

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

**Chelsey Nelson Photography LLC,
and Chelsey Nelson,**

Plaintiffs,

v.

**Louisville/Jefferson County Metro
Government; Louisville Metro
Human Relations Commission–
Enforcement; Louisville Metro
Human Relations Commission–
Advocacy; Verná Goatley, in her
official capacity as Executive Director of
the Louisville Metro Human Relations
Commission–Enforcement; and 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,**

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**Plaintiffs' Response to Defendants'
Motion to Limit Testimony by
Plaintiffs' Rebuttal Expert, George
Yancey, Ph.D.**

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Introduction

Plaintiffs Chelsey Nelson and her photography studio challenge Louisville’s public-accommodations law because it violates Chelsey’s free speech and freedom of religion under the First Amendment and Kentucky’s Religious Freedom Restoration Act (KRFRA). Because this law violates Chelsey’s rights, Louisville must prove that it passes strict scrutiny. And Louisville offered Professor Netta Barak-Corren as an expert to meet that standard. But her testimony should be excluded because it is speculative, unreliable, and irrelevant. Pls.’ Mot. to Exclude Testimony of Netta Barak-Corren (Pls.’ Mot. to Exclude), ECF No. 90. Nonetheless, if this Court admits her testimony, then this Court should also admit the testimony of George Yancey, Ph.D. for two reasons.

First, Dr. Yancey’s rebuttal testimony is relevant. It rebuts and defuses Barak-Corren’s testimony by exposing how her testimony is one-sided and considers only one set of speculative harms. As Dr. Yancey explains, Barak-Corren’s report and conclusions completely ignore Chelsey’s freedoms and the many ways restricting Chelsey’s freedom would harm others. Louisville cannot proffer an expert exhorting this Court to restrict constitutional rights based on an alleged balancing of harms and then say testimony about that balancing is irrelevant.

Second, Dr. Yancey’s rebuttal testimony is reliable. Dr. Yancey is an undisputed expert in “anti-Christian hostility” and applies that expertise to Barak-Corren’s report. And Louisville never meaningfully challenges the underlying methods or the results of any study Dr. Yancey cites. So Dr. Yancey’s testimony should be admitted as rebuttal testimony because it is relevant and reliable.

Background

Dr. Yancey is an expert on “qualitative and quantitative empirical” methods, the “topics raised by Professor Barak-Corren’s report as it concerns the potential

effect on Christian communities,” on “anti-Christian hostility,” and on “the treatment of Christians by those with high levels of cultural power.” Rebuttal Expert Report of George Yancey, Ph.D. (GY Report) ¶¶ 3–4, ECF No. 90–6. Dr. Yancey has written dozens of published books and peer-reviewed articles on media bias, anti-Christian attitudes, and other topics. *Id.* at ¶ 2. Most of Dr. Yancey’s rebuttal report explains that the *Masterpiece* Study uses unreliable methodology, is irrelevant to Louisville, and reaches speculative results. *Id.* at ¶¶ 8, 10–33. Louisville does not dispute Dr. Yancey’s expertise or seek to exclude these critiques. Defs.’ Mot. to Limit Testimony by Pls.’ Rebuttal Expert, George Yancey (Defs.’ Mot.) 4, ECF No. 91 (not challenging “the admissibility of” most of “Professor Yancey’s report”).

Dr. Yancey also explains how Barak-Corren’s “report does not sufficiently account for the converse of her conclusions, i.e., how the lack of a religious exemption for Plaintiffs ... could limit religious freedom and how the loss of that freedom will impact the larger society.” GY Report ¶ 8; *id.* at ¶¶ 34–46. Relying on his own and others’ research, Dr. Yancey emphasizes the potential harm to other creative professionals and social service providers who hold beliefs like Chelsey’s if Chelsey does not receive an exemption from Louisville’s law. *Id.* at ¶¶ 34–45. These harms include increasing hostility towards businesses with Chelsey’s beliefs (*id.* at ¶¶ 36–40), suppressing ideas about marriage (*id.* at ¶¶ 41–42), compelling creative professionals to create works that violate their faith (*id.* at ¶ 42), and potentially “driv[ing] out Christian social work agencies” (*id.* at ¶ 45).

All of Dr. Yancey’s testimony about the potential harms to religious persons and communities is relevant to and responds to Louisville’s defense raised through Barak-Corren: that its law passes strict scrutiny—i.e., that the law is narrowly tailored to further a compelling interest.

