-related tensions and the incidence of bias-related crimes, as defined in § 130.50, either in particular areas or on a Metro Government-wide basis.

(1999 Lou. Code, § 33.074) (Lou. Ord. No. 166-1990, approved 7-16-1990; Lou. Metro Am. Ord. No. 119-2007, approved 7-2-2007)

### **§ 32.760 LOUISVILLE METRO HUMAN RELATIONS COMMISSION-ENFORCEMENT.**

(A) There is hereby created the Louisville/Jefferson County Metro Human Relations Commission-Enforcement.

(B) The Louisville Metro Human Relations Commission-Enforcement ("Human Relations Commission-Enforcement") shall be composed of seven members who shall be appointed by the Mayor with the approval of the Council. Such members shall reside in Metro Louisville and no more than one member shall reside within any council district.

(1) The members so appointed shall include persons who are representative of the several social, economic, cultural, ethnic and racial groups that comprise the population of Metro Louisville. At least one member shall be an attorney and one member a retired judge.

(2) The terms of the members of the Commission shall be for three years and until successors are appointed and qualified. The initial terms of the seven members shall be staggered for one, two and three-year terms. If any of the existing members of the Human Relations Commission desire to serve on the Commission-Enforcement, they shall be allowed to serve a new three-year term of office. The remaining new members shall be appointed to a one, two or three-year terms so that one, two and three-year terms are distributed as evenly as possible.

(3) Members shall serve without compensation, but subject to the approval of the Mayor and within the limits imposed by the budget, they shall be allowed the necessary expenses attendant upon their duties.

(4) When a vacancy occurs on the Human Relations Commission-Enforcement other than as a result of the expiration of the term of appointment, the Mayor shall have the right to fill that vacancy for the unexpired term. Members are subject to removal by the Mayor at the discretion of the Mayor. Members shall be eligible for reappointment for additional terms.

(5) The Mayor shall appoint one of the members of the Human Relations Commission-Enforcement as Chairperson,

who shall serve as Chairperson at the Mayor's pleasure.

(6) The Human Relations Commission-Enforcement shall meet as often as it deems necessary, but shall not meet less than once each month.

(7) A quorum shall consist of four members.

(C) Pursuant to the powers granted the Mayor by KRS Chapter 67C, the existing functions, personnel, funds, equipment, facilities and records of the Louisville and Jefferson County Human Relations Commission in its investigation and enforcement of anti-discrimination laws be and the same are hereby transferred to the Louisville Metro Human Relations Commission-Enforcement created herein. The duties, responsibilities and authorities granted to the former Human Relations Commission for the investigation and enforcement of anti-discrimination laws and enumerated in applicable provisions of the Kentucky Revised Statutes, ordinances and resolutions in place pursuant to KRS 67C.115(1), regulations, policies and procedures adopted by the Commission, unless in conflict with the provisions of §§ 32.760 and 32.761, shall be deemed transferred to the Louisville Metro Human Relations Commission-Enforcement.

(D) Complaint procedures. Any person claiming to be aggrieved by an unlawful practice that is prohibited by ordinance or statute may file a written complaint in accordance with the rules and regulations of the Human Relations Commission-Enforcement and this section. For complaint procedures, see §§ 92.08 et seq.

(Lou. Metro Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 157-2003, approved 9-16-2003)

### **§ 32.761 LOUISVILLE METRO HUMAN RELATIONS COMMISSION-ADVOCACY.**

(A) There is hereby created the Louisville Metro Human Relations Commission-Advocacy ("Human Relations Commission-Advocacy"). The Human Relations Commission-Advocacy shall be composed of ten members who shall be appointed by the Mayor with the approval of the Council and such members shall reside in Jefferson County and no more than one member shall reside within any council district.

(1) The members so appointed shall include persons who are representative of the several social, economic, cultural, ethnic, and racial groups that comprise the population of Metro Louisville.

(2) The terms of the members of the Commission shall be for three years and until successors are appointed and qualified. The initial terms of the ten members shall be staggered for one, two and three-year terms. If any of the existing members of the Human Relations Commissions desire to serve a new three-year term of office. The remaining new members shall be appointed to a one, two or three-year term so that the one, two and three-year terms are distributed as evenly as possible.

(3) Members shall serve without compensation, but subject to the approval of the Mayor and within the limits imposed by the budget, they shall be allowed the necessary expenses attendant upon their duties.

(4) When a vacancy occurs on the Human Relations Commission-Advocacy other than as a result of the expiration of the term of appointment, the Mayor shall have the right to fill that vacancy for the unexpired term. Members are subject to removal by the Mayor at the discretion of the Mayor. Members shall be eligible for reappointment for additional terms.

(5) The Mayor shall appoint one of the members of the Human Relations Commission-Advocacy as Chairperson, who shall serve as Chairperson at the Mayor's pleasure.

(6) The Human Relations Commission-Advocacy shall meet as often as it deems necessary, but shall not meet less than bi-monthly.

(B) The Human Relations Commission-Advocacy shall endeavor to promote and secure mutual understanding and respect among all economic, social, religious, ethnic, and social groups in the metropolitan area, and shall act as conciliator in controversies involving intergroup and interracial relations. The Human Relations Commission-Advocacy shall cooperate with federal, state, and other local agencies in efforts to develop harmonious intergroup and interracial relations, and shall endeavor to enlist the support of civic, religious, labor, industrial, and commercial groups, and civic leaders dedicated to the improvement of human relations and elimination of discriminatory practices.

(Lou. Metro Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 157-2003, approved 9-16-2003)

**Exhibit 6**



# HUMAN RELATIONS COMMISSION

## ANNUAL REPORT

JULY 2012-

JUNE 2013

51 years of promoting unity,  
understanding, and equal opportunity  
among all people of Louisville Metro and  
to eliminate all forms of bigotry, bias, and  
hatred from the community

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OFFICE OF THE MAYOR  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

January 20, 2014

Dear Friends:

Welcome to this report of the challenges, progress and accomplishments for the past year by the Louisville Metro Human Relations Commission.

It was a year full of education, outreach, opportunity, access and advocacy that touched citizens of all walks of life, in every area of our city.

This is the type of work that the Commission has been doing for more than 50 years and our community has benefitted greatly from those decades of commitment and perseverance.

Formed near the start of the history-changing civil rights movement of the 1960s, the Commission has been a constant voice and a conscience for our community for more than five decades, creating a strong record of civil and human rights, justice and fairness for all.

However, many critical issues and challenges lie ahead in Louisville, around the nation and throughout our increasingly complex and connected global society.

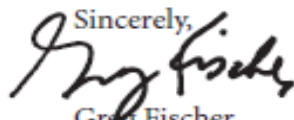
As your mayor, my goal is to give all citizens a voice and a shared stake in making our city the best city in America for all citizens -- regardless of the color of your skin, where you were born, or the circumstances you find yourself in at this moment.

We want a Louisville where all citizens can find good jobs, with fair pay and decent working conditions, and to be able to reach out and attain the lifelong learning and skills they need for those jobs.

We want a Louisville where all citizens are healthier, have equal access to quality healthcare, and to healthy, nutritious foods in their neighborhoods.

We also want a Louisville where all of our citizens are treated with compassion, where neighbor helps neighbor, stranger reaches out to stranger -- and no one goes wanting.

The work of the Human Relations Commission, reflected in this report, is helping our community strive for and reach those goals and ideals.

Sincerely,  
  
Greg Fischer  
Mayor



HUMAN RELATIONS COMMISSION  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

CAROLYN MILLER-COOPER  
EXECUTIVE DIRECTOR

Dear Citizens of Louisville Metro:

The Louisville Metro Human Relations Commission has a rich history of over fifty years in working hard to guarantee that all citizens enjoy equal rights in obtaining employment, housing and using public accommodations, as well as equal business opportunities, the right to be free from police harassment and protection from civil hate crimes. In addition to those daily activities, the Commission attends and stages educational and outreach activities throughout the year, including annual conferences and workshops, sensitivity trainings, community events and recognition of important historical events in the area of civil rights.

2013 marked the 50<sup>th</sup> anniversary of the passage of a local ordinance by the Louisville Board of Aldermen making it illegal for places of public accommodations to discriminate on the basis of race. The Human Relations Commission, then only one year old, was charged with the responsibility and honor of enforcing that ordinance. On May 15, 2013, we celebrated, with the rest of the Louisville Community, the passage of that ordinance and the process of recognizing the civil rights of all citizens. Later, other groups, who have suffered discrimination, were included under the purview of the ordinance. Most recently, sexual orientation and gender identity were included as protected classes for the purpose of protection of the ordinance.

The history of and the importance of the mission of the Human Relations Commission fills us with pride, but also makes us realize that while we have come far, we still have far to go to meet that mission of promoting equal opportunity, diversity and encouraging positive race relations in Louisville. Let us continue to seek ways to ensure that all Louisvillians are treated fairly and equally in their daily lives.

Sincerely,



Carolyn Miller-Cooper  
Executive Director

WWW.LOUISVILLEKY.GOV

410 WEST CHESTNUT STREET, SUITE 300A LOUISVILLE, KENTUCKY 40202



# Human Relations Commission Staff

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*Carolyn Miller-Cooper – Executive Director*

*Martha Lawfer – Human Relations Supervisor*

*Nicolas Valenzuela – Compliance Officer*

*Linda Holland – Compliance Officer*

*Tony Seay – Compliance Analyst*

*Bobbi Selmon – Compliance Analyst*

*Pamela Horne – Public Education Coordinator*

*Diniah Calhoun – Executive Assistant*

*Rotonia Sanford – Human Relations Secretary*

*Sandra Bumphus – Intake Officer and Administrative Clerk*

*Dawn Buffington - Intake Officer and Administrative Assistant*

*Kouanvi Ohin – Part-time Clerk*

# Human Relations Commission Boards

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## Advocacy Board

The goal of this ten member board, appointed by the Mayor with the approval of Metro Council, is to promote and secure mutual understanding and respect among all economic, religious, ethnic and social groups in Louisville.

**Members:**

*Sherman Bush*

*Aukram Burton*

*Reginald Glass, Chair*

*Ira Grupper*

*Miguel Mireles*

*Dr. Prafula Sheth*

*Heather Williams*

*Dawn Wilson*

## Enforcement Board

This board consists of seven members who are appointed by the Mayor with the approval of Metro Council. This board assists in the enforcement of anti-discrimination laws.

**Members:**

*Melissa Allen*

*Judge Kevin Delahanty*

*Marie Dever*

*Charles Lanier Sr.*

*Oneita Phillips*

*Dr. Thomas Sabetta*

*Dr. Ibrahim Syed*

## 50th Anniversary of the Enactment of the Public Accommodations Ordinance

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The Public Accommodations Ordinance, Number 66, Series 1963, was passed on May 14, 1963, by a vote of eight in favor, two opposed, one abstention and one absent. It was signed into law by Mayor William O. Cowger on May 15, 1963. The ordinance ended segregation in public accommodations on the basis of race in the city of Louisville. Later, other protected classes would be added to the purview of the ordinance. This ordinance resulted from demonstrations throughout the country and locally through sit-ins, mostly staged by Louisville youth, protesting the refusal of service to African Americans by restaurants, hotels and other businesses in the community.

On Monday, May 13, 2013, the Louisville branch of the NAACP, the Louisville Defender Newspaper, the Louisville Metro Human Relations Commission, Mayor Fischer's office and Radio Station WLOU sponsored a city wide celebration of the 50<sup>th</sup> anniversary of the passage of the ordinance that ended segregation in public accommodations in Louisville at the Brown Theatre at 315 West Broadway. The location was selected for the event due to it being a place where segregation was enforced fifty years before. Its use symbolized what the ordinance had accomplished.

The celebration was a joyous occasion in remembrance of an important event in the history of this community which made it a better place for all citizens. Speakers included and recognized those who had been instrumental in bringing about the passage of the ordinance. Many of the participants had been high school students fifty years ago and through sit-ins had brought the community's attention and recognition that the ordinance was necessary. The keynote speaker was Barbara Arnwine, the President and CEO of the Lawyers Committee for Civil Rights Under Law. Her fiery speech encouraged attendees to continue the fight for equal rights.

The following day, Louisville reinforced its dedication to promoting the values of the Public Accommodations Ordinance by unveiling a permanent marker on 4<sup>th</sup> and Guthrie Streets, in downtown Louisville.



*On May 14, 2013, Louisville commemorated its 50<sup>th</sup> year anniversary of the civil rights sit-in demonstrations leading to passage of the Public Accommodations Ordinance by installing a marker at the 4<sup>th</sup> and Guthrie Streets location.*

## Complaints: Filing and Process

Citizens of Louisville Metro may file complaints with the Human Relations Commission if they believe that they have suffered discrimination in employment, housing, and places of public accommodation or discriminatory Interferences with another person or property. The Commission has contracts with two federal agencies: the Equal Employment Opportunity Commission and the Department of Housing and Urban Development. Pursuant to these contracts, complaints are dual filed with those agencies. Upon completion of contract terms, the agencies pay the Commission.

In addition to the contracts, the Commission will also investigate complaints that fall within its jurisdiction under local ordinance.

All complaints must be signed by the Complainant and sworn to be true. Once filed, the Complaint is assigned to a Compliance Officer for investigation. The investigation begins with service of the Complaint on the Respondent. The Respondent usually makes a formal reply which becomes a part of the record.

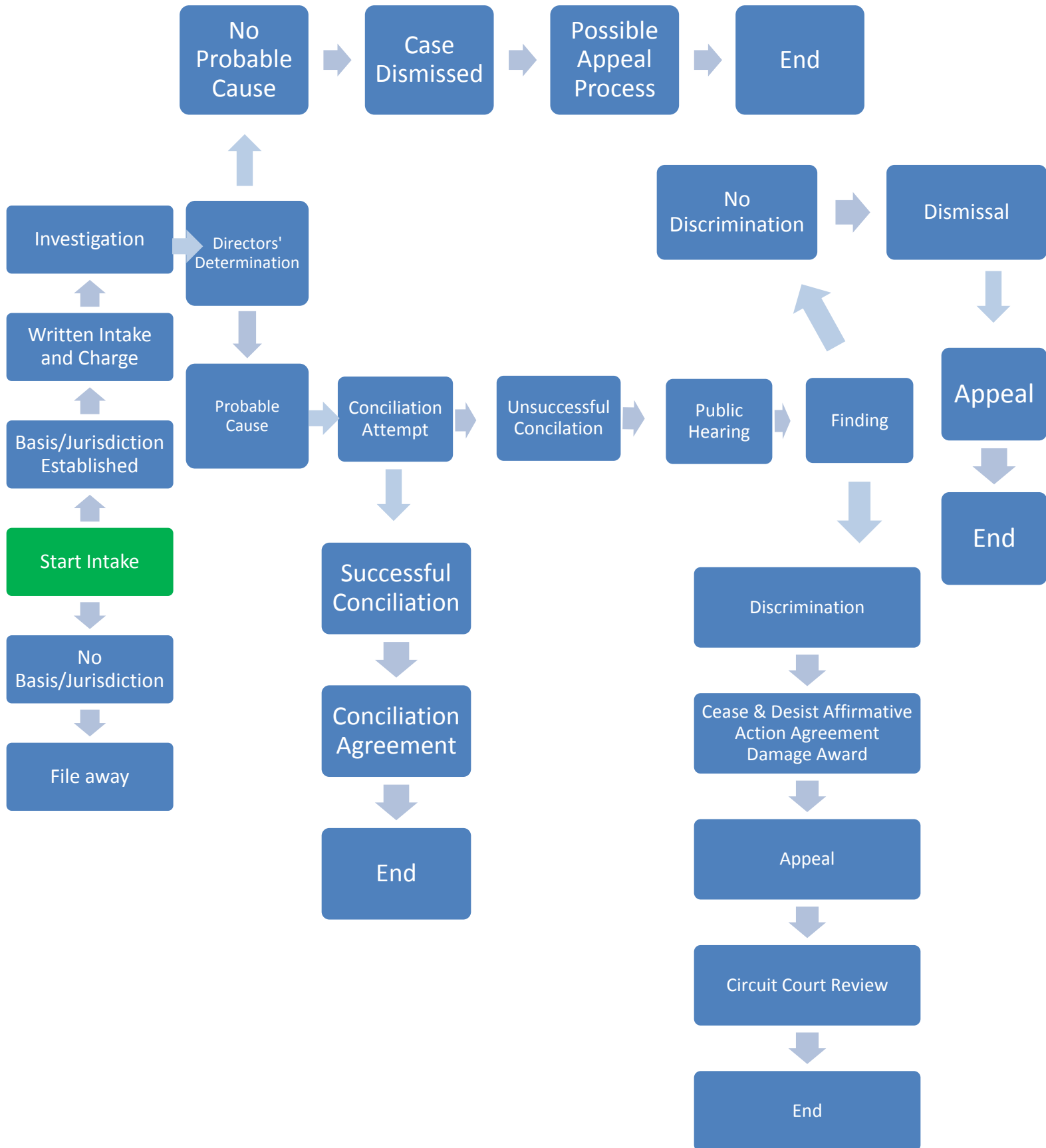
The investigator will request necessary documentation and interviews to evaluate the merits of the Complainant's

allegations and the Respondent's position. At the conclusion of the investigation, the investigator submits findings along with a recommendation to the Agency's Executive Director.

The Executive Director is responsible for determining whether or not the acts substantiate a finding of "probable cause" or "no probable cause." After review of each case, the Executive Director will determine the disposition of the case. When the Executive Director makes a finding of "no probable cause," the complaint is dismissed. The Complainant may ask for reconsideration after the order of dismissal. Where the Executive Director makes a finding of "probable cause, the Commission attempts to conciliate the complaint. If conciliation efforts fail, the matter is set for a public hearing or a court action and is referred to the County Attorney's Office.

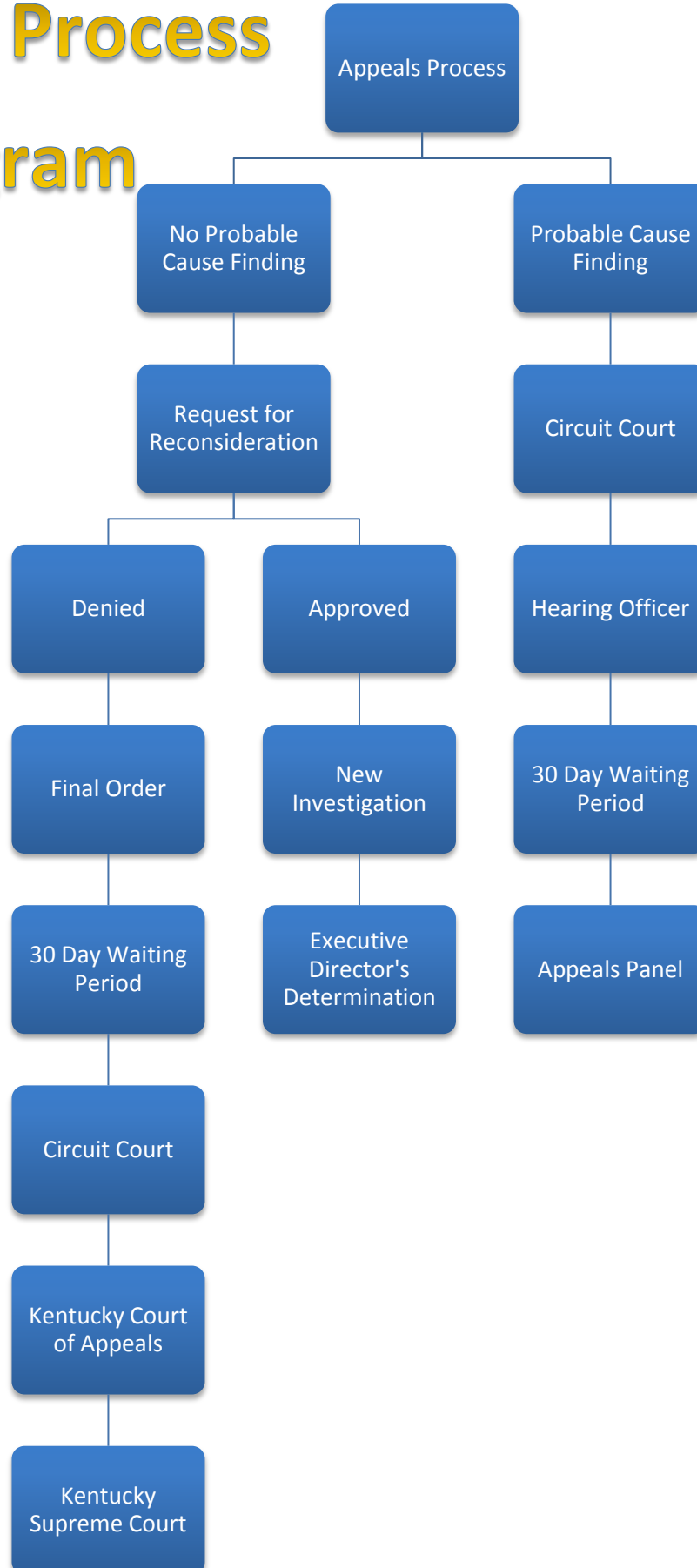
At a public hearing, a Hearing Officer sits as an impartial individual to hear the case. The Hearing Officer makes a decision based upon the weight of the evidence. The Hearing Officer's decision is binding, but may be appealed to the Appeal Committee of the Commission, followed by Circuit Court review.

# Complaint Process Diagram



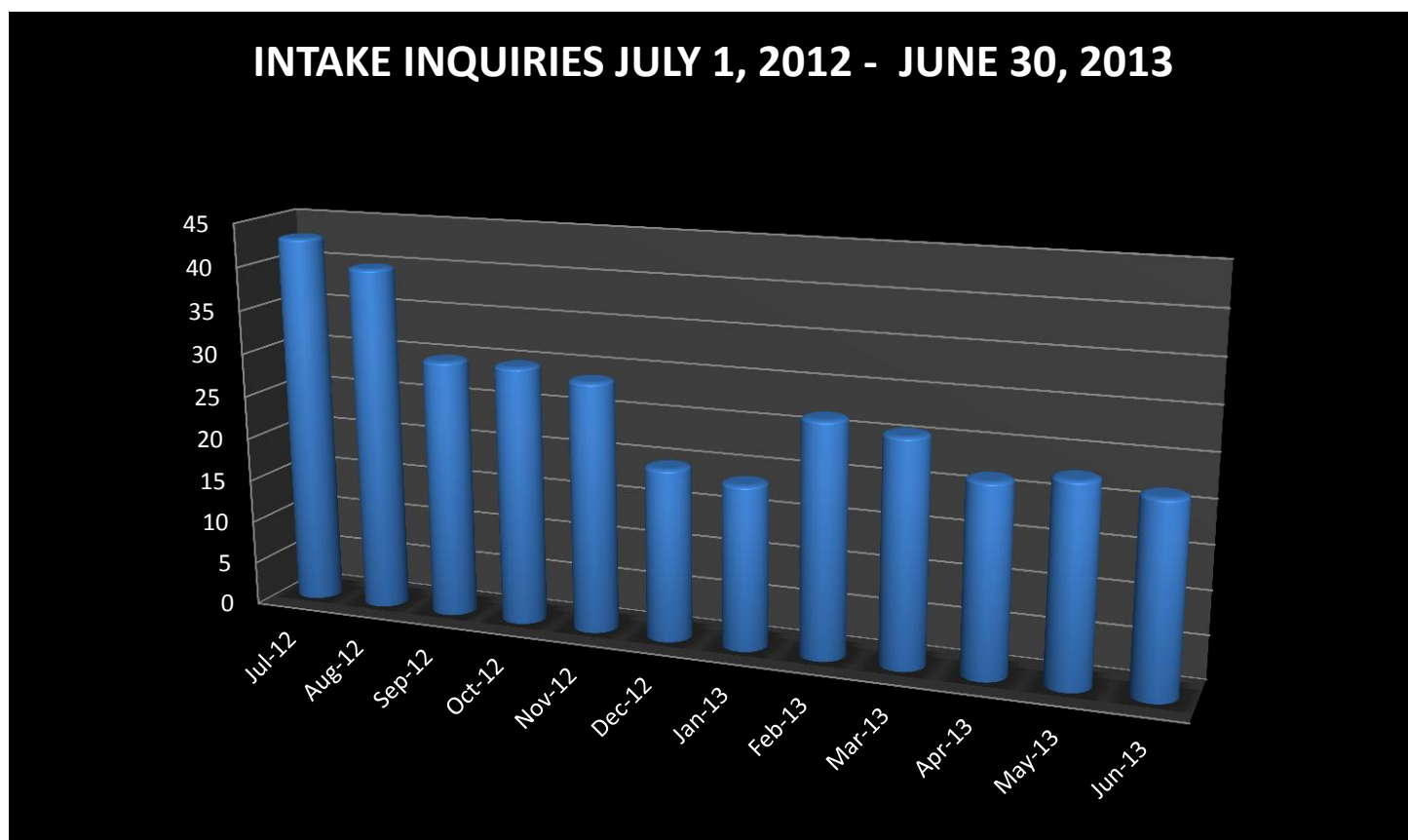
# Appeals Process

## Diagram



# Intake Inquiries

This chart contains the number of inquiries by month that was received from July 1, 2012 to June 30, 2013.



Jul- 12	43	Jan- 13	19
Aug- 12	40	Feb- 13	27
Sep- 12	30	Mar- 13	26
Oct- 12	30	Apr- 13	22
Nov- 12	29	May- 13	23
Dec- 12	20	Jun- 13	22

# Conciliations: July 1, 2012 - June 30, 2013

---

## *Employment*

Betty Fuqua-Carter vs. Levy Premium Food Service Ltd. Partnership \$12,500.00  
(Sex/Retaliation/Harassment) (Termination)

Jeffrey Taylor vs. Reinhart Food Service \$8,000.00 (Race) (Termination)

Bradley Parker vs. Sonic Drive-In \$1,960.00 (Sexual Orientation) (Termination)

Randall Poteet vs. Charter Communications \$17.94 hourly rate promotion (Age) (Discrimination)

Samantha Bartley vs. Timothy McDaniel Covers, Inc. \$8,000.00 (Sex) (Terms & Conditions)

Jill Thompson vs. Dakkota Integrated Systems, LLC \$575.65 and remove written warning from  
personnel file (Race/Retaliation/Sex/Age/Disability) (Terms & Conditions)

Donna Conway vs. Hosparus, Inc. \$13,888.00 (Age) (Termination)

Howard Smith vs. J. Alexander's \$10,000.00 (Age) (Termination)

Courtney Conklin vs. Papa Johns, Inc. \$6,000.00 (Sex) (Termination)

Ira Ryan vs. Riav Ventures, LLC dba Great Clips \$800.00 (Race/Sexual Orientation/ Sex) (Termination)

Reggie Roberson vs. AAK USA, K1, LLC dba Golden Brands \$1,000.00 (Race) (Terms & Conditions,  
Suspension)

Gary Dennis vs. AAK USA, K1, LLC dba Golden Brands \$1,000.00 (Race) (Terms & Conditions,  
Suspension)

Ebony Dennis vs. Sam Swope Auto Group, LLC Private Settlement (Race) (Promotion)

Agreed Order Private Settlement (Race/Harassment) (Termination)

Private Settlement (Disability) (Denied Reasonable Accommodation)

Private Settlement (Sex/Harassment) (Intimidation)

Private Settlement (Retaliation) (failure to Promote)

## *Public Accommodation*

Confidential Conciliation (Sexual Orientation) (Denial of Privileges)

### *Housing*

Daniel Cobble vs. Lafayette G. Owen Withdrawal with Resolution (Race/National Origin) (Terms, Conditions, or Privileges of rental (eviction)

Naiza Guzman vs. Spalding Homes, LLC & Susan Spalding & Wathen Spalding \$845.00 (Sex/National Origin) (Ignored requests for repairs)

Lesley Sands vs. Fifth Towers, LLC, South \$650.00 (Race) (Provision of services in connection with rental; terms and conditions, or privileges of rental)

Ingrid Burgess vs. The Paddock at Eastpoint Withdrawal with Resolution (disability) (Terms and conditions of rental property)

Linda Allgood vs. Fireside Cedar Park LLC & PMR Companies, LLC Withdrawal with Resolution (Disability) (Failure to make a reasonable accommodation for a disability)

Abbas Jasim vs. Fountain Square Apartments LLC & Martin L. Adams & Sons Conciliation Agreement \$1,000.00 and waive all balances (Religion/National Origin) (Terms, conditions, or privileges of rental)

Jessica Delap vs. Robert Adelberg, Four Dogs, LLC, Robert Adelberg Insurance Agency, Inc., and The Nancy Realty Company Conciliation Agreement Fair Housing Training (Familial Status) (Housing Advertisement)

Michelle Brock vs. Southland Mobile Home Park, Inc. Withdrawal with Resolution (Disability) (Terms, conditions, or privileges of rental (non-renewal)

Keandra Fitzgerald vs. Brenda McCoy and Clark Management Co. Mutual Settlement agreement by parties (Disability/Familial Status) (Refuse to rent or sell; eviction)

Edward "Ned" S. Godfrey vs. Hillebrand House, LLP Respondent agreed to provide verbal and written notices (Disability) (Harassment, intimidation, or coercion; failure to make reasonable accommodation for a disability in rental; terms and conditions, or privileges of rental)

Russell Wickliffe vs. Larry Davis returned the deposit in the amount of \$200.00 (Race) (Discriminate in the conditions or terms of sale, rental occupancy, or in services or facilities)

Alvin Puckett, Jr. vs. LaSalle Place Co-Owners Association, Inc. Conciliation Agreement Respondent agreed to provide Complainant with an assigned, designated, handicap parking space (Disability) (Harassment)

### *Hate Crimes*

Christy Frazier vs. Brian Wadkins Conciliation Agreement \$1,000.00(Race)



Complaints Filed

	<b>Employment</b>	<b>Public Accommodations</b>	<b>Housing</b>	<b>Hate</b>	<b>Total</b>
Race	42	5	17	2	66
Sex	43	1	5	2	51
Disability	13	2	23	3	41
National Origin	8	1	5		14
Sexual Orientation	14	1		2	17
Gender Identity					0
Color					0
Religion	3	1	2		6
Age	5				5
Familial Status			5		5
Retaliation	20		1	1	22
<b>TOTAL</b>	<b>148</b>	<b>11</b>	<b>58</b>	<b>10</b>	<b>227</b>

\*\* Some complaints allege more than one basis of discrimination. Therefore, the total number of complaints filed does not equal the total number of bases for complaints filed.

Complaints Closed

	<b>Employment</b>	<b>Public Accommodation</b>	<b>Housing</b>	<b>Hate Crimes</b>	<b>Total</b>
Race	91	8	25	2	126
Sex	59		8	2	69
Disability	32	2	27		61
National Origin	12	1	8		21
Sexual Orientation	21	3	6	2	32
Gender Identity	1		1		2
Color	2				2
Religion	3		2		5
Age	24				24
Familial Status			9		9
Retaliation	38		1		39
<b>TOTAL</b>	<b>283</b>	<b>14</b>	<b>87</b>	<b>6</b>	<b>390</b>

	<b>Employment</b>	<b>Public Accommodation</b>	<b>Housing</b>	<b>Hate Crimes</b>	<b>Total</b>
No Probable Cause	146	7	47	5	205
Other***	16	3	8	1	28
Administrative Judicial	13	1	9		23
Dismissals					0
Withdrawals	26				26
Hearings					0
Litigation					0
<b>TOTAL</b>	<b>201</b>	<b>11</b>	<b>64</b>	<b>6</b>	<b>282</b>

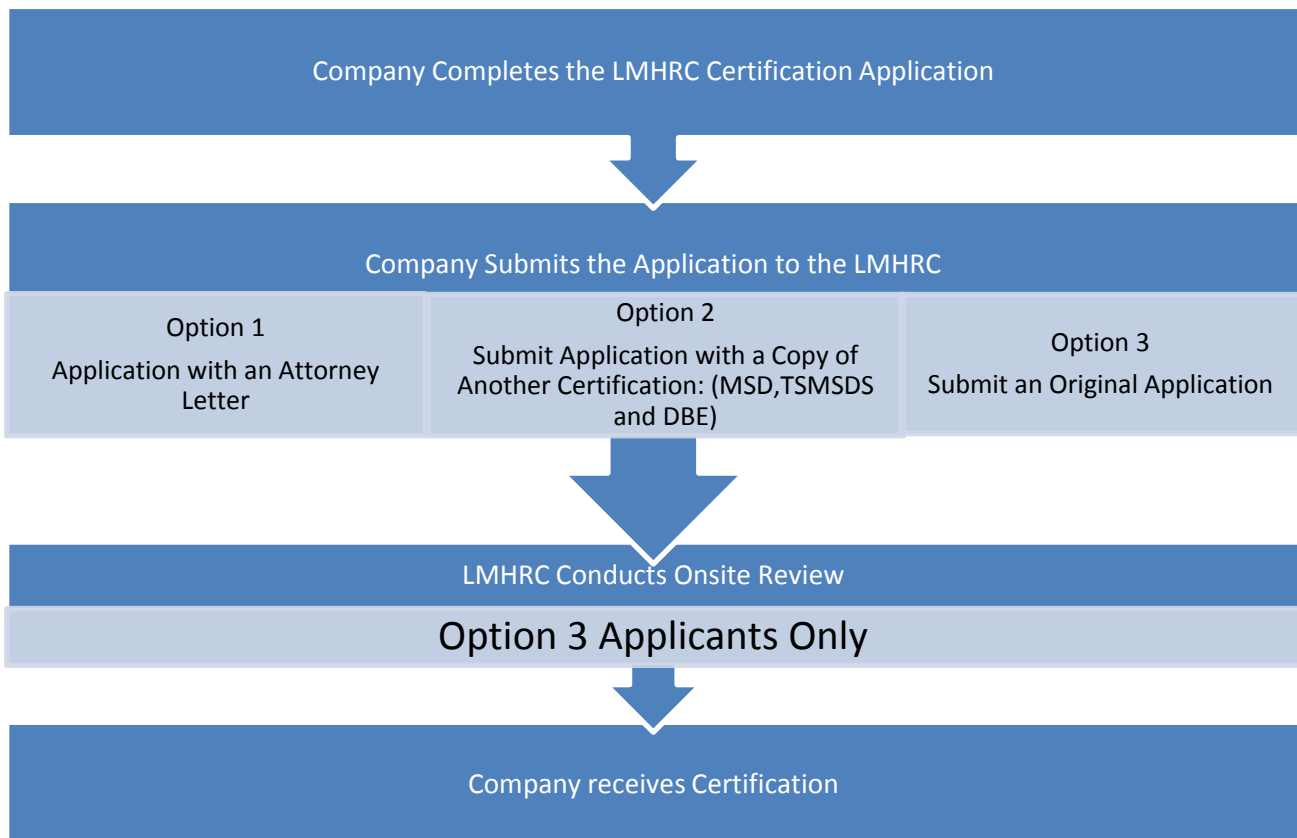
\*\*\*Includes: Probable Cause determinations, settlements, and other dispositions not establishing cause.

# Business Certification and Prequalification

The City of Louisville and Jefferson County Fiscal Court enacted City Ordinance No. 68, Series 1978 and County Ordinance No. 16, Series 1998 (updated 2004) in order to support and encourage affirmative action in employment of all minorities. The Enforcement unit of the Commission conducts the day-to-day administration of these Ordinances.

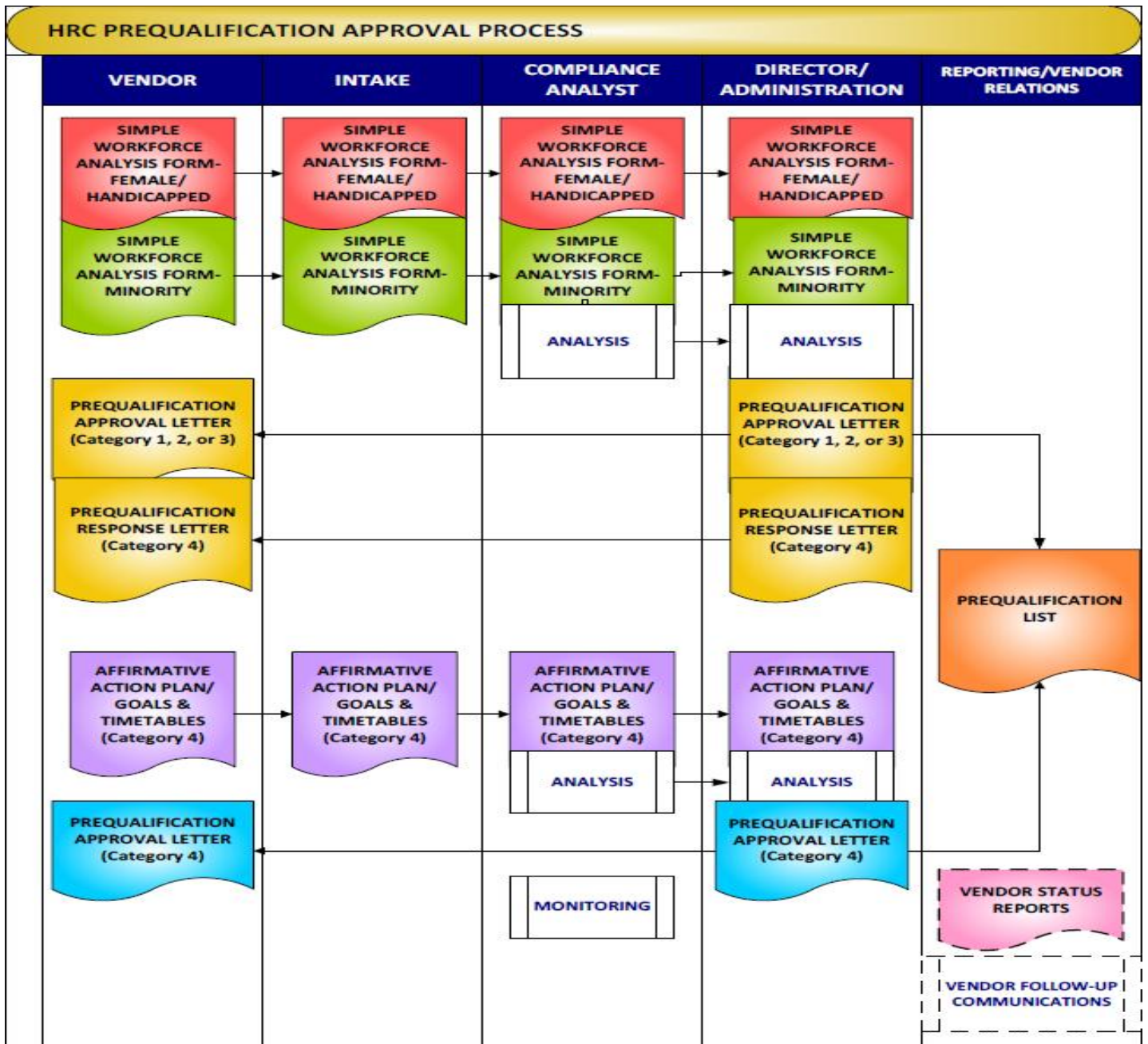
## Certification Process

If a business is a sole proprietorship, partnership, corporation, joint venture, or any other business entity that is fifty-one percent (51%) owned and controlled by a minority (or group of minorities), by a woman (or group of women), or a person with a disability (or group of people with disabilities), the business can be certified by the HRC as a Minority Owned, Woman Owned, or Handicapped Owned Business Enterprise (MFHBE).

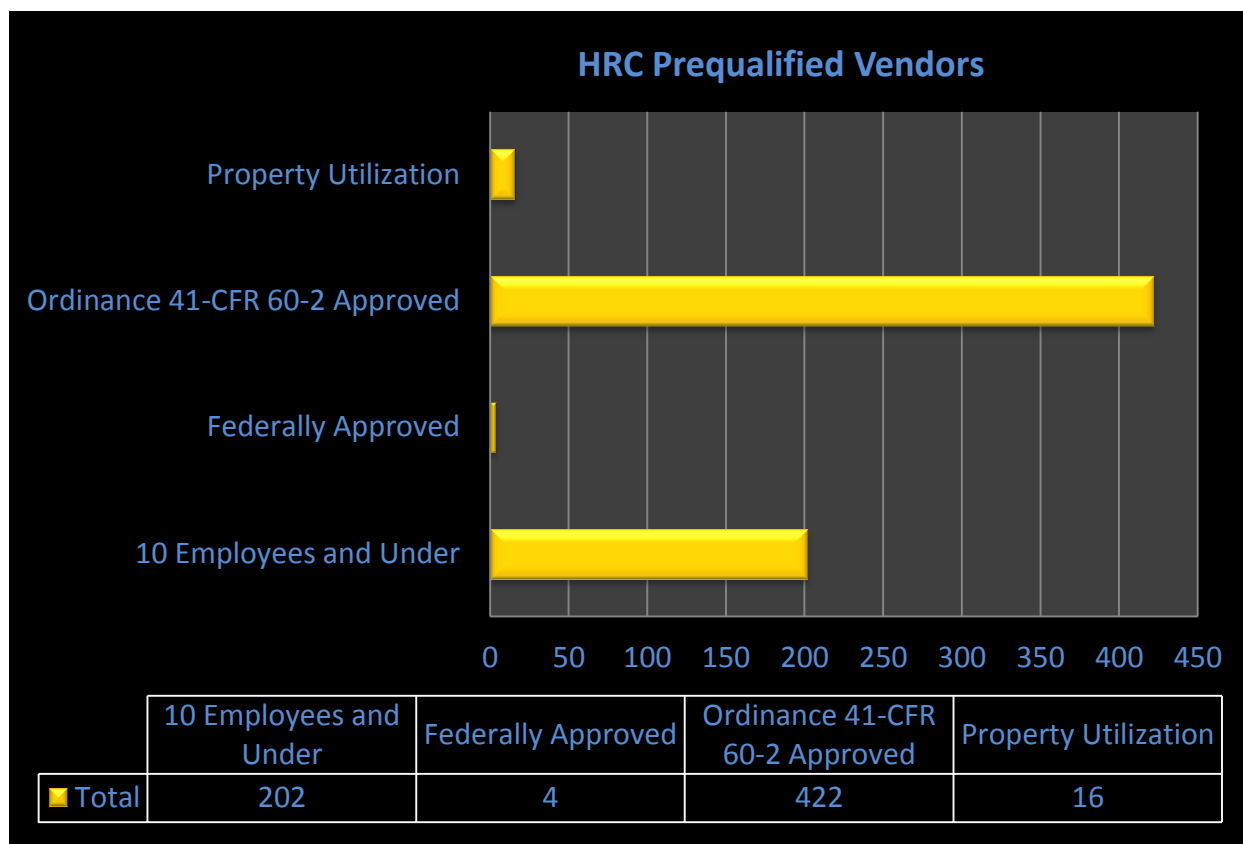
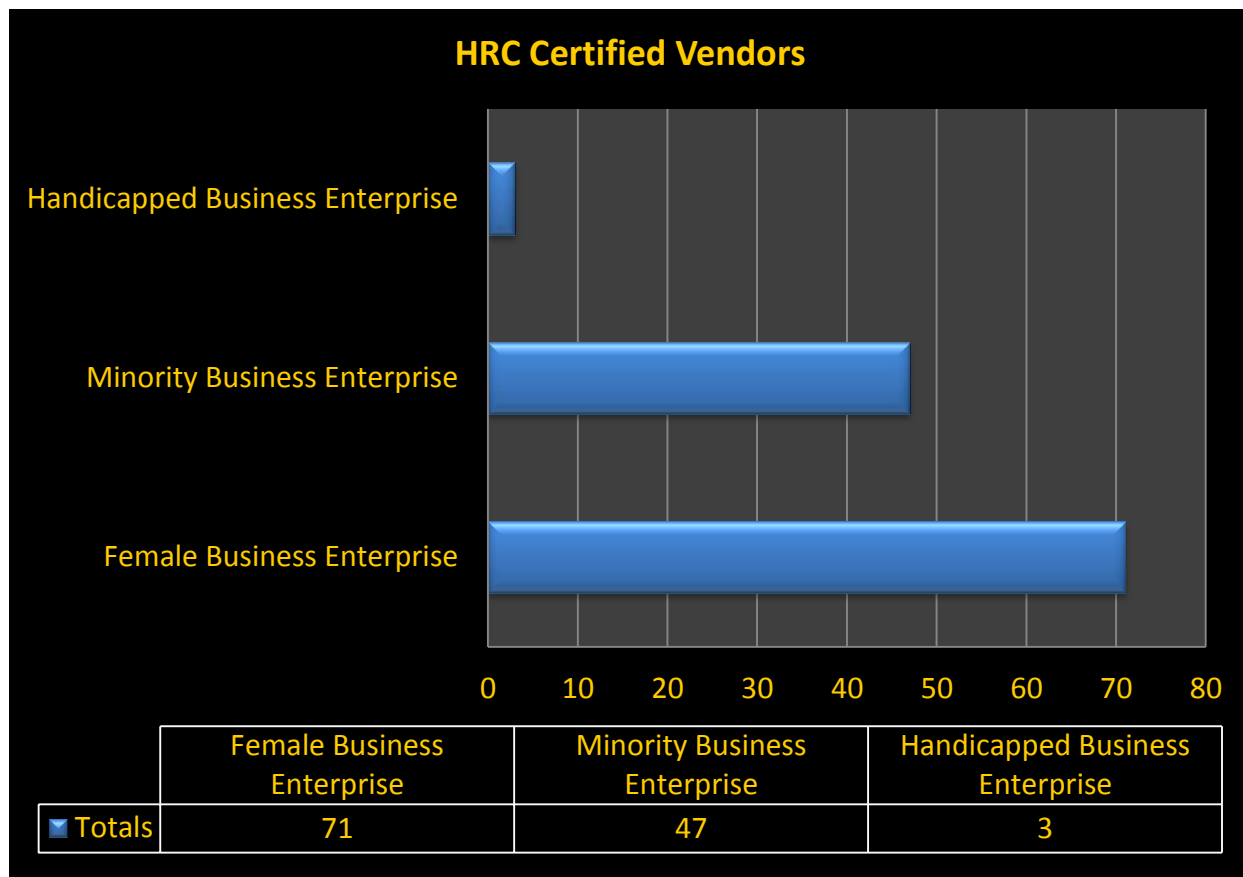


# Prequalification Process

Metro Government requires all contractors and vendors doing business with Metro Government to employ on an equal opportunity basis. In order to ensure that minorities and females are afforded equal opportunities, contractors and vendors must be pre-qualified before conducting business by providing a written affirmative action plan that sets reasonable goals where underutilization is determined to exist.



# Fiscal Year End Standings



\*March 2013, the Commission implemented the CCCS System

## Education and Outreach

The Human Relations Commission seeks to engage the community through our education and outreach programs. Each year, the Commissioners and the staff attend events, serve on boards, run trainings, and attend workshops. Our largest education and outreach event every year is our annual conference.

This year, in January 2013, we hosted the Unity in the Community Outreach Event, *Putting the Pieces Together* at Jefferson Community and Technical College. Keynote speakers were Mayor Greg Fischer and playwright, writer and college professor Betty Baye. Community Seminars were divided into tracts dealing with employment, housing, immigration, community violence and education.

Below are some of the other programs we are involved in throughout the year:

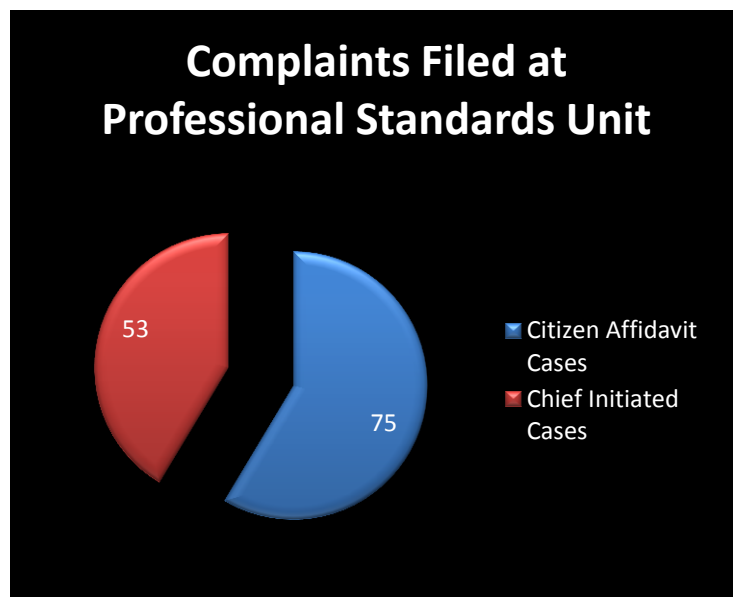
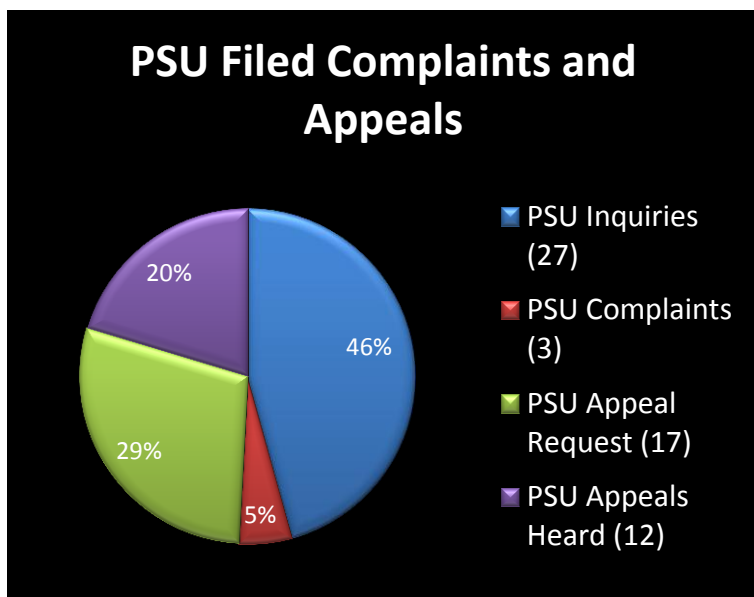
- Fair Housing Presentation for the Greater Louisville Council of the Blind
- HUD-FHAP Region IV Conference
- Women in Transition Tenant Town Hall
- Dosker Manor Resident Corporation Spring Fling
- Conserving Home ownership Fair
- Hispanic Latino Health Fair
- Worldfest
- Metro Disability Coalition Breaking Barriers Spotlight Awards Ceremony
- Internship programs and service projects with University of Louisville, Brown Mackie, and Northern Kentucky University

And the Committees we serve on:

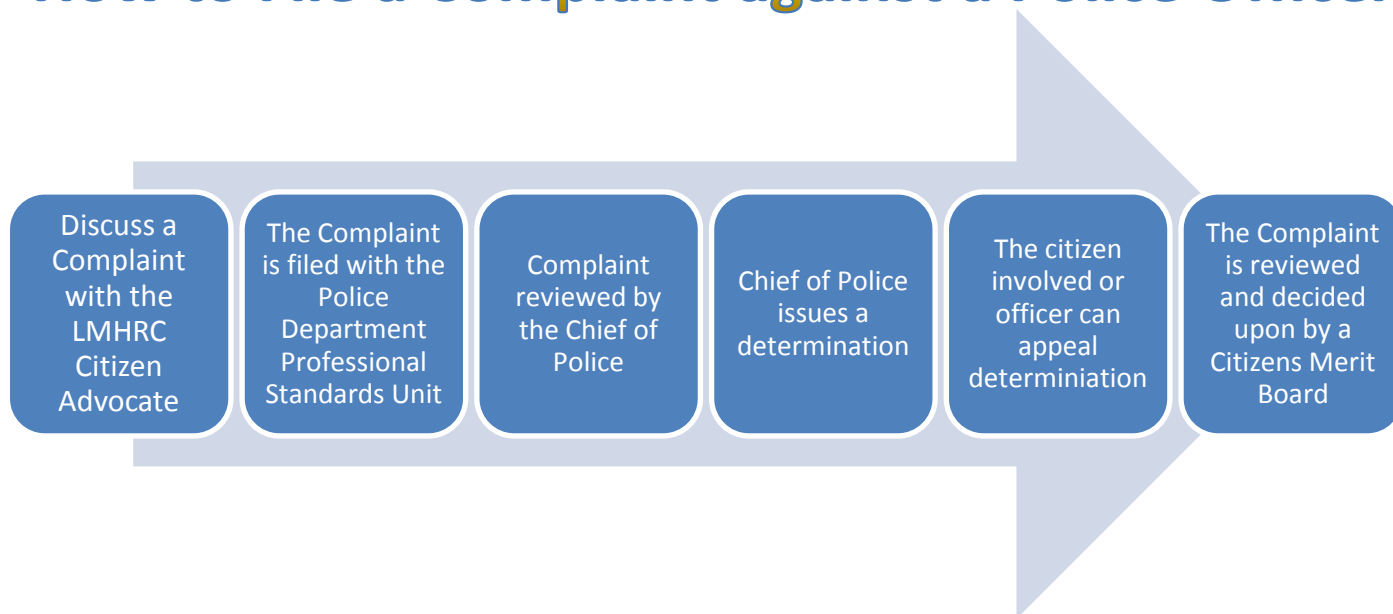
- Metro Disability Board of Directors
- Metropolitan Housing Coalition Board
- Mayor's ADA Roundtable
- HUD-FHAP Region IV Conference Call
- Hispanic Latino Coalition Board

# Professional Standards Unit

Part of the Commission’s role is to assist citizens who believe they have been mistreated by a police officer and are intimidated or overwhelmed with the process of going to the police department to file a complaint. Our agency provides support and assistance with the appeal process. Below is a chart of the number of complaints and appeals taken from this past year along with another chart that explains the complaint process.



