

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

CHELSEY NELSON PHOTOGRAPHY
LLC, et al.

*Plaintiffs-Appellees
and Cross-Appellants*

v.

LOUISVILLE-JEFFERSON COUNTY,
KY METRO GOVERNMENT, et al.

*Defendants-Appellants
and Cross-Appellees*

No. 22-5884 (appeal)

No. 22-5912 (cross-appeal)

**APPELLANTS/CROSS-APPELLEES' MOTION TO HOLD BRIEFING IN
ABEYANCE PENDING A RULING FROM THE U.S. SUPREME COURT
IN *303 CREATIVE LLC v. ELENIS***

Defendants-Appellants and Cross-Appellees 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 Glenda Berry, Kevin Delahanty, Leslie Faust, Andrea Houston, Charles Rogers, William Sutter, and Leonard Thomas, in their official capacities as members of the Louisville Metro Human Relations Commission-Enforcement (collectively, “Appellants”), hereby move for an order holding the briefing schedule for this appeal and cross-appeal in abeyance until 60

days following issuance of a ruling from the U.S. Supreme Court in *303 Creative LLC v. Elenis*, which is expected in May or June 2023. If this motion is denied, Appellants respectfully request an extension of the briefing schedule such that the First Brief is due 30 days from the date of an order denying this motion to hold the briefing schedule in abeyance.

Plaintiffs-Appellees and Cross-Appellants Chelsey Nelson and her wedding photography business, Chelsey Nelson Photography LLC (collectively, “Nelson”) do not wish to provide wedding photography services to same-sex couples. Nelson filed this case as a pre-enforcement challenge to seek a declaratory judgment that Louisville’s antidiscrimination law violates her First Amendment right to freedom of speech. The free speech clause was the primary focus of the District Court’s ruling enjoining Louisville Metro Government and those acting on its behalf from enforcing Louisville Metro’s antidiscrimination ordinance against Nelson.

The same attorneys who represent Nelson in this case are also counsel to a Colorado wedding website business known as 303 Creative, LLC, which filed a nearly identical pre-enforcement challenge to Colorado’s antidiscrimination law. Appellants and Nelson both cited the Tenth Circuit’s opinion in the *303 Creative* case in briefing the summary judgment motions which led to the District Court’s ruling which is being challenged by this appeal. *See 303 Creative LLC v. Elenis*, 6 F.4th 1160 (10th Cir. 2021). On February 22, 2022, the U.S. Supreme Court granted

certiorari in the *303 Creative* case to review the question of “[w]hether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.” *303 Creative LLC v. Elenis*, 212 L. Ed. 2d 6, 142 S. Ct. 1106 (2022).

The District Court in this case quoted the issue upon which the Supreme Court granted review in the first sentence of the opinion on appeal here, and noted that the *303 Creative* case “mirrors the dispute here.” *Chelsey Nelson Photography, LLC v. Louisville/Jefferson Cnty. Metro Gov’t*, 3:19-CV-851-BJB, 2022 WL 3972873, at *1 (W.D. Ky. Aug. 30, 2022). The U.S. Supreme Court’s ruling in *303 Creative* will certainly be relevant to the issues to be briefed in this appeal and may, indeed, fundamentally alter the structure of the parties’ arguments and the strategy with which those arguments are presented. The U.S. Supreme Court is scheduled to hear oral argument in *303 Creative* on December 5, 2022 and is expected to issue its ruling in May or June 2023.

On October 28, 2022, the Sixth Circuit Case Manager assigned to this appeal issued a briefing schedule which requires the First Brief to be filed by December 7, 2022 (two days after the U.S. Supreme Court hears oral argument in *303 Creative*), the Second Brief to be filed by January 6, 2023, the Third Brief to be filed by February 6, 2023, and the Fourth Brief to be filed within 21 days thereafter. *See* Doc. 18. As such, under the current briefing schedule, this appeal will be briefed

before the Supreme Court issues its ruling in *303 Creative*, but the U.S. Supreme Court's ruling in *303 Creative* will almost certainly be rendered before the Sixth Circuit issues its opinion in this case. The parties would therefore be required to file supplemental briefing to adjust their arguments to the U.S. Supreme Court's ruling in *303 Creative*, which would be extremely inefficient and may create confusion with respect to which arguments are being advanced by the parties. To avoid this inefficiency and confusion, Appellants submit that the more orderly way to proceed is to hold the briefing schedule in abeyance until after the U.S. Supreme Court rules in *303 Creative*. Because Nelson won an injunction from the District Court which prohibits enforcement of Louisville Metro's antidiscrimination ordinance against her, she would not be prejudiced by holding the briefing schedule in abeyance.

For the reasons set forth above, Appellants respectfully request that the briefing schedule for this appeal and cross-appeal be held in abeyance and the First Brief not be due until 60 days following issuance of a ruling from the U.S. Supreme Court in *303 Creative LLC v. Elenis*. Alternatively, Appellants respectfully request an extension of the briefing schedule such that the First Brief is due 30 days from the date of an order denying this motion to hold the briefing schedule in abeyance.

Respectfully submitted,

/s/ Casey L. Hinkle

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CERTIFICATE OF SERVICE

I certify that on November 9, 2022, I served the foregoing motion via the CM-ECF filing system on all counsel of record.

/s/ Casey L. Hinkle

*Counsel for Defendants-Appellants
and Cross-Appellees*