Louisville’s law must pass strict scrutiny because Chelsey has shown that it violates her First Amendment rights and her rights under KRFRA. *See* Pls.’ Br. in Supp. of Their Summ. J. Mot. (MSJ) 5–20, 24–25, ECF No. 92–2. Louisville has the burden to prove that its law overcomes strict scrutiny. *Id.* at 20–24. Chelsey has shown that Louisville cannot meet that burden. *Id.*

Even so, Louisville says Barak-Corren’s proposed testimony is “relevant to Louisville’s interest in uniformly enforcing its antidiscrimination law and *the Court’s balancing of that interest against Chelsey’s religious freedoms.*” Defs.’ Mot. 8 (emphasis added).¹ Barak-Corren’s report often mentions the supposed tension between religious liberty and antidiscrimination laws and proposes how to balance these interests. *A License to Discriminate? The Market Response to Masterpiece Cakeshop* (HCRCL), 56(2) *Harvard Civil Rights–Civil Liberties Law Review* 1, 9–24 (forthcoming 2021), ECF No. 90–3 (surveying historical tension and outlining current debate); *id.* at 49–63 (advocating how legislators and courts should balance these interests); *Religious Exemptions Increase Discrimination Towards Same–Sex Couples: Evidence from Masterpiece Cakeshop*, *Journal of Legal Studies* (JLS) 1, 37–38 (forthcoming 2021), ECF No. 90–4 (same). *Cf.* Transcript of Deposition of Netta Barak-Corren 13:6–16:2 (Barak-Corren explaining her report includes her written report, her two articles, and her online appendix) (attached as Exhibit A). For Barak-Corren, this balance should universally favor antidiscrimination laws over religious freedom. *See, e.g.*, HCRCL 8 (arguing one implication of study is that public-accommodations laws pass strict scrutiny).

Dr. Yancey’s testimony explains why Barak-Corren’s balancing scale is off: she exaggerates the weight of Louisville’s law and gives no weight to the potential harms to religious freedom. Ultimately, though, Barak-Corren’s testimony should

¹ Chelsey disputes the relevance of Barak-Corren’s testimony to strict scrutiny. *See* Pls.’ Mot. to Exclude 22–25.

be entirely excluded. *See generally* Pls.’ Mot. to Exclude. And no balancing is needed here—Chelsey has already proven that Louisville has no interest in suppressing her speech or restricting her religious exercise, particularly when Louisville has so many alternatives to achieve any legitimate goals. MSJ 20–24. The First Amendment and KRFRA already do the balancing Louisville calls for. But to the extent this Court needs to balance Chelsey’s rights against Louisville’s speculative and improper goals, this Court should consider both sides of the ledger and the potential harm a ruling against Chelsey would cause her and others. Dr. Yancey’s report addresses this balancing and the gap in Barak-Corren’s testimony.

Argument

If Barak-Corren’s testimony is admitted, then Dr. Yancey’s report should as well because the latter explains the potential harms Barak-Corren’s proposed course of action would cause to religious persons and communities. Dr. Yancey’s report is relevant and responsive to Barak-Corren’s testimony about how this Court should balance religious liberty and public-accommodations laws. Dr. Yancey’s report also uses reliable methodology to reach reliable results.

I. Dr. Yancey’s testimony is proper and relevant to rebutting Barak-Corren’s testimony on balancing religious freedom and antidiscrimination laws.

Dr. Yancey’s testimony about the harm caused by failing to protect Chelsey’s freedom is appropriate and relevant rebuttal evidence.

“The proper function of rebuttal evidence is to contradict, impeach or defuse the impact of the evidence offered by an adverse party.” *United States v. Levy*, 904 F.2d 1026, 1031 (6th Cir. 1990) (cleaned up). *See also* Fed. R. Civ. P. 26(a)(2)(D)(ii) (rebuttal expert testimony “contradict[s] or rebut[s] evidence on the same subject matter” discussed by another party’s expert witness). Relatedly, rebuttal evidence must “help the trier of fact.” Fed. R. Evid. 702(a).

Courts admit “real rebuttal evidence.” *Toth v. Grand Trunk R.R.*, 306 F.3d 335, 345 (6th Cir. 2002). Real rebuttal evidence is evidence “which is directed to rebut new evidence or new theories ...in the defendant’s case-in-chief.” *Id.* (quoting *Martin v. Weaver*, 666 F.2d 1013, 1020 (6th Cir. 1981)). Put differently, such evidence is “expert opinion offered by a Plaintiff in response to a defense theory ... that ordinarily would not be offered by the Plaintiff in its case-in-chief to establish” a claim. *Taylor v. Brandon*, 2018 WL 3581142, at *2 (W.D. Ky. Jan. 30, 2018).