## How to File a Complaint against a Police Officer





# HUMAN RELATIONS COMMISSION

**410 W. Chestnut Street  
Suite 300A  
Louisville, Kentucky 40202  
502-574-3631**

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_



# LOUISVILLE METRO HUMAN RELATIONS COMMISSION

## ANNUAL REPORT JULY 2013 — JUNE 2014

*52 years of promoting unity, understanding, and equal opportunity among all people of Louisville Metro and to eliminate all forms of bigotry, bias, and hatred from the community*





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OFFICE OF THE MAYOR  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

September, 2014

Dear Friends:

Welcome to this report of the challenges, progress and accomplishments for the past year by the Louisville Metro Human Relations Commission.

It was a year full of education, outreach, opportunity, access and advocacy that touched citizens of all walks of life, of many nationalities, of all races and regions, in neighborhoods throughout the community. It was a year that lived up to the theme of this report of "Moving Forward while acknowledging our past in Civil Rights."

This is the type of challenging advocacy work that the Commission has been doing for more than half a century and our community and citizens have benefitted greatly from those decades of commitment and perseverance.

From its early days at the start of the civil rights movement of the 1960s, the Commission has been a constant voice and a conscience for our community, creating a strong record of civil and human rights, justice and fairness for all.

However, many critical issues and challenges remain locally, around the nation and throughout our increasingly complex and connected global society.

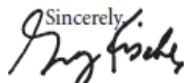
As your mayor, my goal is to give all citizens a voice and a shared stake in making Louisville the best city in America for all citizens -- regardless of the color of your skin, where you were born, or the circumstances you find yourself in at this moment.

We want a Louisville where all citizens can find good-paying jobs and decent working conditions, and to be able to reach out and attain the lifelong learning and skills they need for those jobs.

We want a Louisville where citizens are healthier in all aspects, have equal access to quality healthcare, and to healthy, nutritious foods in their neighborhoods.

We also want a Louisville where all of our citizens are treated with compassion, where neighbor helps neighbor, and no one goes wanting.

The work of the Human Relations Commission, reflected in this report, is helping our community strive for and reach those goals and ideals.

Sincerely,  
  
Greg Fischer  
Mayor

[WWW.LOUISVILLEKY.GOV](http://WWW.LOUISVILLEKY.GOV)

LOUISVILLE METRO HALL 527 WEST JEFFERSON STREET LOUISVILLE, KENTUCKY 40202 502.574.2003



HUMAN RELATIONS COMMISSION  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

CAROLYN MILLER-COOPER  
EXECUTIVE DIRECTOR

September 2014

Dear Citizens:

Over 50 Years ago the Louisville Metro Human Relations Commission was created at a time in history when everyone in our community did not have equal access to places of public accommodation. On March 5, 2014, we, along with thousands, celebrated the 50<sup>th</sup> Anniversary of the March on Frankfort, Kentucky. This event was a time to reflect on the past, critically evaluate the present and where we are, and look ahead to building a better future.

Our mission of “creating equal opportunity and eliminating all forms of bigotry and bias,” is ongoing. Clearly, we have made progress over the years. However, “we have not reached the mountain top.” The ultimate goal is equality and equal access for all, regardless of the individual’s status (race, religion, sexual orientation, age, disability, color, sex, gender identity). So, how do we as a community and country reach our goal? The goal can be reached by EVERYONE in this community pulling together and acknowledging that we all have a role to play. We must take a proactive approach and work together towards our goal.

Looking back, we have had our trials. Things today are not perfect and there is plenty of work to be done, but pulling together, we can reach our goal. Let’s leave a positive legacy for our future generations, one where equality and access is the norm. Metro Louisville is a leader, so let’s lead in all areas for the world to follow.

Sincerely,

  
Carolyn Miller-Cooper  
Executive Director

# COMMISSION STAFF

**Carolyn Miller-Cooper, Executive Director**

**Martha Lawfer, Human Relations Supervisor**

**Dawn Buffington, Administrative Clerk and Intake Officer**

**Sandra Bumphus, Administrative Clerk and Intake Officer**

**Diniah Calhoun, Executive Assistant**

**Stella Dorsey, Citizen's Advocate**

**Linda Holland, Compliance Officer**

**Pamela Horne, Public Education Coordinator**

**Rotonia Sanford, Secretary**

**Kevin Schaub, Compliance Officer**

**Tony Seay, Compliance Analyst**

**Bobbi Selmon, Compliance Analyst**

**Nicolas Valenzuela, Compliance Officer**



**Carolyn Miller-Cooper, Executive Director**



**Commission Staff**

# COMMISSION BOARDS

## Advocacy Board:

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The goal of this ten member board, appointed by the Mayor with the approval of Metro Council, is to promote and secure mutual understanding and respect among all economic, religious, ethnic and social groups in Louisville

### Members:

- Sherman Bush
- Aukram Burton
- Reginald Glass, Chair
- Ira Grupper
- Miguel Mireles
- Angelica Matos
- Dr. Prafula Sheth
- Heather Williams
- Dawn Wilson



Reginald Glass, Chair

## Enforcement Board:

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This board consists of seven members who are appointed by the Mayor with the approval of Metro Council. This board assists in the enforcement of anti-discrimination laws.

### Members:

- Melissa Allen
- Judge Kevin Delahanty
- Marie Dever
- Charles Lanier Sr.
- Oneita Phillips
- Dr. Thomas Sabetta
- Dr. Ibrahim Syed



HRC Commissioners

# RACE AND RELATIONS CONFERENCE

The Louisville Metro Human Relations Commission's 2014 Race and Relations Conference was held on the 13<sup>th</sup> of February. It took place at the Kentucky Center for African American Heritage located at 1701 West Muhammad Ali Boulevard.

The day-long Conference had morning and afternoon workshops boasting a wealth of information from speakers whose topics of presentation or discussions were geared to peak interest in as well as awareness of the various subject matters addressed by the Louisville Metro Human Relations Commissions. The morning session of workshops took the format of a panel discussion. It was geared at highlighting the need to bridge the educational achievement gap amongst students within the community, which will be achieved through the coupling of effective parent and community awareness initiatives.

Conference Speakers included Doctors, Attorneys, Chair-Personnel, Directors, etc. Our Executive Director, Mrs. Carolyn Miller-Cooper, addressed the assembly twice; once for the general welcome and again for the call-to-order. Subsequent to that, the audience was addressed by the Keynote Speaker, Dr. Roger C. Cleveland, President and Owner of the Millennium Learning Concepts Consulting Company.

Workshops during the afternoon included topics such as, "Understanding the Stand Your Ground Law", The Voting Rights Act: Its History and Recent Supreme Court Decision", just to name a few. Following the discussion of these topics, the awards for the conference were handed out. The awards bore the following titles; the Human Relations Commission Lifetime Achievement Award, the Eleanor Young Love Award and the Rev. Louis Coleman Youth Service Award. The Lifetime Achievement Award went to Ira Grupper and Robert Cunningham; the Eleanor Young Love Award went to Dr. Hannah Clayborne and the Rev. Louis Coleman Youth Service Award went to Reagan P. Roy.



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Keynote Speaker:

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Dr. Roger C. Cleveland

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**Lifetime Achievement Award Recipients:**

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Ira Grupper and Robert Cunningham



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**Eleanor Young Love Award Recipient:**

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Dr. Hannah Clayborne



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**2014 Race and Relations Conference**

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Guests

# COMPLAINTS: FILING / PROCESS

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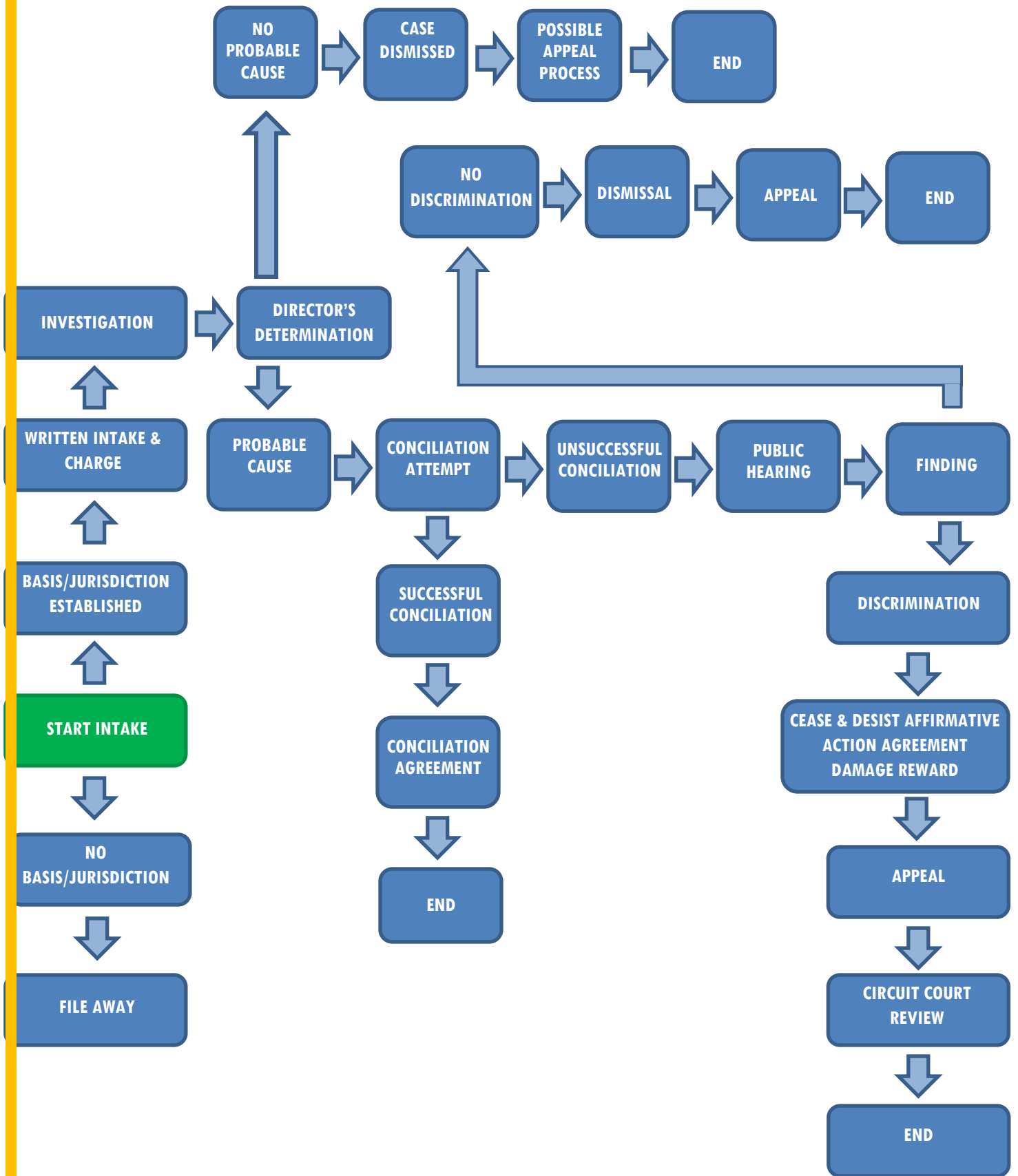
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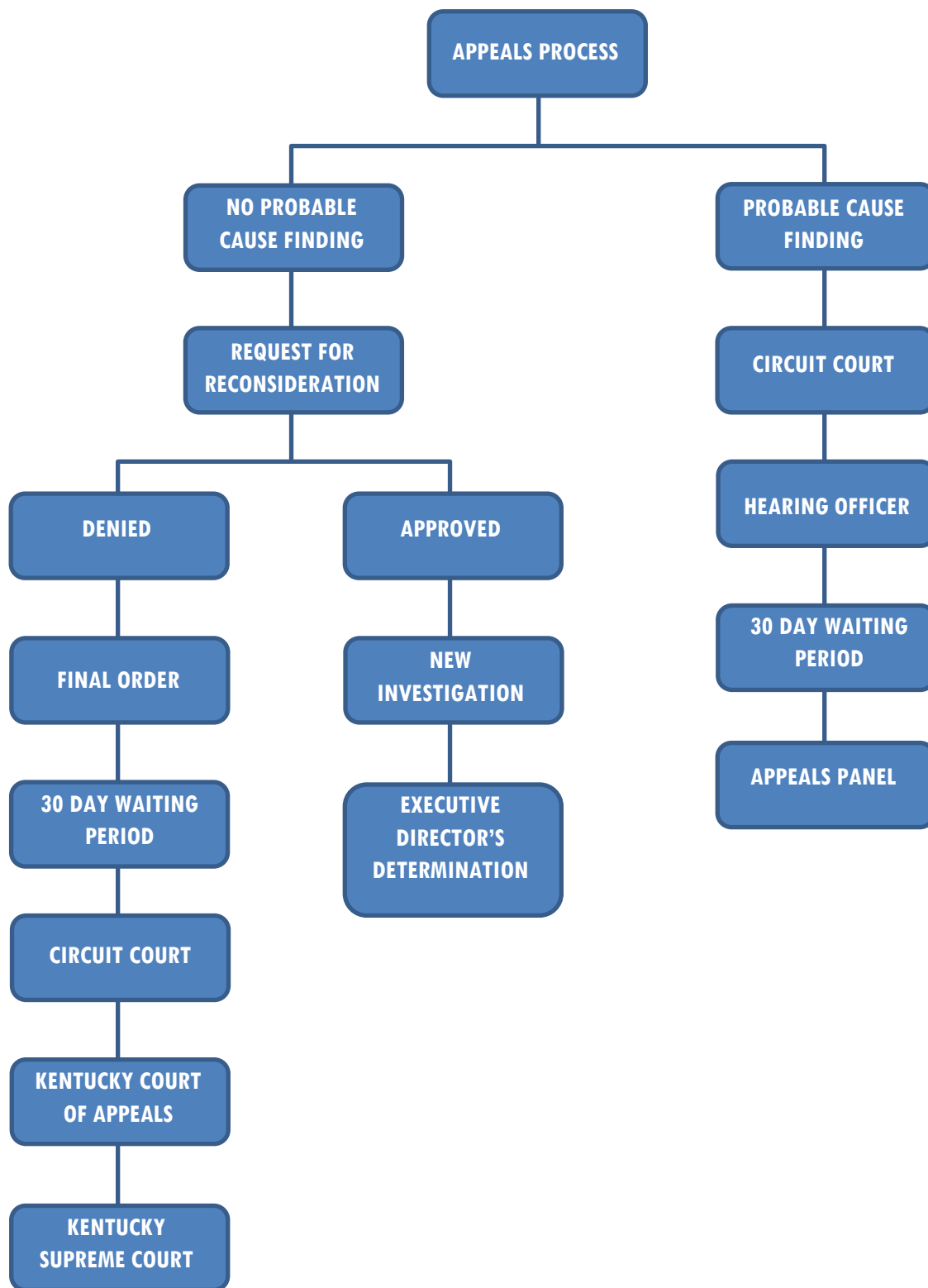
At a public hearing, a Hearing Officer sits as an impartial individual to hear the case. The Hearing Officer makes a decision based upon the weight of the evidence. The Hearing Officer's decision is binding, but may be appealed to the Appeals Committee of the Commission, followed by Circuit Court review.



# COMPLAINT PROCESS DIAGRAM



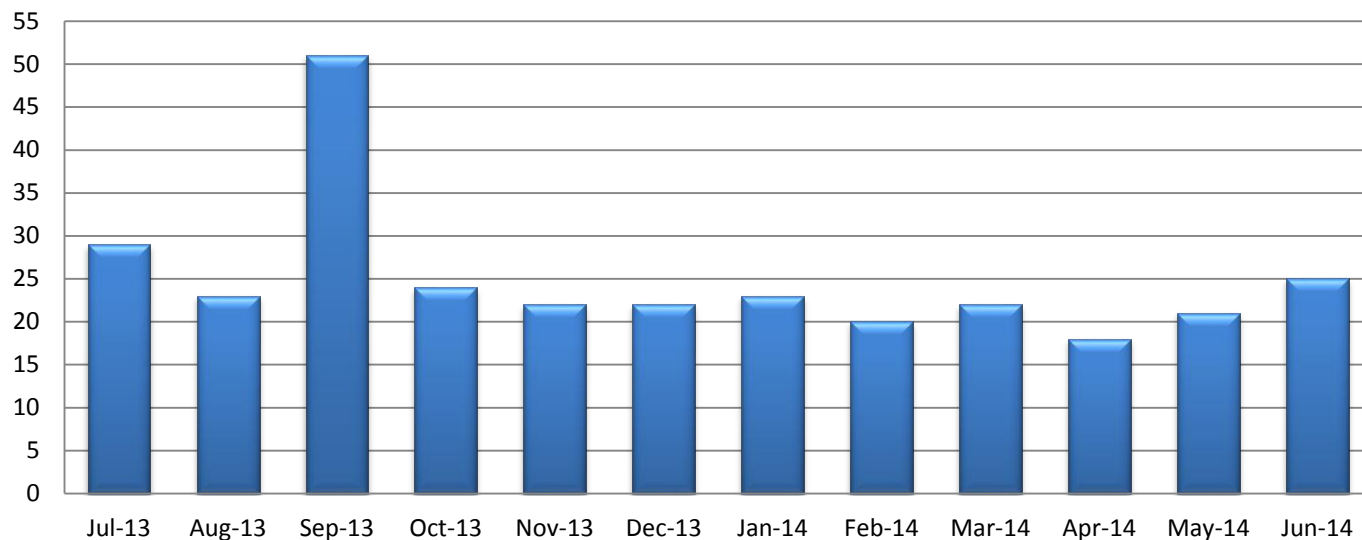
# APPEALS PROCESS DIAGRAM



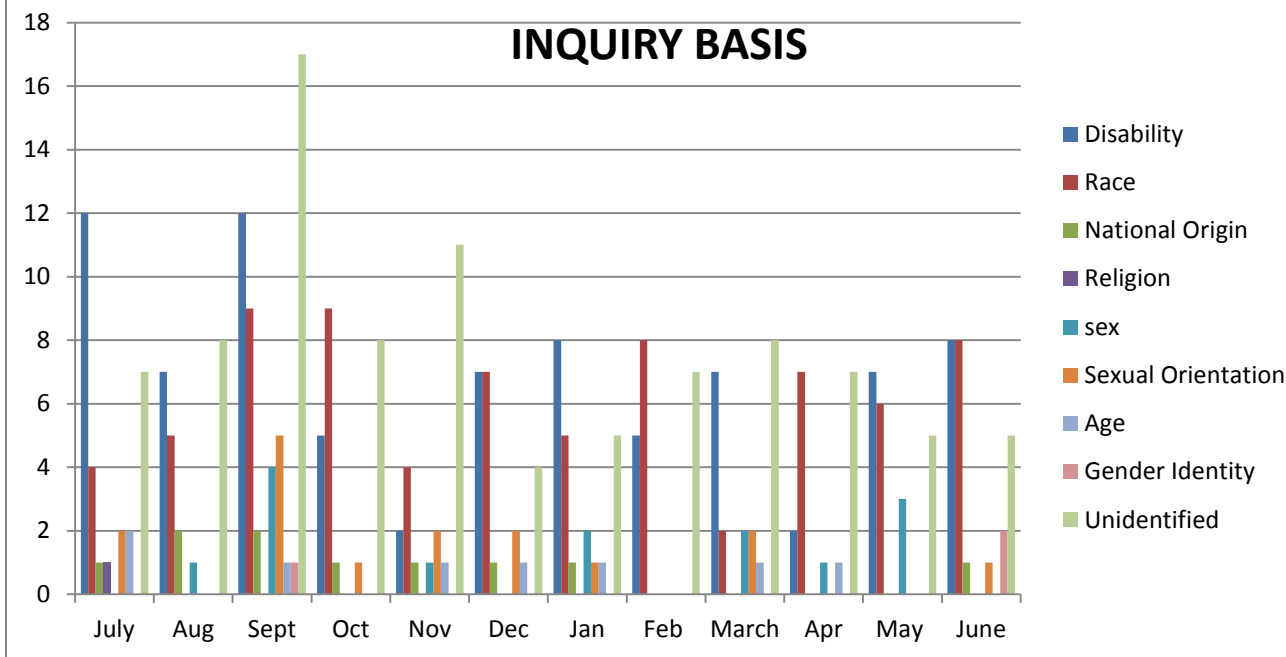
# INTAKE INQUIRIES

This chart contains the number of inquiries by month that was received from July 1, 2013, through June 30, 2014.

### Inquiry Basis July 1, 2013 – June 30, 2014

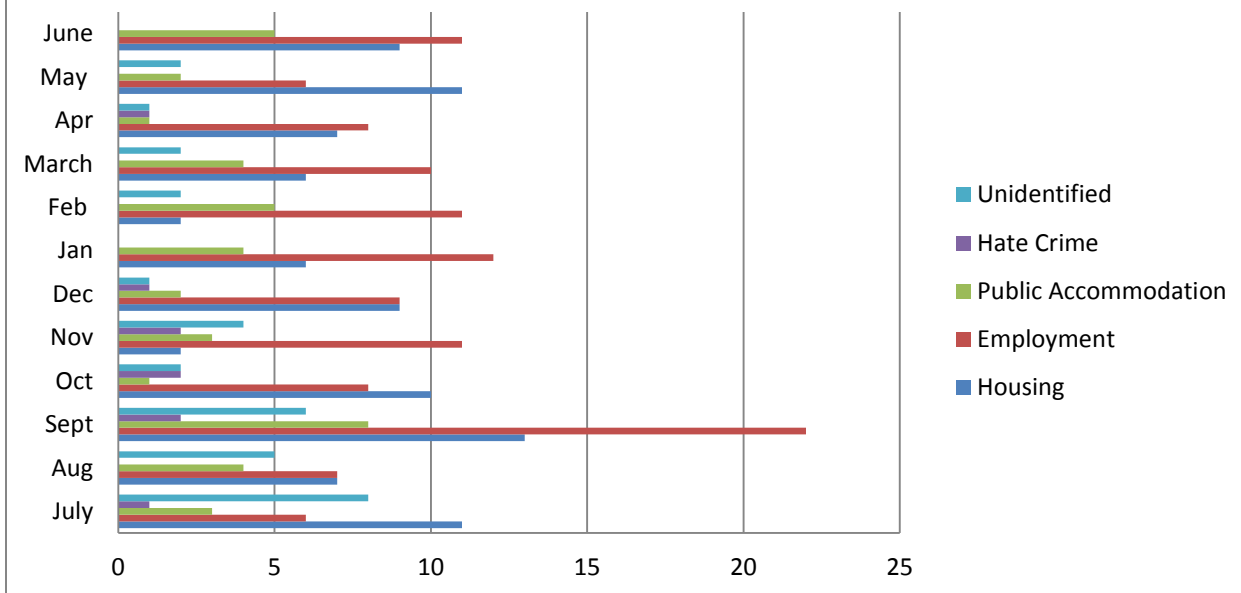


### INQUIRY BASIS



This chart indicates the type of discrimination identified at intake.

## Type of Discrimination Identified at Intake



## PROTECTED CLASSES

**HOUSING:**  
 Race  
 Color  
 Religion  
 National Origin  
 Familial Status  
 Disability  
 Sex  
 Gender Identity  
 Sexual Orientation

**EMPLOYMENT:**  
 Race  
 Color  
 Religion  
 National Origin  
 Age  
 Disability  
 Sex  
 Gender Identity  
 Sexual Orientation

**PUBLIC ACCOMMODATIONS:**  
 Race  
 Color  
 Religion  
 National Origin  
 Disability  
 Gender Identity  
 Sexual Orientation

**HATE CRIMES:**  
 Race  
 Color  
 Religion  
 National Origin  
 Disability  
 Gender Identity  
 Sexual Orientation

# **CONCILIATIONS: July 1, 2013 – June 30, 2014**

## **Housing**

### **Louisville Metro Human Relations Commission – Enforcement v. BB & LLC**

**Basis: Familial Status**

**Action: Discriminatory Advertising**

**Conciliation: Respondent update policies on advertising rental dwellings; cease advertising “no kids” permitted to occupy dwellings**

### **Stankowski v. Cathedral Commons, LTD and Schempp Realty & Management, Inc.**

**Basis: Disability**

**Action: Refusal to make a reasonable accommodation for a disability; retaliation for the filing of a discrimination complaint**

**Conciliation: Respondents’ compensation to the Complainant in the amount of \$10,000;  
Respondents’ fair housing training**

**Alvin pucket v. LaSalle Place Co-Owners Association, Inc – credit collection and legal fees back to the Complainant’s account; Board will address problem regarding residents parking in the Complainant’s assigned handicapped parking space. (Discrimination by retaliation in housing, based on physical disability.**

**Tamara Seadler & Brian Seadler v. Peggy and Jack Dambros – Conciliation \$5,000- (Refusal to rent based on race, Black)**

**Pamela and Edward Livers v. Peggy and Jack Dambros – Conciliation \$5,000- (Refusal to rent based on race, Black)**

**Mary Moorman v. American Apartment Management – Conciliation \$1,000- moving expenses (Discriminate in the conditions or terms of rental occupancy based on race, Black)**

# **CONCILIATIONS** (continuation)

Clara Ralston v. Bronner Realty Company — Conciliated — Complainant received an assigned, designated, handicap parking space (Discriminatory terms, conditions, privileges, or services, on the basis of disability)

## Public Accommodation

Cheryl Medley v. Steak N' Shake — Conciliated \$150 — to repair scooter and \$25 gift card. (Public Accommodation — disparate treatment based on disability)

Mamie Garcia (on behalf of Daughter Juana Lopez) v. Louisville Third Century, Inc. — Conciliated \$2500 (Denial of facilities based on natural origin, Hispanic/American)

## Employment

Sheehan v. St. Martin Tours - \$2,000 (local case)

Nave v. City of Audubon - Confidential Settlement

Nave v. City of Audubon - Confidential Settlement (local case)

Brashear v. Bright Horizons - Confidential Settlement (local case)

Whitney v. JCIM - Confidential Settlement

# COMPLAINTS FILED/CLOSED

July 1, 2013 through June 30, 2014

## Complaints Filed

	<b>Employment</b>	<b>Public Accomodations</b>	<b>Housing</b>	<b>Hate</b>	<b>Total</b>
Race	56	10	10	1	77
Sex	24	2	6	1	33
Disability	20	7	14	2	43
National Origin	4	2			6
Sexual Orientation	8	2	2		12
Gender Identity		2			2
Color					0
Religion	4				4
Age	18				18
Familial Status			5		5
Retaliation	15		2		17
<b>TOTAL</b>	<b>149</b>	<b>25</b>	<b>39</b>	<b>4</b>	<b>217</b>

## Complaints Closed

	<b>Employment</b>	<b>Public Accommodation</b>	<b>Housing</b>	<b>Hate Crimes</b>	<b>Total</b>
Race	45	10	17	2	74
Sex	34		5	1	40
Disability	21	9	19	5	54
National Origin	6	3			9
Sexual Orientation	9	2	3	2	16
Gender Identity		1			1
Color			1		1
Religion	5	1			6
Age	12				12
Familial Status			8		8
Retaliation	9		3	1	13
<b>TOTAL</b>	<b>141</b>	<b>26</b>	<b>56</b>	<b>11</b>	<b>234</b>

\*\* Some complaints allege more than one basis of discrimination. Therefore, the total number of complaints filed does not equal the total number of bases for complaints filed.

	<b>Employment</b>	<b>Public Accommodation</b>	<b>Housing</b>	<b>Hate Crimes</b>	<b>Total</b>
No Probable Cause	89	13	21	8	131
Probable Cause	4	2	6		12
Settlements	4	4	8		16
Administrative	12	3	7		22
Judicial Dismissals					0
Withdrawals	7	2	3		12
Hearings					0
Litigation					0
<b>TOTAL</b>	<b>116</b>	<b>24</b>	<b>45</b>	<b>8</b>	<b>193</b>

# BUSINESS CERTIFICATION AND PREQUALIFICATIONS

---

The City of Louisville and Jefferson County Fiscal Court enacted City Ordinance No. 68, Series 1978 and County Ordinance No. 16, Series 1998 (updated 2004) in order to support and encourage affirmative action in employment of all minorities. The Enforcement unit of the Commission conducts the day-to-day administration of these Ordinances.

## CERTIFICATION PROCESS

---

If a business is a sole proprietorship, corporation, joint venture, or any other business entity that is fifty-one percent (51%) owned and controlled by a minority (or group of minorities), by a woman (or group of women), or a person with a disability (or group of people with disabilities), the business can be certified by the Commission as a Minority Owned, Woman Owned, or Handicapped Owned Business Enterprise (MFHBE).

### Introducing Our New Online Contract Compliance and Certification System!

Louisville Metro Government is pleased to announce its new **Contract Compliance and Certification System (CCCS)**. In June 2013, our paperless system was implemented. This web-based software system is accessible to all Louisville Metro departments, vendors, prime contractors and the general public. After creating an account in the new system, you can:

- Register as a vendor with Louisville Metro Government
- Prequalify your company to do business with Louisville Metro Government
- Certify your minority owned, female owned or handicapped owned company
- Receive free advertisement
- View and Schedule upcoming online training classes and events
- Create your Company Profile
- Add additional company users and profiles
- Receive and send email through the system.
- Receive updates, notifications, alerts, etc., regarding your account
- You are able to log into your account 24 hours a day and customer service is available for assistance.

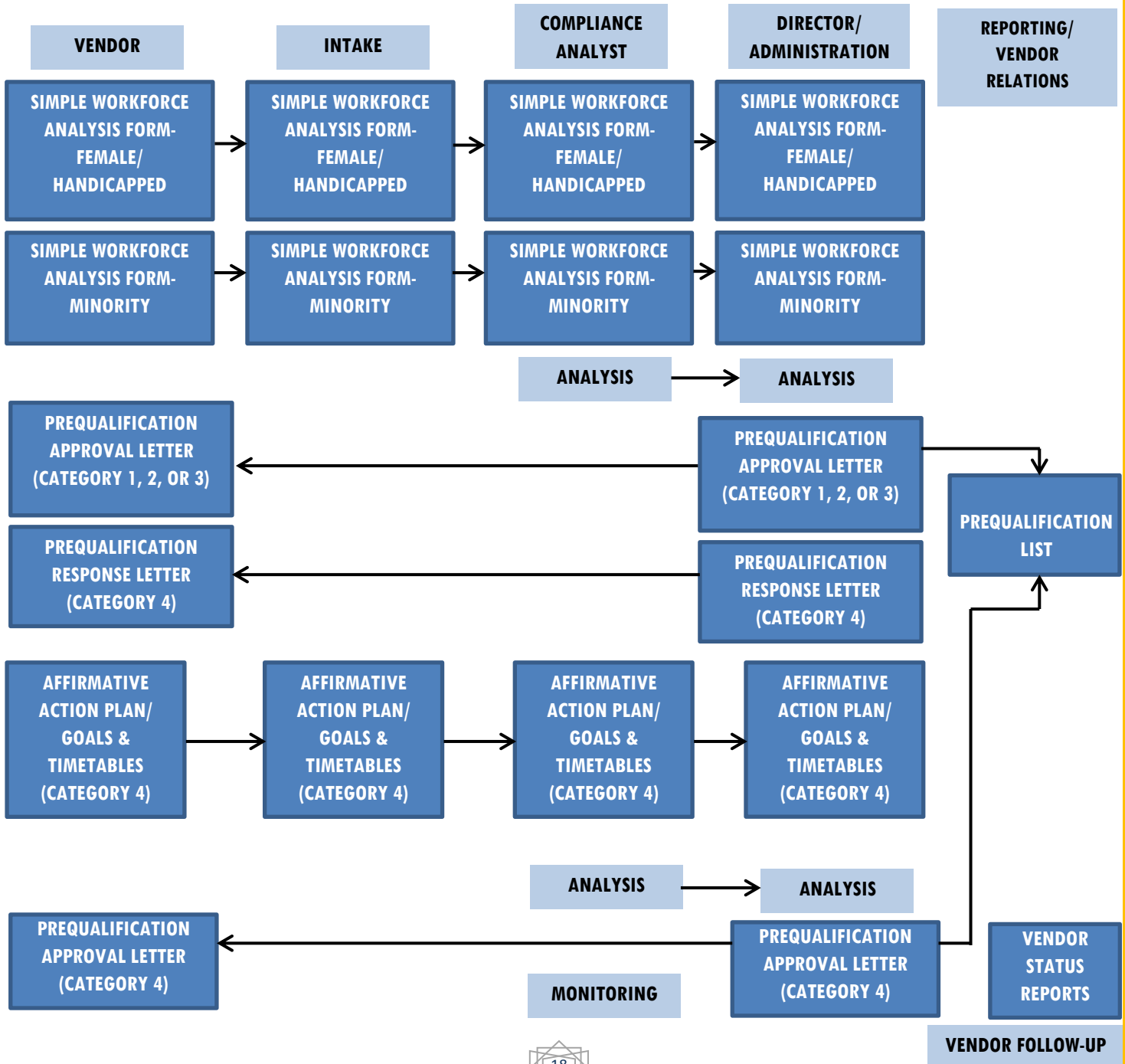
For more information on accessing this system, go to <https://louisvilleky.diversitycompliance.com/>



# PREQUALIFICATION PROCESS

Metro Government requires all contractors and vendors doing business with Metro Government to employ on an equal opportunity basis. In order to ensure that minorities and females are afforded equal opportunities, contractors and vendors must be prequalified before conducting business by providing a written affirmative action plan that sets reasonable goals where underutilization is determined to exist.

## HUMAN RELATIONS COMMISSION PREQUALIFICATION APPROVAL PROCESS

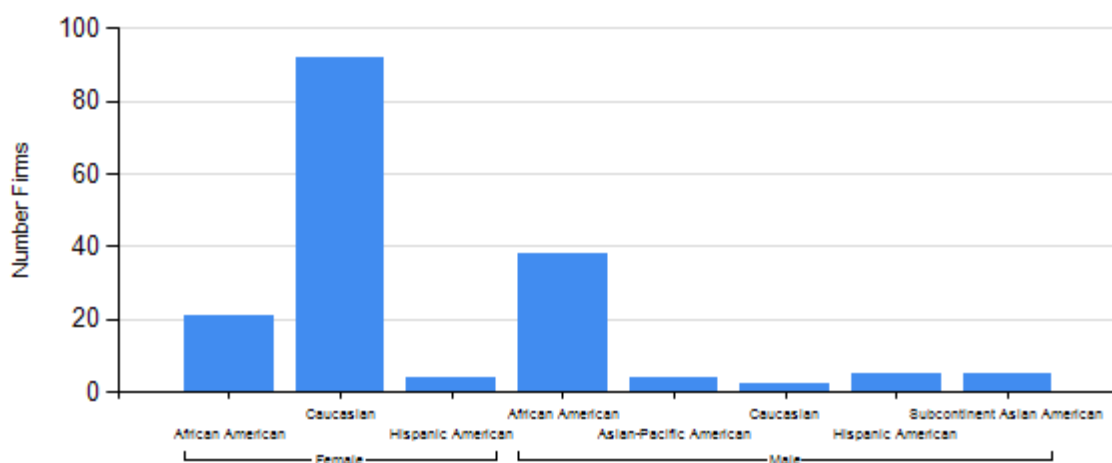


# FISCAL YEAR END STANDINGS

## LMG HRC Certified Directory - Ethnicity & Gender Summary

### Ethnicity & Gender Summary

Ethnicity	Gender	Number Firms
African American	Female	21
African American	Male	38
Asian-Pacific American	Male	4
Caucasian	Female	92
Caucasian / Disabled	Male	2
Hispanic American	Female	4
Hispanic American	Male	5
Subcontinent Asian American	Male	5
<b>Total Firms</b>		<b>171</b>



# EDUCATION AND OUTREACH

In keeping with our mission, the Commission continues to be engaged in our community by attending and hosting community events and focusing on a united community.

## **Monthly Events:**

Fair Housing Coalition Meetings  
Metro Disability Coalition Meetings  
Hispanic Latino Coalition Meetings

## **Special Events by Month:**

### **July 2013:**

Civil Rights Youth Summer Reading Challenge  
Connected Voices: Protesting the outcome of the George Zimmerman Trial

### **August 2013:**

Lexington Fair Housing Council Fair Housing Presentation  
6<sup>th</sup> Annual Anne Braden Memorial Lecture

### **September 2013:**

11<sup>th</sup> Annual WorldFest  
Conference Series for Parents and Students Collaborating for Excellence  
Community Forum – Furthering Fair Housing  
Women in Business Expo  
Accessible City Project Meeting  
Kentucky Commission on Human Rights LGBT Fair Housing Forum  
Fair Housing and Homeless Shelter Training

### **October 2013:**

Community Forum – Louisville Urban League  
St. Francis High School Presentation  
Kentucky Commission on Human Rights 8<sup>th</sup> Annual Hispanic Immigrant and Refugee Networking Summit  
Mayor’s Healthy Hometown Movement Leadership Team Meeting  
Project Progress 1963 “Before Birmingham and Beyond  
Trayvon: An Exploration of American Racial Terror  
Co-Alliance of Business Association Summit

### **October 2013 (continuation):**

3<sup>rd</sup> Annual Dialogue on Diversity Conference  
100 Citizens for Change Executive Committee Meeting  
Get on the Bus Tour – Mercy Academy

### **November 2013:**

TARC Disability Accessible Transportation Meeting  
Veterans Jobs and Resources Fair  
Yellow Cab Louisville Disability Accessible Transportation Meeting  
Ali's Louisville Meeting  
St. John Center – Fair Housing/Public Accommodations Tour  
Ali's Louisville Event  
Healing Possible Quorum Advisory Committee  
Ready Cab of Louisville, Kentucky – Disability Accessible Transportation Meeting  
Goodwill Industries Grand Opening  
Joint Utility Planning Meeting  
Louisville Metro Inspections, Permits & Licenses

### **December 2013:**

African American Initiative Community Mini-Summit  
2013 Louisville Urban League Annual Report Luncheon  
16<sup>th</sup> Annual Kentucky Alliance Unity Dinner  
2013 State of Metropolitan Housing Report Release  
Parental Engagement Workgroup Meeting  
TARC Taxi University Training  
50<sup>th</sup> Anniversary March on Frankfort Planning Meeting  
ADA Coordinators Planning Meeting

### **January 2014:**

Louisville Affordable Housing Trust Fund Briefing  
Regional Transportation Summit  
Hispanic Latino Coalition Meeting: Luz Event

### **February 2014:**

2014 Race and Relations Conference  
Healing Possible Quorum Meeting  
Collegiate – Women of Color and Their Hair  
Women's Business Center of Kentucky – Construction Training  
WLOU – 50<sup>th</sup> Anniversary March on Frankfort

### March 2014:

Louisville Urban League Education Summit  
Allied organizations for Civil Rights  
2014 Women's Summit  
University of Louisville Black Family Conference  
Congressman John Yarmuth's Dialogue on Issues Relating to Women and Children

### April 2014:

La Poderosa AM 620/FM 105.7 – Fair Housing Presentation  
Dosker Manor Resident Corporation Spring Fling  
Accessible City Project  
NCBI Leadership for Diversity Institute  
The Three Stages of Homeownership Forum  
Diversity & Inclusion Conference and Expo

### May 2014:

Franklin Unsung Heroes Banquet  
Regional Mobility Council Meeting

### June 2014:

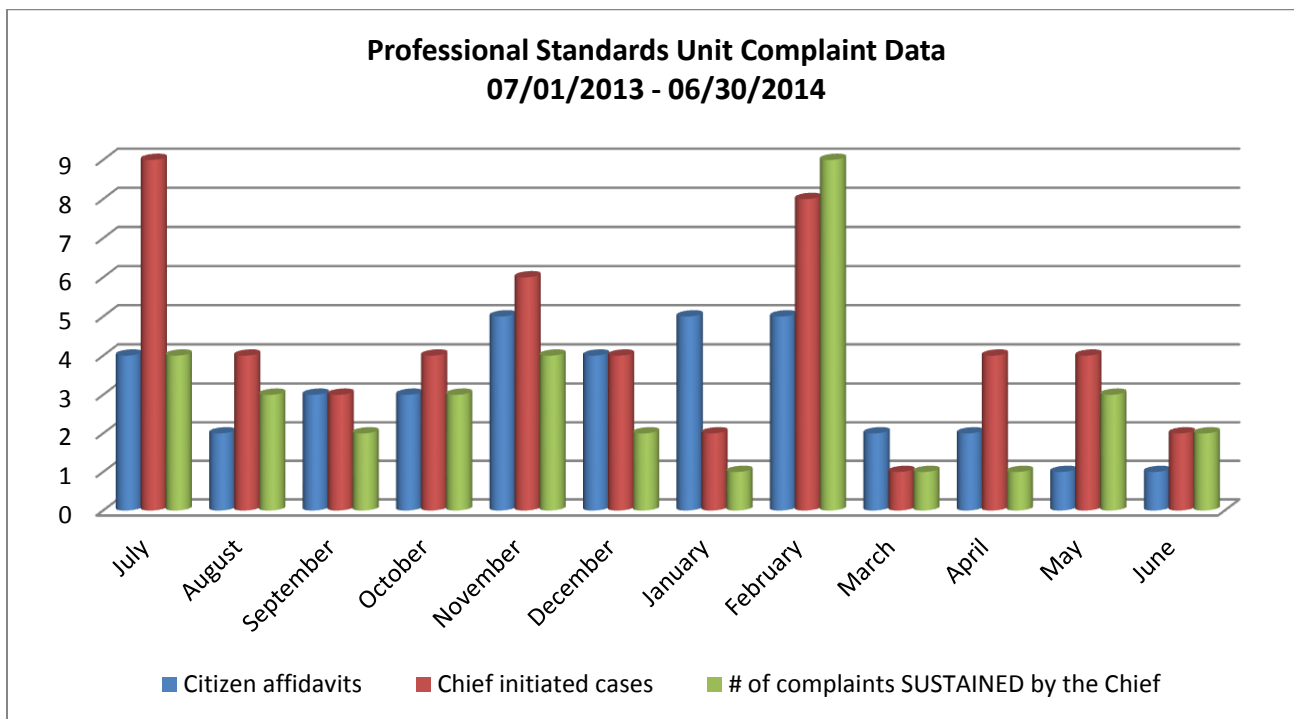
24<sup>th</sup> Annual Americana World Festival  
TSMDC Business Opportunity Fair  
Dosker Manor Unity Day  
Hispanic Latino Health Fair  
WLOU Summerfest  
Regional Mobility Council Meeting



2014 Americana World Festival

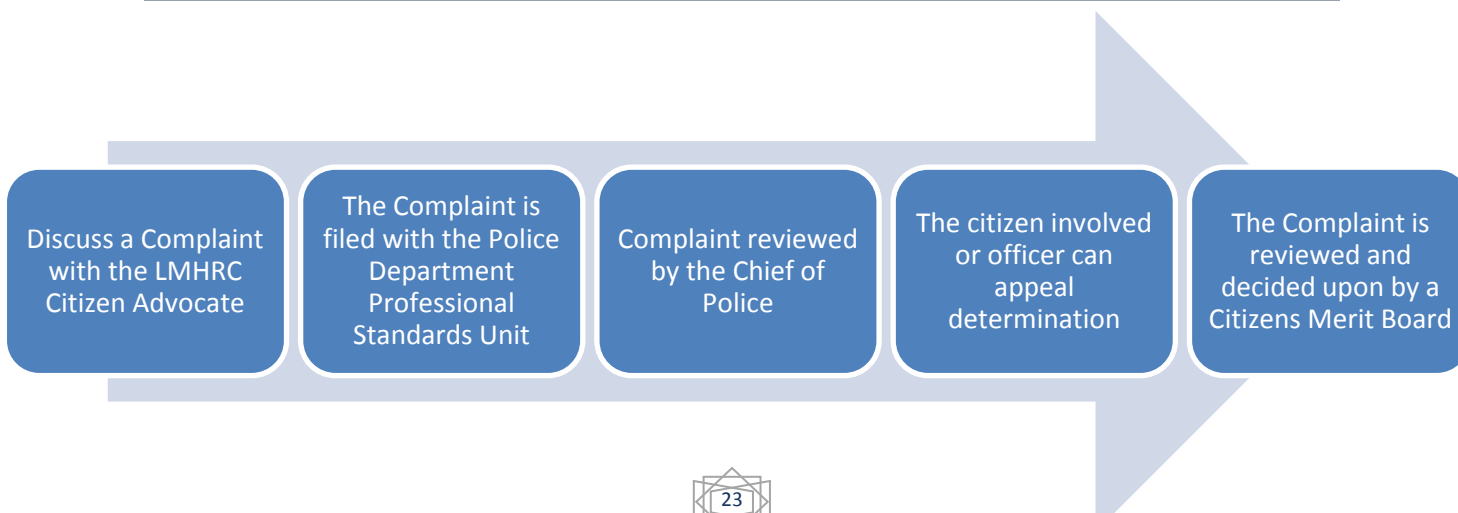
# PROFESSIONAL STANDARDS UNIT

Part of the Commission’s role is to assist citizens who believe they have been mistreated by a police officer and are intimidated or overwhelmed with the process of going to the police department to file a complaint. Our agency provides support and assistance with the appeal process. Below is a chart of the number of complaints and appeals taken from July 1, 2013, through June 30, 2014, along with another chart that explains the complaint process.



\*Data generated from the Professional Standards Unit

## HOW TO FILE A COMPLAINT AGAINST A POLICE OFFICER





**LOUISVILLE METRO  
HUMAN RELATIONS COMMISSION**

**410 WEST CHESTNUT STREET  
SUITE 300A  
LOUISVILLE, KENTUCKY 40202  
502-574-3631**

**Exhibit 7**



2/16/2021

Chelsey Nelson

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

CASE NO. 3:19-cv-851-BJB-CHL

CHELSEY NELSON PHOTOGRAPHY  
LLC and CHELSEY NELSON PLAINIFFS

V. VIDEO DEPOSITION FOR THE DEFENDANTS

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, et al. DEFENDANTS

\* \* \*

DEPONENT: CHELSEY NELSON  
DATE: FEBRUARY 16, 2021

\* \* \*

ELLEN L. COULTER  
REGISTERED PROFESSIONAL REPORTER  
Coulter Reporting, LLC  
101 East Kentucky Street  
Suite 200  
Louisville, Kentucky 40203  
(502) 582-1627  
FAX: (502) 587-6299  
E-MAIL: Ecoulter@coulterreporting.com

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APPEARANCES

FOR THE PLAINTIFFS:

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chinkle@kaplanjohnsonlaw.com

ALSO PRESENT:

KENDALL BOYD - Via Video  
GRETA MAAS - Via Video

MODERATOR:

T.J. BARR  
Coulter Reporting

1 A. An apartment in Louisville.

2 Q. Was that in the Clifton area?

3 A. Yes.

4 Q. Is that the first place that you lived  
5 after you were married to Derrik?

6 A. No. We lived in Tallahassee for a  
7 time before moving to Louisville.

8 Q. Okay. Did you guys wait to live  
9 together until you were married?

10 A. Yes, we did wait until after we were  
11 married.

12 Q. And I understand that you have -- you  
13 have a child?

14 A. Yes.

15 Q. And when was your child born?

16 A. May [REDACTED] 2019.

17 Q. And is that your only child?

18 A. Yes.

19 Q. Okay. So back to education. So after  
20 high school, did you pursue any further education?

21 A. I did, yes.

22 Q. Okay. And I think I saw that you  
23 attended the Florida Community College, is that  
24 right?

25 A. Yes, Florida State Community College.

1 Q. Okay. So that has overlapped with  
2 Chelsey Nelson Photography then, correct?

3 A. Yes, correct.

4 Q. Was that a full-time or a part-time  
5 position at Heartland?

6 A. Full time.

7 Q. Would you go into the office every  
8 day?

9 A. Yes.

10 Q. From 2017 to 2019, was Heartland  
11 Payment Systems, you know, your primary source of  
12 income from employment?

13 A. Yeah.

14 Q. I'm talking about you individually.  
15 Not including your husband.

16 A. Yes.

17 Q. Okay. How much were you making with  
18 Heartland Payment Systems, approximately?

19 A. Approximately 55,000 per year.

20 Q. Before you took that position with  
21 Heartland Payment Systems did you have any prior  
22 connection to the payments industry?

23 A. No.

24 Q. How did you find the job?

25 A. I saw a posting on Facebook about the

1 position.

2 Q. Where is that company based?

3 A. The main office is based in Oklahoma.  
4 I think it's Oklahoma City.

5 Q. Do you know approximately how many  
6 employees they have in Louisville?

7 A. Last I remember, I think it was  
8 between three and four hundred, approximately, but  
9 the office was located in Jeffersonville, not  
10 Louisville technically.

11 Q. Okay. That's helpful.

12 So I think you told me that your  
13 employment with Heartland ran into 2019. When did it  
14 terminate, if you remember the month?

15 A. July.

16 Q. Was there a reason why you stopped  
17 working at Heartland?

18 A. Yes. I wanted to be home with my  
19 daughter and devote my time to her.

20 Q. So -- yeah, so your daughter had been  
21 born on May the [REDACTED] so you resigned a couple of  
22 months later?

23 A. Yes.

24 Q. So you could be home with your baby on  
25 a more regular basis?

1 THE REPORTER: I'm sorry. Excuse me,  
2 I'm sorry. I missed the end of your answer. "That  
3 is certainly something that points to that" --

4 A. That is certainly something that  
5 points to that reality, yes.

6 THE REPORTER: Thank you.

7 Q. Is part of the idea of being one in  
8 flesh having sexual relations?

9 A. Yes.

10 Q. And so when you read that part of  
11 Genesis, do you believe that God is limiting sexual  
12 relations to man and woman, that those -- in the  
13 context of a marriage?

14 A. I do believe that that is an example  
15 where God is limiting approved and holy sexual  
16 expression to be within the confines of a marital  
17 relationship between one man and one woman.

18 Q. And do you believe that any type of  
19 sexual relations outside of a marriage is adultery?

20 A. I believe sexual expression, activity  
21 outside of marriage is sinful. Is sinful.

22 Q. Sinful, okay. What about adultery?  
23 Does it count as adultery?

24 A. Adultery would be a specific type of  
25 sexual sin, not necessarily a -- a broad category for



1           A.       Honestly, everything I've read on the  
2 website I found informative, which is why I've gone  
3 back to it consistently as a news source.

4           Q.       Okay. So you consider Mr. Koukl to be  
5 a good authority on a variety of topics?

6           A.       I do.

7           Q.       And specifically same-sex marriage?

8           A.       I do.

9                   MR. KAPLAN: T.J., could you pull the  
10 Greg Koukl clip, K-O-U-K-L, and it's just the first  
11 three minutes. I need it to stop at 3 minutes.

