

Nos. 22-5884 / 22-5912

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHELSEY NELSON PHOTOGRAPHY, ET AL.,
Plaintiffs-Appellees and Cross-Appellants,

v.

LOUISVILLE-JEFFERSON COUNTY, KY METRO GOV'T, ET AL.,
Defendants-Appellants and Cross-Appellees.

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

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AARON
AND MELISSA KLEIN IN SUPPORT OF PLAINTIFFS-APPELLEES**

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March 1, 2023

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), Aaron and Melissa Klein respectfully request leave to file the attached *amicus curiae* brief in support of Plaintiffs-Appellees. Counsel for Plaintiffs-Appellees consented in writing to the filing of this brief. Counsel for Defendants-Appellants refused to consent. In support of this motion, *amici* state as follows:

I. STATEMENT OF THE MOVANTS' INTERESTS

Amici, Aaron and Melissa Klein, owned a business, “Sweet Cakes by Melissa,” that involved creating original art consistent with their faith, like the Plaintiffs-Appellees in this matter. This Court’s decision in this case will establish precedent as to whether governments can force artists like Chelsey Nelson and the Kleins to speak messages through their art that violate their consciences.

In 2013, Aaron and Melissa were asked to create a custom cake for a same-sex wedding. Due to their religious beliefs, they could not, in good conscience, use their art to celebrate the marriage, so they declined to create the cake. For this single declination, an Oregon state agency ruled that the Kleins violated the state’s public accommodation law and imposed a financially devastating penalty of \$135,000 against the Kleins. Aaron and Melissa were forced to shut down their family bakery, which they had worked for years to build, and were punished with a “gag order” whereby the Oregon government restricted their freedom to discuss their case in

public. The incident giving rise to the case took place almost a decade ago, yet the litigation is still ongoing.

The Kleins know far too well the tremendously high human cost of government coercion. As amici, the Kleins have a strong interest in ensuring the First Amendment protects all artists' right to speak freely or refrain from speaking at all, in accordance with the artists' convictions.

II. THE PROPOSED *AMICUS CURIAE* BRIEF IS DESIRABLE AND RELEVANT.

The *amicus* brief is desirable and relevant because *amici* provide a relevant, cogent analysis in light of existing Free Speech precedent including *United States v. United Foods, Inc.*, 533 U.S. 405, 413 (2001); *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995); *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019); and *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

Because *amici* have personally experienced religious discrimination and the pressures of litigation as artists of faith, they also provide insight into the uniquely damaging impact that occurs when governments coerce the speech of artists and small business owners. *Amici* also provide evidence of the impact this case could have on the lives small business owners and the quality of markets across the country.

CONCLUSION AND RELIEF REQUESTED

For these reasons, the proposed *amici* respectfully request that this Court grant this motion and accept its attached *amicus* brief.

Dated: March 1, 2023.

Respectfully submitted,

/s/ Jeffrey C. Mateer

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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)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 468 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 proportionally spaced typeface with 14-point Times New Roman font.

Dated: March 1, 2023

/s/ Jeffrey C. Mateer

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Counsel for Amicus Curiae