Dr. Yancey’s testimony matches these descriptions of rebuttal and relevant evidence. As noted, Louisville proffered Barak-Corren to try to meet its burden to show that its law passes strict scrutiny. Defs.’ Mot. 8. Barak-Corren’s report advocates how this Court should balance the relationship between religious freedom and public-accommodations laws. Indeed, she claims this relationship was a “central question” to her *Masterpiece* Study. HCRCL 4.

Dr. Yancey’s testimony rebuts this one-sided evaluation by discussing the dangers of Barak-Corren’s proposal. Louisville criticizes Dr. Yancey’s testimony because it discusses potential results Barak-Corren “does not consider.” Defs.’ Mot. 4. But that’s the whole point of Dr. Yancey’s testimony. Dr. Yancey defuses Barak-Corren’s testimony by demonstrating how she failed to “adequately account for the potential costs to religious freedom.” GY Report ¶ 7; *see id.* at ¶ 8.

Dr. Yancey presents research and cases disclosing how refusing to grant Chelsey an exemption could exacerbate religious hostility. GY Report ¶¶ 35–38. He describes the broader “prosocial benefits” delivered by members of the Christian community and how these benefits might deteriorate. GY Report ¶¶ 43–45.

And Dr. Yancey responds to Barak-Corren’s argument about “the transaction costs” of the “harms incurred by same-sex couples ... against the harms incurred by religious objectors.” HCRCL 61. Barak-Corren rejects the argument that “the costs to religious objectors are extremely high, because of the idiosyncratic and fixed

nature of their beliefs.” *Id.* at 61–63. Dr. Yancey counters that coercing these religious beliefs could cause those with Chelsey’s religious beliefs to “lose rights to self-expression” and could enable those “external to Christian communities” to “assess and approve which values Christians can maintain in their businesses and occupations.” GY Report ¶¶ 41–42. And Dr. Yancey explains how an exemption for Chelsey “does not require members of the LGBT communities to violate their strongly held norms and values.” *Id.* at ¶ 42.

Dr. Yancey’s testimony is real rebuttal evidence because Chelsey does not use it in her case-in-chief. *See Taylor*, 2018 WL 3581142, at *2; Fed. R. Civ. P. 26(a)(2) advisory committee’s note to 1993 amendment (“[I]n most cases the party with the burden of proof on an issue should disclose its expert testimony on that issue before other parties are required to make their disclosures with respect to that issue.”). *Cf.* MSJ 20–24 (Louisville’s law fails strict scrutiny). Louisville—not Chelsey—has the burden to show that its law satisfies strict scrutiny. *See, e.g., United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816–17 (2000) (noting government’s “burden of proving the constitutionality of its actions” in First Amendment case); *Thomas v. Bright*, 937 F.3d 721, 734 (6th Cir. 2019) (same). So Chelsey need not show that Louisville’s law *does not* pass strict scrutiny (although she does so anyway without Dr. Yancey’s report (MSJ 20–24)). *See Martin v. City of Albuquerque*, 2019 WL 2107279, at *5 (D.N.M. May 14, 2019) (recognizing “Plaintiffs were not required to offer expert testimony first” in First Amendment case when “the City has the burden” to prove its law was “narrowly tailored to the City’s interest”). Meanwhile, Louisville must show that its law *does* pass strict scrutiny. So Dr. Yancey’s testimony responds to Louisville’s “new evidence or new theories” on strict scrutiny raised in Barak-Corren’s report. *Toth*, 306 F.3d at 345.

But Louisville incorrectly tries to exclude Dr. Yancey’s testimony for three reasons. First, Louisville claims that his testimony goes beyond the “one discrete

question” Barak-Corren considers: “the effect of granting Chelsey Nelson a religious exemption to Louisville Metro’s antidiscrimination law on wedding vendors’ willingness to provide services to same-sex couples.” Defs.’ Mot. 7–8. But Barak-Corren’s report is much broader than that. *See id.* at 8 (noting relevance depends on “Court’s balancing”); *supra* 3 (discussing how Barak-Corren’s testimony promotes one position on religious liberty and antidiscrimination laws).

Second, Louisville claims that Dr. Yancey’s testimony introduces “new evidence.” *Id.* at 8. That’s true. But it’s irrelevant. The evidence is still proper rebuttal evidence because it “is offered to directly contradict or rebut the opposing party’s expert.” *Bentley v. Highlands Hosp. Corp.*, 2016 WL 5867496, at *5 (E.D. Ky. Oct. 6, 2016) (cleaned up). *See also Pogue v. Nw. Mut. Life Ins. Co.*, 2017 WL 4227657, at *3 (W.D. Ky. Sept. 22, 2017) (allowing “a new finding” on rebuttal); *Martin*, 2019 WL 2107279, at *4 (approving rebuttal expert in First Amendment case who offered “several alternatives” not considered by expert). This distinguishes Dr. Yancey’s testimony from the testimony in *Blake v. Securitas Security Services, Inc.* where the proffered rebuttal expert opined on issues that “ha[d] nothing to do” with the expert’s opinion. 292 F.R.D. 15, 18 (D.D.C. 2013); Defs.’ Mot. 8 (relying on *Blake*).