12                   (VIDEO PLAYED)

13 BY MR. KAPLAN:

14           Q.       Were you able to see and hear that,  
15 Ms. Nelson?

16           A.       I struggled a little bit to hear it,  
17 but I do think I heard most of it.

18           Q.       Okay. And that was Mr. Koukl,  
19 correct?

20           A.       Yes.

21           Q.       Did you agree with everything you  
22 heard on that video?

23           A.       What I was able to hear, I -- I would  
24 agree with.

25           Q.       I mean, do you agree with Mr. Koukl

1 that if same-sex marriage is permitted, that it would  
2 open the door to redefining marriage in a lot of  
3 other ways that people might not like such as, you  
4 know, marrying animals or open marriages or polygamy,  
5 et cetera? Do you agree with that view?

6 MR. SCRUGGS: Objection. Calls for  
7 speculation.

8 A. I think that the -- changing the legal  
9 definition between one man and one woman to anything  
10 else opens the door to redefining it to other  
11 possibilities, if you follow it logically.

12 Q. And did you hear anything Mr. Koukl  
13 said that you particularly disagreed with?

14 A. No.

15 Q. Do you -- I think on your current  
16 website you indicated that you follow a show called  
17 Relatable, which is Allie Beth Stuckey?

18 A. I do, yes.

19 Q. Okay. Do you like her?

20 A. I find her to be very informative.

21 Q. Are you a regular listener?

22 A. I am, yes.

23 Q. Did you happen to see her appearance  
24 on The Rubin Report on April the 11th, 2019?

25 A. I have not seen that, no.

1 Q. Are you a member of any organizations  
2 besides your church?

3 A. I may be a member of the United States  
4 Tennis Association, but I think that membership may  
5 have lapsed.

6 Q. Do you currently have any LGBTQ  
7 friends?

8 A. I know people and have acquaintances,  
9 professional acquaintances in the LGBTQ community.

10 Q. Professional acquaintances, but nobody  
11 that you socialize with?

12 A. Not that I know of.

13 Q. Where are the professional  
14 acquaintances from? Like I don't want -- I don't  
15 want names, but, you know, what professional  
16 activities?

17 A. From Heartland Payment Systems.

18 Q. Okay. So did -- you met somebody who  
19 was gay at Heartland Payment Systems?

20 A. I worked with individuals in the LGBTQ  
21 community who were in the same department as I was.

22 Q. Okay. And what part of the LGBTQ  
23 community were they in?

24 A. I'm not sure how they would define  
25 their involvement.

1 Q. Were they gay?

2 A. To my knowledge, they never  
3 specifically said that.

4 Q. Okay. You just sort of surmised from  
5 some comments that they made?

6 A. From comments from other -- from other  
7 people in the department.

8 Q. Okay. Were you able to get along with  
9 them fine?

10 A. We had a wonderful working  
11 relationship. In fact, they offered to help me walk  
12 into the office when I was pregnant and there was a  
13 lot of ice on the ground in the wintertime. We had a  
14 very warm working relationship.

15 Q. Were any of the people who you thought  
16 could be part of the LGBTQ community married?

17 A. I believe -- I know of one, maybe two.  
18 I don't specifically remember.

19 Q. Do you have any family members who are  
20 gay or otherwise LGBTQ?

21 A. Not that I'm aware of.

22 Q. Okay. Let's switch gears. I'd like  
23 to talk to you about your interest in photography.  
24 So do I understand correctly that when you were seven  
25 years old your home in Florida was damaged by a

1 and were church members at Clifton, and I asked them  
2 if they wanted me to take some photos for them.

3 Q. Okay. So you met them at the church.  
4 This was after you had married your husband.

5 A. Yes.

6 Q. And you -- members of this church and  
7 so you offered to take pictures of their first child?

8 A. Yes, and of them as a couple.

9 Q. Okay. And is this after you had  
10 launched Chelsey Nelson Photography?

11 A. Yes.

12 Q. Okay. So this was a paid service?

13 A. It was, yes.

14 Q. And do you recall when in 2016,  
15 approximately, that was?

16 A. I don't remember.

17 Q. Did you launch Chelsey Nelson  
18 Photography in May of 2016? I think that's what your  
19 complaint says.

20 A. Yes, I did.

21 Q. Okay. So it was -- would have been  
22 sometime after that that you took pictures of them?

23 A. Yes, I think so.

24 Q. Have you ever had any --

25 A. Or around that time.

1 It's tab A, T.J.

2 (DEPOSITION EXHIBIT NO. 1 MARKED)

3 MR. KAPLAN: Okay. And maybe if you  
4 could zoom in a little bit. So that -- maybe more,  
5 because I want to focus on some of the text under, "I  
6 believe."

7 Ms. Nelson, can you see that?

8 A. Yes, I can.

9 Q. Okay. So I'll represent to you that  
10 this is a recent, within the past few days, printout  
11 from your current website. And I think if you looked  
12 at this you could confirm that. You can see at the  
13 bottom, you see where it says, "Wedding Services  
14 Celebration Statement"?

15 A. I do.

16 Q. Okay. That was added after you won  
17 your injunction last fall, correct?

18 A. Correct.

19 Q. So -- but up above that under "I  
20 believe," has that series of statements next to the  
21 crosses, has that been there for some time?

22 A. That preexisted the wedding services  
23 celebrations statement (unclear audio).

24 Q. Do you recall when you first put the  
25 belief statements that are next to the crosses onto

1 your website?

2 A. I don't remember the exact time, no.

3 Q. Do you think it was prior to 2020?

4 A. Yes.

5 Q. Do you think it was prior to 2019?

6 A. Yes, I think so.

7 Q. Do you think it was prior to 2018?

8 A. It was probably approximately in  
9 either 2017 or 2018. I don't remember specifically,  
10 but probably in one of those years.

11 Q. Why did you choose to include those  
12 belief statements on your website at that time, if  
13 you recall?

14 A. I wanted to provide an example of my  
15 philosophy and beliefs to potential clients so that  
16 they could have clarity in the type of work I want to  
17 create and promote before they inquire about wedding  
18 services.

19 Q. Okay. Good, that's helpful. So, for  
20 example, that first statement there, I'll read it  
21 into the record. "I believe God's vision for  
22 marriage is beautiful, and one of his sweetest gifts  
23 to us in this life to be treasured and held in  
24 honor."

25 Did I read that correctly?

1 A. Yes.

2 Q. So based on your testimony you just  
3 gave, I would infer that you felt that by  
4 communicating your view about God's vision for  
5 marriage and your support of that, that that could  
6 attract the kinds of customers that you wanted for  
7 your wedding photography business?

8 A. I believe that it would or hopefully  
9 could attract customers that resonated with the work  
10 that I want to make.

11 Q. Is the same true for the fourth plus  
12 statement that's, "I believe in spreading the truth  
13 and love of Jesus by showing off his creativity in  
14 creation"? Did you think that that could, you know,  
15 attract customers who shared your views about your  
16 Christian faith?

17 A. I did think that it could attract  
18 those who agreed, but also help people understand my  
19 perspective even if they don't agree.

20 Q. Right.

21 A. Just as a clarifying point so that my  
22 potential clients could get to know me better.

23 Q. Did you believe that, at the time you  
24 posted those statements, that -- that anyone who had  
25 an aversion to your religious beliefs would probably



1 avoid your services?

2 A. I believed that that was possible.

3 Q. And was that one of your intentions,  
4 though, to sort of attract the market that you wanted  
5 and not attract a market that wouldn't be a good fit  
6 for you?

7 A. The goal was to be upfront,  
8 transparent with anyone interested in hiring me so  
9 that they could make a decision based on information  
10 before taking their time to inquire.

11 Q. And so you think it was sometime in  
12 2017 that this went up?

13 A. Probably 2017 or 2018.

14 Q. Okay. And you -- you never received  
15 an inquiry directly from someone who wanted you to  
16 take photographs of a same-sex marriage wedding, is  
17 that correct?

18 A. Not that I'm aware of, no.

19 Q. Is it fair to say that the closest  
20 that you came was when you were communicating with  
21 Melissa Gwinn -- or I'm sorry, Melissa Glynn about  
22 possibly being a second shooter for her?

23 A. That was an instance where she was  
24 interested in boutique editing services rather than a  
25 second shooter.

1 Q. Okay, boutique editing. Got it. And  
2 she's a photographer.

3 A. Yes.

4 Q. And is she a wedding photographer?

5 A. I don't remember if she shoots other  
6 things other than weddings, but I do know she shoots  
7 weddings.

8 Q. Okay. And so Jodie Brim and Amanda --  
9 what's her last name?

10 A. Amanda Nichols.

11 Q. Amanda Nichols, they take pictures at  
12 weddings, but do they also do family portraits?

13 A. I know Jodie Brim has done family  
14 portraits. I'm not sure if family portraits is  
15 something that Amanda Nichols advertises or does  
16 regularly because I've never photographed -- excuse  
17 me, I've never edited family sessions for her or  
18 anything other than weddings.

19 Q. Is that true for both of them?

20 A. I have also edited family Christmas  
21 photos and business branding photos and what may have  
22 been a senior portrait photo shoot -- I don't  
23 remember the context of that -- for Jodie Brim.

24 Q. Do you recall when you did that work  
25 for her?

1 A. For which photographer?

2 Q. For Jodie Brim, the portrait project.

3 A. I don't remember the specific date,  
4 but I believe it's listed in my interrogatory answers  
5 (unclear audio).

6 Q. Okay. Was that a one-off for you? I  
7 thought you only did -- for hire you only wanted to  
8 do wedding photography?

9 A. I market myself for weddings, but  
10 Jodie Brim had some other projects that I did for her  
11 in addition to weddings at that time. I don't  
12 currently market --

13 THE REPORTER: I'm sorry. I'm sorry,  
14 you're cutting out on me. I'm sorry. "I don't  
15 currently" --

16 A. I don't currently market my editing  
17 services for anything other than weddings.

18 Q. When did you decide to limit the  
19 marketing only to weddings?

20 A. I -- to my knowledge, I've never  
21 marketed any -- any other way for my editing.

22 Q. And what about for you yourself  
23 photographing at events? Did you -- when did you  
24 decide to limit that to weddings, if you've limited  
25 it in that fashion?

1 A. Around the time my daughter was born.

2 Q. Okay.

3 A. In that season of life.

4 Q. Okay. So before your daughter was  
5 born you were willing to photograph events other than  
6 weddings if the opportunity arose?

7 A. It depended on the situation. At that  
8 time the only other thing I photographed close to the  
9 date of her birth was a birth photography session,  
10 but I stopped offering those after my daughter was  
11 born.

12 Q. And, yeah, I would like to encourage  
13 you to speak up as much as possible. I'm afraid that  
14 the court reporter might not be able to hear  
15 everything because I'm having a little trouble. So  
16 do your best and if it continues to be a problem, we  
17 might have you try to call back in instead.

18 A. Okay.

19 Q. So I think you mentioned that you did  
20 a project involving a baby birth, is that correct?

21 A. Birth photography.

22 Q. Yes. Was that Megan and Ryan Kemp?

23 A. Yes.

24 Q. Okay. And that -- so that was in  
25 February of 2019?

1 A. I'm not sure.

2 Q. Okay. And the time that you're  
3 becoming like concerned about this specifically, was  
4 that in 2018?

5 A. I was concerned specifically about  
6 legal action since even before I formed my business  
7 in 2016, but that broadened to the realization of the  
8 specific ordinance in 2018.

9 Q. So I understand from your testimony  
10 just now that you did have some concerns from the  
11 beginning, even in 2016. Why didn't you seek legal  
12 counsel at that time?

13 A. I hadn't thought about it.

14 Q. Hadn't thought about what?

15 A. Seeking legal counsel at that time.

16 Q. Okay. And so there was a later point  
17 in time where you still had these concerns where you  
18 did seek legal counsel?

19 A. Yes.

20 Q. Okay. Did you contact legal counsel  
21 or did legal counsel contact you?

22 A. Legal counsel contacted me initially.

23 Q. Contacted you what?

24 A. Initially.

25 Q. Okay. So you did not initially reach

1 out to counsel. You were contacted by counsel.

2 A. Yes.

3 Q. Okay. And was that the law firm  
4 that's currently representing you, the Alliance  
5 Defense Fund?

6 A. Alliance Defending Freedom, yes.

7 Q. Sorry, Alliance Defending Freedom,  
8 sorry, yeah. ADF. All right.

9 Let's get back to that in a second.

10 So -- well, actually, let's continue on that. So --  
11 and, again, I don't want to know anything about any  
12 conversations or communications written or otherwise  
13 that you've exchanged with any attorney for Alliance  
14 Defense Fund or any other firm that you've retained.  
15 So with that clarification, is it true that you  
16 started talking to attorneys at Alliance Defense Fund  
17 in October 2018, that time frame?

18 A. Alliance Defending Freedom, and I  
19 don't remember the specific month when we would have  
20 began speaking.

21 Q. Okay. Yeah, I'm sorry, I keep getting  
22 that name wrong. Alliance Defending Freedom. I must  
23 know that other organization from some other former  
24 life. I'm starting to get a little -- my memory is  
25 failing me. So --

1 A. You can say ADF if that's easier.

2 Q. So you -- I'm sorry?

3 A. You can say ADF if that's easier.

4 Q. Yeah, let's say ADF. So you don't  
5 recall the year that you first spoke to an attorney  
6 at ADF?

7 A. I do recall the year. I think it was  
8 2018.

9 Q. Okay. So sometime in 2018. Were  
10 those the first attorneys you talked to about this  
11 particular concern that you were having about being  
12 persecuted for your beliefs?

13 A. In an official capacity, yes, I think  
14 so.

15 Q. Okay. And just to clarify, at the  
16 time you started talking to legal counsel, you had  
17 not actually been approached by a same-sex couple  
18 asking you to photograph their wedding, is that  
19 correct?

20 A. That's correct.

21 Q. And I think we've covered the closest  
22 that you ever came to that was the Melissa -- Melissa  
23 Glynn inquiry. Is that fair?

24 A. Yes.

25 Q. To your knowledge.

1 is currently up on your website?

2 A. To my knowledge, yes.

3 Q. Okay. Your intention after you got  
4 the injunction was to put this exact statement onto  
5 your website. Is that accurate?

6 A. Yes.

7 Q. Okay. Who drafted this statement?

8 A. I wrote it with my attorneys.

9 Q. Was there someone who was the primary  
10 draftsman, like the person who wrote -- who's most  
11 responsible for it if you had to pick one person?

12 A. Myself.

13 Q. Okay. And then -- and then your  
14 attorneys advised you after they -- based on a draft  
15 you provided to them?

16 A. My attorneys helped review what I  
17 wrote, yes.

18 Q. Okay. Did it change much?

19 MR. SCRUGGS: Objection. I'm going to  
20 object based on attorney/client privilege on that.

21 MR. KAPLAN: Okay.

22 MR. SCRUGGS: And instruct the witness  
23 not to answer.

24 Q. Did you do the first draft,  
25 Ms. Nelson?



1 A. I don't remember.

2 Q. When did you start working on this  
3 statement? How long before the lawsuit, if you  
4 recall?

5 A. I don't remember when I first started  
6 working on it.

7 Q. Was it a long time before the lawsuit  
8 or not such a long time?

9 A. I honestly don't remember.

10 Q. Are you familiar with Microsoft Word?

11 A. Yes.

12 Q. Okay. I'll represent to you that your  
13 attorneys produced to me two Microsoft Word files.  
14 One is the document we're looking at here, and the  
15 other is the text that falls under the boutique  
16 editing services statement. So they produced to me  
17 Microsoft Word versions of these texts. Were you  
18 aware they did that?

19 A. Yes.

20 Q. Okay. And I think you've stated in  
21 your interrogatory answers that these documents were  
22 finalized on or around November the 8th, 2019, is  
23 that correct?

24 A. I don't remember specifically, but  
25 that generally sounds correct.

1 A. -- ceremonies --

2 Q. And there wasn't any statement quite  
3 like that on your website when you first started  
4 marketing Chelsey Nelson Photography on that site in  
5 2016, was there?

6 A. No, there was not.

7 Q. So is there a particular reason why  
8 you decided to express your outright refusal to  
9 photograph a same-sex wedding in this particular  
10 statement?

11 A. I wanted to be as transparent as  
12 possible about which messages I am and am not willing  
13 to create based on my religious beliefs, and this  
14 seemed like a good way to do that.

15 Q. Did you -- did you -- did you  
16 understand, though, that when you put those  
17 statements out there in 2016, those belief statements  
18 we were looking at, that you were very clearly  
19 expressing that you had a Christian view of the  
20 marriage relationship?

21 A. Those statements were posted after  
22 2016, but, yes, I was fully aware and intending to  
23 relay that I have a biblical worldview on God's  
24 design for marriage.

25 Q. Okay. And that was -- I'm sorry,

1 you're right. I think you told me that that was in  
2 2017 or later, is that right?

3 A. Yes, I think generally 2017 or 2018.

4 Q. Okay. And wasn't it your goal in --  
5 in putting that particular statement here to create a  
6 claim under the Metro Louisville ordinance that you  
7 didn't think you had without making a statement of  
8 outright refusal?

9 A. My goal was to be the most transparent  
10 as possible in order to exercise my freedom to create  
11 consistent with -- consistently with my beliefs and  
12 express what those beliefs are and what the messages  
13 are that I'm willing and not willing to promote  
14 through my business.

15 Q. Okay. Well, do you deny that that  
16 statement was in there to try to create a violation  
17 of the statute?

18 MR. SCRUGGS: Asked and answered.

19 A. What my intention was is to clearly  
20 state the messages that I am and am not willing to  
21 promote based on my religious beliefs, and I believe  
22 that that should be a freedom that I am offered and  
23 is protected through the Constitution.

24 Q. Let's assume that you deleted the part  
25 that we were just talking about, that one sentence,

1 ideal end result for marriage in the Bible and  
2 what -- you know, God's design for marriage, but that  
3 there are -- there are certain instances in which it  
4 is permissible, though it saddens God deeply and is a  
5 different circumstance from same-sex relationships.

6 Q. Do you believe that -- from a  
7 Christian perspective, from your Christian  
8 perspective that God absolutely prohibits premarital  
9 sex?

10 A. Yes.

11 Q. In the questionnaire or in the  
12 interviews that you do of these potential customers,  
13 do you ever ask them if they've engaged in premarital  
14 sexual relations?

15 A. No.

16 Q. I mean, if you just knew that that was  
17 the case, would you refuse to -- like let's say you  
18 went on the Web and found out that they were living  
19 together and they weren't married yet and it looked  
20 to you like they were likely engaging in premarital  
21 sex, would you still move forward with the contract?

22 MR. SCRUGGS: Objection. Calls for  
23 speculation.

24 A. It depends on the circumstance. I  
25 would need to pray about it, think about it and then

1 decide, use my best judgment.

2 Q. Well -- and, again, I'm not trying to  
3 be disrespectful here, but if that is something  
4 that's important to your religious convictions, why  
5 wouldn't you ask them whether they're engaged in that  
6 or not? Why would you bury your head in the sand and  
7 just not find out about it?

8 MR. SCRUGGS: Objection,  
9 argumentative.

10 A. I don't consider it a business best  
11 practice to ask about the sexual activity of my  
12 potential clients during consultations.

13 Q. But if it was two men or two women  
14 coming to you, you would presume that they were  
15 having -- that they were planning to have sex after  
16 marriage, correct?

17 A. I think it would be reasonable to  
18 assume any two individuals seeking to marry one  
19 another would desire to engage in sexual expression  
20 with one another after their wedding.

21 Q. Did I see in your complaint a  
22 statement to the effect that you would be willing to  
23 take photos at an opposite-sex wedding between a  
24 homosexual man and a woman?

25 A. Between a homosexual man and a

1 listed it in the interrogatory answers, the exact  
2 month.

3 Q. Okay. And so this project was done  
4 after you had already started focusing on wedding  
5 photography, is that correct?

6 A. Yes.

7 Q. So was this a one-off? I mean, why  
8 did you agree to do this particular project?

9 A. There was a time that I did offer  
10 birth photography and I accepted this project before  
11 I more exclusively transitioned my services to be  
12 focused on weddings. They engaged my services well  
13 before her due date, so there was, you know, quite a  
14 bit of time between when they signed the contract and  
15 when I actually performed the services in the  
16 contract.

17 Q. And so sitting here today, would you  
18 consider doing another one of these or have you ruled  
19 that out entirely at this point?

20 A. I'm not currently offering birth  
21 photography, and I don't have any current plans to  
22 offer that.

23 Q. Why is that? Well, let me back up a  
24 second. Was this a positive experience for you?

25 A. Yes, yes.

1 Q. Okay. So why wouldn't you want to do  
2 more of this type of work?

3 A. Logistically, it's very difficult and  
4 demanding, and it seemed to be the best decision in  
5 light of becoming a mother myself that the logistics  
6 and schedule needed to continue providing birth  
7 photography services was not conducive to, you know,  
8 my new lifestyle as a -- as a mom.

9 Q. Back to the boutique editing services  
10 for a second. You've walked me through the process  
11 that you go through to edit so I won't ask more about  
12 that, but I did want to ask about your customer base.  
13 So as it stands right now, are your major customers  
14 Amanda Nichols and Jodie Brim?

15 A. I would say my main current customer  
16 base is only Amanda Nichols.

17 Q. Okay. I saw -- there's I think a  
18 recommendation from Jodie Brim on your website. Are  
19 you still on good terms with her?

20 A. Yes, I am.

21 Q. Okay. When you said Amanda Nichols  
22 currently, is that just because you've continued to  
23 get engagements from her but you're not getting any  
24 from Jodie Brim anymore?

25 A. I have only recently received a

1 Q. Are you still willing to provide  
2 family photography on a paid basis?

3 A. I'm not currently providing that  
4 service to the public and would only consider it on a  
5 case-by-case basis likely from close friends or  
6 family, but that's not something that I am promoting  
7 or advertising even among my family and friends.

8 Q. Does -- does the fact that right now  
9 you're exclusively involved with editing wedding  
10 photos and photographing opposite-sex weddings, does  
11 that have anything to do with the litigation, wanting  
12 to focus on weddings specifically?

13 A. I stopped having a -- well, strike  
14 that. I've never focused on offering wedding --  
15 excuse me, on offering family photography, and that  
16 happens to just coincide with my season of life and  
17 being a new mom and having limited time and resources  
18 to devote to my business and needing to prioritize  
19 where that energy should go. And in my best  
20 estimation and judgment, that's to wedding  
21 photography and wedding editing.

22 Q. I think you testified before about  
23 some second shooter work that you did. I mean, were  
24 you paid for that work?

25 A. Yes.



# Chelsey Nelson

Photography

SHOP / BOUTIQUE EDITING / ABOUT / BLOG / PHOTOGRAPHY / CONTACT



## WEDDINGS

CHRYN ON HO OGRA HY W DD NG OR O O  
OU SV E, KENTUCKY

### WEDDING PHOTOGRAPHY

#### I Believe

- + I believe God's vision for **marriage is beautiful**, and one of his sweetest gifts to us in this life to be treasured and held in honor.
- + I believe the **permanence** of marriage brings a freedom to blossom and grow as a person like nothing else.
- + I believe the work we do in our marriages each day can make this world a better place for future generations. The marriage your children grow up observing will have **one of the biggest impacts** on their life.
- + I believe in **spreading the truth and love of Jesus** by showing off his creativity in creation.
- + I also believe in tickle fights, **cuddles**, playful banter and seeing things with a glass half full.

Because life is too short to live any other way.

I would be honored to talk to you about what you envision for your wedding day, and how I can make this an easy, customized process perfectly tailored for you.

#### Wedding Services Celebration Statement

My highest aim of creative expression is to honor God. This looks like focusing on and filling minds with whatever is true or noble, whatever is right or pure, whatever is lovely or admirable, excellent or praiseworthy (based on [Philippians 4](#)). This mentality inspires my photography, blogging, and how I try to serve my clients.

I believe marriage is a special gift from God that represents Jesus Christ's love for his Church, and it all begins at a wedding between a man and a woman. A celebration where love, joy, purity and beauty are publicly proclaimed. When I get to photograph a wedding, I get to share in the ceremony and publicly celebrate the start of a new relationship between the bride and groom. No other human relationship is quite like it in terms of beauty or significance.

God's word greatly impacts my life and business. Practically, this means I don't photograph every wedding that comes my way. I cannot positively depict anything that demeans others, sexually objectifies others, or devalues marriage between one man and one woman. I also can't photograph anything that conflicts with my religious conviction that marriage is a covenant relationship before God between one man and one woman (for example, I don't photograph same-sex weddings or ceremonies celebrating an open marriage).

I believe everyone is beautifully made in the image of God and deserves respect. I appreciate the freedom to create and highlight beauty in such a way that is consistent with my beliefs and presents those messages in the best light possible.



Welcome! I'm Chelsey - a Louisville, Kentucky photographer and private photo editor with a heart for Jesus. I blog here about my journey as a creative entrepreneur, lifestyle tips and everyday adventures. I hope this space can be a cozy, safe haven for you to feel refreshed and inspired.

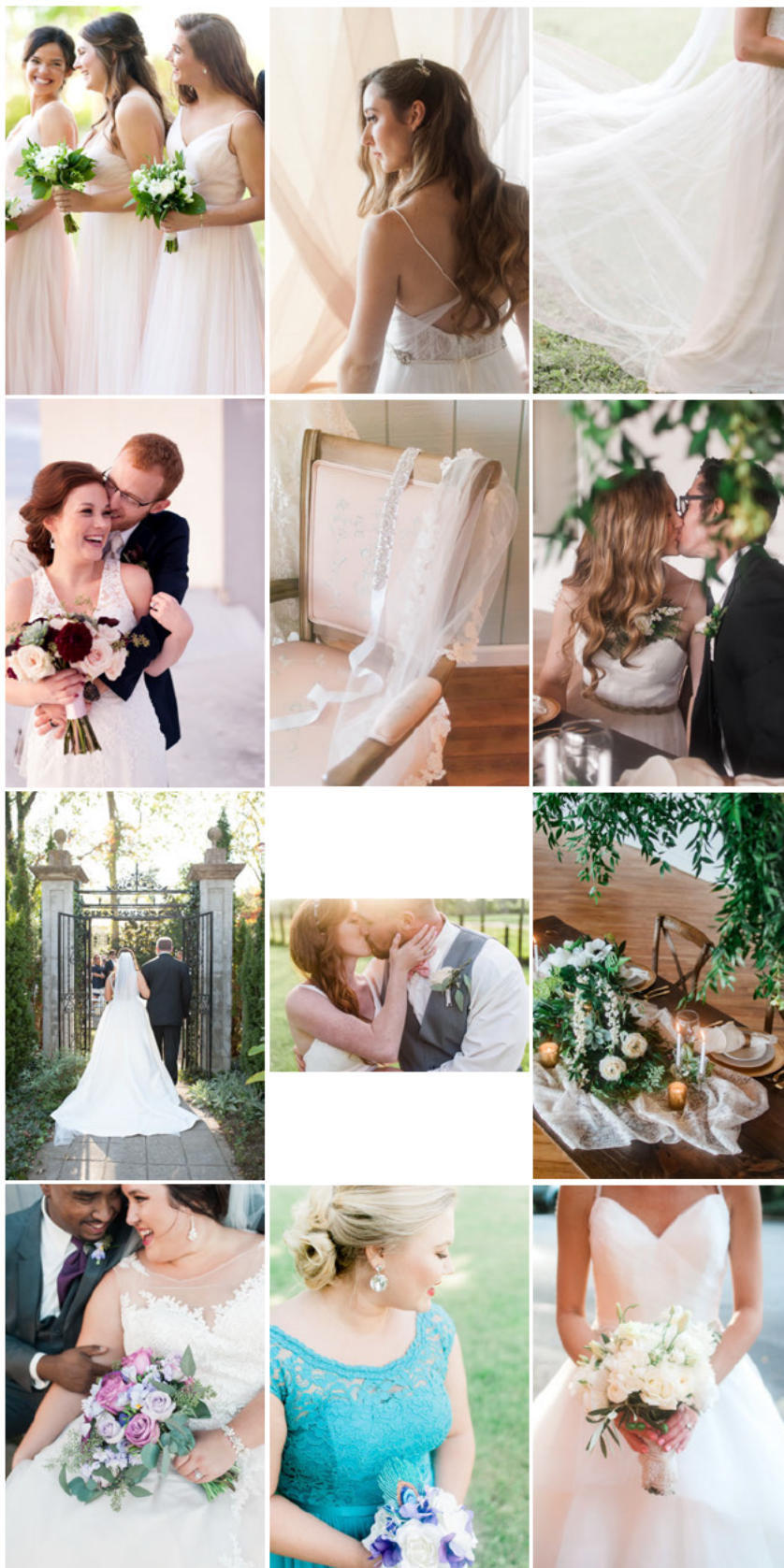
## Chelsey Nelson

Photography

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KENTUCKY BRIDE

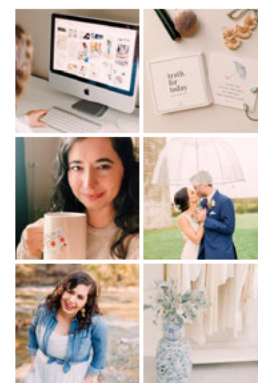




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You can connect with me by clicking the button below for more detailed information.

I can't wait to get to know you!

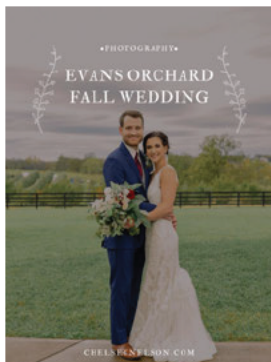
Average investment is approximate y \$3,300

I L I E M O E I F O M A T I O

## FEATURED WEDDINGS



Louisville Kentucky Wedding Photography



Georgetown Kentucky Fall Wedding Photography



Annie + Andrew Frankfort Kentucky Wedding

## FEATURED ENGAGEMENT SESSIONS

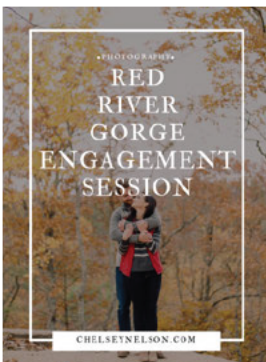
Featured



Cherokee Park Summer Engagement Session



Locust Grove Engagement Session

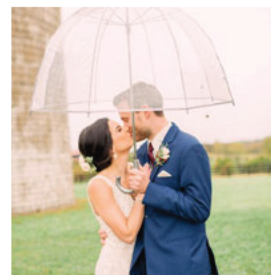


Red River Gorge Engagement Session



Louisville, Kentucky

[Site Use and Privacy Policy](#)



**Exhibit 8**

# Wedding Celebration Services Agreement

Entered into on \_\_\_\_\_ .

Engagement Session is scheduled for \_\_\_\_\_.

Wedding is scheduled for \_\_\_\_\_.

**Parties:**

**Chelsey Nelson Photography, LLC**

Known as "Photographer,"

And with

\_\_\_\_\_

Known as "Client"

Collectively, all of the above people or businesses entering this Agreement will be referred to as the "Parties."

## Purpose of the Agreement

Client desires photography, photograph editing, and blogging for the purpose of their wedding.

Photographer has agreed to provide such services according to the terms set forth below.

## Services, Products, Schedule and Storage

**Package.** Client chooses Photographer’s Wedding Celebration Services package.

**Services.** In this Agreement, “Services” means all of the services included in this section. Photographer shall provide Client with:

- **One pre-wedding consultation in person, by phone or via Skype**
- **Bridal Guide Magazine**
- **Timeline Consultation**
- **One Engagement Session and online gallery**
- **Mileage for Engagement Session Travel and Wedding Day Travel**
- **8 hours of coverage on the wedding day**
- **Second photographer to assist on the wedding day if necessary**
- **3-5 High-Resolution Images delivered via an online gallery the day after the wedding date**
- **Blog post highlighting the Photographer’s favorite images from the engagement and wedding**
- **Keepsake box with prints**
- **High-Resolution Images delivered via online gallery by \_\_\\_\\_\\_**

**Schedule.** Photographer shall arrive no later than **15 minutes before the start time of photography coverage** to provide Client with Services. Client will provide Photographer and their assistant with a meal of the same food served to guests and a reserved place to sit, either with guests or at a specific location near the reception area. Photographer will eat during the same period the Client (Bride and Groom) eats.  
**Image Storage.** Digital copies of photographs produced in the course of fulfilling this Agreement will be stored until delivery of final images and/or products. After \_\_\\_\\_\\_, Client releases Photographer from any and all liability for lost or damaged files or photographs.

### Cost, Fees and Payment

**Cost.** The total cost ("Total Cost") for all Services is \$\_\_\_\_ and due in full by \_\_\_\_\_. A non-refundable deposit of \$\_\_\_\_ (30% of \$\_\_\_\_) is due at signing which secures your date and is applied to the total cost for all Services.

Client shall pay the Total Cost to Photographer as follows:

- 30% of the total due on \_\_\\_\\_\\_, in the amount of \$\_\_\_\_.
- 23% of the total due on \_\_\\_\\_\\_, in the amount of \$\_\_\_\_.
- 23% of the total due on \_\_\\_\\_\\_, in the amount of \$\_\_\_\_.
- 23% of the total due on \_\_\\_\\_\\_, in the amount of \$\_\_\_\_.

**Fees.** Photographer's hourly rate is **\$300** per each hour spent on Client's Services over the allotted amount of time purchased. Photographer makes reasonable efforts to enhance, retouch, and edit Client's images in based on Photographer's editorial and artistic judgment before delivery of Client's final images. If Client requests further retouching or edits after delivery of Client's final images, then Client agrees to pay Photographer for any additional changes Photographer makes at Photographer's hourly rate. If Client implicitly or explicitly requests Photographer to continue Services beyond the hours set forth in this Agreement, Photographer will invoice Client for additional time.

**Late Fees.** If Photographer does not receive payment from Client within fourteen calendar days of any payment date, then Client will be charged a late fee of 1.5% of the outstanding amount per each day that Photographer does not receive payment.

- For example, if Client owes Photographer \$1000 due on April 1 and fails to pay by April 14th. On April 15th, Client owes Photographer \$1015. On April 16th, Client owes Photographer \$1030.23. On April 17th, Client owes Photographer \$1045.68, and so on.

**Expenses.** Any expenses incurred by Photographer while providing Client with Services will be invoiced to Client in a timely manner. Such expenses include hotel stays for Events or ceremonies occurring **60** or more miles away from zip code **40220**. Client is responsible for paying for and delivering any third party products Client wishes Photographer to utilize by \_\_\\_\\_\\_. At Photographer's discretion, Photographer will make reasonable efforts to integrate Client's suggestions.

## Intellectual Property

**Copyright Ownership.** Photographer owns the copyright in any and all images he/she takes pursuant to federal copyright law (Title 17, Chapter 2, §201-02, of the United States Code.) Any and all photographs produced in connection with, or in the process of fulfilling this agreement, are expressly and solely owned by Photographer to use in the reasonable course of business.

**Non-exclusive License.** Photographer grants to Client a non-exclusive, worldwide license of photographs produced with and for Client for personal use and for public use so long as Client provides Photographer with attribution each time Client uses Photographer's property publicly unless and until Photographer assigns her copyright to Client. Photographs will be deemed properly attributed to Photographer when it would be obvious to any reasonable observer, reader or viewer that **Chelsey Nelson Photography** provided the photograph for Client's use.

**Prohibited Uses of Photographs.** Some uses of Photographer's property are expressly prohibited in order to maintain the integrity and quality of Photographer's reputation and work.

- Any resale of the photographs through direct or indirect means, including, but not limited to: selling the photos as stock photography; selling or allowing use of the photos by a third party such as a corporation or advertiser.
- Any illegal assignment of Photographer's work, such as allowing third party use of a photograph online or in print without attribution.
- Any use of photographs, personally or otherwise, which does not include attribution to **Chelsey Nelson Photography**.
- Client expressly agrees not to produce derivative works of Photographer's property, such as, but not limited to, photographs of a photograph, scans into a computer, unauthorized photo collages or other works that incorporate a substantial portion of Photographer's property in a way that distorts or denigrates the photograph's high resolution.
- Any use deemed unreasonable or defamatory, at the discretion of Photographer.
- Any retouched or further edits of photographs that materially alters the composition of the photograph, such as by applying filters, changing the colors or other means of degradation, as determined by Photographer.
- Client will not purposefully try to hide or otherwise conceal attribution to Photographer, such as by printing attribution in such small print or font that the source of the photograph is not readily apparent to the reasonable viewer.

## Appropriate Conduct

**Appropriate Conduct/Safe Working Environment:** The Client(s) expressly agree(s) to ensure the appropriate behavior of all attendees at the wedding/event, and additionally agree(s) to undertake best efforts to ensure that all parties involved in the event, including but not limited to the Client(s), vendors, the bridal party, all guests, and any and all attendees, behave in a manner that provides the Photographer with a safe and comfortable work environment. Any threatening, hostile, inappropriate, or



offensive behavior of any kind, and any other behavior that compromises the safety or well-being of the Photographer or photography equipment or constitutes a hostile work environment will not be tolerated. What constitutes such behavior is up to the sole discretion of the Photographer in accordance with the standard of a reasonably prudent person, and will be dealt with as follows: (a) after the first offense, the Photographer will verbally notify the offending person and either the Client(s) or family member of the Client(s); (b) after the second offense, the Photographer will verbally notify the Client(s), and the Client(s) will remove the offending person for the remainder of the event (c) after the third offense, the Photographer will end wedding coverage immediately and leave the event. If the Photographer leaves the event after a third offense, the Photographer shall be entitled to retain all monies paid hereunder, the Client(s) will not be entitled to any refund, and the Client(s) agree to relieve and hold Photographer harmless as a result of incomplete wedding or event photography coverage, or for a lapse in the quality of the work.

### **Artistic Releases and Limit of Liability**

**Exclusivity.** Client understands and agrees she has hired Photographer exclusive of any other service provider for the Services listed in this Agreement, and no other photographers, other than any assistant or third party that Photographer has hired to complete the Services, are permitted to provide the same Services, paid or unpaid, unless prior permission is granted by Photographer. Client accepts and agrees that third party photographers, whether professional or not, may impede Photographer's access to the bridal couple and/or clients for crucial photos, and it is Client's responsibility to ensure Photographer always has the best angle and/or position as determined by the Photographer. If the Photographer feels its work is being compromised, Photographer has Client's permission to approach Client(s) to ask them to remove the obstructive party or parties. **Client initials** \_\_\_\_\_.

**Artistic Release.** Client has spent a satisfactory amount of time reviewing Photographer's work and has a reasonable expectation that its Services will produce a similar manner and style of aesthetic for Client. Photographer will use reasonable efforts to ensure Client's services are carried out in a style and manner consistent with Photographer's current portfolio and Photographer will try to incorporate any suggestions Client makes. However, Client understands and agrees that:

- Every client and wedding is different, with different tastes, budgets, and performance needs; and
- Photographer is an artist with a unique vision, with an ever-evolving style and technique; and
- Photographer will use its personal artistic judgment to create styled images for Client, which may not include strict adherence to Client's suggestions; and
- Photographer exercises and reserves the right to exercise complete and ultimate editorial judgment and control over all aspects of her services, including photography, editing, blogging, social media promotion, and all other Services; and
- Photographer will not provide Services in a manner that communicates messages contrary to Photographer's religious beliefs and artistic judgement; and

- Dissatisfaction with Photographer's editorial judgment and control or artistic ability are not valid reasons for termination of this Agreement or request of any monies returned.
- Client is responsible for delivering any props or furniture Client wishes to have by \_\_\_\_\_.

**Loss of Images.** In the rare event that any or all images are lost, such as damage to camera or equipment, stolen camera or equipment or damaged film rolls, Photographer shall refund Client the corresponding percentage of lost images. For example, if 30% of the original images taken are lost, Photographer shall refund 30% of the Total Cost.

**Maximum Damages.** Client agrees that the maximum amount of damages he or she is entitled to in any claim relating to this Agreement or Services provided in this Agreement are not to exceed the Total Cost of Services provided by Photographer.

**Indemnification.** Client agrees to indemnify and hold harmless Photographer, its related companies, parties, affiliates, agents, independent contractors, assigns, directors, employees and officers from any and all claims, causes of action, damages or other losses arising out of, or related to, the Services provided in this Agreement. Client agrees to either secure a reasonable amount of insurance coverage to pay for any claims, causes of action, damage, attorney fees or other losses as a result of accident or negligence on behalf of the Parties to this Agreement, or if no insurance is secured, Client waives its right to directly or indirectly ask or force Photographer to pay for any such damages. **Client initials:**

\_\_\_\_\_.

**Non-disparagement.** The Parties mutually agree not to make public defamatory statements that would materially harm the reputation or business activities of any Parties to this Agreement.

**Model Release.** Please see attached as Exhibit A.

## **Cancellation, Rescheduling and No-Shows**

**Cancellation, Rescheduling of Services or No-Show Client.** If Client desires to cancel Services, reschedule Services, or if it becomes impossible for Photographer to render Services due to the fault of the Client or parties related to Client, such as failure of one or more essential parties to provide support or documents in a timely manner, Client shall provide notice to Photographer as soon as possible via the Notice provisions detailed in this Agreement. Upon cancellation or unreasonable delay, all outstanding fees are immediately due and payable to Photographer.

**Weather Delay.** In the event of a rain or weather delay, Client will be notified within 24 hours of any engagement session or wedding that its Services may be reasonably altered to fit the circumstances of the situation at the discretion of the Photographer.

**Force Majeure.** Notwithstanding the above, either party may choose to be excused of any further performance obligations in the event of a disastrous occurrence outside the control of either party that materially affects the Services provided in this Agreement, including:

- A natural disaster (fires, explosions, earthquakes, hurricane, flooding, storms or infestation); or
- War, Invasion, Act of Foreign Enemies, Embargo, or other Hostility (whether declared or not); or

- Any hazardous situation created outside the control of either party such as a riot, disorder, nuclear leak or explosion, or act or threat of terrorism.

**Bad Faith Inducement:** Photographer is not obligated to accept all projects. In accepting Client's request for services, Photographer determined that providing its photography services for Client's wedding and surrounding events are consistent with and does not conflict with Photographer's religious and artistic beliefs and judgment and editorial discretion. However, Photographer may terminate this agreement if Photographer later determines that providing such services will effectively communicate or advance messages that conflict with Photographer's religious or artistic beliefs. If this occurs due to Client's material misrepresentation or fraudulent inducement, Photographer shall be entitled to compensation for the services as they would have been rendered.

**Failure to Perform Services.** In the event Photographer cannot or will not perform its obligations in any or all parts of this Agreement, it (or a responsible party) will:

- Immediately give notice to Client via the Notice provisions detailed in this Agreement; and
- Issue a refund or credit based on a reasonably accurate percentage of Services rendered or find a reasonable replacement to render Services; and
- Excuse Client of any further performance and/or payment obligations in this Agreement.

## General Provisions

**Governing Law.** Kentucky law governs all matters arising out of or relating to this Agreement.

**Severability.** If any portion of this Agreement is deemed to be illegal or unenforceable, the remaining provisions of this Agreement remain in full force.

**Notice.** Parties shall provide effective notice ("Notice") to each other via either of the following methods of delivery at the date and time which the Notice is sent:

1. **Email**

1. **Photographer Email:**
2. **Client Email(s):**

2. **Mail**

1. **Photographer's Address:**
2. **Client Address(es):**

**Merger.** This Agreement constitutes the final, exclusive agreement between the parties relating to the Services contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**Amendment.** The parties may only amend this Agreement by written consent via Notice.

**Dispute Resolution.** If the Parties cannot resolve a dispute or potential claim by means of good-faith negotiation, then the Parties will make a reasonable attempt to resolve their dispute through Alternative Dispute Resolution or Mediation before filing a civil cause of action.

**Headings.** Headings and titles are provided in this Agreement for convenience only and will not be construed as part of this Agreement.

### Exhibit A

#### Model Release

Future Use. Photographer may publish or submit for publication any photograph she owns that is produced in the course of fulfilling this Agreement for any reasonable and related purpose of Photographer’s business, such as, but not limited to publication in:

- Photographer’s own blog;
- third party blogs;
- magazines;
- publications;
- advertisements;
- stock photography sales; and
- any other reasonable commercial purpose.

**Notification of Use.** Photographer is not obligated to notify Client or anyone in photographs of Photographer’s publication or other use of any image or images.

**Model Release.** Client releases her image and likeness for use in any of Photographer’s images and understands these images may be used for any purpose of or relating to Photographer’s business. .

Other subjects agree and understand as signed below:

**Signatures**

**Date**

\_\_\_\_\_  
**Editor**

\_\_\_\_\_

\_\_\_\_\_  
**Client**

\_\_\_\_\_

**Exhibit 9**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
CASE NO: 3:19-CV-851-JRW

*Electronically filed*

CHELSEY NELSON PHOTOGRAPHY, LLC  
AND CHELSEY NELSON

PLAINTIFFS

v.

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, ET AL.

DEFENDANTS

**AFFIDAVIT OF KENDALL BOYD**

Kendall Boyd, the Executive Director of The Louisville Metro Humans Relations Commission, after first being duly sworn, states as follows:

1. I am the Executive Director/Director of the Louisville Metro Human Relations Commission and have held this position since being appointed by Mayor Greg Fischer in 2017. Previously, I was the Assistant Director for the Human Resources for Louisville Metro and held this position from 2014 to the time I was appointed to my current position.

2. The central mission of the Louisville Metro Human Relations Commission is to promote unity, understanding and equal opportunity among all peoples of Louisville Metro which consists of Jefferson County, Kentucky and to eliminate all forms of bigotry, bias and hatred from the community. “The Human Relations Commission conducts investigations on allegations of discrimination in housing, employment and for alleged hate crimes, and conciliates claims of discrimination that may be filed with the agency.” Under Sec. 92.09 (D) of the Ordinance, the Human Relations Commission must attempt to informally resolve or conciliate, every complaint it receives. The Human Relations Commission conciliates the large majority of

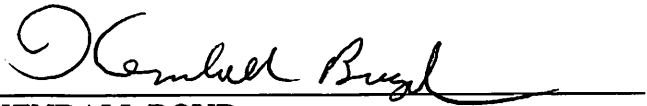
the discrimination complaints it receives. The Human Relations Commission seeks to bridge the many ethnic, racial and religious groups in Louisville Metro through a combination of education/outreach and civil law enforcement. The Commission works to try to ensure that residents of Louisville Metro are able to participate fully in civil activities and the Commission strives to bring awareness and appreciation of the community's diverse population. The Commission also monitors compliance for entities doing business and there is a component to enforce Louisville Jefferson County Metro Government ("Metro's") anti-discrimination laws. "The Human Relations Commission certifies minority, female, and handicapped business enterprises pursuant to ordinance."

3. Before the filing of the subject lawsuit, I had not heard of Chelsey Nelson or her photography business, Chelsey Nelson Photography, LLC. I have spoken to others with the Commission and others with Louisville Metro Human Relations ("HRCE") Commission-Enforcement and Louisville Metro Human Relations Commission-Advocacy ("HRCA") and can state I am unaware of anyone else at our office or with HRCA or HRCE who prior to this suit had any knowledge of or knew of Chelsey Nelson or Chelsey Nelson Photography, LLC. The Louisville Metro Human Relations Commission had not heard of Chelsey Nelson or the business known as Chelsey Nelson Photography, LLC. No charges of discrimination had ever been filed by any other citizens or third parties against Chelsey Nelson regarding any allegations of discrimination regarding same-sex marriages or any other type of discrimination charges or complaints. As the HRCA and HRCE had received no charges or complaints with respect to Chelsey Nelson and/or Chelsey Nelson Photography, before this suit, there was no awareness of Chelsey Nelson or her business, Chelsey Nelson Photography, LLC. Further, neither Chelsey Nelson nor Chelsey Nelson Photography, LLC had ever requested an exception from the

application of Metro’s Public Accommodations Ordinance. As such there was no prior history by Louisville Metro Human Relations Commission/Advocacy or of dealing with Chelsey Nelson Photography, LLC or Chelsey Nelson.

4. Based upon information and belief and a reasonable inquiry, I believe the last time Metro Government or its predecessors the City of Louisville and/or Jefferson County last addressed a constitutional law challenge to the Public Accommodations Ordinance was in 2002.

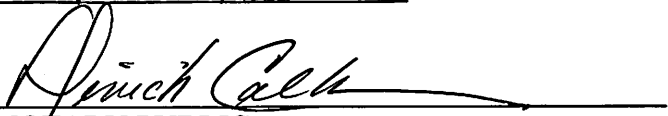
Further the Affiant sayeth naught on this 10 day of January, 2020.

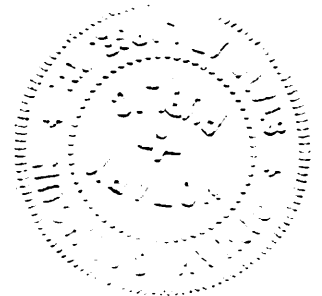
  
KENDALL BOYD

COMMONWEALTH OF KENTUCKY  
COUNTY OF JEFFERSON

The foregoing Affidavit was subscribed and sworn to before me by Kendall Boyd on this 10 day of January, 2020.

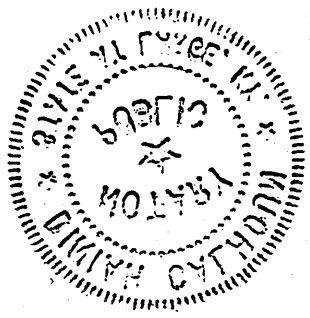
My commission expires: Notary Public, State at Large, KY  
My commission expires Mar. 18, 2022

  
NOTARY PUBLIC  
State at Large, Kentucky





THE COMMISSION ON THE STATUS OF WOMEN  
1800 M STREET, N.W., WASHINGTON, D.C. 20036



**Exhibit 10**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

CHELSEY NELSON	)	
PHOTOGRAPHY, LLC, ET AL	)	
	)	
Plaintiff,	)	Case No. 3:19-CV-851
	)	
v.	)	
	)	
LOUISVILLE/JEFFERSON COUNTY	)	
METRO GOVERNMENT, ET AL	)	
	)	August 7, 2020
Defendant.	)	Louisville, Kentucky

\* \* \* \* \*

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
BEFORE HONORABLE JUSTIN R. WALKER  
UNITED STATES DISTRICT JUDGE  
\* \* \* \* \*

APPEARANCES:

For Plaintiff:	Bryan Neihart
	Jonathan A. Scruggs
	Alliance Defending Freedom - Scottsdale
	15100 N. 90th Street
	Scottsdale, AZ 85260
	Joshua D. Hershberger
	Hershberger Law Office
	P.O. Box 233
	Hanover, IN 47243

Rebecca S. Boyd, RMR, CRR  
Official Court Reporter  
232 U.S. Courthouse  
Louisville, KY 40202  
(502) 625-3777

Proceedings recorded by mechanical stenography, transcript produced by computer.

1 APPEARANCES (Continued):

2 For Defendant David S. Kaplan  
3 Louisville/ Casey L. Hinkle  
4 Jefferson County Kaplan Johnson Abate & Bird, LLP  
Metro Government: 710 W. Main Street  
Suite 400  
Louisville, KY 40202

5  
6 Jason D. Fowler  
Jefferson County Attorney  
7 531 Court Place  
Suite 900  
8 Louisville, KY 40202

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1 I think it arguably could, because that language is vague  
2 and taken in and overbroad. Again, looking at some other courts  
3 that have ruled that way. And, really -- but, of course, I will  
4 fully admit, Your Honor, that that's not our central claim here.

5 THE COURT: And let's -- so let's go to the -- let's  
6 get to the merits.

7 MR. SCRUGGS: Absolutely.

8 THE COURT: And start with the accommodation merits.  
9 I'm going to go -- I did a little research on weddings. It's  
10 been 13 years since mine, but I remember some of it, and I did a  
11 little research to see what else is out there.

12 I made a list of all of the vendors that an engaged couple  
13 might hire, and I'm not going to do all of them, but I'm going  
14 to go through a lot of them and try to apply the test that I  
15 think you applied for when is conduct speech.

16 McDonald's selling hamburger, not speech. Marriott renting  
17 a room for the night, not speech. But some -- marching in a  
18 parade, speech. Even though there's no words, speech. So what  
19 conduct is speech?

