

No. 22-5884 / 22-5912

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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CHELSEY NELSON PHOTOGRAPHY LLC, ET AL,  
*Plaintiffs-Appellees/  
Cross-Appellants,*

v.

LOUISVILLE-JEFFERSON COUNTY, KY METRO GOVERNMENT, ET  
AL  
*Defendants-Appellants/  
Cross Appellees.*

On Appeal from the United States District Court  
for the Western District of Kentucky  
No. 3:19-cv-851-BJB  
Hon. Benjamin Beaton

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**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND  
THE AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY  
FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT  
OF DEFENDANTS-APPELLANTS/CROSS-APPELLEES AND  
REVERSAL**

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the American Civil Liberties Union and the American Civil Liberties Union of Kentucky respectfully move for leave to file the accompanying *amici curiae* brief in support of the Defendants-Appellants/Cross-Appellees and reversal. Undersigned counsel has communicated with the parties regarding this motion. All parties have expressed their consent to *Amici* filing this motion and the accompanying *amicus brief*.

Granting leave to file an amicus brief rests within “the sound discretion of the courts,” and depends on a “finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice.” *EMW Women’s Surgical Ctr., P.S.C. v. Beshear*, 283 F. Supp. 3d 629, 635 (W.D. Ky. 2017), *rev’d and remanded on other grounds*, 920 F.3d 421 (6th Cir. 2019) (quoting *United States v. Michigan*, 940 F. 2d 143, 164, 165 (6th Cir. 1991)). Here, *Amici*’s analysis can “aid the court in resolving” the questions presented. *Michigan*, 940 F.2d at 165.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonpartisan organization with nearly two million members dedicated to

defending the principles of liberty and equality embodied in the Constitution. The ACLU of Kentucky—the ACLU’s state affiliate in the Commonwealth—has a long history of advocating for the civil rights and civil liberties of Kentuckians in both state and federal courts across the Commonwealth. As organizations that advocate for First Amendment liberties as well as equal rights for lesbian, gay, bisexual, and transgender, and queer (“LGBTQ”) people, *Amici* and their members have a strong interest in the application of proper standards when evaluating constitutional challenges to civil rights laws.

This case implicates the rights of individuals to participate in the commercial marketplace as equal members of society and whether businesses are entitled to selectively choose the customers they will serve on the basis of the customers’ identity, issues on which *Amici* have specialized experience and expertise. The ACLU was counsel to Respondents in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), and to Respondents in *State v. Arlene’s Flowers, Inc.*, 193 Wash. 2d 469 (2019), both of which raised many of the same issues presented in this case. The ACLU likewise has appeared as *amicus curiae* in a number of cases in which businesses

providing wedding-related services challenge public accommodations on First Amendment grounds—including this matter in the district court. See e.g., *303 Creative LLC v. Elenis*, — U.S. — (2023) (*amicus*); *Telescope Media Group v. Lucero*, 936 F.3d 740 (8th Cir. 2019) (*amicus*); *Chelsey Nelson Photography, LLC v. Louisville/Jefferson Cnty. Metro Gov't*, No. 3:19-CV-851-BJB (W.D. Ky. Aug. 30, 2022) (*amicus*); *Emilee Carpenter, LLC v. James*, 575 F. Supp. 3d 353 (W.D.N.Y. 2021) (*amicus*); *Brush & Nib Studio, LC v. City of Phoenix*, 448 P.3d 890 (Ariz. 2019) (*amicus*); *Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013) (*amicus*).

*Amici* are uniquely positioned to provide the Court with important background and context for its decision and submit this proposed *amici curiae* brief to describe the shortcomings in recent case law by courts considering similar requests, particularly as the Supreme Court has never accepted arguments by businesses open to the public that the First Amendment allows them to avoid complying with antidiscrimination laws—even when they offer expressive services.

The interests of *Amici*, the importance of the points presented in their brief, and the significance of the issues regarding laws prohibiting

discrimination in public accommodations, all weigh in favor of granting this Motion for Leave to file an *amicus curiae* brief.

WHEREFORE, proposed *amici curiae* respectfully request that this Court grant this Motion for Leave to file the attached brief in support of Defendants-Appellants/Cross-Appellees and reversal.

Dated this 30th day of January, 2023

Respectfully Submitted,

*/s/ Aditi Fruitwala*

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## CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 621 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface with 14-point Century Schoolbook font.

Dated: January 30, 2023

/s/ Aditi Fruitwala  
Aditi Fruitwala

*Counsel for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: January 30, 2023

Respectfully Submitted,

*/s/ Aditi Fruitwala*  
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