Third, Louisville claims that Dr. Yancey’s “observations regarding individual attitudes” of religious hostility are irrelevant. Defs.’ Mot. 8. But Dr. Yancey does more than observe attitudes. He links those hostile attitudes to specific actions that injure religious persons and communities. *See, e.g.*, GY Report ¶¶ 36–38, 40, 42, 44.

Barak-Corren’s testimony never considers the potential harms to religious persons and religious communities. That was a mistake. Dr. Yancey’s report rebuts Barak-Corren’s testimony by demonstrating how serious those harms could be.

II. Dr. Yancey’s testimony reliably highlights how Barak-Corren ignores many potential harms to religious persons and communities.

Dr. Yancey’s testimony about the harms of a ruling against Chelsey may cause is also reliable based on his undisputed expertise in “anti-Christian hostility” and the research he cites.

Rebuttal evidence must be based on “reliable principles and methods” and “based on sufficient facts or data.” Fed. R. Evid. 702(b)–(c). And the expert must reliably apply “the principles and methods to the facts of the case.” *Id.* at 702(d). Dr. Yancey’s testimony meets these requirements.

Dr. Yancey makes a straightforward conclusion: Barak-Corren ignores “how the lack of a religious exemption for Plaintiffs in this case could limit religious freedom and how the loss of that freedom will impact the larger society.” GY Report ¶ 8; *id.* at ¶ 34 (“Barak-Corren does not consider th[e] possibility” that a ruling against Chelsey “could threaten religious freedoms by making Christian communities vulnerable to attack.”). Dr. Yancey gives many examples of the harms Barak-Corren failed to consider.

Dr. Yancey points to Jack Phillips’s cases which display “the link between hostility towards conservative Christians and sexual-orientation antidiscrimination laws.” GY Report ¶¶ 37–38. Dr. Yancey attacks the “underlying assumption” of the *Masterpiece* Study as effectively encouraging courts to “allow religious hostility against religious wedding vendors to avoid same-sex discrimination.” *Id.* at ¶ 39. Dr. Yancey explains the unique harms to “free-speech and free-expression rights” if Chelsey is not granted an exemption. *Id.* at ¶ 41. And Dr. Yancey notes how “[t]he potential cost to Christian communities” absent an exemption for Chelsey may be higher than “the potential cost to same-sex couples” with an exemption for Chelsey. *Id.* at ¶ 42. Louisville never challenges any of these conclusions. So there’s no dispute that Dr. Yancey’s conclusions on these topics are reliable.

Dr. Yancey also shows how animosity towards Christians may increase punishment, who is more likely to have animosity towards Christians, and how this animosity may affect the broader community.

Dr. Yancey's 2013 Study explains that "those with animosity towards Christians are much more likely to pronounce the highest punishment possible when provided an opportunity to punish Christians." GY Report ¶ 36. Louisville counters that Dr. Yancey doesn't link "respondents' preference for strong anti-discrimination enforcement to a deep-seated desire to punish Christians." Defs.' Mot. 10–11.² But of course he did. His study highlights—and no one disputes—that study respondents who "demonstrated hostility towards Christians" imposed the maximum fine more than three times as often as those who "did not demonstrate hostility towards Christians." GY Report ¶ 36. Louisville never questions the methodology or results of this study. So Dr. Yancey's conclusions are reliable.

Dr. Yancey makes the related point that certain demographics are more likely to possess "anti-Christian hostility." *Id.* at ¶ 40. Dr. Yancey then concludes that if "administrators responsible for enforcing sexual-orientation antidiscrimination laws" match these demographics, then such laws may be disproportionately enforced against Christians. *Id.* Dr. Yancey's goal is to show that Barak-Corren should have considered this possible outcome. *Contra* Defs.' Mot. 11 (claiming Dr. Yancey speculates about "Louisville Metro's civil servants"). And Louisville never challenges the fact that certain demographics are more likely to harbor "anti-Christian hostility." GY Report ¶ 40.