20 I think, under your test, the tailor for the tux, the  
21 groom's tux, not speech. The baker who makes a plain, generic  
22 white cake that is already sitting in the window, not speech.  
23 The chef for the reception, even if the chef is onsite, not  
24 speech. If I'm wrong, I need this: Don't -- just make a note,  
25 if you would, and then we'll circle back. If I'm right, don't

1 make any notes.

2 MR. SCRUGGS: Yeah.

3 THE COURT: That's fine. The chef, not speech. The  
4 blow-dry stylist for the bridal party, not speech. The makeup  
5 artist for the bridal party, even though it's an -- even though  
6 it's an artist, not speech. The manicurist for the wedding  
7 party, not speech. The floral -- the customized floral  
8 arrangements for the wedding, speech. A custom-made wedding  
9 cake, speech. Videography, speech. Photography, speech.

10 Let me just stop there. Am I wrong on anything so far?

11 MR. SCRUGGS: No, Your Honor. I think that's --

12 THE COURT: Okay.

13 MR. SCRUGGS: -- all accurate.

14 THE COURT: So here's the ones that I think -- I'm not  
15 sure under your test. So I'll guess, and then, at the end, you  
16 tell me which ones I guessed wrong on.

17 The wedding planner, speech. The seller of wedding  
18 insurance, which I didn't even know was a thing, but I guess if  
19 you spend a bunch of money on a wedding, and then it doesn't  
20 happen, you can get an insurance policy to cover against that.  
21 The seller of wedding insurance, not speech.

22 The venue for the wedding -- and this is all assuming that  
23 none of these vendors are churches, core religious institutions.  
24 Okay. The venue for the wedding, not speech. A custom-designed  
25 wedding dress, speech. Custom-designed invitations, speech.

1 Generic stationery, not speech. Calligrapher, speech.

2 The printer of stationery, let's say the equivalent of like  
3 a FedEx office printer, but they mainly do -- anyway, I think  
4 you would say speech. The jeweler who sells the rings, not  
5 speech. At jeweler who inscribes the wedding date inside the  
6 rings, speech.

7 A custom wedding vows writer, which, it turns out, is a  
8 thing that you can -- who you can hire, speech. The officiant,  
9 again, nonreligious officiant, speech. The waiters at the  
10 reception, not speech. The deejay, speech. The dance  
11 instructor for the wedding couple, teach them how to do their  
12 first dance, speech.

13 The limo driver for the bride and groom leaving the wedding,  
14 not speech. The Uber driver for the wedding guests leaving, not  
15 speech. The travel agent for the honeymoon, not speech. A  
16 divorce attorney, speech.

17 Now, which ones was I wrong on?

18 MR. SCRUGGS: All right. It's quite the list, Your  
19 Honor, and I appreciate it. I think, for the most part, you're  
20 generally right. I want to, though -- some caveats that,  
21 obviously, I think we can think of just bizarre and extreme  
22 examples that could eliminate or include --

23 THE COURT: I'm not asking about that.

24 MR. SCRUGGS: Yes. Okay. But I think that's  
25 generally right. The ones I have kind of a mark on were the

1 jewel -- the jeweler making the rings. Part of me wants to  
2 consider is that like the wedding dress? Is there something so  
3 symbolic about the final product that it conveys a message? I  
4 think that's a much closer call, but I think -- and another one  
5 I have a mark on was the FedEx office, one, where --

6 THE COURT: You think maybe not speech for that?

7 MR. SCRUGGS: Well, I think, you know, there is -- you  
8 can argue that, at some point, it almost is like a common  
9 carrier.

10 THE COURT: What's the difference between the printer  
11 of stationery and the printer of t-shirts with hands on?

12 MR. SCRUGGS: And, Your Honor, I think that's exactly  
13 the parallel. Is it like a publisher printer or is it more like  
14 a telegraph company or telephone company? I think that is  
15 protected, but I just mark it.

16 THE COURT: Well, I'll share. My mom had a stationery  
17 shop for the first 20 years -- or for about 15 years of my life,  
18 and a lot of the stationery that she would sell, they would --  
19 she or an employee would drive over to a little shop called  
20 Minuteman Press, and they would tell Minuteman Press exactly  
21 what the invitation should say, you know, "Come to our wedding,"  
22 you know, "Justin and Jason," and Minuteman Press would print  
23 it. So that's my hypothetical. In that situation, is Minuteman  
24 Press engaging in speech?

25 MR. SCRUGGS: Yes, Your Honor. I think that's right.



1 I was thinking of a different kind of FedEx context. The other  
2 one I think I marked is dance instructor. You know, I think  
3 dance is protected speech, but, you know, it's -- I think it  
4 would be sending dancing cases, right, of -- from the Supreme  
5 Court where it kind of creates its own kind of category, in a  
6 sense, but I think, generally, your -- your definitional list is  
7 correct.

8 THE COURT: Okay. Then let me ask. Imagine that  
9 we're on a small -- let's imagine we're on a military base where  
10 they don't have any of this stuff, and it's kind of in the  
11 middle of nowhere. There's a small town nearby that has all of  
12 these things, but there's only one, and that one person is  
13 opposed to same-sex marriage.

14 If I understand your theory right, a gay couple, the gay  
15 couple in the military who wants to get married can't -- in that  
16 community, that small town near the military base, they can't  
17 get a custom-made floral arrangement, custom-made cake,  
18 videography, photography, a wedding planner, a custom-design  
19 dress, the stationery printed, rings, maybe, they can't get, an  
20 officiant, a deejay, and if they need an attorney, an attorney  
21 related to the marriage.

22 First of all -- well, what do I do with that?

23 MR. SCRUGGS: Yes, Your Honor. It is, you know, in  
24 some sense, a difficult question, but I think that it's that  
25 monopoly question that the Supreme Court addressed in Tornillo,

**Exhibit 11**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

---

**CHELSEY NELSON PHOTOGRAPHY  
LLC and CHELSEY NELSON,**

**Plaintiffs,**

**v.**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, et al.,**

**Defendants.**

---

**Case No. 3:19-cv-851-BJB**

**EXPERT REPORT OF NETTA BARAK-CORREN**

June 30, 2021

**EXPERT WITNESS DISCLOSURE**

1. I have been retained as an expert in this matter by Defendants Louisville/Jefferson County Metro Government (“Louisville Metro”), Louisville Metro Human Relations Commission – Enforcement and Louisville Metro Human Relations Commission – Advocacy, Verná Goatley, in her official capacity as Executive Director of the Louisville Metro Human Relations Commission, Marie Dever, Kevin Delahanty, Charles Lanier, Sr., Leslie Faust, William Sutter, Ibrahim Syed, and Leonard Thomas, in their official capacities as members of the Louisville Metro Human Relations Commission-Enforcement (collectively, “Defendants”), through their counsel, Kaplan Johnson Abate & Bird LLP (“Counsel”), in connection with litigation brought by Plaintiffs Chelsey Nelson Photography LLC and Chelsey Nelson (collectively, “Chelsey Nelson”).

2. Chelsey Nelson is a wedding photographer in Louisville, Kentucky who filed this litigation to challenge the constitutionality of two provisions in Louisville’s Fairness Ordinance (Louisville Metro Ordinance § 92.01, et seq.), which prohibits discrimination in employment, housing, and the provision of goods and services (public accommodations). Specifically, Ms. Nelson challenges the “Denial Clause,” which makes it “an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation . . . on the ground of . . . sexual orientation . . .”, and the “Unwelcome Clause,” which makes it “an unlawful practice for a person, directly or indirectly, to publish, . . . [a] communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation . . . will be refused, withheld, or denied an individual on account of his [or her] . . . sexual orientation . . .” Louisville Metro Ordinance § 92.05(A) & (B).

3. Chelsey Nelson alleges that her religious beliefs prevent her from providing wedding photography and related services to same-sex couples and wishes to advertise her intent

to deny services to same-sex couples in violation of the Unwelcome Clause in Louisville’s Fairness Ordinance. Chelsey Nelson asks the Court to grant her an exception to application of the challenged provisions in the Fairness Ordinance based on her purported rights to free speech and free exercise of religion under the First Amendment. Chelsey Nelson has also asserted claims for declaratory relief under the First Amendment’s establishment clause, Fourteenth Amendment’s due process clause, and Kentucky’s Religious Freedom Restoration Act (“RFRA”) (KRS 446.350).

4. I have been asked to provide an expert opinion regarding the anticipated effects of granting Chelsey Nelson the relief sought by her Complaint on the willingness of other wedding vendors to provide services to same-sex couples.

5. The opinions expressed in this report are based on information available to me at this time and are subject to supplementation or revision based on additional information that may emerge from depositions, additional document submissions, or other developments, including my ongoing research.

#### **PROFESSIONAL EDUCATION AND BACKGROUND**

6. I am a legal scholar and cognitive scientist, focusing on empirical and behavioral analysis of constitutional and public law, with a particular interest in conflicts of rights and the interaction between law and religion and law and social norms.

7. I received my LL.B. in Law and B.A. in Cognitive Science from the Hebrew University (Valedictorian and three-time recipient of the Albert Einstein and Rector awards). I then clerked for the Chief Justice of the Israeli Supreme Court, Hon. Dorit Beinisch, and pursued doctoral studies at Harvard, graduating in 2016. During my time at Harvard, I received the Shapiro scholarship, Gammon fellowship, Sinclair Kennedy Travelling Fellowship, and the Program on Negotiation’s Graduate Research Fellowship, and won the Dean’s Prize in Law and Economics,

and empirical research grants from the Program on the Legal Profession, Harvard's Interfaculty Initiative on Mind, Brain, and Behavior and the Program on Negotiation's Next Generation Grant. I also served as the Inaugural Fellow of the Empirical Legal Research Group in Harvard Law School.

8. Currently, I am an Associate Professor of Law (with tenure) at the Hebrew University of Jerusalem and the Academic Director of the Center for the Study of Multiculturalism and Diversity at the Hebrew University. During 2020-2022 I am also a Nootbaar Religious Freedom Fellow at Pepperdine University School of Law.

9. My academic work was selected to important international fora, including the Stanford International Junior Faculty Forum (~5% acceptance rate) and the WZB Migration and Diversity Conference (~3% acceptance rate) and won several awards, among which Hebrew University's Birk Prize for Excellence in Legal Research, the Israeli Association of Public Law's Gorni Prize for an Outstanding Junior Scholar in Public Law, and the Menachem Goldberg, Howard Raiffa, and Fisher-Sanders Best Paper Awards.

10. My curriculum vitae, which includes any publications I have authored within the last 10 years, is attached hereto as Exhibit 1. This is my first engagement to provide expert services in connection with litigation. I am being compensated for my services in this matter at a rate of \$300/hour. My compensation does not depend in any way on the outcome of this litigation or the opinions stated herein.

**INFORMATION REVIEWED AND/OR RELIED UPON**

11. In developing my opinions in this matter, I had discussions with Counsel and reviewed and/or relied upon the Complaint, the Court's Order and Opinion granting Chelsey Nelson's motion for preliminary injunction, Louisville's Fairness Ordinance (Louisville Metro Ordinance § 92.01, et seq.), Kentucky's RFRA (KRS 446.350), and the materials cited in my two

forthcoming papers: Netta Barak-Corren, A License to Discriminate? The Market Response to *Masterpiece Cakeshop*, 56(2), Harvard Civil Rights-Civil Liberties Law Review (forthcoming 2021), attached hereto as Exhibit 2; Netta Barak-Corren, Religious Exemptions Increase Discrimination Towards Same-sex Couples: Evidence from *Masterpiece Cakeshop*, Journal of Legal Studies (forthcoming 2021), attached hereto as Exhibit 3.

### **OPINION**

12. Based on my work to date, I have formed the opinion that granting Chelsey Nelson a religious exemption from the application of Louisville’s Fairness Ordinance in this case could significantly increase the likelihood that same-sex couples attempting to hire wedding vendors in Louisville, Kentucky will experience discrimination resulting in the denial of equal access to goods and services.

### **BASIS FOR MY OPINION**

13. The basis for my opinion set forth above is largely the *Masterpiece*<sup>1</sup> experiment, described in detail in my forthcoming papers attached hereto as Exhibit 2 and Exhibit 3. As further described in these papers, I examined the impact of the *Masterpiece Cakeshop* decision on the wedding market by conducting a field experiment before and after the decision was rendered. I fielded the experiment in Iowa, North Carolina, Indiana, and Texas, states that, while sharing similar socio-economic characteristics and social and political attitudes, represent the four types of legal regimes currently in existence in the United States with respect to non-discrimination and religious freedom: regimes that prohibit discrimination on the basis of sexual orientation versus regimes that do not; and regimes that subject restrictions of religious exercise to a stringent test (primarily via state RFRAs) versus regimes that do not. My study audited wedding businesses

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<sup>1</sup> See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com’n*, 138 S. Ct. 1719 (2018).

(photographers, bakers, and florists) in those regimes both before and after the *Masterpiece* ruling and measured the impact of the decision on the willingness of wedding vendors to provide services to same-sex couples, as compared with opposite-sex couples.

14. I found that the *Masterpiece* ruling – which was decided in favor of a baker that refused to create a wedding cake for a same-sex couple – significantly reduced the agreement to serve same-sex couples as compared with opposite-sex couples, even among previously willing vendors (the “*Masterpiece* effect”). I found that the *Masterpiece* effect was stable and robust to the inclusion of all experimental covariates, including the legal regime, the type of business, and the wave of inquiry. The effect was equally strong in urban areas, which are often assumed to be particularly inclusive of same-sex couples, and did not vary with the political conservativeness of the county. However, I found that the effect varies with the religiosity of the environment, such that businesses in areas dense with religious congregations, and particularly Evangelical congregations, were more likely to change their behavior to same-sex couples post-*Masterpiece* (even as before *Masterpiece*, businesses in religiously-dense areas did not differ from other areas in how they responded to same-sex and opposite-sex couples).

15. The negative effect of *Masterpiece* was found in all legal regimes except for counties in Texas and Indiana (RFRA states) that enacted local AD rules. As I discuss in the paper attached hereto as Exhibit 3 (pages 13-18), RFRA states differ substantively across states, with Texas and Indiana belonging in a specific category of RFRA states that is not available in all states. Therefore, for the purpose of preparing this opinion, I compared Kentucky’s RFRA with the RFRA laws in Texas and Indiana. Specifically, unlike the RFRA states in Indiana and Texas, which both include carve-outs for local anti-discrimination laws, Kentucky’s law does not have any such carve out. Kentucky’s law has only one provision, which states that “Government shall not substantially



burden a person’s freedom of religion” unless the government satisfies the strict scrutiny standard. *See* KRS 446.350. The Indiana and Texas laws both contain similar language prohibiting the government from substantially burdening free exercise of religion except where the government can satisfy the strict scrutiny standard, but these laws carve-out civil rights laws. *See* Ind. Code Ann. § 34-13-9-0.7 (“This chapter does not (1) authorize a provider to refuse to offer or provide services . . . on the basis of . . . sexual orientation; (2) establish a defense to a civil action or criminal prosecution for refusal by a provider to offer or provide services . . . on the basis of . . . sexual orientation . . .”); TX CIV PRAC & REM § 110.011 (Except for religious non-profits, “this chapter does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state civil rights law.”). The Indiana carve-out was added to the law after passage of Indiana’s initial RFRA (which contained no such carve-out) resulted in significant public blow-back and loss of convention/events revenue.

16. As I write in the paper attached hereto as Exhibit 3 (p. 51), different RFRA designs could have different impact on discrimination, especially as these designs interact with existing or inexistent AD laws. Because of these differences between Kentucky’s RFRA, on the one hand, and Texas and Indiana’s RFRAs, on the other hand, with particular notice to the differences in the laws’ interaction with local AD laws, I would not expect the Louisville Metro area to be immune from the statistically significant *Masterpiece* effect I observed in the *Masterpiece* experiment. That conclusion is bolstered by the high degree of religiosity of Louisville/Kentucky, which I found increased the *Masterpiece* effect in jurisdictions studied as part of the *Masterpiece* experiment.

17. To analyze religiosity, I analyzed data from the Pew Institute (Religious Landscape Data (2014), <https://www.pewforum.org/religious-landscape-study/#religions>) and compared that data to the same metrics observed in my paper for the jurisdictions studied as part

of the *Masterpiece* experiment.

18. The Pew Institute ranks all U.S. states by religiosity based on data from 2014. Kentucky is placed 13th with 63% of adults who are highly religious (a combined index score composed of belief in God, importance of religion, frequency of prayer, and worship attendance). This result is close to tied to that of Texas (64%) and North Carolina (65%) and higher than Indiana (54%, 22th place) and Iowa (55%, 19th place).

19. Kentucky ranks high also on importance of religion, the measure I focus on in my papers. Here, Kentucky is tied with Texas (86% who say religion is somewhat or very important in their lives), slightly above North Carolina (84%) and ahead of Iowa (79%) and Indiana (78%).

20. According to the Pew study, 49% of Kentucky's population are Evangelicals, much higher than that of all four states in my study (28%-35%), the same as Alabama and second only to Tennessee (52%). I also observed that Louisville, Kentucky is home to the Southern Baptist Theological Seminary<sup>2</sup> and some of the largest evangelical megachurches in the country (Southeast Christian Church and St. Stephen Baptist Church).<sup>3</sup>

21. According to the Pew study, Kentucky also has stronger views against homosexuality and same-sex marriage than any of the states in the *Masterpiece* experiment (44% who say that homosexuality should be discouraged, as compared to 36-37% in the states in the experiment, and 52% who are opposed or strongly opposed to same-sex marriage, as compared to 41-46% in the states in the experiment).

22. A comparison of religiosity metrics in Kentucky and the *Masterpiece* experiment

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<sup>2</sup> See: <https://www.sbts.edu/>.


<sup>3</sup> See: [https://en.wikipedia.org/wiki/Religion\\_in\\_Louisville,\\_Kentucky](https://en.wikipedia.org/wiki/Religion_in_Louisville,_Kentucky); Southeast Christian Church website (<https://www.southeastchristian.org/home>); St. Stephens Baptist Church website (<https://www.ssclive.org/church-history/>).

states is below:

Criterion	Definition	Kentucky	Iowa	North Carolina	Indiana	Texas
Importance of Religion	Religion is Somewhat/Very Important (National average: 77%)	86%	79%	84%	78%	86%
% Conservatives	(National average: 36%)	42%	41%	40%	41%	39%
% Evangelicals	(National average: 25%)	49%	28%	35%	31%	31%
Attitudes Towards Homosexuals	“Homosexuality should be discouraged” (National average: 31%)	44%	36%	36%	37%	36%
Attitudes Towards Same-Sex Marriage	Opposing/Strongly Opposing Same-Sex Marriage (National average: 39%)	52%	41%	45%	45%	46%

Source: PEW RESEARCH CENTER, RELIGIOUS LANDSCAPE STUDY (2014).

23. In closing, it is important to note that studies like the *Masterpiece* experiment can never predict future behavior with absolute certainty. The *Masterpiece* study provides evidence that judicial decisions favoring religious objectors to non-discrimination laws can have statistically significant and robust consequences, particularly in very religious areas. In the present case, due to the high degree of religiosity in the area, I would expect to observe the *Masterpiece* effect in Louisville Metro if Chelsey Nelson is granted a religious exemption to application of the Fairness Ordinance in this litigation.

  
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 Netta Barak-Corren

**Exhibit 1**

## Netta Barak-Corren

Hebrew University Law School | Mt. Scopus, Jerusalem 91905, Israel | [netta@huj.ac.il](mailto:netta@huj.ac.il)

### ACADEMIC POSITIONS

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Associate Professor (tenured), Hebrew University Law School	2020 – Present
Assistant Professor, Hebrew University Law School	2017 – 2020
Head of the Law & Psychology Program	2017 – Present

### EDUCATION

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S.J.D. Harvard Law School <i>Dissertation:</i> When Law and Religion Conflict: A Behavioral Examination <i>Committee:</i> Cass Sunstein, Martha Minow, Tom Tyler (Yale)	2016
LL.M. Harvard Law School (waived on admission to the S.J.D.) <i>Dean's Prize in Law and Economics</i> <i>Dissertation awarded the Fisher-Sanders Award</i>	2013
LL.B. and B.A. in Law and Cognitive Science, Hebrew University of Jerusalem <i>Valedictorian, Summa cum laude with highest honors</i>	2012

### RESEARCH INTERESTS

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Constitutional Law, Law and Religion, Law and Social Norms, Empirical Legal Studies, Behavioral Economics, Moral Psychology, Conflict Resolution.

### PUBLICATIONS

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20. Netta Barak-Corren, *Religious Freedom in Israel*, in HANDBOOK ON ISRAELI CONSTITUTIONAL LAW (forthcoming, Barak A., Medina, B., and Roznai, Y. Eds., forthcoming, Oxford University Press)
19. Netta Barak-Corren and Lotem Perry-Hazan, *Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations*, JOURNAL OF SOCIAL ISSUES (special issue for the 50<sup>th</sup> anniversary of legal socialization)
  - ✧ Press coverage: [Ha'aretz](#), [The Marker](#), [Haredim10](#), [Seder Yom \(IDF radio\)](#)
  - ✧ Invited presentations at Israeli Knesset, Ministry of Education, Ministry of Justice, and Israeli Democracy Institute.
  - ✧ Non-technical summary written and circulated by [Chief Scientist, Ministry of Education](#).
18. Netta Barak-Corren and Yael Kariv-Teitelbaum, *Behavioral Responsive Regulation*, Minor Revision, REGULATION AND GOVERNANCE.
  - ✧ Invited presentation at Israeli Ministry of Justice, Department of Regulation.
17. Yuval Barak-Corren, Netta Barak-Corren, Alex Gileles-Hillel, and Eyal Heiman, *The Effect of C-Reactive Protein on Chest X-Ray Interpretation: A Decision-Making Experiment Among Pediatricians*,

[Pediatric Pulmonology.](#)

16. Netta Barak-Corren, *The Empirical Consequences and Normative Implications of Religious Exemptions*, 56(1) [HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW](#) (forthcoming 2021)
15. Netta Barak-Corren, *Religious Exemptions Increase Discrimination Towards Same-sex Couples: Evidence from Masterpiece Cakeshop*, [JOURNAL OF LEGAL STUDIES](#) (forthcoming 2021)
  - ✧ Invited presentations at Chicago Law School, Harvard Law School, Stanford Law School, Texas Law School, Virginia Law School, and Yale Law School.
  - ✧ Press coverage: [Boston Globe](#), [SCOTUSblog](#), [National Constitution Center](#)
  - ✧ Summarized for [the Atlantic](#).
14. Netta Barak-Corren, *Regulating for Social Integration by Behavioral Design: An Evidence-Based Approach for Culturally Responsive Regulation*, [REGULATION AND GOVERNANCE](#) (forthcoming 2021)
13. Karen Huang, Regan Bernhard, Netta Barak-Corren, Max H. Bazerman, and Joshua D. Greene, *Veil-of-Ignorance Reasoning Mitigates Self-Serving Bias in Resource Allocation During the COVID-19 Crisis*, [JUDGMENT AND DECISION MAKING](#) (2021)
  - ✧ Summarized for [HARVARD BUSINESS REVIEW](#).
12. Netta Barak-Corren, *Taking Conflicting Rights Seriously*, 65(2) [VILLANOVA LAW REVIEW](#) 295 (2020)
  - ✧ Lead article of the issue
  - ✧ Selected for the 2018 Stanford International Junior Faculty Forum (~5% acceptance rate)
  - ✧ Selected for CELS 2018 at Michigan Law School, Ann Arbor
  - ✧ Invited presentations at Chicago Law School, Harvard Law School, and Toronto Law School.
  - ✧ Recipient of the Gorni Junior Faculty Award for Outstanding Research in Public Law.
11. Netta Barak-Corren & Daphna Lewinsohn-Zamir, *What's in a name? The asymmetric effects of identifiability on offenders and victims of sexual harassment*. 16(4) [JOURNAL OF EMPIRICAL LEGAL STUDIES](#) 955 (2019)
  - ✧ Selected for CELS 2018 at Michigan Law School, Ann Arbor
  - ✧ Selected for SJDM 2018 at New Orleans (%20 acceptance rate)
10. Netta Barak-Corren, *Reexamining the evidence on Ultra-Orthodox attitudes and gender separation in academia*. 49 [MISHPATIM—HEBREW U. LAW REVIEW](#) (2019) [in Hebrew].
  - ✧ Summarized for [the ICON-S-IL Blog](#), 2019.
  - ✧ Press coverage: [Ha'aretz](#), [Globes](#), [Ynet](#)
  - ✧ Recipient of the Gorni Junior Faculty Award for Outstanding Research in Public Law.
9. Netta Barak-Corren & Max H. Bazerman, *Indecision and decision making in moral conflicts*, [ORG. DYNAMICS](#) (2019).
8. Netta Barak-Corren, Yuval Feldman, & Noam Gidron. *The Provocative Effect of Law: Majority Nationalism and Minority Discrimination*, 15(4) [JOURNAL OF EMPIRICAL LEGAL STUDIES](#) 951-986 (2018).
7. Netta Barak-Corren & Max H. Bazerman, *Saving lives your task or God's? The nuanced relationship between religiosity and moral judgment*, 12(3) [JUDGMENT AND DECISION MAKING](#) 280-296 (2017).

6. Netta Barak-Corren, [Beyond dissent and compliance: Religious decision-makers and secular law](#), 6(2) OXFORD JOURNAL OF LAW AND RELIGION 293-322 (2017).
  - ✧ Translated and reprinted in 4 [BIFRAT U'BICHLAL](#) 17-53 (2019) [in Hebrew].
5. Netta Barak-Corren, Chia-Jung Tsay, Fiery A. Cushman, & Max H. Bazerman, [If you're going to do wrong, at least do it right: Moral conflict promotes moral consistency](#), 64(4) MANAGEMENT SCIENCE 1528-1540 (2017).
4. Netta Barak-Corren, [Does Antidiscrimination Law Influence Religious Behavior? An Empirical Examination](#), 67(4) HASTINGS LAW JOURNAL 957 (2016).
3. Netta Barak-Corren, [Antidiscrimination Law and the Religious Workplace](#), LGBT LAW IN ISRAEL (2016) [in Hebrew].
2. Netta Barak-Corren\*, Edy Glozman\*, & Ilan Yaniv, [False Negotiations: The Art and Science of Not Reaching an Agreement](#), 59(4) JOURNAL OF CONFLICT RESOLUTION 671 (2015). (\* equal contribution)
  - ✧ Recipient of the Howard Raiffa Doctoral Student Paper Award.
  - ✧ Reviewed in Harvard's Program on Negotiation Magazine.
1. Netta Barak-Corren, [Property Rights and Workers Rights: Protecting the Wage of Independent Workers](#), 42(3) MISHPATIM—HEBREW U. LAW REVIEW 973 (2012) [in Hebrew]
  - ✧ Recipient of the M. Goldberg Prize for the best paper on labor law in Israel in 2011.

Netta Barak-Corren, *Compliance with the law under religion-based normative conflicts: A behavioral analysis and preliminary prescriptions* (Unpublished master thesis)

- ✧ Recipient of the Fisher-Sanders Award for the best paper written on conflict resolution in Harvard, MIT and Tufts, 2013

## SHORTER PIECES

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Netta Barak-Corren, *On the Lethal Cocktail of Israeli Democracy and the End Problem of the HCJ wars*, TEL AVIV UNIVERSITY LAW REVIEW FORUM (forthcoming 2021, Hebrew)

Netta Barak-Corren, [How One Supreme Court Decision Increased Discrimination Against LGBTQ Couples](#), THE ATLANTIC (2021)

Netta Barak-Corren, [Shared Fate, Unshared Faith: Israel and the Haredi Society in the Current Corona Moment](#), THE JEWISH QUARTERLY REVIEW (JQR) FORUM

David Enoch, Netta Barak-Corren, Michal Shur-Ofri, Ofer Malcai, and David Heyd, *Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management*, HEBREW UNIVERSITY LAW JOURNAL FORUM (2021, [Hebrew](#), [English synopsis](#))

Max H. Bazerman, Regan Bernhard, Joshua Greene, Karen Huang, and Netta Barak-Corren, [How Should We Allocate Scarce Medical Resources?](#) HARVARD BUSINESS REVIEW (2020).

Netta Barak-Corren, [Gender Segregation in Israeli ultra-Orthodox Academia is not a Zero-Sum Game](#) [Hebrew], ICON-S-IL BLOG (2019)

### SELECTED WORKS IN PROGRESS

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*Religion-equality conflicts and the war within religion*, R&R, AMERICAN JOURNAL OF COMPARATIVE LAW (A\*)

*Majority Nationalism Laws and the Equal Protection of Minorities: Experimental and Observational Evidence from Israel*, R&R, JOURNAL OF LEGAL STUDIES (A\*) (with Noam Gidron and Yuval Feldman)

### SELECTED AWARDS, GRANTS, AND HONORS

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Cornell University Center for Social Sciences Grant Competition Award (\$12,000, w/ Nelson Tebbe)	2021
Nootbaar Religious Freedom Fellow, Pepperdine University School of Law	2020-21
Gorni Prize for an Outstanding Junior Scholar in Public Law	2019
Israeli Science Foundation Research Grant No. 1487/19 (\$152,676 for four years, w/ Lotem Perry-Hazan)	2019
Sacker Prize for Paper Accepted to <i>Mishpatim</i> (\$1500)	2019
Selected for the Seventh WZB Migration and Diversity Conference (~3% acceptance rate)	2019
Selected for the Stanford International Junior Faculty Forum (~5% acceptance rate)	2018
Birk Prize for Excellence in Legal Research	2018
Alicia Fund, Cherrick Center for the Study of Zionism Research Grant (\$2000)	2018
Minerva Center for Human Rights Research Grant (\$2000)	2018
Barak Center for Interdisciplinary Research Grant (\$3500, \$2500, \$4500)	2016-19
Empirical Legal Research Group Inaugural Fellow, Harvard Law School	2015-16
Graduate Research Fellowship, Program on Negotiation, Harvard Law School	2015-16
Sinclair Kennedy Travelling Fellowship, Society and Fellows of Harvard College	2014-15
Human Rights and Judaism Fellowship, Israeli Democracy Institute	2014-17
Next Generation Grant, Program on Negotiation, Harvard Law School	2014
Harvard's Interfaculty Initiative on Mind, Brain, and Behavior Student Award	2014
Cravath International Grant, Harvard Law School	2014
Student Empirical Research Grant, Program on the Legal Profession	2013
Harvard Law School Summer Academic Fellowship	2013
Dean's Prize in Law and Economics, Harvard Law School	2013
Gammon Fellowship, Harvard Law School	2012
Shapiro Scholarship, Harvard Law School	2012-13
International Peace Scholar, P.E.O.	2012-13
Pearlman Scholarship, Hebrew University of Jerusalem	2012-13
Valedictorian (1 of 230), Hebrew University of Jerusalem School of Law	2012
Lord Wolf Award for Leadership and Social Contribution, Hebrew University	2012
Albert Einstein Award	2009-11
✧ Three-time recipient of HUJI's highest honor for academic excellence	
Rector Prize & Dean's List	2009-11



◇ Ranked 1 of 900 students in the law school for three consecutive years	
The Cognitive Science Excellence Program Award	2011
◇ Ranked at the top of the interdisciplinary excellence program	
Oberlander Prize for excellence in international Moot Court Competitions	2011
Quarter-Finalist in the Jessup International Moot Court Competition	2011
◇ Reached for the first time in the history of Israel	
Top Oralist and Memorial Honors in the Jessup International Moot Court Competition	2010
Best Oralist, Hebrew University’s Moot Court competition	2009
Best Speaker, The European Model United Nations, the Hague, Netherlands	2009
<i>Miscellaneous:</i>	
Head of Intelligence Creativity Award for Contribution to Israeli National Security	2007
Israeli Young Scientist Competition, second prize (during high school)	2002

**SELECTED OTHER ACTIVITY**

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Coauthored white papers as part of the COVID-Collective Impact Academia-IL initiative	2020
◇ Ethics Guidelines during the COVID-19 pandemic	
◇ How to harness public cooperation with the COVID-19 regulations	
Academic advisor to JDC Israel on designing behaviorally informed intervention programs	2019
Founded and organized the Empirical Legal Research Group in Harvard Law School	2013-16
Behavioural Insights Team (BIT), London, UK, Research Fellow	2014
Behavioral Insights Group, Harvard University, Undergraduate research mentor	2013-14
Israeli Supreme Court, Chambers of Chief Justice Dorit Beinisch, Law Clerk	2011-12
Mishpatim—Hebrew University Law Review, Editor-in-law	2008-10

**SELECTED TALKS AND PRESENTATIONS**

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\* Only talks and presentations are included, no posters.

1. **2014, Harvard Law School**, Program on the legal Profession Speaker Series (invited). Paper titled: “Not in My School: The Conflict between Law and Religion from the Eyes of Religious Educators”;
2. **2014, Stanford Law School**, Inaugural Conference for Junior Researchers, the Program in Law and Society. Paper titled: “Not in My School: The Conflict between Law and Religion from the Eyes of Religious Educators”;
3. **2014, Harvard Business School**, the Behavioral Insights Group Lab Meeting. Paper titled: “If You’re Going to Do Wrong, at Least Do It Right: Reconciling Moral Concerns under Joint Evaluation”;
4. **2014, Hebrew University**, International Workshop on Behavioral Legal Studies (invited). Paper titled: “If You’re Going to Do Wrong, at Least Do It Right: Reconciling Moral Concerns under Joint Evaluation”;
5. **2014, Behavioral Insights Team, London, UK** (invited). Paper titled: “If You’re Going to Do Wrong, at Least Do It Right: Reconciling Moral Concerns under Joint Evaluation”;
6. **2015, Israeli Democracy Institute**, Human Rights and Judaism Colloquium. Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
7. **2015, Yale Law School**, Conference on Law, Religion and Politics, doctoral workshop. Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;

8. **2015, Harvard Psychology Department**, Boston Area Moral Cognition Group (invited). Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
9. **2015, Washington University St. Louis**, Annual Conference on Empirical Legal Studies. Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
10. **2015, Hebrew University Law School**, Faculty workshop (invited). Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
11. **2015, Bar Ilan Law School**, Faculty workshop (invited). Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
12. **2015, Haifa Law School**, Faculty workshop (invited). Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
13. **2015, IDC Law School**, Faculty workshop (invited). Paper titled: “Does Antidiscrimination Law Influence Religious Behavior?”;
14. **2016, Israeli Democracy Institute**, Human Rights and Judaism Colloquium. Paper titled: “Social Impact Discrimination”;
15. **2016, Harvard Business School**, the International Behavioral Exchange 2016 conference (invited). Presentation titled: “Law, Values, and Norm Conflicts”;
16. **2016, Hebrew University Law School**, the Israeli ICON-S conference. Paper titled: “Social Impact Discrimination”;
17. **2016, McGill Law School**, Annual Law and Religion Roundtable (invited). Paper titled: “Social Impact Discrimination”;
18. **2016, Israeli Democracy Institute**, the weekly roundtable (invited guest speaker). Paper titled: “Mitigating Norm Conflicts by Affirming Identity: Evidence from the Core Curriculum Conflict”;
19. **2016, Bar Ilan Law School**, International Conference on Decision-making and Law (invited). Paper titled: “The Nation Law and Minority Discrimination”;
20. **2017, Jerusalem Institute**, Conference on Ultra-Orthodox Education (invited keynote speaker). Paper titled: “Mitigating Norm Conflicts by Affirming Identity: Evidence from the Core Curriculum Conflict”;
21. **2017, Ben Gurion University**, Decision Making and Economic Psychology (DMEP) Seminar (invited). Paper titled: “Mitigating Norm Conflicts by Affirming Identity: Evidence from the Core Curriculum Conflict”;
22. **2017, Tel Aviv Law School**, Law and Economics Workshop (invited). Paper titled: “Social Impact Regulation”;
23. **2017, Hebrew University Law School**, Public Law Workshop. Paper titled: “Social Impact Regulation”;
24. **2017, Bar Ilan Law School**, Empirical Legal Studies workshop (invited). Paper titled: “Social Impact Regulation”;
25. **2017, Notre Dame Law School**, Annual Law and Religion Roundtable (invited). Paper titled: “Mitigating Norm Conflicts by Affirming Identity: Evidence from the Core Curriculum Conflict”;
26. **2017, Cornell Law School**, Annual Conference on Empirical Legal Studies. Paper titled: “The Provocative Effect of Law: Majority Nationalism and Minority Discrimination”;
27. **2017, Virginia Law School**, Annual Comparative Constitutional Law Roundtable (invited). Paper titled: “The Provocative Effect of Law: Majority Nationalism and Minority Discrimination”;
28. **2017, Ben Gurion University**, joint workshop of the Hebrew University Federman Center for the Study of Rationality & Ben Gurion Center on Decision Making and Economic Psychology (invited). “The Asymmetric Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
29. **2018, Hebrew University Law School**, Law and Economics Workshop. Paper titled: “Social

- Impact Regulation”;
30. **2018, Hebrew University Federman Center for the Study of Rationality**, Annual Retreat (invited guest speaker). Presentation titled: “Conflicts Between Law and Religion: An Empirical Examination”;
  31. **2018, American Law and Economics Annual Meeting (ALEA)**. Paper titled: “The Provocative Effect of Law: Majority Nationalism and Minority Discrimination”;
  32. **2018, Hebrew University Law School**, Public Law Workshop. Paper titled: “The Provocative Effect of Law: Majority Nationalism and Minority Discrimination”;
  33. **2018, Hong Kong University Law School**, ICON-S Conference. Paper titled: “The War Within”;
  34. **2018, Harvard Psychology Department**, Moral Psychology Lab (invited speaker). Paper titled: “The Asymmetric Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
  35. **2018, Harvard-MIT Program on Negotiation Seminar Series** (invited speaker). Paper titled: “The Asymmetric Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
  36. **2018, Harvard Law School**, Empirical Legal Studies Series (invited). Paper titled: “The War Within”;
  37. **2018, Chicago Law School**, Public Law and Legal Theory Workshop (invited). Paper titled: “The War Within”;
  38. **2018, Stanford Law School**, International Junior Faculty Forum (invited). Paper titled: “The War Within”;
  39. **2018, Michigan Law School**, Annual Conference on Empirical Legal Studies. Paper titled: “The War Within”;
  40. **2018, Michigan Law School**, Annual Conference on Empirical Legal Studies. Paper titled: “What’s in a Name?: The Asymmetric Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
  41. **2018, University of Toronto Law School**, Law and Religion Workshop (invited). Paper titled: “The War Within”;
  42. **2018, Society on Judgment and Decision-Making Annual Conference**, New Orleans. Paper titled: “The Asymmetric Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
  43. **2018, IDC Law School**, Justice M. Cheshin Memorial Conference (invited). Paper titled: “Reexamining the Evidence on Ultra-Orthodox Attitudes and Gender Separation in Academia”;
  44. **2019, Tel Aviv Law School**, Israeli Law and Society Conference. Paper titled: “Reexamining the Evidence on Ultra-Orthodox Attitudes and Gender Separation in Academia”;
  45. **2019, Tel Aviv Law School**, faculty workshop (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;
  46. **2019, WZB Berlin**, Seventh WZB Migration and Diversity Conference (invited). Paper titled: “How Majority Nationalism Laws Shape Intergroup Relations in Ethnically Diverse Societies: Experimental and Observational Evidence from Israel”;
  47. **2019, Bar Ilan Law School**, Conference on the Interpretation of the Nation Law (invited). Paper titled: “How Majority Nationalism Laws Shape Intergroup Relations in Ethnically Diverse Societies: Experimental and Observational Evidence from Israel”;
  48. **2019, Federman Center for the Study of Rationality**, joint workshop of the Hebrew University Federman Center & Ben Gurion Center on Decision Making and Economic Psychology (invited). Paper titled: “How Majority Nationalism Laws Shape Intergroup Relations in Ethnically Diverse Societies: Experimental and Observational Evidence from Israel”;
  49. **2019, Hebrew University Law School**, public law workshop. Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;

50. **2019, Hebrew University Law School**, Humboldt-Minerva Human Rights Under Pressure joint seminar. “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;
51. **2019, Hebrew University Law School**, International Workshop on Behavioral Legal Studies. Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;
52. **2019, Hebrew University Law School**, faculty workshop. Paper titled: “What’s in a Name?: The Disparate Effects of Identifiability on Offenders and Victims of Sexual Harassment”;
53. **2019, University of Toronto Law School**, Annual Law and Religion Roundtable (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;
54. **2019, Claremont McKenna College**, Annual Conference on Empirical Legal Studies (waived). Paper titled: “How Majority Nationalism Laws Shape Intergroup Relations in Ethnically Diverse Societies: Experimental and Observational Evidence from Israel”;
55. **2020, Bar Ilan Law School**, Faculty Seminar (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”;
56. **2020, Hebrew University School**, Private Law Workshop. Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
57. **2020, Law, Society, and Psychological Science CRN Summer Research Series**, Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
58. **2020, International Forum on the Future of Constitutionalism**, Works-in-Progress Comparative Constitutional Law Summer Roundtable (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
59. **2020, Chicago Law School**, Measuring Impact in Constitutional Law Conference (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
60. **2020, Hebrew University**, Jewish and Israeli Law Student Club. Talk titled: Prayers and Demonstrations during COVID-19.
61. **2020, Ministry of Justice**, Regulation Forum. Paper titled: “Behavioral Responsive Regulation”.
62. **2020, Bar Ilan University**, Jewish and Democratic Law Center. Talk titled: “Religion in the Public Sphere”.
63. **2020, Tel Aviv University**, The Wars of the High Court of Justice Conference. TBA.
64. **2020, Israeli Democracy Institute**, Ultra-Orthodox Researchers Forum. Paper titled: “Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations”.
65. **2020, UCLA Law School**, Private Law Workshop. Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
66. **2020, Haifa University School of Education**, Law, Religion, and Education webinar. Paper titled: “Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations”.
67. **2020, Pepperdine Law School**, Nootbarr Fellows Workshop. Paper titled: “Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations”.
68. **2021, Hebrew University of Jerusalem Law School**, Public Law Workshop. Paper titled: “Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations”.
69. **2021, University of Virginia Law School**, Family Law Center Symposium, Paper titled: “The Effects on Children of Equality Rules for Religious Placement Agencies”.
70. **2021, University of Virginia Law School**, Law and Economics Workshop (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.

71. **March 2021, Tel Aviv University, School of Government, Political Science and International Relations**, faculty seminar. “The day after the elections: how to fix Israeli democracy?”
72. **March 2021, Philosophy 360**, Paper titled: “Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management”.
73. **March 2021, Rutgers University, Center for Population-Level Bioethics** seminar, Paper titled: “Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management”.
74. **March 2021, Israeli National Academy of Arts and Sciences**, (invited) special webinar, “Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management”.
75. **April 2021, Hebrew University of Jerusalem, School of Public Policy**, faculty seminar (invited). Paper titled: “Behavioral Responsive Regulation.”
76. **April 2021, IDC Herzliya Law School**, Constitutional Law Workshop (invited). Paper titled: “Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management”.
77. **April 2021, Bar Ilan Law School**, Constitutional Law Workshop (invited). Paper titled: “Personal Decisions, Public Consequences: On Distinguishing between the Vaccinated and the Non-Vaccinated in Coronavirus Management”.
78. **April 2021, Yale Law School**, Religious Freedom Clinic (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
79. **April 2021, Israeli Ministry of Justice**, Department of Consulting and Legislation Advanced Seminar in Constitutional law, (keynote speaker). “Constitutional Law: A General Perspective and Current Trends”.
80. **May 2021, Law and Society Association Annual Meeting**, virtual conference. Paper titled: “Bidirectional Legal Socialization and the Boundaries of Law: The Case of Enclave Communities Compliance with COVID-19 Regulations”.
81. **May 2021, Law and Society Association Annual Meeting**, virtual conference. Paper titled: “Behavioral Responsive Regulation.”
82. **May 2021, Hebrew University Center for Interdisciplinary Data Science Research workshop**. Paper titled: “Examining the Effect of Anti-Discrimination Legislation on Outcomes of Children in Adoption and Foster Care.”
83. **June 2021, Haifa University Law School**, faculty seminar (invited). Paper titled: “Do Religious Exemptions Increase Discrimination? Evidence from *Masterpiece*”.
84. **June 2021, Annual Law and Religion Roundtable** (invited). Paper titled: “Examining the Effect of Anti-Discrimination Legislation on Outcomes of Children in Adoption and Foster Care.”.

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**Exhibit 2**

56(2) HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW (forth. 2021)

*A License to Discriminate?*

*The Market Response to Masterpiece Cakeshop*

Netta Barak-Corren\*

What are the consequences of religious exemptions of antidiscrimination laws? And what are the normative implications of these consequences? These questions are currently at the center of a heated debate balancing religious freedom and civil rights. Opponents of religious exemptions from antidiscrimination laws argue that granting exemptions would increase sexual orientation discrimination. Proponents of religious exemptions argue that religious objectors are a small minority and that their exemption would not meaningfully increase discrimination against same-sex couples.

The troubling aspect of this debate is that none of the parties rely on hard data. Particularly missing are data on the effects of exemptions granted in Supreme Court decisions, an issue that the Court has addressed repeatedly in recent years—and is set to do so once again this term, in *Fulton v. City of Philadelphia*.

This Article intervenes in the debate based on the results of a large-scale field experiment that measured the effect of *Masterpiece Cakeshop v. Colorado Civil Rights Commission* on the ability of same-sex couples to receive services in the

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wedding market, as compared to opposite-sex couples. The field experiment revealed that after *Masterpiece Cakeshop*, vendors were less willing to provide wedding services to same-sex couples than to opposite-sex couples. This trend was true even for vendors that provided services to same-sex couples prior to the *Masterpiece Cakeshop* decision. Following *Masterpiece Cakeshop*, the odds that same-sex couples would experience discrimination from wedding vendors are estimated to be between 61% and 85%.

These results have several implications for the debate on religious exemptions. First, they discredit the argument that the effects of religious exemptions are negligible, making clear that exemptions *will* promote further discrimination. Second, the results complicate the conventional portrait of religious objection as fixed (and therefore unyielding to change), showing instead that the demand for discrimination is elastic and shaped by social constructions, even without coercion or sanctions. These negative effects of *Masterpiece Cakeshop* bear on both litigation—showing that antidiscrimination laws are necessary to further states’ compelling interest in securing equality—and in legislation—providing guidance for legislatures on whether and how to enact religious exemptions from antidiscrimination laws.

Finally, the troubling consequences of *Masterpiece Cakeshop* require the Supreme Court to proceed with great care as it sets out to decide *Fulton v. City of Philadelphia* and any other future cases raising ostensible conflicts between religion and anti-discrimination law. However the Court decides to resolve the constitutional issue at hand, it must take into account that even a deliberately narrow and case-specific exemption might have a significant negative impact on the market and its customers.

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INTRODUCTION

The conflict between religious liberty and marriage equality is escalating. This term, the Supreme Court is set to decide *Fulton v. City of Philadelphia*,<sup>1</sup> a case which raises the constitutionality of an antidiscrimination rule that denies religious exemptions for state contractors who refuse to serve same-sex couples. Only two years ago, the Court addressed the conflict in the private market context, in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, ruling for a baker who refused to create a wedding cake

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<sup>1</sup> *Fulton v. City of Philadelphia*, 922 F.3d 140, 146–47 (3rd Cir. 2019), cert. granted, 140 S. Ct. 1104 (2020) (No. 19-123).

for a same-sex couple.<sup>2</sup> Shortly after the decision, the Court vacated and remanded two similar cases, one involving a florist who would not create flower arrangements for a same-sex wedding<sup>3</sup> and another case involving wedding cakes.<sup>4</sup> An impressive number of similar cases have been making their way through the courts in recent years, involving photographers and video artists,<sup>5</sup> a web-designer,<sup>6</sup> a t-shirt store,<sup>7</sup> a custom wedding invitation studio,<sup>8</sup> and a bed and breakfast<sup>9</sup>—all of whom object to serving same-sex couples and seek exemptions from antidiscrimination laws.

This state of affairs has caused anxiety and controversy among citizens, lawmakers, and legal scholars. All of these groups are concerned with potential on-the-ground consequences of religious exemptions from antidiscrimination laws. Opponents of religious exemptions warn that granting exemptions will escalate the number and significance of faith claims and could expand sexual orientation discrimination to all facets of public life.<sup>10</sup> Proponents of religious exemptions reject these concerns as factual nonsense, arguing that religious objectors are a negligible minority in a society growing ever more affirming of marriage equality, and that exempting religious objectors will not exacerbate discrimination against same-sex couples.<sup>11</sup>

The relationship between religious exemptions from antidiscrimination law and the actual consequences for same-sex couples and for religious objectors is thus a central question. Yet there is almost no evidence that could

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<sup>2</sup> *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1720 (2018).

<sup>3</sup> *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671 (2018), *remanded to State v. Arlene's Flowers, Inc.*, 441 P.3d 1203, 1209 (Wash. 2019). A second petition for certiorari was filed in 2019, and was not decided by the time this article went to press. *See* Petition for Writ of Certiorari, *Arlene's Flowers, Inc. v. Washington*, No. 19-333 (U.S. Sept. 11, 2019).

<sup>4</sup> *Klein v. Or. Bureau of Lab. & Indus.*, 139 S. Ct. 2713 (2019).

<sup>5</sup> *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 747 (8th Cir. 2019).

<sup>6</sup> *303 Creative L.L.C. v. Elenis*, 405 F. Supp. 3d 907, 912 (D. Colo. 2019), *appeal docketed*, No. 19-01413 (10th Cir. argued Nov. 16, 2020).

<sup>7</sup> *Lexington-Fayette Urban Cnty. Hum. Rts. Comm'n v. Hands On Originals*, 592 S.W.3d 291, 294 (Ky. 2019).

<sup>8</sup> *Brush & Nib Studio v. City of Phoenix*, 448 P.3d 890, 897 (Ariz. 2019).

<sup>9</sup> *Aloha Bed & Breakfast v. Cervelli*, 415 P.3d 919, 923 (Haw. Ct. App. 2018), *cert. denied*, 139 S. Ct. 1319 (2019).

<sup>10</sup> *See infra* notes 66–69.

<sup>11</sup> *See infra* notes 76–82.

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help clarify which of the contradictory factual premises is actually true. Such evidence is required to inform legislators debating whether to enact religious exemptions, and courts deliberating whether to grant such exemptions. Underscoring the importance of the consequentialist consideration, Justice Kennedy asked the U.S. Solicitor General<sup>12</sup> during the *Masterpiece Cakeshop* oral arguments, “what would the government's position be if . . . the baker prevails in this case, and then bakers all over the country received urgent requests: Please do not bake cakes for gay weddings. And more and more bakers began to comply. Would the government feel vindicated in its position that it now submits to us?”<sup>13</sup> The Solicitor General responded that this would make the case for antidiscrimination “much stronger” because states would be able to show “that the application of the law is narrowly tailored to the government’s interest in ensuring access [to public accommodations].”<sup>14</sup> Justice Kennedy was not alone on the bench in considering the consequences of religious exemptions as the key for the decision to grant them. From *Employment Division v. Smith*<sup>15</sup> to *Burwell v. Hobby Lobby Stores, Inc.*,<sup>16</sup> the Court has consistently cited consequentialist concerns (or lack thereof) in rejecting (or granting) requested religious exemptions.

This article contributes to the consequentialist debate on religious exemptions by studying, for the first time, the effects of religious exemptions on sexual orientation discrimination. Part I begins with surveying the relevant legal background on the tension between marriage equality and religious liberty. It addresses the evolution of the conflict and the legislative patchwork of protections across the nation, where some jurisdictions prohibit sexual orientation discrimination in public accommodations (dubbed here “AD Law” regimes, for convenience purposes) and others do not; where some

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<sup>12</sup> The U.S. Solicitor General argued as amicus curiae supporting the baker in *Masterpiece Cakeshop*. See Transcript of Oral Argument at 2, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018) (No. 16-111).

<sup>13</sup> *Id.* at 45–46.

<sup>14</sup> *Id.* at 46.

<sup>15</sup> 494 U.S. 872, 879 (1990) (noting the concern that permitting an exemption is “in effect to permit every citizen to become a law unto himself”) (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1879)).

