

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 31, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

303 CREATIVE LLC, a limited liability
company; LORIE SMITH,

Plaintiffs - Appellants,

v.

AUBREY ELENIS; CHARLES GARCIA;
AJAY MENON; MIGUEL RENE ELIAS;
RICHARD LEWIS; KENDRA
ANDERSON; SERGIO CORDOVA;
JESSICA POCOCK; PHIL WEISER,

Defendants - Appellees.

No. 19-1413
(D.C. No. 1:16-CV-02372-MSK-CBS)
(D. Colo.)

FOUNDATION FOR MORAL LAW;
CATO INSTITUTE; CENTER FOR
RELIGIOUS EXPRESSION;
CATHOLICVOTE.ORG EDUCATION
FUND; LAW AND ECONOMIC
SCHOLARS; TYNDALE HOUSE
PUBLISHERS; CROSSROADS
PRODUCTIONS, INC., d/b/a Catholic
Creatives; WHITAKER PORTRAIT
DESIGN, INC., d/b/a Christian
Professional Photographers; THE BRINER
INSTITUTE, INC.; STATE OF
ARIZONA; STATE OF ALABAMA;
STATE OF ALASKA; STATE OF
ARKANSAS; STATE OF KENTUCKY;
STATE OF LOUISIANA; STATE OF
MISSOURI; STATE OF MONTANA;
STATE OF NEBRASKA; STATE OF
OKLAHOMA; STATE OF SOUTH
CAROLINA; STATE OF TENNESSEE;
STATE OF TEXAS; STATE OF WEST

VIRGINIA; ROBERT P. GEORGE,
Professor; AMERICAN CIVIL
LIBERTIES UNION OF COLORADO;
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; AMERICANS UNITED
FOR SEPARATION OF CHURCH AND
STATE; ANTI-DEFAMATION LEAGUE;
BEND THE ARC: A JEWISH
PARTNERSHIP FOR JUSTICE;
CENTRAL CONFERENCE OF
AMERICAN RABBIS; GLOBAL
JUSTICE INSTITUTE, METROPOLITAN
COMMUNITY CHURCHES;
HADASSAH, THE WOMEN'S ZIONIST
ORGANIZATION OF AMERICA, INC.;
HINDU AMERICAN FOUNDATION;
INTERFAITH ALLIANCE
FOUNDATION; INTERFAITH
ALLIANCE OF COLORADO; MEN OF
REFORM JUDAISM; PEOPLE FOR THE
AMERICAN WAY FOUNDATION;
RECONSTRUCTIONIST RABBINICAL
ASSOCIATION; SIKH COALITION;
WOMEN OF REFORM JUDAISM;
UNION FOR REFORM JUDAISM;
STATE OF MASSACHUSETTS; STATE
OF CALIFORNIA; STATE OF
CONNECTICUT; STATE OF
DELAWARE; DISTRICT OF
COLUMBIA; STATE OF HAWAII;
STATE OF ILLINOIS; STATE OF
MAINE; STATE OF MARYLAND;
STATE OF MINNESOTA; STATE OF
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF NORTH
CAROLINA; STATE OF OREGON;
STATE OF PENNSYLVANIA; STATE
OF RHODE ISLAND; STATE OF
VERMONT; STATE OF VIRGINIA;
STATE OF WASHINGTON; LAW
PROFESSORS OF THE STATE OF
COLORADO; LAW PROFESSORS

FROM THE STATE OF KANSAS; LAW PROFESSORS FROM THE STATE OF NEW MEXICO; LAW PROFESSORS FROM THE STATE OF OKLAHOMA; LAW PROFESSORS FROM THE STATE OF UTAH; LAW PROFESSORS FROM THE STATE OF WYOMING; LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; SOUTHERN POVERTY LAW CENTER; ASIAN AMERICAN LEGAL DEFENSE & EDUCATION FUND; LATINOJUSTICE PRLDEF; LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS; NATIONAL ACTION NETWORK; THE CENTER FOR CONSTITUTIONAL RIGHTS; CENTER FOR CONSITUTIONAL RIGHTS; FLOYD ABRAMS; ERWIN CHEMERINSKY; WALTER DELLINGER; KERMIT ROOSEVELT; AMANDA SHANOR; REBECCA TUSHNET; MAX H. BAZERMAN; MONICA C. BELL; ISSA KOHLER-HAUSMANN; DAVID LAIBSON; ADAM J. LEVITIN; MARY-HUNTER MCDONNELL; NEERU PAHARIA; NINA STROHMINGER; TOM R. TYLER; LAUREN E. WILLIS; LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.,

Amici Curiae.

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **TYMKOVICH, BRISCOE**, and **MURPHY**, Circuit Judges.

This case comes before the court on remand from the Supreme Court of the United States. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2322 (2023). Having reviewed the Supreme Court’s decision, we conclude that the proper course of action is to remand the case to the district court for further proceedings.

Plaintiffs have filed a motion for appellate attorneys’ fees. Defendants are directed to file a substantive response to that motion within fourteen (14) days of the date of this order.

The case is REMANDED to the district court for further proceedings consistent with the Supreme Court’s decision. Pursuant to Fed. R. App. P. 39(a)(3) and (e)(4), costs are taxed against the defendants in the amount of \$1692.45.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Byron White United States Courthouse

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Denver, Colorado 80257

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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 31, 2023

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Caledonia, MI 49316

RE: 19-1413, 303 Creative, et al v. Elenis, et al
Dist/Ag docket: 1:16-CV-02372-MSK-CBS

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(a)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

- cc: Barry K. Arrington
Marie Bonitatibus
Wesley R. Butler
David Carrillo Casarrubias
Matthew Cushing
John Allen Eidsmoe
Scott W. Gaylord
Eric M. Gold
Scott D Goodwin
Jon M. Greenbaum
Patrick Grubel
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Lindsey Kaley
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Craig Konnoth
Alison Faryl Kyles
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Sara R. Neel
Mari Newman
Eric Olson
Jack Davy Patten III
Josephine Kendra Petrick
Jennifer C. Pizer
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Billy Lee Seiber
Ilya Shapiro
Theresa Lynn Sidebotham
Mark Silverstein
Skippere S. Spear
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Meaghan McLaine VerGow
Eugene Volokh

CMW/jm