² Louisville suggests that Dr. Yancey relied on his 2013 Study to conclude that "some individuals favor members of the LGBT community due to their antipathy towards conservative Christians." *See* Defs.' Mot. 10. But that's incorrect. Dr. Yancey's 2018 Study supports this conclusion. *See* GY Report ¶ 36 (citing the 2018 Study for that point).

Dr. Yancey also explains how this animosity and a ruling against Chelsey may affect the broader community by “inhibit[ing] the ability of Christian communities to continue to deliver prosocial benefits to the larger society.” *Id.* at ¶ 45; *id.* at ¶¶ 43–44. While Louisville claims that Dr. Yancey has “no evidence” for this claim, Dr. Yancey points to Jack Phillips (the Colorado cake-designer targeted by government officials), the (unchallenged) explanation of the harms created when forcing religious persons to create works contrary to their beliefs, and the likelihood that persons with religious hostility will impose greater penalties on religious persons. *See id.* at ¶¶ 36–38, 41–42.

There are many other examples of these harms as well. Barronelle Stutzman of Arlene’s Flowers faces potential million-dollar-attorney-fee payments and a possible personal bankruptcy after she politely declined to create a custom wedding floral arrangement for a same-sex couple she had served for years.³ A photographer in New Mexico closed her business after paying fines and facing death threats for objecting to creating photographs celebrating a same-sex wedding.⁴ Cakeshop owners in Oregon closed their business after being fined \$135,000 for declining to create a custom wedding cake for a same-sex couple.⁵ And Barak-Corren details how “Catholic Charities withdrew from providing adoption services following an

³ *See* Pet. for Reh’g at 11, *Arlene’s Flowers, Inc. v. Washington*, No. 19-333 (U.S. July 27, 2021), <https://bit.ly/3BY9Uss>.

⁴ *Willock v. Elane Photography, LLC*, HRD No. 06-12-20-0685, at 20 (Hum. Rts. Comm’n N.M. Apr. 9, 2008), <https://bit.ly/3AEt6e3>; Richard Wolf, *Same-sex marriage foes stick together despite long odds*, USA Today (Nov. 15, 2017), <https://bit.ly/3m2czwk>.

⁵ Sweet Cakes by Melissa announces closure, KGW8, <https://bit.ly/2UHMANK> (last updated Oct. 6, 2016).

objection to a Massachusetts requirement to place children with families regardless of sexual orientation.”⁶

Even staunch supporters of LGBT anti-discrimination laws admit the great harm caused when these laws force religious adherents out of business and stigmatize and exclude them from the public square. *See* Andrew Koppelman, *Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law*, 88 S. Cal. L. Rev. 619, 629 (2015) (admitting burden of court decision against New Mexico photographer would cause her to “abandon her business”); *id.* at 653 (emphasizing that “[t]he label of ‘bigotry’ is powerful medicine The notion that religious conservatives are all consumed with a hateful compulsion to hurt gay people has been an effective rhetorical trope, but it unfairly stereotypes those it purports to describe--much like the vicious old notion of gay men as misogynistic, amoral sociopaths.”).

Louisville also quibbles with Dr. Yancey’s *Religious Likes and Dislikes as Potential Explanations for Support of Sexual Minorities* (2018 Study), 14(2) *Interdisciplinary J. of Research on Religion* 1 (2018), ECF No, 91–3. Defs.’ Mot. 9–10. Louisville calls the study “unreliable.” *Id.* at 10. But Louisville never disputes the study’s conclusion that antipathy towards conservative Christians is statistically connected to support for sexual minorities; never challenges the study’s results that anti-Christian Fundamentalist sentiments shape attitudes towards wedding professionals, anti-discrimination laws, and other subjects; and never disputes Dr. Yancey’s methodology. *See, e.g.*, 2018 Study 13–21; *id.* at 22 (“There are two reasons, however, to suspect ... that the power of anti-religious animosity

⁶ Netta Barak-Corren, *Taking Conflicting Rights Seriously*, 65 *Vill. L. Rev.* 259, 262 (2020).

has fueled some support for sexual minorities.”); GY Report ¶ 36 (citing study for this point).

Instead, Louisville criticizes the 2018 Study’s use of the phrase “Christian Fundamentalism,” but never explains how the phrase undermines the study (it does not). Defs.’ Mot. 10. And Dr. Yancey explains elsewhere why respondents are more likely to understand the term as meaning “conservative Christians in general rather than only [] the most extremist[] segments of that religious population.” George Yancey & David A. Williamson, *So Many Christians, So Few Lions: Is there Christianophobia in the United States* 141 (2014) (attached as Exhibit B).