<sup>16</sup> 573 U.S. 682, 692–93 (2014) (“[O]ur holding is very specific. . . . [W]e certainly do not hold or suggest that ‘RFRA demands accommodation of a for-profit corporation’s religious beliefs no matter the impact that accommodation may have’ . . . . The effect of the HHS-created accommodation on the women employed by Hobby Lobby and the other companies involved in these cases would be precisely zero.”).

jurisdictions facilitate religious exemptions via a Religious Freedom Restoration Act (“RFRA”) and others do not.<sup>17</sup> This varied setting provides the context for the debate about religious exemptions and for *Masterpiece Cakeshop* itself. Part I concludes with analyzing the opposing consequentialist arguments about religious exemptions, exposing their lack of evidentiary foundations, and the implications of these omissions.

Part II then describes the large-scale field experiment designed to elucidate and inform the consequentialist debate by measuring the impact of the *Masterpiece Cakeshop* decision on sexual orientation discrimination in the wedding vendor market. An extended analysis of the experiment is reported in a separate methodological paper.<sup>18</sup> Wedding vendors (bakers, photographers, and florists; N = 1,155) were sampled from the four types of regimes currently in existence (those with or without antidiscrimination laws; and those with or without religious freedom laws). Each business was contacted via email by four different couples: two shortly before and two shortly after the *Masterpiece Cakeshop* ruling; in each period, one of the test couples was a same-sex couple and the other was an opposite-sex couple. The total dataset includes four observations per business, allowing for both within- and across-businesses comparisons. The question of interest was whether businesses agreed to provide the requested service to the couples.

What were the results of the field experiment? In brief, the field experiment demonstrated that the Court’s decision in *Masterpiece Cakeshop* significantly reduced the willingness of businesses to serve same-sex couples: while 63.6% were willing to serve same-sex couples before *Masterpiece Cakeshop*, only 49.2% were so willing after the decision was rendered (a 14.4 percentage-point gap, or ~23 percent decrease in favorable responses). Zooming in on businesses that, prior to *Masterpiece Cakeshop*, responded positively to same-sex couples, I find that many of these businesses discriminate between opposite-sex and same-sex couples after *Masterpiece Cakeshop*: previously “gay-friendly” businesses that were

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<sup>17</sup> These are broad distinctions. Additional nuances are discussed *infra* Part II.B.

<sup>18</sup> Netta Barak-Corren, *Religious Exemptions Increase Discrimination Towards Same-Sex Couples: Evidence from Masterpiece Cakeshop*, J. LEGAL STUD. (forthcoming 2021). Parts of the current article have been adapted from there. The research was approved by the Hebrew University IRB.

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randomly contacted by opposite-sex or same-sex couples responded less favorably to same-sex couples than opposite-sex couples (75.5% vs. 66.3%, a 9 percentage-point gap, or 12 percent fewer favorable responses) after the decision was rendered. This effect is not an artifact of the experiment itself, as it is identically found in the “control” group of businesses that were contacted for the first time after *Masterpiece Cakeshop*. Probing into the differences between the four regime types, I find that the negative *Masterpiece Cakeshop* effect appears in all regimes, including regimes without AD laws and regimes without RFRA, except for those that enacted *both* an AD law and a RFRA. The effect is robust, and remains so when including analyses that control for county-level conservativeness and analyses limited to businesses located in big cities (where, it is often argued, there is considerably less of a discrimination problem). However, the effect of *Masterpiece Cakeshop* is significantly more pronounced in religious environments, as proxied by the density of religious congregations in the county where the business is located.

A back-of-the-envelope calculation demonstrates the broader implications of these results. Provided that couples of all identities typically contract with about ten types of vendors in the process of organizing a wedding (reception venues, wedding planners, bakers, florists, photographers, videographers, bridal/groom salons, jewelers, DJs, and calligraphers—a partial list), that they often inquire with several vendors from each category, and that the average risk of experiencing discrimination per vendor post-*Masterpiece Cakeshop* is about 9%, I estimate the aggregate risk of experiencing at least one instance of discrimination ranges between 61% and 85% for same-sex couples. This means that across the observed differences between businesses, legal regimes, and religious environments, *Masterpiece Cakeshop* had the general effect of exposing same-sex couples to a substantial and heightened risk of discrimination while planning a wedding.

With this novel evidence, Part III returns to the normative debate and considers the implications of the law of religious exemptions. First, the results of the *Masterpiece Cakeshop* experiment discredit the argument that the effect of religious exemptions is negligible and that exemptions will not promote discrimination. Instead, what the *Masterpiece Cakeshop* experiment

shows is that even an intentionally narrow and case-specific exemption can have a substantial impact on an industry and its customers. Second, the results complicate the conventional portrait of religious objection as fixed, showing instead that the demand for discrimination is elastic and shaped by social constructions, even without coercion or sanctions. Third, this evidence makes clear that states and localities have a compelling interest in passing and enforcing anti-discrimination laws, and that such laws are narrowly tailored to that interest. Antidiscrimination laws thus satisfy strict scrutiny (and lower thresholds of judicial review, where applicable).

At the same time, the documented variation between legal regimes tentatively suggests that there is still room for legislatures to explore ways to protect *both* marriage equality and religious freedom, without necessarily increasing discrimination. I suggest specific ways in which legislators could improve the regulation of religion-equality conflicts, by actively seeking to ground policy in data. In particular, I argue that new laws should be experimentally pre-tested to inform lawmakers as to the likely consequences. I demonstrate how such pre-testing could be performed and I explain its advantages.

As is true for any empirical work, this article does not purport to exhaust or conclude the debate about the consequences of religious exemptions. Indeed, this would be impossible. The article is a snapshot of reality at a specific point in time and place and is limited in what such a snapshot can reveal about society—particularly when it comes to complex phenomena such as the relationship between law and behavior. Notwithstanding these important limitations, the centrality of empirical assumptions to the resolution of the debates in constitutional law requires us to grapple with the empirical questions rather than treating them as axioms. The current debate illustrates this need well. Opponents and proponents of religious exemptions rely on conflicting assumptions regarding the consequences of exemptions, largely talking past each other. While there is no assurance that the opposing camps will digest empirical evidence willingly and without bias, there is always hope that at least some will (indeed, this is the underlying premise of all scientific work). At the very least, disagreements about the relevance of the data could increase the sophistication of legal arguments and generate new questions for debate and empirical investigation. For now, the troubling

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effects of *Masterpiece Cakeshop* suggest that the Supreme Court should question empirical arguments that do not base themselves on relevant data and should carefully consider the probable consequences of its impending decision in *Fulton v. City of Philadelphia* and in any other religion-equality conflict that will come before the Court in the future.

I. THE TENSION BETWEEN MARRIAGE EQUALITY AND RELIGIOUS LIBERTY

The tension between sexual orientation equality and religious liberty has been present from the inception of the movement for marriage equality. When Massachusetts became the first State to recognize same-sex marriage in 2004, the Supreme Judicial Court recognized the possibility of such a conflict when it asserted that its “decision [to uphold same-sex marriage laws] in no way limits the rights of individuals to refuse to marry persons of the same-sex for religious or any other reasons. It in no way limits the personal freedom to disapprove of, or to encourage others to disapprove of, same-sex marriage.”<sup>19</sup> Similarly, when the Iowa Supreme Court recognized same-sex marriage—the fourth high court to follow this route, after Massachusetts, California and Connecticut—it stated that “[r]eligious doctrine and views contrary to this principle of law are unaffected, and people can continue to associate with the religion that best reflects their views.”<sup>20</sup> In 2015, when the U.S. Supreme Court legalized same-sex marriage across the nation in *Obergefell v. Hodges*, it emphasized that “religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned.”<sup>21</sup>

Other courts expressed reservations about the possibility of mitigating the tension between religion and sexual orientation equality. When the Connecticut Supreme Court recognized same-sex marriage in 2008, it dedicated a lengthy paragraph to describe the religious condemnation of homosexuality and to present it as one of the roots of discrimination towards

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<sup>19</sup> *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 965 n.29 (Mass. 2003).

<sup>20</sup> *Varnum v. Brien*, 763 N.W.2d 862, 906 (Iowa 2009).

<sup>21</sup> 576 U.S. 644, 679 (2015). Notably, any reference to a potential tension between religious liberty and marriage equality was omitted from a previous marriage equality decision, *United States v. Windsor*, in which the Court struck down the Defense of Marriage Act, a federal law defining marriage as an act between a man and a woman. 570 U.S. 744, 745 (2013).

gay people in society.<sup>22</sup> The court then observed that “[f]eelings and beliefs predicated on such profound religious and moral principles are likely to be enduring, and persons and groups adhering to those views undoubtedly will continue to exert influence over public policy makers.”<sup>23</sup> Several years later, Justice Alito dissented from the United States Supreme Court’s decision in *Obergefell* with the opposite prediction, expressing concern that “those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.”<sup>24</sup>

Whether mitigating this tension is possible or not remains to be seen. What is clearly evident, however, is that religion-equality conflicts are rapidly gaining legal momentum and public attention. As the primary origin of these conflicts has been state law, it is necessary to understand the variation between states to assess the background against which religious exemptions are debated.

*A. Antidiscrimination Laws and Claims for Religious Exemptions*

At present, federal law does not prohibit discrimination on the basis of sexual orientation in public accommodations. Title II of the Civil Rights Act does not prohibit discrimination on the basis of either sex or sexual orientation;<sup>25</sup> even if it did, it limits “public accommodation” to hotels, restaurants, gas stations, and places of exhibition or entertainment.<sup>26</sup> This definition does not include most of the businesses currently refusing service to same-sex couples, in particular most wedding vendors.<sup>27</sup>

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<sup>22</sup> Kerrigan v. Comm’r of Pub. Health, 957 A.2d 407, 444–45 (Conn. 2008).

<sup>23</sup> *Id.* at 445.

<sup>24</sup> *Obergefell*, 576 U.S. at 741 (Alito, J., dissenting).

<sup>25</sup> 42 U.S.C. § 2000a(a). This omission is in contrast to the prohibition on discrimination on the basis of “sex” in employment in Title VII of the Civil Rights Act, a provision that has been interpreted as also covering sexual orientation discrimination. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020).

<sup>26</sup> 42 U.S.C. § 2000a(b).

<sup>27</sup> *See, e.g.*, *State v. Arlene's Flowers, Inc.*, 441 P.3d 1203, 1209 (Wash. 2019); *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 747 (8th Cir. 2019); *303 Creative L.L.C. v. Elenis*, 405 F. Supp. 3d 907, 912 (D. Colo. 2019), *appeal docketed*, No. 19-01413 (10th Cir. argued Nov. 16, 2020).



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Acting to fill the void, twenty-two states, the District of Columbia, and numerous local governments passed legislation prohibiting discrimination based on sexual orientation and/or gender identity in public accommodations (“AD states,” see Figure 1).<sup>28</sup> Most of these laws permit no religious exemptions,<sup>29</sup> and their definitions of “public accommodations” are generally much broader than that of federal law,<sup>30</sup> covering any business open to the public. These laws are the underpinnings of the lawsuits against wedding vendors that refused to provide service to same-sex commitment ceremonies and weddings, citing religious reasons.<sup>31</sup> Concomitantly, and particularly after the recognition of marriage equality in *Obergefell*, conservative faith groups began calling for religious exemptions from AD laws.<sup>32</sup> On the legislative front, some states took steps to advance these calls.<sup>33</sup> In courts,

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<sup>28</sup> HUM. RTS. CAMPAIGN FOUND., 2020 STATE EQUALITY INDEX 14 (2020), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/HRC-SEI20-report-Update-022321-Final.pdf?mtime=20210322114741&focal=none>, archived at <https://perma.cc/YG5Y-35Q2>. Note that Figure 1 presents the state of the law at the time of the study in 2018, before Virginia prohibited discrimination on the basis of sexual orientation in public accommodations.

<sup>29</sup> Many states provide exemptions for churches and affiliated religious organizations, but these exemptions mostly do not extend to private for-profit businesses. See Lucien J. Dhooge, *Public Accommodation Statutes and Sexual Orientation: Should There Be a Religious Exemption for Secular Businesses?*, 21 WM. & MARY J. WOMEN & L. 319, 344 (2015).

<sup>30</sup> For example, IOWA CODE § 216.2.13(a) defines “public accommodation” as “each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility.”

<sup>31</sup> Such lawsuits against wedding vendors have been brought in various states. See *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018) (in Colorado); *Arlene’s Flowers*, 441 P.3d at 1209 (in Washington); *Telescope Media Grp.*, 936 F.3d at 740 (in Minnesota); *Brush & Nib Studio v. City of Phoenix*, 448 P.3d 890 (Ariz. 2019) (in Arizona); *Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919 (Haw. Ct. App. 2018), cert. denied, 139 S. Ct. 1319 (2019) (in Hawaii); *Klein v. Or. Bureau of Lab. & Indus.*, 410 P.3d 1051 (Or. Ct. App. 2017) (in Oregon); *Elane Photography, L.L.C. v. Willock*, 309 P.3d 53 (N.M. 2013) (in New Mexico).

<sup>32</sup> Erik Eckholm, *Conservative Lawmakers and Faith Groups Seek Exemptions After Same-Sex Ruling*, N.Y. TIMES (June 26, 2015), <https://www.nytimes.com/2015/06/27/us/conservative-lawmakers-and-faith-groups-seek-exemptions-after-same-sex-ruling.html>, archived at <https://perma.cc/N48H-G6WN>; *Religious groups react to Supreme Court ruling on same-sex marriage*, TAMPA BAY TIMES (June 26, 2015), <https://www.tampabay.com/news/courts/religious-groups-react-to-supreme-court-ruling-on-same-sex-marriage/2235233/>, archived at <https://perma.cc/5X7P-X27S>.

<sup>33</sup> See *infra* Part I.C.

most wedding-vendor cases ended in defeat for the vendors.<sup>34</sup>

*Masterpiece Cakeshop* was the first case in which the Supreme Court granted a petition for certiorari on the question of whether laws forbidding discrimination on the basis of sexuality violate religious freedom.<sup>35</sup> Arising under Colorado's AD law, the case presented a conflict between Jack Phillips—the owner of Masterpiece Cakeshop—and Charlie Craig and David Mullins, a same-sex couple who attempted to purchase a cake from Phillips, unaware of Phillips' beliefs. Phillips declined to make the cake, citing his objection to same-sex marriages. The parties dispute whether Phillips offered to sell other products at his store to the couple: Phillips argues that he “offered to make any other cake for them,”<sup>36</sup> but the couple argues that Phillips said that “while the bakery would sell baked goods to gay and lesbian customers for other purposes, it would not sell them baked goods for weddings”<sup>37</sup> and that “the bakery has repeatedly refused to provide any baked goods . . . for wedding receptions or commitment ceremonies of same-sex couples.”<sup>38</sup>

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<sup>34</sup> See, e.g., *Arlene's Flowers*, 441 P.3d at 1237; *Aloha Bed & Breakfast*, 415 P.3d at 923; *Elane Photography*, 309 P.3d at 59; 303 Creative L.L.C. v. Elenis, 405 F. Supp. 3d 907, 912 (D. Colo. 2019). *Contra Brush & Nib Studio*, 448 P.3d at 926 (holding that Phoenix's public accommodations ordinance unconstitutionally compels speech and violates the vendor's free exercise of religion).

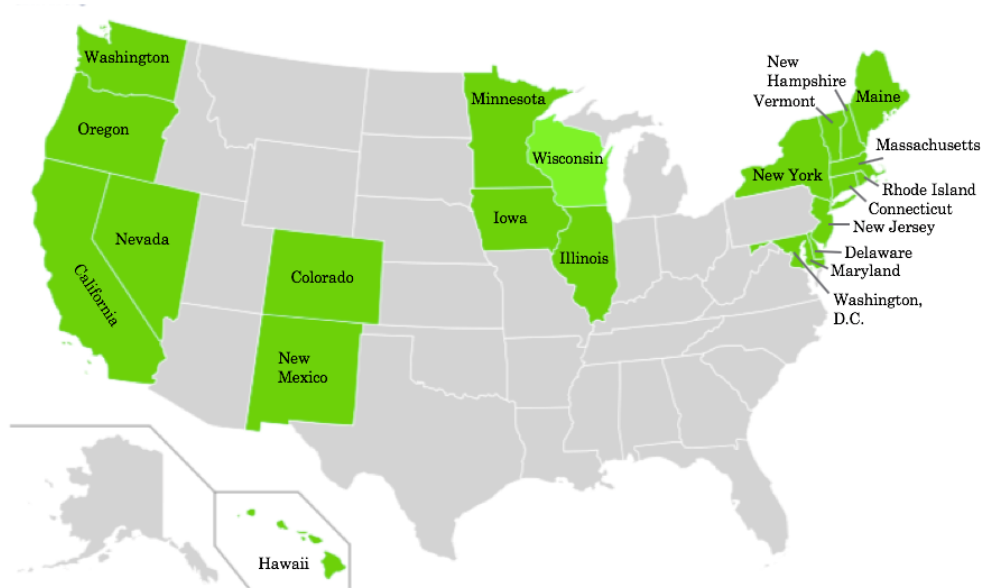
<sup>35</sup> Before *Masterpiece Cakeshop*, the Supreme Court denied certiorari in *Elane Photography, L.L.C. v. Willock*, 572 U.S. 1046 (2014). After *Masterpiece Cakeshop*, the Supreme Court granted certiorari in *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671 (2018), and *Klein v. Or. Bureau of Lab. & Indus.*, 139 S. Ct. 2713 (2019), vacating and remanding both cases for further consideration in light of *Masterpiece Cakeshop*. *Arlene's Flowers*, 138 S. Ct. at 2671; *Klein*, 139 S. Ct. at 2713.

<sup>36</sup> Petition for Writ of Certiorari at 6, *Masterpiece Cakeshop*, 138 S. Ct. 1719 (No. 16-111).

<sup>37</sup> Brief for Respondents Charlie Craig & David Mullins at 4, *Masterpiece Cakeshop*, 138 S. Ct. 1719 (No. 16-111).

<sup>38</sup> *Id.* at 1, 4–5.

## AD states



Source: Human Rights Campaign

**Figure 1. States prohibiting sexual orientation and gender identity discrimination in public accommodations as of 2018.<sup>39</sup>**

The Colorado Civil Rights Commission, the administrative body that adjudicates claims under the Colorado Anti-Discrimination Act, found that Phillips discriminated against the couple based on their sexual orientation. During the proceedings, a member of the Commission stated that “to me it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.”<sup>40</sup> Ultimately, these and related comments were among the primary reasons cited by the Supreme Court when it reversed and invalidated the Commission’s decision. The Court noted that the Commission failed to treat Phillips neutrally and fairly and instead showed

<sup>39</sup> HUM. RTS. CAMPAIGN FOUND., *supra* note 28, at 14. Wisconsin prohibits only sexual orientation discrimination. *Id.* The map does not include local governments that prohibit discrimination within their boundaries. Note that Figure 1 presents the state of the law at the time of the study in 2018, before Virginia prohibited discrimination on the basis of sexual orientation in public accommodations.

<sup>40</sup> *Masterpiece Cakeshop*, 138 S. Ct. at 1729.

unconstitutional religious hostility towards his beliefs.<sup>41</sup> In a concurrence joined by Justice Gorsuch, Justice Thomas opined that Phillips should have also prevailed on free speech grounds, stating that creating and designing custom wedding cakes is a form of expressive conduct.<sup>42</sup>

While Phillips won the case on free exercise grounds, the decision also affirmed the need for AD laws to protect against sexual orientation discrimination in the marketplace. The majority acknowledged that “if [religious] exception[s] were not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws.”<sup>43</sup> For this reason, the Court did not rule out the possibility that Colorado could eventually rule against Phillips and similarly situated vendors on the basis of its AD law if the state guaranteed a neutral and respectful process to all parties. More generally, the majority’s opinion did not expressly resolve the bigger issue of the relationship between religious liberty and sexual orientation equality.

#### *B. Religious Freedom Laws and Claims for Religious Exemptions*

Thus far, I have surveyed the tension between marriage equality and religious liberty from the standpoint of AD legislation. Another type of legislation that bears on the legal status of religion-equality conflicts are Religious Freedom Restoration Acts (“RFRA”).

Congress enacted the first national RFRA in response to *Employment Division v. Smith*, which held that neutral laws of general applicability (i.e., those that do not intentionally target religion) are constitutional even if they substantially burden the free exercise of religion.<sup>44</sup> Before *Smith*, one of the

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<sup>41</sup> *Id.* at 1723. The Court also found another indication of hostility in “the difference in treatment between Phillips’ case and the cases of other bakers who objected to a requested cake on the basis of conscience and prevailed before the Commission.” *Id.* at 1730. These other bakers refused to create cakes with images that conveyed disapproval of same-sex marriage, and the Commission found their refusal legal because the bakers deemed the messages offensive. *Id.* The Court criticized this differential treatment as a showing of hostility towards Phillips’ faith. *See id.*

<sup>42</sup> *Id.* at 1742 (Thomas, J., concurring).

<sup>43</sup> *Id.* at 1727.

<sup>44</sup> 494 U.S. 872, 879 (1990).

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tests used by the Court to review substantial burdens on religious freedom required that such burdens be the least restrictive means of serving a compelling government interest (a test known as “strict scrutiny”).<sup>45</sup> Congress sought to enact that standard through the national RFRA, which provided that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the burden serves “a compelling government interest” and is “the least restrictive means” to further that interest.<sup>46</sup> But the Supreme Court limited the national RFRA’s scope to the federal government and invalidated it as applied to the states.<sup>47</sup> Twenty-one states responded by enacting state-level RFRA to ensure that their governments are subject to the same high level of scrutiny as the federal government (see Figure 2).<sup>48</sup> In ten additional states, courts have interpreted their constitutions to require strict scrutiny.<sup>49</sup>

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<sup>45</sup> See *Sherbert v. Verner*, 374 U.S. 398, 403 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 219 (1972). Strict scrutiny, however, was not evenly or consistently applied before *Smith*, and the Court sidestepped it in a series of cases. See *O’Lone v. Est. of Shabazz*, 482 U.S. 342, 349 (1987) (declining to apply strict scrutiny to prison policy); *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (declining to apply strict scrutiny to military policy); *United States v. Lee*, 455 U.S. 252, 261 (1982) (declining to exempt Amish employers from social security policy); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (declining to reverse the denial of tax benefits of a university, stating that government’s interest in eradicating racial discrimination outweighs the burden on the university’s religious exercise). See generally Ira C. Lupu, *Hobby Lobby and the Dubious Enterprise of Religious Exemptions*, 38 HARV. J. L. & GENDER 35, 51–53 (2015) (exploring the court’s treatment of free exercise claims pre-*Smith*).

<sup>46</sup> 42 U.S.C. § 2000bb to 2000bb-4 (1993), *invalidated by* *City of Boerne v. Flores*, 521 U.S. 507 (1997) (finding RFRA unconstitutional as applied to the states).

<sup>47</sup> *City of Boerne*, 521 U.S. at 532. Congress amended RFRA to reflect the holding and removed the words “a State, or a subdivision of a State” from the definition of “government” in the law. See 42 USC § 2000bb-2.

<sup>48</sup> *State Religious Freedom Restoration Acts*, NAT’L CONF. STATE LEGISLATURES (May 4, 2017), <http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx>, *archived at* <https://perma.cc/QV3E-F67V> [hereinafter NCSL] (providing an up-to-date survey of all RFRA).

<sup>49</sup> Eugene Volokh, *IA. What Is the Religious Freedom Restoration Act?*, VOLOKH CONSPIRACY (Dec. 2, 2013), <http://volokh.com/2013/12/02/1a-religious-freedom-restoration-act/>, *archived at* <https://perma.cc/DXZ6-9PLN> (surveying state RFRA and state interpretations of their constitutions to require strict scrutiny; since then, AR, IN, and MI also enacted RFRA).

### RFRA states



Source: National Conference of State Legislatures

www.gutmacher.org

**Figure 2. States that have enacted Religious Freedom Restoration Acts as of 2018.** Note: The map does not include states that interpret their constitutions to require a RFRA-like protection of religious freedom: AK, MA, ME, MI, MN, MT, NC, OH, WA, and WI.<sup>50</sup>

While RFRA's do not provide absolute guarantees of religious exemptions, conservative legislators in RFRA-less states began pushing for the enactment of RFRA's as a shield (or in some cases, a sword) against potential duties to recognize the validity of same-sex marriage. Mississippi passed a RFRA in 2014; Indiana and Arkansas in 2015.<sup>51</sup> Yet in other states, such as Iowa and Georgia, RFRA bills failed due to public concerns about their implications for LGBTQ rights and fears of commercial boycotts.<sup>52</sup> In the process, RFRA's came to be viewed as the legislative opposite of AD laws.<sup>53</sup>

<sup>50</sup> *Id.*

<sup>51</sup> NCSL, *supra* note 48.

<sup>52</sup> Kathleen Foody, *Ga. lawmakers leave without vote on religious freedom bill*, WASH. TIMES (Apr. 3, 2015), <https://www.washingtontimes.com/news/2015/apr/3/religious-freedom-measure-focus-of-ga-lawmakers-la/>, archived at <https://perma.cc/77XQ-AUDA>.

<sup>53</sup> See, e.g., David Ferguson, *LGBT rights amendment proves to be 'poison pill' for*

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*C. The Implications of the "Legislative Mismatch"*

Figures 1 and 2 show that the distribution of AD laws and RFRA across states is what Professor Lupu has termed a "legislative mismatch" with a relatively narrow overlap. As Professor Lupu notes, the overlap consists of four states that enacted both laws (Connecticut, Illinois, New Mexico, and Rhode Island), a maximum of seven states that have both AD laws and extended protections on religious freedom in their constitutions but no RFRA (Maine, Massachusetts, Minnesota, New York, Vermont, Washington, and Wisconsin),<sup>54</sup> and a considerable number of local governments in RFRA states that enacted municipal AD laws. This last category includes a number of major cities in conservative states, such as Dallas, Texas, Indianapolis, Indiana, Phoenix, Arizona, and Atlanta, Georgia.<sup>55</sup>

The legal variation that results from the "legislative mismatch" potentially entails very different outcomes for otherwise identical cases. Imagine a photographer refusing to take the engagement photos of a same-

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*Georgia's 'religious freedom' bill*, RAWSTORY (Mar. 27, 2015), <https://www.rawstory.com/2015/03/lgbt-rights-amendment-proves-to-be-poison-pill-for-georgias-religious-freedom-bill/>, archived at <https://perma.cc/39CX-J8J6> (reporting how the passage of an amendment preventing the bill from affecting the state's civil rights laws collapsed support of the bill).

<sup>54</sup> Ira C. Lupu, *Moving Targets: Obergefell, Hobby Lobby, and the Future of LGBT Rights*, 7 ALA. C.R. & C.L.L. REV. 1, 45–46 (2015) (classifying states into categories, and since which, no new laws have been enacted to change this classification). Some uncertainty exists as to which states have interpreted their constitutions to require a RFRA-like standard of review. Volokh, *supra* note 49, classifies Hawaii and Vermont as states where courts have explicitly noted uncertainty about whether their constitution entails such a standard, and declined to resolve it, and New York as a state with weak intermediate review. In Hawaii, that uncertainty was recently noted in a case of a wedding service refusal. *Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919, 934 (Haw. Ct. App. 2018) ("We need not decide whether a higher level of scrutiny should be applied to a free exercise claim under the Hawai'i constitution . . . because we conclude that [Hawaii AD law] satisfies even strict scrutiny as applied to Aloha B&B's free exercise claim.").

<sup>55</sup> Lupu, *supra* note 54, at 46; *Texas' Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality\\_maps/profile\\_state/TX](https://www.lgbtmap.org/equality_maps/profile_state/TX), archived at <https://perma.cc/BC78-VFGU> (last visited Apr. 3, 2021); *Indiana's Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality\\_maps/profile\\_state/IN](https://www.lgbtmap.org/equality_maps/profile_state/IN), archived at <https://perma.cc/A77G-U2A9> (last visited Apr. 3, 2021). No local government in an AD state has enacted a municipal RFRA thus far. Local laws are typically enforceable by complaint to a city agency.

sex couple. In solely AD states, a discrimination claim will likely result in victory for the couple.<sup>56</sup> In solely RFRA states, such claim will likely fail. In states that enacted neither type of law (e.g., North Carolina), the claim's fate will likely be similar to RFRA states, if only because there is no vehicle to bring an antidiscrimination claim forward. And in the overlap category, where both sexual orientation and religious freedom are afforded legislative protections, the claim's fate would depend on how courts interpret the relationship between the two laws, including their potential application of strict scrutiny to the state's AD law.

Although one may assume that the conflict is strongest in the overlap states, it is not necessarily the case. For example, the four states with both AD laws and RFRAs construed their RFRAs to apply only to government agencies, excluding legislatures and courts, or limited relief to be only against the government, excluding private parties.<sup>57</sup> This structure led the New Mexico Supreme Court to reject the claim that the state's RFRA prevents the application of the state's AD law to a photographer declining service to a same-sex couple.<sup>58</sup> Courts in Washington<sup>59</sup> and Hawai'i<sup>60</sup>—states that Lupu

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<sup>56</sup> The analysis in this paragraph assumes the state of the law at the time when the study at the heart of this Article was designed, under which there is no constitutional requirement to exempt religious vendors from generally applicable AD laws. That fact did not change following *Masterpiece Cakeshop*, because the Court found for Phillips on the basis of governmental hostility and did not reach the question of whether Phillips had a right to an exemption from AD laws. 138 S. Ct. 1719, 1723–24, 1732 (2018).

<sup>57</sup> Rhode Island defines “government” to exclude the legislature and the courts and sets the remedies to be “injunctive and declaratory relief against any governmental authority which commits or proposes to commit a violation of this chapter.” R.I. GEN. LAWS § 42-80.1 (2010). Connecticut defines “state or any political subdivision of the state” to exclude the legislature and the courts and sets the right to relief only against the state. CONN. GEN. STAT. § 52-571b (1993). New Mexico is very similar to both, as explained below. N.M. STAT. ANN. § 28-22 (2000). Illinois defines “government” to include “a branch” but sets the right to appropriate relief in section 20 only “against a government.” 775 ILL. COMP. STAT. 35 (1998).

<sup>58</sup> *Elane Photography, L.L.C. v. Willock*, 309 P.3d 53, 59, 76 (N.M. 2013) (holding that because the NMRFRA does not apply to the legislator and the courts, and sets remedies only against government agencies, it does not insulate businesses from the legislature's prohibition on discrimination and does not shield them from discrimination lawsuits by private parties, including same-sex couples).

<sup>59</sup> *State v. Arlene's Flowers, Inc.*, 441 P.3d 1203, 1234 (Wash. 2019) (holding that Washington's AD law survives strict scrutiny).

<sup>60</sup> *Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919, 934 (Haw. Ct. App. 2018) (holding that, even if the Hawai'i constitution requires strict scrutiny, the Hawai'i AD law survives it).



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classifies as hybrid because of RFRA-like constitutional norms<sup>61</sup>—reached a similar result, each ruling that the state's AD law survives strict scrutiny. Overall, a large part of this overlap category appears to be more similar to the AD-only category when it comes to religion-equality conflicts.

The potentially more conflicted overlaps are where RFRA's are construed to apply to state laws (not only executive agencies), without excluding relief against private parties. Such are the Texas and Indiana RFRA's,<sup>62</sup> and new RFRA bills have followed this model.<sup>63</sup> Both the Texas and Indiana RFRA's include language stating that the Act does not authorize or establish a defense for discrimination or breach of civil rights laws for any individual or organization other than religious non-profits.<sup>64</sup> But, as neither state has AD laws that prohibit discrimination on the basis of sexual orientation, these reservations appear to be relevant only in municipalities within these states that enacted local AD protections.<sup>65</sup> These clauses are yet to be interpreted by courts as to whether they resolve the tension or not. More generally, RFRA's do not provide a flat guarantee of exemption, only the possibility of securing an exemption subject to certain legal conditions. Therefore, even expansive RFRA regimes do not guarantee religious vendors a right to refuse to serve same-sex couples, although they increase the likelihood that such

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<sup>61</sup> Lupu, *supra* note 54, at 45–46.

<sup>62</sup> TEX. CIV. PRAC. & REM. CODE ANN § 110.014 (1999) (“A person whose free exercise of religion has been substantially burdened . . . may assert that violation . . . without regard to whether the proceeding is brought in the name of the state or by any other person.”); IND. CODE § 34-13-9-7 (2015) (“regardless of whether the state or any other governmental entity is a party to the proceeding”).

<sup>63</sup> In addition to the newly enacted Indiana and Mississippi RFRA's, MISS. CODE § 11-61-1 (2014), many recent RFRA bills followed the same structure, including SB 898 in Oklahoma, HB 55 in New Mexico, SB 180 in Kentucky, SB 1062 in Arizona, etc.

<sup>64</sup> TEX. CIV. PRAC. & REM. CODE ANN § 110.014 (1999); IND. CODE § 34-13-9-7 (2015).

<sup>65</sup> It seems that this is also how these RFRA provisions have been understood in the public media. David S. Cohen & Leonore Carpenter, *The “Fix” to Indiana's Law Still Doesn't Protect Hoosiers From Anti-Gay Discrimination*, SLATE (Apr. 2, 2015), <https://slate.com/human-interest/2015/04/indiana-religious-freedom-law-the-fix-still-doesnt-protect-gay-hoosiers-from-discrimination.html>, archived at <https://perma.cc/2LSV-G5ZX> (arguing that a suggested fix in Indiana's RFRA is relevant only to the few cities that passed AD bills); Robbie Owens, *Texas Has Its Own Religious Freedom Law*, CBS DFW (Mar. 31, 2015), <https://dfw.cbslocal.com/2015/03/31/fifteen-year-old-texas-law-similar-to-new-indiana-law/>, archived at <https://perma.cc/6FAK-U52N> (claiming the Texas RFRA “can't be misused to disregard civil rights protections.”).

right is granted.

In summary, the contemporary regulation of the tension between sexual orientation equality and religious liberty encompasses four legal categories: (1) regimes (state or local) with both AD laws and RFRAs; (2) regimes that only have AD laws; (3) regimes that only have RFRAs; and (4) regimes that have none. This patchwork is the background against which *Masterpiece Cakeshop* was decided, and against which the debate on religious exemptions is raging.

*D. Opposing Arguments About the Consequences of Religious Exemptions*

The legislative mismatch and the inconsistent patchwork of protections for same-sex couples and religious objectors across the nation yielded two forceful and opposite responses to religious exemption laws.

In one camp are advocates and scholars that emphatically object to the legislation of new RFRAs and to most types of religious exemptions from AD laws. Much of the concern voiced by this group is about harm and consequences, perhaps most strongly articulated in Mark Stern's argument that if there is any religious accommodation, "inevitably, it will soon stretch to restaurants, hotels, movie theaters—in short, to all facets of public life. A religious right to discriminate against gay people will lead directly to anti-gay segregation."<sup>66</sup> Professors Douglas NeJaime and Reva Siegel take the view that claims for religious exemptions reflect the same effort to preserve traditional gender norms that characterized the religious objection to enacting these laws in the first place, what they call "preservation through transformation."<sup>67</sup> Hence, they argue that religious accommodations "may continue democratic conflict in new forms,"<sup>68</sup> and faith claims would escalate in number and significance.<sup>69</sup> Law professors also expressed these concerns

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<sup>66</sup> Mark Joseph Stern, *Anti-Gay Segregation May Soon Be Coming to Oregon*, SLATE (Feb. 4, 2014), <https://slate.com/human-interest/2014/02/oregon-anti-gay-referendum-the-initiative-is-homophobic-segregation.html>, archived at <https://perma.cc/SYG8-6PUD>.

<sup>67</sup> Douglas NeJaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L.J. 2516, 2552–54 (2015).

<sup>68</sup> *Id.* at 2521.

<sup>69</sup> *Id.* at 2520; see also Douglas NeJaime & Reva Siegel, *Conscience Wars in Transnational Perspective: Religious Liberty, Third-Party Harm, and Pluralism*, in THE CONSCIENCE WARS: RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND

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to legislatures deliberating new RFRA's, urging them to reconsider the bills.<sup>70</sup>

In the opposing camp are advocates and scholars—including some supporters of same-sex marriage<sup>71</sup>—who support religious exemptions. This group, which has also been active in communicating with legislators and pushing forward draft proposals for religious exemptions,<sup>72</sup> rejects the consequential concerns as detached from reality. Professor Andrew Koppelman cites data from polls indicating that a majority of Americans and the vast majority of young Americans now support same-sex marriages.<sup>73</sup> Reflecting on the volume of court cases, he then claims that instances of individuals invoking religious exemptions from antidiscrimination laws are extremely rare, “a handful in a country of 300 million people.”<sup>74</sup> The economic purposes of antidiscrimination law, Koppelman writes, “are a response to pervasive discrimination, and therefore “they are not frustrated by discrimination which is unusual.” Based on the assumption that discrimination against same-sex couples is unusual, he argues that “[i]f gay people are generally protected against discrimination, then a few outliers

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EQUALITY 187 (Susanna Mancini & Michel Rosenfeld eds., 2018).

<sup>70</sup> Letter from Katherine Franke, Isidor & Seville Sulzbacher Prof. of Law, Columbia University, et al., to Ed DeLaney, Rep. of Indiana (Feb. 27, 2015), [https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/law\\_professors\\_letter\\_on\\_indiana\\_rfra.pdf](https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/law_professors_letter_on_indiana_rfra.pdf), archived at <https://perma.cc/P5AN-YMX4> (criticizing the original Indiana RFRA); letter from Ira C. Lupu, F. Elwood & Eleanor Davis Prof. of Law Emeritus, George Washington University, et al., to Gov. Nathan Deal (Jan. 21, 2015), <https://georgiaunites.org/wp-content/uploads/2015/01/Georgia-Religious-Freedom-Letter.pdf>, archived at <https://perma.cc/2HB4-LEMP> (criticizing the Georgia RFRA proposal).

<sup>71</sup> See, e.g., Andrew Koppelman, *Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law*, 88 S. CAL. L. REV. 619, 620, 643–44 (2014); Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. ILL. L. REV. 839, 877–80 (2014).

<sup>72</sup> For a collection of letters to state legislators making these and similar proposals, see Thomas Berg, *ARCHIVE: Memos/Letters on Religious Liberty and Same-Sex Marriage*, MIRROR OF JUSTICE (Aug. 2, 2009), <https://mirrorofjustice.blogs.com/mirrorofjustice/2009/08/memosletters-on-religious-liberty-and-samesex-marriage.html>, archived at <https://perma.cc/A6MN-M2SW>. For the model exemption law advanced by this group, see Letter from Edward McGlynn Gaffney, Jr., Prof. of Law, Valparaiso Univ. Sch. of Law, et al., to Rosalyn H. Baker, State Sen., Haw. (Oct. 17, 2013), <https://mirrorofjustice.blogs.com/files/hawaii-special-session-letter-10-17-13-1.pdf>, archived at <https://perma.cc/FUK6-H6KS>.

<sup>73</sup> Koppelman, *supra* note 71, at 624.

<sup>74</sup> *Id.* at 643.

won't make any difference.”<sup>75</sup> Similarly, Professors Thomas Berg and Douglas Laycock argue that states do not have a compelling interest in enforcing their antidiscrimination laws against religious objectors where “ample alternative providers exist (as they nearly always do).”<sup>76</sup> *Masterpiece Cakeshop*, in their view, is precisely one such case because other bakers were readily available to provide the service.<sup>77</sup> Yet, the premise that exemptions should be allowed where market alternatives exist is under-developed in these arguments. How many other bakers would need to be available to justify an exemption? And if a large number of bakers ultimately refused service, would it invalidate an otherwise justified exemption?

The question of what quantity of refusing vendors begins to erode the position of proponents of religious exemptions is left unanswered. Koppelman concedes that, in some areas of the country, many businesses might invoke an exemption; but he immediately dismisses this concern, assuming that these areas do not have antidiscrimination protections in the first place.<sup>78</sup> With respect to *Masterpiece Cakeshop*, Berg and Laycock simply note that the couple accepted an offer of a free wedding cake after being refused by Phillips.<sup>79</sup> They do not consider other potential scenarios—for example that a couple would encounter repeated refusals until finally securing a cake—or considerations—for example, that the risk of refusal might be multiplied by the number of vendors a couple typically contracts with for their wedding. Finally, proponents of religious exemptions do not consider the question of how religious exemptions might *themselves* shape market alternatives. If religious exemptions encourage more refusals, or expand to other facets of public life, as Seigel, NeJaime, and others worry,

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<sup>75</sup> *Id.* at 627.

<sup>76</sup> Douglas Laycock & Thomas C. Berg, *Here's what you missed in the Supreme Court ruling in same-sex wedding cake case*, DALL. NEWS (June 14, 2018), <https://www.dallasnews.com/opinion/commentary/2018/06/14/missed-supreme-court-ruling-sex-wedding-cake-case>, archived as <https://perma.cc/QK9T-FYPH>.

<sup>77</sup> Thomas C. Berg & Douglas Laycock, *Masterpiece Cakeshop and Reading Smith Carefully: A Reply to Jim Oleske*, TAKE CARE (Oct. 30, 2017), <https://takecareblog.com/blog/masterpiece-cakeshop-and-reading-smith-carefully-a-reply-to-jim-oleske>, archived at <https://perma.cc/59PP-DKYT> (“The case would be different . . . if no other baker were readily available.”).

<sup>78</sup> Koppelman, *supra* note 71, at 644.

<sup>79</sup> Brief for Christian Legal Society et al. as Amici Curiae Supporting Petitioners at 30, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111) [hereinafter Berg & Laycock's Brief].

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then the premise of market alternatives could erode further.<sup>80</sup>

It is possible that the proponents of exemptions are not worried about the potential expansion of faith-based claims because they assume that no religious objector would shy away from expressing their objection under current legal prohibitions, and thus, the only live question is how the authorities choose to treat these inevitable objections. This type of thinking is implicit in Berg and Laycock's description of religious objectors:

Those bakers willing to turn away good business for religious reasons believe that they are being asked to defy God's will, disrupting the most important relationship in their lives, a relationship with an omnipotent being who controls their fates. They believe that they are being asked to do serious wrong that will torment their conscience for a long time after. Petitioner said he would be "dishonoring" and "displeasing" "the sovereign God of the universe."<sup>81</sup>

Berg and Laycock further write that "[t]he harm of regulation on the religious side is permanent loss of identity or permanent loss of occupation."<sup>82</sup> But is the assumption, that religious objection (where there is one) is an inevitable and fixed position, necessarily true? Or might different legal arrangements influence believers to either tolerate or object to same-sex marriage? This, again, is an open empirical question. If religious objection fluctuates in response to the availability of religious exemptions, and individuals who were willing to provide services to same-sex weddings become unwilling to do so once an exemption is announced, it is unclear that the vigor of Berg and Laycock's argument regarding the harm to religious objectors remains intact. In such case, more nuanced questions would need to be explored: What, really, is the magnitude of harm from not being able to refuse service to same-sex weddings? To what extent is refusal the only available religious response? And is it justified to exempt objectors for whom serving same-sex couples would truly disrupt the most important relationship

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<sup>80</sup> NeJaime & Siegel, *supra* note 67, at 2566–74. Koppelman is aware of this concern, but he dismisses such a "cascade" as unlikely given what he considers to be the irreversible trend in social attitudes towards gay couples. Koppelman, *supra* note 71, at 644.

<sup>81</sup> Berg & Laycock's Brief, *supra* note 79, at 31.

<sup>82</sup> *Id.* at 32.

in their lives, if such exemption also causes many other vendors to refuse service that they would have otherwise provided willingly?<sup>83</sup>

## II. THE *MASTERPIECE CAKESHOP* EXPERIMENT

### A. *The Motivation and Setting for the Experiment*

The primary purpose of the present experiment was to examine the contradicting empirical assumptions regarding the effects of religious exemptions on discrimination towards same-sex couples. These assumptions lie at the heart of the debate on religious exemptions, particularly in the context of weddings, yet neither side has actual data on the consequences of religious exemptions in this market or elsewhere. Even data on the more basic question—the scope of discrimination towards same-sex couples in the wedding industry or any business market—is lacking. These omissions have made it impossible to assess the merits of the opposing positions and have left the debate hanging in the air.

*Masterpiece Cakeshop* created an opportunity to evaluate these arguments in their most pressing setting. Based on the oral arguments, I anticipated that the Court would grant an exemption, in one format or another.<sup>84</sup> As “one of the most anticipated decisions of the term,”<sup>85</sup> the decision was also likely to draw extensive coverage and discussion in the public media (as it did), and thus potentially have an impact on public

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<sup>83</sup> This is not an exhaustive list of intriguing empirical questions. One question that I do not address in this Article is that of religious same-sex couples, and how harm to religious interests should be weighed when religion is on both sides of the conflict—the vendor *and* the couple. This could be addressed in future articles.

<sup>84</sup> This expectation was formed based on the comments of Justice Anthony Kennedy, the Court’s swing seat, who hinted that the Court thought that there was “a significant aspect of hostility to a religion in this case.” Transcript of Oral Argument, *supra* note 12, at 54. This became a dominant line of questioning from the conservative judges on the bench. *Id.* at 54–59. Justice Kennedy also said unequivocally, “Counselor, tolerance is essential in a free society. . . . It seems to me that the state in its position here has been neither tolerant nor respectful of Mr. Phillips’ religious beliefs.” *Id.* at 64.

<sup>85</sup> Amy Howe, *Opinion Analysis: Court Rules (Narrowly) for Baker in Same-Sex Wedding-Cake Case [Updated]*, SCOTUSBLOG (June 4, 2018), <https://www.scotusblog.com/2018/06/opinion-analysis-court-rules-narrowly-for-baker-in-same-sex-wedding-cake-case/>, archived at <https://perma.cc/S7LZ-BVZ2>.

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attitudes and conduct.<sup>86</sup>

When the decision was finally rendered on June 4, 2018, it received broad coverage and mixed responses. National, state, and local news outlets covered the decision and sought comment from local advocacy groups and politicians.<sup>87</sup> All mainstream outlets, including the New York Times, NBC News, and CNN, titled the decision a victory for the baker; they also called the decision “narrow,” explaining that it did not resolve the big constitutional questions at issue.<sup>88</sup> At the same time, many conservative leaders and religious liberty advocates hailed the decision as a victory, expressing significantly less reservations about its scope.<sup>89</sup> Fox News held a supportive

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<sup>86</sup> Katerina Linos & Kimberly Twist, *The Supreme Court, the Media, and Public Opinion: Comparing Experimental and Observational Methods*, 45 J. LEGAL STUD. 223, 247 (2016).

<sup>87</sup> See, e.g., Lauren McGaughy, *Supreme Court Sides With Baker Who Refused To Make Wedding Cake For Gay Couple*, DALL. NEWS (June 4, 2018), <https://www.dallasnews.com/news/lgbt/2018/06/04/supreme-court-sides-baker-refused-make-wedding-cake-gay-couple>, archived at <https://perma.cc/T68K-5XXG>; Emma Platoff, *What the U.S. Supreme Court's Masterpiece Cakeshop decision means for religious refusal laws in Texas*, TEX. TRIB. (June 5, 2018), <https://www.texastribune.org/2018/06/05/us-supreme-court-masterpiece-cakeshop-gay-ruling-religious-freedom-tex/>, archived at <https://perma.cc/BW9D-46TF>; Katie Simpson, *New Supreme Court Ruling May Affect Indiana Religious Freedom Lawsuit*, WFYI INDIANAPOLIS (June 4, 2018), <https://www.wfyi.org/news/articles/new-supreme-court-ruling-may-affect-indiana-religious-freedom-lawsuit>, archived at <https://perma.cc/D6YY-DTR5> (describing *Masterpiece* as a victory for religious exemptions which may assist conservative groups to challenge Indiana's “weakening religious freedom protections”).

<sup>88</sup> Mark Goldfeder, *How the Supreme Court (respectfully) kicked the cake down the road*, CNN (June 6, 2018), <https://edition.cnn.com/2018/06/04/opinions/supreme-court-masterpiece-cakeshop-goldfeder/index.html>, archived at <https://perma.cc/HAG8-UEGC> (“Initial reviews . . . mostly imply that it was a very narrow ruling and is therefore somewhat unremarkable.”); Adam Liptak, *In Narrow Decision the Supreme Court Sides with Baker Who Turned Away Gay Couple*, N.Y. TIMES (June 4, 2018), <https://www.nytimes.com/2018/06/04/us/politics/supreme-court-sides-with-baker-who-turned-away-gay-couple.html>, archived at <https://perma.cc/655G-72YQ> (“The court’s decision was narrow . . . . The court passed on an opportunity to either bolster the right to same-sex marriage or explain how far the government can go in regulating businesses run on religious principles.”); Pete Williams, *In narrow ruling, Supreme Court gives victory to Baker Who Refused To Make Cake For Gay Wedding*, NBC NEWS (June 4, 2018), <https://www.nbcnews.com/politics/supreme-court/narrow-ruling-supreme-court-gives-victory-baker-who-refused-make-n872946>, archived at <https://perma.cc/KXG3-74PY> (“[T]he opinion was a narrow one, applying to the specific facts of this case only.”).

<sup>89</sup> Emilie Kao, *Why the Supreme Court's Ruling for a Christian Baker Was Not 'Narrow'*, DAILY SIGNAL (June 12, 2018), <https://www.dailysignal.com/2018/06/12/why-the-supreme-courts-ruling-for-a-christian-baker-was-not-narrow/>, archived at <https://perma.cc/ECS6-7D72> (“the decision . . . expos[ed] a huge fallacy in the ACLU’s

interview with Phillips, who defined the decision as a “big win.”<sup>90</sup> Leaders of the U.S. Conference of Catholic Bishops released a joint statement applauding the decision, saying that it “confirms that people of faith should not suffer discrimination on account of their deeply held religious beliefs, but instead should be respected by government officials,” emphasizing the decision’s expression of pluralism and tolerance.<sup>91</sup> The Family Research Council released a statement that the decision “made clear that the government has no authority to discriminate against Jack Phillips because of his religious beliefs” and that the “ruling means Jack will remain free to live according to his beliefs whether he is at work, at home, or in his place of worship.”<sup>92</sup> These statements do not betray any doubt about the scope of the decision or mention its recognition of the important role of AD laws in

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main argument in the case . . . The court’s clear rejection of the discrimination argument has implications for many of the other conflicts currently brewing between religious freedom and sexual orientation.”); *Victory for Colorado Cake Case*, LIBERTY COUNS. (June 4, 2018), <https://www.lc.org/newsroom/details/060418-victory-for-colorado-cake-case>, archived at <https://perma.cc/9M8L-QZ23> (“Though the Court focused on the explicit hostility exhibited by the Colorado Civil Rights Commission in this specific instance, this significant decision will have a wide impact regarding the clash between free speech and the LGBT agenda, including laws that add ‘sexual orientation’ and ‘gender identity.’”).

<sup>90</sup> *Colorado Baker Reacts to 'Big Win' in Same-Sex Wedding Cake Case*, FOX NEWS INSIDER (June 5, 2018), <https://insider.foxnews.com/2018/06/05/same-sex-wedding-cake-case-colorado-baker-jack-phillips-supreme-court-ruling-was-big-win>, archived at <https://perma.cc/3Z2C-PDRP>; see also Todd Starnes, *A win for Masterpiece Cakeshop but it ain't over yet*, FOX NEWS (June 4, 2018), <https://www.foxnews.com/opinion/todd-starnes-a-win-for-masterpiece-cakeshop-but-it-aint-over-yet>, archived at <https://perma.cc/8STY-5Q5Z> (“Monday’s ruling should give some comfort to Christian business owners who primarily service the wedding industry – gay rights do not necessarily trump everyone else’s rights.”). Other coverage by Fox News was more careful in discussing the limitations of the decision. See, e.g., Bill Mears & Judson Berger, *Supreme Court sides with Colorado baker who refused to make wedding cake for same-sex couple*, FOX NEWS LIVE (June 4, 2018), <https://www.foxnews.com/politics/supreme-court-sides-with-colorado-baker-who-refused-to-make-wedding-cake-for-same-sex-couple>, archived at <https://perma.cc/6YHF-XMS9> (“The narrow ruling here focused on what the court described as anti-religious bias on the Colorado Civil Rights Commission when it ruled against baker Jack Phillips.”).

<sup>91</sup> *Religious freedom groups praise Supreme Court's Masterpiece ruling*, CATH. NEWS AGENCY (June 4, 2018), <https://www.catholicnewsagency.com/news/religious-freedom-groups-praise-supreme-courts-masterpiece-ruling-57089>, archived at <https://perma.cc/NV9W-38UR>.

<sup>92</sup> *Supreme Court Ruling a Victory for Freedom of Colorado Baker to Live by his Faith, says Family Research Council*, FAM. RSCH. COUNCIL (June 4, 2018), <https://www.frc.org/newsroom/supreme-court-ruling-a-victory-for-freedom-of-colorado-baker-to-live-by-his-faith-says-family-research-council>, archived at <https://perma.cc/4Q7L-Q5FX>.



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protecting against sexual orientation discrimination.

Some progressive commentators observed these enthusiastic responses and voiced concerns that *Masterpiece Cakeshop* will grant objectors a license to discriminate. Gay and Lesbian Alliance Against Defamation (“GLAAD”) President and CEO, Sarah Kate Ellis, said that it “leaves the door wide open for religious exemptions to be used against LGBTQ people.”<sup>93</sup> Annise Parker, the President of the LGBTQ Victory Institute, further warned that, “[h]omophobic forces will purposefully over-interpret the ruling and challenge existing non-discrimination laws by refusing service to LGBTQ people in even more situations.”<sup>94</sup> NBC News columnist, Scott Lemieux, wrote that the decision “presents a serious risk of undermining civil rights law in the name of religious freedom, especially given that it invites yet further suits for the court to consider.”<sup>95</sup>

This combination of factors—a highly anticipated decision, a court that appeared positioned to exempt the religious objector, and the massive coverage that followed the decision and communicated the above messages—created a favorable setting for the empirical test of the effects (or lack thereof) of religious exemptions on sexual orientation discrimination. In a previous study, Professors Katerina Linos and Kimberly Twist found that Supreme Court decisions can increase support for controversial policies that were vindicated by the Court (e.g., the Affordable Care Act), even when the court was divided and the decision was nuanced.<sup>96</sup> Similarly, three recent studies, measuring the effect of the legalization of same-sex marriage on public attitudes, documented an increase in perceptions that social norms support same-sex marriage<sup>97</sup> and an increase in personal support for same-

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<sup>93</sup> Nico Lang, *Hate Groups Want to Exploit Masterpiece Cakeshop Ruling as a License to Discriminate*, INTO (June 4, 2018), <https://www.intomore.com/impact/hate-groups-want-to-exploit-masterpiece-cakeshop-ruling-as-a-license-to-discriminate/>, archived at <https://perma.cc/7DLD-67AR>.

<sup>94</sup> *Id.*

<sup>95</sup> Scott Lemieux, *How the 'Narrow' Ruling in Masterpiece Cakeshop Could Undermine Future Civil Rights Cases*, NBC NEWS (June 5, 2018), <https://www.nbcnews.com/think/opinion/how-narrow-ruling-masterpiece-cakeshop-could-undermine-future-civil-rights-ncna879976>, archived at <https://perma.cc/YM2M-9EZ6>.

<sup>96</sup> Linos & Twist, *supra* note 86, at 247.

<sup>97</sup> Margaret E. Tankard & Elizabeth Levy Paluck, *The Effect of a Supreme Court Decision Regarding Gay Marriage on Social Norms and Personal Attitudes*, 28 PSYCH. SCI. 1334, 1339 (2017).

sex marriages<sup>98</sup> post-*Obergefell*, as well as a sharper decrease in antigay bias in states that legalized same-sex marriage compared with those that did not.<sup>99</sup> All of these studies were based on attitudinal surveys conducted shortly before and after the decisions or acts of legislation, sometimes with an additional experimental component that randomized the framing of the decision or the information provided on the decision. Yet none of these studies examined the implications of Supreme Court decisions on the behavior of decision-makers pertinent to the subject matter of the decision (in the present case, how wedding vendors are influenced from a decision pertinent to the wedding industry).

In addition, previous studies did not investigate whether effects of Supreme Court decisions vary between socio-legal regimes. As Part II explained, the variation in how states regulate sexual orientation discrimination and religious freedom is potentially important in the present case, as these background regimes yield different expectations about the legal outcomes of otherwise identical cases. These expectations could have directed wedding vendors towards different behaviors and could have differentiated their response to the *Masterpiece Cakeshop* decision. For example, business in regimes that resemble Colorado—with AD laws and without RFRA—might refuse service to same-sex couples to a greater extent post-*Masterpiece Cakeshop* if they believe that *Masterpiece Cakeshop* relaxed their AD obligations. One may also expect this change to be more pronounced in overlap regimes, because the existence of a RFRA could strengthen the impression that businesses are likely to secure an exemption post-*Masterpiece Cakeshop*. In contrast, businesses in regimes that have never enacted AD laws have no legal basis to change their behavior. For these businesses, the law has not changed: they are as free to discriminate after *Masterpiece Cakeshop* as they were before the ruling. All these hypotheses should be couched in the general caveat that businesses are not necessarily well versed in the law. Therefore, it is also possible that businesses in different legal regimes would not respond differently to *Masterpiece*

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<sup>98</sup> Emily Kazyak & Mathew Stange, *Backlash or a Positive Response?: Public Opinion of LGB Issues After Obergefell v. Hodges*, 65 J. HOMOSEXUALITY 2028, 2040 (2018).

<sup>99</sup> Eugene K. Ofosu et al., *Same-Sex Marriage Legalization Associated With Reduced Implicit And Explicit Antigay Bias*, 116 PROC. NAT'L ACAD. SCI. U.S. 8846, 8849–51 (2019).

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*Cakeshop*. But then again, laws are not enacted at random, but are the product of certain social and political conditions. These conditions could in turn influence the acceptance and interpretation of the decision, even if businesses are not directly aware of their rights and obligations under the law. In short, investigating differences between socio-legal regimes is vital to understand whether the effect of a national Supreme Court decision is general or varies from one regime to another.

In sum, *Masterpiece Cakeshop* provided a unique opportunity to study the behavioral effect of providing a religious exemption from antidiscrimination laws, a question of which no empirical data exist to date, and which bears heavily on contemporary legal debates. In addition, the present study goes deeper than previous studies in probing the relationship between the national Supreme Court “shock” and the preexisting sub-national legal structures that could vary the effect of the decision between otherwise similar regimes.

*B. Research Design*

To assess whether *Masterpiece Cakeshop* had an effect on sexual orientation discrimination in the wedding industry, I combined methods from natural (pseudo) experiments and field experiments. As in such experiments, I examined the behavior of wedding businesses in two periods: before (May 8–15, 2018) and after (June 13–20, 2018) the decision (June 4, 2018). As in field experiments, the methods aimed to control for both the setting of the examination and the allocation of sexual orientation treatment between businesses, to allow for causal inference.

Sample construction began with a preliminary comparison of all states, to find those that were most comparable in their overall characteristics yet differed in legal regime. Four states were selected: Indiana, Texas, Iowa, and North Carolina. Table 1 shows that these states have roughly the same attitudinal and economic characteristics yet vary in how they regulate religious freedom and public accommodations. North Carolina has no RFRA and no AD law at any level of government (-RFRA, -AD). Iowa has no RFRA (at any level of government), but has a state AD law (-RFRA, +AD).<sup>100</sup>

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<sup>100</sup> IOWA CODE § 216.7 (2017). Notably, the Iowa Supreme Court has been a

Indiana and Texas model together the two final categories: both have state RFRA<sup>101</sup> and no state AD laws, yet some jurisdictions within these states have local AD laws.<sup>102</sup> Texas and Indiana jurisdictions with AD laws model the +RFRA, +AD category, whereas Texas and Indiana jurisdictions without such laws model the +RFRA, -AD category.

TABLE 1 – CHARACTERISTICS OF SAMPLED REGIMES

Criterion	Definition	IA <sup>103</sup>	NC <sup>104</sup>	IN <sup>105</sup>	TX <sup>106</sup>	Dallas	Houston
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trailblazer for gay rights, striking down Iowa’s anti-sodomy law twenty-seven years before the U.S. Supreme Court did the same in *Lawrence v. Texas*, 539 U.S. 558, 578–79 (2003). *State v. Pilcher*, 242 N.W.2d 348, 359–60 (Iowa 1976) (en banc) (holding Iowa’s criminal anti-sodomy law unconstitutional under the Fourteenth Amendment as applied to “adult persons of the opposite sex”). Iowa also became the third state in the nation to allow same-sex couples to marry when the Iowa Supreme Court legalized same-sex marriage in *Varnum v. Brien*, 763 N.W.2d 862, 907 (Iowa 2009). *See also Iowa Supreme Court legalizes gay marriage*, NBC NEWS (Apr. 3, 2009), <https://www.nbcnews.com/id/wbna30027685>, archived at <https://perma.cc/Q6BH-2LUD>. RFRA has been repeatedly proposed and rejected in the state legislature. Barbara Rodriguez, *Controversial ‘religious freedom’ bill gets another look at Iowa Capitol*, DES MOINES REG. (Feb. 18, 2019), <https://www.desmoinesregister.com/story/news/politics/2019/02/18/iowa-republicans-religious-freedom-restoration-act-capitol-rfra-discrimination-bill/2909230002/>, archived at <https://perma.cc/CT95-6RPZ>.

<sup>101</sup> IND. CODE § 34-13-9 (2015); TEX. CIV. PRAC. & REM. CODE ANN § 110.011 (1999).

<sup>102</sup> Jurisdictions in Indiana with AD laws include Indianapolis, Fort Wayne, Evansville, Bloomington, Muncie, South Bend, and Terre Haute. *Indiana’s Equality Profile*, supra note 55. Jurisdictions in Indiana without AD laws include West Lafayette. *Id.* Jurisdictions in Texas with AD laws include Dallas, San Antonio, Austin, El Paso, Plano, and Fort Worth. *Texas’ Equality Profile*, supra note 55. Jurisdictions in Texas without AD laws include Houston, Irving, Arlington, Corpus Christi, Lubbock, Garland, Amarillo, Grand Prairie, Brownsville, McKinney, Killeen, McAllen, Waco, Denton, Round Rock, and College Station. *Id.*

<sup>103</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN IOWA (2015), <https://www.pewforum.org/religious-landscape-study/state/iowa/>, archived at <https://perma.cc/2X9G-YX76>.

<sup>104</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN NORTH CAROLINA (2015), <https://www.pewforum.org/religious-landscape-study/state/north-carolina/>, archived at <https://perma.cc/3NGA-EPKU>.

<sup>105</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN INDIANA (2015), <https://www.pewforum.org/religious-landscape-study/state/indiana/>, archived at <https://perma.cc/TGF4-5LQ5>.

<sup>106</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN TEXAS (2015), <https://www.pewforum.org/religious-landscape-study/state/texas/>, archived at

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						Metro, TX <sup>107</sup>	Metro, TX <sup>108</sup>
GDP (\$) <sup>109</sup>		59,978	54,442	55,173	61,168	--	--
Importance of Religion	Religion is Somewhat/Very Important (National average: 77%)	79%	84%	78%	86%	85%	83%
% Conservatives	(National average: 36%)	41%	40%	41%	39%	41%	38%
% Evangelicals	(National average: 25%)	28%	35%	31%	31%	38%	30%
Attitudes Towards Homosexuals	“Homosexuality should be discouraged” (National average: 31%)	36%	36%	37%	36%	35%	39%
Attitudes Towards Same- Sex Marriage	Opposing/Strongly Opposing Same- Sex Marriage (National average: 39%)	41%	45%	45%	46%	44%	51%
State RFRA <sup>110</sup>		No	No	Yes	Yes	Yes	Yes
State/Local AD law <sup>111</sup>		Yes	No	Some	Some	Yes	No

Two reasons were responsible for the choice of Texas and Indiana as models of the overlap category (+RFRA, +AD) and the +RFRA, -AD category. As Part II describes, there are three versions of the overlap between RFRA and AD laws: (1) states that enacted both laws; (2) states that enacted an AD law and whose courts interpret the constitution to provide a RFRA-like standard; and (3) local AD laws within RFRA states. The primary reason

<https://perma.cc/DNF2-4PPF>.

<sup>107</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN THE DALLAS METRO AREA (2015), <https://www.pewforum.org/religious-landscape-study/metro-area/dallasfort-worth-metro-area/>, archived at <https://perma.cc/9XQ4-79JH>.

<sup>108</sup> PEW RSCH. CTR., RELIGIOUS LANDSCAPE STUDY: ADULTS IN THE HOUSTON METRO AREA (2015), <https://www.pewforum.org/religious-landscape-study/metro-area/houston-metro-area/>, archived at <https://perma.cc/5F7L-Y3ZS>.

<sup>109</sup> GDP per capita was calculated based on data from the second quarter of 2018. BUREAU OF ECON. ANALYSIS, U.S. DEP'T OF COM., GROSS DOMESTIC PRODUCT BY STATE: SECOND QUARTER 2018 (2018).

<sup>110</sup> IND. CODE § 34-13-9 (2015); TEX. CIV. PRAC. & REM. CODE ANN § 110.011 (1999).

<sup>111</sup> This refers to public accommodation laws that apply to private businesses and are enacted at the state or city level.

for choosing the third version to model the overlap category was that the demographic and attitudinal characteristics of the four states that enacted both laws (RI, CN, NM, IL) and the states that had a RFRA without an AD law differed widely from states in the three other categories. Second, as Part II discusses, the particular RFRA design in the first overlap category was not conducive for the examination of the tension between RFRA and AD laws, while the second overlap category raised considerable uncertainty regarding the existence of the same tension. Texas and Indiana provided an adequate demographic and attitudinal comparison to the other legal categories, as well as clarity regarding the classification of their legal regimes.

To be sure, I do not argue that the design is capable of identifying a *causal relationship* between specific regimes and behavioral outcomes (as I will show next, other features of the design allow for the identification of a causal relationship in the entire sample, *across* legal regimes). First, background laws—unlike the experimental treatment—are not randomly assigned. They cannot be easily separated from the underlying political and social climate that produced them.<sup>112</sup> In addition, unlike the *Masterpiece Cakeshop* decision, they are not new, so their effect cannot be studied as a pseudo, natural experiment. Second, as discussed above, while different laws provide different behavioral guidance, businesses may not be fully aware of laws' dictates. Nevertheless, it is important to study the variation between legal regimes—if not for the direct impact of law, then for the potential impact of the underlying socio-political structures that the law reflects. Had I only sampled from one regime, important real-world variation would have been masked. Exploring how businesses in different regimes respond to *Masterpiece Cakeshop* is necessary, even if the results are only suggestive and causal inference is limited.

The sample was built by collecting information on photographers, bakers, and florists in each legal regime through a Google search, aiming to include 250 vendors per regime.<sup>113</sup> Only vendors who published an email address

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<sup>112</sup> In addition, the law is determined not only based on acts of the legislature but also based on judicial decisions and administrative directives that interpret the enacted rule. I attempted to account for those—for example, by not sampling from overlap states where courts interpreted RFRAs as providing no protection against AD claims—but it is very difficult to account for all interactions between judge-made law and legislated law.

<sup>113</sup> For an extended discussion of the sample, see Barak-Corren, *supra* note 18, at 12–

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were sampled.<sup>114</sup> Vendors were contacted by email, a highly common method for communication in the wedding market. There is ample guidance online on how to write an email to potential vendors, and multiple websites assume that email is the default or best form of communication with vendors.<sup>115</sup>

Next, sixteen fictitious email profiles were created to facilitate the experiment. In order to assess the baseline discrimination pattern, each business received two emails prior to *Masterpiece Cakeshop* from two different “couples”: a same-sex couple (first wave) and a different-sex couple (second wave). The couples’ sexual orientation was made evident by their names. The name of the sender, appearing in the profile information and the signature, was a generic American male name (John, Robert, Dylan, Scott). The name of the prospective spouse appeared inside the body of the email and was a generic name for an American male or female, depending on the couple’s identity (Adam, Paul, Harry; Ashley, Rebecca, Jessica).<sup>116</sup> The

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17. The choice of vendors was influenced by recent cases in which businesses refused service to same-sex couples. *See, e.g.*, *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019) (florists); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018) (bakers); *Elane Photography, L.L.C. v. Willock*, 309 P.3d 53 (N.M. 2013) (photographers).

<sup>114</sup> Vendors that did not publish an email address typically had an online application form on their website, reducing the potential concern that the sample is biased towards technology-oriented vendors.

<sup>115</sup> *See, e.g.*, Kelsey Malie, *How to Successfully Communicate With Your Wedding Vendors*, (Mar. 29, 2018), <http://www.kelseymaliecalligraphy.com/blog/2018/3/29/how-to-successfully-communicate-with-your-wedding-vendors>, *archived at* <https://perma.cc/JD6V-M3KY> (“An email is usually the preferred method for inquiries as it allows the vendor to keep track of your conversation, respond in length and from a desktop, and allows them to easily attach files, reference links, and more.”); Kim Forrest, *7 Ways to Effectively Communicate With Wedding Vendors*, WEDDINGWIRE (Feb. 13, 2017), <https://www.weddingwire.com/wedding-ideas/7-ways-to-effectively-communicate-with-wedding-vendors>, *archived at* <https://perma.cc/RNK2-U55G> (assuming at least some communication is done via email); Adair Currie, *How to Email Potential Wedding Vendors*, EVERY LAST DETAIL (Feb. 3, 2015), <https://theeverylastdetail.com/email-potential-wedding-vendors/>, *archived at* <https://perma.cc/32UF-38KE> (providing guidance on how to write emails to potential wedding vendors).

<sup>116</sup> These are highly popular names of men and women respectively (and not of the other gender), for people born in the U.S. in the 1980s and 1990s. *See, e.g.*, SOC. SEC. ADMIN., TOP NAMES OF THE 1990S, <https://www.ssa.gov/oact/babynames/decades/names1990s.html>, *archived at* <https://perma.cc/JT2B-XJTW>. Those years are the relevant age cohorts for marriage in 2018, when the experiment was conducted. In 2018, the median age for marriage in the U.S. was 30 for men and 28 for women. *See* A.W. Geiger & Gretchen Livingston, *8 Facts About Love and Marriage in America*, PEW RSCH. CTR. (Feb. 13, 2019),

emails had similar properties, including similar information about the fictitious couple and the service requested from the vendor; they were written in the same level of cordiality. Small, meaningless changes were inserted to diminish suspicion (including variations in font size, font color, signature style, and profile pictures).<sup>117</sup> The emails were sent one week apart, about the same time during the week and day, with an intentional hour lag to reduce suspicion.<sup>118</sup>

A week after *Masterpiece Cakeshop*, on June 13, all businesses were randomized to receive an email from a same-sex or a different-sex couple (third wave); and on the following week, each business received an email from the opposite-orientation couple (fourth wave). In each third and fourth wave, the two emails had similar properties and were different from the two pre-*Masterpiece Cakeshop* emails. Each email was always sent from a profile that has not contacted that business before. Altogether, each business received four different emails from four different profiles. Following the same procedure and schedule, a “control” group of businesses were contacted in the third and fourth waves.<sup>119</sup> These businesses were contacted for the first time after the decision, to evaluate the possibility that the repeated measurement of the experimental procedure had an independent effect on business behavior.<sup>120</sup>

### C. Strengths and Weaknesses of the Experiment

The experimental design has multiple methodological strengths. First, it combines two of the most powerful methods for causal inference—pseudo-experiments and field experiments—to enable the study of an actual, concrete event—the *Masterpiece Cakeshop* decision—in a controlled setting. Second,

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<https://www.pewresearch.org/fact-tank/2019/02/13/8-facts-about-love-and-marriage/>, archived at <https://perma.cc/UL9E-FKVE>.

<sup>117</sup> See Barak-Corren, *supra* note 18, online app. § OA1, at 1–10, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/05/Online-Appendix-final.pdf>, archived at <https://perma.cc/GF73-AHXU>. All email versions are included in this section of the appendix. *Id.*

<sup>118</sup> Barak-Corren, *supra* note 18, at 18. A small group of subjects received each email 24 or 48 hours after the main group, due to logistical issues. *Id.* at 18 n.22.

<sup>119</sup> *Id.* at 17. There were 251 vendors. *Id.* Additional details on the composition of the control group can be found at this source. *Id.*

<sup>120</sup> *Id.* at 17–20. Further details on the procedure and treatment of the data can be found at this source. *Id.*



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sending carefully designed materials of fictitious individuals instead of real auditors creates a controlled setting for the study and removes inadvertent auditor biases.<sup>121</sup> The emails enable controlling the couple's identities, how they represent themselves to businesses, the exact content of the inquiry, and the timing of the inquiry. All of these are very difficult to achieve in studies that employ real testers (audit studies). Although testers can be trained to behave similarly, it is impossible to erase the numerous differences between real people, or control for nuances in tone and facial expressions that can disclose the auditors' attitudes or that their search for a job/service is ingenuine.<sup>122</sup> In addition, while email inquiries do not capture the entire variation in how couples interact with vendors, emails are one of the most common methods of communication between couples and vendors, especially in the inquiry phase.<sup>123</sup> To the extent that the process of negotiating with vendors has even moderate friction, one would expect that reduced positive responses to emails would ultimately translate into less market opportunities for same-sex couples. Third, the outcome measure—agreement to provide services to the couple—is less crude than, for example, callbacks in employment experiments that were used in previous prominent studies.<sup>124</sup> This is because the conflict about discrimination in wedding services focuses on the specific stage of the transaction that is studied here: the initial inquiry about the service.<sup>125</sup>

Alongside these strengths, the experiment also has limitations. First, similar to other studies of discrimination in the field, I study asynchronous communication rather than face to face or phone communication.<sup>126</sup> As noted, there are good reasons for that. However, how the results translate to additional methods of communication remains an open question and a topic for a future study. In addition, the experiment examines willingness to

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<sup>121</sup> Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 993–94 (2004).

<sup>122</sup> *Id.*

<sup>123</sup> *See, e.g.*, sources cited *supra* note 115.

<sup>124</sup> Bertrand & Mullainathan, *supra* note 121, at 997.

<sup>125</sup> *See* Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n, 138 S. Ct. 1719, 1724 (2018) (inquiry about purchasing a cake); State v. Arlene's Flowers, Inc., 441 P.3d 1203, 1211 (Wash. 2019) (inquiry about floral arrangements); Elane Photography, L.L.C. v. Willock, 309 P.3d 53, 59–60 (N.M. 2013) (inquiry about wedding photos).

<sup>126</sup> Bertrand & Mullainathan, *supra* note 121, at 991–93.

provide service to male couples and does not examine impacts on lesbian or non-binary couples or couples with distinctively Black or non-white names, nor does it explore the intersectionality of gender and race. This, too, could be a topic for a future study.<sup>127</sup>

An additional limitation, resulting from the pseudo- and controlled experiment design, is that I examine the effect of *Masterpiece Cakeshop* in a relatively short time span: several weeks after the ruling. While collecting more observations would have been desirable, it was not possible to continue isolating the effect of the decision from intervening political developments beyond that period. I explain this in more length in the discussion.

TABLE 4: OVERALL RESPONSE RATES IN EACH WAVE

Wave	Overall Response Rate
W1	70.8
W2	58.7
W3	63.4
W4	61.9

Finally, I encountered a large attrition of businesses in the second wave of inquiries before *Masterpiece Cakeshop* (see Table 4)—an issue that pervades studies that repeatedly measure the same respondents over time.<sup>128</sup>

<sup>127</sup> See, e.g., Kathryn M. Kroeper et al., *Marriage Equality: On the Books and on the Ground? An Experimental Audit Study of Beliefs and Behavior towards Same-Sex and Interracial Couples in the Wedding Industry*, 19 ANALYSES OF SOC. ISSUES & PUB. POL'Y 50 (2019). Kroeper's study was conducted before *Masterpiece*, finding that communications from same-sex couples were ignored more than communications from heterosexual and interracial couples. *Id.* at 66–67. The study did not find meaningful differences between gay and lesbian couples. See Kroeper et al.'s online supplement at 3. The comparisons and intersections explored in the study should be revisited, both because the sample size of each couple type was quite small, and because social norms may change, for example, because of decisions such as *Masterpiece Cakeshop*.

<sup>128</sup> See, e.g., Graham Kalton, *Designs for Surveys Over Time*, in SAMPLE SURVEYS: INFERENCE AND ANALYSIS 89, 101–03 (C. R. Rao & D. Pfeffermann eds., 2009); ALAN S. GERBER & DONALD P. GREEN, *FIELD EXPERIMENTS: DESIGN, ANALYSIS, AND*

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This pattern hindered the ability to detect discrimination in the pre-*Masterpiece Cakeshop* period, as the first wave of emails was from same-sex couples and the second wave of emails was from opposite-sex couples. While the causes for this attrition are not entirely clear (this is common to studies that encounter attrition),<sup>129</sup> a random phone survey suggested that businesses that provided no response to the second wave of emails were generally less responsive than other businesses (also over the phone), rather than suspicious or email fatigued.<sup>130</sup> To minimize the impact of attrition on the robustness of the design, I randomized couples' identity within each following wave. In addition, the following waves were designed to increase responsiveness by altering the style and formatting of the emails and the couples' profiles. This effort succeeded in increasing responsiveness to wave three and in reducing attrition between waves three and four. Nevertheless, I concede that the attrition of businesses from wave two prevents the evaluation of the existence and extent of sexual orientation discrimination before *Masterpiece Cakeshop*.<sup>131</sup> To overcome this pitfall and evaluate the effect of *Masterpiece Cakeshop* on the existence and extent of discrimination *after* the decision, I developed several strategies of analysis which I present next.

#### D. Findings

In this section, I present the core results of the *Masterpiece Cakeshop* field experiment.<sup>132</sup> The analysis begins by focusing on businesses that agreed to serve same-sex couples before *Masterpiece Cakeshop* and examining their behavior post-*Masterpiece Cakeshop*. The second analysis examines within-business changes of behavior across all businesses over time. I then move to examining differences between legal jurisdictions and between religious environments.

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INTERPRETATION 236–40 (Ann Shin ed., 1st ed. 2012).

<sup>129</sup> John Fitzgerald et al., *An Analysis of Sample Attrition in Panel Data: The Michigan Panel Study of Income Dynamics*, 33 J. HUM. RES. 251, 252 (1998).

<sup>130</sup> See Barak-Corren, *supra* note 18, online app. § OA3, at 11–14, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/05/Online-Appendix-final.pdf>, archived at <https://perma.cc/GF73-AHXU>.

<sup>131</sup> See *id.* § OA4.1, at 15–20. It is possible to infer that, prior to *Masterpiece Cakeshop*, opposite-sex couples were disfavored relative to same-sex couples (reverse discrimination), but this inference seems tenuous. To the extent it is true, the magnitude of the *Masterpiece Cakeshop* effect is much larger than estimated below.

<sup>132</sup> For elaborations, robustness checks, and follow up studies, see Barak-Corren, *supra* note 18.

1. Did *Masterpiece Cakeshop* Increase Discrimination Towards Same-Sex Couples?

To answer this question, I evaluate the impact of *Masterpiece Cakeshop* on the 576 businesses that agreed to serve same-sex couples before the decision. Examining their behavior after the decision can provide an answer as to whether *Masterpiece Cakeshop* had a negative effect on the willingness of businesses to provide services to same-sex couples. As all businesses, these previously “gay-friendly” businesses were randomized post-*Masterpiece Cakeshop* to receive an inquiry either from a same-sex or an opposite-sex couple (and then vice versa in the following wave, such that each business was contacted by both couples post-*Masterpiece Cakeshop*). This design allowed me to estimate the effect of *Masterpiece Cakeshop* precisely, using both within and between businesses data.

Overall, post-*Masterpiece Cakeshop* inquiries from a same-sex couple had a 66.3% chance of receiving a positive response. Equivalent inquiries from an opposite-sex couple have a 75.5% chance of being answered positively. This represents a difference of 9.2 percentage points, a 14% change, that can be solely attributed to the identity of the couple;<sup>133</sup> these results were stable and significant in both waves following *Masterpiece Cakeshop*.

How do businesses communicate negative responses to couples? The most common form of declining service is simply no response. This result is anticipated, as writing a negative response is both time-intensive and awkward, and the easiest way for a business to proceed is to ignore the inquiry.<sup>134</sup> While some non-responses may have had other causes—for example, non-receipt of the initial email or simple forgetfulness—we would expect such errors to distribute randomly and therefore equally across couple types. This is not the case. Opposite-sex couples had a 19.6% chance of not receiving a response to their inquiry, while same-sex couples had a 27.8% chance of not receiving a response. That is, the chance of same-sex couples to not receive a response was 42% higher.<sup>135</sup> In addition, while explicitly negative responses were less common, the increase in such responses for same-sex couples from before to after *Masterpiece Cakeshop* was 177% the

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<sup>133</sup>  $p = .0006$ . *Id.* at 24 tbl.5.

<sup>134</sup> See John F. Dovidio & Samuel L. Gaertner, *Aversive Racism*, 36 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 1, 10 (2004); cf. Bertrand & Mullainathan, *supra* note 121, at 1006.

<sup>135</sup>  $Z = 3.26$ ,  $p = .001$ . Barak-Corren, *supra* note 18, at 26.

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increase of such responses for opposite-sex couples.<sup>136</sup>

The negative effect of *Masterpiece Cakeshop* on the willingness to provide services to same-sex couples was consistent across additional analyses. I find the effect in the entire sample of businesses in the experiment (N=906): comparing the rate of positive responses to same-sex couples before and after *Masterpiece Cakeshop* yields a drop of 14.4 percentage points, or about 23% change. I find the negative effect also in the control group, where the gap between couple types after *Masterpiece Cakeshop* was 9.5 percentage points, or about 14% change. I also find this effect among the particularly keen group of businesses that responded positively to both couples before *Masterpiece Cakeshop*. While these businesses remain more responsive than any other group of businesses, they too differentiate significantly between same-sex and opposite-sex couples after *Masterpiece Cakeshop* (~7 percentage point difference, or about 8% change). The summary of these results is presented in Figure 1, which shows that all business cohorts respond to *Masterpiece Cakeshop* with unfavorable treatment of same-sex couples, notwithstanding different baselines of positive response rates that characterize each cohort separately. In all of these analyses, the *Masterpiece Cakeshop* effect is robust to the inclusion of all experimental covariates, such as the type of business, the legal regime, and so on. The effect is equally strong in urban areas, which are often assumed to be particularly inclusive of same-sex couples, and does not vary with political conservativeness. However, as I report in the next sub-section, the effect varies with religiosity of the business environment, such that businesses in areas dense with religious congregations are more likely to show substantial discrimination towards same-sex couples post-*Masterpiece Cakeshop*.

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<sup>136</sup>  $Z = 2.14, p = .03$ . Barak-Corren, *supra* note 18, online app. § OA4, at 19, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/05/Online-Appendix-final.pdf>, archived at <https://perma.cc/GF73-AHXU>.

Agreement to Serve Same-Sex and Opposite-Sex Couples After *Masterpiece Cakeshop*

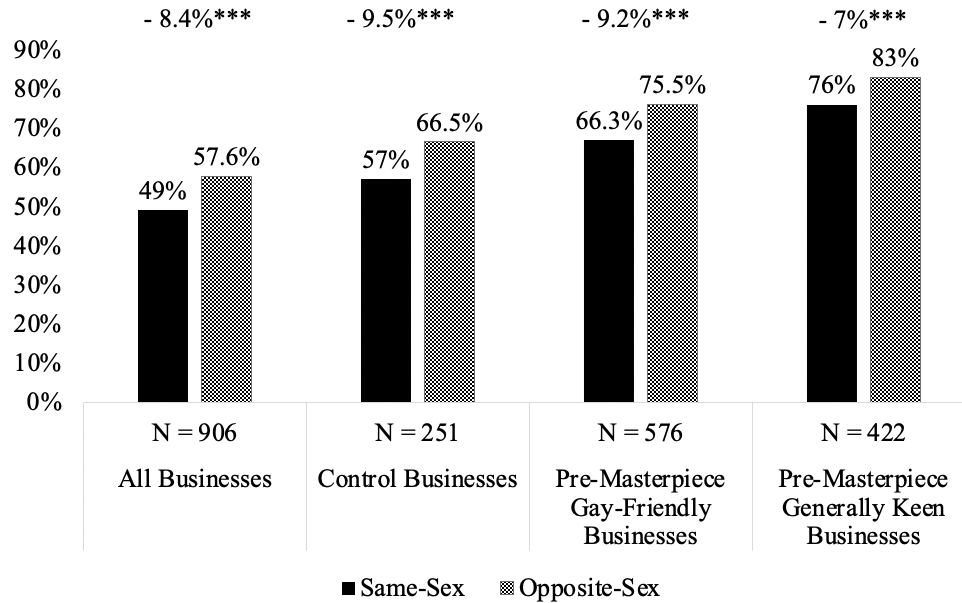


Figure 1.<sup>137</sup> The average positive response rate to same-sex and opposite-sex couples after the *Masterpiece Cakeshop* decision, by four groups of businesses: all businesses; businesses that were sampled for the first time after *Masterpiece Cakeshop* (control businesses); businesses that, prior to *Masterpiece Cakeshop*, were willing to serve same-sex couples (pre-*Masterpiece Cakeshop* gay-friendly businesses); and businesses that, prior to *Masterpiece Cakeshop*, were generally keen to serve all couples (pre-*Masterpiece Cakeshop* generally keen businesses). Gaps in percentage points are noted. \*\*\*  $p < .01$ .

2. What is the Magnitude of the *Masterpiece Cakeshop* Effect?

How substantial are these effects? Take the average 9% gap in willingness to serve same-sex and opposite-sex couples that was documented in the main analysis, as well as most additional analyses reported above. Now consider the typical couple that contracts with about ten vendors in the process of planning their wedding, including photographers, bakers, florists, videographers, venues, DJs, bridal/groom salons, calligraphers, jewelers, wedding planners, and more.<sup>138</sup> A conservative estimate of the number of

<sup>137</sup> *Id.* at 28.

<sup>138</sup> Photographers were generally less responsive (to all couples) than other businesses, but the negative effect of sexual orientation was robust across business types.

inquiries would be one per each business category, amounting to ten in total. A more liberal (some might say more representative) estimate assumes that each couple inquires with one or two potential vendors in each category, maybe more, amounting to at least 15–20 encounters. As each vendor-couple interaction presents an independent risk of incurring discrimination,<sup>139</sup> the aggregate risk that same-sex couples would encounter discrimination at least once in their interactions post-*Masterpiece Cakeshop* is a function of the average risk posed by each vendor and the overall number of interactions. This risk ranges from 61% for ten interactions to 85% for twenty interactions,<sup>140</sup> and can go higher (or lower) the more (or fewer) vendors a couple encounters.

### 3. Does the Effect of *Masterpiece Cakeshop* Vary Between Legal Regimes?

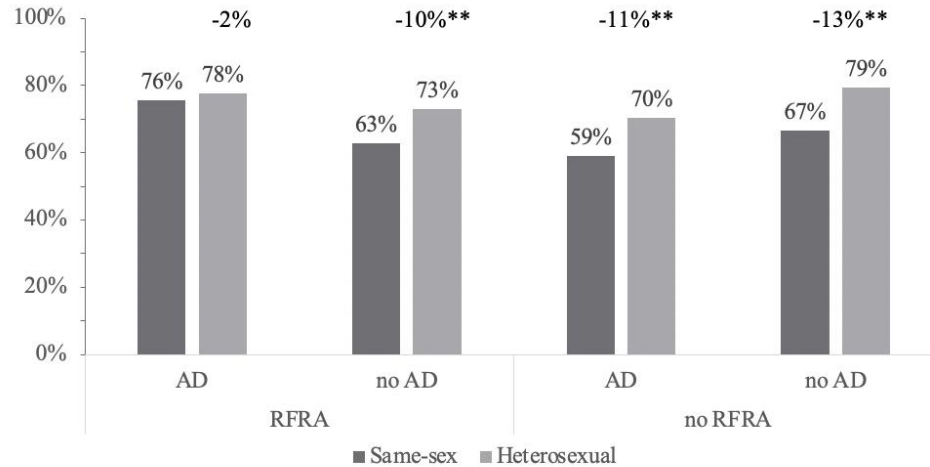
The results demonstrate a substantial reduction in businesses' willingness to provide services to same-sex couples, as compared with opposite-sex couples, after the *Masterpiece Cakeshop* decision. Next, this section asks how this effect displays in different socio-legal regimes. Because of space limitations, the results are summarized in Figure 2. Briefly, I find that *Masterpiece Cakeshop* had a highly statistically significant negative effect in all regimes, *except* for regimes that enacted both an AD law and a religious freedom law.

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<sup>139</sup> Clearly, independent vendors in one area could be different than independent vendors in another area, as areas differ in their levels of discrimination. In that sense, the risk posed by each vendor is not entirely independent from the risks posed by neighboring vendors. The *Masterpiece Cakeshop* effect was robust to county-level conservativeness and city size but varied with county-level religious density. On some aspects, then, the assumption of independence holds on average, and on other aspects the risk may vary with the environment. In any event, cases of revealed non-independence were rare and were removed from the sample. See Barak-Corren, *supra* note 18, online app. § OA2, at 10–11, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/05/Online-Appendix-final.pdf>, archived at <https://perma.cc/GF73-AHXU>.

<sup>140</sup> In probabilistic terms, the question is: what is the probability that at least one of the vendors will discriminate against the couple, given  $X$  vendors and that the average vendor poses a 9% discrimination risk? To answer the question, one needs to calculate the odds that *all*  $X$  vendors do *not* discriminate (91% per vendor) and subtract that from 1.  $P(\text{at least one vendor discriminates}) = 1 - 0.91^X$ . This probability is 0.61 for  $X=10$  vendors, 0.76 for  $X = 15$  vendors, 0.85 for  $X = 20$  vendors, and so on.

Impact of *Masterpiece Cakeshop* on Previously Gay-Friendly Businesses, by Legal Regime



Businesses = 576, Observations = 1,152

Figure 2. This figure presents the effect of *Masterpiece Cakeshop* on businesses operating in different legal regimes that prior to the decision agreed to provide services to same-sex couples. +RFRA, +AD regimes are counties in Indiana and Texas that are subject to state RFRA and have enacted local AD laws; +RFRA, -AD regimes are counties in Indiana and Texas that are subject to state RFRA and have not enacted local AD laws; the -RFRA, +AD regime comprises all counties in Iowa, a state that has enacted an AD law and no RFRA; the -RFRA, -AD regime comprises all counties in North Carolina, a state that has not enacted a RFRA and has not enacted an AD law, and had no county with such laws at the time of the experiment. See Table 1 for a socio-demographic comparison of the four regimes. \*\*  $p < .05$ ; \*\*\*  $p < .01$ .

4. Is the Effect of *Masterpiece Cakeshop* Shaped by Religiosity?

Finally, what role does religion play in business behavior? Given that the decision involves a religious exemption and received considerable attention in religious media, one may expect that businesses operating in more religious environments will be more sensitive to *Masterpiece Cakeshop*, and as a result, the effect will be more pronounced in these environments. This hypothesis is particularly plausible with respect to Evangelical-dominant areas, as Evangelical Christians have been involved in a large number of wedding conflicts and are the denomination with the lowest rates of support for same-sex marriage.<sup>141</sup> Although individual-level evidence on the

<sup>141</sup> PEW RSCH. CTR., U.S. PUBLIC BECOMING LESS RELIGIOUS 108–09 (2015), <https://www.pewforum.org/wp->



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religiosity of the businesses is unavailable in this study, I can examine the impact of the surrounding religious environment by observing the density of Evangelical congregations in the county where the businesses are located.

I explored this hypothesis using public data on county-level density of religious and particularly Evangelical congregations from the U.S. Religion Census.<sup>142</sup> These data help me examine whether religious environment influences previously gay-friendly businesses after *Masterpiece Cakeshop*.

Figure 3 plots the results. The top panel shows that the gap in agreement to serve same-sex and opposite-sex couples varied with the religiosity of the environment of the businesses. All of the businesses in this analysis agreed to serve same-sex couples before *Masterpiece Cakeshop*. After *Masterpiece Cakeshop*, however, businesses in religiously dense areas showed a large gap between same- and opposite-sex couples. In contrast, businesses in areas with few congregations do not significantly distinguish between same-sex and opposite-sex couples. Plotting the results against the density of Evangelical congregations provides very similar results, as the bottom panel of Figure 3 shows. The data for areas with very few congregations is somewhat noisy (only 32 businesses are located in counties where Evangelical density is 0.0004 or below), yet the general trend is the same: the sexual orientation service gap widens with Evangelical density. Notably, the percentage of businesses agreeing to provide services for opposite-sex couples is fairly stable across high- and low-religious/Evangelical density areas. The fluctuation occurs mostly with respect to same-sex couples.<sup>143</sup>

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content/uploads/sites/7/2015/11/201.11.03\_RLS\_II\_full\_report.pdf, archived at <https://perma.cc/NW2E-998M>.

<sup>142</sup> See generally CLIFFORD GRAMMICH ET AL., 2010 U.S. RELIGION CENSUS: RELIGIOUS CONGREGATIONS AND MEMBERSHIP STUDY (2012).

<sup>143</sup> For the results of the regression analyses that account for religious and Evangelical density, see Barak-Corren, *supra* note 18, online app. § OA4.6, at 30–32 tbl.OA4.8, <https://harvardcrcl.org/wp-content/uploads/sites/10/2021/05/Online-Appendix-final.pdf>, archived at <https://perma.cc/GF73-AHXU>.

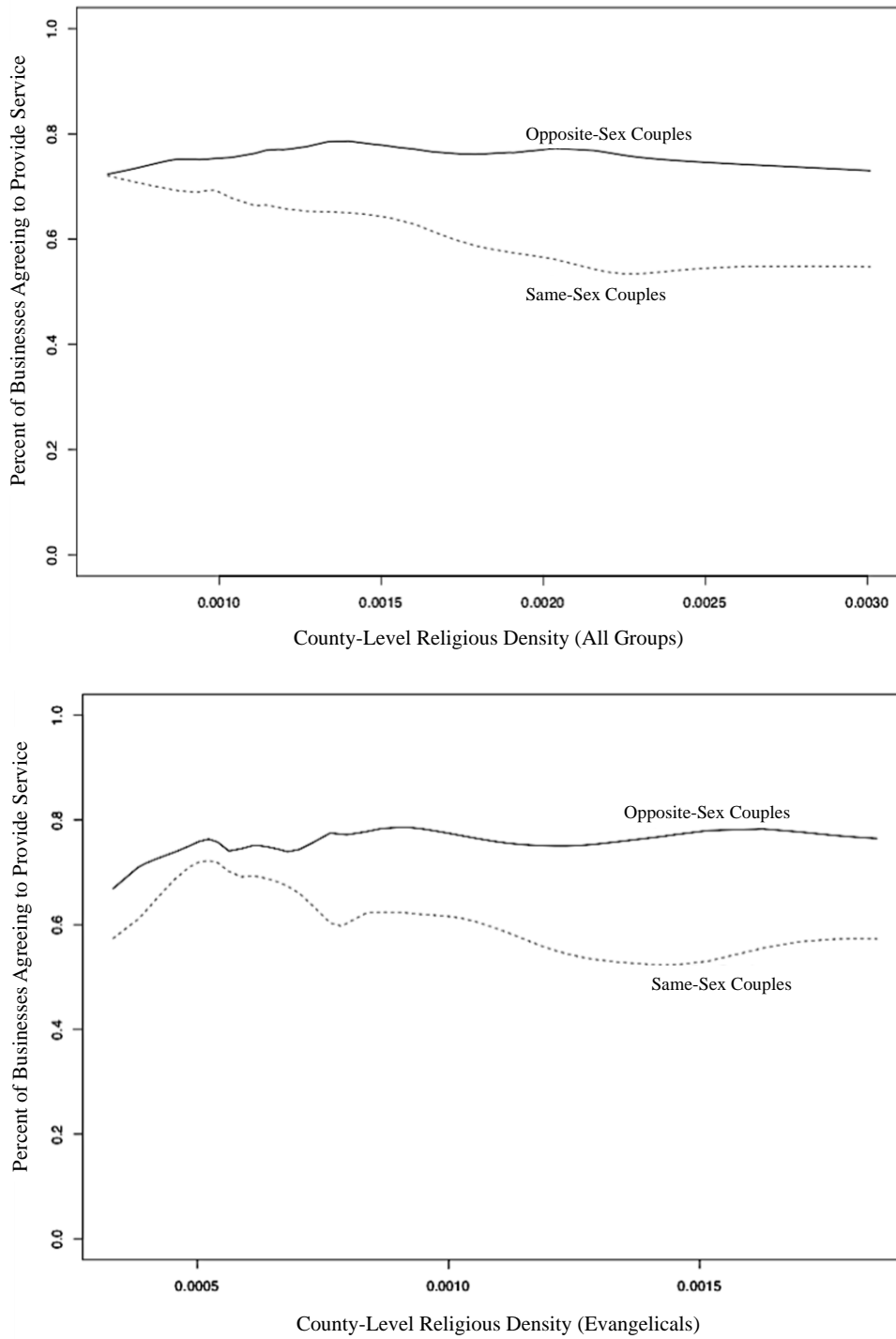


Figure 3. The agreement to serve same-sex and opposite-sex couples post-

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*Masterpiece Cakeshop* by businesses that provided positive responses to same-sex couples prior to *Masterpiece Cakeshop*, as a function of the religious environment. The top panel illustrates the results as a function of congregations density from all religious groups in the county where the business is located. The bottom panel illustrates the results as a function of the density of Evangelical congregations in the county.

These data demonstrate that the negative effect of *Masterpiece Cakeshop* is significantly concentrated in more religious environments. To get a concrete appreciation of the magnitude of this result, I compared businesses in high versus low Evangelical density environments (top 25% versus bottom 25%). In highly Evangelical environments, previously gay-friendly businesses developed a 20.5 percentage point gap between couples (78 percentage points versus 57.5 percentage points),<sup>144</sup> whereas in slightly Evangelical environments, the gap is 2.7 percentage points (70.6 percentage points versus 67.9 percentage points, and non-statistically significant). The same disparity between high and low religiosity areas is true for general religiosity as well.<sup>145</sup> These results are illustrative, yet it is important to note that the effect is not a binary but a continuum. Not only heavily religious (Evangelical) communities show the effect, but also intermediately religious communities, as Figure 3 demonstrates. These results indicate that businesses in more religious areas updated their behavior after *Masterpiece Cakeshop* significantly more than businesses in less religious areas.

### III. THE MASTERPIECE CAKESHOP EFFECT: EXPLANATIONS AND IMPLICATIONS

The field experiment findings exposed the highly consequential effect of law and the Supreme Court in particular on the behavior of the public. A methodological strength of the field experiment is that it tests the effect of *Masterpiece Cakeshop* directly before and after the decision was rendered, while controlling the setting of the study and employing randomization and is therefore able to isolate the decision's causal effect. It would have been desirable to continue examining *Masterpiece Cakeshop*'s effect later in time, but subsequent legal and political developments have severed the causal link between *Masterpiece Cakeshop* and the market, making such examination impossible. Shortly after the decision, legislatures in several states have

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<sup>144</sup>  $Z = 3.69, p = .0002$ . Barak-Corren, *supra* note 18, at 36.

<sup>145</sup> A 17.2 percentage point vs. 3.6 percentage point gap, respectively,  $Z = 3.133, p = .0017$ . *Id.*

proposed or revived new religious liberty bills<sup>146</sup> and two states surveyed in the experiment—Texas and North Carolina—passed legislation related to religious liberty or LGBTQ rights.<sup>147</sup> Given the constantly dynamic legal and political landscape on these issues, whatever has been the conduct of businesses during the intervening period, it can no longer be linked to *Masterpiece Cakeshop*. The *Masterpiece Cakeshop* field experiment therefore provides the cleanest test of the decision's impact and speaks for the consequences directly stemming from the decision itself.

A. *Explaining the Masterpiece Cakeshop Discriminatory Effect*

What explains the general effect of the *Masterpiece Cakeshop* decision on wedding vendors? Why do they change their behavior after the decision is rendered? Elsewhere, I considered two types of mechanisms that could explain the effect: *cognitive* and *social*.<sup>148</sup>

There are two primary cognitive explanations for the results: a law-and-economics-type explanation and an expressive-law-type explanation. The law-and-economics explanation is that *Masterpiece Cakeshop* was interpreted by vendors as a relief of previously-anticipated penalties for discrimination, or as a signal that the Court has little intention to enforce AD laws. In economic terms, *Masterpiece Cakeshop* may have influenced perceptions regarding the probability of sanction and/or the likelihood of enforcement. The problem with this explanation is that it is less plausible in light of the design of the experiment and its findings. First, for *Masterpiece*

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<sup>146</sup> This includes Iowa and Texas. See Rodriguez, *supra* note 100; Emma Platoff, *Texas Senate approves occupational licensing bill LGBTQ advocates call a "license to discriminate"*, TEX. TRIB. (Apr. 2, 2019), <https://www.texastribune.org/2019/04/02/texas-senate-religious-refusal-LGBTQ-occupational-licensing/>, archived at <https://perma.cc/J2EQ-GF5H> (reporting on S.B. 17, which would allow occupational license holders to cite sincerely held religious beliefs as a defense for license-threatening conduct or speech).

<sup>147</sup> Emma Platoff, *Texas House passes religious liberty bill amid LGBTQ Caucus' objections*, TEX. TRIB. (May 20, 2019), <https://www.texastribune.org/2019/05/20/texas-religious-liberty-bill-passes-lgbtq-caucus-fear-hateful-rhetoric/>, archived at <https://perma.cc/5LJF-K2J2>; Tim Fitzsimons, *N. Carolina is first in South to ban state funding for conversion therapy*, NBC NEWS (Aug. 3, 2019), <https://www.nbcnews.com/feature/nbc-out/n-carolina-first-south-ban-state-funding-conversion-therapy-n1038846>, archived at <https://perma.cc/2Y27-4SB3>.

<sup>148</sup> Barak-Corren, *supra* note 18, at 36–39.

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*Cakeshop* to relieve the risk of incurring a penalty, such risk should be present to begin with. Yet, the experiment, by design, eliminated the risk of getting caught (by the couple, by society, and by state officials), as emails allow vendors to entirely avoid the detection of discrimination (whereas in face to face communication, the synchronous nature of communication makes it more difficult). Namely, even before *Masterpiece Cakeshop*, vendors could have opted to ignore emails from same-sex couples or provide excuses; they were under no threat of detection, enforcement, or penalty, and *Masterpiece Cakeshop* did not change that. The reputational risk of being labelled a discriminator (and the potential penalty of losing clients) was also absent, for the same reasons. Hence, the decreased willingness to provide services to same-sex couples cannot be attributed to a relief of risk of penalty.

Furthermore, the negative effect of *Masterpiece Cakeshop* is found even in regimes that have not enacted *any* prohibition on the discrimination of same-sex couples (no-AD law regimes). Businesses in Texas, Indiana, and North Carolina, operating under no obligation to serve same-sex couples, and therefore under no threat of sanction, still adapted their behavior post-*Masterpiece Cakeshop*. Hence, it is unlikely that the negative *Masterpiece Cakeshop* effect is explained by the decision's influence on the legal costs of discrimination, even if these costs indeed dropped. Indeed, by no means do I argue that legal or social penalties are inexistent or uninfluential. Both legal penalties and reputational costs can be very influential. However, their absence from the present setting—a common real-life setting where communication is asynchronous and decisions can be easily masked and remain unknown to the public—makes penalties an unlikely explanation for the effect documented in the present study.

An alternative cognitive explanation is that *Masterpiece Cakeshop* had an expressive effect on wedding vendors, changing their perceptions of the social norm regarding service refusal. The expressive theory of law argues that law can foster change not only or merely by the imposition of costs or benefits, but also by conveying that a certain norm has received a consensual status.<sup>149</sup> The *Masterpiece Cakeshop* decision was a lopsided 7–2 ruling that

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<sup>149</sup> See generally Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 339–40 (2000); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024–25 (1996).

crossed partisan lines and was infused with normative messages. The majority opinion particularly emphasized the importance of tolerance in a free society, the need for pluralism, and respect for the views of religious objectors. These parts of the decision were frequently cited by conservative and religious commentators on the decision.<sup>150</sup> Changes in social norm perceptions and/or personal support of same-sex marriage following the decision could explain why the decision strengthened the impetus of discrimination even if the probability of detection had not changed.<sup>151</sup> Another possibility is that personal preferences did not change, but were emboldened by the expressive message of the decision, making decision-makers more likely to act on them.