Louisville simply does not challenge many of Dr. Yancey’s conclusions or opinions. And because Louisville has no meaningful way to undermine the reliability of any of the conclusions it does challenge, Dr. Yancey’s testimony is reliable.

Conclusion

The testimony of George Yancey, Ph.D. is relevant and reliable rebuttal evidence. If Professor Netta Barak-Corren’s testimony is admitted (it should not be), then Dr. Yancey’s testimony should be admitted to prove one of the many shortcomings of Barak-Corren’s report—her failure to balance the potential threats to religious liberty.

Respectfully submitted this 29th day of September, 2021.

By: s/ Bryan D. Neihart

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2021, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

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UNITED STATES DISTRICT COURT
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Case No. 3:19-cv-00851-BJB-CHL

**Bryan D. Neihart's Declaration in
Support of Plaintiffs' Response to
Defendants' Motion to Limit
Testimony by Plaintiffs' Rebuttal
Expert, George Yancey, Ph.D.**

I, Bryan D. Neihart, declare as follows:

1. I am over the age of eighteen and competent to testify, and I make this declaration based on my personal knowledge.
2. I am one of the attorneys representing Plaintiffs Chelsey Nelson Photography LLC and Chelsey Nelson in this litigation.

3. On June 30, 2021, Defendants served on Plaintiffs a Notice of Expert Disclosure, retaining Professor Netta Barak-Corren, and produced the expert report of Professor Barak-Corren.

4. On August 4, 2021, counsel for Plaintiffs' deposed Professor Barak-Corren. A true and correct copy of the relevant excerpts of the deposition transcript is attached as Exhibit A.

5. On July 13, 2021, Plaintiffs served on Defendants a Rebuttal Expert Disclosure retaining George Yancey, Ph.D.

6. On July 26, 2021, Plaintiffs produced the rebuttal expert report of George Yancey, Ph.D.

7. Dr. Yancey's report cited to many of his previously published academic books and peer-reviewed articles. One of the cited academic books is George Yancey and David Williamson, *So Many Christians, So Few Lions: Is There Christianophobia in the United States?* (2014). A true and correct copy of excerpts of that book is attached as Exhibit B.

Declaration Under Penalty of Perjury

I, Bryan D. Neihart, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of September, 2021, at Scottsdale, Arizona.



Bryan D. Neihart

EXHIBIT A

1	3
UNITED STATES DISTRICT COURT WESTERN DISTRICT OF KENTUCKY LOUISVILLE DIVISION Case No. 3-19-CV-00851-BJB-CHL CHELSEY NELSON PHOTOGRAPHY, LLC and CHELSEY NELSON, PLAINTIFFS v. LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, et al., DEFENDANTS DEPONENT: PROFESSOR NETTA BARAK-CORREN DATE: AUGUST 4, 2021 COURT REPORTER: JESSICA TAYLOR ROSS TAYLOR COURT REPORTING KENTUCKY 2901 SIX MILE LANE LOUISVILLE, KENTUCKY 40220	1 2 APPEARANCES 3 4 COUNSEL FOR PLAINTIFFS: 5 Ryan Bangert, Esq. 6 Bryan D. Neihart, Esq., AZ Bar No. 035937 7 (Via Zoom videoconference) 8 ALLIANCE DEFENDING FREEDOM 9 15100 N. 90th Street 10 Scottsdale, Arizona 85260 11 Telephone: (480)444-0020 12 Email: rbangert@adfllegal.org 13 bneihart@adfllegal.org 14 15 COUNSEL FOR DEFENDANT, LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT: 16 17 Casey L. Hinkle, Esq. 18 Rick Adams, Esq. 19 (Via Zoom videoconference) 20 KAPLAN JOHNSON ABATE AND BIRD, LLP 21 710 W. Main Street, 4th Floor 22 Louisville, Kentucky 40202 23 Telephone: (502) 416-1630 24 Email: chinkle@kaplanjohnsonlaw.com 25 radams@kaplanjohnsonlaw.com
2	4
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 PROFESSOR NETTA BARAK-CORREN 16 AUGUST 4, 2021 17 18 19 20 21 22 23 24 25	1 2 APPEARANCES 3 4 COUNSEL FOR DEFENDANT, LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT: 5 6 Jason D. Fowler, Esq. 7 John Carroll, Esq. 8 (Via Zoom videoconference) 9 ASSISTANT JEFFERSON COUNTY ATTORNEYS 10 531 Court Place, Suite 900 11 Louisville, Kentucky 40202 12 Telephone: (502)574-6321 13 Email: jason.fowler@louisvilleky.gov 14 john.carroll2@louisvilleky.gov 15 16 17 18 19 20 21 22 23 24 25