Moving from cognitive to social mechanisms, the environment in which vendors operate could have also influenced their decisions. I examined several types of environmental factors: urbanism; conservativeness; and religious density (I also examine different legal regimes, but I discuss this separately). All other things being equal, I did not find that the *Masterpiece Cakeshop* effect weakened in more urban environments, nor strengthened in more conservative environments. But I did find an indication of a more specific social mechanism: the religiosity of the surrounding environment. Businesses in religiously-dense areas discriminated against same-sex couples after *Masterpiece Cakeshop* significantly more than businesses in less religious areas.

Before interpreting these results, it is important to note that the religiosity of the environment is a crude proxy for the role of religion in the decision-making process, a proxy that could interact with additional factors in ways that are not controlled for in the study. Therefore, the findings from this analysis should be viewed as suggestive rather than conclusive. With this in mind, one straightforward interpretation of the results is that areas with more religious congregations have more religious businessowners, and that religious owners are adapting their behavior after *Masterpiece Cakeshop*

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<sup>150</sup> See *supra* notes 89–92.

<sup>151</sup> This explanation is also supported by the evidence on the impact of the Supreme Court on social norms and support of same-sex marriage in *Obergefell v. Hodges*, 576 U.S. 644 (2015). See Tankard & Paluck, *supra* note 97, at 1339; Kazyak & Stange, *supra* note 98, at 2044–45.

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(likely due to a perceived change in the social norm). Another possibility is that *Masterpiece Cakeshop* received greater exposure and favorable attention in religious environments, such that news of the decision (framed by religious and conservative outlets) spread widely and influenced *all* businesses—religious or not. This hypothesis is supported by the work of Linos and Twist, who found that Supreme Court decisions mostly influence attitudes through one-sided media frames, and that these frames have similar influence on people who regularly consume the relevant media versus those who are randomly exposed to them.<sup>152</sup> Either way, a religious environment appears to play a major role in translating *Masterpiece Cakeshop* into negative consequences for same-sex couples. The precise mechanism by which this translation occurs should be addressed in future studies, including survey experiments to measure individuals' religiosity. Such studies could also broaden the investigation to additional mechanisms and legal measures, such as statutory exemptions.

*B. Implications for Legislators*

The “legislative mismatch” between the protections of sexual-orientation equality and religious freedom across the country should be a cause for concern on both ends of the political spectrum. The two most common regulatory vehicles to afford such protections—AD laws and RFRA—have been mostly stalled in recent years due to heightened anxiety about the consequences of AD laws for religious objectors and of RFRA for LGBTQ people. In May 2019, during a heated debate on the floor of the Texas House about an amendment to the state’s RFRA, members of the LGBTQ caucus questioned the bill’s sponsors extensively about how the bill might spark discrimination and warned that the bill “perpetuates the rhetoric that leads to discrimination, to hate and ultimately bullying that leads to the consequence of people dying.”<sup>153</sup> The last states to enact new RFRA until recently were Arkansas and Indiana in 2015;<sup>154</sup> the resulting commercial and public

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<sup>152</sup> Linos & Twist, *supra* note 86, at 223.

<sup>153</sup> Platoff, *supra* note 147.

<sup>154</sup> NCSL, *supra* note 48. In March 2021, right before this Article went to press, South Dakota became the first state in six years to enact a RFRA. S.B. 124, 2021 Leg., 96th Sess. (S.D. 2021).

backlash might have deterred other states from following that route.<sup>155</sup>

The situation is similar with respect to AD laws. On April 2020, Virginia expanded its public accommodations law to protect against discrimination based on gender identity and sexual orientation.<sup>156</sup> But prior to that, the last state to enact an AD law prohibiting sexual orientation discrimination in public accommodations was Delaware in 2009.<sup>157</sup> Twenty-seven states have not yet enacted such laws.<sup>158</sup>

The *Masterpiece Cakeshop* field experiment conducted a first-of-its-kind examination of the implications of the AD/RFRA mismatch by testing the behavior of wedding vendors from states that are highly similar in terms of their economic, social, and political climates, yet model four different legal regimes: with or without a RFRA, and with or without an AD law. The findings revealed that the introduction of a (perceived) federal religious exemption—in the form of *Masterpiece Cakeshop*—had the same negative impact on same-sex couples in three of the four regimes, but not in regimes that are regulated by both a RFRA *and* an AD law. Intriguingly, the

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<sup>155</sup> See, e.g., James Briggs, *RFRA 'Fix' Was Enough to Keep Tourists Coming to Indianapolis*, DES MOINES REG. (Feb. 3, 2017), <https://www.desmoinesregister.com/story/money/2017/02/03/briggs-rfra-fix-enough-keep-tourists-coming-indianapolis/97146094/>, archived at <https://perma.cc/XAS9-QYPT> (describing the backlash in Indiana). In Georgia, Gov. Deal vetoed the state's RFRA bill in response to widespread criticism from LGBTQ groups and supporters, including threats of commercial boycott. Greg Bluestein, *BREAKING: Nathan Deal vetoes Georgia's 'religious liberty' bill*, ATLANTA J.-CONST. (Mar. 28, 2016), <https://www.ajc.com/blog/politics/breaking-nathan-deal-vetoes-georgia-religious-liberty-bill/yVAFf868i7ilsrWT9zpH3L/>, archived at <https://perma.cc/4C4T-Q59N>. The Human Rights Campaign have also made the backlash a salient part of its appeal to states to refrain from enacting RFRA's, for example in its criticism of the recent South Dakota legislation. Wyatt Ronan, *South Dakota Gov. Kristi Noem Signs Religious Refusal Bill, Creating First Major RFRA Law in Six Years*, HUM. RTS. CAMPAIGN (Mar. 13, 2021), <https://www.hrc.org/press-releases/south-dakota-gov-kristi-noem-signs-religious-refusal-bill-creating-first-major-rfra-law-in-six-years>, archived at <https://perma.cc/PF4H-SPT6>.

<sup>156</sup> VA. CODE ANN. § 2.2-3900 (2020).

<sup>157</sup> 77 Del. Laws 90 (2009) (amending 28 sections in the Delaware Code to include sexual orientation).

<sup>158</sup> Out of which, five states—Florida, Kansas, Michigan, North Dakota, and Pennsylvania—recently interpreted the prohibition on “sex” discrimination in their law as including sexual orientation and gender identity. See *State Public Accommodations Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT (Dec. 10, 2020), <https://www.lgbtmap.org/img/maps/citations-nondisc-public-accom.pdf>, archived at <https://perma.cc/PX77-2RZB>.



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differential effect of *Masterpiece Cakeshop* was partially observed between cities within the same RFRA state that differed on whether they had an AD law or not (e.g., Dallas versus Houston); these differences were associated with significant consequences for discrimination.

Before discussing the potential implications of these results, several caveats are due. To be sure, no causal inferences can be drawn from the legal regime results, as discussed earlier, because legal regimes are not randomly allocated and were impossible to examine in a natural experiment setting in the present context. Therefore, I am not arguing that the (in)existence of one law or the other is the cause for the *Masterpiece Cakeshop* effect. In addition, legal regimes are considerably richer and more nuanced than the letter of the law can reveal; and they are influenced, among other factors, by administrative policies and judicial decisions not captured in this analysis. Furthermore, legal differences between otherwise similar political units could be the result of unobservable variables that could be the actual causes of differences in discrimination. For example, the social and political climate that produced certain legislation might *also* shape the conduct of local businesses; such an explanation is probably more likely than the assumption that wedding businesses are fully familiar with the laws of their political units.

The underlying causes of the findings aside, the results carefully suggest two observations about the implications of the legislative mismatch. First, AD laws do not necessarily safeguard sexual orientation equality or protect against an increase in discrimination. Second, RFRA's are not necessarily themselves detrimental to the operation of equality on the ground.

1. The Push for Federal and State AD Laws Should Not Forsake Local AD Laws.

That AD laws do not necessarily ensure equality is not, on its own, novel. Extensive empirical research has repeatedly exposed and documented the failures of AD laws to prevent and remedy discrimination in practice.<sup>159</sup> Yet it is interesting to observe that regimes that enacted an AD law, but no RFRA,

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<sup>159</sup> For a review based on comprehensive data, see ELLEN BERREY ET AL., RIGHTS ON TRIAL: HOW WORKPLACE DISCRIMINATION LAW PERPETUATES INEQUALITY 54–73 (2017).

fare *worse* than comparable regimes that enacted both laws. Iowa, for example, has a long tradition of protection and advancement of sexual orientation equality. Iowa led the way for other states in invalidating its sodomy law already in 1976 and being one of the first states to recognize same-sex marriage.<sup>160</sup> The state enacted a state-wide ban on sexual orientation discrimination, and efforts to enact a RFRA in Iowa failed several times due to concerns about the potentially detrimental effects of such act on sexual orientation discrimination.<sup>161</sup> Against this background, one could expect that the social and political climate that produced Iowa's legal regime would be the most favorable to same-sex couples of all four regimes. Instead, business behavior in Iowa is found to be indistinguishable from regimes that have neither an AD law nor a RFRA (North Carolina), or even from regimes that have no AD law, but do have a RFRA (certain localities in Texas and Indiana). In contrast, regimes that have both an AD and a RFRA (other localities in Texas and Indiana) did not show the negative *Masterpiece Cakeshop* effect.

This pattern raises the question of whether AD laws vary in their effectiveness based on the level of their enactment—namely, whether municipal AD laws are more effective than state variations. This possibility runs counter to the intuition of LGBTQ advocacy groups in many AD-less states. Some of these groups intensified their struggle for state-level AD legislation following *Masterpiece Cakeshop*, claiming that municipal legislative acts are insufficient and “do not carry the force that a state law would.”<sup>162</sup> Clearly, enacting a series of municipal ordinances is less efficient than enacting one law that covers all municipalities and provides legal recourse for the entire state population. Yet there are two potential reasons for why local AD legislation may fare better in reducing discrimination than state-level legislation. First, legislation at the local level may better represent the preferences and behavioral intentions of the political community.<sup>163</sup>

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<sup>160</sup> See sources cited *supra* note 100 and accompanying text.

<sup>161</sup> See *Iowa Religious Freedom Restoration Act (HF 258)*, REWIRE NEWS GROUP (Feb. 19, 2019), <https://rewire.news/legislative-tracker/law/iowa-religious-freedom-restoration-act-hf-258/>, archived at <https://perma.cc/22MK-GG7M> (documenting the failure of several bills in 2016 and 2018 and the stalling of a 2019 bill).

<sup>162</sup> See Platoff, *supra* note 87.

<sup>163</sup> For a discussion of how cities promote democratic self-governance and representation better than states, see Yishai Blank, *City Speech*, 54 HARV. C.R.-C.L. L. REV.

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Therefore, the enactment of a municipal AD law by a certain community likely provides a more reliable commitment to equality and nondiscrimination than the enactment of a state AD law. Second, and relatedly, because municipal legislation is closer to home, it could be more successful in persuading residents that have not yet bought into the norm. According to the expressive theory of law, “[a]s long as legislation is positively correlated with popular attitudes or opinions, then it will cause individuals to revise their beliefs about the expected approval or disapproval and to act accordingly.”<sup>164</sup> If this proposition holds in the present case, the fact that a municipal AD law represents the norm of the immediate community increases its ability to persuade individuals from that community to conform. This ability could be compromised the higher a certain legislation “climbs” (namely, a state law might succeed less in revising behavior than municipal law, and federal law might have even less success). This decrease in effectiveness is especially likely in diverse states, where communities that adhere to different norms could respond to AD laws very differently.<sup>165</sup>

Given that the findings with respect to state differences are correlational and may therefore reflect a variety of additional factors, these conclusions are tentative and should be further examined in future studies.

One implication for the interim period is not to abandon local initiatives to enact AD laws or prioritize them as less urgent or less important than state-level initiatives. Assuming that equality movements care not only about the law on the books, but also (and perhaps more so) about the law on the ground, including the prevention of actual discrimination and the improvement of people’s lives and opportunities, local AD laws appear to contribute greatly to achieving these goals.

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365, 389–96 (2019).

<sup>164</sup> McAdams, *supra* note 149, at 343; *see also* Robert Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585, 595 (1998) (hypothesizing that enacting a norm can increase the number of people who follow it).

<sup>165</sup> In such cases opposing communities could react against the law. *See* Netta Barak-Corren et al., *The Provocative Effect of Law: Majority Nationalism and Minority Discrimination*, 15 J. EMPIRICAL LEGAL STUD. 951, 956 (2018).

2. RFRA's Are Not Necessarily Recipes for Discrimination and Should Be Pre-Tested to That Effect.

The second important finding that emerges from the comparison of legal regimes is that RFRA's are not necessarily detrimental to the operation of sexual orientation equality. This finding is arguably more surprising and potentially of broad relevance. The enactment of RFRA's and other protections of religious liberty has been the focus of intensive debate in recent years: one of the major concerns being that such laws would encourage greater discrimination against sexual minorities. I already alluded to the levels of anxiety and controversy that characterize this issue. States that enacted or considered enacting RFRA's were threatened with high-impact boycotts. Indiana itself was the subject of such a boycott after passing its RFRA in 2015, losing twelve conventions and \$60 million in revenue.<sup>166</sup> The Indiana legislature quickly passed a "fix" that clarified that the new Act does not trump local AD laws,<sup>167</sup> a provision very similar to the one included in Texas' RFRA from its inception.<sup>168</sup>

The results from the *Masterpiece Cakeshop* field experiment indicate that the combination of religious liberty protections of the Texas-Indiana type with AD laws at the local level was resistant to the negative effect of *Masterpiece Cakeshop* on discrimination towards same-sex couples. One potential explanation is that the tension built into these hybrid regimes led businesses to reflect and contemplate their positions in advance—prior to *Masterpiece Cakeshop*—more, perhaps, than businesses in regimes where the tension was less salient. Having already formed a position, businesses in hybrid regimes were possibly more resistant to the influence of *Masterpiece Cakeshop*.<sup>169</sup> Notably, these businesses were not merely more consistent in their behavior; they were also the least discriminatory of same-sex couples post-*Masterpiece Cakeshop* (see Figure 3). Seventy-six percent of businesses in hybrid regimes agreed to provide services to same-sex couples, compared to 59–67% of businesses in other regimes.

As with the findings regarding AD regimes, the relationship between

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<sup>166</sup> Briggs, *supra* note 155.

<sup>167</sup> See *supra* notes 64–65.

<sup>168</sup> *Id.*

<sup>169</sup> I thank Stephanie Barclay for proposing this point.

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hybrid regimes and sexual orientation discrimination should be further examined. In particular, RFRA comes in many shapes and forms—e.g., with or without recourse against local governments, private lawsuits, and civil rights law.<sup>170</sup> Different RFRA designs could have different impacts on discrimination, especially as these designs interact with existing or in-existent AD laws. To be sure, businesses in RFRA regimes without AD laws strongly showed the negative *Masterpiece Cakeshop* effect. Caveat is required before enacting a new RFRA or amending an existing act.

Alongside this caveat, the findings regarding hybrid regimes provide tentative hope for scholarly and political efforts—most notably, Professor Robin Fretwell Wilson's work—that marriage equality and religious liberty could be reconciled in legislation somehow, without necessarily exacerbating discrimination.<sup>171</sup> How might this goal be achieved?

An important implication of the *Masterpiece Cakeshop* experiment is that such efforts should rely on reliable and robust empirical evidence regarding the likely consequences of the proposal on sexual orientation discrimination. To do that, I propose pre-testing RFRA (and any other similar mechanism). Lawmakers and law professors must not speculate on the outcomes of their proposals or treat them as self-evident. As the findings of the field experiment teach us, speculations and assumptions that do not rely on directly relevant data are no good. The discipline of empirical legal studies has advanced to offer a variety of methods—including experimental surveys and qualitative in-depth interviews—that could facilitate testing the likely effects of proposed policies before formal implementation.<sup>172</sup>

For example, a state legislature could collect a representative sample of the state population, randomly expose different groups to alternative bills, and examine whether exposure to one bill (compared to the others, or no bill)

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<sup>170</sup> See *supra* notes 57–64 and accompanying text.

<sup>171</sup> See, e.g., Robin Fretwell Wilson & Anthony Michael Kreis, *Embracing Compromise: Marriage Equality and Religious Liberty in the Political Process*, 15 GEO. J. GENDER & L. 485, 488–89 (2014). Notably, Wilson and her colleague do not promote new RFRA, but instead specific and clear exemptions for wedding vendors from the duty to provide service to same-sex couples (but not other suspect categories). *Id.*

<sup>172</sup> In general, the field of evidence-based lawmaking has developed both theoretically and practically in recent years. See Ittai Bar-Siman-Tov, *The Dual Meaning of Evidence-based Judicial Review of Legislation*, 4 THEORY PRAC. & LEGIS. 107, 108–11 (2016).

generates more or less anti-gay bias in the population, or produces a more or less accurate understanding of appropriate behavior. Lawmakers could either devise their own decision-making dilemmas to probe citizens' understanding of the proposed law, or they could rely on one of the many measures established in psychological research to capture bias and social norm perceptions.<sup>173</sup>

Clearly, pre-testing laws requires collaboration between lawmakers and empirical legal scholars, or even the establishment of an in-house research department to execute empirical studies for legislatures. Yet the benefits of such approach greatly exceed its costs. First, basing legislation on data, rather than on speculations, is a positive good which improves the quality of the legislative process. Second, the fears and anxiety that accompany the religion-equality conflict prevent the advancement of both AD laws and RFRA's all around the nation and exacerbate cultural divides and political polarization. Were the opposing parties to suspend their assumptions about the consequences of proposed policies and subject them to a rigorous empirical test, they might have been able to approach proposals more openly. In addition, the interim phase of subjecting bills to an a-priori empirical test, before legislating them, will facilitate bipartisan collaboration in research design. Pro-religion and pro-equality legislators will have to sit down and decide what bills they want to test and what measures are needed to capture the consequences they fear or favor, if real. For example, they will need to jointly draft the vignettes (or scenarios) they are interested in probing citizens' reactions to. This deliberation could clarify the stakes for both parties, encourage more reflection about their goals and concerns, and concretize the debate going forward. The results would hopefully resolve the debate in one direction or the other and provide informed ground to base any decision regarding the legislation.

### C. Implications for Courts

The findings of the *Masterpiece Cakeshop* field experiment answer several legal questions currently preoccupying the courts.

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<sup>173</sup> See, e.g., Ofosu et al., *supra* note 99, at 8847–48; Tankard & Paluck, *supra* note 97, at 1336–39.

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First, courts are the arbitrators of the debate on the consequences of religious exemptions. Complainants of discrimination and supporting amici frequently warn of increased discrimination towards same-sex couples if religious exemptions are granted. Religious objectors and supporting amici consistently argue that this concern should be dismissed because “ample alternative providers exist.”<sup>174</sup> As a result, courts ask what the consequences of their decisions are likely to be—as did Justice Kennedy, who penned the majority opinion in *Masterpiece Cakeshop*.<sup>175</sup> But, until now, courts have had no relevant data to answer this question.

The *Masterpiece Cakeshop* field experiment provides these data for the first time, documenting the scope of refusals to same-sex couples, as compared with opposite-sex couples, in response to the *Masterpiece Cakeshop* decision. Courts now have concrete evidence from different legal regimes in the U.S., data that were thus far the object of concerns and speculation. Importantly, these data are not drawn from liberal strongholds, but from states that are either at the national average or more conservative. The data show courts that market alternatives *do* exist—there are vendors who will provide services to same-sex couples—and that granting a religious exemption encourages discrimination towards same-sex couples nevertheless, across a wide range of social and legal categories. Indeed, the *Masterpiece Cakeshop* decision generally exposed same-sex couples to a high risk of experiencing discrimination—estimated to be between 65% and 81%, as a function of the number of market interactions in which couples engage. Justice Kennedy’s concern that an exemption would encourage wedding vendors to refuse service to same-sex couples is unfortunately borne out by the data.

These troubling consequences provide the missing piece to the puzzle of applying a strict scrutiny analysis, or RFRA review, to AD laws. Under this doctrine,<sup>176</sup> the court first examines whether the law substantially burdens the

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<sup>174</sup> Laycock & Berg, *supra* note 76; *see also* Transcript of Oral Argument, *supra* note 12, at 46 (U.S. Attorney General arguing in support of the baker that “products are widely available from many different sources”).

<sup>175</sup> *Id.* at 44–45.

<sup>176</sup> In 29 states, the standard of scrutiny of governmental burdens on religion is currently lower, encompassing standards such as intermediate scrutiny or even rational basis review. *See supra* Part I.B.

free exercise of religion. To survive strict scrutiny, a law must be the least restrictive means by which to further a compelling governmental interest. This is a high threshold for the government, one “that takes a hard look at the facts and does not accept the ‘government’s bare say-so’ about factual outcomes.”<sup>177</sup> The first part of the justification—proving a compelling governmental interest—is typically uncontroversial when it comes to laws that aim to fight discrimination on the basis of sexual orientation. But the second part—the least restrictive means test—is thornier, especially in cases involving potential religious exemptions. Cannot the compelling governmental interest in eradicating discrimination be achieved through the less restrictive means of a law that permits religious exemptions? To determine whether religious exemptions would undermine a law’s purpose, judges must engage in a factual examination of the consequences of religious exemptions. To know whether a universal enforcement of AD laws is the least restrictive means to ensure access to public accommodations, courts need to know whether religious exemptions detract from this compelling goal. The results of the *Masterpiece Cakeshop* field experiment establish that the decision substantially detracted from this goal in most regimes, by substantially expanding discrimination against same-sex couples. Unfortunately, this was the outcome even though the Court reiterated its commitment to protecting sexual minorities in the marketplace in general, and despite the fact that the exemption crafted for the baker was narrow and case specific. Taken together, these results vindicate states that currently insist on enforcing AD laws without providing exemptions. As I note earlier, it is possible that a different combination of legal means will generate different behavioral outcomes, and such combinations should be tested—or, where relevant, pre-tested—in the appropriate circumstances in the future.

The second implication for courts involves the specific reasoning of the *Masterpiece Cakeshop* decision. The majority Justices—particularly Justice Kennedy—clearly wished to avoid settling the larger tension between religious liberty and sexual orientation equality. Instead, the Justices sought to carve a narrow decision that would not grant wedding vendors a license to discriminate against same-sex couples. This strategy does not seem to have

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<sup>177</sup> Stephanie Barclay, *An Economic Approach to Religious Exemptions*, 72 FLA. L. REV. 1211, 1262 (2020) (quoting *Yellowbear v. Lampert*, 741 F.3d 48, 59 (10th Cir. 2014)).



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been successful. *Masterpiece Cakeshop* has ultimately increased discrimination in the wedding industry and bolstered legislators and advocates in their attempts to expand religious protections and narrow the scope of antidiscrimination protections.<sup>178</sup> The two subsequent unreasoned decisions in *Arlene's Flowers*<sup>179</sup> and *Klein*<sup>180</sup> that vacated and remanded other wedding vendor cases, despite very different factual circumstances, might have strengthened the impression that *Masterpiece Cakeshop* was not so narrow after all. Assuming the Court did not intend to expand discrimination against same-sex couples, could other judicial strategies have fared better?

This question is of crucial importance considering the challenge facing the Court in its coming term, and likely future ones. This term, the Court will decide *Fulton v. City of Philadelphia*, which involves a social welfare agency that objects, on religious grounds, to a Philadelphia AD rule. That rule requires the agency to provide services to LGBTQ prospective foster parents, as part of its governmental contract. The agency argues that if the Court rules for the city, the agency will close its doors and children will be harmed. The city argues that same-sex couples should not be excluded solely on the basis of their sexual orientation, and that all children are better off if placement agencies refrain from considering factors other than the best interest of children.

The *Masterpiece Cakeshop* experiment offers two lessons for the *Fulton* Court—and for any court adjudicating religion-equality conflicts in the future. First, the Court should require the parties to present directly relevant data to found arguments about consequences. The findings from the *Masterpiece Cakeshop* field experiment teach us that contrasting arguments about the empirical world can thrive despite the absence of data, as each party to the debate is highly motivated to hold on to their own assumptions and to speculate about the facts. This is a dangerous state of affairs. In constitutional law, as elsewhere, arguments about outcomes should rest on actual data. Not

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<sup>178</sup> See Simpson, *supra* note 87 (quoting the head of the American Family Association of Indiana saying that he sees *Masterpiece Cakeshop* as a “signal” to push forward litigation against local AD laws in Indiana); Platoff, *supra* note 147 (describing bills in Texas expanding protections for religious professionals and corporations).

<sup>179</sup> *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671, 2671–72 (2018).

<sup>180</sup> *Klein v. Or. Bureau of Lab. & Indus.*, 139 S. Ct. 2713, 2713 (2019).

only are data crucial to learn the truth value of consequentialist arguments, they can also nuance and refine legal analysis. In the *Masterpiece Cakeshop* context, the empirical work exposes issues that were not previously considered in the area of religious exemptions—such as the nature of the influence of law on behavior—and creates new and specific questions for lawyers and judges to answer—such as how to factor the aggregate risk of discrimination. It is therefore imperative that courts will develop a more critical approach to consequential arguments and will look for directly relevant data.

The second lesson for the *Fulton* Court flows directly from the poor outcomes resulting from the avoidance strategy used in *Masterpiece Cakeshop*. By now, several different studies—including the present study—have shown that the Court has the power to shape public attitudes and public behavior, thereby producing either less or more bias and discrimination in society.<sup>181</sup> It is true that after a decision is handed down by the Court, it takes on a life of its own, and much of its effects depend on how it is communicated by mass media. But the Court is not a helpless statist in this process. A clearer and less ambiguous decision—for example, one that sets a clear rule that is easy to communicate, understand, and follow—is less open to aggrandization, misstatements, or misinterpretations. The *Fulton* Court should opt for a clear and bright-line decision that provides specific and unambiguous behavioral instructions, including for future cases. This is particularly true if the court decides to grant an exemption in *Fulton*. In such case, the Court should assume, based on the *Masterpiece Cakeshop* effect, that its decision will likely encourage discrimination against sexual minorities. It is the Court's responsibility to minimize this effect to the extent possible. The Justices should not mislead themselves to think that evading the big questions or making a case-specific decision, as in *Masterpiece Cakeshop*, will avoid undesirable outcomes. The Justices should also not mislead themselves to think that their decision will only expand the freedom of a negligible minority of extremely objecting individuals. Rather,

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<sup>181</sup> Cf. Ofosu et. al, *supra* note 99, at 8849 (finding a sharper decrease in anti-gay bias in states that legalized same-sex marriage compared with those that did not); Tankard & Paluck, *supra* note 97, at 1341–42 (finding that the Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015), shifted perceived social norms among non-LGBTQIA Americans in support of same-sex marriage).

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exempting religious objectors will likely have a broad impact, including on decision-makers who were willing to provide services before the decision, but will refuse to do so afterwards. These consequences are particularly concerning given the number of wedding conflict cases that have recently resolved in favor of vendors.<sup>182</sup> This trend gives rise to the possibility that the *Masterpiece Cakeshop* effect will repeat and aggregate over time, the more such decisions are made and become known to the public.

Finally, the expansion of discrimination post-*Masterpiece Cakeshop* suggests that courts should develop a better account of the burden that AD laws place on religious objectors. The dominant theory of the relationship between religious exemptions and religious objection put forth in litigation is that religious exemptions relieve the harm that antidiscrimination rules inflict on religious individuals. Among other things, the theory assumes that the only effect of exemptions would be to relieve devout individuals of the societal harm, but that exemptions do not change behavior, because religious objectors would not have provided services to same-sex couples in any event.<sup>183</sup> Recently, Professor Barclay suggested to formalize this theory in economic terms, arguing that the harms incurred by same-sex couples (as a result of discrimination) should be weighed against the harms incurred by religious objectors (as a result of the AD law), by examining the transaction costs for each party. Barclay argues that the costs to religious objectors are extremely high, because of the idiosyncratic and fixed nature of their beliefs. She reasons that compelling them to act against their faith will increase net societal harm, because religious objectors will either become martyrs, or will end up with a broken conscience.<sup>184</sup> Under this theory of Berg, Laycock, Barclay, and others, the availability of exemptions should not change the scope of religious objection (because they will not enter the transaction in any event), only its consequences for the objectors.

But the results of the *Masterpiece Cakeshop* experiment bely this theory. First, the seeming availability of a religious exemption post-*Masterpiece*

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<sup>182</sup> See *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 762 (8th Cir. 2019); *Brush & Nib Studio v. City of Phoenix*, 448 P.3d 890, 926–27 (Ariz. 2019); *Lexington-Fayette Urban Cnty. Hum. Rts. Comm'n v. Hands On Originals*, 592 S.W.3d 291, 298 (Ky. 2019).

<sup>183</sup> Berg & Laycock's Brief, *supra* note 79, at 32.

<sup>184</sup> Barclay, *supra* note 177, at 27–28 (relying in part on Christopher Lund, *Martyrdom and Religious Freedom*, 50 CONN. L. REV. 959, 965–67 (2018)).

*Cakeshop* changed the scope of refusal to same-sex couples. To the extent that this effect is due to *Masterpiece Cakeshop*'s encouragement of religiously motivated objection, the data unsettle the theory that religious objection is a result of permanent idiosyncratic features of the objectors' religious identity, features that are unyielding to external influence. Rather, it seems that religious objection is contingent on the seeming availability of an exemption. The demand for objection is not fixed, but elastic. Second, this effect is not related to the imposition or relief of any penalty or enforcement. While it is theoretically possible that prior to *Masterpiece Cakeshop*, some religious objectors in no-exemption regimes caved in to legal pressure because they could not afford the penalties,<sup>185</sup> the experiment shows that wedding vendors changed their behavior in the absence of any state penalty and absent any likelihood of enforcement. First, as discussed above, discrimination increased in regimes that do not prohibit discrimination at all. Second, the option to ignore an email from a same-sex couple was available to all vendors both before and after *Masterpiece Cakeshop*, without anyone ever knowing their reasons for doing so. Wedding vendors changed their behavior not because *Masterpiece Cakeshop* relieved them of a penalty associated with their behavior, but due to other reasons—more likely, the expressive effect of the decision.<sup>186</sup>

These findings suggest that transaction costs in religion-equality conflicts are in fact dynamic, and that the religious objection to AD laws can fluctuate as a result of the availability of exemptions in ways that defy the “martyr/broken conscience” dichotomy.<sup>187</sup> These findings require courts to probe deeper into the characteristics of religious objection and explore more carefully the assumptions regarding the magnitude of harm caused to religious objectors from the *unavailability* of exemptions.

Clearly, this is a highly sensitive issue, and posing the question by no means underestimates the possibility that such harm is real and grave for some religious objectors. At the same time, law in general and the Supreme Court, in particular, always navigate two different levels of generality: the

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<sup>185</sup> Despite the conscientious harms they experienced. This is the “broken conscience” concern developed in the context of harms by Barclay, *supra* note 177, at 27–28.

<sup>186</sup> See *supra* Part III.A.

<sup>187</sup> Barclay, *supra* note 177, at 27–28.

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specific case and the general rule. In specific cases involving specific objectors, the harm from not providing an exemption could be enormous. Yet, because each decision also contributes to the formation of a general rule, courts cannot ignore how specific decisions eventually create precedents that influence the availability of rights and remedies for everyone, including individuals who do not necessarily share the features of the specific objector. The *Masterpiece Cakeshop* effect indicates that there are wedding vendors in this broader category who are willing to provide services to same-sex weddings in the first instance but become unwilling to do so once an exemption is announced.

There is no doubt that the Court faces an acute dilemma. Both equality before the law and religious liberty are fundamental constitutional rights, and setting their respective boundaries is no simple task. However the Court decides to resolve the constitutional issues at hand, it ought to consider the harms that might result from its decision, and to avoid or mitigate these harms if possible. Courts are often motivated by a desire to provide justice in particular cases without creating inadvertent and unjust consequences across the board. An important first step towards this goal is to follow the general prescription offered in this Article: to rest constitutional analyses of consequentialist arguments directly on relevant empirical evidence.

**Exhibit 3**

50(1) THE JOURNAL OF LEGAL STUDIES 1 (in press)

## Religious Exemptions Increase Discrimination Towards Same-Sex Couples: Evidence from Masterpiece Cakeshop

Netta Barak-Corren\*

### ABSTRACT

In 2018, the Supreme Court decided *Masterpiece Cakeshop v. Colorado Civil Rights Commission* in favor of a baker who refused service to a same-sex couple due to his religious beliefs. This article examines the behavioral effect of this decision in an experiment (N=1,155 businesses) that measured discrimination towards same-sex couples in wedding services shortly before and after *Masterpiece*. I find that *Masterpiece* significantly reduced the agreement to serve same-sex couples as compared with opposite-sex couples, even among previously willing vendors. Considering the variety of vendors involved in a typical wedding, I estimate the odds that same-sex couples would experience discrimination post-*Masterpiece* between 61% and 85%. These results show that even a narrowly construed exemption can have a significant and robust, even if inadvertent impact on a market and its customers. I discuss the implications of these results for the research on Supreme Court effects on the public.

### 1. INTRODUCTION

What are the consequences of exempting religious objectors from antidiscrimination law?

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Answering this question is crucial to resolving the escalating tension between religious freedom and sexual orientation and gender equality in the United States. So far, the primary legal tool that has been proposed as a solution has been religious exemptions. But the use of exemptions have also raised considerable objections. Central among those is the concern that granting exemptions would escalate the number and significance of religious claims and extend LGBTQ discrimination (NeJaime 2012; NeJaime and Siegel 2015; Stern 2014). Proponents of religious exemptions reject these concerns as factual nonsense, arguing that religious objectors are a negligible minority in a society growing ever more affirming of LGBTQ equality, and that exempting religious objectors will not expand discrimination against same-sex couples (Koppelman 2014; Berg and Laycock 2017; Laycock and Berg 2018; Laycock 2017, 3:962).

Currently, there is almost no evidence that could clarify which of the contradictory factual arguments is actually true. Not only that such evidence is required to settle and refine theoretical debates, it is also crucial to inform legislators debating whether to enact religious exemptions, and courts deliberating whether to grant such exemptions. From *Reynolds v. United States* (1878), the first case to bring the question of religious exemptions before the Supreme Court, through key decisions such as *Employment Division v. Smith*<sup>1</sup> and *Burwell v. Hobby Lobby Stores, Inc.*,<sup>2</sup> up to *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*<sup>3</sup>--the decision at focus in the present study—the Supreme Court has always cited the social consequences of exemptions (or

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<sup>1</sup> 292 U.S. 872 (1990) (Scalia, J.) (Citing *Reynolds v. United States* (1878): "To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.")

<sup>2</sup> 134 S. Ct. 2751, 2782 (2014) (Alito, J.) (resting the majority opinion on the assumption that the exemption's effect on third-parties "would be precisely zero").

<sup>3</sup> 138 S. Ct. 1719 (U.S. 2018).



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lack thereof) when determining whether to reject (or grant) petitions for religious exemptions.

This article elucidates the consequentialist debate on religious exemptions by studying, for the first time, the effects of religious exemptions on sexual orientation discrimination. Part 2 begins by presenting the necessary legal background and the *Masterpiece* decision, in which the Supreme Court ruled in favor of a religious baker who refused service to a same-sex couple. Next, Part 3 describes a large-scale experiment that I designed to measure the impact of *Masterpiece* on sexual orientation discrimination in the wedding services market. To this end, I combined methods from pseudo-experiments (studies that examine the impact of a reform by focusing on events occurring shortly before and after the reform) and field-experiments (studies that randomly allocate different treatments to subjects in the field). Wedding vendors (bakers, photographers, and florists) were sampled to the experiment from the four legal regimes currently existing in the United States that differ based on whether they prohibit sexual orientation discrimination in public accommodations (AD law) or not, and on whether they facilitate religious exemptions via a Religious Freedom Restoration Act (RFRA) or not.<sup>4</sup> This resulted in a 2 (AD law/no AD law) by 2 (RFRA/no RFRA) matrix from which 906 businesses were sampled to the experiment. Each business was examined shortly before (May 8<sup>th</sup>-15<sup>th</sup>, 2018) and after (June 13<sup>th</sup>-20<sup>th</sup>, 2018) the *Masterpiece* decision (rendered on June 4<sup>th</sup>, 2018). In each period, wedding businesses were contacted via email by a same-sex or an opposite-sex couple inquiring about wedding services. Each business was contacted by the two types of couples both before and after the decision, resulting in four observations per business and a rich dataset that allows for both within-business and across-businesses comparisons. A “control” group of 251 businesses was contacted for the first time after

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<sup>4</sup> RFRA is not the only legal vehicle facilitating religious exemptions. Others are addressed in Part 2.

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*Masterpiece*, by both couple types, following the same procedures. The question of interest was whether businesses agreed to provide the requested service to couples, and specifically whether *Masterpiece* influenced the responses businesses provide to same-sex couples.

Part 4 presents the results of the *Masterpiece* experiment. Briefly, the decision significantly reduced the willingness to serve same-sex couples, from 63.6% before *Masterpiece* to only 49.2% after the decision was rendered (a 14.4 percentage-point gap, or ~23 percent decrease in favorable responses). Zooming in on businesses that, prior to *Masterpiece*, responded positively to same-sex couples, I find that these businesses discriminate between opposite-sex and same-sex couples after *Masterpiece*. Previously “gay-friendly” businesses that are randomly contacted by opposite-sex or same-sex couples after the decision was rendered respond less favorably to same-sex couples (75.5% vs. 66.3%, a 9 percentage-point gap, or 12 percent fewer favorable responses). This effect is not an artifact of the experiment itself, as it is identically found in the “control” group. Probing into the differences between the four legal regimes, I find that the negative *Masterpiece* effect appears in all regimes, except for those that enacted *both* an AD law and a RFRA. The effect is robust, including in analyses that control for county-level conservativeness and analyses limited to businesses located in big cities (where, it is often argued, there is no discrimination problem). However, the effect of *Masterpiece* is significantly more pronounced in religious environments, as proxied by the density of congregations in the county where the business is located.

A back-of-the-envelope calculation demonstrates the broader implications of these results. Provided that couples of all identities typically contract with about ten types of vendors in the process of organizing a wedding (reception venues, wedding planners, bakers, florists, photographers, videographers, bridal/groom salons, jewelers, DJs, and calligraphers—a partial

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list); and that they often inquire with several vendors of each category; and that the average risk of experiencing discrimination post-*Masterpiece* is about 9%; I estimate the aggregate risk of discrimination for same-sex couples between 61% and 85%. This means that, across the observed differences between legal regimes and religious environments, *Masterpiece* has the general effect of exposing same-sex couples to heightened risk of discrimination in the organization of weddings.

Part 5 discusses the results. First, I consider potential explanations for the effect of *Masterpiece* on vendors' behavior, examining both cognitive mechanisms (how the decision is perceived and factored into the decision-making process) and social mechanisms (how social factors, particularly religion, interact with the decision-making process). Moving to implications, I discuss the contributions of the study to the research of Supreme Court effects on the public. In particular, the study sheds new light on the argument that courts are ineffective at spurring social change (Rosenberg 2008), by highlighting the risk that the court will emerge as effective, paradoxically, by spurring inadvertent social change. On the constitutional end, the results discredit the argument that religious exemptions will not expand discrimination. Instead, what the *Masterpiece* experiment shows is that even a narrow exemption can have a significant and robust impact on a market and its customers. Next to these implications, the observed variation between legal regimes and religious environments provides preliminary evidence that discrimination can be minimized under certain conditions. These findings can guide future research on religion-equality conflicts, Supreme Court effects, and the dynamics of discrimination more broadly.

## **2. LEGAL BACKGROUND**

### **A. The “legislative mismatch” of Antidiscrimination and Religious Freedom Laws**

The regulation of sexual orientation discrimination and religious freedom in the U.S. vary at the state and local level. Some jurisdictions prohibit public accommodations (such as wedding businesses) from discriminating on the basis of sexual orientation (hereinafter: “AD laws”), while other jurisdictions do not prohibit such discrimination.<sup>5</sup> Concomitantly, some jurisdictions enacted rules that facilitate the creation of religious exemptions from rules of general applicability (often these are Religious Freedom Restoration Acts, or RFRA), while other jurisdictions have not enacted such rules.<sup>6</sup> With the legalization of same-sex marriage, new RFRA were enacted in Mississippi (2014), Indiana, and Arkansas (NCSL 2017). In other states, e.g., Iowa and Georgia, RFRA bills failed due to concerns about their implications for LGBTQ rights and fears from commercial boycotts (Foody 2015). In the process, RFRA became the legislative antonym of AD laws (Ferguson 2015).

The distribution of AD laws and RFRA across states is a “legislative mismatch” (Lupu 2015) with a narrow overlap. The overlap consists of four states that enacted both laws,<sup>7</sup> a maximum of seven states that have enacted AD laws and have extended protections on religious freedom in their constitutions,<sup>8</sup> and a considerable number of local governments in RFRA states that enacted municipal AD laws (Lupu 2015, pp. 48-49). This last category includes a number of major cities

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<sup>5</sup> Twenty-two states, the District of Columbia, and numerous local governments enacted such laws (HRC 2018).

<sup>6</sup> Twenty-one states enacted RFRA (NCSL 2017) and ten states interpreted their constitutions to require a RFRA-like standard of review (Volokh 2013). Lupu (2015) and Volokh (2013) classify differently which states have interpreted their constitutions to require a RFRA-like standard. I return to this issue in Section 3.B, where I note that the lack of clarity regarding the legal status in these states was a reason to avoid sampling businesses from them.

<sup>7</sup> Connecticut, Illinois, New Mexico, and Rhode Island.

<sup>8</sup> Maine, Massachusetts, Minnesota, New York, Vermont, Washington, and Wisconsin.

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in conservative states, such as Dallas, Indianapolis, Phoenix, and Atlanta (Lupu 2015, p. 49). To date, no local government in an AD state has enacted a local RFRA.

In summary, the regulation of the tension between marriage equality and religious liberty divides into four categories: regimes (state or local) with both AD laws and RFRA; AD-law-only regimes; RFRA-only regimes; and regimes that have enacted none. This is the diverse legal background against which *Masterpiece Cakeshop* was decided.

**B. *Masterpiece Cakeshop v. Colorado Commission of Human Rights***

The *Masterpiece* case presented a conflict between Jack Phillips—the owner of Masterpiece Cakeshop—and Charlie Craig and David Mullins, a same-sex couple who entered his cakeshop to inquire about a wedding cake, unaware of Phillips' beliefs. Phillips declined to make the cake citing his objection to same-sex unions.

The Colorado Civil Rights Commission found that the baker discriminated against the couple based on their sexual orientation. The Supreme Court reversed and invalidated the Commission's decision, writing that the Commission showed unconstitutional religious hostility. While the baker won the case on free exercise grounds, the majority acknowledged that "if that [religious] exception were not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws." (*Masterpiece*, p. 1727). For these reasons, the Court did not rule out the possibility that Colorado could enforce its AD law in similar cases in the future. More generally, the majority's opinion did not expressly solve the tensed relationship between religious liberty and sexual orientation equality

### **3. THE MASTERPIECE EXPERIMENT**

#### **A. The motivation and setting for the experiment**

The primary purpose of the project is to examine the contradicting empirical assumptions regarding the effects of religious exemptions on discrimination towards same-sex couples. The present contradictions and omissions have made it impossible to assess the merits of the opposing positions and leave the debate hanging in the air.

*Masterpiece Cakeshop* created an opportunity to evaluate these arguments in their most pressing setting. Based on the oral arguments, I anticipated that the decision would yield an exemption of sorts.<sup>9</sup> As “one of the most anticipated decisions of the term” (Howe 2018), the decision was likely to draw extensive coverage and discussion in the public media (as it did), thus to potentially have an impact on public attitudes and conduct (Linos and Twist 2016).

When the decision was finally rendered on June 4<sup>th</sup>, 2018, it received broad coverage and mixed responses. National, state and local news outlets covered the decision and sought comment from local advocacy groups and politicians (Simpson 2018; Platoff 2018; McGaughy 2018). All mainstream outlets, including the New York Times, NBC News, and CNN, titled the decision a victory for the baker; they also called the decision “narrow,” explaining that it did not resolve the big constitutional questions at issue (Liptak 2018; Williams 2018; Goldfeder 2018). At the same time, many conservative leaders and religious liberty advocates hailed the decision as a victory,

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<sup>9</sup> This expectation was based on the comments of Justice Kennedy, then the Court’s swing seat, who hinted that the Court thinks that there was “a significant aspect of hostility to a religion in this case”, Tr. of Oral Arg. 53. This became a dominant line of questions for the conservative judges on the bench, *id.* at 53-59. Justice Kennedy also said unequivocally, “Counselor, tolerance is essential in a free society. [...] It seems to me that the state in its position here has been neither tolerant nor respectful of Mr. Phillips' religious beliefs.” *Id.*, at 63.

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expressing less reservations about its scope.<sup>10</sup> Fox News Insider (2018) held a supportive interview with Phillips, who defined the decision as a “big win.”<sup>11</sup> Leaders of the U.S. Conference of Catholic Bishops released a joint statement applauding the decision, saying that it “confirms that people of faith should not suffer discrimination on account of their deeply held religious beliefs, but instead should be respected by government officials” and emphasizing the decision’s expression of pluralism and tolerance (Catholic News Agency 2018). The Family Research Council (2018) released a statement that the decision “made clear that the government has no authority to discriminate against Jack Phillips because of his religious beliefs” and that the “ruling means that Jack will remain free to live according to his beliefs whether he is at work, at home, or in his place of worship.” These statements do not betray any doubt about the scope of the decision or mention the Court’s recognition of the important role of AD laws in protecting LGBTQ people.

Some LGBTQ advocates and progressive commentators observed these enthusiastic responses and voiced concerns that *Masterpiece* will grant objectors a license to discriminate. GLAAD president said that “it leaves the door wide open for religious exemptions to be used against LGBTQ people” (Lang 2018). The president of LGBTQ Victory Institute further warned that “Homophobic forces will purposefully over-interpret the ruling and challenge existing non-

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<sup>10</sup> To give the readers a better sense of the conservative and religious framing of the decision, I survey key quotes in the footnotes. Consider Kao (2018): “the decision... [exposed] a huge fallacy in the ACLU’s main argument in the case... The court’s clear rejection of the discrimination argument has implications for many of the other conflicts currently brewing between religious freedom and sexual orientation.”; Liberty Counsel (2018) :“Though the Court focused on the explicit hostility exhibited by the Colorado Civil Rights Commission in this specific instance, this significant decision will have a wide impact regarding the clash between free speech and the LGBT agenda, including laws that add ‘sexual orientation’ and ‘gender identity.’”

<sup>11</sup> See also Starnes (2018) (“Monday’s ruling should give some comfort to Christian business owners who primarily service the wedding industry – gay rights do not necessarily trump everyone else’s rights”). Other coverage by Fox News was more careful in discussing the decision, e.g. Mears (2018) (“The narrow ruling here focused on what the court described as anti-religious bias on the Colorado Civil Rights Commission when it ruled against baker Jack Phillips.”).

discrimination laws by refusing service to LGBTQ people in even more situations” (Lang 2018). NBC’s columnist Scott Lemieux (2018) wrote that the decision “presents a serious risk of undermining civil rights law in the name of religious freedom, especially given that it invites yet further suits for the court to consider.”

This combination of factors—a highly anticipated decision, a court that appeared positioned to exempt the religious objector, and the massive coverage that communicated the above messages—created a favorable setting for an empirical test of the behavioral effects (or lack thereof) of religious exemptions. In a previous study, Linos and Twist found that Supreme Court decisions can increase support for controversial policies that were vindicated by the Court (e.g., Obamacare), even when the court was divided and the decision was nuanced (Linus and Twist, 2016). Similarly, three recent studies that measured the effect of same-sex marriage legalization on public attitudes documented increases in support for same-sex marriage post-*Obergefell* (Kazyak and Stange 2018); increases in the perception that social norms support same-sex marriage (Tankard and Paluck 2017); and, prior to *Obergefell*, sharper decreases in antigay bias in states that legalized same-sex marriage compared with states that did not (Ofosu et al. 2019). All of these studies were based on attitudinal surveys conducted shortly before and after court decisions or legislative acts, sometimes with an additional experimental component that randomized the framing of the decision. Additional surveys examined public attitudes about LGBTQ discrimination, irrespective of Supreme Court decisions or same-sex marriage legalization (Powell, Schnabel, and Apgar 2017). Yet none of these studies examined the impact of Supreme Court decisions on the behavior of pertinent decision-makers. In the present case, the pertinent decision-makers are wedding vendors and the question is whether they are influenced from a ruling for a vendor who denied



service to a same-sex couple.

In addition, most previous studies did not investigate whether the effect of Supreme Court decisions varies between socio-legal regimes. Yet different legal regimes can direct wedding vendors towards different behaviors and therefore differentiate their response to *Masterpiece*. For example, businesses in regimes that resemble Colorado—with AD laws and without RFRA—might adopt their response to same-sex couples if *Masterpiece* is perceived as relaxing their AD obligations. One may expect such change to be more pronounced in overlap regimes, because the existence of a RFRA could strengthen the impression that businesses are likely to secure an exemption post-*Masterpiece*. In contrast, businesses in regimes that have never enacted AD laws have no legal basis to change their behavior. For these businesses, the law has not changed: they are as free to discriminate after *Masterpiece* as they were before the ruling.

In sum, *Masterpiece* provided a unique opportunity to study the behavioral effect of religious exemptions from antidiscrimination law, a question of which no empirical data exist to date, and which bears heavily on contemporary legal debates. In addition, the study advances the research of the effects of Supreme Court decisions in several ways: First, the study expands the examination from attitudes to behaviors, and from the general public to pertinent decision-makers. Second, the study goes deeper than previous studies in probing the relationship between the national judicial “shock” and the preexisting legal structures that could vary the effect of the decision between otherwise similar subnational regimes.

## **B. Research design and methods**

To assess whether *Masterpiece* had an effect on sexual orientation discrimination in the

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wedding industry, I combined methods from pseudo- and field-experiments. As in pseudo-experiments, I examined the behavior of wedding in businesses in two periods: before (May 8<sup>th</sup>-15<sup>th</sup>) and after (June 13<sup>th</sup>-20<sup>th</sup>) the decision (June 4<sup>th</sup>, 2018). As in field experiments, the methods of this examination aimed to control the setting of the examination and the allocation of the sexual orientation treatment between subjects (businesses) to allow for causal inference. The following subsections describe the construction of the sample, materials, and procedure of the experiment.

**Sample.** Sample construction began with a preliminary comparison of all states, to find those that were most comparable in their overall characteristics yet differed in their legal regime. The comparison included GDP per capita, the importance of religion for state residents, the share of Evangelicals in the state, the share of conservatives, attitudes towards homosexuals, and attitudes towards same-sex marriage. After matching demographic resemblance against legal regime variation, four states were selected for sampling: Indiana, Texas, Iowa and North Carolina. Table 1 shows that these states have roughly the same attitudinal and economic characteristics, that are either at the national average or more conservative.

TABLE 1 – CHARACTERISTICS OF SAMPLED REGIMES

Criterion	Definition	Iowa	North Carolina	Indiana	Texas	Dallas Metro, TX	Houston Metro, TX
GDP per capita (\$)		59,978	54,442	55,173	61,168	--	--
Importance of Religion	Religion is Somewhat/Very Important (National average: 77%)	79%	84%	78%	86%	85%	83%
% Conservatives	(National average: 36%)	41%	40%	41%	39%	41%	38%
% Evangelicals	(National average: 25%)	28%	35%	31%	31%	38%	30%
Attitudes Towards Homosexuals	“Homosexuality should be discouraged” (National average: 31%)	36%	36%	37%	36%	35%	39%
Attitudes Towards Same-Sex Marriage	Opposing/Strongly Opposing Same-Sex Marriage	41%	45%	45%	46%	44%	51%

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(National average: 39%)

State RFRA	No	No	Yes	Yes	Yes	Yes
State/Local AD law	Yes	No	Some	Some	Yes	No

*Notes:* GDP per capita is calculated based on data from 2018, Q2. Sources: GDP: THE U.S. BUREAU OF ECONOMIC ANALYSIS, GROSS DOMESTIC PRODUCT BY STATE, SECOND QUARTER 2018 (2018); Population: U.S. CENSUS BUREAU, 2018 NATIONAL AND STATE POPULATION ESTIMATE (2018); All other data: PEW RESEARCH CENTER, RELIGIOUS LANDSCAPE STUDY (2014). State/Local AD Law (row 8) refers to public accommodation laws that apply to private businesses and are enacted at the state or city level.