<p style="text-align: right;">13</p> <p>1 that if there's a take -- that the question is 2 pending, that you answer the question and then 3 we can take a break. 4 Is that fair? 5 A. Yes. 6 Q. Very good. Now, I know that we 7 sent some documents over to your counsel earlier 8 today. I wanted to know if -- if you received 9 them and if you have them available. The first 10 would be a copy of your expert report in this 11 case, and that would include your report, as 12 well as the three exhibits that accompany that 13 report. Do you have that document available to 14 you? 15 A. Yes, you mean by that -- my report 16 -- my two papers and the Online Appendix, right? 17 Q. And I -- and I apologize, I was not 18 referring to your Online Appendix. I was -- I 19 was going to mention that just a moment. What I 20 was referring to you is your expert report dated 21 June 30, 2021 that you've signed and that was 22 submitted in this case. 23 A. Yes, I have it. 24 Q. And attached to that -- you have 25 that.</p>	<p style="text-align: right;">15</p> <p>1 unpublished paper that -- and I don't know if 2 its been published yet or not, but it was going 3 to be -- looking for the name of the journal. 4 The Journal of Legal -- 5 A. The Journal of Legal Studies. Yes. 6 It's actually been published -- 7 Q. Okay. So it has been published 8 now? 9 A. -- in the past week or two. Yeah. 10 Q. Very good. Okay. So though -- 11 that package of documents is what I'm referring 12 to as -- as your report. 13 Is that fair? 14 A. Yes. Yes. 15 Q. And then there's a second document 16 that you mentioned and that is your Online 17 Appendix? 18 A. Yes. I also have that with me as 19 well. 20 Q. Very good. Do you consider your 21 Online Appendix to be part of your report as 22 well? 23 A. Well, it's part of my papers. 24 Q. So is that yes, your Online 25 Appendix is considered to be part of your</p>
<p style="text-align: right;">14</p> <p>1 A. Yeah. 2 Q. Is that correct? 3 A. Uh-huh. (Witness answers in the 4 affirmative?) 5 Q. And when you -- when you answer my 6 questions, I would ask that you simply say yes 7 or no. Sometimes uh-huhs and uh-uhs, even 8 though that's normal conversation it's hard for 9 the court reporter to pick up. So that's -- 10 that's just a helpful reminder for all of us 11 during these depositions. 12 But you -- you do have a copy of 13 the June 30th expert report? 14 A. Yes, I do. 15 Q. And attached to that at least the 16 document that I have as three exhibits. The 17 first is your CV, the second is a copy of a -- a 18 journal article. And I believe that has not yet 19 been published but it's in one of the Harvard 20 Law Journals. 21 A. Uh-huh. (Witness answers in the 22 affirmative.) 23 Q. Is that correct? 24 A. Yes. 25 Q. And then the third is an</p>	<p style="text-align: right;">16</p> <p>1 report? 2 A. I would think so. 3 Q. Okay. And the final document that 4 I believe you should have is our fifth set of 5 requests for production. Have you seen that 6 document? 7 A. I did. You referred to the 8 document where you asked for additional 9 disclosure, right? 10 Q. That is correct. 11 A. Yes, I have it. 12 Q. Very good. Now, I want to briefly 13 cover off some of your education and your 14 experience. Where did you grow up? 15 A. So I was born and raised in Haifa, 16 which is in Northern Israel. And then as most 17 Israelis I was off to the military and served -- 18 served for nearly five years in the 19 intelligence. And then I went to university in 20 Israel, to the Hebrew University and I studied 21 both law and cognitive science. 22 Q. Okay. And I'll stop you right 23 there. I appreciate the information. Where did 24 you -- did you attend high school in Israel? 25 A. Yes, I did.</p>