Alongside their demographic and attitudinal similarity, the sampled states vary in how they regulate religious freedom and public accommodations. North Carolina has no RFRA and no AD law at any level of government.<sup>12</sup> Iowa has no RFRA (at no level of government) but has a state AD law (IOWA CODE § 216.7). Both Indiana (IND. CODE § 34-13-9) and Texas (TEX. CIV. PRAC. & REM. CODE ANN § 110.011) have state RFRA and no state AD laws, yet some local governments within these States have AD laws. Sampling from all of these regimes produced a 2 (+/- AD) by 2 (+/- RFRA) sampling matrix (Table 2).

Two reasons were responsible for the choice of Texas and Indiana as models of the overlap category (+RFRA,+AD) and the +RFRA-AD category. As Part 2 describes, the overlap between RFRA and AD laws has three versions: (1) states that enacted both laws; (2) states that enacted an AD law and their courts interpreted their constitution to provide a RFRA-like standard; and (3) local AD laws within RFRA states. The primary reason for choosing the third version to model the category was that the demographic and attitudinal characteristics of the four states that enacted both laws (RI, CN, NM, IL) and the states that only had RFRA, without an AD law, differed too widely than the states populating the other matrix categories. Second, not all RFRA designs raise the same tension with AD laws. RFRA in the first overlap category are mostly narrow and not

<sup>12</sup> NC has enacted a specific religious exemption allowing magistrates to refuse to perform same-sex marriages, SB 2 (2015), but there is no exemption for private businesses. NC also prohibited cities or counties from passing sexual orientation AD laws, HB 2 (2016), what explains the complete absence of local AD laws in the state.

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conducive for the examination of this tension, while the second category raises considerable uncertainty regarding the very existence of the tension (Volokh 2013, cf. Lupu 2015). Texas and Indiana provided an adequate demographic and attitudinal comparison to the other legal categories, as well as clarity regarding the classification of their legal regimes.

TABLE 2 – THE LEGAL REGIME MATRIX AND SAMPLED STATES

	RFRA	No RFRA
AD law	Specific jurisdictions in Indiana and Texas <sup>13</sup>	Iowa
No AD law	Specific jurisdictions in Indiana and Texas <sup>14</sup>	North Carolina

To be sure, although I invest great efforts in facilitating the comparison between regimes, I do not argue that this design is capable of identifying a causal relationship between specific regimes and behavioral outcomes. First, it is difficult to separate the legal regime from the underlying political and social climate that produced the law.<sup>15</sup> Second, different laws provide different behavioral guidance—as discussed above—but businesses might not be fully aware of law’s dictates. Nevertheless, legal regimes are likely to matter, if not for the direct impact of law then for the underlying socio-political structures that it reflects. Had I only sampled from one regime, important variation would have been masked and misleading interpretations might have been construed. Exploring how businesses in different regimes respond to *Masterpiece* is thus

<sup>13</sup> At the time of the experiment, these included the following: in Indiana, Indianapolis, Fort Wayne, Evansville, Bloomington, Muncie, South Bend, Terre Haute. In Texas, Dallas, San-Antonio, Austin, El-Paso, Plano, Fort Worth.

<sup>14</sup> At the time of the experiment, these included the following: in Indiana, West Lafayette. In Texas: Houston, Irving, Arlington, Corpus Christi, Lubbock, Garland, Amarillo, Grand Prairie, Brownsville, McKinney, Killeen, McAllen, Waco, Denton, Round Rock, College Station.

<sup>15</sup> In addition, the law is determined not only based on acts of the legislature but also based on judicial decisions and administrative directives that interpret the enacted rule. I attempted to account for those—for example, by not sampling from overlap states where courts interpreted RFRAs as providing no protection against AD claims—but it is very difficult to account for all interactions between judge-made law and legislated law.

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necessary, even if the results are only suggestive and causal inference is limited.

A power analysis (via G\*Power) determined that a sample size of 179 businesses per legal category is needed to detect a medium-size effect (.25) with 80% power (assuming four legal regime groups and two covariates—see below). The detection of within-subject effects (sexual orientation and the effect of *Masterpiece* itself) required a considerably smaller sample. Yet due to pitfalls that could result in sample reduction (e.g., inactive businesses or email addresses; technical failures) the sampling aimed for 250 businesses per legal category.

The wedding industry includes a variety of vendors and services, such as photography, videography, flower arrangements, dresses, suits, wedding cakes, wedding planning, venues, and more. Recent cases in which businesses refused service to same-sex couples involved bakers, photographers, and florists, among others. I was particularly interested in bakers and photographers, because these businesses represent different models of involvement in the wedding: photographers typically spend many hours with the couple, take an active part in the event and are present throughout the wedding, often for 9-10 hours. Typically they also create the couple's wedding album, requiring continued relationship with the couple. In contrast, bakers typically have a more limited interaction with the couple (during tastings and the order), do not play an active role in the event and are not present in the wedding. These differences in personal involvement could bear on vendors' willingness to serve couples. Therefore the sampling focused on these two types of vendors, supplementing them with florists in one legal regime (Iowa) where not enough photographers and bakers were found.<sup>16</sup>

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<sup>16</sup> Iowa contained smaller populations of bakeries and photographers compared with the other regimes (and particularly bakeries). Florists were chosen to augment the sample because of prior conflicts involving this industry

The sample was built by collecting all vendors in each legal regime that could be found on a simple Google search and published an email address as a form of communication.<sup>17</sup> Contacting wedding vendors via email is a very common, if not the most common method of communication of couples: There is ample guidance online on how to write an email to potential wedding vendors and multiple websites assume that email is the default or best form of communication with vendors.<sup>18</sup> After mapping states and cities/counties that fitted into the legal regime typology, businesses were sampled based on regime size, from large to small. Thus, the sampling gave preference to large political units (e.g., big cities) over small political units (e.g., small cities and rural counties) and ended when the designated sample size was obtained.<sup>19</sup> Each business included in the sample was individually checked and verified to be a relevant business (e.g., a bakery rather than a coffee shop). The final sample includes the entire population of bakeries that met the search criteria in each legal regime, and a large sample of the respective photographers' population.<sup>20</sup>

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(e.g., *Arlene Flowers*, *supra* note 2) and because florists' involvement in the wedding was assumed to be intermediate: florists do not fill an active role in the event and are not present throughout the event, similar to bakers; and they do not appear to be offering shelf products, similar to photographers.

<sup>17</sup> The search words were “[profession] in [jurisdiction]” (e.g., “wedding photographers in Indianapolis, IN”).

<sup>18</sup> *See, e.g.*, Forrest (2017) (assuming communication is done via email); Currey (2019) (providing guidance on how to write emails to potential wedding vendors); Malie (2018) (“An email is usually the preferred method for inquiries as it allows the vendor to keep track of your conversation, respond in length and from a desktop, and allows them to easily attach files, reference links, and more.”). Vendors that did not publish an email address typically had an online application form on their website, reducing the potential concern that the sample is biased towards technology-oriented vendors.

<sup>19</sup> If the search yielded more results than needed, only the first valid results were included. The rationale for including top results rather than a random sample of search results was based on the Google search algorithm, which prioritizes relevant results, and also on the researchers' experience that first result pages include more relevant results than advanced pages. Top results were typically within the geographic boundaries I searched for, whereas later results were often in suburbs or other cities/counties; in addition, top results typically met the definition of the searched business, whereas later results sometimes belonged to other types of businesses (e.g., a Starbucks coffee shop that came up in a wedding bakeries search).

<sup>20</sup> In Iowa (+AD – RFRA), the sample also includes the entire photographer population (Iowa was the only category in which the search was not able to collect 250 businesses and exhausted all business types at 218 businesses). In North Carolina (- RFRA - AD) the sample exhausted 89% of relevant photographers. In the +RFRA -AD regime (Texas and Indiana) the sample exhausted 88% of the population. In the +RFRA +AD regime (Indiana and Texas) our sample exhausted about 50% of the relevant population (the photographer population in this regime was bigger than other regimes).

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In addition to the main experiment sample, I also constructed a “control” group of 251 vendors which was only contacted after *Masterpiece*. The control group was composed of photographers and florists from three of the four legal regimes (as all businesses in Iowa and bakers in all jurisdictions were exhausted in the experimental group). The control exhausted the relevant photographers population in each regime in addition to 45 florists from each regime. As explained in more detail in the procedure, the control group was not designed to test differences between regimes or business types, but to evaluate the effect of the experimental procedure itself.

***Procedure and materials.*** Sixteen fictitious email profiles were created for the experiment. In order to assess the baseline discrimination pattern, each business received two emails prior to *Masterpiece* from two different ‘couples’: a same-sex couple (1<sup>st</sup> wave) and a different-sex couple (2<sup>nd</sup> wave). The couples’ sexual orientation was made evident by their names. The name of the sender, appearing in the profile information and the signature, was a generic white American male name (John, Robert, Dylan, Scott). The name of the prospective spouse appeared inside the body of the email and was a generic name for a white American male or female, depending on the couple’s identity (Adam, Paul, Harry; Jessica, Ashley, Rebecca). The emails had similar properties, including similar information about the fictitious couple, the service requested from the vendor, and the prospective timing of that service,<sup>21</sup> and they were written in the same level of cordiality. Small, meaningless changes were inserted to diminish suspicion (including variations in wording, font size, font color, and signature style). The emails were sent one week apart, during

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<sup>21</sup> The timing of the prospective wedding noted in the email was determined based on market norms about when approximately to contact specific vendors. While the recommended timeline somewhat varies from one wedding portal to another, the emerging norm seems to be that photographers should generally be contacted between 9-11 months in advance, and florists and cakeshops should be contacted 6-9 months in advance (some advices provide a shorter timeframe for cakeshops). Thus, emails to photographers noted a wedding date which was 11 months away and emails to florists and cakeshops noted a date which was 8 months away.

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business days and hours, at about the same day of the week and time of the day, with an intentional hour lag to reduce suspicion.<sup>22</sup> All email versions are included in the Online Appendix.

A week after *Masterpiece*, on June 13<sup>th</sup>, all businesses were randomized to receive an email from a same-sex or a different-sex couple (3<sup>rd</sup> wave); and on the following week, each business received an email from the opposite-orientation couple (4<sup>th</sup> wave) (Overall, each business received emails from both couple types, one week apart). The emails of each wave had similar properties and were different from the two pre-*Masterpiece* emails. To increase responsiveness and further distinguish the communication from previous waves, post-*Masterpiece* emails included profile pictures and phone numbers, and alternated further the style and formatting of the emails. Each email was always sent from a profile that has not contacted that business before; altogether, each business received four different emails from four different profiles.

Businesses of the control group were contacted for the first time in the 3<sup>rd</sup> and 4<sup>th</sup> waves (after the decision was rendered), following the exact same post-*Masterpiece* procedure and during the exact same times. The control group was included to evaluate the possibility that the repeated measurement of businesses in the experiment group could have influenced their behavior, independent from the effect of the decision or couple's identity. More specifically, the goal of the control group was to assess whether the effects of *Masterpiece* were similar among businesses that were contacted both before and after *Masterpiece* and businesses that were freshly-contacted only after *Masterpiece*. This comparison provided an independent reference for response rate and attrition rate, which allowed for an additional robustness check.

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<sup>22</sup> In each wave, some subjects received the email 24 or 48 hours after the main group, due to logistic issues. All emails were sent during business days and hours.



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In order to reduce suspicion and fatigue, the research team answered each responding business manually once, soon after the response was received, and before the next wave of emails. The answers were personal and varied based on each business’ response. Typically, the responses requested more time to think or mentioned a reason for not continuing the correspondence which was unrelated to the details of the offer. Fifty-nine vendors had to be excluded from the sample because of email communication failures (typically, not receiving one of the four emails), and 15 were omitted due to explicit or potential suspicion.<sup>23</sup> The final sample, after exclusions, remained significantly larger than required to detect the minimal effect, based on the power analysis:

TABLE 3 – THE FINAL SAMPLE OF BUSINESSES IN THE EXPERIMENT

	RFRA	No RFRA
	N = 212	N = 210
AD	Photographers: 125 Bakers: 87	Photographers: 93 Bakers: 35; Florists: 82
	N = 244	N = 238
No AD	Photographers: 179 Bakers: 65	Photographers: 155 Bakers: 83

For any given inquiry, I measure the response it elicits from the business based on the email communication. Two RAs coded the entire dataset of emails under the close supervision of the PI. The research team conducted numerous meetings throughout the coding process to discuss the coding method, resolve open issues, and fine-tune the coding scales.<sup>24</sup> The main outcome of interest in all analyses is whether businesses agreed to provide service to the couple.<sup>25</sup>

Between the 3<sup>rd</sup> and 4<sup>th</sup> email waves a phone survey was conducted with a random sample of

<sup>23</sup> Online Appendix, Section OA2, details reasons for exclusions and the number of vendors excluded.

<sup>24</sup> Online Appendix, Section OA5, provides further information regarding the coding process.

<sup>25</sup> I had two measures for this outcome, binary and nuanced. The scale for Nuanced Response was: 1 = positive response, 0.5 = cooperative response, e.g., a vendor that asks for more information on the date or the location, 0 = no response, -0.5 = a negative response that includes a referral to other providers/services, -1 = negative response. Binary Response coded all responses > 0 as 1 (positive) and all responses <= 0 as 0 (negative).

wedding vendors to gain insight on non-response patterns observed in waves 1 and 2 (See below). The appendix describes the phone survey's sample, procedure, and results.

### **C. Strengths and Weaknesses of the Experiment**

The experimental design has multiple methodological strengths. First, it combines two of the most powerful methods for causal inference—pseudo-experiments and field experiments—to enable the study of an actual, concrete event—the *Masterpiece* decision—in a controlled setting. Second, sending carefully designed materials of fictitious individuals instead of real auditors creates a controlled setting for the study and removes inadvertent auditor biases (Bertrand and Mullainathan 2003). Third, the outcome measure—agreement to provide services to the couple—is less crude than, for example, callbacks in employment experiments (Bertrand and Mullainathan 2003). This is because the argument about discrimination in wedding services relates to the specific stage of the transaction that is studied here: the initial inquiry about the service.

Alongside these strengths, the experiment also has limitations. First, similar to Bertrand and Mullainathan (2003), I study asynchronous communication rather than face to face or phone communication. There are good reasons for that: Using emails enables the creation of a highly controlled experimental setting, including with respect to the couple's identities, how they represent themselves to businesses, the exact content of the inquiry, and the timing of the inquiry. All of these are very difficult to achieve in studies that employ real testers (audit studies). Although testers/auditors can be trained to behave similarly, it is impossible to erase the numerous differences between real people, or control for nuances in tone and facial expressions that can disclose the auditors' attitudes or that their search for a job/service is ingenuine (Bertrand and Mullainathan, 2003). In addition, while email inquiries do not capture the entire variation in how

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couples interact with vendors, emails are one of the most common methods of communication between couples and vendors, especially in the inquiry phase. To the extent that the process of negotiating with vendors has even moderate friction, one would expect that reduced positive responses to emails would ultimately translate into less market opportunities for same-sex couples. However, how the results translate to additional methods of communication remains an open question. This can be a topic for a future study.

An additional limitation, that flows directly from the method of a pseudo and controlled experiment, is that I examine the effect of *Masterpiece* in a relatively short time span: several weeks after the ruling. While collecting more observations would have been desirable, it was not possible to continue isolating the effect of the decision from intervening political developments. Shortly after the decision, legislatures in Texas, Iowa, and North Carolina have proposed, revived and even passed legislation pertaining to religious liberty and LGBTQ rights (Rodriguez 2019; Platoff 2019a; Platoff 2019b; Fitzsimons 2019). In this dynamic landscape, the conduct of businesses can no longer be linked to *Masterpiece*. Future cases may provide opportunities to examine additional effects of religious exemptions on society.

TABLE 4: OVERALL RESPONSE RATES IN EACH WAVE

<u>Wave</u>	<u>Overall Response Rate</u>
W1	70.8
W2	58.7
W3	63.4
W4	61.9

Finally, and this is an issue pervasive in studies that repeatedly measure the same respondents over time (Kalton, 2009; Gerber and Green 2012, pp. 236-238), I encountered a large attrition of businesses in the second wave of inquiries before *Masterpiece* (See Table 4). This pattern hindered

the ability to detect discrimination in the pre-*Masterpiece* period, as the first wave of emails was from same-sex couples and the second wave of emails was from opposite-sex couples. While the causes for this attrition are not entirely clear (this is common to studies that encounter attrition, Fitzgeralds et. al 1998), a random phone survey suggested that businesses that provided no response to the second wave of emails were generally less responsive than other businesses (also over the phone), rather than suspicious or email fatigued.<sup>26</sup> To minimize the impact of attrition on the robustness of the design, in the following waves I randomized couples' identity within each wave. In addition, as described in the procedure, the following waves were designed to increase responsiveness by altering the style and formatting of the emails and the couples' profiles.<sup>27</sup> This effort succeeded in increasing responsiveness to wave 3 and in reducing attrition between waves 3 and 4. Nevertheless, I concede that the attrition of businesses from wave 2 prevents the evaluation of the existence and extent of sexual orientation discrimination before *Masterpiece*.<sup>28</sup> To overcome this pitfall and evaluate the effect of *Masterpiece* on the existence and extent of discrimination *after* the decision, I developed several strategies of analysis which I present next.

#### **4. RESULTS**

This Section is organized as follows: it begins with the main analysis, which focuses on businesses that agreed to serve same-sex couples before *Masterpiece* and examines their behavior post-*Masterpiece*. The second analysis examines within-business changes of behavior across all

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<sup>26</sup> Online Appendix, Section OA3, reports that vendors who did not respond to the 2<sup>nd</sup> wave email were also less likely to answer the phone than vendors who replied to that email (36% vs. 52%, respectively). In addition, no 'phone favoritism' was found among email non-responders, *id.*

<sup>27</sup> Among these alterations, each profile was allocated a unique phone number, including a personalized outgoing message (identical in content).

<sup>28</sup> It is possible to infer that prior to *Masterpiece*, opposite-sex couples were disfavored relative to same-sex couples (reversed discrimination), but this inference seems tenuous. To the extent it is true, the magnitude of the *Masterpiece* effect is much larger than estimated below. Section OA4.1 in the Online Appendix reports these results.

businesses over time. I then move to examining differences between legal jurisdictions and between religious environments. Robustness checks and follow up studies can be found in the Online Appendix and are referenced along the way.

### **A. Has Masterpiece Increased Discrimination Towards Same-Sex Couples?**

To answer this question, I evaluate the impact of *Masterpiece* on businesses that agreed to serve same-sex couples before the decision (N=575 businesses \* 2 post-*Masterpiece* observations per business, resulting in 1150 observations). The assumption underlying this analysis is that businesses who responded favorably to same-sex couples before *Masterpiece* were equal treatment businesses (for the very least, they were “gay-friendly” businesses). Examining their behavior *after* the decision can provide an answer as to whether *Masterpiece* had a negative effect on the willingness of businesses to provide service to same-sex couples.

Some readers might have expected that a diff-in-diff strategy would be applied to answer the question. But the problem with the diff-in-diff approach is that the attrition between the first and second waves (both of which were pre-*Masterpiece*) meant that a diff-in-diff would be subject to criticism as not having comparable opposite-sex-couple-treated observations. Focusing on businesses who were gay-friendly in the pre-*Masterpiece* period circumvents the need to rely on data from the second wave of emails before *Masterpiece*, where significant attrition occurred. This is possible because all emails from same-sex couples were sent in the first wave of emails and therefore data on responsiveness to same-sex couples were not affected from the subsequent attrition.<sup>29</sup> Because assignment to wave in the post-period was randomized (unlike in the pre-

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<sup>29</sup> Ideally, had attrition not occurred, data from all waves should have been used to simultaneously assess both the existence of discrimination pre-*Masterpiece* and the effect of *Masterpiece* on preexisting discrimination. But because the data from wave 2 suffers from significant attrition, it is not possible to evaluate pre-*Masterpiece* discrimination

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period), there is no concern about attrition creating a confound if one conditions on the pre-period behavior and uses post-period outcomes to measure the effect of the decision.

Second, while the sample is smaller than the original sample (N= 906), it is still large enough to detect the effect in question.<sup>30</sup> The self-selection of businesses into this sample is not a concern, since these are exactly the businesses that require our focus. Businesses that discriminated against same-sex couples both before and after *Masterpiece* would not influence the results. In contrast, businesses that shifted from positive response to discrimination are precisely the object of the inquiry. Because businesses were randomized post-*Masterpiece* to receive an inquiry from a same-sex or an opposite-sex couple (and the vice versa in the following wave, such that each business was contacted by both couples post-*Masterpiece*), I can estimate the effect of *Masterpiece* precisely, using both within and between businesses data.

TABLE 5 - AVERAGE RESPONSE RATES OF LGBT-SERVING BUSINESSES AFTER *MASTERPIECE*, BY SEXUAL ORIENTATION OF COUPLES (NUANCED RESPONSE)

Sample	Couple	Negative Responses		No Response	Positive Responses		Total PR	Percent Difference in PR (p-value)	Total RR	Obs.
		<i>Neg. w/ Referral</i>		<i>Coop.</i>	<i>Pos.</i>					
All Inquiries	Opposite-sex	2.78	2.08	19.62	2.26	73.26	75.52	9.20 (0.0006)	80.38	576
	Same-sex	4.17	1.74	27.78	1.74	64.58	66.32			
Wave 3	Opposite-sex	1.39	2.43	19.44	2.43	74.65	77.08	9.38 (0.011)	80.56	289
	Same-sex	3.47	1.74	26.74	2.08	65.63	67.71			
Wave 4	Opposite-sex	4.17	1.74	19.79	2.08	71.88	73.96	9.03 (0.018)	80.21	287
	Same-sex	4.86	1.74	28.82	1.39	63.54	64.93			

patterns. At the same time, it is possible to answer the second question—what the effect of *Masterpiece* is—by relying exclusively on the first wave of emails, as described in the text.

<sup>30</sup> As the effect size exceeded the conservative assumptions of the power analysis, it was detectable also in analyses that relied on smaller samples. This is also true for the robustness analysis reported below.

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*Notes:* The table reports the response rates, by type of response, for opposite-sex couples and same-sex couples, for businesses that prior to *Masterpiece* provided a positive response to same-sex couples ('gay-friendly'). Response types include: Negative response (column 3), negative response moderated by a referral of the couple to a different vendor (column 4), no response (column 5), cooperative response (column 6), and positive response (column 7). The table also reports total of positive responses per couple type (column 8), as well as the difference in positive responses between couple types (column 9). Column 9 also reports the *p*-value for a test of proportions testing the null hypothesis that the positive response rates are equal across sexual orientation groups. Finally, the table reports the total response rate, positive and negative, per couple type (column 10) and the total number of observations (column 11).

Table 5 tabulates average response rates by the sexual orientation of the couple. Row 1 and 2 present the results for all inquiries collected post-*Masterpiece* by sexual orientation. Inquiries from a same-sex couple have a 66.3 percent chance of receiving a positive response. Equivalent inquiries from an opposite-sex couple have a 75.5 percent chance of being answered positively. This represents a difference of 9.2 pp, or 14 percent, that can be solely attributed to the names manipulation. Column 9 shows that this difference is highly statistically significant.<sup>31</sup>

Rows 3-4 and 4-5 present the same results for each wave of inquiries sent post-*Masterpiece* separately. On the first week after *Masterpiece*, 67.7% of the businesses randomly contacted by same-sex couples responded positively, as compared with 77% who responded positively to opposite-sex couples. This represents a difference in positive response rate of 9.3 pp, or 14 percent. On the second week after *Masterpiece*, the randomization flipped such that each business received an email from the counter-orientation couple. Of the businesses now contacted by opposite-sex couples, ~74% responded favorably, as compared with ~65% who responded favorably to opposite-sex couples. This represents a difference in positive response rate of 9 pp, or 14 percent. These differences are significant in both waves.

Note that this pattern indicates both between-subject differences (in each week, between the

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<sup>31</sup> These statistical tests assume independence of responses. However, as tables OA4.1-3 in the Online Appendix show, the results remain significant when the analysis assumes that the responses are correlated at the business level.

random groups) and within-subject differences (across weeks, within each group). Weekly attrition cannot explain the within-subject pattern, as the rate of response went *up* in the group that received the first message from a same-sex couple and the second message from an opposite-sex couple. In fact, as column 10, rows 3-5, show, opposite-sex couples experienced no reduction in positive responses from the first to the second wave. Only same-sex couples experienced such reduction. Yet, as Table OA4.1 in the Appendix shows, the effect of wave was not significant.

How do businesses communicate negative responses to couples? As Table 5, Column 5 indicates, the most common form of declining service is simply no response. This result is anticipated, as writing an negative response is both time costly and awkward, and the easiest way is to ignore the inquiry (Dovidio and Gaertner 2004; Bertrand and Mullainathan 2003). While it is possible that failures to respond result from not receiving an email, or forgetting to respond to it, we would expect such errors to distribute randomly, and therefore equally, across couple types. This is not the case. Opposite-sex couples had a 19.6 percent chance of not receiving a response to their inquiry. Same-sex couples had a 27.8 percent of not receiving a response. That is, the chance of same-sex couples to not receive a response was 42 percent higher ( $Z=3.26, p=.001$ ).

The additional checks that are reported below and in the Online Appendix indicate that the negative effect of *Masterpiece* on the willingness to provide service to same-sex couples was robust across analyses. I find it in the entire sample of businesses in the experiment ( $N=906$ ): comparing the rate of positive responses to same-sex couples before and after *Masterpiece* yields a drop of 14.4 pp, or about 23 percent. Observing only the responses after *Masterpiece* in the entire sample, the rate of positive responses for same-sex couples was lower than the respective rate for opposite-sex couples in 8.4 pp on average (Section OA4.2 in the Online Appendix); We find the



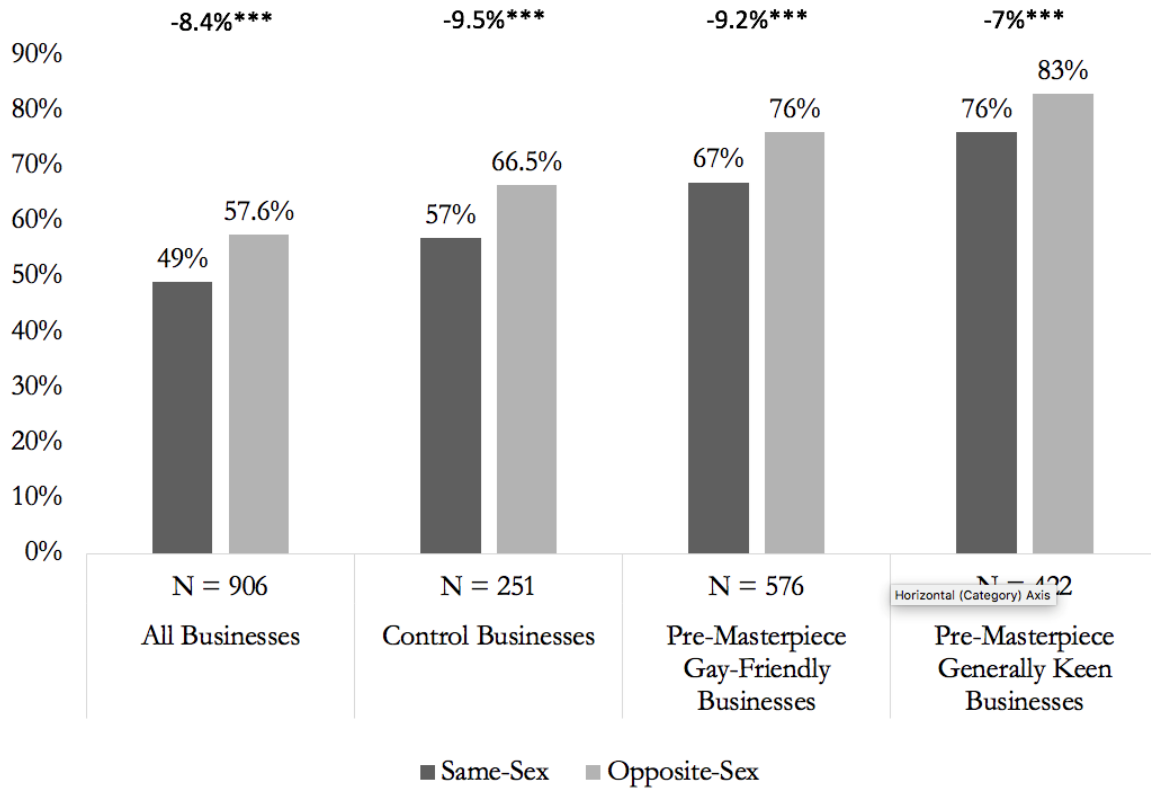
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same effect in the control group, where the gap between couple types was 9.5 pp (Section OA4.3 in the Online Appendix). We also find this effect among the particularly keen group of businesses that responded positively to both couples before *Masterpiece*. While these businesses remain more responsive than any other group of businesses, they too differentiate significantly between same-sex and opposite-sex couples after *Masterpiece* (~7 pp difference, Section OA4.4 in the Online Appendix). The summary of these results is presented in Figure 1, that shows that all business cohorts respond to *Masterpiece* with unfavorable treatment of same-sex couples, notwithstanding different baselines of positive response rates that characterize each cohort in separate.

In all of these analyses, I find that the *Masterpiece* effect is stable and robust to the inclusion of all experimental covariates, including the legal regime, the type of business, and the wave of inquiry. The effect is equally strong in urban areas, which are often assumed to be particularly inclusive of same-sex couples, and does not vary with political conservativeness. However, Sub-Section D finds that the effect varies with the religiosity of the environment, such that businesses in areas dense with religious congregations, and particularly Evangelical congregations, are more likely to adopt their behavior post-*Masterpiece*.

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**Figure 1.** Agreement to serve same-sex and opposite-sex couples after *Masterpiece*

How substantial are these effects? Take the average 9% gap in the willingness to serve same-sex and opposite-sex couples that was documented in most analyses. Now consider the typical couple, that contracts with about 10 vendors in the process of organizing the wedding, including photographers, bakers, florists, videographers, venues, DJs, bridal/groom salons, calligraphers, jewelers, wedding planners, and more.<sup>32</sup> A conservative estimate of the number of inquiries would be one per each business category, amounting to ten in total. A more liberal (some might say more representative) estimate assumes that each couple inquires with one or two potential vendors in each category, maybe more, amounting to at least 15-20 encounters. As each vendor-couple

<sup>32</sup> Photographers were generally less responsive (to all couples) than other businesses, but the negative effect of sexual orientation was robust across business types.

interaction presents an independent risk of incurring discrimination,<sup>33</sup> the aggregate risk that same-sex couples would encounter discrimination at least once in their interactions post-*Masterpiece* is a function of the average risk posed by each vendor and the overall number of interactions. This risk ranges from 61% for ten interactions to 85% for twenty interactions,<sup>34</sup> and can go higher (or lower) the more (less) vendors a couple encounters.

### **B. Within-Business Transitions**

Thus far we studied the effect of *Masterpiece* on businesses that provided favorable responses to same-sex couples prior to the ruling—that is, holding constant the pre-*Masterpiece* behavior, I asked how these businesses respond to random inquiries from same-sex and opposite-sex couples after *Masterpiece*. A complementary approach is to study within-business transitions throughout the duration of the experiment. As each business received four inquiries, two before and two after the decision, one from each couple type in each period, it is possible to study changes not only across businesses but also within businesses over time. While this analysis is compromised by the attrition that occurred in the second wave of inquiries before *Masterpiece*, zooming in on within business transitions alleviates this issue to some extent, as I will show below.

Table 6 tabulates the transitions from no/negative response pre-*Masterpiece* to positive

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<sup>33</sup> Clearly, independent vendors in one area could be different than independent vendors in another area, as areas differ in their levels of discrimination. In that sense, the risk posed by each vendor is not entirely independent from the risks posed by neighboring vendors. The *Masterpiece* effect was robust to county-level conservativeness and city size but varied with county-level religious density. On some aspects, then, the assumption of independence holds on average, and on other aspects the risk may vary with the environment. In any event, cases of revealed non-independence were rare and were removed from the sample (Section OA2 in the Online Appendix).

<sup>34</sup> In probabilistic terms, the question is: what is the probability that at least one of the vendors will discriminate against the couple, given  $X$  vendors and that the average vendor poses a 9% discrimination risk? To answer the question, one needs to calculate the odds that *all*  $X$  vendors do *not* discriminate (91% per vendor) and subtract that from 1.  $P(\text{at least one vendor discriminates}) = 1 - 0.91^X$ . This probability is 0.61 for  $X=10$  vendors, 0.76 for  $X=15$  vendors, 0.85 for  $X=20$  vendors, and so on.

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response post-*Masterpiece*, and vice versa, for same-sex and opposite-sex couples. The table indicates that transitions occur in all directions, but overall, they are significantly biased in favor of opposite-sex couples and against same-sex couples.<sup>35</sup> Businesses were three times more likely to transition from agreeing to declining service to same-sex couples after *Masterpiece* than transitioning in the opposite direction (row 2, column 4). In contrast, businesses were 42 percent more likely to transition in favor of providing service to opposite-sex couples after *Masterpiece* (row 1, column 4). Studying the same results at the level of the couples indicates that opposite-sex couples were more than twice as likely than same-sex couples to experience a *positive transition*, such that a previously declining business would agree to serve them post-*Masterpiece* (Column 1). In contrast, same-sex couples were twice as likely to experience a negative transition, such that a previously willing business would decline to provide service post-*Masterpiece* (Column 2). Notably, the estimates in first cell in Table 5 (row 1, column 1) should have probably been lower, because the general attrition that followed the pre-*Masterpiece* inquiry from opposite-sex couples might have yielded unintended declines of service – ultimately resulting in more positive transitions post-*Masterpiece*. The other cells, however, are not influenced from the attrition issue. In particular, the comparison of the transitions in column 2 and row 2, both showing that same-sex couples are very likely to experience a negative transition after *Masterpiece*, are unaffected.

TABLE 6 – WITHIN-BUSINESS TRANSITIONS BEFORE AND AFTER *MASTERPIECE*  
BY SEXUAL ORIENTATION OF COUPLES

<u>Percent of Businesses Transitioning From:</u>		Percent Difference (p-value)	Ratio
Declining to Agreeing	Agreeing to Declining		

<sup>35</sup> The occurrence of transitions in all directions is not surprising in and of itself. For example, Bertrand and Mullainathan (2003) found that alongside equal treatment employers (in that study, 88% of all employers) and white-favoring employers (8.4%), there 3.5% of the employers favored black applicants. Transitions in all directions are also expected because of communication failures. Note, however, that omissions to respond were not randomly distributed across couple types, as the p-values of the comparisons in Table 5 indicate.

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Opposite-Sex Couples	15.3%	10.8%	4.5%	1.42%
	[139]	[98]	(0.004)	
Same-Sex Couples	7.1%	21.4%	-14.3%	0.33%
	[64]	[194]	(0.0000)	
Percent Difference (p-value)	8.2%	-10.6%		
	(0.0000)	(0.0000)		
OS/SS Ratio	2.16%	0.5%		

*Notes:* The table reports the transition rates within-businesses from declining service (negative or no response) pre-*Masterpiece* to agreeing to provide service (positive response) post-*Masterpiece* (column 1), and vice versa (column 2), for opposite-sex couples (row 1) and same-sex couples (row 2). In brackets in each cell is the number of businesses in that cell. Column 3 reports the percent difference between columns 1 and 2, as well as the p-value of the difference, and Column 4 reports the ratio between Columns 1 and 2 (for each couple type, the ratio of positive/negative transitions). Row 3 reports the percent difference and p-value of the difference for rows 1 and 2, and Row 4 reports the ratio between Rows 1 and 2 (for each transition type, the ratio of opposite-sex vs. same-sex couples experiencing the transition).

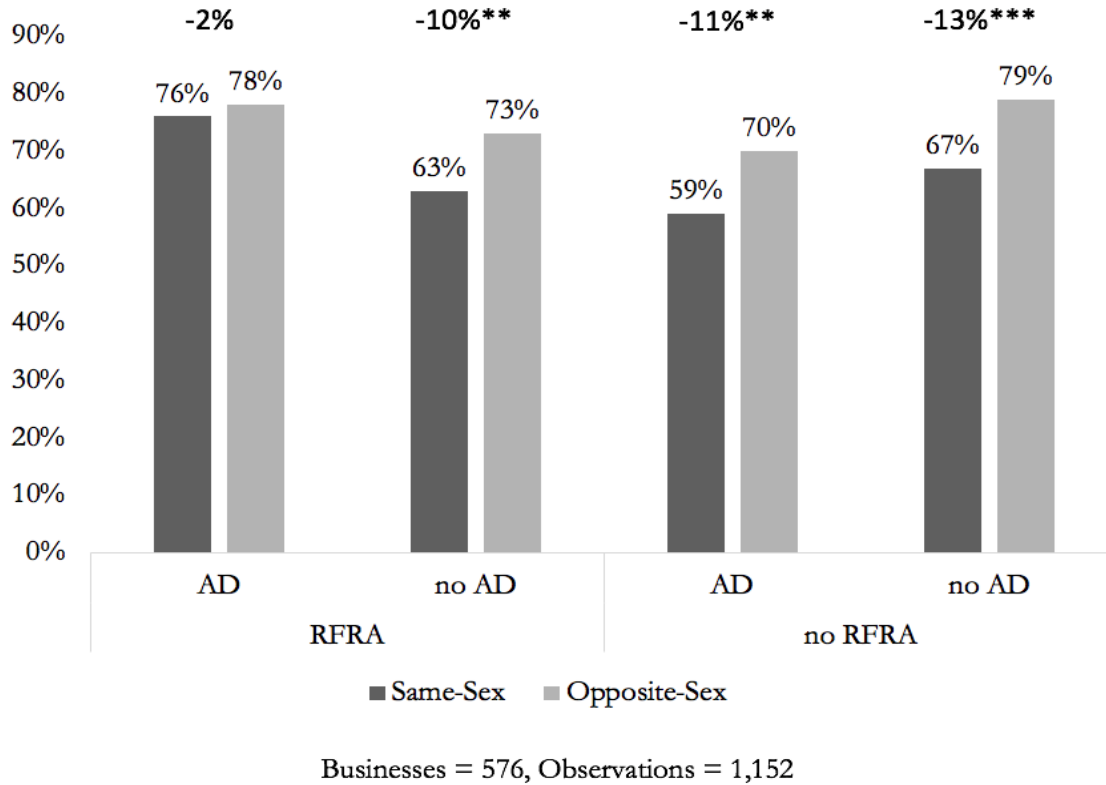
These findings complement the main analysis by indicating that the reduction in willingness to provide services to same-sex couples that is evident across businesses post-*Masterpiece* is also evident within-businesses post-*Masterpiece*. This reduction is not offset by businesses that prior to the decision did not serve same-sex couples and transitioned to serving them after the decision (this is also evident from the analysis of the full dataset in Section OA4.2 of the Online Appendix). While transitions from a positive to a negative response occur in all directions, same-sex couples encounter the largest percent of negative directions and the smallest percent of positive transitions.

**C. Does the Masterpiece Effect Vary Between Legal Regimes?**

The results so far demonstrate a substantial reduction in businesses’ willingness to provide service to same-sex couples, as compared with opposite-sex couples, after the *Masterpiece* decision. Next, we would like to learn more about the factors that may influence this gap. More specifically, this Section asks how this effect displays in different socio-legal regimes. Because of space limitations, the results are summarized in Figure 2. Briefly, I find that *Masterpiece* had a highly statistically significant negative effect in all regimes, *except* for regimes that enacted both

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an antidiscrimination law and a religious freedom law. The full analysis is reported in Section OA4.5 of the Online Appendix. I return to these results in the discussion.



**Figure 2.** The effect of Masterpiece on previously gay-friendly businesses, by legal regime

**D. Is the Masterpiece Effect More Pronounced in Religious Environments?**

Finally, what role does religion play in business behavior? Given that the decision involves a religious exemption and received considerable attention in religious media, one may expect that businesses operating in more religious environments will be more sensitive to *Masterpiece*, and as a result, the effect will be more pronounced in these environments. This hypothesis is particularly plausible with respect to Evangelical areas, as Evangelicals have been involved in a large number of wedding conflicts and are the denomination with the lowest rates of support in same-sex

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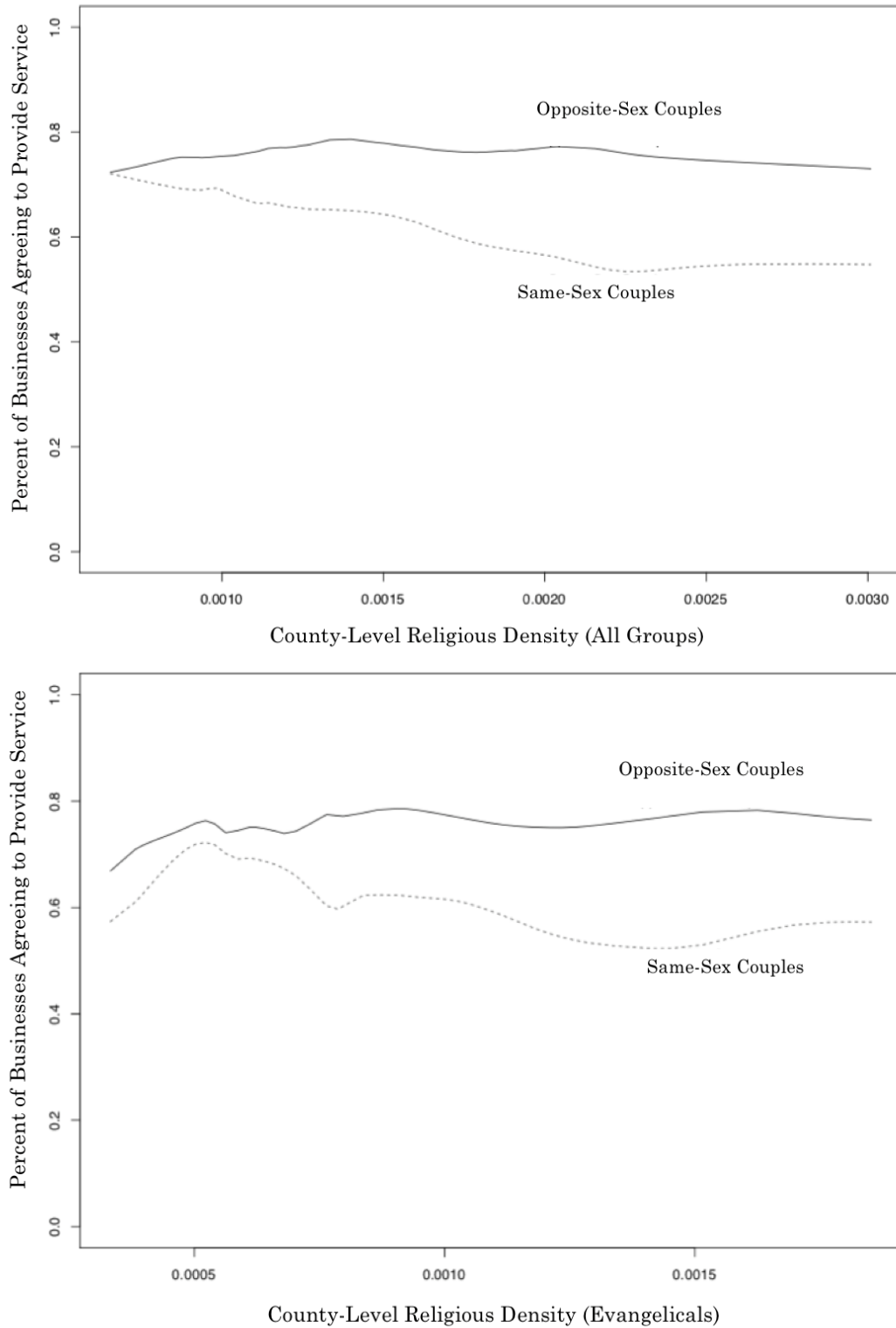
marriage (Pew Research Center 2014). Although individual-level evidence on the religiosity of the businesses is unavailable in this study, I can examine the impact of religious environment by observing the density of Evangelical congregations in the county where businesses are located.

I explored this hypothesis using public data on county-level density of religious and particularly Evangelical congregations from the U.S. Religion Census: Religious Congregations and Membership Study, 2010 (County File), available in the Association of Religion Data Archives (ARDA) (Grammich et. al 2010). The data include county-level counts of the number of congregations and adherents for 236 religious groups, as well as county population. As the number of adherents appeared less reliable than the number of congregations,<sup>36</sup> I computed the congregations/population ratio (religious density), for all religious congregations and for Evangelical congregations in particular. I then examine whether religious environment, as proxied by these measures, influences previously gay-friendly businesses after *Masterpiece*.

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<sup>36</sup> As Grammich et. al (2010) explain, only about 36% of the 236 groups reported data on their adherents and in 31 counties the number of reported adherents exceeded the total population in 2010. While groups can err in counting heads or overstate their actual membership, these biases are less likely in counting congregations and are more likely to be detected by ARDA data checkers.

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**Figure 3.** The effect of Masterpiece on previously gay-friendly businesses, by religious environment (top panel - all denominations; bottom panel – Evangelicals).



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Figure 3 plot the results. The top panel shows that the gap in the agreement to serve same-sex and opposite-sex couples varies with the religiosity of the environment of the businesses. All of the businesses in this analysis agreed to serve same-sex couples before *Masterpiece*. After *Masterpiece*, however, businesses in religiously dense areas show a large gap between same- and opposite-sex couples. In contrast, businesses in areas with few congregations do not distinguish between same-sex and opposite-sex couples. Plotting the results against the density of Evangelical congregations provides very similar results, as the bottom panel of Figure 3 shows. The data for areas with very few congregations is somewhat noisy (only 32 businesses are located in counties where Evangelical density is 0.0004 or below), yet the general trend is the same: the sexual orientation gap widens with Evangelical density. Notably, the percent of businesses agreeing to provide service to opposite-sex couples is fairly stable across high- and low-religious/Evangelical density areas. The fluctuation occurs mostly with respect to same-sex couples.

Section OA4.6 in the Online Appendix includes the results of the regression analyses that account for religious and Evangelical density.<sup>37</sup> Both are statistically significant, and with the interaction term between sexual orientation and religious/Evangelical density in the model, the effect of sexual orientation is no longer significant. In other words, the negative effect of *Masterpiece* on the agreement to provide service to same-sex couples is significantly concentrated in more religious environments. To get a concrete appreciation of the magnitude of this result, I compared businesses in high vs. low Evangelical density environments (top 25% (N=141) v.

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<sup>37</sup> One may ask how religious environment influenced behavior before *Masterpiece*. It is not possible to examine this question in full because of the Wave 2 attrition, that affected businesses across different levels of Evangelical density. However, a comparison of each pre-*Masterpiece* wave in separate shows that businesses in highly- and slightly-Evangelical environments did not significantly differ in their agreement to serve opposite-sex ( $p=.31$ ) and same-sex couples ( $p=.71$ ) before *Masterpiece*.

bottom 25% (N=109)). In highly Evangelical environments, previously gay-friendly businesses develop a whopping 20.5 pp gap between couples (78 pp vs. 57.5 pp,  $Z=3.69$ ,  $p = .0002$ ), whereas in slightly Evangelical environments, the gap is 2.7 pp (70.6 pp vs. 67.9 pp, n.s.). Observing high vs. low general religious density areas yields the same results.<sup>38</sup> These results indicate that businesses in more religious areas updated their behavior after *Masterpiece* significantly more than businesses in less religious areas.

## 5. CONCLUSIONS AND IMPLICATIONS

Combining methods from pseudo-experiments and field-experiments, this study finds a robust reduction in the willingness to serve same-sex couples after the Supreme Court *Masterpiece* decision, as compared with opposite-sex couples. The negative effect of *Masterpiece* on same-sex couples is evident in the population of businesses that prior to *Masterpiece* were willing to provide service to same-sex couples, as well as in the entire sample of businesses drawn from four different legal regimes in different US States. We see the causal effect of *Masterpiece* both within businesses, over time, and between businesses randomly contacted by same-sex or opposite-sex couples after the decision was rendered. The negative effect of *Masterpiece* is not an artifact of the experiment, as it is identically found in the control group.

What explains the effect of the *Masterpiece* decision on wedding vendors? The first aspect of this question relates to the *cognitive mechanisms* that translated *Masterpiece* to behavioral change. First, *Masterpiece* may have been interpreted as relieving a previously-anticipated penalty for discrimination or reducing the likelihood of enforcement (Becker 1968). Yet this explanation

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<sup>38</sup> A 17.2 pp vs. 3.6 pp gap, respectively (High-density N=144; Low-density N=110;  $Z=3.133$ ,  $p = .0017$ ).

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appears less plausible given the design of the experiment and the observed data. The experiment eliminated the risk of getting caught by design, as emails allowed vendors –both before and after *Masterpiece* – to entirely avoid detection, by simply ignoring the sender. In addition, vendors changed their behavior even in regimes that do not prohibit sexual orientation discrimination (Figure 2). A more likely possibility is an expressive effect (McAdams 2000; Sunstein 1996), i.e. that the decision led vendors' to perceive the social norm as more permissive of service refusal to same-sex couples. This explanation is supported by Tankard and Paluck (2017) and Kazyak and Stange (2018) who found that the *Obergefell* decision shaped individuals' perceptions of the social norm regarding same-sex marriage. Whereas the *Obergefell* court emphasized marriage equality, the *Masterpiece* court stressed the need to tolerate religious objection to marriage equality. The decisions may have had similar effects on social norm perceptions, only in opposite directions.

The second explanation for the effect could be the *social environment*, and particularly its religiosity, as businesses in religiously-dense areas updated their behavior substantially more than businesses in less religious areas. This may be explained by a greater concentration of religious vendors in these areas, or greater diffusion of conservative frames of the decision that may have influenced also non-religious vendors. The precise mechanism by which religion translated *Masterpiece* to negative consequences should be examined in future studies.

The findings from the *Masterpiece* experiment have several important theoretical implications. First, the experiment indicates that the Court can extend its influence beyond shaping public attitudes to shaping behavior itself. Second, the novel examination of the interaction between national and subnational legal structures highlights that the Court's effects can vary between legal regimes, sometimes in unexpected ways. In the present setting, *Masterpiece* had an effect in

regimes that were not supposed to be influenced from the decision (no AD regimes) and had no effect in regimes where change were expected (AD+RFRA regimes). These results underscore the need to account for subnational variation in future studies. Third, the study sheds new light on the argument that courts are ineffective at spurring social change (Rosenberg 2008), by highlighting the risk that the court will be effective, paradoxically, in spurring *inadvertent* social change. Rosenberg argued that courts are incapable of shaping public opinion but they may produce backlash by mobilizing opponents to block further rulings or reverse existing ones by means of legislation (Rosenberg 2008, pp. 362-370; 418-19). This study adds another risk to this list: that unsuccessful litigation will produce the opposite social consequences, independent from any political mobilization, by influencing market players. The *Masterpiece* Court clearly worried that its decision might increase discrimination against same-sex couples, a concern which may have contributed to the narrow ruling. Were the consequences different had the Court provided a bright line rule rather than “something for everyone”? This question could be explored in future studies.

Last but not least, the present study brings crucial and heretofore unobserved data to bear on a central normative question in constitutional law, one that is essential to the resolution of conflicts between equality and freedom. First, the results discredit the argument that religious exemptions will not expand discrimination. Instead, what the *Masterpiece* experiment shows is that even a narrow exemption can have a significant and robust impact on a market and its customers. These findings advance the debate on the impact of religious exemptions: now that data are available, more nuanced analyses can be performed: We can estimate the actual, aggregate risk of discrimination (which, as I showed above, is likely to be very high); and we can direct research efforts to the factors that are found to aggravate or attenuate the risk (including legal regime and

religious environment), and divest efforts from arguments that have been contradicted in fact (including that discrimination is not an issue in urban or progressive areas). These findings provide concrete guidance for future research.

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