201	<p>1 STATE OF KENTUCKY)) SS. 2 COUNTY OF JEFFERSON) 3 I, JESSICA TAYLOR ROSS, a Notary 4 Public within and for the State at Large, do 5 hereby certify that the foregoing deposition was 6 taken before me, via Zoom, at the time and for 7 the purpose in the caption stated; that the 8 witness was first duly sworn to tell the truth, 9 the whole truth and nothing but the truth; that 10 the deposition was reduced to digital shorthand 11 and recorded by me in the presence of the 12 witness; that the foregoing is a full, true and 13 correct transcript of my digital notes and 14 recording; that there was no request that the 15 witness read and sign this deposition; that the 16 appearances were as stated in the caption. 17 18 WITNESS MY SIGNATURE this 11th day of 19 August, 2021. 20 My commission expires July 21, 2022. 21 22 /s/ Jessica T. Ross JESSICA TAYLOR ROSS Court Reporter 23 Notary Public, State At Large Notary ID 602031 24 25 V/JR</p>	203	<p>1 2 - 2 - 3 4 Once I have received the errata sheet from you, I will then append the errata sheet to the original transcript and forward it to 5 Mr. Bangert for safekeeping. 6 If you have any questions about this errata sheet procedure, please let me know. 7 8 Sincerely, 9 10 /s/ Jessica Taylor-Ross Jessica Taylor-Ross 11 12 Enclosures (1) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
202	<p>1 TAYLOR COURT REPORTING KENTUCKY 2901 Six Mile Lane 2 Louisville, KY 40220 Telephone (502) 671-8110 3 Facsimile (502) 671-8116 August 16, 2021 4 5 6 TO: Casey L. Hinkle, Esq. KAPLAN JOHNSON ABATE AND BIRD, LLP 710 W. Main Street, 4th Floor 7 Louisville, Kentucky 40202 Telephone: (502) 416-1630 8 Email: chinkle@kaplanjohnsonlaw.com 9 10 RE: UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION Case No. 3-19-CV-00851-BJB-CHL 11 CHELSEY NELSON PHOTOGRAPHY, LLC and CHELSEY NELSON 12 VS. LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, et al. Errata Sheet for PROFESSOR NETTA BARAK-CORREN 13 14 Dear Ms. Hinkle, 15 16 Pursuant to your request for a Read and Sign, I am providing you with the transcript 17 errata sheet for the deposition of Professor Netta Barak-Corren given in the above matter on 18 August 4, 2021. 19 Please advise Professor Barak-Corren she is to read your copy transcript and complete the 20 errata sheet (all three pages) attached hereto, have it notarized and return all three pages to 21 me within thirty days of the date of this letter. If there are no changes to be made, 22 please indicate there are no changes on the errata sheet, have it notarized and return all 23 three pages to me within thirty days of the date of this letter. 24 25</p>	204	<p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF KENTUCKY 2 LOUISVILLE DIVISION Case No. 3-19-CV-00851-BJB-CHL 3 4 5 6 CHELSEY NELSON PHOTOGRAPHY, LLC and CHELSEY NELSON, PLAINTIFFS 7 8 9 v. 10 11 12 LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, et al., DEFENDANTS 13 14 15 DEPONENT: PROFESSOR NETTA BARAK-CORREN DATE: AUGUST 4, 2021 16 17 18 COURT REPORTER: JESSICA TAYLOR ROSS 19 20 21 22 ERRATA SHEET FOR PROFESSOR NETTA BARAK-CORREN 23 24 TAYLOR COURT REPORTING KENTUCKY 2901 SIX MILE LANE LOUISVILLE, KENTUCKY 40220 25</p>

EXHIBIT B

**SOMANY CHRISTIANS,
SO FEW LIONS**

***Is There Christianophobia
in the United States?***

**George Yancey and
David A. Williamson**

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ious hatred. We encourage future work that includes comparison groups, but lack of a reference group does not diminish the value of this work.

It is possible that when respondents considered conservative Christians, they were considering extremist groups and not conservative Christians as a group. The most famous extremist group is Westboro Baptist Church. Yet the name of that group came up only once in the answers to the open-ended comments of the more than twenty-five hundred respondents who provided those answers. This was also true for the word “dominionists,” referring to another fairly well-known extremist Christian group. It is hard to believe that the attitudes documented in this book are due to perceptions toward Christian extremist groups since those groups are mentioned so few times. Perhaps the term “Christian fundamentalist” primed respondents in the ANES to think about Westboro or dominionists when they responded to thermometer questions. Yet, because the demographic characteristics of anti-fundamentalist individuals in the ANES are very similar to those of respondents expressing Christianophobic attitudes in our qualitative sample, it is unlikely that extreme groups such as Westboro or dominionists are a major factor shaping the attitudes of the ANES sample either. We cannot show the degree of influence these extreme groups have on attitudes toward conservative Christian groups, but the influence seems minuscule. The most logical answer is that respondents are reacting to their ideas of conservative Christians in general rather than only to the most extremists segments of that religious population.

FINAL THOUGHT

Our study questions the very nature of tolerance itself. The value of tolerance is often advocated by those who are most likely to possess Christianophobia—highly educated political progressives. Real tolerance comes out in how we treat those with whom we totally disagree. For many political progressives and highly educated individuals, accepting individuals of different races and sexual preferences is relatively easy since they have an affinity with highly educated progressives of color and different sexual orientations. But accepting those they disagree with, such as conservative Protestants, is more difficult. Battling